

T A S M A N I A
LAW REFORM
I N S T I T U T E

Submission Template

Should Tasmania Introduce ‘Notional Estate’ Laws?

This Issues Paper considers whether Tasmania should introduce notional estate laws within the *Testator’s Family Maintenance Act 1912* (Tas) (the ‘TFM Act’) and seeks to gauge the level of community support for the introduction of such laws.

In Tasmania, provision for a successful applicant who makes a claim under the *TFM Act* can only be made from the deceased’s estate. It is possible for a person who might be considered wealthy to die with very little in their estate. This might occur where a person owned property with others as a joint tenant, or where assets are held in trusts. A person may make gifts before their death, with assets gifted then ceasing to form part of their estate. Assets may also pass to beneficiaries outside of an estate, for example, where superannuation or life insurance proceeds are paid directly to beneficiaries. As a result, there may be insufficient assets in the estate to satisfy a successful applicant’s claim for provision.

Legislation in New South Wales enables the court to deem assets that are not within a person’s estate as ‘notional estate’. The court can then utilise these assets when making provision for a successful applicant. These laws enable provision to be made for successful claimants from a much broader pool of assets than are available in Tasmania. The Institute has been asked to provide advice to the State Government about whether Tasmania should introduce notional estate legislation.

The deadline for feedback to the Tasmania Law Reform Institute is 24 May 2019.

You can answer any or all of the questions and provide as little or as much information as you wish.

The Template can be filled in electronically and sent by email or printed out and filled in manually and posted.

- The form is designed to be completed electronically by entering responses. The space provided for your answer will expand (if necessary) as you type. You are invited to include as much or as little information as you choose.
- Alternatively, you may print out the form and either fill it in manually or use a separate answer sheet (if you use a separate answer sheet, please ensure that you clearly number your answers to correspond with the questions in the Issues Paper). Again, you are invited to include as much or as little information as you choose.

After you have completed your submission please either email or post the document to the Institute:

Email: law.reform@utas.edu.au

Post: Tasmania Law Reform Institute

Private Bag 89
Hobart TAS 7001

This study has been approved by the Tasmanian Social Sciences Human Research Ethics Committee. If you have concerns or complaints about the conduct of this study, please contact the Executive Officer of the HREC (Tasmania) Network on +61 3 6226 6254 or email human.ethics@utas.edu.au. The Executive Officer is the person nominated to receive complaints from research participants. Please quote ethics reference number [H0016752].

Personal Information

Name

Organisation (if any) Address

Email

Phone number

Publication of Submissions

The Institute uses any submissions received to inform its research. Submissions may be referred to or quoted from in a final report which will be published on the Institute's website. Extracts may also be used in published scholarly articles and/or public media releases. However, if you do not wish your response to be referred to or identified, the Institute will respect that wish.

Therefore, when making a submission to the Institute, please tick the applicable box to identify how you would like it to be treated based on the following categories:

Public submission – the Institute may refer to or quote directly from my submission and name me as the source of the submission in relevant publications.

Anonymous submission – the Institute may refer to or quote directly from my submission in relevant publications but must not identify me as the source of the submission.

Confidential submission – the Institute must not refer to or quote directly from my submission but may aggregate information in my submission with other submissions for inclusion in any report or publication.

Confidential submissions will only be used to inform the Institute generally in its deliberations of the particular issue under investigation, and/or provide publishable aggregated statistical data.

Providing a submission is completely voluntary. You are free to withdraw your participation at any time, by contacting Kira White on (03) 6226 2069 or email Law.Reform@utas.edu.au. You can withdraw without providing an explanation. However, once the report has been sent for publication, it will not be possible to remove your comments.

All responses will be held by the Tasmania Law Reform Institute for a period of five (5) years from the date of the first publication and then destroyed. Electronic submissions will be stored on a secure, regularly backed-up University network drive. Hard copy submissions will be stored in a locked filing cabinet. At the expiry of five years, submissions be deleted from the server, in the case of electronic submissions, or shredded and securely disposed of in the case of paper submissions.

QUESTIONS

Question 1

In your experience, do people deal with or structure their assets in order to reduce the property that is available to make provision for a successful applicant under the *Testator's Family Maintenance Act 1912* (Tas)? Please provide examples.

Question 2

Should people be entitled to deal with their assets during their lifetime to reduce the property that is in their estate and available to claim under the *Testator's Family Maintenance Act 1912* (Tas)? Please provide reasons explaining your view.

Question 3

Please indicate your level of support (if any) for the following proposition: 'notional estate legislation should be introduced in Tasmania':

1. strongly agree;
2. agree;
3. somewhat agree;
4. neutral/no view;
5. somewhat disagree;
6. disagree;
7. strongly disagree.

Please provide reasons explaining your view.

Question 4

Do you consider that introduction of notional estate provisions in Tasmania would create difficulties or issues? For example, in your experience or opinion how might notional estate legislation interfere with:

- (a) tax planning;
- (b) asset protection arrangements;
- (c) provisions made for individuals during a person's life;
- (d) farming or business succession arrangements; or
- (e) other aspects of estate planning?

Question 5

If notional estate provisions were introduced in Tasmania, should the New South Wales legislation be used as a precedent? If so, are there any parts of these provisions that you think should be changed? For example, do you consider that there is a need to make any change to:

- (a) the types of property that may be affected;
- (b) the acts (or failures to act) captured;
- (c) the relevance of a person's intentions;
- (d) the period of time in which a relevant property transaction occurs that is covered;
- (e) the circumstances in which a notional estate order may be made; or
- (f) any other provisions?

Question 6

Are there any other matters in relation to introducing notional estate legislation in Tasmania that you would like to comment on?

