

The address of the NBCC is: GPO Box 9848, Adelaide SA 5001, Australia. Copies of the NBCC's publications, including a regular newsletter, are available from the Committee whose Executive Director is Ms Lesley Dredge. □

wills for disabled persons

A lawyer's dream of heaven — every man reclaimed his property at the resurrection, and each tried to recover it from all his forefathers.

Samuel Butler, 1670

The New South Wales Law Reform Commission (NSWLRC) has released a discussion paper dealing with the problems of persons who have a disability which prevents them from making a valid will. It proposes a scheme of 'statutory wills' to enable such persons to have a valid will made on their behalf.

A similar problem was reviewed by the ALRC in its DP 39 *Guardianship and Management of Property*. That paper examines the inadequate state of the present law in the Australian Capital Territory providing for guardianship of persons unable to manage their personal affairs. The paper also examines the law relating to the management of property of such persons and makes tentative recommendations for reform of the law. The paper is discussed in more detail in [1989] *Reform* 149–151.

The NSWLRC DP says that under the current law anyone who has some form of developmental disability or who suffers from a mental illness or disorder, may not be able to make a valid will 'because they lack testamentary capacity'. Some of the injustices which can occur as a result include:

- stepchildren being unable to inherit, even where it is clear that would be against the testator's wishes

- costly legal actions to ascertain the validity of the will because of doubts as to capacity
- the exclusion from the estate of persons who, though outside the testator's immediate family, are people the testator would have wished to benefit
- the estate being distributed as an intestacy.

statutory wills. The NSWLRC suggests that many of these problems could be overcome with the introduction of a scheme of 'statutory wills'. Under such a scheme, wills would be made by the Supreme Court on behalf of persons lacking will-making capacity. The main aim of the scheme would be to give effect to the wishes of the person on whose behalf the will is made.

Some of the features suggested for the new scheme include:

- a requirement that when making the will the Court should have regard as far as is reasonable, to the wishes of the testator;
- a provision allowing solicitors and social workers to make an application to have the will made;
- provision for inclusion of minors (persons under 18 years of age) within the scheme;
- a provision to allow the court to make a 'declaration as to capacity' if requested.

The Commission is calling for submissions and comments on the proposed statutory wills scheme from all interested groups and individuals. □