



# What you need to know about Wills

ADELAIDE OFFICE:

Level 1 / 48 Carrington St  
Adelaide SA 5000

PHONE: 08 8212 4334  
FAX: 08 8212 5054

GLENELG OFFICE:

1 Byron St Glenelg SA 5045

PHONE: 08 8294 5253  
FAX: 08 8295 8462

EMAIL: [admin@scales.net.au](mailto:admin@scales.net.au)

[scales.net.au](http://scales.net.au)

SCALES  
+PARTNERS  
*Lawyers*

# Why should I make a Will?

It is only by making a Will that you can exercise your legal right of directing how your assets should be distributed. If you do not make a Will then the laws of intestacy dictate what happens to your assets.

This is often not what you would want to be the case. For example, if you die leaving a spouse and children, part of your estate may be received by Public Trustee on behalf of your children, with their interest having to be held on trust for them until they turn 18. This may result in hardship and distress for your family. In some cases it means that your spouse is asked to sell the house so that Public Trustee can take control of your children's share of the estate. Alternatively your spouse might have to borrow money to buy the children's share.

Special problems can arise in circumstances where you have children from one relationship but you are now in another relationship. In these circumstances a carefully drawn Will balancing the interests of your children and your new partner is essential.

In addition, when you make a Will you are able to:

- Appoint the people you want to be your executors and trustees.
- Make specific provision for the receipt of the benefit to be delayed until certain events occur (such as the beneficiary turning 21 years of age) to ensure that the benefit is not wasted.
- Make provision for payments to be made to infant beneficiary before they turn 18.
- Nominate the guardians for your children in the event that both parents die before they reach 18.
- Explain in the Will why you have made lesser (or no) provision for some members of your family than others. This may be important in avoiding a legal contest in relation to your estate.

## When should I make a Will?

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As soon as possible. Apart from the fact that ill fortune can come to anybody at any time, it is important to understand that if you were to lose legal capacity as a result of an accident or illness, you are not then able to make a valid Will.

If you have recently separated from your spouse or de-facto spouse then it is important that you address the issue of a Will or a new Will, as mere separation does not affect the validity of an existing Will, nor the operation of the laws of intestacy.

In most circumstances marriage or re-marriage has the effect of annulling an existing Will. The only exception is if the Will is expressed to be made specifically in contemplation of that marriage. If you are intending to be married in the near future, you should make a Will which is expressed to be made specifically in contemplation of marriage. If you are married, but have not made a Will since being married, then you need to make a new Will.

## Who should draw the Will?

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Your Will should be drawn by a competent solicitor. The alternatives are not recommended. For example:-

- Making a homemade or "do it yourself" Will is inherently dangerous and, in some circumstances, worse than having no Will at all. The fact is that you do not have the legal knowledge or skills to draft a Will for yourself. What you may intend to say in a Will may not be what another person would interpret your Will as saying. Very few people are able to think through all of the potential issues that might arise from drafting a Will in a particular way and many important issues are not addressed. Moreover, even an apparently minor mistake can invalidate a Will or lead to great expense in having the Will ruled upon by a court.

- Although Trustee companies may be prepared to prepare a Will for you for little or no charge, this is usually on condition that they are named as the executors in your Will. They will then charge a percentage of the value of your estate for so acting. This is invariably far more expensive than having a solicitor prepare your Will and appointing a family member or friend as executor.

## How much will it cost to have a solicitor prepare a Will for me?

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This depends on the complexity of the Will you require. We recommend you speak to us about what your requirements are likely to be. We can usually then provide an estimate of the likely costs before commencing work on your behalf.

## If I have a Will is that all I need to consider?

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No, firstly you also should be considering whether you need an Enduring Power of Attorney (EPOA) and/or an Advance Care Directive (ACD). These documents are often known as "living wills" and they dictate who looks after your affairs if you lose legal capacity but do not die. Please note that your spouse or your parents do not automatically have the power to act on your behalf if you suffer a catastrophic injury. We recommend that you carefully read our brochures regarding these topics.

Secondly there are other matters that need to be considered, such as who receives your Superannuation, Life Insurance etc and, if you operate a business, how you should arrange your affairs such that there is a smooth transition to your beneficiaries.

## How do I get started?

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We suggest you contact us by phone in the first instance to discuss your needs.