

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

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*Report to Partner  
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*DARWIN*

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## 1.0 Project Overview

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 of will making (N= 2,405)
2. A judicial case file review of contested cases (N=245)
3. A document analysis of Partner Organisation (PO) files involving disputed cases
4. On line surveys with document drafters (Public Trustee officers and solicitors in private practice)
5. Key informant interviews with samples relevant to circumstances of interest (including complex families, complex assets, and diverse cultural practices).

The first and second components of the project (1 and 2 above) are almost complete and data collection for the third component (3) is in progress. A survey of document drafters (the fourth project component) has been developed and is currently being piloted with POs. An interview schedule is presently being developed for the fifth component of the project (key informant interviews).

This document provides:

- early results from the PO File Review
- an update on progress of the pilot study for the document drafters survey and preparation for key informant interviews
- an outline of the next stages of the project.

Analysis of the PO File Review data is currently in progress with data collection underway utilising partner contested will cases closed between March-September 2013, and hence only preliminary findings are provided. The analysis will be presented in full at the next Industry Partner meeting in early 2014.

## 2.0 Progress to Date

### 2.1 National Prevalence Survey

#### Purpose

The national prevalence survey explored the prevalence of will making in Australia, the triggers to making, changing or not making a will, advice sought and the way in which assets are typically distributed through wills.

#### Progress

The survey has been completed and the data extensively analysed. A copy of the final report was provided to POs via the Industry Partner meeting in March 2013. Work is also being reported in a publication titled *Making and changing wills in contemporary Australia: prevalence, triggers and intentions*. This academic paper will be submitted to a high ranking socio-legal journal (Journal of Law and Society). Work on this publication is ongoing. A draft of this document will be forwarded for comment in the next month. A second paper (Supplementary Document 1) is a draft copy of the publication titled *Prevalence and predictors of advance directives in Australia*, which also reports on national prevalence survey data. We plan to submit this paper to the *Medical Journal of Australia* by September 20 and seek your feedback and approval for publication before this date. It is likely that further papers will be developed and submitted for publication by the end of 2013. POs will be circulated with all intended publications prior to submission.

During analysis of national prevalence survey data, emergent themes, as well as issues requiring validation and/or further exploration in subsequent key informant interviews were identified so as to inform the schedule being developed for these interviews.

#### Discussion Box 2.1

##### FOR DISCUSSION:

- a) Next steps: dissemination of the report (e.g., publications)
- b) Use of prevalence survey. The research team is interested in any use of the data or any comment received on the results by the POs.

## 2.2 Judicial Case File Review

### Purpose

This part of the research involved a review of all adjudicated succession law cases in Australia during a 12 month period (Jan – Dec 2011). The purpose of this judicial case file review was to identify the legal grounds relied on in contesting wills and disputants' underlying motives. Initial themes were discussed at the last Industry Partner meeting and feedback was provided on the work undertaken to date. Analysis of the cases in the sample has continued and more results will be available early next year.

The initial analysis of the judicial case review has assisted in identifying the target groups for the semi-structured interviews.

## 2.3 Partner Organisation File Review

### Purpose

This component of the research seeks data on cases involving a dispute dealt with, in the first instance, by the POs. Many disputes dealt with by the POs do not go to court, or are settled outside court. The review of public trustee case files will augment the judicial case file review.

### Progress

Ethical clearance to collect de-identified data from these files was obtained and, with the POs, a coding template and notes was developed and piloted. The main study commenced 1 March 2013. Data collection during the main study involves working with partners to review all cases involving a dispute closed between March/April 2013 and September/October 2013. The time taken to complete the coding is between 10 and 30 minutes per file depending on the size and complexity of the file. The research team will continue to provide support to PO staff and assist with clarification of issues from coders over the study period. We appreciate the considerable in kind support provided by the organisations involved in this data collection.

Advice from the Victorian State Trustees is that their legislation does not permit provision of de-identified data relevant to individual dispute cases dealt with by the State Trustees. Victoria will provide an aggregated data summary of dispute cases dealt with over the study period. A coding template for aggregate level data has been finalised and data collection is underway in Victoria. The summary data obtained will be used to consider whether the cases from Victoria reflect or differ from the key issues identified in the detailed data collection from NSW, ACT, WA, SA, Qld and Tasmania.

### Overview of key issues (preliminary)

As of 27 August 2013, forty-nine templates have been received and entered into Excel and SPSS databases. We have undertaken a preliminary analysis of these 49 cases. Please note these are early findings and should not be considered indicative of the broader context of disputed estates. Additionally, these preliminary findings are for not available for public distribution. As data collection is currently in progress findings will be presented in full at the next Industry Partner meeting. A selection of some of the emerging issues that have arisen include:

Table 1 Number of cases by State

Jurisdiction	Cases	Jurisdiction	Cases
Australian Capital Territory	2	New South Wales	14
South Australia	11	Queensland	13
Western Australia	9	Tasmania	0
Victoria	0		

As Table 1 reveals, New South Wales, Queensland and South Australia have provided a similar number of cases. Western Australia is next with 9 cases. No PO File Review templates have been received from Tasmania to date, however the research team has been informed that work on

completing these templates is progressing. Victoria has reported that nine completed cases have been incorporated into their aggregated summary thus far.

Table 2 below provides a snapshot of testator characteristics.

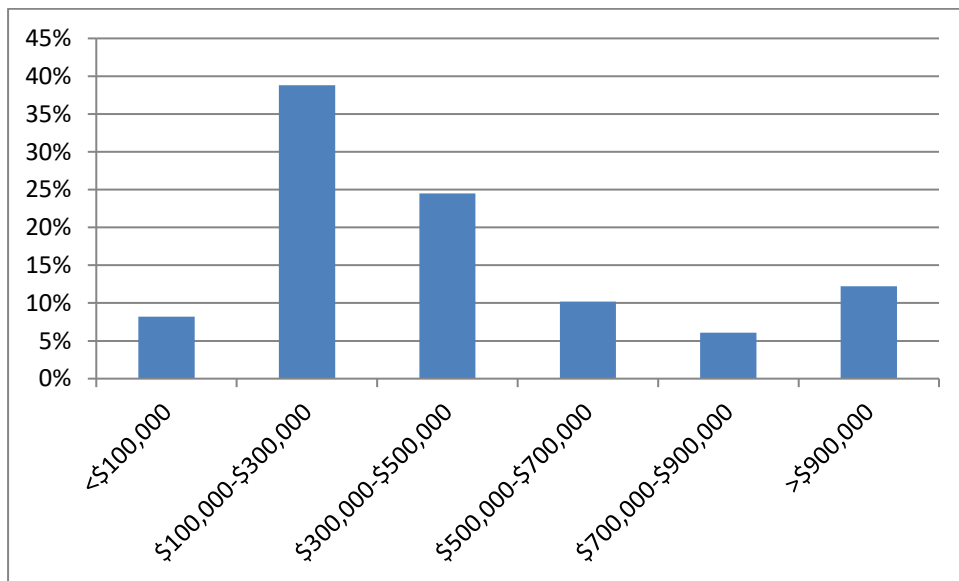
**Table 2 Characteristics of testators**

Variable	n	%
<b>Testators (n=49)</b>		
Mean age at death in years (SD)	78.0 (15.25)	
Male	27	55
<i>Proportion of will makers and non-will makers</i>		
Will maker	45	92
Non-will maker	4	8
<i>Marital status at death</i>		
Married	8	16
De facto (including same sex)	2	4
Single/never married	3	6
Separated/divorced	4	8
Widowed	13	27
Unknown	19	39
<i>Ethnicity<sup>1</sup></i>		
Australian born <sup>2</sup>	27	75

<sup>1</sup> Data on the testator’s culture and religion was unavailable for the majority of cases. <sup>2</sup> Country of birth data was missing for 27% of cases. Percentage of Australian born is the proportion of valid cases.

*Composition of disputed estates*

- On average contested estates were valued at more than \$500,000 (mean = \$508,791 SD= \$678,050). The large standard deviation reflects the wide range of values (between \$64, 146 and \$4,400,000).



**Figure 1 Estimated net value of estates**

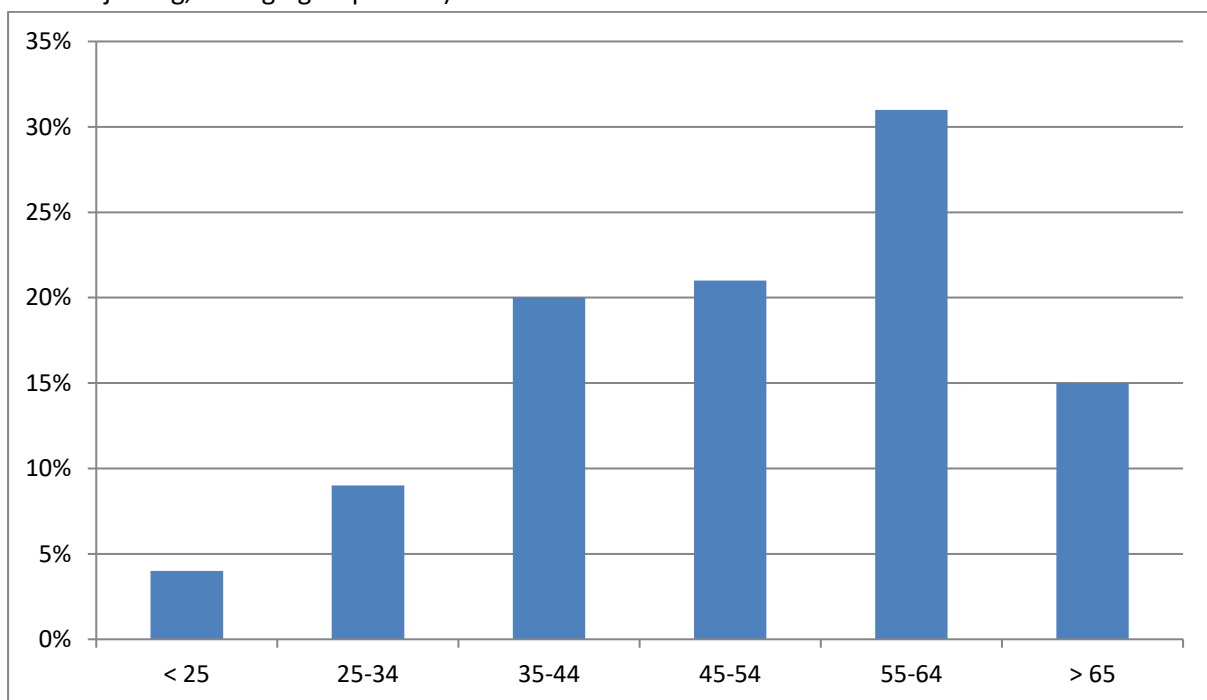
- In 65% of cases the nature of the estate was not judged to be relevant to the dispute; in these cases information on the nature of the estate was not provided.
- Where the nature of the estate was relevant to the dispute (and hence data on the estates was available), there was substantial variability in estate type/nature reported. Given the small number of valid cases and the variability in them, it wasn't possible to determine how features of estates may contribute to disputes. It is clear, however, that there is contestation around some quite small estates.

#### *Personal relationships*

- Personal relationships were more likely than estate characteristics to be relevant to the dispute, with the former having relevance in 86% of cases.
- In more than half of the disputes (62%), at least one aspect of complexity within the family was described. Separation or divorce was most commonly reported (41% of cases), followed by children/adults with a significant disability or ill health (38%) or new spousal/de-facto relationships (35%).

#### *Who is likely to dispute?*

- Claims by biological children of the deceased were the largest category of persons instigating disputes (74% of cases).
- Gender distribution was very close to evenly split across disputant types (e.g., primary, joining, emerging disputants).



**Figure 2** Age of disputants

- In almost all cases (96%) there was a single dispute.
- In half of the cases the dispute was described as arising due to exclusion, although insufficient provision was also common, being reported in 33% of cases.



Table 3 provides the overall figures for cases found in these categories. The majority of cases relate to family provision claims.

**Table 3 Types of contests**

Type of contests	Cases	Type of claim	Cases
Family provision claims	40	Validity cases	4
Construction cases	2	Other cases	3

#### *Processes of resolution*

- The most common process of resolution identified was informal negotiation between parties (51% of disputes); however this process in isolation did not typically achieve a resolution. The majority of cases involving informal negotiation also involved at least one other process of resolution.
- A third of disputes involved mediation, and in 75% of these cases agreement was reached. NB. Mediation is compulsory for family provision applications in Queensland and New South Wales.
- 16% of cases escalated to Court for resolution.
- The most commonly identified driver of efforts to achieve a resolution was the solicitor for the disputant/s (49% of cases).
- The role of the Public Trustee was most commonly as executor of the will (in 77% of cases), and they typically became involved in the dispute during the course of administration (76% of cases).

#### *Outcomes of the disputes*

- The most frequent outcome sought by the disputant was redistribution of the estate such that they received some greater, unquantified amount from the estate (32%).
- In more than half of cases (59%) the outcome of the dispute was that a compromise was reached. Generally the disputant/s received some greater amount from the estate.
- There was considerable variability in the reported contributor/s to the outcome observed. The most common response was 'other' (37% of disputes), followed by all parties demonstrating a willingness to compromise or parties acknowledging, supporting or agreeing with the claim brought by the disputant (27% each) and/or a desire by one or more parties to settle the matter quickly (20%).

NB. Percentages quoted above may not total 100 due to rounding.

**Proposed next steps and timeframes:** The main study will close on 30 September 2013 in all States/Territories except for ACT. Given its small size, ACT will code cases over a 12 month period and hence the main study will close on 1 March 2014. All closed cases for the six month period from March/April to September/October 2013 will be included. The research team is aiming to obtain 100 cases for the PO File review.

The research team will receive final templates by 30 October and findings will be presented in full at the next Industry Partner meeting. Content analysis will examine the nature of these disputes and the factors associated with their occurrence and resolution. The results will be compared with the analysis of the case file review to provide further insight into contestation and responses.

### Discussion Box 2.3

**FOR DISCUSSION:**

- a) Any comments or queries regarding definitions or coding procedures?
- b) Any other feedback about the File Review including likely numbers from each State?
- c) Any comments on how POs might use these data?

## 2.4 On line Survey of Document Drafters

### 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 document drafters and their approach to resolving these difficulties.

### Progress

The research team developed a draft survey and completed a pre-test with seven legal colleagues in June 2013. A copy of the paper version of the pilot survey is provided as Appendix 1. Ethical clearance for this component of the project has been obtained from The University of Queensland.

A pilot study is currently underway. Our primary contact/s within each PO were invited to participate in the pilot, alongside two or three document drafters within their organization. The research team will adjust the survey, if required, in response to this pilot work. To date 15 pilot surveys have been completed (see Table 4 below). Feedback on the survey content and format has been received from Victoria and ACT.

Table 4 Number of pilot surveys by State

Jurisdiction	Cases	Jurisdiction	Cases
Australian Capital Territory	7	New South Wales	1
South Australia	1	Queensland	0
Western Australia	0	Tasmania	2
Victoria	4		

The final version of the online survey will go live by 30 September 2013. An email containing background information and a link to the final online survey (see Appendix 2) will be sent to our primary contact/s within the POs. These contacts are then responsible for forwarding the email including background information and the survey link to colleagues with relevant experience (current or previous) in the area of will drafting (1) within their organisations and (2) relevant contacts they may have outside their organisation (e.g., State Law Society Networks, private solicitors). The online survey will also be separately distributed by the research team to the State Law Society Networks.

The survey will be open to participants for a period of three months. It should take around 15 minutes to complete.

Proposed next steps will be to complete data collection, analyse data and report findings. It is anticipated that this survey will rely predominantly on quantifiable measures and therefore will be analysed in a similar way to the prevalence survey data.

## Discussion Box 2.4

**FOR DISCUSSION:**

- a) Any comments or feedback on the pilot of the online survey?
- b) How well do the proposed timeframes fit in with PO operations and staff capacity?
- c) Any suggestions regarding appropriate contacts external to the organizations?

### 3.0 Planning for the next stages of the research (for information rather than discussion)

#### 3.1 Key Informant Interviews

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 issues in further depth in 60 to 80 interviews with will makers and non-will makers sampled on the basis of key circumstances of interest. See Appendix 3.

Key circumstances of interest have been identified. Proposed participants in these interviews include:

A. Testators: Purposive sample of 60 - 70 adults across the Australian states (approximately equal numbers of men and women) grouped on the basis of three circumstances of interest (complex families, complex assets, cultural practices).

a) Complex assets (approximately 20 interviews): Target groups will include (1) farmers who own their own property ; (2) people with significant international assets; and (3) people with a complex mix of assets such as multiple properties and shares valued over \$3 million.

b) Complex families (approximately 15-20 interviews): Target groups will include (1) families where there has been more than one marital type relationship and children or adult children from at least one of these. These children or adult children may include biological/adopted and/or stepchildren of any age; and (2) families with a child or adult child with impaired capacity for decision making related to intellectual disability.

c) Cultural practices that suggest different forms of family provision than those generally reflected in family provision legislation (approximately 15-20 interviews): Proposed participants include self-identified members of the Muslim community.

and

B. People without a will: Purposive sample of 20 adults aged over 45 years who do not intend to make a will (approximately equal numbers of men and women).

**Progress:** Work on refining sampling and recruitment strategies and developing the semi-structured interview schedule is ongoing. Ethical clearance for this component of the project will be sought from The University of Queensland and an application is currently being drafted. Appendix 3 includes draft semi structured interview topic areas.

Proposed next steps will be to recruit interviewees, recruit and train interviewers and conduct interviews. The research team aims to complete this phase by mid 2014.

### Discussion Box 3.1

**FOR DISCUSSION:**

- a) Any comments or feedback on the draft interview topic areas? (Appendix 3)
- b) Are there any areas you think should be explored in greater depth with selected groups?

## **4.0 The next Industry Partner meeting** (for information rather than discussion)

### **4.1 Results from the PO File Review**

A copy of the final report of outcomes of the review will be provided to POs. The POs will also be provided with copies of any other publications arising from this component of the study.

### **4.2 Early results from the on line survey of document drafters**

POs will be updated on early results arising from the analysis of online survey data, including the processes and practices of making a will and how family relationships are recognised. Findings around which socio/familial situations present difficulties to document drafters and avenues for resolution will also be presented and strategies will be put forward for reducing the risk of will contestation.

### **4.3 Early results from the Key informant interviews**

POs will be presented with initial results arising from the analysis of the key informant interviews. A thematic analysis will explore characteristics associated with differing attitudes towards will making and principles in use e.g. size and nature of assets; family structure; cultural patterns. For non will makers we will report on knowledge of the implications of intestacy laws, reasons for not making a will, perceptions of barriers to making a will and alternative transfer strategies in use by these individuals.

### **4.4 Update on research progress**

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

## 5.0 The research team

- Cheryl Tilse – [c.tilse@uq.edu.au](mailto:c.tilse@uq.edu.au)
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## List of appendices

- Appendix 1 – DRAFT Document Drafters On line Survey
- Appendix 2 – Email to participants (information sheet for Document Drafters On line Survey)
- Appendix 3 – DRAFT semi structured interview topic areas

## List of supplementary documents

- Supplementary document 1 – DRAFT publication *Prevalence and predictors of advance directives in Australia*

## Appendix 1 – DRAFT Document Drafters On line Survey

This survey is about the kinds of personal circumstances that clients present which can create difficulties for will drafters. It also asks about how those difficulties are managed. There are no right or wrong answers. We are interested in your experiences and expect a range of responses. This survey should take around 15 minutes to complete.

### SECTION 1: DEMOGRAPHIC INFORMATION

To help us better understand your perspectives, we would like to know about your experience in this area.

1. What is your current occupation?
  - Private solicitor – general
  - Private solicitor – wills and estate planning specialist
  - Solicitor within a Public/State Trustee
  - Will drafter within a Public/State Trustee
  - Solicitor within a trustee company
  - Will drafter within a trustee company
  - Other (please specify)

*Free text*

2. How many years experience do you have as a:

Occupation	Experience (in years)
Private solicitor – general	<i>Free text</i>
Private solicitor – wills and estate planning specialist	<i>Free text</i>
Will drafter within a Public/State Trustee	<i>Free text</i>
Will drafter within a trustee company	<i>Free text</i>
Other	<i>Free text</i>
<b>Total years experience as a solicitor</b>	<i>Free text</i>

3. On average, how many wills do you draft in a typical year?

*Free text*

4. On average, how many deceased estates do you administer in a typical year?

*Free text*

5. Where are your current offices located? (*more than one answer*)

State	Area
ACT	Capital City
NSW	Urban Area
NT	Regional Area
QLD	
SA	
TAS	
VIC	
WA	

## SECTION 2: ALLOCATION PRINCIPLES USED IN FRAMING WILLS AND BEQUESTS

The purpose of this section is to gain a better understanding of the way in which clients intend to distribute their assets through a will. We are particularly interested in will makers' intentions when allocating their assets and what difficulties, if any, these intentions present for will drafters.

Difficulties may include, but are not limited to, legal difficulties, increased likelihood of the will being contested, risks to family relationships, and risks to lawyer-client relationships.

6. How often do clients who are married or in a de facto relationship prioritise their spouse or partner in their will?

- Never
- Rarely
- Occasionally
- Frequently
- Always

7. In your experience, what degree of difficulty does each of the following present?

	Very difficult	Difficult	Easy	Very easy	I have not seen clients who have this intention
a. prioritizing a current partner or spouse					
b. providing for an ex-partner where there are children from the previous marriage					
c. providing for an ex-partner where there are <b>no</b> children from the previous marriage					

8. In your experience, are there any circumstances where clients wishes to provide for an ex-partner that present a degree of difficulty for will drafters? Why?

*Free text*

9. How often do clients intend to divide their assets **unequally** between their beneficiaries (including as alternative beneficiaries)?

- Never
- Rarely
- Occasionally
- Frequently
- Always

10. How often do clients who intend to divide their assets unequally allocate assets in a way that:

	Never	Rarely	Occasionally	Frequently	Always
a. achieves equitable outcomes for beneficiaries (e.g., unequal bequest means beneficiaries obtain similar levels of financial security)					
b. reflects beneficiaries' need (e.g., the greatest share of the estate may be bequeathed to the beneficiary with high care needs)					
c. reflects the degree of care and (non-financial) support they received from beneficiaries					
d. reflects the quality of the beneficiaries' relationship with the testator					
e. recognises prior financial contributions made by the testator to the beneficiaries					
f. prioritises cultural and/or religious beliefs when dividing their assets (e.g., appointing beneficiaries based on gender or position within the family, such as the eldest child)					
g. recognises prior financial contributions or non-financial contributions the beneficiary has made to the testator's business or farm					

11. Are there any other reasons for dividing assets you regularly see applied by clients who intend to divide their assets unequally between their beneficiaries?

*Free text*

12. In your experience, what degree of difficulty does each approach to distributing assets unequally between beneficiaries present?

	Very difficult	Difficult	Easy	Very Easy	I have not seen clients who use this approach to distribute their assets

a.	achieves equitable outcomes for beneficiaries (e.g., unequal bequest means beneficiaries obtain similar levels of financial security)					
b.	reflects beneficiaries' need (e.g., the greatest share of the estate may be bequeathed to the beneficiary with high care needs)					
c.	reflects the degree of care and (non-financial) support they received from beneficiaries					
d.	reflects the quality of the beneficiaries' relationship with the testator					
e.	recognises prior financial contributions made by the testator to the beneficiaries					
f.	prioritises cultural and/or religious beliefs when dividing their assets (e.g., appointing beneficiaries based on gender or position within the family, such as the eldest child)					
g.	recognises prior financial contributions or non-financial contributions the beneficiary has made to the testator's business or farm					

13. How often do parents choose to divide their assets **unequally between their children** (including as alternative beneficiaries)?

- Never
- Rarely
- Occasionally
- Frequently
- Always

14. Among those parents who choose to leave unequal shares to their children, how often do they allocate assets in a way that:

	Never	Rarely	Occasionally	Frequently	Always
a.					
b.					
c.					
d.					
e.					
f.					
g.					
h.					

15. In your experience, are there any other reasons why parents decide to leave unequal shares to their children?

*Free text*

16. How often do clients intend to include in their will beneficiaries who are **not family members** (e.g., friends, organisations, pets)?

- Never
- Rarely
- Occasionally
- Frequently
- Always

17. In your experience, what degree of difficulty do the following types of beneficiaries present?

	Very difficult	Difficult	Easy	Very easy	I have not seen clients who intend to include these types of beneficiaries
Friends and other people who are not family members					
Organisations or groups (including charities)					
Pets					

18. How often do clients intend, other than by a will, to restrict or exclude access to estate assets by beneficiaries after testator’s death (e.g., complex trust arrangements)

- Never
- Rarely
- Occasionally
- Frequently
- Always

19. In your experience, what degree of difficulty do these clients present?

- Very difficult
- Difficult
- Easy
- Very easy
- I have not seen clients who use this approach to distribute their assets

20. In your experience, what **family characteristics** typically create the most difficulties? Why?

*Free text*

21. In your experience, what **estate characteristics** typically create the most difficulties? Why?

Free text

### SECTION 3: COMPLEX CIRCUMSTANCES IN WILL DRAFTING

The aim of this section is to explore the approaches and strategies used when managing clients with complex personal circumstances or intentions that present a high risk of being contested.

22. When a client expresses intentions you believe present a high risk of being contested, how likely are you to...

	Very unlikely	Unlikely	Likely	Very likely	I have not used this approach
a. spend time discussing the likelihood, and reasons why, the will may be contested?					
b. encourage your client to explain their decision in their will or a document to be read in conjunction with their will?					
c. encourage your client to discuss their intentions with their family members, executor and important others?					
d. take a leading role in facilitating discussions between your client and their family members or significant others about your client's intentions?					
e. encourage your client to consider will alternatives that may better suit their intentions (e.g., testamentary trust)?					
f. provide advice on the way in which assets are typically distributed through wills?					
g. encourage your client to distribute their assets as inter-vivos gifts?					

23. What else might you do in circumstances where a client describes intentions you believe present a high risk of being contested?

Free text

24. When a client presents with complex family circumstances (e.g., two or more marriages, children from different partners, estranged family members), what approach do you take as a will drafter to reduce the risk of possible future contestation?

Free text

25. In your experience, generally how effective are the following strategies in reducing the risk of will contests when used during the drafting process?

	Very ineffective	Ineffective	Effective	Very effective	I have not used this approach
a. encouraging clients to explain their decision in their will or in a document to be read in conjunction with their will?					
b. encouraging clients to discuss their intentions with their family members, executor and important others?					

c. encouraging clients distribute their assets as inter-vivos gifts?					
d. take a leading role in facilitating discussions between your client and their family members or significant others about your client's intentions?					

26. What other strategies, when used during the drafting process, are **effective** in reducing the risk of will contests?

*Free text*

**SECTION 4: CASE STUDIES**

In this section we present a short case study which describes a fictional client with complex personal circumstances. We are interested in the approach you would take to will drafting if presented with a client in these circumstances. Please read the case study carefully and answer the questions that follow.

**Case Study 1:** Mrs. Jones requests that her assets be divided equally between two of her three children and that under no circumstances her second husband benefit from her estate.

Mrs. Jones explains she divorced her first husband after 10 years of marriage and two daughters. She married her second husband a few years later and they have been living together in the family home for the last 29 years. Her second husband brought one son to the marriage.

Mrs. Jones is keen to see her estate divided equally between her biological daughter and step-son. She claims to have had little contact with her second daughter following her divorce. Mrs. Jones praises her first daughter and step-son for providing emotional and practical support to her in the last four years during which she was diagnosed with heart disease. When questioned further, Mrs. Jones alleges that her current husband is often physically violent towards her, although admits she has never contacted police or sought to press charges.

Mrs. Jones identifies her primary asset to be the family home worth \$350, 000 and a small amount of cash savings. The home is held solely in Mrs. Jones' name and was awarded to her during her divorce. The cash savings she earned while married to her second husband. While the family home is in her name, all assets of the marriage are communal.

Mrs. Jones has not discussed her intentions with any of her family members.

What, if anything, presents the greatest difficulty in drafting a will for a client with these personal circumstances?

*Free text*

What steps would you take to reduce the likelihood of this will being contested?

*Free text*



**Case Study 2:** Jonathon, who is widowed, owns a two-third share of a large cattle property that has been operated by his family since the early 1880s. Jonathon inherited his share from his father. One third of the property is owned by Jonathon’s cousin, William, who currently resides in the UK. The title of the property is held in a family company of which Jonathon and William are shareholders.

Jonathon wants to leave his share of the property to his eldest son, Thomas, who unlike Jonathon’s other two children remained on the farm to oversee operations.

Jonathon also owns a share portfolio, the value of which is forecast to increase significantly over the next 20 years. While Jonathon has always treated his children equally, he believes it is important that ownership of the farm is simplified and efficiency of operations improved. Jonathon has high hopes Thomas will be able to purchase the final third of the property from William and believes the contents of the share portfolio will enable Thomas to do so.

Jonathon states that he has provided significant financial support to his other son and daughter by funding their university degrees and living expenses while at university. He emphasises the fact that he provided this financial support despite his two younger children making no contribution to the operation of the farm and having no intention to contribute to the farm in the future.

Jonathon is seeking to draft a will that will provide Thomas the best opportunity to gain ownership of the farm in its entirety and leave the residue of his estate to be equally divided between his remaining son and daughter, primarily his personal effects. He is aware this distribution is unequal but believes it reflects the level of contribution made by his children to the family business and is the best hope of the property remaining intact.

- What, if anything, presents the greatest difficulty in drafting a will for a client with these personal circumstances?

*Free text*

- What steps would you take to reduce the likelihood of this will being contested?

*Free text*

**Case Study 3:** Mrs. T emigrated with her husband to Australia 40 years ago. They have two Australian-born and educated children, one son and one daughter. She was widowed 5 years ago.

In her traditional culture the eldest son is expected to provide practical care and financial support to his parents in exchange for being the sole inheritor of the family wealth.

Mrs. T currently lives alone in the family home and, in recent years, is experiencing failing health. Her daughter, who lives in the same suburb as Mrs. T, has provided significant practical and emotional care to her mother over this time. Mrs. T’s son, who lives 1.5 hours south of Mrs. T, phones his mother regularly and tries to visit at least once every couple of months.

Mrs. T believes her son will soon ask her to move in with his family, a wife and two young children. She has not discussed this issue with her son but believes he is aware of his duty. Mrs. T’s daughter reports her brother has been quite clear he does not want their mother to move in with his young family. Mrs. T refuses to accept that her son will not do his duty.

Mrs. T would like to draft a will that reflects her cultural values and facilitates eldest-son succession. She has discussed her deeply held cultural beliefs with her daughter. Her daughter is upset by Mrs. T’s decision. She points out that she has provided most of the care to her mother and argues that in Australian culture children are treated equally by their parents.

Mrs. T attends with her daughter.

- What, if anything, presents the greatest difficulty in drafting a will for a client with these personal circumstances?

Free text

- What steps would you take to reduce the likelihood of this will being contested?

Free text

27. Are there any other general comments you would like to make about the challenges in drafting wills and/or strategies used to manage those challenges?

Free text

Thank you for taking the time to respond to this survey. A brief overview of final results will be published on the School of Social Work and Human Services (UQ) website (<http://www.uq.edu.au/swahs>).

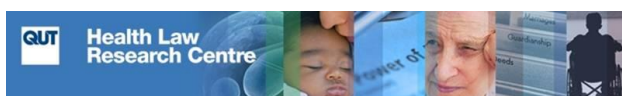
For more information about this survey or to discuss the issues faced by will drafters further with the research team, please contact:

Chief Investigator Associate Professor Cheryl Tilse ( <a href="mailto:c.tilse@uq.edu.au">c.tilse@uq.edu.au</a> )	Research Manager Rachel Feeney ( <a href="mailto:r.feeney@uq.edu.au">r.feeney@uq.edu.au</a> )
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If you have any concerns or would like to make a complaint about this research, please contact:

The Ethics Officer  
Ph.: (07) 3365 3924  
[humanethics@research.uq.edu.au](mailto:humanethics@research.uq.edu.au)  
Research & Research Training Division  
The University of Queensland

## Appendix 2 – Email to participants (information sheet for Document Drafters On line Survey)



### **Families and generational asset transfers: making and challenging wills in contemporary Australia**

We wish to invite you to participate in a national online survey of will drafters.

The purpose of the survey is to explore the kinds of personal circumstances that clients present which can create difficulties for will drafters and how those difficulties are managed. Drawing on the experience and expertise of will drafters we hope to learn more about the process of drafting wills for a society with increasingly complex family structures, relationships and assets.

This research forms part of a larger project conducted in collaboration with State and Territory public trustee organisations. The project will develop the first representative, national database on who does and does not make a will and why and the grounds on which decisions about challenges to wills are made within the legal system. The data collected will be used to inform recommendations aimed at promoting wider participation in estate planning and reducing the likelihood of wills being contested. While your participation will not benefit you directly, it will help us to understand the difficulties faced by will drafters and the most effective approaches to managing those difficulties with a view to improving the practice of will drafting and estate administration across Australia.

There are no right or wrong answers. We are interested in your experiences and expect a range of responses. You are free to withdraw from the survey at any time without penalty. No identifying information (electronic or otherwise) will be captured by this survey. All responses, therefore, remain anonymous and confidential.

**This survey should take around 15 minutes to complete.**

#### **Follow this link to the Survey:**

[Take the Survey](#)

Or copy and paste the URL below into your internet browser:

[http://uqpsych.qualtrics.com/WRQualtricsSurveyEngine/?Q\\_SS=88R3GoOU3W7RJFH\\_4YGYLkMyiU4e76R&\\_ =1](http://uqpsych.qualtrics.com/WRQualtricsSurveyEngine/?Q_SS=88R3GoOU3W7RJFH_4YGYLkMyiU4e76R&_ =1)

Once you have completed the survey, we strongly encourage you to forward this email to colleagues who you believe have relevant experience (current or previous) in the area of will drafting. It is important that you do not simply cut and past the survey link but instead forward the whole email to ensure colleagues have the opportunity to read this background information.

For more information about this survey or to further discuss the issues faced by will drafters with the research team, please contact:

Chief Investigator Associate Professor Cheryl Tilse ( <a href="mailto:c.tilse@uq.edu.au">c.tilse@uq.edu.au</a> )	Research Manager  Rachel Feeney  ( <a href="mailto:r.feeney@uq.edu.au">r.feeney@uq.edu.au</a> )
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Kind regards,

The research team

Prof Cheryl Tilse, School of Social Work and Human Services, UQ

Prof Jill Wilson, School of Social Work and Human Services, UQ

Prof Linda Rosenman, School of Social Work and Human Services, UQ

A/Prof Ben White, Health Law Research Centre, School of Law, QUT

This study adheres to the Guidelines of the ethical review process of The University of Queensland. Whilst you are free to discuss your participation in this study with project staff (contactable on [c.tilse@uq.edu.au](mailto:c.tilse@uq.edu.au) OR 3365 1788), if you would like to speak to an officer of the University not involved in the study, you may contact the Ethics Officer on 3365 3924.

Follow the link to opt out of future emails:

[Click here to unsubscribe](#)

## Appendix 3 – DRAFT semi structured interview topic areas

### A. Testators

1. *Demographic information:* Age, current partner status, children and/ or dependents, education, living arrangements, cultural identification.
2. *Family characteristics:* Questions on structure, quality of relationships (more extensive investigation for complex and blended families or families with a child with a decision making disability).
3. *Making and changing your will:* Questions about how many wills, what instigated will making/changing activities, what seeking to achieve, any difficulties? Who was involved?
4. *Current will:* Broad questions (and some scenarios) on distribution, intentions, difficulties, potential areas of conflict.
5. *Assets to be distributed:* Broad questions on nature and complexity of assets, assets held overseas. For farmers: Further details about farm assets and ownership (details below).
6. *Some general questions*
  - i. How important is it to you to use your savings to live comfortably and take care of your current and future lifestyle needs versus leaving an inheritance for the next generation?
  - ii. Have you given your family members any sizeable gifts, (including property, money, or other items of value) over the years?
    - a. If yes, have you taken account of such gifts in drawing up your will?
  - iii. What do you think the law says would happen to your assets if you die without a will?
  - iv. When you drafted your will did you also complete any other planning documents such as financial enduring powers of attorney or advance directives (use appropriate terminology depending on the State/Territory)?

+ Small number of additional targeted questions related to complex assets/complex families/culture (details below)

*Final question:* Is there anything else you would like to tell us or feel is important to discuss?

### Additional targeted questions

#### Farmers

Information about the farm e.g. Size? Nature? Business structure? Current ownership and management? How many generations the farm has been in your family?

Questions about: Involvement of children/ other family members in farm work or management: Relationship between succession of farm and inheritance.

### **International assets**

Questions about approach to dealing with foreign assets including information on preparing a will in each country that assets are held.

### **Complex mix of assets**

Questions about approach to complex mix of assets, use of trusts, intentions and directions.

### **Specific needs: Child or adult child with impaired capacity for decision making related to cognitive disability**

Demographic information and family history/structure and disability.

Questions about plans to provide for the child, expectations of other family members.

Appointment of administrators, trustees and guardians?

### **Culture**

Questions about ethnicity and cultural identification of family members, time in Australia etc.; cultural beliefs and their influence on will making, understanding of Australian law? Barriers and challenges.

## **B. People without a will**

1. *Demographic information*
2. *Attitudes towards wills and will-making:* Questions about reasons, intentions, barriers, beliefs, what might change views?
3. *Alternative arrangements?* Gifts, trusts.
4. *Information on assets*
5. *Expectations and knowledge*
  - a. How would you like your assets to be distributed on your death?
  - b. Do you think these intentions will automatically be fulfilled under the law?
  - c. What do you think the law says would happen to your assets if you die without a will?
6. *General questions*
  - a. How important is it to you to use your savings to live comfortably and take care of your current and future lifestyle needs versus leaving an inheritance for the next generation?
  - b. Anything else to discuss?