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BY: _____

Submission No. 16

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25 March 2013

Chief Executive Officer
Victorian Law Reform Commission
Level 10
10 Queen Street
MELBOURNE VIC 3000

Dear Sir/Madam,

Re: Applications under Part IV of the Administration and Probate Act

Just over four years ago I made a submission to the Commission that the six-months limit for lodging applications be reduced to three. Your reply indicated that the matter would be considered when the Act next came up for review. Accordingly I enclose a copy of the aforementioned letter and ask your Commission to consider same now as part of the review being undertaken at the request of the present Attorney-General.

In short, I make the point that the six-months time-limit was adopted in "horse and buggy days" when there was no instant means of communication as there is today.

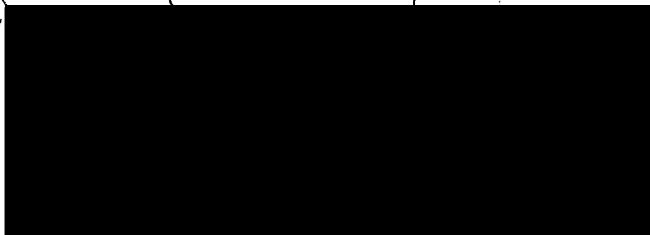
Secondly, in most instances would-be applicants actually have up to nine months from the date of death to lodge applications, as it often takes two or three months to marshal assets and obtain a Grant of Probate.

Thirdly, the six-months period is unnecessarily burdensome on executors, particularly elderly executors. For example, the longer the corpus of an estate has to be held, the greater the taxation burden and the difficulty of getting clear from the Tax Office.

In summary, the six-months period is unreasonable, and now serves only dilatory persons who would take twelve months, if it were given them!

Yours faithfully

Henry S. Dixon



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Our Ref: HSD:LM

13 November 2008

COPY

Chief Executive Officer
Victorian Law Reform Commission
Level 10
10 Queen Street
MELBOURNE VIC 3000

Dear Sir/Madam

Applications under Part IV of the Administration and Probate Act

Two or three years ago, I made a submission that the six-months limit on lodging Applications be reduced to three months. The reply received indicated that the matter would be considered when the Act next came up for review. Just at the moment I do not have in front of me the letter of reply showing your reference detail. However, as I have had no further communication concerning the fate of the submission, may I ask that you place the matter on your agenda for consideration by the Commissioners, if same has not already been discussed.

Accordingly, I take this opportunity of repeating some of the points canvassed in my original submission:-

1. The time-limit of six months was adopted in "horse-and-buggy" days, when there was no telephone, let alone facsimiles and other instant forms of communication. The ease of present-day communication is not only relevant to the preparation and lodging of the actual application, but to communications between persons concerned with the Estate prior to any application being initiated.
2. Any would-be applicants in fact have an average of nine months to make up their minds and lodge an application – as usually two or three months elapse before Probate is obtained.

3. It is unfair on Executors in particular, and on beneficiaries, to delay distribution for up to half a year from the Grant of Probate.
4. The six-months is particularly burdensome on elderly Executors. I speak as an eightyyear-old who has carried the burden of executorship on a number of occasions. The role of Executor is a great burden in itself, and should be lifted from the shoulders of an individual as soon as is practicable. Moreover, the inducement to finalise an Estate promptly is lessened if the Executor can't distribute before six-months are up.
5. Referring to the Tax responsibilities of the Executor, if he has to hold money for any length of time, he has to invest it, and obtain a Tax File Number and put in an Estate Return, which further complicates and prolongs the distribution. If the application period were limited to three-months, many Estates would not attract Tax. Income received up to the time the assets are realised is usually included as part of the Deceased's income to the date of death, unless the Executor has to reinvest during the hiatus period.

All in all then, the six-months period is unreasonable in this day and age, and finishes up serving the interests of dilatory persons rather than the interests of the community at large.

Yours faithfully

per Henry Dixon