

# CASE FOR REFUGEES

*Centre for advocacy, support and education for refugees*

## Making a Will Fact Sheet

### What is a Will?

A Will is a legal document that describes how you wish to distribute your estate when you die. Your estate may consist of land, property, cash and other assets that you own.

A Will must be made of your own free will, without pressure being placed on you by another person.

### Why Do You Need a Will?

A Will is required to make sure that the people to whom you wish to give your estate to are properly provided for after your death.

If you do not have a Will, you will have no say in how your property is distributed and your estate will be distributed according to Australian law. This could mean that some or all of your estate is given to people who you did not want to receive it.

A Will also allows you to make arrangements for the guardianship of any children and other dependents under your care, set out what type of funeral you want, and whether you wish to be an organ donor.

You should be aware that although your Will sets out your wishes which will be strongly considered, it is open for family members to challenge your Will. For example, your family may challenge the guardianship arrangements for your children or your wish to be an organ donor. For this reason, it is very important that you discuss with your family your wishes, to ensure that they follow them according to your Will upon your death.

### The Validity of a Will

To make sure your Will is valid, it must contain certain features and make provision for certain family members. For this reason, you should have a solicitor draw up your Will. CASE for Refugees Inc. can prepare your Will for you.

Some types of property cannot be given to another person under your Will. For example, if you own land as a joint tenant with another person then your share of the land will become the property of that person when you die, regardless of whether your Will provides otherwise.

To be valid a Will should also be in writing and signed and witnessed correctly. There are specific requirements regarding who can be a witness.

You will need to appoint an Executor who will be responsible for ensuring that the terms of your Will are carried out. There are specific requirements regarding who can be your Executor.

### Who Should You Provide for in Your Will?

Australian law provides that if certain people are not adequately provided for under your Will, then they may be entitled to claim some of your estate or claim for a greater provision out of your estate. Examples of people who may be able to contest your Will include current and former spouses, parents, children and other people who are dependent upon you.

If you do not want to leave any property to someone who would otherwise be entitled to receive it under

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Australian law, then you must make your reasons for excluding that person clear in your Will. Even if you do so, there is no guarantee that a court will follow your wishes. This is a difficult area of law and it is advisable that you seek the advice of a solicitor if you intend to exclude someone from your Will.

## Where Should You Store your Will?

It is important that you store the original Will in a secure place. For example, you may choose to store your Will with a solicitor, accountant, your bank or the Public Trustee.

You should also keep a copy of the Will together with information of where the original Will is stored.

Make sure that you do not affix or staple anything to your Will. This may affect the validity of your Will.

## When Should You Review and Update Your Will?

Generally, you should think about reviewing and updating your Will every two to three years.

You should also update your Will when your circumstances change, for example:

- marriage, separation and divorce, or the commencement or ending of a de facto relationship;
- the birth or death of a family member; or
- death of the executor.

Recent changes to the law mean that if you get married after you make your Will, the marriage will have the effect of cancelling your Will, unless the marriage is provided for in the Will. If you get divorced, your Will will also be cancelled.

## Where to Go to Get Help

CASE for Refugees Inc. is a non-government, non-religious community legal centre that provides migration and general legal services to the culturally and linguistically diverse (CaLD) communities of Western Australia. CASE for Refugees Inc. can prepare your Will for you.

All services are free of charge, although donations from individuals and organisations are gratefully accepted. All donations of more than AUD\$2.00 are tax deductible.

The contact details for CASE for Refugees Inc. are as follows:

245 Stirling Street, Perth

Western Australia 6000

Tel: (08) 9227 7311

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