

WILLS BILL 2012
EXPLANATORY MEMORANDUM

The object of this Bill is to restate, with amendments, the law relating to wills in Norfolk Island in order to implement (with modifications) the recommendations of the National Committee for Uniform Succession Laws regarding the law of wills contained in its final report to the Standing Committee of Attorneys-General in December 1997.

More broadly, the purpose of this Bill is to review and restate the law in Norfolk Island in connection with making and revocation of wills, their interpretation and disputes, and to provide for the recognition of foreign wills made in accordance with the Convention providing a Uniform Law on the Form of an International Will 1973 when that convention comes into force in Australia. Transitional provisions make it clear that existing wills are not affected by the new law except as stated.

Significant changes to the law of wills effected by the Bill include the following—

- (a) the introduction of court authorised wills for people who lack testamentary capacity;
- (b) the provision of statutory guidance in relation to the matters to be taken into consideration by the court in authorising a minor to make a will;
- (c) new rules about beneficiaries who witness wills;
- (d) new rules about survivorship;
- (e) revision of the law relating to foreign wills to bring Norfolk Island law relating to choice of law issues into line with the law in other jurisdictions;
- (f) new provisions about who is entitled to see a will on the death of a testator;
- (g) new provisions for the deposit of wills;
- (h) provisions relating to the admission of limited evidence to aid in the interpretation of wills.

The law of wills has traditionally required strict compliance with the formal requirements for execution, variation or revocation of a will. Most jurisdictions have introduced statutory reforms in this regard. An important change contained in the Bill, and one long overdue for Norfolk Island, is the conferral of a discretion on the Supreme Court to dispense with strict formal compliance in certain circumstances.

Outline of provisions

Part 1—Preliminary

Clause 1 of the Bill provides the short title.

Clause 2 provides for commencement of the Bill in stages. Clauses 1 and 2 come into effect upon assent by the Administrator. Other provisions, except Part 5 dealing with International Wills, come into effect on a day or days fixed by the Administrator by notice in the Gazette but Part 5 cannot come into effect until the Convention is in force in Australia. Part 5 cannot, however come into force unless the other provisions of the Bill have been commenced. If the Bill, other than Part 5, have not been commenced by 1 January 2013, they come into effect on that date.

Clause 3(1) provides a number of definitions for the Bill. **Court** is the Supreme Court; **disposition** includes gifts devises and bequests as well as powers of appointment and their exercise; **document** is any paper or material on which there is writing (but the definition is expanded in clause 8(6)); **domestic partner** of a deceased is a person to whom the person was not married but with whom the deceased person was living at the date of death as a couple on a genuine domestic basis (irrespective of gender); **minor** means a person who is less than 18 years old; **Registrar** is the Registrar of Probates; **spouse** of a deceased person means a person to whom the deceased person was married at the date of death; **testator** means a person who made a will; **will** includes a codicil and any other testamentary disposition.

Part 2—The making, alteration, revocation and revival of wills

Division 1— Will-making powers

Clause 4 describes what kind of property can be disposed of by will. Broadly this is any property of the testator including property that was not that of the testator at the time the will was made but does not include property of which the testator was a trustee. The clause also describes what property means and includes a contingent, executory or future interest in property and a right of entry or recovery of property or a right to call for the transfer of title of property.

Clause 5 (1) provides that a minor cannot make a valid will (that is a person under 18 years of age).

Clauses 5(2) and 5(3), however provides exceptions to clause 5(1), in that a minor can make a will under a Court order under clause 16 and married minor can make a valid will, can make a valid will in contemplation of marriage (but cannot be effective unless the marriage takes place), and can revoke a will.

Division 2—Executing a will

Clause 6 sets out the ways in which a will can be validly made. Thus a will must be in writing. It must either be signed by the testator or someone at the direction of the testator. The signature of the will must be made with the intention of making a will but does not have to be signed at the foot of the will. The will must be signed by the testator in the presence of 2 or more witnesses present at the same time. At least 2 of the witnesses must sign the will in the presence of the testator but they do not have to sign in the presence of each other. The will does not have to expressly state that it has been executed in the manner prescribed (but in the event of dispute that may have to be proved). If a person is empowered to exercise a power of appointment and to do so in a particular manner, that power can be validly exercised if done in accordance with this Bill but not the manner of the requirement of the power.

Clause 7 provides that a witness to a will is not required to know that they are witnessing a will for it to be valid.

Division 3—Dispensing with requirements for execution

Clause 8 provides that the Supreme Court may admit to probate as the will of a deceased person a document which has not been executed in the manner in which a will is required to be executed or a document, an alteration to which has not been executed in the manner in which an alteration to a will is required to be executed by this Act, if the Court is satisfied that that person intended the document to be his or her will. In making a decision the Court may have regard to any evidence relating to the manner in which the document was executed and any evidence of the testamentary intentions of the testator, including evidence of statements made by the testator. The clause also provides for powers of the Court to be exercised by the Registrar where delegated. Subclause (6) provides an extensive extended definition of **document** instead of the narrower definition of document applying elsewhere in the Bill.

Division 4—Witnessing a will

Clause 9 provides that a person who is unable to see and attest that a testator has signed a document, may not act as a witness to a will. This clause makes it clear that not only a person who is permanently blind but also one temporarily unable to see is prevented from witnessing a will.

Clause 10 retains the rule that voids dispositions to interested witnesses but does not void a disposition to the spouse of a witness or a person claiming under the spouse of a witness. A disposition to a person who attests the execution of a will is void unless at least two other attesting witnesses are not beneficiaries under the will, all the other beneficiaries consent in writing to the interested witness taking his or her share under the will (and have the legal capacity to do so) or the Court is satisfied that the testator knew and approved of the disposition and it was given or made freely and voluntarily by the testator.

Division 5—Alteration, revocation and revival of wills

Clause 11 provides an exhaustive (and expanded) list of the means by which a will or part of a will may be revoked. The means are—

- (a) by a will made under an order of the Court under clause 16 or 17, or
 - (b) the testator's marriage to the extent specified in clause 12, or the testator's divorce or annulment of the testator's marriage to the extent specified in clause 13, or
 - (c) by a later will, or
 - (d) by some writing declaring an intention to revoke the will, executed in the manner in which a will is required to be executed by the proposed Act, or
 - (e) by the testator, or some person in his or her presence and by his or her direction, burning, tearing or otherwise destroying the will with the intention of revoking it, or
-

- (f) by the testator, or by some person in his or her presence and at his or her direction, writing on the will or dealing with the will in such a manner that the Court is satisfied from the state of the will that the testator intended to revoke it.

As clause 11 is an exhaustive statement of the means of revoking a will, a will cannot be revoked by any presumption of an intention on the ground of alteration in circumstances.

Clause 12 provides that a will is revoked by marriage although there are circumstances where there might be doubt and the clause provides that they are exceptions to the rule – this includes a will made in contemplation of a particular marriage where the marriage takes place or a will made in contemplation of marriage generally is not revoked by the solemnisation a marriage.

Clause 13 provides that divorce or annulment revokes a will unless the testator has made it clear that the testator did not want a disposition, appointment or grant in a will to be revoked upon the ending of the marriage but if the will does have a continuing effect it does so as if the former spouse predeceased the testator.

Clause 14 provides for the procedure for altering a will which must be done with the same formality as the making of the will (although signatures of the testator and witnesses near an alteration are sufficient) but if the alteration is such that it makes no sense (the words or effect of the will are no longer apparent because of the alteration) the alteration is not effective.

Clause 15 deals with how a will may be revived. To revive a will it must be re-executed or revived by a codicil and is taken to have been executed on the date of revival. If a will has been partly revoked and is partly revoked again and then revived, the part most recently revoked is revived.

Part 3—Wills made or rectified under court authorisation

Division 1—Court authorised wills by minors

Clause 16 empowers the Supreme Court (despite the general incapacity of a minor in Clause 5) to grant a minor leave to make a will on terms disclosed to the Court and subject to such conditions as the Court sees fit. The clause enables a minor, or a person on his or her behalf, to apply to the Court for an order authorising the minor to make or revoke a will in specific terms approved by the Court. Before making an order, the Court must be satisfied that the minor understands the nature and effect of his or her testamentary proposal and the extent of any property disposed of by it, as well as being satisfied that the proposal accurately reflects the minor's testamentary intentions and that it is reasonable in all the circumstances to make the order. The order may be made subject to conditions. A will made under this clause is only valid if executed in accordance with the requirements specified for execution of wills in proposed Part 2, and if one of the attesting witnesses is the Registrar. The will is required to be deposited with the Registrar, although a failure to comply with this requirement does not affect the validity of the will.

Division 2—Court authorised wills for persons who do not have testamentary capacity

Clause 17 and subsequent clauses confer new powers on the Supreme Court to make orders authorising the making, alteration and revocation of wills for persons lacking testamentary capacity. The process is in 2 stages – application for leave to apply for an order and an application for an order. In practice it is expected that these 2 processes will run together in order to expedite the process and avoid unnecessary costs. An order may be made in respect of any person under a disability (including a minor) but an order cannot be made if the person is deceased before an order is made.

Clause 18 provides that in conducting the hearing of an application for leave the Court is not bound by the rules of evidence. It may consider any information provided to it under clause 28 and may inform itself of any other matter in any manner it sees fit. However the provisions of Part 3.10 of the *Evidence Act 2004* (dealing with privilege) are not excluded by these wide provisions.

Clause 19 provides for the Court to make such related orders or give directions as it thinks necessary in a matter under Clause 21.

Clause 20 provides that a person who gains or regains testamentary capacity can revoke a will made by the Court while under incapacity.

Clause 21 provides that a will made by the court under clause 17 must be signed by the Registrar and sealed by the Court and if revoked similarly executed (this requirement is not intended to affect the actions of a person who has the capacity to revoke such a will personally under clause 20). A will made by the Court is to be deposited with the Registrar and may not be withdrawn without a court order or the person has gained testamentary capacity. Failure to deposit such a will does not invalidate the will.

Clause 22 provides that the Court must be satisfied with certain matters such as the testator being under an incapacity, that the proposed will provisions are the kind of thing a reasonable testator would want in the circumstances and that it is reasonable in the circumstances to make the order for the making of the will.

Clause 23 provides for the way the Court may inform itself about matters to take into account when hearing an application for leave to apply for an order under clause 17.

Clause 24 provides the information that is or may be required by the Court in hearing an application for leave for an order under clause 17.

Clause 25 provides for the persons entitled to appear and be heard in any proceedings for the hearing of an application for leave to apply for an order under section 17 – this includes the person involved, their legal practitioner, a person holding an enduring power of attorney for the person, the person’s guardian or administrator and any other person who has, in the opinion of the Court, a genuine interest in the matter.

Clause 26 provides for the recognition of a statutory will made on behalf of a person who, at the time of the execution, lacked testamentary capacity and made in a place, other than Norfolk Island, according to the law of that place being a place where the deceased was resident at the time of the execution of the will.

Division 3—Court authorised rectification of wills

Clause 27 enables the Supreme Court to rectify a will if satisfied that it is so expressed that it fails to carry out the testator's intentions. The provision empowers the Court to make an order to rectify a will to carry out the intentions of a testator. However, the Court may only do so if it is satisfied that the will does not carry out the testator's intentions because a clerical error was made or because the will does not give effect to the testator's instructions. An application for such an order must be made within a period of 6 months after the grant of probate but the Court may extend the period if it considers it necessary to do so provided a final distribution of the estate has not been made. The clause protects a personal representative from liability in respect of certain distributions made to a beneficiary as if the will had not been rectified. The protection afforded applies only in respect of maintenance distributions or distributions made at least 6 months after the grant of probate and without notice of any application being made under this clause or the Family Provision of the *Administration and Probate Act 2006*.

Clause 28 requires the Court to direct that a certified copy of an order under clause 31 be attached to the grant of probate or letters of administration with the will annexed (as the case may be).

Part 4—Construction of wills

Division 1—General rules about the construction of wills

Clause 29 specifies the interest in property that may be disposed of by will provides that where, subsequently to the making of a will, the testator disposes of a part interest in the property disposed of by will, the will operates to dispose of a remaining interest in the property. It is designed to prevent the failure of a disposition, which otherwise would cause the remaining interest to fall into the testator's residuary estate under clause 31.

Clause 30 provides that a will takes effect as if it had been executed immediately before the death of the testator and is designed to ensure that property acquired by the testator after he or she made the will can be disposed of by it however the testator can express a contrary intention in the will or elsewhere.

Clause 31 operates to avoid a partial intestacy by providing that if any disposition of property is ineffective the will takes effect as if the property were part of the residuary estate of the testator. Property that is the subject of a power of appointment is excluded because, if the power of appointment fails, the property passes according to the provisions of any gift over contained in the instrument creating the power.

Clause 32 specifies the circumstances in which extrinsic evidence is admissible to clarify a will. It permits the Court to admit extrinsic evidence of the testator's actual intention for the purpose of construing a will, where the language used in it is meaningless or ambiguous (either on the face of the will or in the light of surrounding circumstances). Evidence of the testator's intention may not be admitted to establish any surrounding circumstances and subclause (3) preserves the admissibility of extrinsic evidence otherwise admissible at law, for example, evidence of the testator's intention to fortify or rebut equitable presumptions of intention or where wording of the will is found to be equivocal.

Clause 33 provides that the construction of a will is not altered by a change in the testator's domicile after the execution of his or her will.

Clause 34 provides that a contingent, future or deferred disposition of property, whether specific or residuary, includes any intermediate income of the property which has not been disposed of by the will.

Clause 35 requires a beneficiary to survive a testator by 30 days before receiving a benefit under the testator's will, subject to a contrary intention appearing in the will; the clause also enables a personal representative to make a maintenance distribution to certain beneficiaries during the 30-day period but any distribution comes out of the share of those beneficiaries but if the beneficiary does not survive the testator for 30 days is treated as an expense of the estate.

Division 2—Construction of particular provisions in wills

Clause 36 provides that, subject to a contrary intention expressed in the will, a general disposition of land or of the land in a particular area includes leasehold land, whether or not the testator owns freehold land.

Clause 37 specifies what property is, subject to a contrary intention expressed in the will, included in a general disposition of property by the testator.

Clause 38 provides that, subject to a contrary intention expressed in the will, a disposition of real property without words of limitation operates to pass the testator's whole estate or interest in the property.

Clause 39 specifies how a disposition to a person's issue is to operate. It provides that, subject to a contrary intention expressed in the will, a disposition of property to a person's issue, without limitation as to remoteness, must be distributed to those issue according to the intestacy rules that apply when a person is survived only by issue

Clause 40 specifies the manner of construing a disposition which contains a requirement that the disposition will fail if the beneficiary dies without issue.

Clause 41 operates as an exception to the lapse rule contained in clause 39 in circumstances where a beneficiary, who is the issue of the testator, fails to survive the testator for 30 days but leaves issue who do survive the testator for this period. In these circumstances, subject to a contrary intention expressed in the will, the original beneficiary's share passes to his or her surviving issue, who take the share according to the intestacy rules that apply when a person is survived only by issue. The clause does not apply in specified circumstances, for example, if the original beneficiary fails to fulfil a condition imposed on the beneficiary by the will or if a contrary intention appears in the will. However, the clause states that a general requirement or condition that issue survive the testator or reach a specified age does not of itself show a contrary intention.

Clause 42 specifies how a residuary disposition is to be construed; subclause (1) operates (subject to a contrary intention appearing in the will) to prevent a partial intestacy occurring in circumstances where a disposition of all, or of the residue, of the testator's estate refers only to the testator's real property or only to the testator's personal property — it provides for the reference to be construed as a reference to include both; subclause (2) deals with how property passes if a disposition of the whole or residue of the testator's estate fails as a fractional part; it operates (subject to a contrary intention appearing in the will), so that the part that fails is added to the other fractional parts proportionally.

Clause 43 sets out the requirements for administering a disposition of property to an unincorporated association. It operates to save a disposition to an unincorporated association of persons that would otherwise be invalid either on the grounds that it could be construed as a trust for non-charitable purposes or that it breaches the rule against perpetuities. Subclause (1) deems certain dispositions of property to be an augmentation of the general funds of the beneficiary association. Dispositions to associations that are charities are excluded because the grounds of invalidity the clause seeks to avoid do not apply to charities. If an unincorporated association has aims, objectives or purposes which are exclusively charitable or which can be considered to be exclusively for charitable purposes, then both the validity and the administration of the gift to the association are governed by the law relating to charities. Proposed subclause (5) saves dispositions to an unincorporated association that might fail because, for example, a list of members of the association at the time of the testator's death cannot be compiled.

Clause 44 puts it beyond doubt that the creation of a power of appointment by will does not constitute an unacceptable delegation of a testator's will-making power.

Clause 45 specifies how a reference, whether express or implied, to a valuation in a will is to be construed. It operates (subject to a contrary intention appearing in the will) to provide a default method of valuation of property when a will makes specific reference to a valuation that it is not possible to make. In those circumstances the valuation is to be a valuation of the property as at the testator's death, made by a competent valuer.

Division 4—Wills to which foreign laws apply

Clause 46 sets out the rules to establish the validity of a foreign will but does not affect a will to which the provisions of Part 6 (International wills) apply. Broadly, a will is to be taken to be properly executed if its execution conforms to the internal law in force in the place where it was executed; or which was the testator's domicile or habitual residence or of which the testator was a national, either at the time the will was executed, or at the testator's death. Special provisions deal with such matters as executing a will on board a ship or aircraft and dealing with immovable property in a jurisdiction as well as the exercise of a power of appointment by will in a manner different from that required by the instrument that created the power.

Clause 47 sets out rules for deciding what law applies to a will and where in a country (such as Australia) where there are a number of different jurisdictions the law of which could be applicable.

Clause 48 provides for the rules to follow in determining the requirements of a foreign law in determining the validity of a will but in certain circumstances a requirement may be considered a formality only.

Part 5—International wills

The matters provided for in this Part are more extensively referred to at the end of the clause notes

Clause 49 provides for definitions for Part 5, defining **Convention** as the Convention providing a Uniform Law on the Form of an International Will 1973 and **international will** as a will made in accordance with the requirements of the Annex to the Convention: the Annex to the convention is set out in the Schedule to the Bill.

Clause 50 provides that the Convention has the force of law in Norfolk Island.

Clause 51 provides for the persons who are entitled to act in connection with an international will and is made to comply with the requirements of the Convention.

Clause 52 provides that the persons qualified to witness an international will are those entitled to do so under Norfolk Island law (which are to be found in this Bill).

Clause 53 makes it clear that the provisions of this Act that apply to wills extend to international wills.

Part 6—Deposit of wills

Clause 54 provides that wills may be deposited with the Registrar and the manner in which this may be done.

Clause 55 empowers the setting of fees in connection with the deposit of wills and their removal.

Clause 56 provides how and to whom a will deposited with the Registrar may be released.

Clause 57 specifies the persons who are entitled to inspect and make copies of a will of a deceased testator.

Part 7—Transitional and consequential provisions

Clause 58 repeals the *Wills Act 1973*.

Clause 59 sets out various circumstances under which wills made before the Bill becomes law are either continued in force or are affected. Generally the rule is that pre-existing wills are not affected.

Note on International Wills

Part 5 of the *Wills Bill 2012* adopts into Norfolk Island law the Uniform Law contained in the UNIDROIT Convention providing a Uniform Law on the Form of an International Will 1973 (the Convention), which was signed in Washington D.C. in 1973.

The primary objective of the Convention is to eliminate problems that arise when cross border issues affect a will, for example where a will deals with assets located overseas or where the will-maker's country of residence is different to the country in which the will is executed.

The Convention's Uniform Law provides for an additional form of will—an international will—that sits alongside other local forms of will. An international will that complies with the Uniform Law will be recognised as a valid form of will by courts of other States party to the Convention, irrespective of where the will was made, the location of assets or where the will-maker lives, and without the court having to examine the internal laws operating in foreign countries to determine whether the will has been properly executed.

The Uniform Law sets out requirements for the form of the will and the process for its execution—it does not deal with issues such as the capacity required of the will-maker or the construction of the terms of a will. These are matters that will continue to be dealt with by local law.

By a decision of the Standing Committee of Attorneys-General in July 2010, all Australian States and Territories have agreed to adopt the Uniform Law into their local legislation to allow Australia to formally accede to the Convention and to provide a consistent approach to the recognition of international wills across Australian jurisdictions. The Bill is based on a model Bill although, as required by the Convention, the Schedule to the Bill reproduces the text of the Uniform Law.

No forced commencement date for Part 5 is provided because it is not possible at this time to determine one. Gazettal of assent will not be made unless the Convention has entered into force in Australia. Article XI of the Convention provides that the Convention will enter into force six months after accession. The Convention will therefore enter into force six months after Australia accedes to the Convention and thereafter the Bill will come into force when Part 6 is commenced.

Division 3 of Part 4 contains provisions for wills to which foreign laws apply.

It is to be noted that clause 46(1) provides that the provisions of that section and clauses 47 and 48 do not limit the operation of Part 5. International wills are a separate form of will that sit alongside existing forms of recognised will so that sections 46, 47 and 48 (Division 3 of Part 4) may continue to apply to a "foreign will" that is not an international will, either because there was no intention for it to be made in the form of an international will or because, in spite of any intentions, the will has not been validly made as an international will. Article 1.2 of the Uniform Law provides that the invalidity of an international will does not affect its formal validity as a will of another kind.

The Schedule at the end of the Bill reproduces the Annex to the Convention. This gives effect to Article I of the Convention, which requires a Contracting Party to reproduce the actual text of the Annex to the Convention. The Annex to the Convention contains the Uniform Law.

The Annex in summary—

Article 1 provides that a will shall be valid as regards form, irrespective of the place where the will 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 that complies with Articles 2 to 5 of the Uniform Law. If an international will is invalid because it does not comply with Articles 2 to 5 of the Uniform Law, it may still be valid as a will of another kind. For example, it may be a will to which foreign laws apply, the validity of which can be determined under Division 3 of Part 4 of the *Wills Act 2012*.

Article 2 provides that a joint will cannot be drawn up in the form of an international will.

Article 3 requires an international will to be in writing. It can be written in any language, by hand or by any other means and it need not be written by the testator.

Article 4 requires the testator to declare that a document is his or her will, and that he or she knows the contents of the will, before two witnesses and an authorised person. The testator does not have to inform the witnesses or authorised person of the contents of the will.

Section 51(1) of the *Wills Act 2012* designates the persons authorised to act in connection with an international will in Norfolk Island. In accordance with section 50 of the *Wills Act 2012*, the requirements for acting as a witness to an international will in Norfolk Island are governed by Norfolk Island law. For example, section 9 of the *Wills Act 2012* provides that a person who is unable to see and attest that a testator has signed a document may not act as a witness to a will in Norfolk Island.

Article 5 requires the testator to sign the international will in the presence of the two witnesses and the authorised person, or to acknowledge his or her signature if signed previously. If the testator is unable to sign the will, the authorised person must note on the will the reason for the incapacity.

The Article recognises that the local law of a Contracting Party may allow a testator to direct another person to sign on his or her behalf. Section 6(1)(a) of the *Wills Act 2012* makes such provision. The witnesses and authorised person must attest the will by signing it in the presence of the testator.

Article 6 requires the signatures of the testator, witnesses and authorised person to be placed at the end of the international will. If the will consists of several pages, each page of the will should be numbered and signed by the testator (or the person designated to sign on his or her behalf or the authorised person). However, an international will is not rendered invalid if these requirements are not met.

Article 7 provides that the date of the international will is the date on which it was signed by the authorised person. The date should be noted at the end of the will by the authorised person. The will is not rendered invalid if these requirements are not met. If the will is undated or wrongly dated, the date will have to be proved by some other means.

In the absence of any mandatory rule about the safekeeping of a will, Article 8 requires the authorised person to ask the testator whether he or she wishes to make a declaration about the safekeeping of the international will. If the testator wishes to make such a declaration, he or she can request that the certificate that the authorised person attaches to the will (under Article 9) mentions the place that he or she intends to have the will kept. The will is not rendered invalid if this requirement is not met.

Section 153A of the *Administration and Probate Act 2006* allows a will to be deposited in the office of the Registrar. This is voluntary.

Article 9 requires the authorised person to attach a certificate to the international will certifying that the obligations of the Uniform Law have been complied with.

The form of the certificate is prescribed in Article 10. It is intended that the form allow small changes of detail to the certificate, for example where the form allows for the omission of particulars marked with an asterisk. However, the certificate must be in a substantially similar form to that set out in Article 10. The form of the certificate is important as it aims to facilitate the reading of the certificate, especially if a reader speaks a foreign language, and the easy identification of relevant details such as the name of the testator and the authorised person.

The certificate also requires the authorised person to certify that the witnesses to the will meet the conditions requisite to acting as a witness to a will in Norfolk Island. For example, section 9 of the *Wills Act 2012* provides that a person who is unable to see and attest that a testator has signed a document may not act as a witness to a will in Norfolk Island.

In accordance with Article 13, an absence or irregularity of a certificate will not affect the formal validity of an international will.

Article 11 requires the authorised person to keep a copy of the certificate and deliver another copy to the testator. As another copy of the certificate is attached to the international will, this means that the authorised person must make out three signed certificates. In accordance with Article 13, an absence or irregularity of a certificate will not affect the formal validity of an international will.

Article 12 provides that, in the absence of evidence to the contrary, the certificate will be conclusive of the formal validity of an international will. Any challenge to the validity of the will is to be solved in accordance with the legal procedure applicable in the Contracting Party where the will and certificate are presented.

As noted above, Article 13 provides that the absence or irregularity of a certificate will not affect the validity of an international will.

Article 14 provides that an international will is subject to the ordinary rules of revocation of wills under local laws. Division 5 of Part 2 of the *Wills Act 2012* sets out the relevant law in Norfolk Island in relation to revocation.

Article 15 requires that, when interpreting and applying the provisions of the Uniform Law, regard must be had to its international origin and to the need for uniformity in its interpretation.

Further information on the intended operation of the Uniform Law is set out in the Explanatory Report on the Convention prepared by UNIDROIT, which can be found at—

<http://www.unidroit.org/english/conventions/1973wills/1973wills-explanatoryreport-e.pdf>

3 August 2012
