



ADLV LAW
FIERCELY ON YOUR SIDE

SOLUTION BRIEF

Legal Capacity to make a Will and Enduring Power of Attorney

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It is an essential requirement of a valid Will and Enduring Power of Attorney that the testator/ donor possesses the requisite testamentary capacity. In assessing such capacity both the mental capacity and the general knowledge and 'awareness' (e.g. that the testator knew and approved the contents of the Will) of the testator/donor is relevant.

Testamentary capacity

In relation to a testator, the testator must be of sound mind, memory and understanding. The common law principle (which was laid down in the 1870 case of *Banks v Goodfellow*) is that to have such capacity, a testator:

- Must understand their acts and the nature of those acts;
- Must understand the extent of their testamentary disposition (i.e. the extent of the property to which they are disposing);
- Must be able to comprehend and appreciate the claims (i.e.. the moral claims) to which they ought to give effect (namely persons who might reasonably expect to benefit from their Will); and
- Must not be influenced by any 'insane delusion' in the disposition of their property (i.e. 'that no disorder of the mind shall poison his/her affections, pervert his/her sense of right, or prevent the exercise of his/her natural faculties – that no insane delusion shall influence his /her will in disposing of his property and bring about a disposal of it which, of the mind had been sound, would not have been made').

The capacity to make an Enduring Power of Attorney would hinge on similar requirements.



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TALK TO US

What next?

If you would like to speak to someone about putting in place a Will or Enduring Power of Attorney, call us on 1300 654 590 or email us at wehelp@adlvlaw.com.au.

Further information can also be found on our website at www.adlvlaw.com.au.

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