

**MISSION
AUSTRALIA**

**A guide to
preparing
your Will**



A Will is one of the most important personal documents you will prepare.

It allows you to express exactly how you want to provide for your loved ones and support cherished causes on your passing.

Without a Will, your assets will be distributed using a legal formula, which may not be in line with your wishes.

Having a valid, up-to-date Will grants you peace of mind today and relieves your loved ones from unnecessary costs and additional stress during an already difficult time.

This guide, in conjunction with Mission Australia's Personal Estate details booklet*, has been designed to help answer your questions about Wills and estate planning. It may also assist you to make decisions prior to preparing or updating your Will.

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THE BASICS OF WILLS

What is a Will?

A Will is a legal document that sets out who will receive or benefit from your assets (your property and possessions) on your passing.

The people and organisations that you name in your Will as the recipients of your assets are called beneficiaries.

*Please ask for a copy if Personal Estate details booklet has not been supplied with this Will Guide.

What makes a Will valid?

Generally, for a Will to be valid:

- You must be over 18 years of age (though Wills can be prepared for people under 18 years old in limited circumstances);
- It must be in writing;
- It must be signed by you, and your signature must be witnessed by two other adults (who are not beneficiaries under your Will), in your presence and the presence of each other; and
- You must have had the mental capacity to make a Will at the time of making or updating your Will.

What happens if I do not have a valid Will when I pass?

If you do not have a valid Will, no one will know who you wish to leave your property and possessions to, and this is referred to as passing away 'intestate'.

As no one will know your wishes, the courts in your state or territory will decide what happens to your property and possessions. The law specifies which family members are entitled to your property and possessions, and what portion they are entitled to. These laws are also called the 'rules of intestacy'.

The laws in each state and territory vary, but generally only allow your family members to inherit your property and possessions.

Therefore, it is particularly important to have a valid Will in place if you would like to leave any gifts to friends or charities.



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ADMINISTRATION OF YOUR WILL

Who carries out my Will?

Executors

In preparing your Will, you will need to consider who you would like to appoint as your executor. An executor is a person or organisation who administers your Will after you pass.

Some people choose to appoint a personal executor (e.g. a trusted family member or friend) while others decide to engage a professional (e.g. lawyer, accountant or a Public Trustee) to act as their executor.

In deciding who you would like to appoint as

your executor, it is important to consider a few things, including whether:

- The person or organisation has the right skill set, resources and time to properly administer your Will; and
- The person or organisation is comfortable with taking on the responsibility of being your executor.

It is often a good idea to nominate co-executors and/or an alternative executor (in case your chosen executor passes before you do).

If you decide to appoint a professional to act as your executor, it is important to remember they will charge a fee for providing executor services.

An executor has several responsibilities including:

- Locating your Will;
- Organising your funeral (in certain circumstances);

- Notifying organisations including utility providers, banks and government agencies of your passing;
- Talking to organisations to find out information about your assets and debts;
- Applying for a grant of probate (if necessary), which is the legal document issued by the relevant state/territory court to provide recognition that a Will is valid;
- Paying your debts and distributing any remaining assets to your beneficiaries.

Trustees

If you create any trusts in your Will, you will also need to appoint a trustee. A trustee is a person or organisation who will manage and administer any trusts created under your Will.

Often, people will appoint the same person as both their executor and trustee under their Will.

The responsibilities of a trustee may include preserving and managing your assets before they are distributed under your Will. This can include if your beneficiaries include minors – they will preserve and manage your assets until they turn 18 (or a specific age that you nominate).



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MAKING YOUR WILL

Do I need a lawyer to help make my Will?

It is important to get professional help from a lawyer to make your Will, particularly if you have:

- Significant or complex assets, or assets outside of Australia;
- A complex family background (e.g. have been previously married or in a domestic relationship, or have children from previous relationships); or
- Unique personal circumstances (e.g. if you have children with special needs or disabilities that you want to ensure are provided for).

Most lawyers can prepare a simple Will for a relatively modest cost. For more complex Wills, the fees will be higher. You can ask for a quote from a lawyer before they prepare your Will.

Seeking advice from a lawyer can help ensure that your Will is valid and reflects your wishes.

What else do I need to think about when making my Will?

Some key considerations include:

Your assets and debts – what assets and debts do you have? You will need a detailed list of all your property and possessions, and any debts you have which may include mortgages and personal loans. If you have any loans over your assets (e.g. a mortgage over your house) it is particularly important to seek advice from a professional to understand how this should be dealt with in your Will.

Your children – who will look after them if you and your partner pass away? You can include who you would like to be the guardian of your children (if you have children under 18) if both parents pass away. It is advisable to discuss this with your lawyer to find the best plan for your personal situation.

Your pets – what arrangements would you like in place for your pets? You should consider how you would like your pets are looked after, if the need arises. This can include setting up a trust in your Will for their ongoing care and maintenance or leaving your pet with an animal shelter or animal charity. You can also nominate someone in your Will to look after your pet, but it is best to check this is something they are comfortable with. To understand what options are available, speak to a lawyer.

Funeral and burial/cremation arrangement – what would you like your funeral to look like and would you like to be buried or cremated? You can include your preferred funeral and burial/cremation wishes in your Will, but they will not be legally binding, so it is important to let your loved ones know your wishes.

Organ and tissue donations – would you like to donate your organs and/or tissue? If this is the case, you should register your decision on the Australian Organ Donor Register and make your wishes known to your loved ones, as your family's consent is required for a donation to proceed.

Gifts to organisations and charities – would you like to continue making an impact to the causes that have the greatest significance to you, well into the future? You can include a gift to charity in your Will.



What is the most impactful way to leave a gift to a charity?

Residual or percentage gifts are the best options. Both are automatically adjusted for inflation, and therefore hold their value over time. They are also the most flexible ways to give, as they do not require updating to account for changes to your total assets. A residual gift is particularly good because it enables you to look after your loved ones first and foremost. It's advisable to seek the correct suggested Will wording from your chosen charity to ensure accurate and appropriate representation of your wishes.

Mission Australia does not specify wording you should use as we are not legal professionals. However, below are a couple of examples for the most common types of gifts we receive.

Residual gift

I give ____% of the residue of my Estate to Mission Australia – (ABN 15 000 002 522) for its general purposes, free of all duties and declare that the receipt of an executive officer at the time, shall be sufficient discharge of my executor's duty.

Pecuniary gift

I give \$_____ to Mission Australia – (ABN 15 000 002 522) for its general purposes, free of all duties and declare that the receipt of an executive officer at the time, shall be sufficient discharge of my executor's duty.

More information

To discuss giving a gift in your Will to Mission Australia, please contact our Gifts in Wills team at:

giftsinwills@missionaustralia.com.au

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AFTER MAKING YOUR WILL

What are some important things to do after making my Will?

Store your Will in a safe and secure place

There are several options for keeping your Will safe, including keeping it in a secure place at home, or with a safekeeping service (e.g. a law firm, a bank safe deposit box, Public Trustee or probate registries of Supreme Courts) for a fee.

Ensure the right people know where your Will is and can access it

It is important to let your executor know where your Will is, so they can obtain the original Will when needed. You may also wish to tell your loved ones where your Will is, so it can still be

obtained if your executor forgets its location or passes away before you do.

You should also make sure that your executor and, if appropriate, your loved ones, can access your Will when you pass away.

Keep your Will up to date

Make sure to update your Will if you experience any major life events or changes to your assets or the circumstances of your beneficiaries. See below for details on how you can change your Will.

Can I make changes to my Will and how do I do it?

Yes, you can make changes to your Will. You should review your Will and make changes (if appropriate) whenever you have a major life event, such as:

- Marriage, divorce and separation;
- The birth or passing of your family members;

- Changes to your assets or financial circumstances;
- The passing of any people who are beneficiaries, executors or trustees under your Will.

Additionally, it is important to update your Will if an organisation that is a beneficiary, executor or trustee under your Will no longer exists.

Minor changes can be made with a codicil. A codicil is a separate legal document that adds to, or alters, your Will and is kept with your Will to be read alongside it. Like your Will, it will need to be signed and witnessed correctly to be valid.

Alternatively, it may be easier to make a new Will.



What happens to my Will if I get married or divorced?

You should make a new Will (even if you want it to be the same as your old Will) when you get married, divorced or if you have been separated from your partner for a long time.

Under law, getting married can automatically revoke a Will that you had in place before the marriage.

Though a divorce does not automatically revoke a Will, it can automatically revoke any gift to your former spouse set out in your Will. A divorce can also automatically revoke any appointment you may have made for your former spouse to act as an executor, trustee or guardian under your Will.

There are exceptions, but it is important to talk to a lawyer, so they can advise you on how to proceed.

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OTHER ESTATE PLANNING CONSIDERATIONS

What other future planning decisions should I consider?

In addition to making a Will, there are other tools that can be used to protect your property and possessions, and ensure you are looked after by people you trust at a time when you may need it. Two common tools you may come across are Enduring Powers of Attorney and Enduring Guardianships.

What is an Enduring Power of Attorney?

An Enduring Power of Attorney is a legal document that empowers a person (or multiple people) to make financial, legal and property decisions on your behalf if you are unable to do so yourself.

What is an Enduring Guardianship?

An Enduring Guardianship is a legal document that empowers a person (or multiple people) to make lifestyle, health, medical and other personal decisions on your behalf if you are unable to do so yourself.

It is important to think carefully about who you would like to act as your attorney or guardian, if you decide to put either of these documents in place.

Additionally, it is important to note that an Enduring Power of Attorney and Enduring Guardianship capacity to do so (i.e. you can still make decisions and act on your own).



Thank you for considering a gift in your Will to Mission Australia

Your kind decision can provide enduring support to individuals and families facing challenging circumstances in the future.

Your thoughtful contribution will ensure there's always a way forward for people in need.

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