

A guide to gifts in Wills



Do all the good
you can  by all
the means you
can  in all the
ways you can 

John Wesley

Dear friend,

It is a special kind of person who finds themselves reading this booklet. Its contents are developed for people who value the essential work of Wesley Mission and want transformative help for people in need to continue well into the future.

The challenge of maintaining the work of Wesley Mission remains enormous. Still, we have been blessed by generous people over decades, many of who are ordinary folk who have decided to partner with us to make a difference that is both positive and enduring.

When I connect with our frontline services, I am always encouraged by the stories of people's lives that have been transformed by Wesley Mission coming alongside at just the right moment. And so, I want to thank you for the critical role that you play in making that possible. We could not continue our work without people just like you.

There are many ways to support Wesley Mission, but, as you will read in this booklet, a gift in your Will is unique as it leaves a living legacy for generations to come. Every life is precious. 'Doing all the good you can' is simply an ordinary person making an extraordinary decision to value the life of another.

Continuing the pioneering faith and care established more than 200 years ago, Wesley Mission exists for all people, no matter how vulnerable. By leaving a gift in your Will to Wesley Mission, you will continue to help the disadvantaged and marginalised and ensure that the life-changing work of Wesley Mission is maintained and grown, creating a sustainable and exciting future of care.

I hope you will find that this booklet answers the questions you may have in order to make an informed decision about leaving a gift to Wesley Mission in your Will. Thank you again for considering how you might partner with us in a lasting gift of kindness to others.

Every blessing,



Rev Stu Cameron
CEO and Superintendent



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Introduction

This booklet is designed to help you understand the importance of having a Will and how to go about making one. It’s also designed to guide you through how you can use your Will to make a difference in the lives of others.

Your Will has the potential for you to leave a legacy of significance that will live beyond your natural life and bring help and healing to people in need. Through a range of programs Wesley Mission offers Christian care and compassion to those who are experiencing homelessness, older Australians, children and families in crisis, people living with mental illness or disability, those in need of counselling and many more.

Every gift given to Wesley Mission in a Will is a selfless gift that puts something back into the community and makes the world a better place for others, because every life matters.





The key of generosity

Audrey made some very important decisions regarding her assets and her welfare in life. When her parents passed away, Audrey, as their only child, inherited their entire estate. She needed to plan carefully how she would later distribute her assets to benefit others.

A long time and active supporter, Audrey decided early on that she wanted to leave a significant gift to Wesley Mission, and as a single woman living alone, she also needed to consider the help she would need if she was not able to look after herself or handle her financial affairs.

The information Audrey relied on is very similar to what you'll read in this booklet. Audrey made a Will, and established a Power of Attorney and Enduring Guardianship.

In 2012 Audrey suffered a serious stroke. Having these arrangements in place, gave Audrey peace of mind during her illness. She was well looked after, and her affairs were handled responsibly by those she had appointed. While sadly Audrey died not long after, her funeral arrangements and the settlement of her estate were relatively simple, because she had an up-to-date Will.

Audrey is remembered for her life-long fondness of music, graduating in 1950 from the prestigious Trinity College of Music London and also performing before Queen Elizabeth II. Alongside her gift to the work of Wesley Mission, she also left her much loved grand piano to Wesley Rayward Carlingford where it will continue to live on bringing enjoyment to the residents.



Last Will and testament

The following information is provided as a guide to you preparing your last Will and testament, an Enduring Power of Attorney and Guardianship.

What is a Will?

A Will is a legal document that sets out what you want to happen to your assets when you pass away. Making a Will is the only way you can ensure your wishes for your assets will be known after you die.

How do I ensure my Will is valid?

For a Will to be valid it needs to comply with certain criteria:

- it must be in writing – it can be handwritten, typed or printed
- it must be signed by the person making the Will and witnessed by two or more people (beneficiaries should not be a witness as it may cancel out their entitlement).

You must have ‘testamentary capacity’

This means:

- you know the legal effect of a Will
- you must be aware of the extent of your assets,
- you must be aware of the people who would normally be expected to benefit from your estate
- you must not be prevented by reason of mental health issues from reaching rational decisions as to who is to benefit from your Will.

What should I include in my Will?

The terms of your Will describe what you want to happen to your assets, and you can leave them to whoever you like ie. family, friends or organisations such as Wesley Mission. These may include gifts, and may concern real estate, cars, personal items such as jewellery, furniture, collectables, simply money or shares.

You are able to place restrictions on the gifts that you make so that they are used for a specific purpose. You may also wish to include specific directions about your funeral and burial requirements. However, if you do choose to include these types of directions you will need to make sure you let your Executor and others who are near and dear to you know of your wishes.

How often do I update my Will?

Your Will expresses your wishes at a particular point in time. As your circumstances change, it's advisable to regularly review your Will to reflect your current wishes. Situations where you may want to revise or update your Will include:

- marriage
- separation or divorce
- starting a defacto relationship
- your children marry, divorce and/or have extended families
- executor named is unable to handle the responsibility or has died
- a beneficiary named in the Will has died (when writing your Will, it's wise to name substitute beneficiaries)
- the death of spouse
- the value of legacies diminishing over time
- retirement
- when you buy or sell assets.

Where possible see a solicitor when making or changing your Will.

If I get married or divorced, does that affect my Will?

- If you marry after you've made a Will, the Will is generally revoked or cancelled, unless it was made in anticipation of marriage.
- Marriage will not affect a gift to the person who is your spouse at your date of death.
- If you divorce after you make your Will, it only revokes or cancels any gift to a former spouse.
- It cancels your former spouse's appointment as executor, trustee or guardian in the Will, unless the former spouse is a trustee of property left on trust for beneficiaries that include children you have in common.
- This doesn't apply if the Court is satisfied that the Will maker did not intend by divorce to revoke the gift or appointment.
- The above issues require specific legal advice.

Who can contest my Will?

- A valid Will doesn't necessarily guarantee that your wishes will be carried out exactly as you provide.
- While you're entitled to leave your assets to anyone you wish, in some circumstances, friends or relatives who believe they've not been sufficiently provided for are entitled to contest your Will.
- Some simple strategies that may help your executor, beneficiaries and the Court settle any disputes quickly:
 - Clearly state if there is anyone who you don't want to benefit from your estate and the reason behind your direction.
 - If you have provided a gift to someone and you think that the gift is all you wish for that person to receive, then you should state this and provide the reason in the terms of the gift.
 - People who can contest your Will under the Succession Act 2006 are not restricted to your spouse and children. Claimants can include a defacto partner, any other dependants or a former spouse. The person needs to convince the Court that they should receive a share or greater share of your estate, based on their 'need'. Blended families, second marriages and then family sickness may increase the likelihood of your Will being contested.

What is an 'executor and trustee' and what do they do?

- An executor of a Will carries out the wishes of a person after they die.
- The role of the executor is to manage the estate within the terms of the Will and protect the assets of the estate.
- A trustee looks after ongoing bequests to family and friends for a specific time stated in a Will – for example for your children or grandchildren.
- The executor and trustee must comply with various laws and rules that govern the administration of deceased estates and trusts.
- The executor will need professional assistance from a solicitor and accountant.

Who should I appoint as my executor and trustee?

- Many people appoint a friend or relative as their executor. People do this as a compliment, a way of acknowledging their respect and admiration for that person. The reality is that they are left with the responsibility involved in administering your estate at a time when they may be grieving.
- It's an important personal responsibility that can be time consuming, challenging and require complex decisions.
- When appointing an executor, you should make sure that he or she has the time and capability to carry out the required duties.
- It's advisable to avoid appointing someone who is a beneficiary as this may create a conflict of interest.
- It's unwise to appoint an executor who is your age or older than you. It's not uncommon for an appointed executor to predecease the person appointing them.
- For practical reasons it's also best that you don't nominate executors who live overseas.

What happens if I die without a Will?

- You die intestate and no-one will know who you wanted as your beneficiaries and who you wanted as your executor.
- Your assets will then be distributed according to a pre-determined formula with certain family members receiving a defined percentage of your assets despite what you may have wished.
- Dying intestate can result in your surviving spouse, family and friends suffering unnecessary financial hardship and emotional stress.
- In a defacto or same sex relationship, it's necessary to supply sworn evidence that the relationship existed.

Where do I keep my Will?

- Where it can be easily found when it's needed.
- Tell someone close to you where your Will is stored.
- Store your original Will in a safe place.



A legacy of impact

Mark was raised on a farm south west of Sydney by his mother and grandmother. His mother had always been a supporter of Wesley Mission and the pioneering advocacy work of the then Wesley Mission Superintendent the Rev Alan Walker.

Following in his mother's support of Wesley Mission, Mark has been a supporter for more than twenty years. "In that time I have come to understand more about the diversity and range of their services and the vital impact they have had in helping, improving and even saving people's lives," Mark said.

One area of Wesley Mission's work that Mark has been particularly interested in is the David Morgan Centre, a supported employment facility opened in 1973 to provide opportunities for those living with disability. The centre owes its name to the late David Morgan, a former Wesley Mission board member and businessman whose gift made the centre possible.

"I was privileged to personally visit the David Morgan Centre and see first-hand the loving, caring environment in which they provide work for people [living] with disabilities," Mark said of his visit where he was able to meet several workers.

"I have seen and experienced the care and dedication of the Wesley Mission staff and I am certain that leaving a gift in my Will to Wesley Mission is the right thing to do," Mark said. Mark has left a gift to Wesley Mission in his Will which he believes will leave a lasting and worthwhile legacy.



Enduring Power of Attorney and Guardianship

When considering the future, most people understand the importance of having a Will. However, it's important that people understand that a Will only takes effect when someone dies. So, what would happen if you no longer had the ability to look after your own affairs, such as if you were out of the country or suffering from a serious illness? You would need someone to be able to access your finances to pay a bill or consent to medical treatment on your behalf. This is where an Enduring Power of Attorney and a Guardianship certificate combine to form an important part of your plan for the future.

What is Power of Attorney?

- A Power of Attorney is a legal document where you appoint a person of your choice to manage your assets and financial affairs while you're alive.
- Making a Power of Attorney doesn't mean that you'll lose control over your financial affairs. It simply provides your solicitor with a formal authority to manage your financial affairs according to your instructions.
- Your solicitor can act for you when you experience a variety of situations, such as an extended holiday overseas or interstate, a serious medical condition where you're unable to communicate or even when you're no longer able to manage your own affairs. This last example requires the appointment of an Enduring Power of Attorney, which will continue to have effect after you have lost your capacity to self-manage.
- Careful consideration needs to be given to who you appoint as your solicitor. This is because they'll be responsible for making serious legal and financial decisions on your behalf.
- Appoint someone who you know to have the necessary business and financial skills needed to manage your affairs.

Above all you need to be able to trust that your solicitor will act in your best interest with impartiality and without conflicts of interest. Make sure that you discuss your intention to appoint them as your solicitor so that they know what their role is likely to involve. By doing this you can ensure that the person you would like to appoint will agree to take on the role.

When you do appoint someone as your solicitor, it's likely that it won't be until some time in the future that the person is called on to act for you. This is particularly so with Power of Attorney. Therefore, a friend or relative who is much older may not be appropriate to appoint under an Enduring Power of Attorney as they may not survive you or be able to take on the role when required.

What powers will my solicitor have?

- To make any decision relating to your finances or property, which you could do yourself.
- A broad general power and authority or be limited to specific tasks such as selling your house or paying certain kinds of bills.
- Provide your solicitor with the authority to give reasonable gifts to others or the ability to meet the reasonable living and medical expenses of their own or any other nominated person.

What duties will my solicitor have?

- To act only in your best interests and as such it's an important position of trust.
- Avoid conflicts of interest.
- Obey your instructions while you're mentally capable and act in accordance with the directions in an Enduring Power of Attorney.
- Act in accordance with the authority contained in the Power of Attorney.
- Maintain the integrity of your finances and property.
- Accurately record any and all dealings with your finances and property that they undertake as your solicitor.
- Recognise your right to confidentiality, respect your views and wishes, taking into account your existing relationships, values and culture.

What other issues are involved?

The making of an Enduring Power of Attorney is a very important decision. It can convey on your solicitor a vast amount of authority to handle your financial affairs. However, if you require your solicitor to be able to deal with your real estate, your Power of Attorney document will need to be registered with the Land and Property Information Division (LPI) of the NSW Department of Lands.

The appointment will only cease to be of effect if you die or it is revoked. Upon your death, the executor of your estate will assume responsibility for your affairs. Your executor may or may not be the same person as your solicitor.

The alternative in which the appointment of an solicitor may cease is if you revoke the Power of Attorney. There are many reasons why you may wish to revoke the Power of Attorney such as changes in the relationship with the solicitor, your circumstances or that the solicitor is no longer appropriate for the role. Revocation of a Power of Attorney is carried out by informing your solicitor in writing to that effect. You should also notify your bank and any other relevant person or organisation, such as the LPI if the Power of Attorney was registered, of the revocation.

What is Enduring Guardianship?

- It's important to consider the best person to appoint as your solicitor.
- As with a Power of Attorney an Enduring Guardian is a legally appointed decision-maker with regard to the provision of medical, dental or specialist treatment.
- A decision or consent by an Enduring Guardian has the same legal effect as if the person had acted personally.
- Appointing an Enduring Guardian you can be sure that your best interests will continue to be taken into account should you lose your capacity.
- You're confident that the person you have entrusted has your best interests at heart.
- The Guardianship Division of the New South Wales Civil & Administrative Tribunal makes the appointment of an Enduring Guardian upon receiving an application for an appointment.

Why do I need a Solicitor or an Enduring Guardian?

The most important reason why you should appoint a solicitor or an Enduring Guardian is so that you can be sure that they act in your best interests. If you should lose your capacity and don't have such appointments in place, the people who care for you may encounter difficulties in managing your affairs according to your wishes because they would have no control over your assets. Your family would not be able to access your finances to pay bills, enter into contracts in relation to real estate such as a house or consent to specialist medical treatment vital to your care.

Consider the following situation. Your partner has suffered a debilitating injury and needs specialist treatment including the purchase of expensive medical equipment. Further, your partner has a large amount of money in an account only in their name. This is the only source of funds available to provide for your partner. If the Enduring Power of Attorney and Guardianship were in effect the solicitor would be able to access this money and pay the expenses arising out of the treatment. The Enduring Guardian would be able to consent to the treatment.

If these appointments weren't in place, you wouldn't be able to access these funds or consent to the medical treatment on behalf of your partner. This may have a devastating effect not only on your partner but on you as well. You would then have to apply to the Guardianship Tribunal for their assistance, delaying your partner's treatment and possibly incurring unnecessary costs.

Should the Guardianship Tribunal be required to appoint an Enduring Guardian, there's no guarantee that the appointment is made according to your wishes. The Tribunal has a discretionary power with regard to appointing an Enduring Guardian and may even appoint the Public Guardian to the role. This will result in your family and friends having no power to help you in your time of need.



Leaving a lasting legacy

What is a gift in my Will?

Leaving a gift to a person or organisation in your Will is called a **'bequest'**. A charitable bequest is a gift left to a charity or not-for-profit organisation. There are three major types of bequests:

1. A specific bequest is a gift of a particular asset such as a house, furniture or jewellery
2. A general bequest is usually a sum of money or a percentage of the value of your estate
3. A residual bequest is the remainder of your estate after all other bequests and expenses have been deducted.

How do I word a gift in my Will to Wesley Mission?

The requested wording for a bequest to Wesley Mission is as follows:

"I give to Wesley Mission of 220 Pitt Street Sydney NSW 2000 (ABN 42 1646 55145) for the general purposes thereof".

Should you wish to direct the gift to a special area of Wesley Mission, the following is recommended:

"I give to Wesley Mission of 220 Pitt Street Sydney NSW 2000 (ABN 42 1646 55145) for the specific area of".

(For example: "its religious purposes" or "its caring services for the homeless", etc)

We also recommend including: "... and the receipt executed on behalf of Wesley Mission shall be sufficient discharge for my trustee and my trustee shall not be bound to see the application of the said gift."

Do gifts to charities have to be large gifts?

A charitable gift in your Will doesn't have to be large to be effective. Your gift, regardless of its size, combines with other bequests to empower the charity to continue its work with confidence in the future. Large gifts may provide the extra funds necessary to establish, maintain or expand an important facility or service.

If my personal circumstances change, is my gift still legally binding?

The concern about future living costs and needs is often the main reason why people don't leave a gift to a charity in their Will. You can make your gift with confidence, knowing that if your circumstances do change, you can revise or update your Will at any time should the need arise.

What is a Wills Day?

As a service to the community, Wesley Mission holds a number of Wills Days each year. At a Wills Day you can have your Will prepared by an independent solicitor for a fraction of the normal cost. You may consider leaving a gift to help those in need, however there is no obligation. Wills Days cover basic Wills only and an appointment is required.

If you would like to make an appointment to have your Will prepared at one of our Wills Days, please contact us:

(02) 9263 5548

willsdays@wesleymission.org.au

wesleymission.org.au/wills



Contact us

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Wesley Mission

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Wesley Mission is a part of the Uniting Church in Australia.

We acknowledge the Traditional Custodians of the land on which we work. We pay our respects to their Elders – past, present and future generations – and to all Aboriginal and Torres Strait Islander peoples and communities.

wesleymission.org.au