WILLS AMENDMENT (INTERNATIONAL WILLS) BILL 2012

Introduction and First Reading

Bill introduced, on motion by **Hon Michael Mischin (Parliamentary Secretary)**, and read a first time.

Second Reading

HON MICHAEL MISCHIN (North Metropolitan — Parliamentary Secretary) [7.42 pm]: I move —

That the bill be now read a second time.

The Wills Amendment (International Wills) Bill 2012 amends the Wills Act 1970. It adopts into Western Australian 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 DC in 1973. UNIDROIT—the International Institute for the Unification of Private Law—is an intergovernmental organisation that formulates uniform law instruments aimed at harmonising and coordinating private laws between countries. The convention is one such uniform law instrument. The convention came into force on 9 February 1978 and currently has 12 state parties and an additional eight signatories. These include the United Kingdom, the United States of America, Italy, France, Bosnia and numerous provinces in Canada.

Although Australia has been a member of UNIDROIT since 1973, it is not yet a signatory to the convention. However, 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. This will allow Australia to formally accede—accession being the unconditional formal acceptance of a treaty by a state that did not take part in the negotiation and signing of the concluded treaty—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. To date, Victoria and the Australian Capital Territory have introduced their implementing bills. The commonwealth will be unable to proceed to the final stage of implementation—that is, the preparation of accession documents, which I understand are prepared by the Department of Foreign Affairs and Trade—until the various implementing bills have been passed by each state and territory. Further, the convention provides for a mechanism so that the convention comes into effect six months after accession. The Western Australian amendments will therefore not commence operation until the convention comes into force in Australia, which may not be until 2013.

The primary objective of the convention is to eliminate problems that arise when international cross-border issues affect a will; for example, when a will deals with assets located overseas or when the will maker's country of residence is different from 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. The international will is an alternative to a local form 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 or 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 according to those laws. The formalities required for international wills executed under the uniform law are similar to the requirements under the Western Australian Wills Act 1970. For example, an international will must be in writing and be signed by the will maker in the presence of two witnesses. The main difference is that the uniform law contains an additional requirement that the will maker must also declare the will in the presence of an "authorised person", who is required to attach to the will a certificate to the effect that the proper formalities have been performed. The certificate, in the absence of evidence to the contrary, is conclusive of the formal validity of the instrument as an international will. The convention allows contracting states to designate who shall be these authorised persons. Through the Standing Committee of Attorneys–General—now called the Standing Council of Law and Justice—all Australian states and territories have agreed that authorised persons should have an understanding of local laws concerning wills and of the uniform law's form requirements. The bill therefore designates Australian legal practitioners and public notaries as persons authorised to act in connection with international wills. 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. Pursuant to standing order 126(1), I advise that this bill is a uniform legislation bill. It is a bill that ratifies or gives effect to an intergovernmental or multilateral agreement to which the government of the state is a party. I commend the bill to the house, and I table the explanatory memorandum.

[See paper 4529.]

Debate adjourned and bill referred to the Standing Committee on Uniform Legislation and Statutes Review, pursuant to standing orders.