

WHY DO I NEED A WILL?

The experienced Wills & Estates team at Whyte, Just & Moore answer this question and more.

Dying without a valid will means you have no control over who your assets will pass to following your death. It means you may not be providing for loved ones and your estate may not benefit the people you would have intended to benefit if you had made a will. It also means that loved ones may face an extended time of stress and uncertainty, in what should otherwise have been a time of reflection and grieving.

We sometimes hear about famous people who die without a will, including stars like Jimi Hendrix and Bob Marley. What we may not hear about is how their families have battled for up to three decades, in drawn out litigation, in an attempt to settle the estates of their loved ones. Unfortunately, it is not only famous families who face these issues. Everyday Australians who die without a valid will have family members left behind to navigate these issues and the challenges which inevitably follow.



WJM Principals - Aaron Jolly and Will Pivalu

What happens if you die without a will in Australia?

If you die without a valid will, you *die intestate*. This means that the Intestacy laws of your state or territory will determine how your estate is to be distributed. Sometimes this occurs because a will was never made. In other circumstances, a will may have been made but might later be revoked or considered invalid for different reasons, including (but not only limited to) marriage and divorce of the will-maker.

Not having a will and dying intestate means:

- You do not control who is your executor, being the person or people responsible for administering and making decisions about your estate.
- You do not control who benefits from your estate. Your estate may pass to relatives who you do not wish to benefit. If you do not have relatives, your estate may pass to the crown.
- There may be costly litigation which can take place over a number of years, meaning loved ones are left without any financial certainty for a long time following your death.

Why is it important to have a valid and up to date will?

A valid will which reflects your current wishes enables you appoint who will act as the executor of your estate. An executor is responsible for doing everything from organising your funeral and carrying out practical roles such as cleaning out your home, right through to engaging a lawyer and overseeing your will and ensuring the timely and efficient administration of your estate.



The WJM Wills and Estates Team

A valid will allows you to determine who you wish to benefit from your estate and where your assets will go. You can also pass control of companies and other responsibilities and roles you might have within trusts and other structures to named beneficiaries of your choosing.

You can express your wishes about who might care for any minor aged children when you die and provide guidance for your executor about your wishes for the disposal of your body after you die and whether you wish to be buried, cremated or anything else which is important to you.

I have a will, should I update it?

If you have made a will, it is important to review it from time to time, and at least every three to five years. Your life and situation will change over time and the law also changes over time. Circumstances where you may wish to review and update your will sooner than every few years include:

- your financial circumstances change;
- your family circumstances change, for example, if you marry, start a new relationship, divorce, separate, or have new children or grandchildren;
- a beneficiary under your current Will dies or has a significant change in their circumstances;

- an executor appointed under your current Will dies or becomes unsuitable to act due to age or ill-health or perhaps a change in the nature of your relationship with them;
- you sell or give away assets that are specifically mentioned in your Will;
- you buy or inherit significant assets;
- you begin to hold assets that your Will cannot deal with, such as in superannuation or a trust;
- the entities or structures you hold assets in change.

It is important that all of the necessary legal requirements to give effect to any changes or updates to your Will (and other legal documents including trust deeds) are completed correctly; otherwise your will may not be valid and legally enforceable. In some circumstances and if done incorrectly, small changes made to a Will can have unfortunate and unintended consequences. Incorrectly made changes or updates can revoke or invalidate the entire will document. Therefore, it is important that you seek appropriate advice rather than try to amend or alter your estate planning documents yourself.

Whyte Just & Moore lawyers has a team of trusted advisors who can provide advice to you to assist with your estate planning and making or updating your will and other important legal documents. This will give you the peace of mind of knowing that, when the time comes, your loved ones are protected.

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Call the Whyte, Just & Moore **WILLS & ESTATES** team **today** on **03 5222 2077** or **info@wjmlawyers.com.au**

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