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TASMANIA

Wednesday, 4 September 2019

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## **Report urges caution before expanding Tasmania's estate dispute laws**

A Tasmania Law Reform Institute (TLRI) report has concluded that laws enabling family members to dispute an inheritance should not be expanded to cover assets such as superannuation, life insurance and family trust assets that don't come into a person's estate.

In every Australian State except NSW, these 'non-estate assets', which also include certain jointly owned assets, cannot be claimed when someone applies to the court for more from a deceased estate.

Under the Testator's Family Maintenance Act 1912 (Tas) people can give away assets before their death to remove those assets from claims. The State Government's terms of reference asked the TLRI to consider whether Tasmania should introduce laws, like those in NSW, that allow a court to declare non-estate assets to be "notional estate".

"The extent to which family members can dispute what was left to them under a will is a topic that people often hold strong views about. Our public consultation highlighted significant differences of opinion about the extent to which assets should be subject to claims," report author Kate Hanslow said.

"This demonstrated that there is no easy answer to what is, at least in part, a philosophical question about the limits the law should place upon people's freedom to deal with their assets as they please and to gift their assets as they wish after their death."

The report, released today, concludes that Tasmania should not introduce notional estate laws unless nationally uniform laws are enacted. Several respondents to the TLRI raised concerns about the potential for notional estate laws to be avoided through "jurisdiction shopping", with NSW the only Australian jurisdiction with laws of this type. The report observes that the effectiveness of the NSW scheme has not yet been evaluated. Several respondents suggested that notional estate laws increase the complexity, time and cost of court disputes.

"Given the significant barrier to the effectiveness of notional estate laws created by the lack of nationally uniform laws, the questions about the extent of need

for reform and the potential problems it may create, the Institute formed the view that notional estate provisions should not be enacted in Tasmania without nationally uniform laws and further evaluation of the New South Wales law," Ms Hanslow said.

Nevertheless, noting the divergent and strongly held views on this issue and that several respondents did support the introduction of notional estate laws to prevent people avoiding legitimate claims to their estates, the TLRI's report recommends that uniform family provision laws be placed on the national agenda with this project including an evaluation of the NSW scheme and research into the extent to which claims are presently being avoided.

"Acknowledging that the State government may legitimately conclude that reform is desirable given the strong arguments advanced in favour of it, our report suggests that any reform should enact a narrower scheme to that in New South Wales and concentrate upon situations where people intentionally avoid claims," Ms Hanslow said.

The Final Report, including an easy-read version, can be found here: <https://www.utas.edu.au/law-reform/publications/completed-law-reform-projects> under the tab "Notional Estates".

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