

Legal Yarns

Wills



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Artwork by Dixon Patten, a proud Gunnai, Yorta Yorta, Gunditjmara and Dhudhuroa man.



What is a Will?

A Will is a legal document that sets out how your belongings will be distributed after you pass away. A Will can also include wishes and instructions about things like what you want to happen at your funeral, or who you want to look after your children or pets.

Why is it important to have a will?

Everyone should have a Will. Having a Will can provide a calm and gentle process for grieving family members. A Will helps your family and those close to know how you want your belongings (which are sometimes called assets) to be distributed after you pass away.

How old do you have to be to have a will?

All adults should have a Will. You can start to think about writing a Will once you are 18-years old. Talking about a Will with your loved ones can help with the process for your future if you suddenly fall ill or pass away.

Having a will can help save a lot of problems when it comes to family members and those close to you having a say over your belongings once you pass away.

What happens if I don't have a will?

If you pass away without having a Will this is called *dying intestate*. If this happens, the law may rely on an older Will if you have one, otherwise the Court may appoint someone to distribute your 'estate' by applying what is called the *rules of intestacy*. This means that the administrator will follow a general formula and distribute your belongings to people like; your spouse or partner, your children, your parents, or other relatives.

If this happens it can be difficult for your family to access your belongings, and they might have to apply for a grant of letters of administration. This process can take some time depending on your documents. It will be the law's decision what happens to your estate.





What happens if I don't have much to leave in a Will?

Even if you don't have much to leave to your loved ones, it's still important to have a Will. Aside from documenting how you want your estate to be dealt with, a Will can also include information about what you want to happen at your funeral, or where or how you want to be buried or cremated.

How long does a Will last?

A Will is valid from the day it is made. If you amend your Will or make another Will, the earlier Will becomes invalid.

A Will is only valid if it is in writing, intended to be a Will, signed by you, and has the date it was signed by you.

Do I need to update my Will after I write it?

It's a good idea to update your Will if your circumstances change.

You should think about updating your Will if:

- You have different assets you want to distribute through your Will,
- Your relationship or family circumstances change,
- The people you have identified as executor or beneficiaries are no longer appropriate.

Where can I get a Will done - can I write it myself?

You can write a Will yourself, but we do not recommend this.

Normally you have to pay to have a Will drafted by a lawyer. You can use a generic Will kit or online service, but keep in mind these types of kits are generic and not always suited to everyone's circumstances.

If you have questions about making a Will you can call VALS Civil team on 1800 064 865.

You should hold a copy of your original will in a safe place where you know where it is.





Can a will be contested or challenged?

Yes, your will can be challenged if your family members or next of kin think that it is unfair. Your will can be challenged by:

- A spouse or former spouse, including domestic partners,
- Your children,
- A grandchild who is or was dependent on you,
- A registered caring partner who is or was dependent on you (was in a registered carer relationship with you but not in a “couple” with you),
- A person who, at the time of your death is a member of your household who is or was dependent on you.

Challenging a Will is a long and sometimes expensive process. If you are thinking about challenging someone else's Will you should seek legal advice.

Key terms used when talking about Wills

Estate

Your estate is what you own, and what will be distributed by your Will. It can include property you own (like the things in your house), or more significant property (like a house, car or caravan).

Beneficiary

A beneficiary is a nominated person who will receive your belongings when you or a family member pass away. They can inherit your personal belongings like family heirlooms, jewellery, property, and intellectual property.

Executor

You will need to appoint a nominated person to be your executor. They will manage your estate when you pass away if you have any wishes, they carry out those duties to the people you have in your will.

Gift and bequest

A gift or bequest is what a beneficiary receives through a Will.





What is the difference between a Will and a Power of Attorney?

Powers of Attorney are legal documents that allow you to choose who will make decisions about financial and personal matters if you are not able to make these decisions yourself.

A Power of Attorney (or POA) is a person that you have identified to make decisions on your behalf if you are unable to make those decisions yourself. A POA can make decisions about various things, including:

- your medical treatment,
- management of your finances,
- your personal affairs like where you will live.

A POA is a legal document, and the person that you appoint must accept this responsibility. There are specific things the legal document needs to include. **If you have any questions about POA call VALS Civil team on 1800 064 865.**

An Attorney makes decisions on your behalf when you are alive. The Attorney does not have any responsibilities after you pass away.

Enduring Power of Attorney

An Enduring Power of Attorney is responsible for making decisions about your personal and financial matters when you are unable to do this yourself.

Things an Enduring Power of Attorney can make decisions about include your personal affairs (where you live, what happens to your house, who cares for you) or your financial affairs (paying your expenses or deciding what happens to your property).

Medical treatment decision maker

A medical treatment decision maker can make decisions about your medical care if you are unable to do this yourself.

If you fall sick or have an accident and you cannot make decisions for yourself at a time of illness, having the medical power of attorney gives someone the legal authority to agree to or refuse medical treatment on your behalf when you cannot make those decisions on your own.

You can also have an Advanced Care Directive that says how you want your medical decisions to be made, and what your preferences are. It can be a guide for the medical treatment decision maker when you are unable to make those decisions yourself.





Where can I find out more information or get support to create a Will or allocate a Power of Attorney?

VALS does not assist in drafting Wills or Power of Attorney documents. We can provide you with some information about Wills or refer you to another legal provider who can assist.

VALS Civil and Human Rights Practice host Wills Days across Victoria. At a Wills Day you will find out more information about the Wills process, and you may be able to have a Will drafted by a pro-bono legal provider. **To find out more contact our Civil and Human Rights team on 1800 064 865.**

Online resources available

There are many online resources available about Wills and Power of Attorney.

- [Victoria Law Foundation – A guide to making a Will in Victoria](#)
- [Office of the Public Advocate Victoria](#)
- State Trustees Victoria
 - [Making a Will](#)
 - [Power of Attorney](#)
- [Our Mob and Cancer](#) – information about free and low-cost Wills

Where can I get help?

If you'd like more information, or to speak to our legal teams, you can call VALS on 1800 064 865.

You can find out more information about our legal teams and the types of issues they can help with via [our website](#).

Disclaimer

This document contains general information only and does not constitute legal advice or services.

This fact sheet was published in July 2025. All information is accurate as of date of publication. For further information please head to VALS website.

