

FAMILIES AND  
GENERATIONAL ASSET  
TRANSFERS: MAKING  
AND CHALLENGING  
WILLS IN  
CONTEMPORARY  
AUSTRALIA

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## Contents

1.0 Project Overview.....	3
2.0 Progress to Date.....	3
2.1 Case File Review.....	3
Sample.....	3
Contests by state.....	3
Contests by type .....	4
A case study: Family provision cases .....	4
Preliminary themes: Triggers for contests.....	5
<b>Discussion Box 2.1</b> .....	6
2.2 Prevalence Survey.....	6
Sample.....	6
The proportion of the Australian population with a valid will.....	7
What are the triggers for making wills?.....	8
Profile of non-will makers .....	10
<b>Discussion Box 2.2</b> .....	10
3.0 Planning for the Next Stages.....	11
3.1 Partner Organisation File Review (requires in kind support).....	11
Purpose of this review .....	11
Initial proposal and feedback from POs.....	11
Revised proposal for discussion.....	11
<b>Discussion Box 3.1</b> .....	12
3.2 Key Informant Interviews and Surveys – Document Drafters (requires in kind support) .....	12
Purpose .....	12
Initial proposal .....	12
Revised proposal for discussion.....	12
<b>Discussion Box 3.2</b> .....	13
3.3 Key Informant Interviews – Will Makers and Non-Will makers.....	13
Purpose .....	13
Initial proposal .....	13
Revised proposal for discussion.....	13
<b>Discussion Box 3.3</b> .....	14
4.0 Items for Discussion at Next Industry Partner Meeting .....	14
4.1 Dissemination strategy .....	14

4.2 Prevalence survey .....	14
4.3 Update on research progress.....	14
Appendix 1 – DRAFT PO File Review Template and Coding Notes .....	15
Appendix 2 – Prevalence Survey: Additional General Interest Information.....	19
What advice or information is sought around will making? .....	19
Who is most likely to act as an executor?.....	19
What instructions or trusts are included in wills? .....	19
What experiences have respondents had with other people’s wills.....	19

## 1.0 Project Overview

Norms and practices associated with family asset transfers through wills are being challenged in Australia by a changing demographic, socio-cultural, familial, and policy context. The project aims to establish a national database on the prevalence, patterns and practices of will making in Australia, the principles underpinning this form of asset distribution and/or contestation and the issues confronting document drafters and members of the community. The methodology has five major components:

1. A national prevalence survey (N = 2,405)
2. A document analysis of case law of contested cases (N = 245)
3. A document analysis of Partner Organisation (PO) files involving disputed cases
4. Key informant interviews and surveys with document drafters
5. Key informant interviews relevant to circumstances of interest (including, complex families, complex assets, and cultural practices).

The project commenced in December 2011. The ARC awarded less than 60% of the request for \$470,000. When combined with partner contributions, the operating budget for the project is \$375,000 over three years. As a result the Chief Investigators (CIs) and POs agreed to revise the project to remove the PhD scholarship, reduce the number of key informant interviews and delay the appointment of a research coordinator in the first year using the chief investigators to fulfill the role. Further savings can be made by restructuring the project methodology, in particular by reducing the number and nature of key informant interviews.

Progress to date and proposals for further work are outlined in this report. Analysis of the national survey data is currently in progress and preliminary findings are provided only. The analysis will be presented in full at the next Industry Partner meeting in 2013.

## 2.0 Progress to Date

### 2.1 Case File Review

#### Sample

This stage of the project draws on publicly available judgments that deal with estate contests. Three legal databases (Casebase, Firstpoint and Austlii) were searched using the term 'succession' over a one year period from 1 January 2011 to 31 December 2011. After excluding cases that were not relevant to the study, a total of 218 cases remained.

Additional cases from Tasmania, the Australian Capital Territory and the Northern Territory will be included in the analysis. This is because there were only a small number of cases in these jurisdictions in 2011 so a wider period of time (up to six years) was needed for comparative purposes. This wider sample includes a further 27 cases, making a total of 245 cases.

#### Contests by state

Putting aside the 27 additional cases and focusing on the 2011 cases, Table 1 below provides figures for the number of cases in the analysis by jurisdiction.

**Table 1 Number of estate contests by State in 2011**

Jurisdiction	Cases	Jurisdiction	Cases
Australian Capital Territory	3	New South Wales	98
Northern Territory	2	Queensland	49
South Australia	15	Tasmania	3
Victoria	34	Western Australia	14

As Table 1 reveals, New South Wales had twice as many cases as any other jurisdiction with a total of 98 (Queensland was second with 49 cases). Although varying population size is a relevant factor in these results, the impact of variation in law and practice (e.g., use of mediation) will also be explored.

### Contests by type

Case files were generally assigned to one of four broad categories: family provision claims, construction cases, validity cases, and other cases. A small number of cases were allocated to more than one category where this was necessary to accurately characterise the case. It was also possible to allocate cases in three of the four categories to subcategories, as outlined in Chart 1.

**Chart 1 Categories and subcategories of types of estate contests**

Family provision	Validity	Construction	Other
By partner/spouse	Capacity contested		Establishing next of kin
By child/ren	Will itself contested		Conduct of executors/control of estate
By extended family			Seeking provision by other avenues
By others not related to deceased			Statutory will applications
			Other

Table 2 provides the overall figures for cases found in these categories. The majority of cases relate to family provision claims.

**Table 2 Types of cases in 2011<sup>1</sup>**

Type of claim	Cases	Type of claim	Cases
Family provision claims	123	Validity cases	49
Construction cases	22	Other cases	37

### A case study: Family provision cases

The cases outlined above can be broken down further by jurisdiction and the relevant subcategory. A case study of family provision cases is considered briefly here. Table 3 shows a breakdown of family provision cases by State and by who the relevant claimant was in terms of his or her

<sup>1</sup> The total number of claims (n = 231) is greater than the total number of cases included in the analysis (n = 218) because some cases had more than one claim.

relationship with the deceased. It reveals that claims by children of the deceased are the largest category of persons instigating family provision claims, but that this is largely due to the high numbers of such claims in New South Wales. In particular, we note the high level of succession litigation in NSW generally, and especially in relation to family provision claims (particularly those brought by a child).

**Table 3 The number cases categorised within Family provision claim sub-categories by State in 2011**

	By partner	By child	By extended family	By others	TOTAL
ACT	0	1	0	0	1
NT	0	3	1	0	4
NSW	19	48	3	2	72
QLD	7	9	0	1	17
SA	0	2	0	0	2
TAS	0	1	0	0	1
VIC	4	13	4	4	25
WA	1	0	0	0	1
TOTAL	31	77	8	7	123

### Preliminary themes: Triggers for contests

The cases in the sample have not yet been fully analysed but there are some themes which emerge as to potential triggers for estate contests:

- **Complex family situations:** particular examples that are noteworthy are blended families where there is conflict between a later spouse and children of an earlier relationship or between children from different relationships.
- **Large estates:** there appears to be a perception that where the estate is large, a wider group of people should be beneficiaries. Although it is clear too that small estates are not immune from contest, particularly where claimants are in need.
- **Cultural issues:** this is particularly the case where cultural considerations lead to unequal treatment of potential beneficiaries.

Other noteworthy issues that have arisen from the preliminary analysis although they do not arise as frequently are:

- **Relationships of short duration:** questions can often arise as to what entitlement such relationships give rise to (and what counts as 'short' can also be contested).
- **No immediate family:** without a close family member to benefit, this can open a will up to contest by a wider group of people.
- **Irrational litigants:** there is a cohort of cases which appear to be due to irrational (and sometimes legally unrepresented) claimants. These people have a view as to what is just and will not be deterred from pursuing that outcome.

## Discussion Box 2.1

### FOR DISCUSSION:

- a) Are the themes that emerge from the preliminary analysis as to triggers for conflict consistent with your experience?
- b) Are there any other variables that we should be looking for when analysing the cases?
- c) The frequency of cases indicates significant disparities between jurisdictions. Are there particular features of your jurisdiction that are noteworthy that we should consider when interpreting this data (e.g., what might explain the high level of succession litigation in NSW generally and especially in relation to family provision claims)?

## 2.2 Prevalence Survey

The findings presented below are preliminary findings from the survey. Please note that these early findings are for not available for public distribution.

### Sample

A total of 12,110 households were contacted. Of these:

- 2,405 (20%) completed the survey
- 444 (4%) agreed to participate but were unable to complete the survey before it was closed
- 4,846 (40%) calls were out of scope (e.g., no one over 18 being available, quotas being met)
- 4,415 (36%) refused to participate.

Respondents were fairly evenly distributed across age groups (see Table 4),<sup>2</sup> although the very young (18-24) and very old (75+) are somewhat under represented. Furthermore,

- half the sample was male (n = 1,200, 50%)
- more than three quarters were born in Australia (n = 1,899, 79%)
  - no more than 7% of the sample was born in any other single country (e.g., UK)
- only a small number of respondents identified as Indigenous (n = 36, 1%).

Table 4 Number of respondents in each age category and location

Age	QLD (%)	NSW (%)	VIC (%)	SA (%)	WA (%)	ACT (%)	TAS (%)	NT (%)	Total (%)
18-24	41 (9)	75 (11)	58 (11)	15 (9)	28 (11)	10 (10)	7 (7)	14 (14)	248 (10)
25-34	50 (11)	98 (14)	83 (15)	8 (5)	40 (16)	10 (10)	12 (12)	21 (21)	322 (13)
35-44	80 (18)	191 (27)	153 (29)	44 (25)	80 (31)	26 (26)	22 (22)	26 (26)	622 (26)
45-54	91 (21)	93 (13)	71 (13)	27 (15)	29 (11)	27 (27)	18 (18)	12 (12)	368 (15)
55-64	69 (16)	115 (16)	83 (15)	35 (20)	25 (10)	8 (8)	14 (14)	20 (20)	369 (15)
65-74	69 (16)	89 (13)	55 (10)	28 (16)	31 (12)	16 (16)	20 (20)	6 (6)	314 (13)

<sup>2</sup>The sample was deliberately drawn to ensure at least half of the respondents were aged under 45 years. The inclusion of a substantial proportion of younger respondents is important as prior research suggests that this group is the least likely to have made a will.

<b>75+</b>	35 (8)	39 (6)	32 (6)	18 (10)	21 (8)	3 (3)	7 (7)	1 (1)	156 (7)
<b>Total</b>	435	700	535	175	254	100	100	100	2,399

Note: Six respondents refused to report their age to interviewers (three from Victoria and one each from Queensland, South Australia and Western Australia).

### The proportion of the Australian population with a valid will

The proportion of the population found to have a will has varied markedly across previous research and appears largely dependent on the age-range of the sample surveyed. For example:

- 96.2% of Australian respondents aged over 50 had made a will (Olsberg & Winters, 2005)
- 79% of Queensland respondents aged over 35 had made a will (Wilson & Tilse, 2012)
- 58% of Australian respondents aged 18 and over had made a will (Giving Australia, 2005)
- 37% of English and Welsh respondents aged 16 years and over had made a will (Douglas, Woodward, Humphrey, Mills, & Morrell, 2011; Humphrey, Mills, Morrell, Douglas, & Woodward, 2010).

Based on these findings, it is reasonable to expect that between one half and two thirds of the Australian adult population is likely to have a will, the greater proportion of this population made up by older generations.

The current research found approximately 60% of the Australian adult population has a valid will. Within the States and Territories, this proportion varies between two-thirds and one half of adults (see Table 5). Consistent with previous research, the greater proportion of will makers is made up by older generations (see Figure 1).

**Table 5 Proportion of will makers and non-will makers in Australia**

	QLD (%)	NSW (%)	VIC (%)	SA (%)	WA (%)	ACT (%)	TAS (%)	NT (%)	Total (%)
<b>Will makers</b>	289 (66)	404 (58)	301 (56)	117 (66)	141 (55)	56 (56)	66 (66)	51 (51)	1,425 (59)
<b>Non-will makers</b>	147 (34)	296 (42)	237 (44)	59 (33)	114 (45)	44 (44)	34 (34)	49 (49)	980 (41)
<b>Total</b>	436	700	538	176	255	100	100	100	2,405



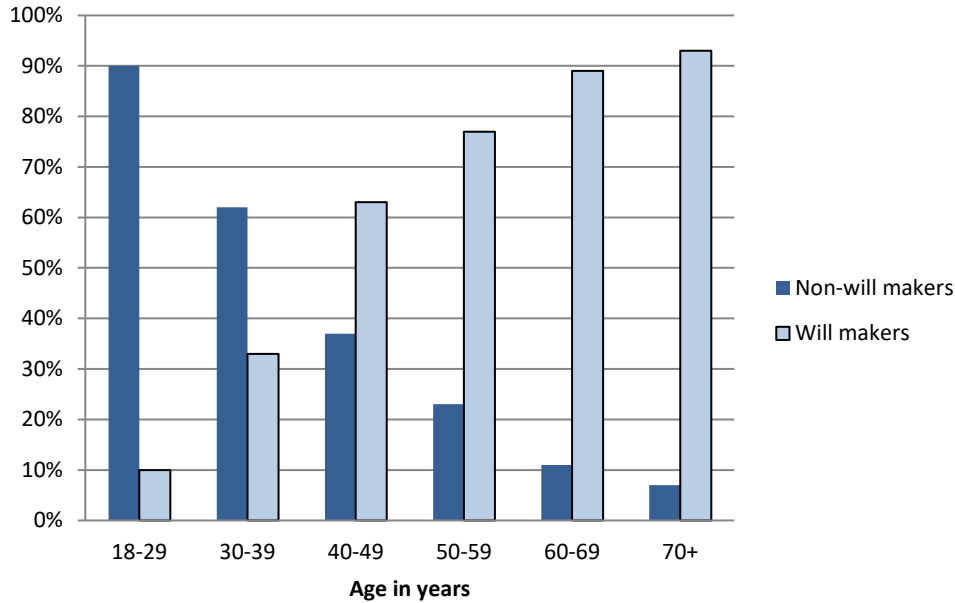


Figure 1 Proportion of will makers and non-will makers as a function of age

Although, to some extent, the prevalence of will making reflects state by state variations in the proportion of the resident population aged over 50 years, there are some exceptions such as Queensland (see Table 6).

Table 6 Proportion of the estimated resident population within each age category and jurisdiction at 30 June, 2011

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
<b>Proportion of resident population aged over 50</b>	36%	42%	29%	40%	45%	47%	41%	39%	41%
<b>Will makers</b>	56%	58%	51%	66%	66%	66%	56%	55%	59%

Source: Australian Bureau of Statistics, 31010DO002\_30230 Australian Demographic Statistics, March 2012; Prevalence survey

### What are the triggers for making wills?

Just under half of all non-will makers indicated that they intended to make a will (n = 452, 46%).

Non-will makers identified the key circumstances likely to trigger will making as (see Table 7):

- changes in health/personal circumstances
  - changes to personal health (as opposed to the health of others) (n = 772, 92%)
- changes in family circumstances
  - having children (n = 210, 28%)
  - a death in the family (n = 205, 27%).

Will makers identified the following triggers for will making (see Table 8):

- effort to get their affairs in order
  - getting organised in general (n = 751, 79%)
  - travel (n = 135, 14%)
  - felt they were old enough (n = 141, 15%)
- a change in family circumstances

- having children (n = 299, 41%)
- getting married (n = 175, 24%).

It is worth noting that most respondents identified more than one trigger for will making (non-will makers (n = 899, 92%); will makers (n = 962, 68%). For example, one will maker described how a culmination of factors had led her to prepare a will:

*I had married and had kids and have possessions and things [having a will] makes sure they go to the right people [and] often when people die it causes lots of trouble for the people left [Participant 4840].*

Advertising, general information or personal recommendations prompted very few will makers to prepare or change their will (n = 255, 18%).

**Table 7 Circumstances identified by non-will makers as likely to trigger will making (most frequently to least frequently reported)**

	QLD (%)	NSW (%)	VIC (%)	SA (%)	WA (%)	ACT (%)	TAS (%)	NT (%)	Total (%)
<b>Change in health/personal circumstances</b>	122 (83)	249 (84)	209 (88)	50 (85)	100 (88)	38 (86)	30 (88)	40 (82)	838 (85)
<b>Change in family circumstances</b>	115 (78)	230 (78)	183 (77)	47 (80)	91 (80)	35 (79)	24 (71)	37 (75)	762 (79)
<b>As part of planning/getting affairs in order</b>	98 (67)	186 (63)	152 (64)	40 (69)	85 (75)	30 (68)	22 (65)	36 (73)	649 (66)
<b>Change in financial circumstances</b>	85 (59)	176 (59)	141 (59)	31 (52)	67 (59)	20 (45)	21 (62)	23 (47)	564 (58)
<b>Change in work circumstances</b>	21 (14)	70 (24)	46 (19)	11 (19)	28 (25)	7 (16)	5 (15)	8 (16)	196 (20)

**Table 8 Circumstances identified by will makers as a trigger for their first will (most frequently to least frequently reported)**

	QLD (%)	NSW (%)	VIC (%)	SA (%)	WA (%)	ACT (%)	TAS (%)	NT (%)	Total (%)
<b>As part of planning/getting affairs in order</b>	189 (65)	283 (70)	187 (62)	75 (64)	98 (67)	38 (68)	45 (68)	34 (67)	946 (66)
<b>Change in family circumstances</b>	142 (49)	210 (52)	166 (55)	55 (47)	65 (46)	25 (45)	35 (53)	26 (51)	724 (51)
<b>Change in financial circumstances</b>	46 (16)	97 (24)	64 (21)	19 (16)	25 (18)	12 (21)	8 (14)	10 (20)	282 (20)
<b>Change in health/personal circumstances</b>	25 (9)	39 (10)	24 (8)	11 (9)	13 (9)	8 (14)	1	4 (8)	125 (9)

<b>Change in work circumstances</b>	15 (5)	26 (6)	18 (6)	7 (6)	13 (9)	7 (12)	5 (8)	10 (20)	101 (7)
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### Profile of non-will makers

Compared to will makers, non-will makers are likely to be younger, male, and have estates of lesser value.

**Table 9 Profile of will makers and non-will makers**

		Will Maker	Non-will maker
<b>Age</b>			
	18-44	425 (36%)	767 (64%)
	45-99	995 (82%)	212 (18%)
<b>Gender</b>			
	Male	659 (55%)	541 (45%)
	Female	766 (64%)	439 (36%)
<b>Estimated value of the estate</b>			
	<\$200,000	176 (26%)	513 (74%)
	>\$500,000	613 (78%)	171 (22%)

Previous research has shown that age is likely to be the most important predictor of will making. Many of the characteristics identified above are likely to be correlated with age. Further analysis will explore and identify those predictors of will making that operate independently of age.

Additional general interest information, including information seeking around will making, the content of wills and experience with wills, is included in Appendix 2.

### Discussion Box 2.2

#### FOR DISCUSSION

- a) Apart from demographic age profile, what might explain the differences in the proportion of adult will makers across States and Territories?
  - E.g., 66% in Qld, SA, Tasmania; 55%-58% in NSW, Vic, WA, ACT; 51% in NT
- b) Are the triggers of will making identified in the prevalence survey (i.e., getting affairs in order, change in family circumstances) consistent with your experience?
- c) What triggers of will making weren't identified through the prevalence survey that you would expect to be present (e.g., acquisition of assets)?
- d) Any other comments / questions regarding the prevalence survey?

## 3.0 Planning for the Next Stages

### 3.1 Partner Organisation File Review (requires in kind support)

#### Purpose of this review

The aim of this part of the study is to seek data on cases where there are disputes over wills dealt with, in the first instance, by the partner organisations. The PO review will augment the case law review. This is important as many disputes are often resolved prior to court action. In the ARC application it was proposed that the research team provide a coding scheme template and training for PO staff members to undertake the file review. The coding scheme seeks to capture the nature of the disputes, factors associated with their occurrence and their resolution and the distributional and equity principles that underpin the settlement of wills disputes.

#### Initial proposal and feedback from POs

The initial proposal was for a retrospective analysis of closed PO cases that have been disputed. Although the Public Trustee for the ACT and the Public Trustee in Western Australia have indicated an interest in the initial proposal, responses from the NSW Trustee & Guardian, the Public Trustee in SA and the Public Trustee in Tasmania raised the following issues related to this approach:

- a) jurisdictional variation
  - a. in the number of cases (e.g., per year estimate: 90 in Tasmania, 5-7 in Australian Capital Territory, 30-50 in South Australia)
  - b. whether mediation is compulsory
- b) time and cost involved in accessing files
  - a. in some jurisdictions it may only be possible to determine whether a case qualifies as a 'dispute' after retrieving and reading the file
  - b. there may be multiple files on some cases
  - c. closed cases are often archived off site which may incur retrieval costs.

This suggests the proposed approach is not feasible for many POs and a revised research design should be considered.

#### Revised proposal for discussion

A prospective study should reduce time and costs. All cases involving a dispute and closed by the POs during a six month study period (from 1 January, 2013 to 30 June 2012) will be included in the analysis. That is, cases will be coded just prior to archiving.

Cases involving a dispute are defined as those which:

- include issue/s of entitlement, validity, or document construction
- the issue is persisted with on two or more occasions
- resolution of the issue requires third-party intervention (including both formal and informal).

This definition is intended to capture cases in which a dispute is initiated by beneficiaries, persons not included in the will, and/or partner organisations. It will include cases that are settled prior to judicial resolution or that are referred to the courts after settlement cannot be reached.

Each case included in this analysis will be coded by PO staff using a template developed by the research team in consultation with the partner organisations. Appendix 1 provides a draft of the data collection template.

In kind support is sought to pilot the template.

### Discussion Box 3.1

#### FOR DISCUSSION

- a) Use of prospective methodology:
  - a. how well does this fit in with PO operations and staff capacity (e.g., would need to commence January 2013)?
  - b. suitability of coding template (length, areas covered)?
  - c. comments on categories and coding in coding template (see Appendix 1)?
- b) Is the definition of 'dispute' appropriate and consistent with POs understanding?
- c) What is the process of mediation used by the POs? Do the codes cover this?
- d) Which POs are willing to pilot the template?

### 3.2 Key Informant Interviews and Surveys – Document Drafters (requires in kind support)

#### Purpose

This component aims to build on the extensive expertise of POs in drafting wills. It will identify those socio/familial situations which present difficulties to documents drafters and their approach to resolving these difficulties.

#### Initial proposal

- a) Semi structured interviews with 25 public trust officers and 25 private lawyers in two states (N = 100) to inform the development of an online survey
- b) an online survey distributed through POs and Law societies in each state.

#### Revised proposal for discussion

Given budgetary constraints, the research team proposes eliminating the semi-structured interviews with document drafters and conducting the online survey only. This approach is unlikely to disrupt the integrity of information collected from document drafters and will ensure an appropriate number of interviews with will makers and non-will makers can be conducted within budget. We propose that we develop and pilot the online survey in consultation with POs. The survey would then be distributed electronically through all State and Territory PO offices and law society lists and advertised in relevant newsletters. Respondents who wished to provide information to the research team beyond that collected through the online survey would be encouraged to participate in a telephone interview with a member of the research team.

## Discussion Box 3.2

### FOR DISCUSSION

- a) Comments on the revised proposal that eliminates interviews with document drafters.
- b) Should online surveys be distributed through POs in all States and Territories?
- c) What is the best approach to distributing the survey to ensure a good response rate from both public trust officers and private lawyers?
- d) How long should it take respondents to complete the survey (e.g., 15 minutes)?
- e) Should public trust officers and private lawyers from the Northern Territory be included?
- f) Which POs would be willing to pilot the survey?

## 3.3 Key Informant Interviews – Will Makers and Non-Will makers

### Purpose

This component seeks to develop an in depth understanding of the basis of bequests, the principles of allocation, the processes involved in making a will and knowledge of intestacy. These interviews will explore in further depth issues that have arisen from the case file reviews and the prevalence survey.

### Initial proposal

The research team was to conduct 150 Interviews with will makers and 50 interviews with non will makers. In response to the reduced ARC funding, we have previously agreed on limiting the number of interviews.

### Revised proposal for discussion

We propose conducting between 60 and 80 interviews with will makers and non-will makers grouped on the basis of key circumstances of interest.

From the pilot interviews for the prevalence survey, the case file review and the literature, three key circumstances of interest have been identified:

- Complexity of families (e.g. multiple partners, children from different partners, cohabitation)
- Complexity of assets such as large estates, businesses and farms with complex structures; some assets held overseas
- Cultural practices that suggest different forms of family provision particularly in relation to wives and gender.

Interviews (e.g., face to face or telephone) will be conducted with a purposive sample drawn from these three groups (at least 20 people from each group). Interviews will include both will makers and non-will makers and address:

- reasons for making / not making or changing wills
- advice/information sought when making or changing a will

- knowledge of the consequences of dying intestate
- distributional principles underlying wills.

### Discussion Box 3.3

#### FOR DISCUSSION

- a) Are individuals from complex families, with complex assets, or different cultural practices of greatest interest to the POs?
- b) What key circumstances of interest are missing?
- c) Which cultural groups are of greatest interest to the POs?
  - a. The research team proposes the research focus on Muslim will makers given the highly publicised conflict between Sharia law and family provision law in the ACT and ongoing discussion about the role of Sharia Law within the Australian legal system.
  - b. If there is interest in including Indigenous groups, the following is worthy of consideration:
    - i. there is a high degree of variability within and between Indigenous groups
    - ii. collecting information from this population is highly costly and would impact on our capacity to conduct other components of the research
    - iii. the practices of these groups have been captured in previous Queensland research
  - c. Some cultural groups may be represented in other target groups (e.g., Greek population may be disproportionately present among people with complex assets)

## 4.0 Items for Discussion at Next Industry Partner Meeting

### 4.1 Dissemination strategy

The research team will distribute the results of this research in peer reviewed journals, presentations at conferences and to industry partners, and through annual and final reports to the POs. Early publications are likely to include detailed descriptions of the methodology applied to the case law review and early findings from analysis of the prevalence survey. Subsequent publications will include in depth analysis of outcomes from the case law review, prevalence survey and interviews to inform policy and practice. At the next Industry Partner meeting we will discuss the appropriateness of this dissemination strategy in meeting the needs of the research team and POs.

### 4.2 Prevalence survey

The findings presented here are preliminary findings only. The analysis is currently in progress and will be presented in full at the next Industry Partner meeting.

### 4.3 Update on research progress

POs will be provided with updates on research progress at the next Industry Partner meeting.

## Appendix 1 – DRAFT PO File Review Template and Coding Notes

This is a draft only and will need to be further developed in consultation with the partners. We have include a hypothetical case example to demonstrate the type of information sought.

1. Case Number					
000123					
2. Testator / Deceased					
Gender	<input checked="" type="checkbox"/> Male		<input type="checkbox"/> Female		
Age	64				
Culture / Religion (if available)	Anglo-Saxon, Christian				
Country of Birth	Australia				
Indigenous status	<input checked="" type="checkbox"/> Non-Indigenous		<input type="checkbox"/> Aboriginal	<input type="checkbox"/> Torres Strait Islander <input type="checkbox"/> Both	
3. Estate					
Type (intestate / will)	<input checked="" type="checkbox"/> Will		<input type="checkbox"/> Intestate		
Size (Total)	<input type="checkbox"/> <b>Small:</b> less than \$200,000 <input checked="" type="checkbox"/> <b>Medium:</b> \$200,001 - \$500,000 <input type="checkbox"/> <b>Large:</b> \$500,001 - \$1 million <input type="checkbox"/> <b>Significant:</b> more than \$1 million				
Complexity (see notes)					
4. Family (where relevant)					
Family structure	Testator is widowed with four adult children. Divorce and remarriage of son of testator, son has biological children and a step daughter from a new relationship.				
Family dynamics	Reported good relationship between testator and three siblings, Son had a poor relationship with father and siblings as a result of his divorce and remarriage. Little contact in the last five years with father or siblings.				
5. Principles of distribution used in the will (where a will is present)					
Principle of distribution (see notes)	Equity and deservedness– equal shares to deceased’s three daughters, deceased’s son excluded with his share going to his two biological children and excluding his step daughter.				
Anyone excluded and on what grounds?	One son excluded on grounds his remarriage and subsequent poor relationship with testator ( father)				
6. Disputant/s					
Is there more than one dispute? (see notes)			<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes – please complete from section 5 on a new template for each additional dispute (remember to identify case number)		
	Disputant 1	Disputant 2	Disputant 3	Disputant 4	If more than four disputants please add details in notes section at the back of this template
Gender	Male				
Age	34				
Relationship to deceased	Son				
Beneficiary	No				
7. Description of dispute					
Issue/item disputed	No provision for son and step grandchild				
Parties directly involved in the dispute	Son of the deceased vs daughters of the deceased (the beneficiaries)				
Number of contacts over which dispute was raised	on 3 separate occasions				
Outcome sought by disputant	Equal share to himself - son				
Grounds for contest	<input checked="" type="checkbox"/> Family provision <input type="checkbox"/> Validity <input type="checkbox"/> Construction		<input type="checkbox"/> Other (specify)		
Grounds for contest (including norms/ motivations underpinning claim and opposition to the claim)	Son believes he is entitled to the same share as his other siblings and that his children should be equally recognised regardless of their status. Other siblings believe he is not entitled to a share and his children, who have a blood tie with the testator, should inherit his share. Siblings seek to exclude any access to father’s estate by son’s second wife and her child to reflect their father’s views.				



8. Process of resolution (tick those that apply)		
<b>Process</b>	<input checked="" type="checkbox"/> Informal negotiation within PO	<input type="checkbox"/> Other (specify)
	<input type="checkbox"/> Mediation within PO	
	<input type="checkbox"/> Mediation outside PO	
	<input type="checkbox"/> Other dispute resolution outside PO (specify)	
	<input type="checkbox"/> Court referral	
<b>Mediator</b>	<input checked="" type="checkbox"/> PO Case officer	<input type="checkbox"/> Other (specify)
	<input type="checkbox"/> Other PO employee	
	<input type="checkbox"/> Mediator from outside the PO	
9. Outcome of the dispute		
<b>Outcome</b>	<input type="checkbox"/> The dispute was not resolved	<input type="checkbox"/> Other (specify)  Beneficiaries agreed on equal provision being made for the step daughter.
	<input type="checkbox"/> Dispute resolved wholly in disputant's favour	
	<input type="checkbox"/> Existing distribution upheld	
	<input checked="" type="checkbox"/> A compromise was reached (describe in space opposite)	
<b>Describe the key contributor to the outcome observed?</b>	Son modified claim after several heated family discussions in the office of the public trustee. He reported the reason as the effect on his current wife of ongoing disagreement. All expressed concern about costs of extended legal proceedings on a moderate estate.	
<b>Impact of outcome</b>	Extensive legal costs avoided. Step as well as biological grandchildren's claim recognised.	
10. Case summary/Other noteworthy / interesting features of the case		
<p>Please provide a brief case summary and note any factors that were important in the dispute.</p> <p><b>Case Summary</b>  Testator is widowed with four adult children. Son has biological children with first wife, is divorced and remarried with step-daughter from second relationship. Son disputing exclusion of himself and his step daughter from the will. Testator's other children want to uphold their father's wishes. A compromise was reach using informal discussion. The son's equal share of the estate will be divided between his biological children and step-child equally.</p> <p><b>Other important factors likely to have contributed to the dispute</b></p> <ul style="list-style-type: none"> <li>The fact that the son's second wife is considerably younger and from a different cultural group than her partner seems to have contributed to the dissention in the family.</li> </ul>		

# Coding notes (for further comment)

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## Section 3: Complexity

- International assets
- Family trusts
- ? farm or business with complex and varying contributions by family members
- ? assets with complex titles/ownership
- Loans and outstanding debts?
- Specialized assets of disputed ( financial? sentimental?) value e.g paintings, antique furniture, jewelry

## Section 5: Principles of distribution

- **Spousal:** assets are to pass wholly to the surviving spouse
- **Equity:** assets are divided equally between beneficiaries (typically children)
- **Need:** assets are divided according to beneficiaries' need (e.g., greater proportion of assets are bequeathed to those who are in greatest need)
- **Reciprocity:** assets are divided according to the degree of care/support provided to the deceased (e.g., greater proportion of the assets are bequeathed to those who provided practical help to the deceased)
- **Deservedness:** assets are divided to reflect the perception that some individuals are more deserving than others, typically because they have a better relationship with the testator (e.g., claimant was excluded from the will because he had not contacted the deceased in more than 5 years).
- **Cultural/Religious practices:** division of assets is dictated by the testators' culture/religion – *describe how* (e.g., a testator makes the oldest son sole beneficiary of her estate because this is consistent with her Chinese cultural beliefs)
- **Other:** where the distribution of assets does not fit one of the above criteria please describe in detail the way in which assets were divided

**Note:** code according to the way in which the majority of the estate is allocated. For example, if the deceased bequeaths assets wholly to the surviving spouse, and then provides a favourite book to a child and other memento to a friend, this would be coded as spousal.

## Section 6: Is there more than one dispute?

The following are examples of the presence of **more than one dispute**:

- A son disputes the will on the grounds that he was not given an equal share of his father's estate and his step-mother disputes the will on the grounds that she was not given an equal share of her husband's estate (2 disputes)

- A son disputes his sister inheriting the family home because he believes the asset should be divided equally; the same son disputes his uncle inheriting his father's war medals because he believes non-titled assets should stay within the immediate family (2 disputes)

The following are examples of **one dispute**:

- A son disputes his sister receiving the family car and his brother receiving the family home because he believes all assets should be divided equally

## Appendix 2 – Prevalence Survey: Additional General Interest Information

### What advice or information is sought around will making?

More than half of will makers (n = 826, 58%) sought advice from others when deciding how to distribute assets within their will. This advice was most typically sought from partners (n = 369, 26%) or solicitors (363, 25%).

Wills were most often prepared by a general solicitor (n = 829, 58%) or solicitor who specialises in wills and estate planning (n = 208, 15%). Fewer than 10% of will makers (n = 84, 6%) reported their most recent will had been prepared by the public trustee.

### Who is most likely to act as an executor?

The majority (n = 1,208, 85%) of will makers included executors in their will. Executors were most likely to be:

- a family member or friend who was also a beneficiary (n = 695, 56%)
- a family member or friend who was not a beneficiary (n = 473, 39%)
- a spouse or partner (n = 353, 29%)
- the solicitor who drew up the will (n = 174, 14%)
- the public trustee (n = 78, 6%).

One quarter of will makers indicated that one or more executors resided outside their own state (n = 287, 24%). Only a very small number of will makers indicated one or more executors resided outside Australia (n = 75, 6%).

### What instructions or trusts are included in wills?

Just over one fifth (n = 330, 23%) of will makers had included funeral instructions in their will, while 17% (n = 238) had included specific trusts. Respondents described the purpose of their trust as:

- to support children, grandchildren or dependents (n = 97, 41%)
- to deny children access to their inheritance until they reach a certain age (n = 43, 18%)
- to explain specifically how assets should be distributed (n = 33, 14%)
- to provide an education for their dependents (n = 27, 11%).

Only one respondent indicated she had established a trust for her dogs while three respondents made mention of trusts for specific charities.

### What experiences have respondents had with other people's wills

Only a small number of respondents (n = 161, 7%) had ever been involved in a legal dispute over another person's will. Almost one third had been the recipient of a bequest (n = 740, 31%) while one fifth had acted as an executor (n = 430, 18%).

Respondents who had been involved in a legal dispute, received a bequest, or acted as an executor were also more likely to be will makers than to be non-will makers.<sup>3</sup>

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<sup>3</sup>Note: this research did not ask whether individuals were involved in a dispute, acted as executors or received a bequest before or after having prepared their own will. It is not known, therefore, whether this relationship is causal in nature.

**Table 10 Relationship between experiences with other people’s wills and will making behaviour**

	Non-will makers	Will makers
<b>Involved in a legal dispute over wills<sup>4</sup></b>		
Yes	53 (33%)	108 (67%)
No	980 (41%)	1,425 (59%)
<b>Received a bequest<sup>5</sup></b>		
Yes	177 (24%)	563 (76%)
No	802 (48%)	859 (52%)
<b>Acted as an executor<sup>6</sup></b>		
Yes	87 (20%)	343 (80%)
No	893 (45%)	1,081 (55%)

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<sup>4</sup>  $\chi^2 (1, 2405) = 4.38, p < .05$

<sup>5</sup>  $\chi^2 (1, 2405) = 126.59, p < .001$

<sup>6</sup>  $\chi^2 (1, 2405) = 92.13, p < .001$