

Being proactive whilst you have capacity .

In late 2012, the Queensland Supreme Court ordered that an alteration to a grandfather's will be made by way of a codicil, that provided for the establishment of a separate testamentary trust for each of his grandsons. *Please see attached article on the case, by Richard Williams, Barrister.*

This is a landmark decision !

This highlights/emphasizes the following:

- Possible addition of a trust to a Will by the court, at the request of a beneficiary during the Willmaker's lifetime , but after he has lost capacity.
- Courts ability to authorise a Will for a person without capacity and help children who may have assets or testamentary wishes, who cannot legally make a will.
- The significant tax and other benefits that are sought via the courts or via an alternative mechanism

An alternative cheaper mechanism to a statutory will is an estate proceeds trust. An estate proceeds trust can rectify an oversight by a testator/ Willmaker who has omitted to incorporate a testamentary discretionary trust in their will . However, it has significant limitations.

Where possible, **the best solution is:** to establish a will which incorporates a **testamentary discretionary trust**, whilst a Willmaker retains capacity and in their lifetime.

A testamentary discretionary trust , properly crafted, can provide great benefits. It can exist for 80 years, have a wide class of beneficiaries and is capable of being either partially or wholly discretionary.

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