

Terms of Reference – Succession Law

The Victorian Law Reform Commission is asked to review and report on the desirability of legislative or other reform in relation to the succession law matters set out in these terms of reference. The purpose of this reference is to:

- a) ensure that Victorian law operates justly, fairly and in accordance with community expectations in relation to the way property is dealt with after a person dies
- b) ensure that the processes to resolve disputes about the distribution of such property are efficient, effective and accessible
- c) identify practical solutions to problems that may still be outstanding in Victorian law and practice following the recommendations of the National Committee for Uniform Succession Laws established by the Standing Committee of Attorneys-General (SCAG).

In particular, the Commission is asked to review and report on the following matters:

Wills

1. whether the current requirements for witnessing wills should be revised to better protect older and vulnerable will-makers from undue influence by potential beneficiaries or others
2. whether the current provisions that allow the Supreme Court to authorise wills for persons who do not have testamentary capacity should be revised
3. the need to clarify when testamentary property disposed of during the will-maker's lifetime will be deemed and when it will be protected from ademption

Family provision

4. whether Part IV of the *Administration and Probate Act 1958* concerning family provision applications is operating justly and effectively, having regard to its objective of providing for the proper maintenance and support of persons for whom a deceased had a responsibility to make provision

Intestacy

5. whether Division 6 of Part I of the *Administration and Probate Act 1958* concerning the distribution of an estate on an intestacy is operating effectively to achieve just and equitable outcomes

Legal practitioner executors

6. whether there should be special rules for legal practitioners who act as executors and also carry out legal work on behalf of the estate, including rules for the charging of costs and commission

Administration of estates

7. how assets are designated to pay the debts of an estate and the effect that this has on the estate available for distribution to beneficiaries or to meet a successful family provision claim
8. whether a court should have the power to review and vary costs and commission charged by executors

Operation of the jurisdiction

9. whether there are more efficient ways of dealing with small estates
10. the costs rules and principles applied in succession proceedings, taking into account any developments in rules or practice notes made or proposed by the Supreme Court
11. any other means of improving efficiency and reducing costs in succession law matters.

In undertaking this reference, the Commission should have regard to, and conduct specific consultation on, any relevant recommendations made by the National Committee for Uniform Succession Laws established by SCAG. The National Committee has released reports and model legislation on wills (1997 and 2006), family provision (1997 and 2004), intestacy (2007) and the administration of deceased estates (2009). State and Territory Ministers have agreed to adopt the National Committee's recommendations as the basis for reforming succession laws in their respective jurisdictions with the aim of maximising national consistency.

The reference does not include consideration of the remaining recommendations of the National Committee, unless relevant to the above referred matters.

The Commission should also consider any legislative developments in both Victoria and other Australian jurisdictions since the National Committee released its reports.

The Commission is to report by 1 September 2013.