

FIA Conference 2023

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Online Wills and The Law: Everything you need to know

GIFTS IN WILLS

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 gatheredhere
FREE ONLINE WILLS

 **FIA** CONFERENCE

Who is Safewill?

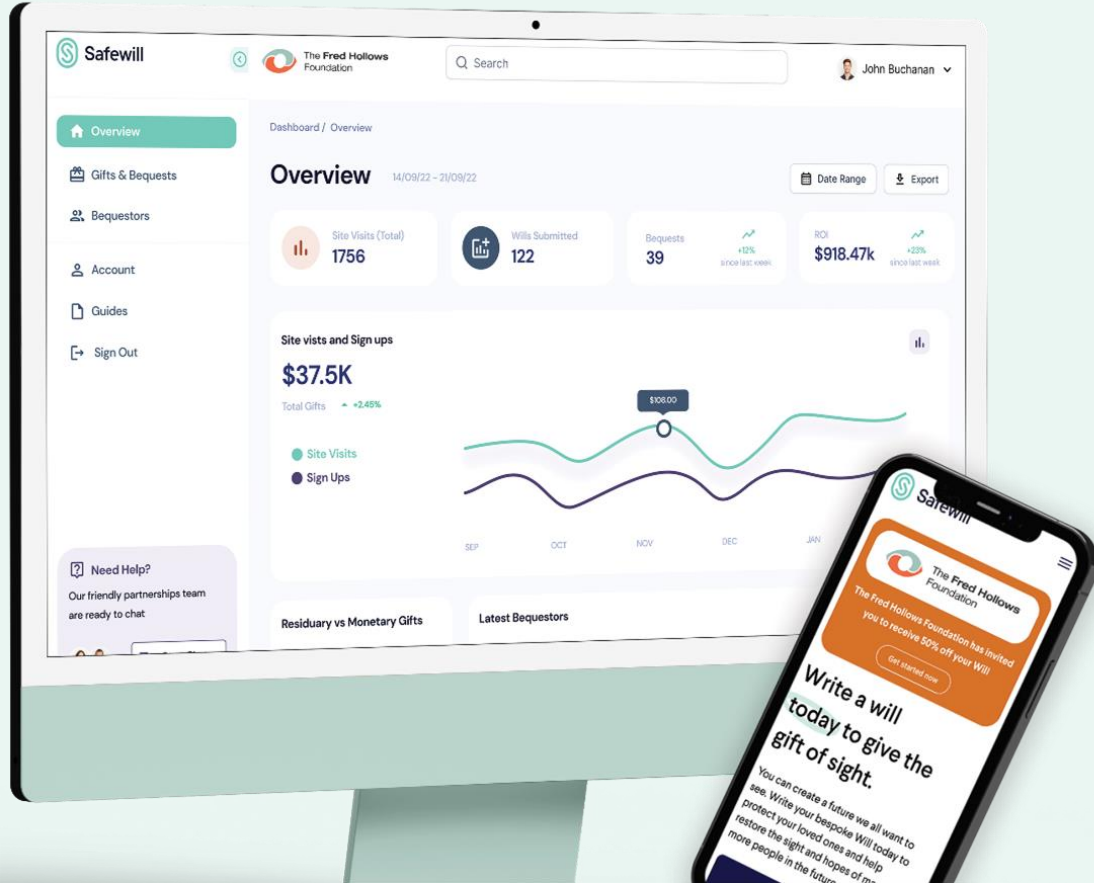
- ③ Safewill is an online Estate Planning company founded in 2018 by two ex-legal professionals. Safewill allows Australians to draft comprehensive digital estate plans (including Wills, enduring powers of attorney & enduring guardianship documents) and to access specialist lawyers where bespoke drafting is required.
- ③ Safewill has helped over 80,000 Australians with their estate plans, and is rated 4.9 out of 5 from 1600+ reviews.
- ③ Safewill is supported by Safewill Legal, a dedicated Estate Law Firm, who service complex estate law clients and review each Will written through the Safewill platform for completeness.



“We’re making it easier for all Australians to plan for the future, just in case they don't live forever.”

- Adam Lubofsky and Dan Bennett, co-founders of Safewill.

Safewill for Charities



- ⑤ We work with over 200 of Australia's largest charities to acquire, confirm and track their Gifts in Wills online via our customisable Will flow and data dashboard.
- ⑤ Over \$500 million committed in Gift in Wills donations to over 400 different charities since Safewill launched (closing in on 10,000 bequests)
- ⑤ Every Will is reviewed by our Affiliate Law Firm, Safewill Legal, in an effort to reduce the number of ineffective gifts and complications upon application for probate.

Today's Agenda:

- ③ Even with the prevalence of online Wills, we're regularly asked questions from partners about what risks they may pose to their organisation and their donors.
- ③ Today we'd like to address those questions, including:
 1. The legality of online Wills;
 2. How online Wills compare to other legal Wills; and
 3. Pressure points with online Wills
- ③ We will also focus on a recent landmark case for online Wills from the NSW Supreme Court, involving the Attorney General, Safewill and an application for Probate on an informal Will.



Safe Will Pty Ltd
support@safewill.com
7/28 Foveaux Street
Surry Hills, NSW 2010

Thanks for
choosing Safewill.

Instructions for signing

Thank you for choosing Safewill. Your Will is almost complete – follow the steps below, provided by our legal advisers, to sign your Will and have it witnessed.

Step 1 - Print your Will

Print your Will, read it carefully and make sure you understand it. If you do not understand what you are signing, we recommend seeking independent legal advice.

Step 2 - Find two people to act as witnesses

Once you have understood your Will, you need to find two witnesses to watch you sign the Will, and to sign it themselves. You should state in front of your witnesses that you have read and understood the Will, and that you intend it to be binding as a legally valid Will.

Your witnesses cannot be:

- Under 18 years of age;
- Your partner or family member;
- Mentioned in the Will by name;
- Capable of benefitting under your Will;
- Legally blind;
- Someone who lacks the mental capacity to understand that they are witnessing a Will.

Step 3 - Sign your Will

Using a blue or black pen, you should sign the Will first in front of your two witnesses. Make sure that they both watch you sign the Will. After you have signed each page of the Will, both witnesses should sign each page of the Will too, using the same pen as you if possible.

Step 4 - Keep your Will safe

Store your Will someplace safe, making sure a family member or your Executor know where it is and how to access it. You can also upload a digital copy of your signed Will to your Safewill account, as an added measure for safekeeping.



Estate Planning

Probate

Cremations

Wills

Power of Attorney

Legal Advice

Speak with a Wills lawyer

If you're looking for some feedback on your Will, or your situation is complex, you can book a call with a specialist Wills lawyer from our affiliate law firm, Safewill Legal. Just complete the Will flow as normal, and select the option for Legal Advice at checkout.

Who is Safewill Legal?

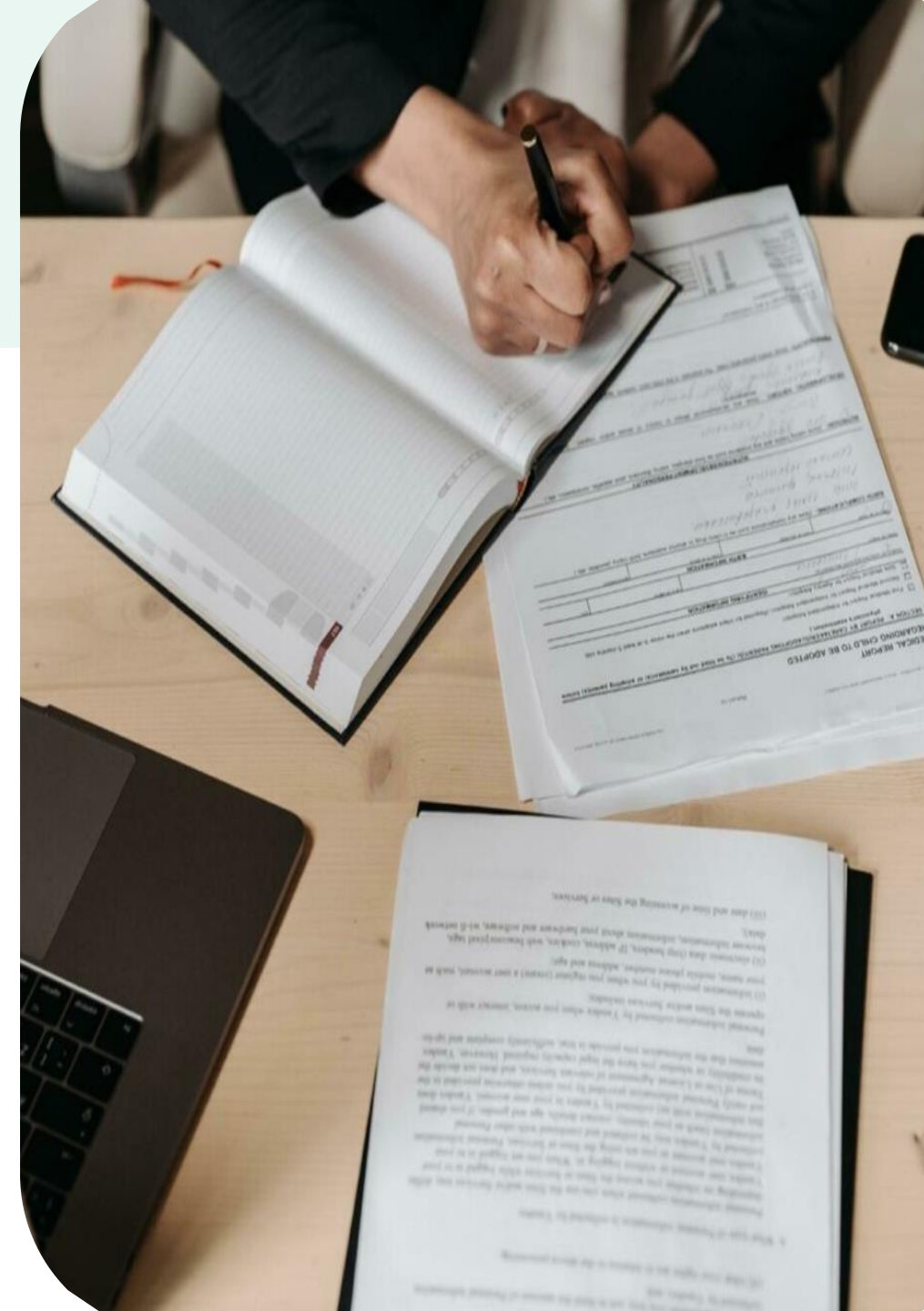
Safewill Legal is a specialist Estate law firm, assisting clients with Probate and Estate Administration, and bespoke Estate Planning throughout Australia.

Safewill Legal also supports the Safewill business by reviewing all Wills submitted to the Safewill Platform, and offering users the ability to speak with a lawyer to discuss complex circumstances

Since launch, Safewill Legal has reviewed over 25,000 Wills written via the Safewill platform, and has assisted on 1,000 probate applications across Australia.

Online Wills and the Law

- Online Wills are Wills that are generated digitally using specialised technology.
- They work by automating the process of manual drafting by using digital inputs to create a Will.
- Online Wills share the same requirements of validity as a traditional Will.



Online Wills in context

- Prior to the growth in technology, there were two key methods of will writing, being a lawyer drafted Will, or a DIY paper will kit.
- Online wills have taken the static Will kit, and digitised it to be more flexible for consumers.
- This digitisation has provided much needed structure to the Will writing process.

Last Will

1. This is the last Will of me, [redacted]
 of [redacted] NSW
 By this Will, I revoke all previous Wills and testamentary dispositions made by me.

2. I APPOINT [redacted]
 of [redacted]
 and [redacted]
 of [redacted]
 to be the Executor(s) of my Will and trustee(s) of my estate.

3. IF THE OTHER natural parent predeceases me, or dies at the same time as me, I appoint [redacted]
 to be the Guardian of my minor children during their respective minorities.

4. I LEAVE THE FOLLOWING special gifts free of all duties and charges to:
 A) [redacted] of [redacted]
 my HOUSE AND LAND CONTENTS AND MY HONDA INTERA (CAR) LASER
 B) [redacted] of [redacted]
 my [redacted] AND NEMA SHARES
 C) [redacted] / [redacted] ABOVE ADDRESSES
 my MONEY TO BE HANDED OUT 50/50 AND MY SUPERANNUATION

I GIVE THE RESIDUE of my estate to [redacted] my [redacted] of [redacted]
 born [redacted] After payments of all my just debts, funeral and testamentary expenses.
 But if [redacted] predecease me then I give the residue of my estate in parts to:

A) [redacted] my NEPHEW D.O.B. [redacted] the part of 50 %
 Address: [redacted]
 B) [redacted] my NEICE D.O.B. [redacted] the part of 50 %
 Address: [redacted]
 C) [redacted] my [redacted] D.O.B. [redacted] the part of [redacted] %
 Address: [redacted]
 D) [redacted] my [redacted] D.O.B. [redacted] the part of [redacted] %
 Address: [redacted]

RE my assessment MY PARENTS WILL LIVE IN MY HOUSE AT [redacted]
 WHERE THERE ARE minor beneficiaries, that minor beneficiary cannot receive their entitlements under this
 will until they attain the age of 21 years [redacted] I HAVE BEEN INFORMED -> STILL IN MY PROPERTY

the Testator/Trustee [redacted] Dated [redacted]
 [redacted] Dated [redacted] 6 PICTURES IN KITCHEN
 [redacted] Dated [redacted] 1 COFFEE TABLE
 [redacted] Dated [redacted] 1 SHARP TV

Will Kit

LAST WILL AND TESTAMENT OF [redacted]

I, [redacted] presently of [redacted] hereby revoke all former
 testamentary dispositions made by me and declare this to be my last Will.

1) PRELIMINARY DECLARATIONS
 2) Prior Wills and Codicils
 3) I revoke all prior Wills and Codicils.

4) Marital Status
 5) Not married. Divorced.

6) Children
 7) I have the following living children:
 a) [redacted] Victoria.
 b) [redacted] Victoria.

8) EXECUTOR
 9) Executor
 10) The expression 'my Executor' used throughout this Will includes either the singular or
 plural number, or the masculine or feminine gender as appropriate wherever the fact or
 context so requires.

11) Appointment
 12) I appoint [redacted] Victoria, in the absence of [redacted]
 [redacted] I appoint [redacted]
 [redacted]

13) My Executor is not required to post bond.

14) Powers Of My Executor
 15) I give and appoint to my Executor the following duties and powers with respect to my
 estate:

Self typed Will

Last Will and Testament of

Preliminary Declarations and Scope of Will

This Will is made by me, [redacted] of [redacted] (also known as [redacted], (I, me, the Will maker).

1. This Will affects my property and affairs in Australia only and does not affect property or affairs of mine in any other country. This Will takes effect and operates independently and separately from any will made by me in respect of property and affairs of mine in any jurisdiction other than Australia.
2. I revoke all previous Wills and testamentary acts made by me in respect of property and affairs of mine in Australia only, and I declare this to be my last Will.
3. I wish to be cremated as more specifically stated in my Statement of Testamentary Wishes.
4. I wish for my ashes deposited or scattered at [redacted], or such place as my Executor considers would most closely achieve my wish.
5. My partner is [redacted] of [redacted] Australia.
6. I have the following living children:
 - a. [redacted] of [redacted] Australia.

Definitions and Interpretation

7. The following definitions and interpretation apply in this Will unless the context requires otherwise:

Definitions:

- a. **Backup Beneficiary** means the Backup Beneficiary specified in the Residuary Estate section of this Will; and **Backup Beneficiaries** shall have the same meaning.

Safewill Will

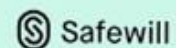
WILL

THIS IS THE LAST WILL of me [redacted] of [redacted] in the State of [redacted]

1. I REVOKE all former testamentary dispositions. This will is only intended to operate in respect of all my properties located in Australia. In regard to my properties located outside Australia, the law of intestacy of that relevant country where my properties are located shall apply as if I died intestate or without having made a will.
2. I APPOINT my spouse, [redacted] to be the executrix of this my will and trustee of my estate. If my trustee shall refuse or be unable to act or predecease me or die before my estate is distributed or for any reason fail or cease to act as my trustee, I APPOINT MY daughters [redacted] to be the executrix and trustees of my estate.
3. SUBJECT to my spouse [redacted] surviving me for a period of thirty (30) days, I GIVE TO my said spouse the whole of my personal and real properties. If my said spouse fails to survive me by a period of thirty (30) days then her share shall lapse and shall form part of my residuary estate.
4. I GIVE all the other residue of my real and personal properties to my trustee upon trust to sell, call in, collect and convert the same into money at such time or times and in such manner as my trustee shall think fit with the power to postpone the sale, calling in and conversion of the whole any part or parts of the said property including leaseholds or other property of the terminable or hazardous nature during such period as my trustee shall think proper and my trustee shall out of the moneys arising therefrom shall hold the balance (balance means after deducting all my just debts and testamentary expenses) of my said property (herein called "my residuary estate") UPON TRUST for such of my CHILDREN as shall survive me and attain age of twenty-one years and if more than one, in equal shares absolutely. PROVIDED THAT if any such child of mine shall fail to attain a vested interest or shall predecease me leaving a child, him or her surviving and who shall survive me or be born after the date of my death and who shall attain the age of twenty-one years, then such child shall take and if more than one, equally the share which his, her or their deceased parent would otherwise have taken had he, she or they survived and attained a vested interest.
5. MONEYS liable to be invested under this will may be invested in or upon any of the following:
 - (a) investments authorized by law for the investment of trust funds in the Commonwealth of Australia or any state thereof;
 - (b) land of any tenure or any rights or interest in, upon or in relation to land in the Commonwealth of Australia whether income earning or not and including the purchase of a residence for use by beneficiary which residence shall be held on trust for sale;

Lawyer Drafted Will

Pressure Points with Online Wills



Smart wills
for
modern
life.

Create your own will online in minutes.
We're using modern design and technology
to help every Australian safeguard their
life's work.

safewill.com

- Through our work with charities, we have been exposed to a variety of questions and concerns about the online Will writing process.
- We generally see the following concerns voiced in relation to online wills
 - Are Online Wills open to abuse?
 - Are Online Wills more likely to be “contested”?
 - Can Online Wills deal with complexity?

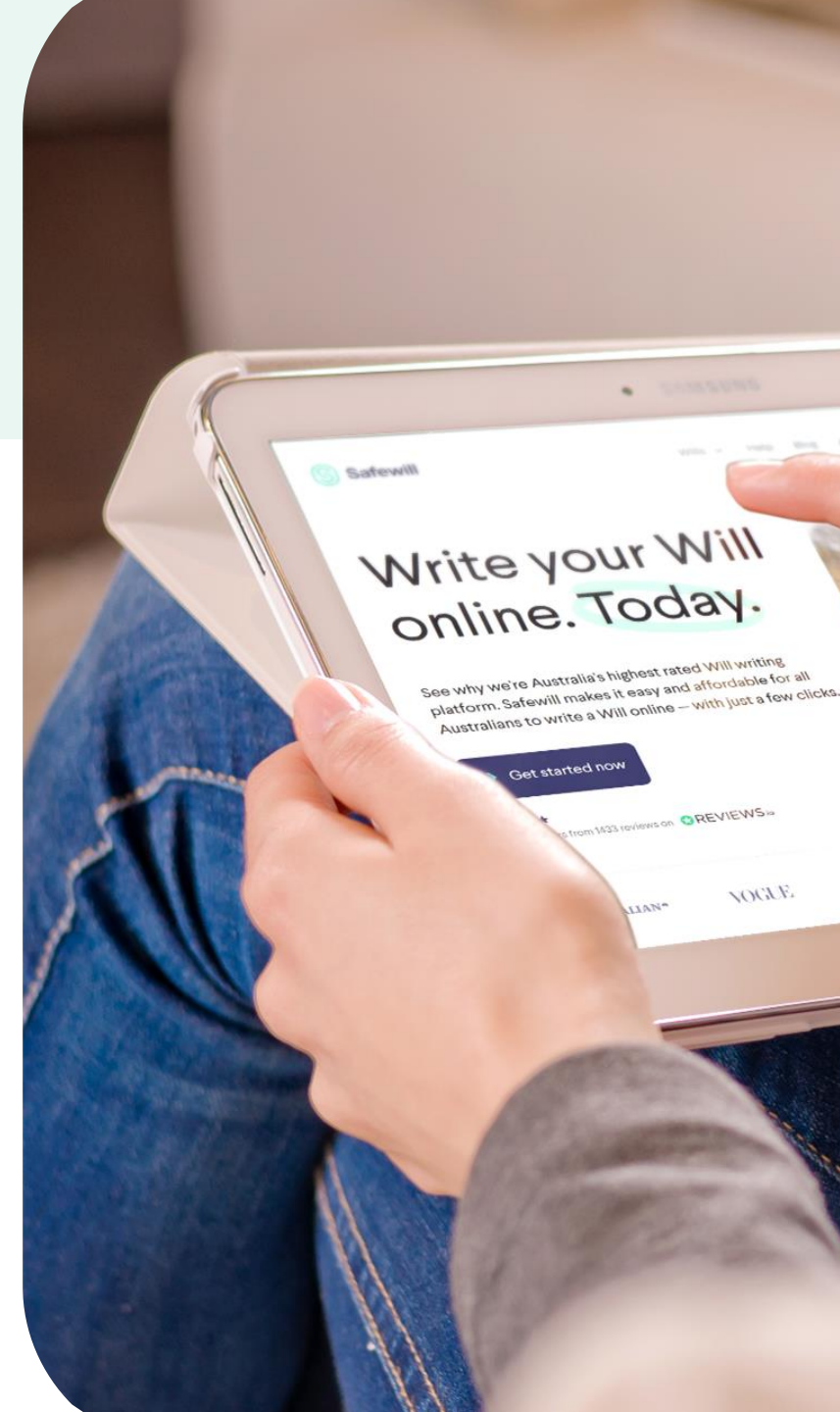


Are online Wills more open to abuse?

- The concept of undue influence in will writing has been in existence for centuries.
- Online Will platforms often track IP addresses, require 2 factor authentication to access the Will document, and create a digital point in time record of behaviour (including changes to Wills).
- Using an online Will platform makes it more likely that the contents of the Will cannot be hidden or destroyed down the track.
- Wills are required to be signed by the Willmaker in wet ink, and witnessed by two independent adult witnesses. Safewill Wills have a signature line on each page. This helps to ensure the Willmaker has seen and approved the entire contents of their Will.

Are online Wills more likely to be contested?

- Contesting a Will means someone isn't happy with the amount of money they've received in the Will.
- “Eligible people” have an in built right to contest an estate, no matter who has drafted the Will.
- It is generally accepted that special care should be taken when cutting a dependent out of a Will.
- There are some techniques that can be used in Will writing to minimise the likelihood of a contest, and some online Will platforms can provide this additional advice and service.



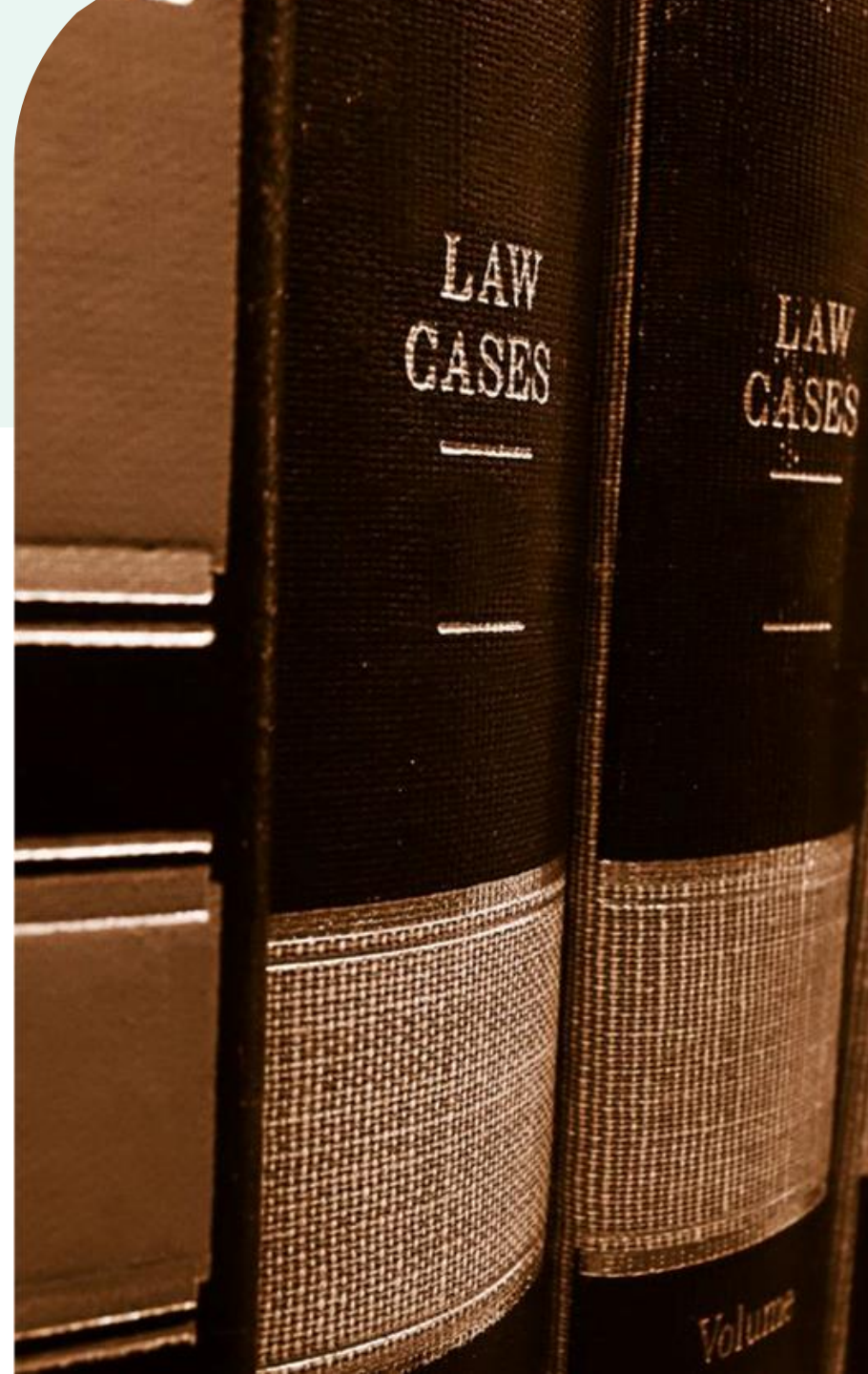
Can online Wills deal with complex circumstances?

- Cutting someone out of the will, blended families, children with special disabilities, assets owned in trusts and corporate structures are all complicating factors in Will writing
- At checkout, Safewill customers looking for more support can choose to pay for Legal Advice to receive guidance tailored to their personal circumstances and amendments to their Will if needed.
- If they elect not to pay for Legal Advice, their Will is still reviewed to ensure they have used the platform correctly.
- Bespoke supporter communications are also an important aspect of being able to deal with complex circumstances.



Online Wills in Practice: What do the Courts say?

- We have received Probate of numerous Safewill Wills, including in the NSW, Victorian and Queensland Supreme Courts.
- Case law helps us understand with more certainty what the Court's think about online Wills, and particularly how they hold up in difficult situations where capacity issues, approval issues or duress may be involved.
- Safewill is the only online Will provider to have their online Will process interrogated, with the resultant Will ultimately approved by the Supreme Court in a recent landmark case



Application by Maggie Riman (Estate of Rita Riman) [2022] NSWSC 872

- In June 2021, Rita made an account on Safewill, completed the online questions in the Will flow (including who she wanted to act as her executor and who should receive her estate) and submitted her Will for review.
- Rita died on the same day before downloading and signing her Will
- Rita sent a digital link to the platform to her compensation lawyer, and advised her sister she had made a Will.
- The NSW Supreme Court considered all the circumstances including the terms of the Will, the operation of the platform, and Rita's capacity.
- A Grant of Probate was successfully made of the informal Will.

What have we learnt?

- The Court is well aware of online Wills, and understands they are going to form part of the estate planning space moving forward.
- In certain circumstance the Court can approve a Will even without the customer signing or receiving the final Will document, however this should *not* be taken as the general rule.
- We saw the importance of how technology works to facilitate the ability of a person to make a Will, and in particular how Safewill's processes allowed for the wishes of a person to be recorded during a difficult time.

Questions?



Thank you

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