Last Will of

**Testator**

Dated: 2019





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1. General

# Revocation and declaration

I, **Testator** of Testator street, Testator town, New South Wales Postcode:

## Revoke all former Wills and other testamentary acts made by me; and

## Declare this to be my last Will.

1. Appointment Of Executor

# Appointment of my Executor

## I appoint my Partner wife/husband, **Partner name** of Partner street, Partner town, New South Wales Postcode (‘**Partner first name**’), as the Executor of my Will.

## If **Partner first name** is not willing or able to act (or to continue to act) as the Executor of my Will, then I appoint such of my children named below who are willing and able to act (or continue to act), and if more than one, jointly and severally, as the Executors of my Will:

### **Child Girl name** of Child Girl street address, town, New South Wales 2758 (‘**Child Girl first name**’); and

### **Child Boy street address, town** of Child Girl street address, town, New South Wales (‘**Child Boy first name**’).

## The expression ‘my **Executor**’ means the executor from time to time of my Will as appointed under this clause 2.

# Executor machinery provisions

Unless otherwise specifically stated in my Will:

## My Executor is not excluded from participating in a matter concerning the administration of my estate only because of a personal interest in the matter; and

## A gift to a person named as my Executor is not dependent on that person acting as an executor.

# My Executor to take control of my estate

## I give all of my real and personal estate, of whatever nature and wherever situated (my **estate**) to my Executor to hold and pay:

### my funeral and testamentary expenses;

### all succession, estate and other duties payable in consequence of my death; and

### my just and reasonable debts, (to the extent they are not to be satisfied from any particular source, or dealt with under another provision of my Will).

## My Executor must then hold, pay and apply the balance of my estate in accordance with the remaining terms of my Will.

1. Gift of Personal Belongings

# Gift of Personal Belongings

## I give, free of all duties and encumbrances, my Personal Belongings to my Executor to be distributed under this clause 5.

## Without creating any legal obligation, it is my strong wish that my Executor distributes my Personal Belongings in accordance with the most recent list I leave stored with my Will, signed and dated by me. For the avoidance of doubt, such list is not intended to be a testamentary document, and is not intended to be admitted to probate, but is intended only to guide my Executor in dealing with my Personal Belongings and my Executor is not bound to obey my suggestions.

## If I do not leave a list, or if any of my Personal Belongings are not listed, I give my Personal Belongings to my Partner wife/husband **Partner first name**absolutely if he survives me by 30 days.

## If the gift made to my Partner wife/husband **Partner first name**in this clause fails, I give my Personal Belongings to such of my Children who become a Qualifying Beneficiary, and if more than one, as tenants in common in equal shares absolutely.

## I give my Executor the power to decide which of my chattels are my Personal Belongings.

## I direct that my Personal Effects other than my Personal Belongings are to form part of my Residual Estate.

1. Specific Gifts

# Specific gifts before dealing with residual estate

The specific gifts made in this Part are made after satisfying clause 5 (above), and before distributing the balance of my residual estate, to be dealt with under the remaining provisions of my Will.

1. Residual Estate

# Definition of my Residual Estate

For the purposes of this Part, my ‘**Residual Estate**’ is the balance of my estate not otherwise effectively dealt with or exhausted under a preceding Part (and includes any part of my estate subject to a gift in a preceding Part that has failed).

# Residual gift for my Partner wife/husband

## I give the whole of my Residual Estate to my Partner wife/husband **Jann**, provided she survives me by 30 days.

## If the gift in the preceding paragraph (a) fails, then the remaining provisions in my Will apply.

# Division of my Residual Estate into “Portions”

## If the above gift to my Partner wife/husband **Partner first name**fails, I direct my Executor to divide the whole of my Residual Estate into one or more equal portions (each, a “**Portion**”), and to hold and dispose of each Portion in accordance with the remaining provision of this Part V of my Will

# Residual gift for Child Girl first name and Andrew

## I give one Portion of my Residual Estate to my daughter **Child Girl first name** and my son **Andrew** if they survive me to become a Qualifying Beneficiary.

## Gift-Over – to Children and then grandchildren

## If a gift in this clause 10 fails, the Gift-Over provisions in Part VII to the Children (and then grandchildren) of the intended beneficiary apply subject to them becoming a Qualifying Beneficiary.

## If the gifts referred to in this Clause lapse or fail because no person attains a vested interest in that gift, then from the time of that lapse or failure that gift is added equally to the Portion that has not lapsed or failed.

# Residual gift for Marita and Gina

## I give one Portion of my Residual Estate to such of my daughters **Marita Xxx** of Xxx(“**Marita**”)and **Gina Xxx** of Xxx (“**Gina**”) who survive me to become a Qualifying Beneficiary and if more than one, as tenants in common in equal shares.

## If either **Marita** or **Gina** do not survive me to become a Qualifying Beneficiary of a part in my estate then I direct my Executor to add the part that would have been given in subclause (a) to the survivor.

## If the gifts referred to in this Clause lapse or fail because no person attains a vested interest in that gift, then from the time of that lapse or failure that gift is added equally to the Portion that has not lapsed or failed.

## If all gifts in this clause 11 fails, then this portion shall be added equally to those gifts in clause 10 of this Will that have not failed.

# Gift of Residual Estate to my siblings and my Partner wife/husband’s siblings

## If under the preceding clauses 8, 9, 10 and 11 no person survives to become a Nominated Beneficiary of my Residual Estate, I direct my Executor to divide my Final Default Residual Estate into equal portions (each a Portion), and then to give:

### one Portion to those of my siblings (with whom I have one or both parents in common) who become a Qualifying Beneficiary and if more than one as tenants in common in equal shares; and

### the other Portion to those of my Partner wife/husband **Jann**’s siblings (with whom my Partner wife/husband has one or both parents in common) who become a Qualifying Beneficiary and if more than one as tenants in common in equal shares.

**Gift-Over – to Children and then grandchildren**

## If a gift in this clause fails, the Gift-Over provisions in Part VII to the Children (and then grandchildren) of the intended beneficiary apply subject to them becoming a Qualifying Beneficiary.

1. General Provisions Relating to Entitlements

# Beneficiaries

**Outright Beneficiaries**

## When an outright gift is given to a person on the condition that they are (or must become) a **‘Qualifying Beneficiary’**, the condition is only satisfied (and the person is for this purpose a Qualifying Beneficiary) only if the person:

### Survives me by 30 clear days or is born after my death;

### Is living on the date on which the person or persons entitled to the gift must be determined in accordance with the terms of my Will; and

### Reaches the age of 25 years (the **Qualifying Age**).

## If an outright gift is given to more than one Qualifying Beneficiary, then unless otherwise stated for that gift, the gift must be distributed in equal shares (as tenants-in-common) among those Qualifying Beneficiaries.

# Vesting of entitlements

## Any gift that depends on the beneficiary surviving me by a specified period, or reaching a specified age, is contingent and does not vest in the beneficiary unless and until he or she has survived for the specified period or reached that age.

## Income produced by the gift between my death and the vesting of the gift accumulates to the gift.

# Disclaimer

## If a beneficiary disclaims all or part of the assets that would otherwise be distributed to them under my Will, the assets to which the disclaimer relates become part of the balance of my estate.

## Notwithstanding any other term of my Will, to the extent that a beneficiary, by reason of bankruptcy, an arrangement with his or her creditors, or otherwise, would not personally benefit from a gift made under my Will, the gift made to that beneficiary is not to take effect.

# Prospective beneficiary

In respect of any part of my estate held on trust in expectation of a person (the **Prospective Beneficiary**) becoming the beneficiary of that part, my Executor may pay or apply some or all of the net income and capital of that part for the maintenance, care, support, education and general advancement in life of:

## The Prospective Beneficiary; and

## A person considered by my Executor to be a dependant of the Prospective Beneficiary

including to:

## Pay or contribute towards the food and accommodation needs of the beneficiary;

## Pay for all forms of health and medical care, and health insurance of the beneficiary;

## Pay for childcare, school and higher education fees of the beneficiary;

## Pay for recreational expenses, travel expenses, and other day to day needs and expenses of the beneficiary;

## Make payments to the beneficiary by way of pension or allowance;

## Make contributions to a superannuation fund on behalf of the beneficiary; and

## Make payments (without seeing to their application) to the parent, guardian or care-giver of the beneficiary, and accept the receipt of the payee as an absolute discharge.

1. ‘Gift-Over’ Provisions

# Application of this Part VII

This Part VII only applies to a gift made in my Will if I have directed that the Gift-Over provisions apply to that gift, but not otherwise.

# Outright gifts: Gift-Over to Children and then grandchildren

## If an intended beneficiary (the **Beneficiary**) dies before attaining a vested interest in my estate, but leaves a Child (or Children) who:

### Is or becomes a Qualifying Beneficiary; and

### Is living on the date of death of the Beneficiary (**Reserve Date**),

(a **Survivor**), then the Survivor receives the interest the Beneficiary would have received had the Beneficiary attained a vested interest. If there is more than one Survivor, then each receives an equal share.

## If a Survivor who would otherwise have taken the place of the Beneficiary dies before attaining a vested interest in my estate, but leaves a Child (or Children) who is or becomes a Qualifying Beneficiary and is living on the Reserve Date (the **Further Survivor**), then the Further Survivor receives the interest the Survivor would have received had the Survivor attained a vested interest. If there is more than one Further Survivor, then each receives an equal share.

1. Dealing With My Person

# Declarations in relation to person

It is my wish that my body is disposed of as my Executor decides.

1. Administrative Provisions

# General powers of Executor and Trustees

## Subject to any express requirement in my Will, my Executor and the Trustees of any trusts created by my Will:

### Have all the powers, authority and discretion of a natural person, together with the specific powers set out in my Will; and

### In the exercise of their general and specific powers, are not restricted by the rules relating to trustees contained in any legislation of the Commonwealth of Australia or any of its States or Territories; and

## The specific powers set out in the other provisions of my Will are in addition to, and do not limit the generality of, the general powers set out in clause 20(a).

# Costs and expenses

Unless otherwise directed in my Will, my Executor must:

## Allocate the burden of; and

## Pay or adjust for

any taxes and duties imposed by any jurisdiction on:

## Assets forming part of my estate;

## Death benefits paid in consequence of my death; and

## The capital of and income from my estate

to the extent that is permissible, as though it were a testamentary expense.

1. Interpretation

# Schedules

The following schedules are incorporated into and form part of my Will:

## Schedule ADJ (Adjustments); and

## Schedule P (Executor & Trustee Powers).

If there is any inconsistency between the Main Provisions and the provisions of a particular Schedule, the Main Provisions prevail to the extent of the inconsistency.

# Governing law

So far as I can choose the law to govern the administration of my estate, and the trusts created by my Will, I choose the laws of New South Wales.

# General rules of interpretation

In my Will, unless expressly provided otherwise, or the context clearly indicates a contrary intention:

## Words denoting the singular include the plural, and *vice versa*;

## Words denoting any gender include all genders;

## Headings are for convenience only and do not affect the interpretation of the contents of the clause or paragraph;

## If, by reason of the inclusion of any word, description or provision in my Will, all or any part of my Will would be invalid, then my Will must be construed as if the word, description or provision was not included; and

## Reference to any statute, or any subordinate legislation or instrument, includes all statutes, subordinate legislation or instruments amending, modifying, consolidating, re-writing, re-enacting or replacing them, and a reference to a statute includes all subordinate legislation and instruments made under that statute.

# Definitions

Unless the context otherwise requires, in my Will and in each Schedule to my Will, the following expressions have the following meanings:

## **Children** means:

### biological children;

### children born as a result of an artificial conception procedure as defined in the Family Law Act 1975 (Cth) and who are acknowledged by me or by one of my descendants as his or her child; and

### legally adopted children (whether adopted before or after the date of my Will),

and ‘grandchildren’ and ‘great grandchildren’ have a corresponding meaning;

## **Descendants** of a person at a particular time means, in the first instance, that person’s living Children, and if that person does not have any living Children, then any living Children of that person’s Children (and so forth down subsequent generations), and in the absence of any lineal descendants, that person’s closest living blood relative (or relatives) at that time;

## **Main Provisions** means the clauses set out in the main body of my Will, and excludes the paragraphs of each Schedule;

## **my Children** means those persons who are my ‘Children’ (as that term is defined in my Will), and specifically includes:

### my daughter, **Child Girl name** of 1112 East Kurragong Road, East Kurrajong, New South Wales 2758;

### my son, **Child Boy street address, town** of Testator street, Testator town, New South Wales Postcode;

### my daughter, **Gina Xxx** of [address]; and

### my daughter, **Marita Xxx** of [address].

## **Personal Belongings** mean, for the purposes of my Will, my Personal Effects located in my principal residence including its garage, outbuildings and garden, at my death and excluding blinds, curtains, light fittings and any other property normally included in the sale of any real estate;

## **Personal Effects** means my tangible personal property except;

### Property used exclusively for business purposes;

### Banknotes or coins (unless forming a collection made in pursuit of a hobby or for some other non-commercial purpose);

### Property held as a pledge or other form of security;

### Property (such as gold bullion or uncut diamonds) in which I have invested as a hedge against inflation or adverse currency movements; and which is not an object of household, or personal, use, decoration or adornment; and

### An interest in real property which for the purposes of this Will includes all fixtures and fittings normally included in the sale of any real estate such as blinds, curtains, light fittings and fixed floor coverings;

### Fixtures and fittings normally sold with any real estate I own at the time of death, such as blinds, curtains, light fittings.

## My Executor’s decisions about what items are included in this exception should be final.

## **Schedule** means a schedule to my Will;

## **trustee** means a trustee from time to time of a trust created under my Will.

\* THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK \*

I, **Testator**,have signed my name on:

the \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2019

|  |  |
| --- | --- |
| Signed by **Testator** as his last will, in the presence of us both at the same time, who at his request and in his presence, and in the presence of each other, have signed our names as witnesses: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **Testator** |

|  |  |
| --- | --- |
| Full Name of First Witness:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Address of First Witness:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Occupation of First Witness:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature of **First Witness** |
|  |

|  |  |
| --- | --- |
| Full Name of Second Witness:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Address of Second Witness:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Occupation of Second Witness:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature of **Second Witness** |
|  |

Schedule ADJ: Adjustments

1. Overriding priorities for my Executor
   1. Notwithstanding the other terms of my Will, my Executor must administer my estate in a manner that gives priority to the following:
      1. First, the division of my estate (and other assets) between my Beneficiaries in the same aggregate proportions as outlined in my Will; and
      2. Secondly, having regard to taxation, capital preservation and other matters, the most cost and tax effective and efficient manner of dealing with the assets.
   2. Subject to Paragraph 1(a), in satisfying any gift made under my Will, my Executor may pay a greater part of any particular asset or benefit (or class of asset or benefit) to a particular Beneficiary or Testamentary Trust, to the exclusion of any other Beneficiary or Testamentary Trust.
   3. It is my strong wish that prior to exercising any power under this Schedule, my Executor obtains appropriate legal, taxation, financial and other professional advice, having regard to the character of my assets and the particular circumstances of my Beneficiaries.
2. Direction to adjust entitlements for Total Wealth
   1. If I have directed my Executor to adjust the quantum of a Beneficiary's share of my residual estate under this Schedule with regard to the Beneficiary's entitlement to participate in my Total Wealth, my Executor must determine that Beneficiary's share of my residual estate on the basis that:
      1. The total value of my residual estate includes the value of each Beneficiary’s interest or participation in my Total Wealth; and
      2. Each Beneficiary's individual share in my residual estate is partly (or wholly) satisfied by their interest or participation in my Total Wealth.
   2. If a person brings a claim for further provision from my estate that is not provided for in my Will (an **Inheritance Claim**), the terms of this Schedule dealing with my Total Wealth do not apply to the extent they may increase the quantum of assets that would otherwise accrue to the person making the Inheritance Claim.
3. Meaning of Total Wealth

In my Will my **Total Wealth** includes all of the following assets and amounts (unless specifically stated otherwise):

* 1. Any entitlements to the proceeds of a policy of life insurance paid to or for the benefit of one or more Beneficiaries as a consequence of my death (either directly or indirectly, and whether through or outside my estate);
  2. Any entitlements to superannuation and other death benefits paid to or for the benefit of one or more Beneficiaries as a consequence of my death (either directly or indirectly, and whether through or outside my estate);
  3. My proportionate interest in the value of any real property (the **Joint Property**) that passes on my death to a person who is a surviving joint tenant in the Joint Property;
  4. The face value of any loans forgiven to a Beneficiary under my Will;
  5. The balance of my estate; and
  6. My interest as beneficiary as member in any Trust, Joint Venture or other enterprise outside my direct personal ownership in which I have a beneficial interest.

1. Definitions

Unless the context otherwise requires, the following expressions have the following meanings:

**Beneficiary** means each beneficiary named in the Main Provisions, and for the purposes of this Schedule includes:

* 1. Their respective spouses and Children;
  2. The trustees of the Testamentary Trusts in respect of which they are nominated as a Nominated Beneficiary; and
  3. Entities in which they hold a direct or indirect beneficial interest; and
  4. The trustees of trusts for which the beneficiary (or their respective spouses and Children) directly or indirectly hold the power to remove and appoint the trustee.

1. Interpretation
   1. The definitions set out in my Will apply to this Schedule.
   2. A reference in this Schedule to a Paragraph is, unless otherwise stated, a reference to a paragraph of this Schedule.

- END OF SCHEDULE ADJ -

Schedule P – Executor & Trustee Powers

1. Executor & Trustee Powers

My Executor and the Trustees of any trust established by my Will have the power to:

* + 1. sell, lease, exchange or otherwise dispose of any assets on the terms they consider expedient, as if they were beneficially entitled;
    2. sell, call in and convert into money the whole or any part of any asset;
    3. invest and change investments freely, as if they were beneficially entitled;
    4. postpone the sale and conversion of any part of my estate for so long as they think fit, without being responsible for any loss;
    5. hold, use, surrender, let, lease, take and grant options or rights in, or otherwise deal with any real or personal property (including, but not limited to, shares, units, debentures or securities of any company or trust) on whatever terms they think fit;
    6. make loans to beneficiaries that are secured or unsecured, subject to interest or interest free;
    7. acquire any annuity, allocated pension or complying pension that provides for the payment of benefits to a beneficiary;
    8. make, or cause to be made, contributions to a complying superannuation fund on behalf of a beneficiary;
    9. pay any debts, taxes and funeral and testamentary expenses;
    10. use income, capital or both income and capital to pay capital gains tax levied on the disposal of an asset, and apportion liability for that tax;
    11. calculate trust income in accordance with taxation, accounting or other definitions or concepts;
    12. treat any income derived from assets they hold pending the satisfaction of a contingency or during a life interest as arising at the time they receive the income and not apportioned to any other time or period;
    13. separately record, identify, pay, allocate, apply or accumulate any income, right, credit, rebate or capital, and to do so by reference to any categories, source, class or other means of identification;
    14. treat any income earned from any asset pending the satisfaction of a contingency or during a life interest as arising at the time the income is received by them and not apportioned to any other time or period;
    15. appropriate any asset or interest in an asset not specifically given to a beneficiary in full or partial satisfaction of a legacy or share of my estate without needing to obtain the consent of any beneficiary;
    16. purchase all or any part of an asset at a value determined by a qualified valuer and on terms that would be granted to an arm's length purchaser;
    17. conduct a business, either alone or in partnership, in Australia or elsewhere, and to appoint or employ any person (including themselves);
    18. make declarations as to the beneficial ownership of particular assets;
    19. receive capital and other moneys and give valid and effective receipts for all purposes;
    20. provide guarantees or indemnities for the performance of obligations of any person;
    21. raise and borrow money on any terms, and provide security by way of mortgage, bill of sale, lien, charge or otherwise over the whole or any part of any asset;
    22. mortgage, charge, pledge, encumber or otherwise grant, give or permit any mortgage, lien, encumbrance, security or charge over or in respect of any asset and for any obligation;
    23. open bank accounts of every description on any terms and conditions, and to conduct and operate those accounts in any manner, including but not limited to the power to operate any account in overdraft;
    24. obtain and consider independent and impartial advice from a person whom my Executor and trustees reasonably believe to be competent to give advice, (including any lawyer, accountant and financial planner), and pay out of my estate the reasonable costs of obtaining the advice;
    25. delegate in writing the exercise of any powers, and to execute any powers of attorney or other instruments necessary to effect the delegation;
    26. nominate in writing any specific powers that are within the general or specific powers by virtue of my Will or any statute or rule of law;
    27. do all other things incidental to the exercise of these powers; and
    28. restrict in writing the temporary or permanent exercise of any of these powers.

- END OF SCHEDULE P -