

16 February 2018

Our ref (VK-SLC)

The Hon. Yvette D'Ath
Attorney-General and Minister for Justice
Minister for Training and Skills
Attorney General's Department
GPO Box 149
BRISBANE QLD 4001

By post and email: attorney@ministerial.qld.gov.au

Dear Attorney

Re: Proposed amendments to the *Succession Act 1981*

We write to propose amendment to the court authorised wills provisions contained in the *Succession Act 1981*.

Execution of court authorised wills

Once the court has made an order, section 26(2) requires the proposed testator be alive at the time the registrar signs the will.

We consider this to be inconsistent with the purpose of the legislation and the power of the court, and propose that it be repealed.

The requirement is an unnecessary additional requirement that is purely administrative as it requires no exercise of discretion by the registrar, the discretionary considerations having already been considered by the judge on the making of the order. Further, it can give rise to an otherwise unnecessary application to the court for further orders in situations where the proposed testator dies after the court orders the will be made, and before the registrar signs the will.

In both Queensland and NSW judges have made orders to cure such injustices¹.

We note South Australia does not have an equivalent provision in the *Wills Act 1936* (SA).

¹ *Re Scott* [2014] NSWSC 465; *Re White; Parry v Smith* (unreported, Holmes CJ, 12 October 2016)

Amendments to the Succession Act 1981

Leave to apply

Section 22(1) of the Act requires an applicant to obtain the court's leave to apply for an order.

The court may hear the application with or immediately after the application for leave (section 22(3)).

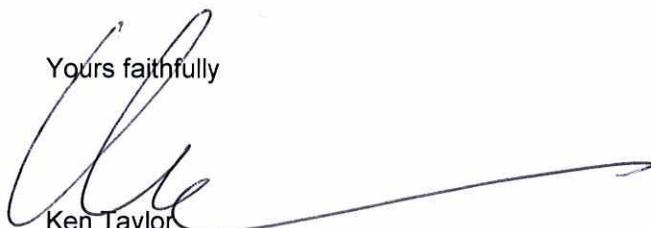
Both applications are routinely heard in the Applications List of the Supreme Court, and are generally heard together.

We consider the requirement for leave to be redundant, and propose that this requirement be repealed. The remainder of Subdivision 3 of the Act remains relevant to the substantive application, with appropriate amendment.

We note that an application for a court authorised will for minors does not require a leave application.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Senior Policy Solicitor, Vanessa Krulin on 07 3842 5872 or v.krulin@qls.com.au.

Yours faithfully



Ken Taylor
President