



GUARDIAN
WILLS & PROBATE

LETTER OF WISHES

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OF: _____

TO: **EXECUTORS AND TRUSTEES**

1. OVERVIEW

- 1.1** This Letter is intended to provide my executors and trustees with morally binding guidance *but is in no way intended to change or modify the operative provisions of my will*. As such, I direct my executors and trustees to be guided by the values and principles expressed by this Letter and apply those values and principles as closely as possible to the discretions they may be required to exercise under my will, bearing in mind that circumstances may have changed by the relevant time and that they should make the decision that they feel is most appropriate in the circumstances.
- 1.2** I have addressed this Letter to my executors and trustees, however I ask that any person who may be required to exercise discretion relating to my affairs following my death (e.g. the trustee of any superannuation fund of which I am a member and the controllers of any trusts or companies which I previously controlled) should also feel compelled to follow the directions in this Letter.
- 1.3** This Letter is intended to provide our executors and trustees with morally binding guidance but is in no way intended to change the provisions of our wills. As such, we direct our executors and trustees to be guided by the values and principles expressed by this Letter and apply those values and principles as closely as possible to the discretions they may be required to exercise under our wills, bearing in mind that circumstances may have changed by the relevant time and that they should make the decision that they feel is most appropriate in the circumstances.
- 1.4** We have addressed this Letter to our executors and trustees, however we ask that any person who may be required to exercise discretion relating to our affairs following our death (e.g. the trustee of any superannuation fund of which either of us is a member and the controllers of any trusts or companies which either of us previously controlled) should also feel compelled to follow the directions in this Letter.

2. DIRECTIONS IN RELATION TO TESTAMENTARY TRUSTS

- 2.1** In relation to any testamentary trust (**TT**) established in _____ that:
- (a) the controllers of the TT should retain control of the TT until they deem it appropriate;

minor children:
 - (b) when the youngest of _____ the controllers of the TT should pass control of the TT to them i.e. the current controllers should retire and appoint my children (or a person they each nominate) to be the joint controllers of the TT;

- (c) each controller (i.e. the trustees, and if applicable, the appointors) should seek specific legal advice about their duties and responsibilities in relation to the TT, as well as ensuring that they implement a succession plan for their role as a controller of the TT. The controllers should be aware that there are certain events which could occur to them which will automatically disqualify them from holding their office. They should familiarise themselves with the events set out in the definition of Disqualification Trigger and ensure that they have set in place an appropriate succession mechanism for the TT in case they die, lose capacity or another Disqualification Trigger (such as family breakdown) happens to them. There can be very serious consequences of the trustee or appointor of the TT being removed inadvertently without an appropriate succession plan in place. When planning for the succession of the control roles for the TT, it is important to remember that the trustee of a TT has complete discretion to decide the income and capital entitlements of the beneficiaries. The beneficiaries will not be able to claim any entitlement from the TT unless the trustee first decides to make a distribution to them. When nominating a successor for a control role of the TT, you should only appoint people that you trust to take on the responsibility of controlling the TT and to act in the best interests of the beneficiaries;
- (d) the TT structure has been used very deliberately due to the asset protection and tax advantages, and careful consideration should be given to these advantages before deciding to withdraw any assets from a TT or wind up a TT; and
- (e) any withdrawal of capital from a TT should be structured as a loan to a beneficiary (ideally with the TT taking a registered security for repayment) or by transferring control of the TT.

2. DIRECTIONS IN RELATION TO TESTAMENTARY TRUSTS

2.1 In relation to any testamentary trusts (TTs) established in _____ direct that:

- (f) the controllers of each TT should retain control of the TT until they deem it appropriate;

minor children:
- (g) when each of my children attains the age of _____ they should obtain control of the TT of which they are the nominated beneficiary i.e. the current controllers should retire and appoint that child (or a person they nominate) to be the controller of the TT;
- (h) each controller (i.e. the trustees, and if applicable, the appointors) should seek specific legal advice about their duties and responsibilities in relation to the TT, as well as ensuring that they implement a succession plan for their role as a controller of the TT. The controllers should be aware that there are certain events which could occur to them which will automatically disqualify them from holding their office. They should familiarise themselves with the events set out in the definition of Disqualification Trigger and ensure that they have set in place an appropriate succession mechanism for each TT in case

they die, lose capacity or another Disqualification Trigger (such as family breakdown) happens to them. There can be very serious consequences of the trustee or appointor of a TT being removed inadvertently without an appropriate succession plan in place. When planning for the succession of the control roles for a TT, it is important to remember that the trustee of a TT has complete discretion to decide the income and capital entitlements of the beneficiaries. The beneficiaries will not be able to claim any entitlement from the TT unless the trustee first decides to make a distribution to them. When nominating a successor for a control role of a TT, you should only appoint people that you trust to take on the responsibility of controlling the TT and to act in the best interests of the beneficiaries;

- (i) the TT structure has been used very deliberately due to the asset protection and tax advantages, and careful consideration should be given to these advantages before deciding to withdraw any assets from a TT or wind up a TT; and
- (j) any withdrawal of capital from a TT should be structured as a loan to a beneficiary (ideally with the TT taking a registered security for repayment) or by transferring control of the TT.

3. YOUR EMOTIONAL WILL

- 3.1** My favourite family recipe. Please think of me whenever you make it:
- 3.2** My favourite books. Please think of me whenever you read them:
- 3.3** My favourite films. Please think of me whenever you watch them:
- 3.4** _____ favourite family recipe. Please think of me whenever you make it:
- 3.5** _____ favourite family recipe. Please think of me whenever you make it:
- 3.6** _____ favourite books. Please think of me whenever you read them:
_____ favourite books. Please think of me whenever you read them:
- 3.7** _____ favourite films. Please think of me whenever you watch them:
- 3.8** _____ favourite films. Please think of me whenever you watch them:

4. DIRECTIONS TO GUARDIANS

- 4.1** Schooling preferences: *Insert your wishes here*
- 4.2** Healthcare decisions and preferences: *Insert your wishes here*
- 4.3** Our family doctor is: *Insert your wishes here*
- 4.4** Our family dentist is: *Insert your wishes here*
- 4.5** Guidance about financial values and decision: *Insert your wishes here*

5. SAFE DEPOSIT

Location of safe deposit:	
Location of keys/duplicate keys:	

6. DIGITAL ASSETS, SOCIAL MEDIA, PASSWORDS, SECURITY BOXES AND INFORMATION STORED WITH THIRD PARTIES

You should consider taking the following steps to ensure that your executors can gain access to your Digital Assets:

- (a) *in relation to any cryptocurrency, ensure that your executors know how to access your two-tier passwords and if the digital wallet is on a movable device (e.g. a USB or external hard drive) ensure that they know the location of the digital wallet;*
- (b) *using programs such as Google's Inactive Account Manager, a password manager (for example, Lastpass or 1Password) and/or a digital asset storage company (for example, Your Legacy Lockbox, Legacy Locker, AssetLock). «*IF {TEL_couple_or_individual} = "Indivi»*

6.1 A record of my Digital Assets and Digital Accounts (as defined in my Will) (including access details) may be kept with this document or with my will and I direct whoever holds the information to release it following my death to my trustees.

6.2 My trustee may, to the maximum extent permitted by law:

- (a) use, access, modify, control, delete, assign, transfer or dispose of any of my Digital Assets and Digital Accounts; and
- (b) obtain, access, modify, delete, and control my passwords and other electronic credentials associated with my Digital Assets and Digital Accounts.

After you have died, do you want your email accounts to be deleted?	☐ Yes ☐ No If No, details:
After you have died, what would you like done with your social media accounts?	☐ Closed ☐ Memorialised ☐ Copied and relocated offline Details:

Do you have any other special instructions for your digital assets published or stored on the internet?	
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6.1 A record of each of our Digital Assets and Digital Accounts (as defined in our Wills) (including access details) may be kept with this document or with our respective wills and we direct whoever holds the information to release it following our death to our trustees.

6.2 Our trustees may, to the maximum extent permitted by law:

- (a) use, access, modify, control, delete, assign, transfer or dispose of any of our Digital Assets and Digital Accounts; and
- (b) obtain, access, modify, delete, and control our passwords and other electronic credentials associated with our Digital Assets and Digital Accounts.

	«Client 1»	«Client 2»
After you have died, do you want your email accounts to be deleted?	☐ Yes ☐ No If No, details:	☐ Yes ☐ No If No, details:
After you have died, what would you like done with your social media accounts?	☐ Closed ☐ Memorialised ☐ Copied and relocated offline Details:	☐ Closed ☐ Memorialised ☐ Copied and relocated offline Details:
Do you have any other special instructions for your digital assets published or stored on the internet?		

7. PERSONAL BELONGINGS

You can leave morally binding directions about your jewellery, collectibles and any other items of sentimental value here. If you want your wishes to be legally binding, specific provisions need to be included in your will.

7.1 *Insert your wishes here*

- (a) *Insert your wishes here*

7.2 Personal Belongings:

- (a) *Insert your wishes here*

8. DIRECTIONS ABOUT PETS

8.1 *Insert your wishes here*

9. DIRECTIONS ABOUT FUNERAL ARRANGEMENTS

The following questions are a guide only. Feel free to delete or ignore any questions that you don't wish to answer, and add in more details or guidance if you have specific wishes.

Have you prepaid your funeral, or do you have funeral insurance/bonds?	☐ Yes ☐ No If yes, details:
Do you want a traditional funeral or a memorial service only?	☐ Traditional ☐ Memorial Service Details:
What type of funeral or memorial service would you prefer?	☐ Religious ☐ Non-religious Details:
Do you prefer burial or cremation?	☐ Burial ☐ Cremation Details:
Do you have a pre-paid burial plot, wall niche or remembrance garden?	☐ Yes ☐ No If yes, details:
Where do you wish for your service to be held?	
Do you have any preferences for your service? Consider any music, poems, a prepared letter, eulogy, clothes or jewellery you wish to wear, release of doves, guard of honour, flowers or donations in lieu of flowers?	
If you are buried, do you want any particular type of memorialisation e.g. plaque or headstone?	
If you are cremated, what would you wish to be done with your ashes?	

9.1 *Insert any additional wishes here*

	«Client 1»	«Client 2»
Have you prepaid your funeral, or do you have funeral insurance/bonds?	☐ Yes ☐ No If yes, details:	☐ Yes ☐ No If yes, details:
Do you want a traditional funeral or a memorial service only?	☐ Traditional ☐ Memorial Service Details:	☐ Traditional ☐ Memorial Service Details:
What type of funeral or memorial service would you prefer?	☐ Religious ☐ Non-religious Details:	☐ Religious ☐ Non-religious Details:
Do you prefer burial or cremation?	☐ Burial ☐ Cremation Details:	☐ Burial ☐ Cremation Details:
Do you have a pre-paid burial plot, wall niche or remembrance garden?	☐ Yes ☐ No If yes, details:	☐ Yes ☐ No If yes, details:
Where do you wish for your service to be held?		
Do you have any preferences for your service? Consider any music, poems, a prepared letter, eulogy, clothes or jewellery you wish to wear, release of doves, guard of honour, flowers or donations in lieu of flowers?		
If you are buried, do you want any particular type of memorialisation e.g. plaque or headstone?		
If you are cremated, what would you wish to be done with your ashes?		

9.2 *Insert any additional wishes here*

10. DIRECTIONS FOR ORGAN DONATION

If you wish to donate your organs after you pass away, you should register with the National Organ Donor register at <https://www2.medicareaustralia.gov.au/pext/registerAodr/Pages/DonorRegistration.jsp>

Please note that additional notifications are usually required in relation to donation for medical research.

Do you wish for your organs to be donated after you pass away?	☐ Yes ☐ No
Have you registered with the National Organ Donor register that your organs can be donated:	☐ Yes ☐ No

10.1 *Insert any additional wishes here*

	«Client 1»	«Client 2»
Do you wish for your organs to be donated after you pass away?	☐ Yes ☐ No	☐ Yes ☐ No
Have you registered with the National Organ Donor register that your organs can be donated:	☐ Yes ☐ No	☐ Yes ☐ No

10.2 *Insert any additional wishes here*

11. PEOPLE TO NOTIFY

11.1 *Insert your wishes here*

12. ADVISERS

12.1 Estate planning lawyer -

12.2 Accountant -

Signed by: _____

On: _____/_____/20____

Signed by: _____

On: _____/_____/20____