



Queensland University of Technology
The Australian Centre for Philanthropy
and Nonprofit Studies

CPNS Mission

To bring to the community the benefits of teaching, research, technology and service relevant to the philanthropic and nonprofit communities.

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Accepting bequests from animal lovers

Note: This guide is intended to inform the lay staff and volunteers of charitable organisations about the basic concepts and processes of wills and estate law in order that they can better instruct their advisors. It is neither intended as, nor can it replace professional advice which should be sought promptly in matters involving wills or bequests.

Fact 1: Animal lovers cannot leave bequests to their animals

The *Succession Act* 1981 (Qld) does not refer to a will-maker leaving a legacy directly to a pet or to any animal. Animals cannot inherit from a will directly since they are classified legally as property, and have no capacity to hold money or property themselves. Therefore, there is a presumption that all beneficiaries will be persons, either natural or otherwise. The only exception to this presumption is a legacy to an unincorporated association, which is validated by section 33Q of the *Succession Act*.

Fact 2: Bequests can be left to animal charities

It is possible to leave a bequest to the care of animals generally provided the bequest is for **charitable purposes**. If you are an animal charity you can:

- advertise for bequests in Queensland, and
- include suggested wording for bequest clauses on your website.

It is essential that organisations seek appropriate legal advice about their bequest clause. The wording of a bequest clause can be important so that it is clear that the bequest is for a charitable purpose within the meaning of that term in Queensland, and that the bequest is given with a **general charitable intention**.

There are several **important issues to remember** here:

- use your website to solicit bequests and suggest the correct wording for your bequest clauses on your website;
- make sure your bequest clauses have been approved by your solicitors so that they:
 - use the correct name for your charity
 - refer to the bequest as one for charitable purposes
 - refer to the bequest as being for a general charitable intention;
 - always recommend that your potential benefactors obtain legal advice for themselves when you solicit a bequest; and
- encourage potential benefactors to contact you about a bequest in advance so that you can make suggestions as to what kind of bequest would be most useful, suggest standard bequest clauses to use, and discuss with the benefactor how the bequest will be dealt with.

Fact 3: Family provision claims can adversely affect a bequest to your charity

While a will-maker can make any legacy or bequest to charity which he or she wants, each Australian state has legislation which allows family members and dependants of various kinds to make a claim on the will-maker's estate which can overturn or reduce a charitable legacy. In Queensland, this provision is found in Part IV of the *Succession Act 1981*.

Therefore, while a will-maker may leave his or her entire estate to an animal charity, a family member or dependant who is a proper claimant, and who is found not to be properly provided for in the will in question, may apply to have proper provision made. Depending on the circumstances, this type of application may mean that some or all of bequest to the animal charity will be lost.

There is extensive case law on the issue in Australia which strongly favours family claimants as against charities of all kinds. Indeed, charities have been entirely successful in only 6.5% of the major court cases decided in Australia on the issue. Whilst most of these cases do not involve animal charities, an example may be seen in a case from New South Wales in 2001, in which an entire estate was left to the RSPCA (NSW). However, the three adult children of the testator were successful in their family provision claim, which reduced the legacy to the RSPCA by 60%.

Therefore, it is important for a will-maker who wants to leave any legacy, but particularly a substantial legacy, to an animal charity to take into account the possibility of a family provision claim.

Ultimately, there is nothing that can practically be done to avoid such claims, but perhaps the following steps are advisable:

- encourage potential benefactors to:
 - discuss openly with family any intention to leave a bequest to an animal charity
 - have legal advice on the framing of the bequest and its wording
 - inform you of any intention to leave a bequest, and take your advice as to what kind of bequest would be most suitable
- discourage potential benefactors from leaving their entire estate to your charity, unless they have no possible family or dependant claimants on their estate
- be careful that all your staff and volunteers understand not to engage in any coercive behaviours or tactics in attempting to gain bequests – these include fraud, undue influence, unconscionable conduct, psychological pressure, or coercive force
- consult FIA standards and principles on fundraising and bequests:
http://www.fia.org.au/AM/Template.cfm?Section=Principles_and_Standards_of_Fundraising_Practice

This information sheet is part of a series of research projects on bequests and planned giving funded by the E F and S L Gluyas Trust and the Edward Corbould Charitable Trust under the management of the Perpetual Trustees Company. Many issues require further investigation, including practical considerations for charities in pursuing bequests in wills, and a further report will be forthcoming from CPNS on this topic.

This Information Sheet was issued on 22 September 2008. Events, policies and laws alter rapidly – you should take independent advice before acting on any matter raised in this publication.

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