**Bill introduced on motion by Mr Greg Smith, read a first time and printed.**

## Second Reading

**Mr GREG SMITH** (Epping—Attorney General, and Minister for Justice) [12.46 p.m.]: I move:

That this bill be now read a second time.

The Succession Amendment (International Wills) Bill 2012 amends the Succession Act 2006 to adopt into New South Wales law the uniform law contained in the Convention providing a Uniform Law on the Form of an International Will 1973. The uniform law provides for an additional form of will known as an "international will". The convention was prepared by the International Institute for the Unification of Private Law [UNIDROIT], and it entered into force on 9 February 1978. The convention is currently in force in a number of other countries, including Italy, France, Belgium, Portugal, Slovenia, Bosnia and numerous provinces in Canada. The key benefit of the convention is that it provides greater legal certainty for testators. It provides a uniform set of requirements for a will—known as an international will—that will be recognised as a valid form of will by courts within those countries that have adopted the uniform law.

Currently, proving the formal validity of a will can become complex where the will contains foreign characteristics, such as where a will deals with assets in another jurisdiction or where a will has been executed in another jurisdiction but deals with property situated in New South Wales. For instance, if a will is made in another country and then an application for probate is made in New South Wales, the New South Wales court may have to consider which country's laws should apply to determine its formal validity. This may involve determining matters such as where the will was executed or the residence, domicile or nationality of the testator, and the requirements of the law in force in that place. In the case of an international will, this process would be simplified. An international will that complies with the uniform law will be recognised as a valid form of will by courts within those countries that have adopted the uniform law, regardless of where the will was made, the location of the assets, or the testator's residence, domicile or nationality.

In July 2010 the then Standing Committee of Attorneys-General agreed to take action to implement legislation in each State and Territory to allow Australia to accede to the convention. The Parliamentary Counsel's Committee then prepared a model bill, which has formed the basis of this bill. The convention requires that in order for member states to effectively adopt the convention into law, the text of the uniform law must be reproduced. As a result, item [3] of schedule 1 to the bill essentially reproduces the uniform law contained in the convention.

I now turn to the provisions of the bill. Item [2] of schedule 1 to the bill inserts a new part 2.4A into the Succession Act 2006 dealing with international wills. This creates an additional form of will in New South Wales. It does not replace existing forms of wills. The use of international wills will be purely optional. Clause 50B provides that the annex to the convention, which is set out in schedule 2, has the force of law in New South Wales. Clause

50C deals with the persons authorised to act in connection with international wills. Under the convention, an authorised person is required to attach to a will a certificate to the effect that the proper formalities have been performed. The certificate, in the absence of contrary evidence, is conclusive of the formal validity of the instrument as an international will. Through the standing committee, States and Territories have agreed that authorised persons should have an understanding of local laws concerning wills and of the uniform law's requirements as to form.

This is why the bill designates Australian legal practitioners and public notaries as persons authorised to act in connection with international wills. Clause 50D provides that the requirements for acting as a witness to an international will are governed by the law of New South Wales, and clause 50E makes clear that the provisions of the Succession Act 2006 that apply to wills extend to international wills. These provisions reflect the fact that the international will provisions are confined to providing for a form of a will and are not intended to address matters such as the capacity of witnesses or the construction of the terms of a will.

Item [3] of schedule 1 contains the uniform law as it appears in the Convention providing a Uniform Law on the Form of an International Will. Article 1 provides that a will shall be valid with regard to form irrespective of matters such as where it is made or the location of assets. The key requirement is that the will must be made in the form of an international will, complying with articles 2 to 5 of the uniform law. The uniform law also makes clear that a will that does not satisfy the formal requirements of an international will may still be valid as another form of will. For example, if a testator purports to make an international will but articles 2 to 5 of the uniform law are not complied with, the will may nonetheless be a valid will in New South Wales if it is valid under part 2.1 of the Succession Act 2006. This again reflects the intention, which is to provide for an additional form of will rather than substituting for the form of a will already available under the Act.

Articles 2 to 5 of the uniform law contain the requirements for a will to be a valid international will. These include requirements that there be only one testator; that the will be made in writing; that the testator declare in the presence of two witnesses and an authorised person that the document is his or her will and that he or she knows its contents; that the testator sign the will, or acknowledge a previous signature, in the presence of the witnesses and authorised person unless he or she is unable to sign; and that the witnesses and authorised person attest the will by signing it in the testator's presence. Articles 6 to 15 of the uniform law contain further matters of form and other matters. These articles cover matters such as the position of signatures and the date of the will, and where it should be noted. They also deal with the role of the authorised person, and the form and status of the certificate that they provide. Item [1] of schedule 1 provides that the part of the Succession Act 2006 dealing with foreign wills does not limit the operation of the new part 2.4A dealing with international wills.

The convention provides that it will enter into force six months after Australia accedes to it. The New South Wales amendments will not commence operation until the convention comes into force in Australia. Once the uniform law is in operation in each Australian jurisdiction there will be a consistent approach to recognising the formal validity of international wills across Australia. In addition, it should be simpler for courts in other countries that have adopted the uniform law to recognise the formal validity of international wills made in Australia. The bill reflects this Government's commitment to implementing the International

Institute for the Unification of Private Law convention and to simplifying the process of proving the formal validity of wills that comply with its requirements. I commend the bill to the House.

**Debate adjourned on motion by Mr Paul Lynch and set down as an order of the day for a future day.**