



Estate Planning Tasmania News

Issue 3 January 2009

Special Edition—*Wills Act 2008* News Alert

There is a major change in Estate Planning law in Tasmania about to take place. We thought that we should bring to your attention the *Wills Act 2008*.

When did the change happen?

The *Wills Act 2008* passed through the Tasmanian Parliament in late 2008, and received Royal Assent on 16 December 2008. The *Wills Act 2008* has not yet been proclaimed—that is, it has not yet commenced - but it is expected to commence around 1 March 2009.

Why was it necessary to change the law about Wills in Tasmania?

There has been a National reform program in succession law, which dates back to the 1990s. The aim of that reform program has been to bring in relatively uniform succession law across Australia. Succession law is the law of Wills and Estates, and is, as a consequence, closely related to Estate Planning.

There will be further legislative reforms in the future about what happens when a person does not have a Will at all (intestacy law), and what claims people can make when they believe that they have not been adequately provided for under a Will (Family Provision, or Testator's Family Maintenance law). Peter Worrall, and other present and past employees in the Estate Practice Group at Peter Worrall Lawyers, have been involved in the reform process in making submissions about what the law should be.

Once the *Wills Act 2008* commences, there will be similar laws relating to Wills in Queensland, New South Wales, Victoria and Tasmania. However the law in each State will not be exactly the same, so clients with assets in various States will still need special attention paid to their Wills.

Does the new Act mean that everyone should update their Wills?

The simple answer to this question is no, as Section 5 of the *Wills Act 2008* provides that the old law—essentially the *Wills Act 1992*—will continue to apply to Wills made before the commencement of the *Wills Act 2008*—however there are some exceptions.

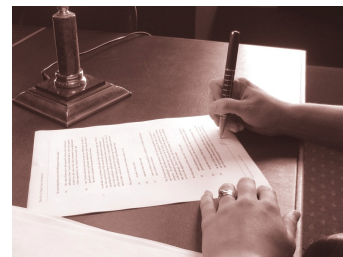
What are the substantial changes?

There has been reform to (among many other things):

- How a Will is interpreted after divorce;
- How a Will is interpreted after marriage;
- How a Court may dispense with the formal requirements for the execution of a Will; and
- How a Court, or the Guardianship & Administration Board, may make Wills for people who are unable to make Wills for themselves because of lack of capacity to do so—the reform in this area is substantially along the lines of a recent article written by Sam McCullough of Peter Worrall Lawyers. For a copy of this article, please email sam@pwl.com.au.

New provisions not previously seen in Tasmania include:

- The effect of providing for a valuation of assets in the Will;
- The entitlement of a wide range of people to see a copy of a Will after the death of the Willmaker;
- An enhancement to the ability to pay maintenance to beneficiaries immediately after death;
- A new statutory interpretation of the domicile of the Willmaker—increasingly important where people have a number of homes in different jurisdictions; and
- A presumption of survivorship by thirty (30) days before a beneficiary can receive their gift, unless the Will provides otherwise (more on this item below).





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Things you need to know about the new *Wills Act 2008*

The presumption of survivorship by thirty (30) days—does this have a good or bad effect?

This is what the Act says at Section 49:



49. Beneficiaries must survive testator for 30 days

- (1)** *If a disposition is made in a will to a person who dies within 30 days after the death of the testator, the will is to take effect as if the person had died immediately before the testator.*
- (2)** *This section does not apply if a contrary intention appears in the will.*
- (3)** *A general requirement or condition that a beneficiary survive the testator does not indicate a contrary intention for the purpose of this section.*

The answer to the question “does this presumption have a good or bad effect?” (posed above) is that it depends on the client. Every person who prepares a new Will drawn after the *Wills Act 2008* commences, should critically consider whether this provision should apply to their Will. Even plain language in a new Will — “*my investment property at West Hobart to my son Bruce, if he is alive at my death*” will have the meaning, after the commencement of the *Wills Act 2008*, that Bruce must survive the Willmaker for more than thirty (30) days to receive the property.

It is possible to revoke the presumption in the Will (see Sections 49(2) and 49(3)), but this must be done with specific words.

In some cases there will be adverse tax effects of not revoking the presumption. It will also be important to consider who the default beneficiaries are if the presumption applies.

This will be a critical estate planning question for all Willmakers to consider from now on.

What further information is available about the *Wills Act 2008*?

The second reading speech made by Attorney General Lara Giddings, when she introduced the legislation is available at <http://www.parliament.tas.gov.au/HansardHouse/isysquery/98d4bf95-879b-45fb-91c2-647b07fa8590/1/doc/> (when entering this site you will need to scroll down to Ms Giddings’ speech at 3.19pm).

The Estate Practice Group of Peter Worrall Lawyers will be running seminars for clients of the firm on the effects of the new *Wills Act 2008*. We will be running similar seminars for those professional advisers in the Accounting and Financial Planning professions. Bookings for these seminars can be made by sending a return email to us at registrations@pwl.com.au, and once we have some idea of numbers, we will respond to those clients who are interested.

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