



# New Law Bulletin

## How Do You Know When You Are Dead?

In the administration of a deceased persons estate, before any action can be taken to administer the estate, there is the usual requirement for proof of the death.

In most cases this is produced by a *Death Certificate*.

However, sometimes the Death Certificate is not available. In the recent decision of Maynard v the Estate of Maynard [2015] QSC144, an application was made to the Court in circumstances where the deceased person disappeared in rough seas whilst on a surfing holiday. No Death Certificate was available.

There is a common law presumption that if a person has been missing for 7 years that they are presumed dead.

However, the Court held in Maynard that pursuant to Section 6 of the Succession Act 1981 (QLD) that it had power to determine the issue of the death of the deceased at this time (not being at least 7 years after).

There was substantial affidavit evidence before the Court. The evidence showed that he arrived in Bali and checked into his accommodation for a “surfing holiday”, but never checked out and was not seen again after he left the accommodation that same day. Later that day, a fragment of his surfboard was recovered by a local dive master.

The evidence was that he had a close relationship with his family and would have been in contact.

In this case the Court found that it did not have to wait 7 years for the Court to be able to infer death.

The Court was satisfied that by the making of an affidavit as to death, the wife would be able to proceed with an application for Letters of Administration on intestacy as Mr Maynard did not leave a Will.

The Court found that it was important that the matter proceed this way as the family was suffering financial hardship in the absence of evidence of the death. This would then enable the wife and their children to proceed to obtain the benefit of any estate of the deceased without having to wait the 7 years.