

Your Will, Your Way, Your Yooralla

(The information in this booklet is not legal advice. You should consult a solicitor before acting upon any information in this booklet).

If you have been putting off making your Will, you need wait no longer. This booklet will give you the basic information you need to start planning your Will. You can then decide whether to engage a professional to prepare your Will or to do it yourself.

Do I need a Will?

The law does not require you to have a Will. However there are laws which rigidly control what will happen with your property if you die without a Will. If you believe that you should have a say about what happens to your property when you die, then you should have a Will

What happens if I don't have a Will?

If you die without leaving a valid Will your estate will be distributed in accordance with rigid rules set out in legislation. Also, you don't have a say in who will be your executor.

If you leave a spouse and children when you die, they might have to share the estate with other relatives whom you did not wish to benefit.

The person who administers your estate might need to carry out expensive searches for relatives. This means less money for your beneficiaries.

If you have no family there are some circumstances where your estate might end up in the hands of the government.

When should I make my Will?

There is no time like the present. If you already have a Will you should read it over every two years or so just to make sure that it is up to date. You should also check your will whenever there is a change of circumstances such as marriage, divorce, a death in the family, or other significant event which might have effects on your finances or relationships.

What is the difference between mutual, joint and reciprocal Wills?

Mutual Wills are Wills in which two or more people prepare separate Wills benefiting each other under an enforceable agreement to do so. They also agree not to vary the Will without the agreement of the others.

A joint Will is one in which two or more persons have made their Wills in the one document.

Reciprocal Wills are separate Wills, commonly made by spouses, which provide for reciprocal gifts to each but without any separate contract.



How do I change my Will?

If you wish to make changes to an existing Will, it is a good idea to consider making a new Will instead. This helps to make sure that you think about all your circumstances instead of just focussing on the particular change you want to make.

You can also change your Will by making a codicil. A codicil is prepared as a separate document and must be signed and witnessed in the same way as a Will. The witnesses do not need to be the same people who witnessed the original Will. Since a codicil changes the original Will, you should seek legal advice before making one. A danger with a codicil is that it could have unintended effects on the meaning of the original Will.

Should I prepare my own Will?

If you prepare your Will without legal advice, consider the consequences of the Will being misinterpreted or, worse still, being found to be invalid because of your misunderstanding of the law.

Where can I get legal advice?

Even if you have a small amount of property you should seriously consider obtaining legal advice about your Will. Compared with most other legal fees the cost of making a Will is quite low. You may already have a solicitor, so you should approach him or her for advice. The Law Institute of Victoria has a list of Specialist Accredited solicitors who have demonstrated a high degree of skill and knowledge in the area of Wills and Estates. The list can be obtained free of charge from the Institute by phoning (03) 9607 9311.

What is an Executor and Trustee?

An executor and trustee is the person (or persons) who carry out the instructions you have included in your Will. You should make sure that the person or persons you choose are competent and willing to perform the tasks.

Often members of the will maker's family, the main beneficiaries under the Will or close family friends are chosen as executors and trustees. It is wise to appoint a substitute executor and trustee to cover the possibility of your executor and trustee dying before you, or during the course of administering the estate.

Some people choose trustee companies, certain professionals, such as solicitors or accountants, or the Public Trustee to be their executor and trustee. Before you make your Will, find out from the prospective executor and trustee the costs and fees they will charge.

What is a Guardian?

A testamentary guardian is a person appointed by a Will to have the care and control of a child of the willmaker (the testator) until the child becomes 18. Where a willmaker believes he or she might leave a child under 18 years of age without a surviving parent, they should consider nominating a testamentary guardian of the child. They should also consider doing so where there are Family Court custody orders in their favour.



What will be included in my estate?

Your estate will be made up of any property to which you are entitled and liabilities owed by you at the date of death. You can see that this may differ from the situation at the date of making your Will.

Any property of which you are the sole owner forms part of your estate. However you will need to aware of the different ways you can share ownership of property with another person. For example, if you hold property as a joint tenant with another person, that property will usually not form part of your estate. On the other hand, if you hold the property as a tenant in common, your share will form part of your estate.

You should consider all your assets and liabilities as a first step before deciding how to distribute your estate. This is helpful where you would like to make a gift of a certain amount of money, so you can be sure that the money will be available when your estate is administered. Where a property you wish to give has a mortgage on it make sure your Will states what is to happen if the mortgage still exists at the time of death.

What are beneficiaries and gifts?

- A beneficiary is a person or organisation that receives a gift under a Will.
- A gift is an item of property, which you dispose of in your Will.

You can make a gift in many ways:

- You can leave the *whole* of your estate to a particular person or organisation.
- You can leave a certain *sum of money* to a particular person or organisation.
- You can leave *specific item of property* such as a house, car, and jewellery. (You need to consider what you want to happen in case you dispose of it or it no longer exists by the time you die.)
- You can leave the *residue* (what is left over after other gifts have been made) to a particular person or organisation.
- You can also make a *contingent gift*, - a gift that depends on some event or occurrence before the beneficiary gets it. For example, you might want to make the gift conditional on the beneficiary reaching a certain age.

- You might wish to leave a *life interest* to one person so that when that person dies it goes to another person or organisation.
- You might wish to give a person a *right to occupy* a residence during their lifetime and a gift of the residence to another person or organisation when the occupier dies.

Can I give away my property in my Will as I like?

The freedom to dispose of your property in your Will is a long-standing legal right. However this freedom is restricted by legislation which gives the Supreme Court the power to order that provision be made out of the estate for the proper maintenance and support of a person for whom the deceased willmaker had a responsibility. The existence of this legislation is a very good reason why you need legal advice when making your Will.



Can I leave a gift to a charity in my Will?

The freedom to dispose of property by a Will is a very important right and people naturally exercise that right by providing for their family and friends. Where people can do so they often leave a gift to charities they believe in.

One very good reason among many for assisting charities is that our surviving family and friends will continue to live in a community that needs the services of charities to function properly. In our changing world, who among us can predict when our family or friends might need the very services which our favourite charity provides?

About Yooralla

Since 1918 Yooralla has been providing vital services for people with disabilities. Whether as the Yooralla Hospital School for Crippled Children or The Victorian Society for Crippled Children and Adults, as we were previously known, hundreds of thousands of Victorian children and adults have benefited from therapy, education, work training, employment, accommodation and special equipment provided by Yooralla. Many of those people with disabilities would have missed out on help but for the generosity of people with foresight and compassion who left a gift in their Will to Yooralla.

Today Yooralla provides services to more than 30,000 Victorians with disabilities every year. Our ageing population is but one reason why the need for disability services will be more acute in the future. At present we need to raise five million dollars from donations and bequests each year. Our present need is great indeed. Our future need will be greater.

How do I include Yooralla in my Will and still care for my family?

You can care for your family by making proper provision for them in your will and then including where appropriate, your choice of the following clauses in your will:

- *"I give the sum of \$(amount of gift) to Yooralla Society of Victoria."*
- *"I give (amount)% of my estate to Yooralla Society of Victoria."*
- *"I give my property situated at (address) to Yooralla Society of Victoria."*
- *"I give my shares in (name of company or companies) to Yooralla Society of Victoria."*
- *"I give the residue of my estate to Yooralla Society of Victoria." Trustee."*

You may also wish to consider leaving a life interest in some of your property, such as real estate or shares, to family or friends so they can benefit from them during their lives. The property can to pass to Yooralla when your family members or friends die.

Another option is to give a family member or friend a right to occupy a property during their lifetime and for the property to pass to Yooralla when the family member or friend no longer wishes to occupy the property or dies.

Of course, we recommend that you consult your solicitor to ensure that your wishes are clearly expressed in your will.

What do I need to tell my solicitor?

The "Wills Checklist" covers most of the basic information your solicitor will need to know. By filling it out before your first appointment it could be a real time and cost saver!

Wills Checklist

Willmaker (or Testator)

Full name:
Address:
Telephone:
Occupation:
Age:
Do you already have a will?
If yes, when was it made?
If yes, where is it held?
Do you want to revoke it?

Spouse/De facto

Are you married or do you have a de facto spouse?
(state which)
Full name:
Address:
Telephone:
Occupation:
Age:
Do you have a mutual/reciprocal/joint will?
(State which)

Children/Dependants

Full names:
Addresses:
Telephone:
Occupations:
Relationship to willmaker:
Ages:

Estate (assets)

Describe assets:
Account(s) in banks or building societies:
Bonds or shares:
Life insurance policy:
Superannuation:
Personal property:

Real estate:
Money owing to you:
Any other property:

Liabilities

Mortgage:
Personal loans:
Credit cards:
Other:

Beneficiaries

Full names:
Address:
Occupation:
Relationship to you:
Age:
What gift do you wish to give?

Executor

Full name:
Address:
Occupation:
Age:

Guardian of minor children

Name of guardian:
Address:
Age:
Occupation:

For further information please contact:

Yooralla's Bequest Officer
P.O. Box 200
Flinders Lane Victoria 8009
Tel: (03) 9650 4077
Fax: (03) 9654 7779
Email: bequests@yooralla.com.au
Or visit our website at www.yooralla.com.au

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Your Will Your Way Your Yooralla



A lasting way to help Yooralla

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