



Australian Government
Attorney-General's Department

Access to Justice Division

11/27258

7 May 2012

David Monk
A/g Committee Secretary
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

Dear Mr Monk

7 May 2012 JSCOT hearing – Convention providing a Uniform Law on the Form of an International Will (Washington D.C., 26 October 1973)

On 7 May 2012, I appeared as a witness before the Joint Standing Committee on Treaties to answer questions on the *Convention providing a Uniform Law on the Form of an International Will* (the Convention). I am writing to provide the Committee with more information on the position of the State and Territory Law Societies with respect to Australia's accession to the Convention.

During the proceedings, I had stated that while some of the Law Societies and other stakeholders had expressed some concerns, they were generally supportive of Australia's accession to the Convention. I wish to clarify that the Law Institute of Victoria (LIV) and the New South Wales Law Society's Elder Law and Succession Committee (NSW Law Society) do not support Australia's accession to the Convention.

The concerns of the LIV and NSW Law Society are summarily the following:

1. the provisions for formal requirements by the Convention that go beyond the current legislative provisions and policies which focus on the substance of the will
2. the limited scope of the Convention which may lead to incorrect assumptions by prospective testators as to the purpose and benefits of an international will
3. the likely limited adoption of the international will due to the limited number of current State parties

I did flag these issues and the fact that they had been raised as concerns at the hearing.

The remaining stakeholders, which included the Supreme Court of Victoria, the Victorian Bar Council and the New South Wales Bar Association were supportive of the proposal to accede to the Convention. The Victorian Supreme Court and the Victorian Bar Council, in particular, noted that

an international will would remove the need to apply complex conflict of laws rules to determine whether a will is in a valid form during probate.

I hope this will be of assistance to the Committee in preparing their report. Should further information be required, we would be very happy to assist.

The action officer for this matter is Angela Teh who can be contacted on 02 6141 3482.

Yours sincerely

Karl Alderson

Assistant Secretary
Justice Policy and Administrative Law Branch
Access to Justice Division