

Serial 50  
Wills Amendment (International Wills) Bill 2013  
Mr Elferink

A Bill for an Act to amend the *Wills Act*

NORTHERN TERRITORY OF AUSTRALIA

WILLS AMENDMENT (INTERNATIONAL WILLS) ACT 2013

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Act No. [ ] of 2013

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# NORTHERN TERRITORY OF AUSTRALIA

Act No. [ ] of 2013

An Act to amend the *Wills Act*

[Assented to [ ] 2013]  
[Second reading [ ] 2013]

The Legislative Assembly of the Northern Territory enacts as follows:

## 1 Short title

This Act may be cited as the *Wills Amendment (International Wills) Act 2013*.

## 2 Commencement

- (1) Subject to subsection (2), this Act commences on the day fixed by the Administrator by *Gazette* notice.
- (2) This Act cannot commence earlier than the day on which the *Convention providing a Uniform Law on the Form of an International Will 1973* enters into force in Australia.

## 3 Act amended

This Act amends the *Wills Act*.

## 4 Section 3 amended

Section 3

*insert (in alphabetical order)*

***Convention***, for Part 5A, see section 48B.

***internal law***, for Part 5, see section 45.

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*international will*, for Part 5A, see section 48B.

**5 Section 48A and Part 5A inserted**

After section 48 in Part 5

*insert*

**48A Part does not limit international wills provisions**

This Part does not limit the operation of Part 5A.

**Part 5A International wills**

**48B Definitions**

In this Part:

*Convention* means the *Convention providing a Uniform Law on the Form of an International Will 1973* signed in Washington DC in the United States of America on 26 October 1973.

*international will* means a will made in accordance with the requirements of the Annex to the Convention.

**48C Application of Convention**

- (1) The Annex to the Convention has the force of law in this jurisdiction.
- (2) A copy of the Annex to the Convention is set out in Schedule 2.

**48D Persons authorised to act in connection with international wills**

- (1) For this Part, the following persons are authorised to act in connection with an international will:
  - (a) an Australian legal practitioner as defined in section 6(a) of the *Legal Profession Act*,
  - (b) a public notary of any Australian jurisdiction.
- (2) A reference in the Annex to the Convention to a person authorised to act in connection with international wills is a reference to:
  - (a) a person mentioned in subsection (1) who is acting in Australia; or

- 
- (b) any other person who is acting as an authorised person under a law of a state (other than Australia) that is a party to the Convention.

*Note for section 48D*

*This section gives effect to Articles II and III of the Convention.*

#### **48E Witnesses to international wills**

The conditions requisite to acting as a witness to an international will are governed by the law of this jurisdiction.

*Note for section 48E*

*For the relevant provisions of this Act see Part 2, Division 2.*

#### **48F Application of Act to international wills**

To avoid doubt, the provisions of this Act that apply to wills extend to international wills.

### **6 Schedule amended**

Schedule, heading

*omit, insert*

### **Schedule 1 Repealed Acts**

### **7 Schedule 2 inserted**

After Schedule 1

*insert*

### **Schedule 2 Annex to Convention providing a Uniform Law on the Form of an International Will 1973**

Section 48C(2)

#### **ANNEX**

#### **UNIFORM LAW ON THE FORM OF AN INTERNATIONAL WILL**

##### **Article 1**

1. A will shall be valid as regards form, irrespective particularly of the place where it 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 complying with the provisions set out in Articles 2 to 5 hereafter.

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2. The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

#### **Article 2**

This law shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

#### **Article 3**

1. The will shall be made in writing.
2. It need not be written by the testator himself.
3. It may be written in any language, by hand or by any other means.

#### **Article 4**

1. The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof.
2. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

#### **Article 5**

1. In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.
2. When the testator is unable to sign, he shall indicate the reason therefor to the authorized person who shall make note of this on the will. Moreover, the testator may be authorized by the law under which the authorized person was designated to direct another person to sign on his behalf.
3. The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

#### **Article 6**

1. The signatures shall be placed at the end of the will.
2. If the will consists of several sheets, each sheet shall be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

#### **Article 7**

1. The date of the will shall be the date of its signature by the authorized person.
2. This date shall be noted at the end of the will by the authorized person.

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**Article 8**

In the absence of any mandatory rule pertaining to the safekeeping of the will, the authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Article 9.

**Article 9**

The authorized person shall attach to the will a certificate in the form prescribed in Article 10 establishing that the obligations of this law have been complied with.

**Article 10**

The certificate drawn up by the authorized person shall be in the following form or in a substantially similar form.

**CERTIFICATE**

(Convention of October 26, 1973)

1. I, ..... (name, address and capacity), a person authorized to act in connection with international wills
2. Certify that on ..... (date) at ..... (place)
3. (testator) ..... (name, address, date and place of birth) in my presence and that of the witnesses
4. (a)..... (name, address, date and place of birth)  
(b)..... (name, address, date and place of birth)  
has declared that the attached document is his will and that he knows the contents thereof.
5. I furthermore certify that:
6. (a) in my presence and in that of the witnesses  
(1) the testator has signed the will or has acknowledged his signature previously affixed.  
\*(2) following a declaration of the testator stating that he was unable to sign his will for the following reason  
.....  
– I have mentioned this declaration on the will  
\* – the signature has been affixed by ..... (name, address)
7. (b) the witnesses and I have signed the will;
8. \*(c) each page of the will has been signed by ..... and numbered;

- 
9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;
  10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;
  11. \*(f) the testator has requested me to include the following statement concerning the safekeeping of his will:  
.....
  12. PLACE
  13. DATE
  14. SIGNATURE and, if necessary, SEAL

#### **Article 11**

The authorized person shall keep a copy of the certificate and deliver another to the testator.

#### **Article 12**

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of a will under this Law.

#### **Article 13**

The absence or irregularity of a certificate shall not affect the formal validity of a will under this Law.

#### **Article 14**

The international will shall be subject to the ordinary rules of revocation of wills.

#### **Article 15**

In interpreting and applying the provisions of this law, regard shall be had to its international origin and to the need for uniformity in its interpretation.

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\* To be completed if appropriate

### **8 Expiry of Act**

This Act expires on the day after it commences.