



## Court Made Wills

In two recent cases the Court considered Statutory Wills for two individuals.

In the first case, Mr Fenwick was a 60 year old man who, following a severe head injury at work lacked the necessary capacity to make a Will or Codicil. His brother made an application to the Court for a Codicil to be added to the Will Mr Fenwick had made before his accident. The purpose of the Codicil was to prevent Mr Fenwick's Estate from passing to the Crown in the event of intestacy.

In the second case, Charles (not his real name) was a child who had sustained severe irreversible brain injury at the age of 4 months. He received the sum of \$50,000.00 victim's compensation. Charles was in the care of the Minister for Community Services and the Minister made an application for a Statutory Will to be made by the Court on Charles' behalf.

Section 18 of the Succession Act NSW 2006 ("the Act") gives the Court the power to authorise a Will to be made, altered or revoked for a person without testamentary capacity.

The application for a Statutory Will is a two stage process. Firstly, a person must obtain leave from the Court to make the application. The information required by the Court in an application for leave is set out in section 19 of the Act. These requirements include, but are not limited to the following:

- Reasons why the application is being made
- Evidence the person lacks testamentary capacity
- Estimate of the size and nature of the persons assets and debts
- A draft of the proposed Will or changes to an existing Will
- Any evidence of the person's wishes before they lost capacity

If leave to make the application has been granted by the Court, the application itself can then be made for the Order to make a Will, or to alter or revoke an existing Will.

In both of the above mentioned cases, the Court exercised its powers under section 18 to make a Codicil for Mr Fenwick, and to make a Will for Charles.

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