

Useful Information About Writing Your Will



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1 How this booklet can help you

Most of us, if we do manage to get around to making our Will, think about it in terms of sorting out our affairs and caring for those we love. And that's entirely appropriate.

However, your Will also provides you with the opportunity to leave something, large or small, to a charity that you support, and be recognised and remembered for your generosity – a legacy that will endure into the future.

This booklet helps you make your Will by:

- identifying some of the decisions you'll need to make when you make or update your Will
- providing a checklist of issues you might want to discuss with your lawyer and cover in your Will
- expanding on the checklist in Queensland AIDS Council's *10 Tips for Preparing Your Will*
- providing useful forms for record keeping.

The booklet also includes information on the work of the Queensland AIDS Council (QuAC).

You may also wish to consult your lawyer

Every attempt has been made to ensure that the information is accurate at the time of production, and it has been written and checked by lawyers.

We hope that you find the advice helpful, but encourage you to seek the advice of your own lawyer when it comes to writing your Will.

2 Why make a Will?

When eventually the time comes, do those close to you know exactly what your wishes are?

Your Will may not reflect your wishes

Many Australians die without a Will, or with a Will that is out of date. By out of date, we mean that it doesn't reflect their final wishes – because they did not update it as their circumstances changed.

Or, an event in the past may have made their Will invalid.

Make it easier for your friends and family

Many friends and relatives left behind are also often left wondering exactly what their deceased friend or relative wanted to do about things like their burial, memorial service, or looking after their children or pets.

Sometimes the friend or relative responsible for looking after your affairs finds it very difficult to track down relevant accounts and assets.

Sometimes nothing much is written down – let alone in one place!

It's even worse where death or severe disablement is sudden. Sadly, relatives or friends are sometimes left to sort out a financial mess.

The more work that has to be done to sort things out, the more it costs, and the less that will be available to be given to others.

Even worse perhaps, if you have no Will and no legal in-laws, the government gets the lot.

3 Making your Will is easy

A very simple Will is easy and straightforward. It will probably just say who is to get all or specific parts of your property, and appoint an executor to finalise your affairs.

You will find toward the back of this document an example of a simple Will. You'll see how straightforward they can be.

You can also buy a Will form or Will kit from a newsagent or bookstore.

3.1 Decide what to include in your Will

There are many issues you may wish to cover in your Will or that need to be dealt with in related documents like Powers of Attorney or directions on medical consents.

Queensland AIDS Council's *Tip Card for Preparing Your Will* gives a brief checklist of the information that is useful to have ready for your lawyer when you consult him or her about your Will.

Just in case you don't have the Tip Card, here's the list again:

1. Details of your Executor/s (the person/s who will finalise your affairs).
2. Details of the people or organisations to whom you want to give your property.
3. Details of a guardian for any child under 18.
4. Details of your major assets, their value and when you acquired them.
5. A list of your major debts (if any).
6. Details of any family trusts.
7. Details of any business you own, and what is to happen to it. You may wish to discuss with your solicitor the powers which enable your Executor to keep the business running (even while it is being sold).
8. If you are giving specific property to more than one person, who you want to get any property that is left over.
9. Whether a headstone for your grave or other burial or funeral arrangements should be paid for by your estate.
10. Whether debts owing to you by particular people are to be forgiven and left unpaid.

3.2 Appoint an Executor

You need to say in your Will who you want to be your Executor(s). Your Executor is the person who is responsible for carrying out the instructions in your Will after your death.

Get their agreement

You should ask your proposed Executor(s) if he/she will accept the appointment.

Appoint more than one

It can be a good idea to appoint more than one Executor. This may help to minimise the time required to carry out the instructions in your Will when the time comes.

Being an Executor need not disqualify anyone from receiving a benefit from your Will; so you can choose a friend or family member.

You can choose a professional

You can also choose a solicitor, accountant or a professional Executor such as the Public Trustee or a Trustee company. Executors can charge a commission and costs to your estate. You should discuss the duties and any commission with your Executor.

3.3 Give trustees the power to maximise the return on any investment

Wills often provide for the Executor to be a trustee of your estate while your affairs are being finalised.

Normally, trustees can only invest in a relatively limited range of financial investments, and they may not be those that prudently maximise the return. Ask your solicitor to make sure there is a sensible range of investment options specified in your Will.

3.4 Have you made sufficient provision for close family so your Will cannot be challenged?

In each state of Australia there are laws that allow that certain people can apply to have a share of an estate. The persons who can apply are spouses or former spouses, children, or certain dependants. These people can apply for a share of the estate on account of their maintenance, education or advancement in life.

It is a complicated area of the law. When you consult your solicitor, check that you have made sufficient provision in your Will so that these types of claims are not likely to lead to expensive court cases, delays in distributing your estate, or have the effect of dramatically reducing what you may want to leave to special people in your life.

3.5 Appoint a guardian for any child under 18

If you have dependent children and both parents were to die, it is important that your Will nominates the person you want to be the guardian of your children.

Your Will should also appoint an Executor and Trustee who will be able to manage assets for a long period if necessary, while your children grow.

A guardian is a person who takes legal responsibility for a child. He/she does not necessarily have to care for your children, but retains control of important decisions such as who does care for them, their education and so on.

3.6 Looking after your affairs if you ever become mentally disabled?

Everybody hopes it won't happen to them, but you do need to remember that especially in illness or older age, you may become sufficiently mentally disabled that you are unable to look after your legal or financial affairs.

Enduring Power of Attorney

With an Enduring Power of Attorney, you can arrange for someone you trust to look after your affairs. It's called "Enduring" because it continues to have legal effect.

It also works as a normal Power of Attorney even if you are never disabled. This can be handy if you are travelling overseas and you need someone to look after legal or financial affairs at home.

Your solicitor can write a Power of Attorney (or an Enduring Power of Attorney) for you. The person you appoint needs to be someone you trust absolutely.

3.7 List any major debts - they will be paid first

Writing your Will is a good time to make a list of any major debts you have.

Your Executor is required to pay these debts before your property is distributed to the people you specify in your Will.

A clear list of these debts will make it much simpler for your Executor to finalise your affairs.

There is a form at the back of this booklet you can use for listing these debts, as well as any assets you may have.

3.8 Are debts owing to you by particular people to be forgiven and left unpaid?

An Executor normally requires that all debts owing to you be repaid. Once this is done, the Executor then distributes your property as you specify.

In some cases, you may want to forgive debts owing to you and tell your Executor that they don't have to be repaid, for example, debts to particular friends or that are owed to you by your children.

Your solicitor will need to write a sentence in your Will itemising those debts that do not have to be repaid to your estate.

3.9 Do you wish to be cremated or buried? What kind of civil or church service do you want?

If you've had the sad task of finalising arrangements after the death of a relative or friend, you'll know that one of the difficult issues is knowing whether the person who has died wanted to be cremated or buried.

You can ask your solicitor to include your own decision about this in your Will. An alternative is to write a letter to the right person to indicate your preference.

You can also take the opportunity in your Will (or in a letter) to let your Executor know whether you'd prefer a church or civil service as a funeral. Your Executor is not legally bound by your decision, but it is unlikely that your decision will not be respected.

3.10 Signing and witnessing Wills

You do have to be careful when you sign and witness a Will. The witnesses have to be two people who do not receive anything from the Will. They have to initial and date every page, with the same pen.

3.11 It's easy to change your Will - it's called a codicil

If you want to make a fairly minor change or addition to your Will you can do it without redoing the whole Will. You just add what's called a codicil.

A codicil is just an extra document that becomes part of your Will. Like a Will, it's best drawn up by your solicitor, and needs to be witnessed by two independent people.

Codicils are useful for adding things to your Will like special bequests to good causes.

3.12 How often should I review my Will?

You should review your Will every 3-5 years or if any of the following happens:

- a new partner in your life
- marriage, divorce or separation
- birth of children or grandchildren
- retirement
- death of a beneficiary or your Executor
- you want to benefit a good cause.

If you have more than simple additions to your Will, it is probably best to write a new Will so it is all in one document.

3.13 An example of a really simple Will

Will of John Brown

This is the last Will and testament of John Brown of 1 Pitt Street, Inner City, in the State of Queensland.

1. I revoke all former testamentary acts.
2. I give the whole of my estate to my friend John Smith and I appoint him my sole executor.

4 Your Will, your choice

4.1 Use your Will to do good even after you have gone

Your Will is an opportunity to do something of lasting good for years or decades after you have gone. A small amount can go a long way.

You might not think you own a lot of property or that you have many valuable assets.

But even part of a house or land, some shares or a bank balance can do an enormous amount in the hands of a reputable charity like the Queensland AIDS Council.

4.2 You can make a difference

Income from gifts in Wills helps to fund the important work of the Queensland AIDS Council (QuAC).

Large or small, every bequest makes a difference to the work that QuAC can do for people living with HIV/AIDS. Please take a moment to consider whether you could include a bequest to QuAC in your Will.

QuAC has a range of ways that it likes to recognise and remember you and your bequest. If you'd like to find more, please contact the Bequest Officer, QuAC, PO Box 3142, South Brisbane Business Centre, 4101. You can call 07 3017 1777 or free call 1800 177 434 (outside of Brisbane) or fax 07 3844 4206.

5 Queensland AIDS Council – Who we are, what we do

5.1 Who we are

The Queensland AIDS Council (QuAC) was established in 1985 as a response by the gay community to the HIV/AIDS crisis.

Our aim is to mobilise a community response to empower communities and individuals most affected by HIV/AIDS.

Gay men are the highest priority for QuAC's community education efforts.

We provide support and education to all people living with HIV/AIDS (PLWHA).

This work could not be planned and implemented without the assistance of QuAC's volunteer base.

5.2 What we do

QuAC focuses on two key areas: HIV services and on education for preventing new HIV infections.

HIV Services

The HIV Services Program is a state-wide initiative aimed at providing support, information and practical assistance to PLWHA and their significant others. The Program comprises the Client Services and Support Project (CSSP) and the Health Enhancement and Monitoring Project (HEMP).

CSSP provides counselling, emotional support, home help and practical assistance including medical transportation, treatments information and financial support using skilled volunteers and professionally trained staff.

HEMP provides information and education in order to assist PLWHA to make their own decisions about their health. This QuAC/QPP joint-project produces the publication 'QPP Alive', provides treatments education, peer support, peer education and advocacy workshops across Queensland.

Education

The aim of the HIV Education Program is to minimise the number of new HIV infections in Queensland among gay and bisexual men.

We are one of the very few services that targets our efforts toward gay and bisexual men.

Where possible we provide relevant health information, resources and referral for lesbian, bisexual and transgendered people.

Projects include:

- Facilitation of peer group education forums
- Campaigns which provide information on issues facing gay and bisexual men
- A state-wide service that provides telephone information support and outreach education to isolated men and non gay-identified men who have sex with men

- Participation in research and policy development with other community organisations and the Queensland Health Department
- The Indigenous Gay Men and Sista-Girls Project that targets services to respond to the needs of Indigenous gay, bisexual and transgendered people.

5.3 A charity

QuAC is a registered charity. Donations to QuAC are tax deductible.

6 What you should know about making a bequest

6.1 A bequest is a gift of part or all of your estate

A bequest is simply a special gift made in your Will of part or all of your estate.

How much you decide to leave as a bequest depends on your own personal circumstances. It's your personal decision - whatever you can afford will help.

6.2 There are three different types of bequest

There are a number of ways that you can leave a bequest.

A specified amount

You can choose to leave a specified amount of money. This can be a good way of being specific about how much you wish to give. However, if you don't update your Will regularly you may find that the value of a specific amount declines over time. As a result, you may end up giving less than you intended, or if the value of your estate declines, then you may give a larger proportion than you had originally planned.

A proportion of your estate

You can also choose to leave a proportion of your estate by specifying the particular percentage you wish to go to your selected beneficiary. In some cases this might be as much as 100 per cent - in others it might be just 5 per cent.

The residue

Or you could leave what's called the residue - the amount left after all of your other specific bequests or commitments have been met.

6.3 How to leave a gift to Queensland AIDS Council

Depending on your wishes, the wording of any bequest in your Will should be chosen appropriately from the following options:

- "I give (free of any relevant duties):
- (the whole of my estate, or
 - the remainder of my estate, or
 - (say) twenty percent [20%] of my estate, or
 - the sum of \$_____ , or
 - the property located at _____ , or)

to the Queensland AIDS Council absolutely for the general purposes of the said Council. I direct that a receipt of the Queensland AIDS Council shall be a sufficient discharge of my trustee or Executor."

6.4 A good simple book with more useful details

Rest Assured is a concise book with more useful details about Wills, estates and funerals. It has further information on making your own Will, and on how to make arrangements on behalf of a friend or relative who has died.

It goes into greater detail about issues we've covered in this booklet and provides information about prices of services and where to contact services you may need.

It also includes hard-to-get information about how to go about arranging a funeral. *Rest Assured* is available from legal bookshops, or from Redfern Legal Centre Publishing, 122 George Street, Redfern NSW 2016. Telephone (02) 9698 3066 or fax (02) 9698 3077.

7 Recording key information for your executor and family

Please take this opportunity to record key personal information for the benefit of your executor, family or friends. It will help them finalise your estate, or assist you in the case of severe disablement.

Personal information of:

.....

Your name

People to be notified on my death

Name _____

Address _____ PC _____

Telephone number (H) _____ (W) _____

Connection _____

Name _____

Address _____ PC _____

Telephone number (H) _____ (W) _____

Connection _____

Name _____

Address _____ PC _____

Telephone number (H) _____ (W) _____

Connection _____

Name _____

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Name _____

Address _____ PC _____

Telephone number (H) _____ (W) _____

Connection _____

Name _____

Address _____ PC _____

Telephone number (H) _____ (W) _____

Connection _____

You may wish to include relatives, close friends, employers, business associates, your bank manager, clubs or professional associations, your trade union, life insurance companies, your superannuation fund, the Departments of Social Security or Veterans' Affairs, etc. (as appropriate). Your insurance company may need to be notified if any property becomes unoccupied.

8 Key contact people

Next of kin:

Name _____

Address _____ PC _____

Telephone number (H) _____ (W) _____

Solicitor:

Name _____

Address _____

Telephone number _____ Fax _____

Doctor:

Name _____

Address _____

Telephone number (W) _____ (After hours) _____

Executor/s of my Will:

1. _____ Phone: _____

2. _____ Phone: _____

Trustees or guardians by my Will:

Preferred funeral arrangements:

9 List of Assets

Item	Approximate value
Home	\$
Other real estate property (record addresses below)	\$ \$ \$ \$
Motor Vehicle	\$
Caravan	\$
Furniture	\$
Appliances	\$
Jewellery	\$
Books	\$
Works of Art	\$
Bank, Building Society Deposits	\$
Bonds, shares & debentures	\$
Superannuation or Retirement (record company below)	\$ \$ \$
Life Assurance Policies	\$ \$
Other Investments	\$ \$ \$
Loans due to me	\$ \$ \$
Other Assets	\$ \$ \$ \$ \$

Debts and Obligations

Item	Approximate value
Mortgages owed (balance due)	\$
Loans due to others	\$
Bank overdraft	\$
Credit Card balances	\$
Other debts owed	\$

10 It's your choice

The information in this booklet is straightforward and unbiased. Please make your own choices about what you wish to do. What you choose is entirely your own decision.

10.1 Please make a Will – for the sake of those you care about

Whatever else you do, for the sake of a partner and your friends and relatives, please make a Will. It doesn't need to be complex and can be simple and easy to make. In the process, please consider some of the important Will-making issues that are raised in this booklet.

10.2 Would you like to discuss your plans or recognition?

If you would like to discuss your bequest plans please feel free to call the Queensland AIDS Council on 07 3017 1777 or free call 1800 177 434 (outside of Brisbane).

QuAC can help you with advice about the kinds of bequests that you can make, as well as the best way to recognise you and your gift. Any enquires will be kept absolutely confidential.

If you do make a bequest, we'd be grateful if you would use the coupon on the final page of this booklet and let us know about your decision. It gives us the opportunity to thank you, make sure you are recognised in an appropriate way, and to learn how you would prefer to see your gift used by the Council.

To: The Bequest Officer, QuAC

Please ring me on: Ph (__) _____

A convenient time of day to telephone is: morning afternoon.

I would like Queensland AIDS Council to know that I am planning to leave a bequest to help its vital work.

Name _____

Address _____ Postcode _____

Please return this coupon to the Bequest Officer, QuAC, PO Box 3142, South Brisbane Business Centre, 4101. You can call 07 3017 1777 or free call to 1800 177 434 (outside of Brisbane) or fax 07 3844 4206.

