



21 March 2011

74.9, W6
RB;rp

The Honourable John Rau MP
Attorney-General
DX 336
ADELAIDE SA

Dear Mr Attorney

**International Institute for the Unification of Private Law (UNIDROIT)
Convention Providing a Uniform Law on the form of an International Will 1973 ("the Convention")**

Thank you for your letter of 21 January 2011 in which you advised that at the July 2010 meeting of the Standing Committee of Attorneys-General it was agreed that Australia should take steps to accede to the UNIDROIT Convention and that States and Territories should take action to implement the Convention's Uniform Law into domestic legislation.

The matter has been considered by the Society's Succession Law Committee (previously the Probate Committee).

The Society does not see any major difficulties with the proposal for an "International Will", but does make the following comments

1. It is not clear who an "authorized person" is. Presumably local legislation would provide the necessary definition for a Will made in South Australia. It is suggested that an "authorized person" in South Australia should be a legal practitioner.
2. It is likely that our Court would require some evidence that the "authorized person" in another country, is in fact authorized by that country's legislation. This might require an affidavit to that effect by the "authorized person".
3. At present, a Will made out of the State of South Australia can be admitted to Probate if the Will is made in accordance with the law of the place where it was made, or by the law of the place where the testator was domicile when it was made, or by the laws then in force "in that part of Her Majesty's Dominions that constituted his or her domicile of origin". (Section 13 *Wills Act 1936*). Where it is necessary to establish the law of any country, State or Territory outside of South Australia the Registrar of Probates can accept an affidavit from any person whom the Registrar regards as suitably qualified to give evidence of the law in question. (Rule 26 of the Probate Rules).
4. There is no certainty that an "International Will" will make the procedure much simpler. Perhaps the form of the affidavit of the "authorized person" may be slightly different in content to the current affidavit or affidavits that are required.

5. It should also be pointed out that, in many cases, if a Will is proved in a foreign country and a grant of administration of the Will has been obtained in that country, the original Will is retained by the Court in that other country. Our Court then reseals the grant of probate. Our Court accepts that, if a grant of administration has been made in another country, that the Will has thereby been declared to be valid. A form of International Will would not be necessary in those circumstances.

I trust these comments are of assistance. Please do not hesitate to contact me should you wish to discuss any aspect of this response.

Yours sincerely



Ralph Bönig
PRESIDENT