

Why make a Will? What is a probate application?

It is often the case that most of us would leave difficult tasks last on our “Things to do” list. Alternatively, some would put them first on their list and would bypass those difficult tasks year in and year out. Making a valid Will is one of those tasks, even though it is not at all difficult for lawyers to draft a simple Will.

In Victoria, the *Wills Act 1997* (“the ACT”) governs the law relating to the making of your Will. The basic requirements are that you must be of sound mind and your Will must be witnessed by two people. It is also advisable to nominate two alternative executors. The Act actually makes it clear that a Will made by a minor is not valid, unless that minor is married or about to be married.

Lawyers who practice in this area of the law are trained to make sure that all requirements by the Courts are met and that your Will shall be a valid one. If your Will is not valid, then your wishes may not be carried out. In a worse case, you may provide an avenue for certain greedy persons to make a claim on your estate.

We are often asked about Will kits that are available on the market. It is not easy for lawyers to discard those kits as to do so they would run the risk of being accused of looking after their own interest. We often advise that those kits are fine as long as you know what you are doing. If you have matters that, by law, require closer scrutiny, then those kits do not ask the appropriate questions or allowing for a special clause in your Will. An example is what to do if you have 4 children but only wish to give to three of them? Further, some of the kits carry with them a disclaimer which would defeat the purpose of having a valid Will.

If your Will is required for an application for probate (i.e., when you are no longer here either 6 feet under or scattered around your garden), then it is often that lawyers are involved, not only to make sure that the application is successful, but also to alleviate the stress from your executor and ultimately your beneficiaries or loved ones.

A grant of probate (also called a grant of representation) is almost always required unless your assets are nominal or that everything you own is in joint names as joint assets pass by law to the survivor.

In the event of intestacy, a grant of administration is required. Again, there are requirements that are set out by the Supreme Court that must be followed. The lawyers play a major role in making sure that the proper next of kin applies for the Grant and that the various forms and affidavits are done in accordance with the appropriate legislations and regulations.

Simple Wills are not difficult to draft by lawyers and therefore should not be expensive. At *Coolabah Law Chambers* we have a 50% discount for all Australian war veterans and their spouses/partners. We also can go to you for instructions.

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