

Attention Judge Philip Cummins
Chairman Victorian Law Reform Commission

Dear Sir,

In view of the review of the state's succession laws discussed recently in the press I make the following submission.

I have recent experience in some very difficult cases involving deceased estates.

Example 1

A sole executor wants to pay herself a large commission and two of the five beneficiaries don't agree because:

1. The commission she is claiming is three times the suggested and professionally accepted rate
2. She has done very little to earn the fee

As a consequence she has instructed the estate solicitor to write letters etc to the beneficiaries attempting to sway opinion and delaying the process therefore chewing up the remaining cash in the estate. My problem is that the law needs to be changed to require action to be implemented within a fixed time. The law seems to be very weak on this point and allows solicitors to waste time and to therefore accumulate fees in deliberations.

Change to law requested:

1. To have time limits installed on the processes involved in administering an estate applicable to both solicitors and executors.

Example 2

Prior to marriage a couple negotiated a pre-nuptial agreement that effectively agreed that the man's farm which had been in the family for five generations would stay in his family (passing to siblings, nephews/nieces etc) and not pass to his wife on his death. Clearly the woman knew the situation; she brought no assets into the marriage and was expecting to do quite well out of the man's other assets which in his will he left to his wife. The couple met and married in their late 40's / 50's and the woman who became his wife could not conceive children and the couple knew this prior to the marriage. The couple were married for 12 months after which the man became very sick and was cared for by his wife; he ultimately died 11 years after the marriage. The estate is currently in administration and the wife has made a threat to sue for the farming property on the basis that she wants more cash. The situation is aggravated by the fact that the Part IV provision of the Family Law Act has enormous power and that power is widely recognised in the community. A pre-nuptial agreement should have very significant power given that it is put together in anticipation of the marriage and the conditions are understood prior to the marriage.

Change to law requested:

1. Law that allows marriage to void existing Wills.
2. Recognition of pre-nuptial agreement in determining claims under Part IV of the Family Law Act

Example 3

It is my understanding that after the issuing of Probate there is a 6 month period in which a person can make a claim against the estate under Part IV of the Family Law Act. This is fine, however it is also my understanding that if the 6 month period has expired a person may apply to the Supreme Court to have a late claim considered. This seems to be unreasonable - the 6 month period should be finite.

Change to law requested:

1. Remove the ability to have a late claim against an estate considered by the Court following the expiration of the 6 month period.

It seems under the current legislation that a person cannot die in any reasonable comfort that their wishes via a Will can be pretty much ensured to be carried out. There appears to be too much opportunity for the original intent of the Will to be violated.

I also agree with the proposal that exists in other states where challenges to a Will are limited to blood relatives - this would overcome the absurdity of step children and other gold diggers from capitalising on an opportunity.

I trust that the above suggestions will be considered in your review and that in the end we gain some security in the execution of a person's Will.

Yours faithfully,

Graham S. Paton