
Book Review — Statutory Will Applications: A Practical Guide by Richard Williams and Sam McCullough

Jenny McMillan THE COLLEGE OF LAW

In New South Wales the ability to apply to the court for a will to be authorised for a person lacking testamentary capacity is a fairly recent development. Applications for court-authorised wills are now permitted under Ch 2 of the Succession Act 2006 (NSW). That Act commenced on 1 March 2008 and since then a dozen judgments dealing with applications for wills to be made have been published.

In *Statutory Will Applications: A Practical Guide* Richard Williams and Sam McCullough have undertaken a thorough analysis of the legislation and case law to date, not just in New South Wales, but in all jurisdictions across Australia. Similarities and differences in the statutory frameworks around the country are clearly set out, and some historical context given including a discussion of the history of the jurisdiction in England and Wales and of the development of the legislation in this country from its first enactment in South Australia in 1996.

The authors stress the importance of the core test for exercise of the court's jurisdiction, namely that the proposed will, alteration or revocation is, or is reasonably likely to be, one that would have been made by the person if he or she had testamentary capacity. The focus is quite different, therefore, from that which operates in family provision applications. With a statutory will the key question revolves around the likely wishes of the testator, where in family provision the testator's position is sidelined in favour of a consideration of the adequacy of provision for an eligible applicant.

The interplay between court-authorised wills and potential family provision claims is thoughtfully addressed in this book. Indeed one of the real strengths of the book is the way in which it analyses some of the difficult and problematic questions that can arise in connection with court-authorised wills. For example, what are the implications when the applicant is the sole or main beneficiary of the proposed will? And to what extent can the court be expected to sanction the making of a will proposed as a compromise between different family factions?

First and foremost, however, this is a guide for practitioners. It conveniently categorises the different circumstances in which it may be appropriate to make an application for a court-authorised will, and directs the reader to any reported cases that fall within each category. It provides checklists for preparing and conducting an application, including addressing the evidence requirements and identifying persons who should be served. Factors to be considered if acting for another interested party in the proceedings are also clearly explained. A chapter is devoted to costs, with an analysis of the costs orders made in applications to date, including contested and unsuccessful applications.

This new jurisdiction is, of course, still in its infancy, and it is to be expected that it will be some time before its potential is fully realised. The incidence of dementia among elderly Australians is one factor that is likely to lead to more and more applications. This book will assist practitioners in identifying circumstances where an application for a court-authorised will may be appropriate. Further, it will be a useful tool for practitioners developing the expertise and confidence to advise clients in relation to an application for a will to be made for someone who lacks testamentary capacity and to efficiently prepare for and conduct the application.

I congratulate both authors on their achievement in creating such a useful reference for practitioners and look forward with interest to seeing how the law in the area unfolds.



Jenny McMillan

Lecturer (Applied Law — Wills and Estates)

The College of Law

Jenny McMillan is a NSW Law Society Accredited Specialist in Wills and Estates and a lecturer in the College of Law's online Master of Applied Law (Wills and Estates).