



**PUBLIC TRUSTEE**  
FOR THE AUSTRALIAN CAPITAL TERRITORY  
WILLS • ESTATES • POWERS OF ATTORNEY • TRUSTS

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## YOUR PUBLIC TRUSTEE

PTACT undertakes a vital role in protecting the financial and property interests of those in our community who lack capacity. We also provide services to those electing to access our expertise as executor under Wills and as trustee in settlements and foundations.

PTACT is an independent ACT Territory Authority, established in 1985 replacing the former Curator of Estates of Deceased Persons. The Public Trustee makes over 750 Wills each year, administers some 700 trusts and administers over 100 estates per year.

We manage the financial affairs of more than 500 people who through age, infirmity or disability, require financial management services under Enduring Power of Attorney, or order of the ACT Civil and Administrative Tribunal.

We are actively involved in local philanthropy as trustee of the ACT's public charitable foundation, the Capital Region Community Foundation, known as GreaterGood.

Our highly experienced and well-qualified staff provide specialist trustee services including funds management, accounting and taxation.

For more information visit our website at [www.publictrustee.act.gov.au](http://www.publictrustee.act.gov.au) or call us during business hours to make a confidential appointment on ph (02) 62079800. We are centrally located at Ground Floor 221 London Crct Canberra City.

## WELCOME

This our first issue of Going Public introduces you to the Public Trustee for the ACT (PTACT), who we are, what we do, how you can contact us plus some great articles with tips on Will-making.

We will be bringing Going Public to you every six months to keep you informed about news, views and upcoming events.

Subsequent issues will focus on a different theme and will contain articles on issues of interest prepared by Public Trustee staff, proposed changes to laws as well as information about forthcoming events, whilst busting some myths about the industry and what we do.

In this issue we will focus on Wills. Our next issue will provide information around disability, financial management, Powers of Attorney and Special Disability Trusts.

We trust you find Going Public interesting and informative.

Andrew Taylor  
PUBLIC TRUSTEE



## What we do

- **Wills** - Wills for ACT residents who appoint the Public Trustee as Executor.
- **Financial Management Services** - Under order of the ACT Civil and Administrative Tribunal.
- **Estates** - Permanence, trustworthiness and professionalism are vital in the choice of an executor.
- **Powers of Attorney** - Power of Attorney services (financial) for Will clients where you appoint the Public Trustee as attorney.
- **Trusts** - Act as trustee under court order, will or deed including Special Disability Trusts for those unable to manage their funds.
- **Unclaimed Money** - Pay claims associated with certain unclaimed money.
- **Confiscated Criminal Assets** - Administer forfeited assets restrained.
- **Official Visitors** - Provision of administrative services to Official Visitors.
- **GreaterGood** - Our own Charitable Foundation enables Canberrans to establish a charitable fund of their own.

## WHY MAKE A WILL?

Most of your life is spent working to build up assets - a home, a car, superannuation, insurance and other investments that provide the lifestyle and security you want for yourself and your family.

Making a Will is the way to be certain a lifetime of work is passed on to the people you choose.

It provides security for those who are close to you and for those you are responsible for, and it may avoid unnecessary difficulties upon your death.

You may name guardians for your minor (under 18 years old) children and make arrangements for their maintenance and education.

## WHEN IS THE RIGHT TIME TO MAKE YOUR WILL?

'I'd like to make a Will but I don't have a lot of assets and it hardly seems worthwhile' or 'There is plenty of time for that sort of thing later, isn't there?'

Sound familiar? It's the two most common reasons, or excuses, for why people don't write a Will.

However, no matter how insignificant we believe our assets are, now is the time to make a Will.

Whether we have plenty of time or not is something that we really do not know. We insure our car for the unexpected and we should cover ourselves with a Will for the same reason.

Your Will may be your last words to your family. It warrants careful consideration and is best made when we are healthy and alert.

Even with minor assets, dealing with financial institutions in a deceased estate can become a lot easier when a copy of the Will nominating an executor is available. An executor gives institutions some certainty and enables them to allow the executor access to accounts.

This can save the cost of an application to the Court for a grant of representation in smaller estates and is a very good reason why we all should hold an up-to-date will.

Most persons in a relationship choose to hold their property as joint tenants so, upon the death of one, the assets will pass automatically to the survivor. However, this does not negate the need for both to hold a will to cover the possibility of simultaneous death. It is best to determine our testamentary intentions together with our partners.

A Will need not be a difficult document and can be put together readily with the correct advice. PTACT has a will preparation service for people wishing to appoint the Public Trustee as executor and has attractive options available for those wishing to include charitable provisions.



For more information visit [www.publictrustee.act.gov.au](http://www.publictrustee.act.gov.au)  
or ring 62079800 for a confidential will appointment.  
We accept will appointments from 7.30am by prior  
arrangement.

## We will come to you...

If you are unable to visit us because you are incapacitated in some way eg in hospital, a nursing home or hospice, we will visit you to make your Will and Enduring Power of Attorney (conditions apply).

## FREQUENTLY ASKED QUESTIONS

**Q. How old do I have to be to make a Will?**

**A.** You are legally able to make a Will after you have attained 18 years of age.

**Q. If I get married, enter into a civil partnership or civil union is my Will revoked?**

**A.** Yes. Marriage revokes a Will unless the Will has been made in contemplation of marriage.

**Q. What happens if I die without leaving a Will?**

**A.** Your assets will be distributed according to a formula commonly referred to as the Laws of Intestacy, not necessarily in accordance with your wishes.

**Q. Will my spouse automatically receive my assets if I leave no Will?**

**A.** No. The assets may also be shared with your children.

## YOUR WILL INTERVIEW WITH THE PUBLIC TRUSTEE...

Your Will interview with the Public Trustee is designed to be simple yet comprehensive. Our qualified legal personnel can address your unique needs whether you are married, single, in a same-sex relationship or from another culture.

We provide Wills at no cost for persons of 60 years and over. A typical interview will take less than an hour and requires minimal preparation. We take appointments from 7.30am on weekdays.

Your Will interview will determine your capacity to make a Will, who to nominate as your executor and beneficiaries as well as any specific issues eg trusts, bequests to charity etc.

We will store your Will and Enduring Power of Attorney in safe custody at no cost after you have made your Will.

We will even provide you a complimentary coffee at Mingle next door while you wait for your Will to be prepared and signed.

## USE OUR WILLS FACT FINDER



Check out our Will Fact Finder on our website and provide us with useful information in advance of your Will interview.





## COMMON WILL PITFALLS

- Putting off making such a simple but essential document.
- Creating an informal Will. Prospective beneficiaries will seize upon the interpretation that favours them most.....ensuing legal arguments can be costly.
- Creating inequities in your Will. The surest way to raise disputes as to testamentary capacity or undue influence is to omit family members who expect to benefit.
- Forming new relationships without revising your Will. Informal relationships and how to balance the responsibility of a new spouse with the expectations of our adult children to their inheritance can be problematic.
- Failing to take appropriate advice. Ultimately, our Will becomes the most momentous document of our life....worthy of informed consideration and hardly something to be chanced through a Will Kit.
- Not discussing your Will with your executor and beneficiaries.
- Omitting to tell your family where your Will is located.

## WILL KITS

Are Will Kits OK? There have been many Court cases where the Will-maker did not get the Will right using a Will Kit.

Common mistakes include faulty signing, incomplete witnessing, failure to deal with all possible estate leaving a partial intestacy, inadequate identification of beneficiaries and using imprecise wording leaving your intentions unclear.

Prospective beneficiaries will prefer the interpretation which favours them most and often will pursue their claim in Court. The costs of Court action will be many times greater than the few dollars saved by choosing a Will Kit over having the Will done professionally.

One case on record refers to a Will-maker who had used several coloured pens in a Will Kit. Both witnesses and the Will-maker had signed with different pens introducing doubts as to correct witnessing and there were many insertions and deletions suggesting the Will may have been changed after signing. Additionally, the Will referred to "all my goods", perhaps a common term, but one which refers to personal estate only and not to real estate. The Court had to consider all these matters, including what the deceased had intended regarding the real estate. The matter was resolved in Court but much expense and delay could have been avoided if the deceased had not relied upon a Will Kit to save one professional consultation.

## MYTHS BUSTED

**MYTH** - When I die, if I don't leave a Will my assets will go to the government.

**BUSTED** - Untrue, your assets will be distributed in accordance with the common law 'Laws of Intestacy'. It could only happen if you die with no living next of kin.

**MYTH** - When I die they will tax my estate through death duty.

**BUSTED** - Death duties have been abolished since about 1980. However, as many capital growth assets have been acquired since introduction of Capital Gains Tax (CGT) in 1985, CGT has supplanted death duties as a testamentary concern.

**MYTH** - Will making is expensive.

**BUSTED** - No, a typical Will prepared by the Public Trustee will cost \$210 for partners and \$335 with Enduring Powers of Attorney.

**MYTH** - When making my Will I can specifically leave out my family as beneficiaries.

**BUSTED** - The (ACT) *Family Provision Act 1969* provides that irrespective as to the contents of your Will, a specified range of persons may make a claim on your estate upon your death. The Supreme Court is empowered to vary the provisions of your Will. The Act is aimed at ensuring that we provide for the proper maintenance and support for our family or dependants from our deceased estate .

**MYTH** - If I divorce my spouse and die without updating my Will he/she will receive my estate.

**BUSTED** - No, divorce revokes any provision made under your Will for your ex-spouse.

(Fees effective from 1 July 2014)

## CHALLENGES TO YOUR WILL

At the time of making our Will, we would like to think that our choice of beneficiary is ultimate and could not be overturned. By nominating our beneficiaries, we declare who we wish to benefit from our estate and expect this to be final.

However, in reality, certain members of the family may contest the terms of our Will in Court. Under the ACT *Family Provision Act 1969*, Claims for variation of the Will may begin in the Supreme Court up to six months from when probate is granted in a deceased estate.

Persons entitled to apply are the deceased person's partner, spouse, children, a former spouse or step child (if maintained by the deceased at time of death) and also a grandchild or parent in certain cases.

'Spouse' includes a civil partner or an eligible partner (whether or not of the same gender) who has resided with the deceased as a couple in a genuine domestic basis for over two years, or who is the parent of the deceased's child.

Persons who have responsibilities for the maintenance of others should fully consider those responsibilities when making a Will to avoid any costly challenge to the Will after death.

If one person is to be favoured due to disability, hardship or other reason, this is best discussed and disclosed to others during the Will maker's lifetime for understanding and acceptance.

Circumstances that could invite a challenge to a Will are best avoided and a well considered professionally drafted Will is recommended.





## JOIN US IN CELEBRATING WILLS WEEK 2014

In October 2014 we will again celebrate Wills Week, an event unique to the Public Trustee for the ACT. During Wills Week we will hold daytime and evening seminars on the importance of having an up to date Will and Enduring Power of Attorney.

Our speakers will talk about Family Provisions claims as well as our very own philanthropic foundation 'GreaterGood'. The seminars are free and open to any person in the community to attend.

### ■ Northside

Tuesday 21 October 2014  
6.00pm - 8.00pm  
Ainslie Football Club, Wakefield Avenue, Ainslie.

### ■ Southside

Thursday 23 October 2014  
9.30am - 12.00 noon  
Hellenic Club, Matilda St, Woden.

All persons attending will be provided with a free Will voucher.

Bookings are essential. Call our staff on 62079800 to secure a booking.

## CHANGES TO ACT LEGISLATION

In the past six months, the Public Trustee made eight recommendations to amend laws to remove barriers and help simplify processes.

One notable change, introduced in 2014, halved the time within which a person could make a claim on an estate under the *Family Provision Act 1969*, significantly reducing delays in estate administration.

## OUR CUSTOMERS SAID...

"The behaviour of your staff merits recognition...a very pleasant experience"

"I could not ask for more considerate help and advice"

"Exceptional care given to every detail"

"The Public Trustee performs an excellent public service"

"There was no way we could have settled my mother's estate without your office. I very much appreciated it"

"Excellent professional service with very good people skills...very happy"

"I recommend your services to all my friends"

"The computer based Wills program was so efficient. Our new Wills were completed within 90 minutes...thanks for the coffee voucher...a nice touch"



## CASE STUDIES - LESSONS LEARNT

### The dreaded Capital Gains Tax

In making his Will an elderly man had two houses, the family home in Canberra and the holiday home at the Coast. Both were around the same value and, as his daughter liked the family home he decided to leave it to her. His son liked the holiday home and he decided to bequeath it to him. The reality was however that despite the properties being of equal value, the holiday home attracted Capital Gains Tax on the sale of the property by the son, creating a significant imbalance between the beneficiaries.

### The case of the missing rings

In making her Will, a lady decided that she wanted to bequeath her three rings in her Will, one each to her two daughters and one to her daughter-in-law. Upon her death it was discovered that one of the rings was missing, creating a dilemma as one ring went to a daughter whilst the other to the daughter-in-law and the other daughter missed out. The message here is not to make your Will so prescriptive.

## FACT SHEETS

Our Fact Sheets can be found under "Publications" on our website at [www.publictrustee.act.gov.au](http://www.publictrustee.act.gov.au)

You'll find comprehensive information about a range of issues and services.

Our top four Fact Sheets have been translated into Chinese, Italian, Sinhala, Tamil and Vietnamese.

## WILLS FOR ABORIGINAL AND TORRES STRAIT ISLANDER RESIDENTS

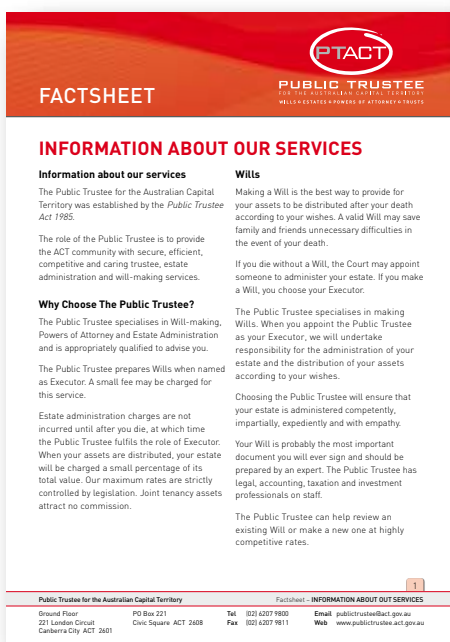
Traditional laws fail to recognise different kinship patterns and their impact in inheritance law, and to recognise the importance of custodial property for intestacy. The issue is extremely complex and there is no simple cost-effective solution.

PTACT has prepared a Fact Sheet on Wills for Aboriginal and Torres Strait Islander residents. The Fact Sheet can be found in the Public Trustee's website under "Publications".

The Fact Sheet covers issues such as the passing of material goods, dealing with the mortal remains, guardianship of children and difficulties associated with the passing of customary secret laws are among problems experienced by Indigenous Islanders with these laws.

PTACT is currently participating in an ARC (Australian Research Council) Linkage Study "Families and generational asset transfers: Making and challenging Wills in contemporary Australia" which explores amongst other issues the views of Indigenous Islander Queenslanders on Will-making.

Further reading: Aboriginal Wills Handbook e-book funded by the NSW Trustee and Guardian and written by Professor Prue Vines of the University of NSW.





## WOMEN AND WILLS

Women dominate as the ones to benefit in estates but strangely do not figure as often as executors. Sons are more likely to be selected to administer the estate, however, women have a greater tendency to be benevolent and are more likely to include charitable intentions in their Will than the men.

Old English succession law favoured the eldest son to maintain the family title and estate while the widow would hope to receive a right to reside and an annuity.

In post war Australia it was common for the widow not to receive an absolute interest but an interest for life in the income only with the capital upon her death passing - in all probability - to the sons. This avoided double succession and resultant higher death duties and was seen to help preserve the family estate.

In 2013, average life expectancy for women is 84 and for men 80 years so consequently females can reasonably expect to survive males and benefit under the Will.

Probate registry statistics show that 75% of testators left their estates solely to the spouse and that only 2% of Wills shared the estate between spouse and children. However this practice is yet to be reflected in the laws of intestate succession here in the ACT.

For those who die without a Will, the tradition of succession direct to children lingers in the rules of intestacy and the spouse receives the chattels, a statutory legacy of \$200,000 and then shares the balance of the estate with the children.

To avoid unwanted complexities, both partners should hold a Will.

## GREATERGOOD - OUR CONTRIBUTION TO THE COMMUNITY

Canberrans are known to dig deep when they can..... Today we hear of many worthy community and charitable causes competing for support.

An accessible and cost effective way of creating a family charitable fund is through Canberra's local charitable foundation, GreaterGood.

GreaterGood provides an umbrella facility for charitably minded people to establish their own named charitable account. A settlement of funds of as little as \$20,000 attracts full tax deductibility and has no establishment costs. GreaterGood has brought the concept of an ongoing charitable fund into the reach of everyday people. Funds are invested for both growth and income and recipient charities receive helpful annual distributions to fund their charitable works; distributions that will increase with time and go on forever, truly a gift that keeps on giving.

Under your Will, you can create your own named commemorative charitable fund to ensure that your support of charities can be ongoing. The fund will safeguard your capital as you have done during your lifetime and will distribute the annual income to your recommended charities. Additionally there are capital gains tax advantages regarding assets that carry a potential tax liability.

Contact us for more information or visit our website at [www.greatergood.org.au](http://www.greatergood.org.au)

## CONTACTING US

<b>HOURS</b>	- 9.00am - 4:30pm (Mon - Fri)
<b>OFFICE</b>	- 221 London Crct, Canberra City ACT
<b>POST</b>	- PO Box 221, Civic Square ACT 2608
<b>PHONE</b>	- (02) 6207 9800
<b>FAX</b>	- (02) 6207 9811
<b>EMAIL</b>	- <a href="mailto:publictrustee@act.gov.au">publictrustee@act.gov.au</a>
<b>WEB</b>	- <a href="http://www.publictrustee.act.gov.au">www.publictrustee.act.gov.au</a>

### DISCLAIMER

The content of this newsletter is general information only and should not be relied upon as legal advice. You should contact a solicitor or the Public Trustee to obtain professional advice applicable to your particular issue and circumstances.