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## How Gender and Other Identity Factors Influence Attitudes Toward Will Making: Lessons From Australia

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**Authors**

Bridget J. Crawford, Tina Cockburn, Kelly Purser, Ho Fai Chan, Stephen Whyte, and Uwe Dulleck

# How Gender and Other Identity Factors Influence Attitudes Toward Will Making: Lessons from Australia

*Bridget J. Crawford,\* Tina Cockburn,† Kelly Purser,‡  
Ho Fai Chan,§ Stephen Whyte<sup>¶</sup> & Uwe Dulleck<sup>α</sup>*

## ABSTRACT

*This essay aims to stimulate interest in further empirical study of attitudes toward will making by reporting the results of a 2022 survey conducted in Australia of the general population (n=1202) and legal professionals (n=112). We asked participants for their views about the ideal age at which to begin the will-making process and the relative contributions of the client and attorney to any resulting will. There was a discernible gender-based difference in views on both questions. Women preferred to initiate those conversations approximately six years earlier than men did and, especially at earlier life stages, preferred less professional input into the will-making process than men did. Income and education levels appear to have no impact on individuals' responses to these questions. The sample population was sufficiently homogeneous that it is not possible to*

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*draw conclusions about how religious background or political views may impact preferences about when the first will-making conversation should occur or the desired relative contribution of the legal professional to the ultimate will.*

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## I. INTRODUCTION

Many trust and estate scholars embrace empirical questions and methods to generate important baseline knowledge. For example, by engaging with surveys, probate records, or both, scholars have made important findings about the percentage of the U.S. population that has a will,<sup>1</sup> the types of estates associated with below-market sales of the family home,<sup>2</sup> and the characteristics of estates with litigation over the surviving

<sup>1</sup> See Alyssa A. DiRusso, *Testacy and Intestacy: The Dynamics of Wills and Demographic Status*, 23 QUINNIPIAC PROB. L.J. 36, 41–42 (2009); Wendy S. Goffe & Rochelle L. Haller, *From Zoom to Doom? Risks of Do-It-Yourself Estate Planning*, 38 EST. PLAN. 27, 27 (2011); David A. Horton, *Wills Law on the Ground*, 62 UCLA L. REV. 1094, 1121–22 (2015).

<sup>2</sup> See Danaya C. Wright, *What Happened to Grandma's House: The Real Property Implications of Dying Intestate*, 52 U.C. DAVIS L. REV. 2603, 2606–07 (2020).

spouse's elective share right.<sup>3</sup> Likewise, an area of longstanding interest to scholars is how well the default rules of intestacy match majoritarian preferences.<sup>4</sup> There is even ample (if dated) evidence that explains why people do not have wills.<sup>5</sup> Yet there has never been a comprehensive national study of estate planning behavior in the United States. Scholarship incrementally advances the collective understanding, but substantial gaps remain in many areas.

One area where empirical research has the potential to yield new insights is the study of attitudes toward will making. What age do most people consider the "right" time to start the will-making process? In the views of members of the general public, what are the relative expected contributions of the client and the lawyer to the will-making process? Do attitudes vary by identity factors like gender, income, education, religion, or political affiliation? With answers to these questions, estate planners might be better equipped to understand their clients' individual needs, hesitations, and expectations. So, too, could policy makers better design effective community education efforts that prioritize testacy over intestacy and minimize litigation relating to the validity and construction of wills.

This essay adds to the empirical knowledge by exploring the results of two surveys: the first asked members of the Australian general public (n=1202) for their opinions on the appropriate age for making a first will and how much of the final document should reflect the client's input versus the legal professional's.<sup>6</sup> The second survey asked legal professionals (n=112) the same questions. Using a behavioral economics lens, we also asked both groups whether the availability of remote witnessing rules for wills—newly adopted during the pandemic in several states in Australia,<sup>7</sup> as in the U.S.—impacted their attitudes toward making a will.

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<sup>3</sup> See Naomi Cahn, *What's Wrong About the Elective Share "Right"?*, 53 U.C. DAVIS L. REV. 2087, 2089 (2020).

<sup>4</sup> See, e.g., Mary Louise Fellows et al., *An Empirical Assessment of the Potential for Will Substitutes to Improve States Intestacy Statutes*, 85 IND. L.J. 409, 436-38 (2010); Yair Listokin & John Morley, *A Survey of Preference for Estate Distribution at Death Part I: Spouses and Partners 1-3* (2023), <https://ssrn.com/abstract=4332171> [<https://perma.cc/N7DR-PP8S>].

<sup>5</sup> See, e.g., Contemporary Studies Project, *A Comparison of Iowans' Dispositive Preferences with Selected Provisions of the Iowa and Uniform Probate Code*, 63 IOWA L. REV. 1041, 1077 (1978).

<sup>6</sup> See Tina Cockburn et al., *A Behavioral Economics Analysis of Will Making Preferences: When to Begin and Who Should Have Most Input?*, 32 MINN. J. INT'L L. 1, 14 (2023).

<sup>7</sup> Australian states adopted remote electronic witnessing rules as an emergency measure during the pandemic, with varying outcomes in terms of permanency. For example, the State of Queensland discontinued the practice, whereas the State of Victoria enacted permanent remote witnessing rules, and the State of New South Wales has adopted a pilot program. See generally Bridget J. Crawford et al., *Wills Formalities in a Post-Pandemic*

In a prior article, we reported the results, focused primarily on the differences that emerged between members of the general public and legal professionals, as well as the cognitive biases that influenced their views.<sup>8</sup> That article reported three noteworthy findings. First, we found that members of the general public set the ideal age for making a first will almost twenty years later than legal professionals did: 47.39 years of age compared to 28.2 years of age.<sup>9</sup> Second, members of the general public contemplated legal professionals' having less input into a will's content (65.41%) than the legal professionals themselves did (70.23%). Finally, the availability of pandemic-era remote witnessing rules had no impact on the attitudes of either members of the general public or legal professionals toward making a will.<sup>10</sup>

This article builds on that prior work to explore how individual identity factors such as gender, age, education, income, religion, and political affiliation impact the responses of the general public to the same questions about when to begin the will-making process and the relative expected contribution of the legal professional to the will-making process. We find that stated preferences are strongly correlated with both gender and age, but not other identity factors. We make five findings of note:

- (1) On average, women wish to begin the will-making process almost six years earlier than men do.
- (2) Women aged 18 to 45 want substantially less input from legal professionals than men in the same age cohort do.
- (3) Men's desire for input from professionals appears to vary more significantly over their lifespan than women's sentiments do.
- (4) When making a will, younger people tend to want less professional input from legal professionals than older people do.
- (5) Education and income do appear to be correlated to views of the ideal age at which to begin will making or the desired level of input from a legal professional.

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*World: A Research Agenda*, 2021 U. CHI. LEG. F. 93, 93 (2021); Kelly Purser et al., *End of Life Decision-Making, Advance Care Planning and Estate Planning During a Pandemic*, in PANDEMICS, PUBLIC HEALTH EMERGENCIES AND GOVERNMENT POWERS: PERSPECTIVES ON AUSTRALIAN LAW 353, 353 (Belinda Bennett & Ian Freckelton eds., 2021); Kelly Purser et al., *Wills Formalities Beyond COVID-19: An Australian-United States Perspective*, 5 U.N.S.W. L.J.F. 1 (2020).

<sup>8</sup> Cockburn et al., *supra* note 6, at 14.

<sup>9</sup> *See id.*

<sup>10</sup> *Id.* at 33. For a discussion of the relationship between the six cognitive bias results, on the one hand, and preferred age for first discussion of will making and relative share of contribution to the will's contents, see *id.* at 22.

The lack of variation in the sample does not permit any comparisons along axes of religious or political differences. While the findings are limited to the Australian context, they set the stage for a similar inquiry focused on the U.S. population.<sup>11</sup>

Part II of this essay provides an overview of the empirical study's methods, results, and limitations. Part III explains the extent to which gender and age correlate to attitudes toward will making and discusses the reasons that this may be so. Part IV sketches possible future directions for further empirical studies in Australia, the United States, and beyond that could add to knowledge about attitudes toward will making and estate planning more broadly. The resulting information could inform interventions that positively impact behavior at individual and societal levels.

## II. AN EMPIRICAL STUDY OF ATTITUDES TOWARD WILL MAKING: DESIGN AND RESULTS

### A. Methods

In 2021, a research team at the Queensland University of Technology in Brisbane, Australia—including five authors of this essay—designed two surveys. The first was an online survey of members of the Australian general public who were eighteen years of age or older.<sup>12</sup> The second was a survey of solicitors and paralegals working anywhere in Australia.<sup>13</sup> Participants for this second survey were recruited via newsletters and other communications sent through state-based professional organizations, a national organization of public interest lawyers, and the Society of Trust and Estate Practitioners Australia, a membership and credentialing organization for those who specialize in the law of trusts and estates.<sup>14</sup> The research team also contacted some law firms directly and invited them to share the survey invitation with their attorneys.<sup>15</sup>

Both surveys began with questions typical of social science research and designed to measure six types of cognitive bias: conjunction fallacy,

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<sup>11</sup> See *id.* at 35 (calling for a study of “[comparative] cross-jurisdictional attitudes on these same questions, [that will] assess similarities and differences” in order to “determine whether certain insights from the Australian study are translatable to jurisdictions with different policies, laws, and traditions.”).

<sup>12</sup> See *id.* at 10.

<sup>13</sup> See *id.* at 10 n.27. On the difference between a lawyer and a solicitor in Australia, see, for example, *Solicitor vs. Lawyer in Australia*, ROSE L. (Nov. 20, 2018), <https://roselaw.com.au/resources/solicitor-vs-lawyer-in-australia/> [<https://perma.cc/C7WT-BWLY>]. Respondents did not need to specialize in the estate planning to participate in the survey. See Cockburn et al., *supra* note 6, at 10.

<sup>14</sup> Cockburn et al., *supra* note 6, at 10 n.27.

<sup>15</sup> See *id.*

illusion of control bias, endowment effect bias, herding bias, confirmation bias, and risk aversion.<sup>16</sup> The surveys then asked the participants a variety of demographic questions and two stated preference questions:

- (1) At what age do people prefer to have an initial discussion with a legal professional regarding engaging in the will-making process?
- (2) As between the individual and their legal advisor, who should have the most input into the content of any resulting will?<sup>17</sup>

The survey did not provide any further explanations, so respondents were free to interpret the terms “will-making process” and “input” as they saw fit. To answer the first question, participants positioned a slider on a scale of 18 years to 80 years old. To answer the second question, participants chose from a menu of twenty-one options that ranged from 0% expected client input/100% expected professional input, increasing/decreasing by 5% at each step to 100% expected client input/0% professional advisor input.<sup>18</sup>

The survey’s last section measured the impact of attribute framing specific to the availability of pandemic-era rules that permitted remote witnessing of wills via audio-visual technology.<sup>19</sup> Participants were asked to rank in order of importance the reasons that someone might use such technology to create their will. For half of the randomly assigned participants, the reasons were framed positively (e.g., remote witnessing may reduce financial cost to the client) or negatively (in-person witnessing may increase financial cost to the client).<sup>20</sup>

Table 1 shows the summary statistics for the study sample of members of the Australian general public. Table 2 provides the general descriptive statistics for the same group.

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<sup>16</sup> See *id.* at 11. For definitions of these behavioral biases, see *id.* at 13-14.

<sup>17</sup> See *id.* at 12-14.

<sup>18</sup> See *id.* at 25-26 tbl. 5. The survey also asked a variety of questions about attitudes toward the use of audiovisual technology for the remote execution and/or witnessing of wills. *Id.* at 13. Discussion of those findings is beyond the scope of this essay.

<sup>19</sup> See *id.* at 13.

<sup>20</sup> See *id.*



TABLE 1 – SUMMARY STATISTICS BY GROUP

<i>Australian general public (n=1,202)</i>	<b>Sample</b>	<b>SD</b>	<b>Min</b>	<b>Max</b>	<b>Total Australian Population (all ages)<sup>21</sup></b>
Male (%)	65.8%				49.3%
Female (%)	34.2%				50.7%
Age	49.47	(18.44)	18	96	38
Age (female)	46.41	(17.73)	18	88	39
Age (male)	51.06	(18.61)	18	96	37
Ideal age for initial will-making discussion	45.37	(16.29)	16	80	-
Share of legal professional's input in will content	65.41	(33.18)	0	100	-

<sup>21</sup> See *Snapshot of Australia*, AUSTRALIAN BUREAU OF STATISTICS, <https://www.abs.gov.au/statistics/people/people-and-communities/snapshot-australia/latest-release> [<https://perma.cc/98MW-WR23>].

TABLE 2 – GENERAL PUBLIC DESCRIPTIVE STATISTICS – CATEGORICAL VARIABLES

	N	Study Sample	Australian Adult Population
<b>Education level:<sup>22</sup></b>			
<i>Below Grade 10</i>	4	0.61%	9.07%
<i>Grade 10 or 11</i>	83	12.71%	25.3%
<i>Grade 12</i>	62	9.49%	58.85%
<i>Technical/Pre-vocational</i>	84	12.86%	(44.97%)
<i>Undergraduate</i>	217	33.23%	(27.46%)
<i>Postgraduate</i>	183	28.02%	(14.12%) <sup>23</sup>
<i>Doctor/PhD</i>	20	3.06%	n/a
<b>Total</b>	N=1202		
<b>Income level per annum:<sup>24</sup></b>			
<i>\$10,000 or less</i>	94	8.33%	
<i>\$10,001 - \$20,000</i>	116	10.28%	
<i>\$20,001 - \$30,000</i>	169	14.98%	
<i>\$30,001 - \$40,000</i>	93	8.24%	
<i>\$40,001 - \$50,000</i>	98	8.69%	

<sup>22</sup> See *Income*, AUSTRALIAN GOVERNMENT DEPARTMENT OF EDUCATION (Mar. 23, 2022), <https://www.education.gov.au/integrated-data-research/benefits-educational-attainment/income> [<https://perma.cc/8NTB-6J9A>]. Data on the Australian Adult Population comes from the 2021 Census. See *2021 Census of Population and Housing: General Community Profile: Highest Year of School Completed by Age by Sex*, AUSTRALIAN BUREAU OF STATISTICS tbl. G16, [https://www.abs.gov.au/census/find-census-data/community-profiles/2021/AUS/download/GCP\\_AUS.xlsx](https://www.abs.gov.au/census/find-census-data/community-profiles/2021/AUS/download/GCP_AUS.xlsx) [<https://perma.cc/5N5E-E3T9>]; *Religious Affiliation in Australia*, AUSTRALIAN BUREAU OF STATISTICS (Apr. 7, 2022), <https://www.abs.gov.au/articles/religious-affiliation-australia> [<https://perma.cc/K5MA-N6SF>]. Note that the Census Data on education level is for those 15 years of age and higher, whereas the surveyed population is of those 18 years of age and older. See *id.* There are challenges in presenting the education data in this side-by-side format because of differences in this study's method of data collection and reporting, compared with the Australian census. See *id.* The numbers in parentheses indicate the percentage of people whose highest "non-school qualification" (i.e., education beyond primary or secondary school) is technical/pre-vocational, undergraduate, or postgraduate. See *id.* However, all people included in these three reporting bands are also counted for Census purposes in the "Grade 12" band, as the Census treats all of those with technical/pre-vocational, undergraduate, or postgraduate education as having achieved a "school" qualification of Grade 12. See *id.*

<sup>23</sup> See *id.* "Postgraduate" includes PhD, Masters, and Graduate Diploma and Graduate Certificate Levels of educational attainment. See AUSTRALIAN GOVERNMENT DEPARTMENT OF EDUCATION, *supra* note 22, at fig. 2.

<sup>24</sup> See *2021 Census of Population and Housing*, AUSTRALIAN BUREAU OF STATISTICS, <https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/income-and-work-census/2021/Income%20and%20work%20data%20summary%20-%20first%20and%20second%20release.xlsx> [<https://perma.cc/4FGS-684Z>]. This study asked participants for their annual income, whereas the Census collects weekly income data. *Id.* The annualized Census figures are shown in Appendix 1 *infra*. We have made annual projections on that basis.

**Income level per annum:**

<i>\$50,001 - \$60,000</i>	104	9.22%
<i>\$60,001 - \$70,000</i>	92	8.16%
<i>\$70,001 - \$80,000</i>	72	6.38%
<i>\$80,001 - \$90,000</i>	54	4.79%
<i>\$90,001 - \$100,000</i>	44	3.90%
<i>\$100,001 - \$110,000</i>	43	3.81%
<i>\$110,001 - \$120,000</i>	15	1.33%
<i>\$120,001 - \$130,000</i>	22	1.95%
<i>\$130,001 - \$140,000</i>	13	1.15%
<i>\$140,001 - \$150,000</i>	22	1.95%
<i>\$150,001 - \$160,000</i>	15	1.33%
<i>\$160,001 - \$170,000</i>	7	0.62%
<i>\$170,001 - \$180,000</i>	6	0.53%
<i>\$180,001 - \$190,000</i>	7	0.62%
<i>\$190,001 - \$200,000</i>	11	0.98%
<i>More than \$200,000</i>	31	2.75%

**Total** N=1128

**Religion:**

<i>Christianity</i>	599	49.88%	43.9%
<i>Atheism/no religion</i>	218	18.15%	38.9%
<i>Buddhism</i>	51	4.25%	2.4%
<i>Islam</i>	46	3.83%	3.2%
<i>Hinduism</i>	27	2.25%	2.7%
<i>Judaism</i>	5	0.42	n/a
<i>Other</i>	255	21.23	8.9%

**Total** N=1201

**Political affiliation:<sup>25</sup>**

<i>Labour Party</i>	380	31.61%	33.33%
<i>Liberal Party</i>	359	29.87%	34.09%
<i>The Greens</i>	112	9.32%	10.73%
<i>National Party</i>	44	3.66%	2.91%

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<sup>25</sup> For a discussion of Australia's largely two-party system, see, for example, Matilda Boseley et al., *Voting 101: A Crash Course on the Different Political Parties in Australia*, *GUARDIAN* (May 5, 2022, 11:52 PM), <https://www.theguardian.com/australia-news/video/2022/may/06/voting-101-a-crash-course-on-the-different-political-parties-in-australia-video> [<https://perma.cc/A6SC-TLY9>]. Data on the percentage of the Australian electorate belonging to each party is drawn from Ian McAllister et al., *Australian Election Study, 2022*, *ADA DATAVERSE*, <https://dataverse.ada.edu.au/dataset.xhtml?persistentId=doi:10.26193/W3U2S3> [<https://perma.cc/H CZ5-ALEL>]. See also Sarah Cameron et al., *The 2022 Australian Federal Election Results from the Australian Election Study*, *AUSTL. NAT'L UNIV.* (2022) (showing data on the percentage of the Australian electorate belonging to each party).

**Political affiliation:**

<i>Centralist</i>	70	5.82%	n/a
<i>Non-partisan</i>	132	10.98%	15.59% <sup>26</sup>
<i>Other</i>	105	8.74%	6.26%
<b>Total</b>	<b>N=1202</b>		

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Compared to the Australian population aged eighteen and older, our study population was slightly older. The sample disproportionately over-represented males and members of the Labour Party and the National Party. Members of the Liberal Party and the Greens, as well as people with no stated religious affiliation, are underrepresented. The income distribution of the study sample generally tracks the Australian population.<sup>27</sup>

For analytic purposes, we used the questions about the ideal age at which to start will making and the relative intended contributions of the client and legal professional as dependent variables in conducting a bivariate analysis. We examined the differences between male and female respondents to both questions. We then conducted a multivariate analysis to model how both men's and women's attitudes differed by age, education level, religion affiliation, and political affiliation. The next part of the essay discusses the results.

## B. Results

Table 3 presents the regression data.

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<sup>26</sup> See Cameron et al., *supra* note 25. Note that there is no "Centralist" designation in the Australian Election Study, so the "Non-Partisan" category may capture those people in the study sample who self-identified as "Centralist." *Id.* See also McAllister et al., *supra* note 25.

<sup>27</sup> See *infra* Appendices 1-2.

TABLE 3 – IDEAL AGE FOR ESTATE PLANNING AND SHARE OF INPUT BY CLIENT VS. LEGAL PROFESSIONAL, BY GENDER, AGE, EDUCATION LEVEL, INCOME, RELIGIOUS AFFILIATION, AND POLITICAL AFFILIATION

	(1)		(2)	
	Ideal age for initial will-making discussion		Share of legal professional's input into will/estate plan	
Participant's age	-.071**	(.0301)	-.5696***	(.0581)
Male	6.619***	(1.045)	4.641**	(2.061)
	(1)		(2)	
	Ideal age for initial will-making discussion		Share of legal professional's input into will/estate plan	
Education	.5027	(.3196)	-.2662	(.6046)
Income	-.1699	(.1131)	-.1022	(.2144)
<i>Religious affiliation</i>				
Christianity	(REF.)		(REF.)	
Atheism	-1.958	(1.339)	-3.059	(2.42)
Buddhism	4.69**	(2.311)	5.095	(4.621)
Islam	2.484	(2.426)	9.524*	(5.172)
Hinduism	4.767	(3.489)	14.09**	(5.82)
Judaism	6.861	(8.03)	10.53	(13.97)
Other	-1.463	(1.288)	.1313	(2.392)
<i>Political affiliation</i>				
The Greens	1.781	(1.726)	6.494*	(3.61)
Labour Party	(REF.)		(REF.)	
Centralist	-.9499	(2.104)	2.328	(4.138)
National Party	5.714**	(2.421)	3.943	(4.857)
Liberal Party	-.6411	(1.27)	3.04	(2.325)
Nonpartisan	-3.272**	(1.646)	-2.538	(2.695)
Other	-.3165	(1.847)	-.6377	(3.669)
Constant	40.38***	(2.981)	54.84***	(5.735)
Other Controls	Yes		Yes	
N	1122		1122	
R <sup>2</sup>	.0818		.218	

Notes: Standard errors (robust) in parentheses.

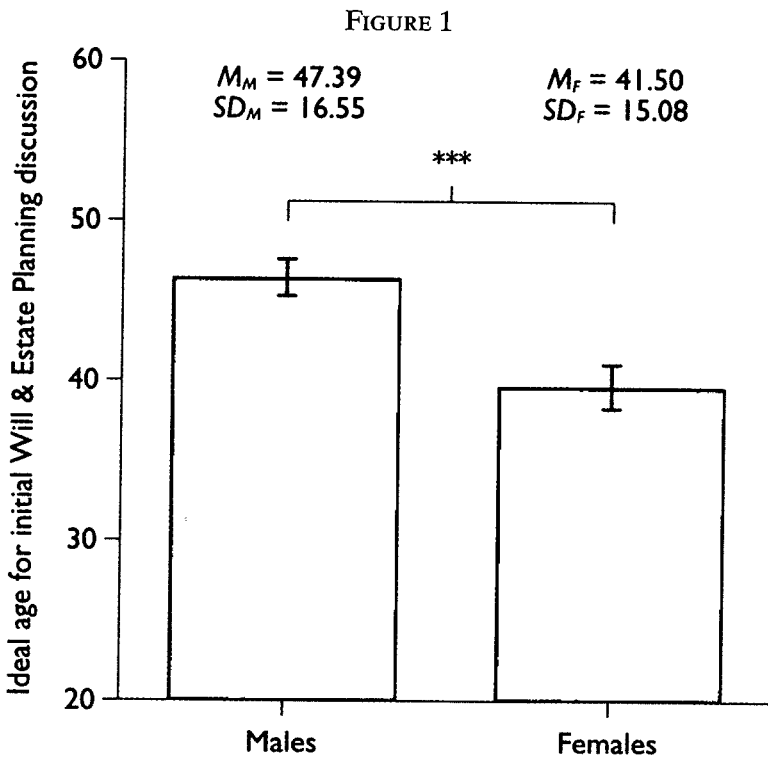
\*  $p < .10$ ; \*\*  $p < .05$ ; \*\*\*  $p < .01$ .

In this discussion of the results from the empirical study, we examine how expressed preferences of the ideal age for beginning will making differ by gender and how expressed preferences for input of legal professionals vary by gender, age, and over time. We also consider the impact of

income, religious identity, and political affiliation on the answers to these questions.

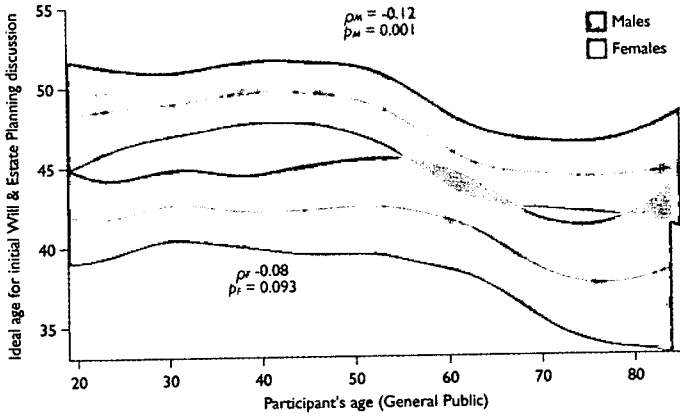
### 1. Gender and Commencement of Will Making

In response to the question about the ideal age for an initial discussion regarding will making, there is a statistically significant difference (diff = 6.629 years,  $p < .01$ ) between men's mean and women's mean, with the women preferring first discussions of will making at a much earlier age ( $M = 41.50$ ) than men ( $M = 47.39$ ). See Figure 1.



The gender difference is even greater in the sample population aged 18 to 50 years, with women preferring a first discussion on average eight to ten years earlier compared to men. See Figure 2.

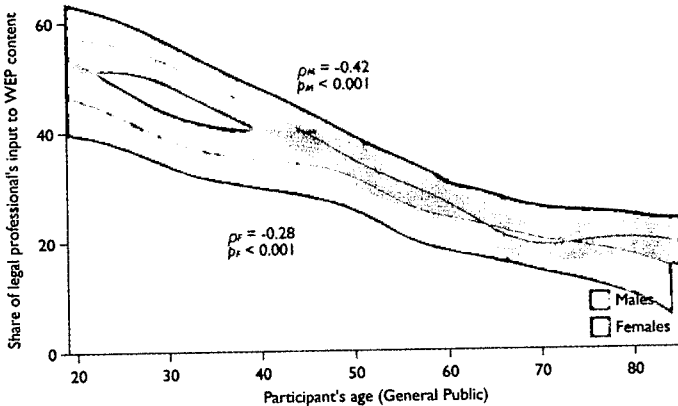
FIGURE 2



2. Gender, Age, and Desire for Input of Legal Professionals

In response to the question about stated preferences for the relative share of input into the will by the client compared to a legal professional, there is a statistically significant difference (diff.= 4.4641 years,  $p < .05$ ) between men's mean and women's mean, with the women preferring less professional input (M=32.1% professional input) compared to men (M=35.6%). The greatest gap appears in the 18 to 45 age group. Note, though, that the rate of change by age cohort is greater for men ( $m = -0.42$ ) than for women ( $m = -0.28$ ). In other words, men's views were subject to greater change at different life stages than women's views were. For both men and women, though, the percentage of input sought from legal professionals increased over time. See Figure 3.

FIGURE 3



### 3. *Education, Income, and Certain Will Making Preferences*

We found no statistically significant relationship between education level or income level and either the stated age preference for an initial discussion regarding will making or the relative share of input into the will by the client compared to a legal professional.

### 4. *Religion, Politics, and Views on Estate Planning*

Because of lack of variation in the sample, we cannot draw any conclusions about the ways that religious identity or political affiliation impact views on these questions.

## C. Limitations

The survey has several important limitations. Firstly, as noted above, the samples are not nationally representative in several important ways.<sup>28</sup> Secondly, there is selection bias, insofar as participants self-selected into a survey administered online, which is typical of social science surveys. The samples thus may be skewed in favor of those who are more socially aware and more educated, have greater access to technology, have greater facility in using that technology, and/or perceive some sort of benefit from participating that members of the general public do not.<sup>29</sup> For that reason, surveys do not provide representative evidence.<sup>30</sup> Thirdly, the online survey asked about stated preferences about the ideal age at which to begin an initial discussion regarding will making and the relative share of input into the will-making process by the client compared to a legal professional. By definition, it does not yield any insights into revealed preferences (i.e., actual behavior).<sup>31</sup> Fourth, the descriptive categories used in the survey tended to be binary in some cases (e.g., male/female) and non-binary in others (e.g., religious affiliation or political affiliation) and thus may not adequately capture the full range of identities that could be relevant to the outcomes. Finally, the survey does not ask any questions about race, ethnicity, language status, immigration status, country of birth, or location of residence. In part, this is consistent with the Australian Bureau

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<sup>28</sup> See *supra* Tables 1-2.

<sup>29</sup> See Cockburn et al., *supra* note 6, at 34-35.

<sup>30</sup> See generally David S. Yeager et al., *Comparing the Accuracy of RDD Telephone Surveys and Internet Surveys Conducted with Probability and Non-Probability Samples*, 75 PUB. OP. Q. 709, 718-19, 732 (2011) (discussing limitations of internet surveys).

<sup>31</sup> See, e.g., Stephen Whyte & Benno Torgler, *Preference Versus Choice in Online Dating*, 20 CYBERPSYCHOLOGY, BEHAV. & SOC. NETWORKING 150, 150 (2017) (discussing differences between stated preferences and revealed preferences).



of Statistics' current practice of not collecting race or ethnic background data.<sup>32</sup> At the same time, the Australian population is diverse in several meaningful ways; to give just one example, 29.1% of the population was born outside Australia.<sup>33</sup> The survey does not capture that richness.

### III. DISCUSSION: GENDER AND AGE MATTER, BUT INCOME, EDUCATION (AND RELIGION) MAY NOT

It is difficult to say why gender is correlated to a preference for initial will-making conversations at earlier ages and less input from a legal professional. One highly speculative explanation might refer to women's material realities. That is, on average, women tend to earn approximately 77.2 cents for every dollar earned by a man in Australia, so women of all kinds—single or partnered, in same-sex relationships or different-sex relationships—may be aware of their relative lack of economic power and thus feel an acute need to plan for the financial future.<sup>34</sup> Indeed, women accounted for 81.7% of the increase in the population of people experiencing homelessness in Australia in 2021, compared to 2016.<sup>35</sup> Furthermore, to the extent that women tend to have greater responsibility than men do for caring for both children and senior generation family members,<sup>36</sup> they may be more focused on securing the financial future (for children) or facilitating the distribution of property at death (their own or a parent's). If this is true, then the especially pronounced gender gap in stated preferences for the age of first will making in the age cohort 18 to 50 years, compared to women in older age groups, might be explained by the fact that women in the 18 to 50 group are more likely to have minor

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<sup>32</sup> See, e.g., Andre M. N. Renzaho, *The Lack of Race and Ethnicity Data in Australia—A Threat to Achieving Health Equity*, 20 INT'L J. ENV'T RSCH. & PUB. HEALTH 5530, 5530-31 (2023) (discussing non-collection of race and ethnicity data by several OECD countries including Australia).

<sup>33</sup> See *Australia's Population by Country of Birth*, AUSTR. BUREAU OF STAT. (Apr. 4, 2022), <https://www.abs.gov.au/statistics/people/population/australias-population-country-birth/latest-release> [<https://perma.cc/4WFM-JCFT>].

<sup>34</sup> See, e.g., *Gender Pay Gap Data*, WORKPLACE GENDER EQUAL. AGENCY, <https://www.wgea.gov.au/pay-and-gender/gender-pay-gap-data> [<https://perma.cc/P6BC-WKFZ>] (“For every \$1 on average a man makes, women earn 77.2c. Over the course of a year, that difference adds up to \$25,596.”).

<sup>35</sup> See *Estimating Homelessness: Census*, AUSTR. BUREAU OF STAT. (Mar. 22, 2023), <https://www.abs.gov.au/statistics/people/housing/estimating-homelessness-census/2021> [<https://perma.cc/VQV4-7U4U>].

<sup>36</sup> See, e.g., *The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 20*, MELBOURNE INST. APPLIED ECON. & SOC. RSCH. 25, 28 (2022) (noting that for the period 2005 to 2019, women were “considerably more likely to be carers than males” and “more likely to be the main carer for their care recipient”). *Id.* at 28. “In fact, women are 68.7% of main carers.” *Id.*

children living at home than those in the older age cohorts.<sup>37</sup> We are not able to test these hypotheses, which rely on over-generalizations.

Informed by other empirical studies, it may be that this study's finding of women's comparatively earlier age preferences for initial will-making consultations do not, in fact, translate into actually making a will. Professor Alyssa DiRusso, for example, found in a study of a nationally representative survey of 324 members of the public in the United States that more than 38% of men reported having a will, but only 26% of women did.<sup>38</sup> In other words, there may be a gap between what women say they want (earlier consultations) versus what they do (actually execute wills). It is noteworthy, however, that DiRusso did find that marital status was correlated to having a will, with 33% of all married people having a will, compared to 15% of single people.<sup>39</sup> That is not an identity factor that this study tracked.

With regard to the stated preferences for the relative share of input into the will-making process by the legal professional compared to the client, women's desire for less input from a legal professional might reflect women's comparatively strong views about what pattern of estate distribution would be most beneficial for them and their children and a desire to effectively implement their estate plans and minimize estate disputes.

The fact that older people of both sexes seek greater input from legal professionals than younger people do might be explained by reference to age-related appreciations for the complexity of planning for post mortem distributions, more years of asset accumulation, or more complex family circumstances such as second marriages and blended families. The findings in this study are in keeping with those of Professor Cheryl Tilse and colleagues, who found in a study of the Australian general population (n=2,405) that rates of testation increased with age.<sup>40</sup> This makes sense, because as one ages, one's finances, family needs, or both tend to become more complex. Furthermore, as a practical matter, "[t]hose with greater wealth may be more concerned with how it is divided at their death, and may be more concerned with the tax implications of their estate plan. They may also be more likely to be in contact with attorneys and other professionals who would advise writing a will."<sup>41</sup> That explanation is complicated, though, by

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<sup>37</sup> See *supra* Figure 2.

<sup>38</sup> See DiRusso, *supra* note 1, at 45.

<sup>39</sup> See *id.* at 47-48.

<sup>40</sup> See Cheryl Tilse et al., *Making and Changing Wills: Prevalence, Predictors, and Triggers*, SAGE OPEN, Jan.-Mar. 2016, at 4 (finding that rates of testation increased with age cohort, starting at 9.8% for the group aged 18 to 29 and increasing to 93.4% for those aged 70 and older).

<sup>41</sup> Monica K. Johnson & Jennifer K. Robbennolt, *Using Social Science to Inform the Law of Intestacy: The Case of Unmarried Committed Partners*, 22 L. & HUM. BEHAV. 479, 484 (1998).

this study's finding of an absence of correlation between income level and either preferences for the first age for will-making consultation or the relative percentage contribution of a legal professional to an estate plan.

Ordinarily, one might associate a desire to engage in early will making and/or to receive legal advice with high incomes and/or high levels of education. Earning power tends to be related to educational attainment, and higher-income people are more likely than lower-income people to accumulate assets.<sup>42</sup> Professor DiRusso's study found educational levels to be highly correlated to the likelihood of having a will, with testacy rates of 22.7% among those in the U.S. with a high school education only (roughly Year 12 in Australia), 30% with some college, 38% with a bachelor's degree, and greater than 55% with those having a more advanced degree.<sup>43</sup> So, too, the DiRusso study found that rates of testation rose with income: 18.5% of those with annual income of \$25,000 or lower had a will compared to 33.5% of those with incomes ranging from \$25,000 to \$100,000, and 40.4% for those with incomes over \$100,000.<sup>44</sup> While DiRusso's study and this one measured different things—rates of testation (DiRusso) versus attitudes about the ideal age for an initial conversation about will making and the relative percentage contributions to the will by the client and the legal professional (this study)—the tensions in the two results point to the need for further study.

In fact, as Professors Yair Listokin and John Morley have hypothesized, it is possible that "in poorer families, the passage of assets to children is more urgent than in wealthier families."<sup>45</sup> This is because children in lower income families may need money right away in the event of the death of one or both parents.<sup>46</sup> Again, we are not able to test this hypothesis. Other empirical research has yielded conflicting findings about the relationship between income/wealth and will making.<sup>47</sup> Some studies have found that greater wealth is positively correlated with rates of testation

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<sup>42</sup> See, e.g., *Income: Higher Educational Attainment Leads to Higher Total Incomes, More Diverse Sources of Income and Reduces Reliance on the Aged Pension*, AUSTRALIAN DEPT. OF EDUCATION, <https://www.education.gov.au/integrated-data-research/benefits-educational-attainment/income> [<https://perma.cc/8NTB-6J9A>] (illustrating that for years 2015-2016, income and median income from wages and salaries increases with educational attainment in Australia).

<sup>43</sup> See DiRusso, *supra* note 1, at 49.

<sup>44</sup> *Id.* at 51.

<sup>45</sup> Listokin & Morley, *supra* note 4, at 31.

<sup>46</sup> See *id.*

<sup>47</sup> Compare, e.g., Tilse et al., *supra* note 40, at 4 (naming higher estate value as a predictor of testation), with Teresa Whitaker, *Creating Virtual Families? The Bequeathing Practices of Childless Single, and Widowed Testators in 1951 and 2000 in Ireland*, 32 J. FAM. HIST. 133, 137 (2007) (reporting in results of study of 98 wills by people of a variety of asset levels).

and other studies have not.<sup>48</sup> Again, the different research results point to the need for further research in this area. There is much that is unknown about basic behavior when it comes to will making.

#### IV. CONCLUSION

In light of the facts that gender appears correlated with the age that is considered “right” for a first conversation about will making and that both gender and age impact the attitudes about the legal professional’s expected contribution to that process, estate planning professionals might well tailor their communications. When counseling younger different-sex couples in particular, professionals may need to be especially attuned to gender-based differences in representing their clients. Each member of the couple likely brings to the process different rationales and expectations that can be explained in part by reference to gender.

Given this study’s findings that education, income, religion, and political affiliations appear to have no impact on stated preferences for the ideal age at which to begin the will-making process or views about the expected relative contributions of the client versus the legal professional to a will, it is tempting to say that these factors do not matter in estate planning. Of course, nothing could be further from the truth. Practically speaking, a client’s level of education almost always impacts on how an advisor communicates; education levels also may impact the nature and extent of the advice the client seeks input from the legal advisor. Similarly, the client’s income level, insofar as it is often correlated to wealth, may be one—if not the primary—driver of a tax-sensitive estate plan. Religious views, too, may directly inform the structure and substance of a will and other estate planning documents.<sup>49</sup> And political views may inform a client’s overall sense of the legal system in which the planning occurs and appetite for tax minimization.<sup>50</sup> In short, identity matters a great deal to estate planning.

In our prior article reporting the results of the two surveys, we suggested how law reformers can use this knowledge to develop new policies.<sup>51</sup> We identified the need for further comparative empirical work on

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<sup>48</sup> Compare, e.g., Joula E. Dekker & Mark V.A. Howard, Research Report 13: I Give, Devise and Bequeath: An Empirical Study of Testators’ Choice of Beneficiaries, at 10, (NSW L. Reform Comm’n 2006), with Whitaker, *supra* note 47.

<sup>49</sup> See, e.g., Wendy S. Goffe, *Conform Health Care Directive to Client’s Religious Views—Part I*, 39 EST. PLAN. 19 (2012) (explaining health care directive considerations informed by Jewish and Christian traditions and beliefs).

<sup>50</sup> See, e.g., Karen J. Sneddon, *The Will as Personal Narrative*, 20 ELDER L.J. 355, 360, 370 (2013).

<sup>51</sup> See Cockburn et al., *supra* note 6, at 35.

attitudes toward will making.<sup>52</sup> With the expectation that both we and others will continue on this path, we draw particular attention to the value of behavioral economics lenses in uncovering attitudes toward the use of remote audio-visual technology to facilitate the execution of wills. We found that regardless of whether remote witnessing was positioned as a benefit or “drag” on the will making process, the views of members of the general public and legal profession remained the same.<sup>53</sup> This neutrality suggests that there is no groundswell of support for making permanent any pandemic era remote witnessing statutes.<sup>54</sup>

Taking the broadest view, the results of this study—presented in both our prior article and this essay—point to the significant gaps in the state of knowledge about who engages in will making and when (and how) they go about doing so. There has been no systematic study of national practices and preferences in Australia or beyond. We hope that through contributions to the collective knowledge, we can build the case for a systematic study of attitudes and behaviors toward planning for the post mortem distribution of assets and the end of life more broadly.

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<sup>52</sup> *See id.*

<sup>53</sup> *See id.* at 33.

<sup>54</sup> *See, e.g., Purser et al., supra note 7, at 5-6.*

## APPENDIX 1

Australian Annual Income, 2021<sup>55</sup>

Weekly (Annual) Income	Percentage of Workers Aged 15 and Over
\$0	8.74%
\$1-\$149 (\$1-\$7,799)	3.27%
\$150-\$299 (\$7,800-\$15,599)	4.84%
\$300-\$399 (\$15,600-\$20,799)	7.57%
\$400-\$499 (\$20,800-\$25,999)	7.61%
\$500-\$649 (\$26,000-\$33,799)	7.27%
\$650-\$799 (\$33,800-\$41,599)	6.92%
\$800-\$999 (\$41,600-\$51,999)	8.09%
\$1,000-\$1,249 (\$52,000-\$64,999)	8.98%
\$1,250-\$1,499 (\$65,000-\$77,999)	6.75%
\$1,500-\$1,749 (\$78,000-\$90,999)	5.91%
\$1,750-\$1,999 (\$91,000-\$103,999)	4.37%
\$2,000-\$2,499 (\$104,000-\$129,999)	7.58%
\$3,000-\$3,499 (\$156,000-\$181,999)	1.76%
\$3,500 or more (\$182,000 or more)	3.19%

<sup>55</sup> 2021 Census of Population and Housing: Income and Work Data Summary, Table 1. Total Personal Income (Weekly) By Age By Sex, AUSTRALIAN BUREAU OF STATISTICS, (Oct. 12, 2022), <https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/income-and-work-census/2021/Income%20and%20work%20data%20summary%20-%20first%20and%20second%20release.xlsx> [https://perma.cc/DT4G-2LKG].

APPENDIX 2

Annual Income: Australian General Population vs. Study Sample

