



Government of **Western Australia**  
Department of **Justice**

Contact: Brian Roche  
Title: Public Trustee  
Telephone: 9222 6500



Public Trustee



Hon Nick Goiran MLC  
Chairman  
Select Committee into Elder Abuse  
Legislative Council Committee Office  
Parliament House  
WEST PERTH WA 6005

Email to: [eld@parliament.wa.gov.au](mailto:eld@parliament.wa.gov.au)

Dear Mr Goiran

### INQUIRY INTO ELDER ABUSE

Thank you for the opportunity to appear before the hearing on Monday 26 March 2018 of the Legislative Council's Select Committee Inquiry into Elder Abuse.

The following information is provided in response to the Questions on Notice raised during the hearing:

#### Question on Notice #1

*What Public Trustee community education sessions are planned between now and September?*

The Public Trustee is currently in the process of planning events from June onwards, and attached is a list of the community education events scheduled until September 2018.

During the financial year 2016/17, the Public Trustee conducted 26 public community education seminars where financial elder abuse was addressed within the context of Wills, Estates, Enduring Powers of Attorney and Administration Orders made by the State Administrative Tribunal.

The Public Trustee also conducted another 20 'closed' information sessions relating to the role of the Public Trustee, financial administration and elder abuse, at the request of community groups, professional service providers and Government agencies.

#### Question on Notice #2

*How often does the Public Trustee exempt private administrators from submitting annual accounts?*

Private Administrators' Accounts examined by the Public Trustee					
Financial Year Ended 30 June	2013	2014	2015	2016	2017
Required to lodge returns	1,961	2,041	2,095	2,161	2,306
Exempted from lodging returns	309	378	439	529	567
Total	2,270	2,419	2,534	2,690	2,873
% Exempted	14%	16%	17%	20%	20%

## **SUPPLEMENTARY INFORMATION**

The Public Trustee's Principal Legal Officer Mr Michael Bowyer also wishes to provide the following supplementary information about the Public Trustee's Wills fees and relevant case law referred to in the hearing to assist the Committee.

### **Public Trustee Fees for its Wills Service**

In the hearing, reference was made to the Public Trustee's fees for its Wills service. I have attached a copy of the current Wills fees brochure for your information.

### **People with decision-making disabilities giving evidence**

Mr Bowyer made reference to two cases in which a person with a decision-making disability gave evidence in a civil matter (end of page 8 of the transcript).

One was in the Family Court, and involved the person agreeing in cross-examination that a transaction that was documented as a loan was in fact a gift.

The other was *Brown v Wade* [2010] WASC 367, a case in the Supreme Court involving a disputed Will. A Mrs Wade gave evidence on the circumstances in which her husband's Will was executed. The Court did not accept her evidence in important respects (see paragraphs [153] to [158]; [210] to [215]; [324]) and did not grant probate of the Will that she had wanted proved.

### **Expansion of the forfeiture rule**

Mr Bowyer referred to the decision concerning the estate of Mrs Ah Bee Mack (page 9 of the transcript), in which the Supreme Court, in particular circumstances, extended the forfeiture rule to stop a person indirectly financially benefiting from murdering his mother. That decision was *Public Trustee (WA) v Mack* [2017] WASC 325.

### **Gifts by donees of enduring powers of attorney**

Mr Bowyer referred to two decisions of the State Administrative Tribunal (page 9 of the transcript).

The first was *DW and JM* [2006] WASAT 366, in which the Tribunal said that donees can make gifts in some circumstances. That decision was not directed at donees personally benefiting from such gifts, although paragraph [40] touched on it.

The second was *KS* [2008] WASAT 29, in which the President said that generally speaking, donees of enduring powers of attorney could not make gifts to themselves, but that there were some exceptions and qualifications on that (see paragraphs [50] to [57]).

### **Gifts by administrators**

Mr Bowyer referred to a provision in the *Guardianship and Administration Act 1990* concerning gifts (top of page 10 of the transcript). That provision is section 72(3). It requires an administrator to obtain the Tribunal's approval before making various types of gifts. He also referred to a decision of the Tribunal (including the President), which appeared to limit the sorts of transactions that fell within section 72(3) and needed the Tribunal's approval. That decision was *FS* [2007] WASAT 202 (see, in particular, paragraphs [135] to [144]). In *Perpetual Trustees WA Limited and The Public Trustee* [2009] WASAT 253 (at paragraphs [57] to [86]), a differently constituted Tribunal (including a Deputy President) appeared to take, with respect, a different approach.

**The Court of Appeal and a person's wishes**

Mr Bowyer referred to a decision of the Court of Appeal concerning a person's wishes (page 18 of the transcript). That decision was *The Public Trustee v Baker* [2014] WASCA 23. The Court (at paragraph [30]), when considering section 70(2) of the *Guardianship and Administration Act 1990*, said: "There will inevitably be many cases where the mental capacity of the represented person is such that consultation would be impossible. There will also inevitably be cases where the circumstances are such that the wishes of the represented person cannot be acted upon."

I have also attached the transcript of oral evidence given to the Committee, corrected for typographical or transcription errors.

Yours sincerely



Brian Roche  
PUBLIC TRUSTEE  
3 April 2018

*Attachments*

1. *Public Trustee Public Education Seminars Schedule to September 2018*
2. *Public Trustee Wills Fees for the year ending 30 June 2018*
3. *Corrected transcript of oral evidence given to the Committee*

## Public Trustee Public Education Sessions Scheduled to September 2018

Date	Event	Time	Location	Venue	Pax
19/03/18	WA Will Week	10.30am-12pm	Wembley	Telethon Speech & Hearing Conference Centre	200
20/03/18	WA Will Week	10.30am-12pm	Cannington	City of Canning Function Room 1317 Albany Highway Cannington	200
21/03/18	WA Will Week	10.30am-12pm	Joondalup	Joondalup Reception Centre, 102 Boas Ave Joondalup	200
21/03/18	WA Will Week	1-2.30pm	Perth	Public Trustee, Level 1, 553 Hay Street, Perth	100
22/03/18	WA Will Week	10.30am-12pm	Perth	Public Trustee, Level 1, 553 Hay Street, Perth	100
22/03/18	WA Will Week	1-2.30pm	Perth	Public Trustee, Level 1, 553 Hay Street, Perth	100
23/03/18	WA Will Week	1-2.30pm	Fremantle	University of Notre Dame - Cliff Street Fremantle	300
26/03/18	Carers Wills & Financial Admin	1.30-3.30pm	Perth	Commonwealth Respite Centre, 107 Wellington St East Perth	40
27/03/18	Wills, Estates & Financial Admin - Regional	12-2pm	Wyalkatchem	Wyalkatchem Community Resource Centre	60
3/04/18	Wills, Estates & Financial Admin	1-2pm	Perth	Citiplace Community Centre (members only)	40
5/04/18	Wills, Estates & Financial Admin	2-3pm	Mundaring	Mundaring Men's Shed / Hub of the Hills, 8 Craig St, Mundaring	60
13/04/18	CCAWA Til Death Do Us Part	12-1pm	Mandurah	Sebel Hotel, Mandurah (members only)	100
18/04/18	GESB Retirement Planning Day	12-1.30pm	Perth	Auditorium, City of Perth Library, Perth (GESB members only)	100
18/04/18	National Advance Care Planning Week	1pm-4.15pm	East Perth	Theatrette, 189 Royal Street East Perth	240
20/04/18	National Advance Care Planning Week	9.30am-12.45pm	East Perth	Theatrette, 189 Royal Street East Perth	240
26/04/18	Wills, Estates & Financial Admin	12-2pm	Bunbury	Bunbury Public Library Activity Room, Parkfield Street, Bunbury	60
26/04/18	Wills, Estates & Financial Admin	6-8pm	Busselton	Busselton Community Resource Centre, Harris Road Busselton	60
30/04/18	Wills, Estates & Financial Admin	10-11.30am	Gosnells	The Knowledge Centre 2232D Albany Highway, Gosnells	60
8/05/18	Wills, Estates & Financial Admin - Regional	10-11.30am	Bullcreek	TPIWA RAAFA Estate 2 Bull Creek Drive, BULL CREEK 6149	100
15/05/18	Private Administrator Training	5-8pm	Perth	Public Trustee (SAT appointed administrators only)	36
16/05/18	Law Week	6.15-7.45pm	Perth	Public Trustee, Level 1, 553 Hay Street, Perth	100
17/05/18	Law Week	10-11.30am	Bentley	VRAC, 26 Plantation Drive, Bentley	100
28/05/18	Wills, Estates & Financial Admin	10-11.30am	Fremantle	Glyde Street Community Centre, 42 Glyde Street, East Fremantle	50
15/06/18	National Elder Abuse Awareness Day	10.30am-12pm	Perth	Public Trustee, Level 1, 553 Hay Street, Perth	100
19/6/18	Deceased Estates and Administration		Perth	Legalwise seminar for solicitors CPD	
19/6/18	Dealing with Elder Abuse		Perth	Legalwise seminar for solicitors CPD	
21/06/18	GESB Retirement Planning Day	12-1.30pm	Perth	Auditorium City of Perth Library, Perth (GESB members only)	100

Date	Event	Time	Location	Venue	Pax
28/06/18	Wills, Estates & Financial Admin - Regional	10.30am-12pm	Jurien Bay	Jurien Bay Mens Shed / Shire of Dungan (TBC)	50
28/06/18	Wills, Estates & Financial Admin - Regional	2-3.30pm	Dongara	Irwin Recreation Centre, Dongara (TBC)	50
29/06/18	Wills, Estates & Financial Admin - Regional	10.30am-12pm	Geraldton	Geraldton Multipurpose Centre, The Esplanade Geraldton (TBC)	100
29/06/18	Wills, Estates & Financial Admin - Regional	2-3.30pm	Geraldton	Midwest Dept of Justice Staff, Geraldton Regional Prison (TBC)	50
24/07/18	GESB Retirement Planning Day	12-1.30pm	Perth	Auditorium City of Perth Library, Perth (GESB members only)	100
26/07/18	Wills, Estates & Financial Admin - Regional	12.30-2.30pm	Kalgoorlie	EGCC 13 Roberts Street, Kalgoorlie (TBC)	100
9/08/18	Wills, Estates & Financial Admin	1-2.30pm	Wanneroo	U3A, Wanneroo Recreation Centre, 275 Scenic Drive, Wanneroo	50
23/08/18	Private Administrator Training	5-8pm	Perth	Public Trustee (SAT appointed administrators only)	36
30/08/18	GESB Retirement Planning Day	12-1.30pm	Perth	Auditorium City of Perth Library, Perth (GESB members only)	100
12/09/18	GESB Retirement Planning Day	12-1.30pm	Perth	Auditorium City of Perth Library, Perth (GESB members only)	100

3,582



Public Trustee

# Wills, WA Will Bank and Enduring Powers of Attorney

The Public Trustee provides quality Will-drafting, trustee and asset management services to all Western Australians. We can assist you or your loved ones with:

- Wills and Will Storage
- Enduring Powers of Attorney
- Deceased Estate Administration
- Trustee Services
- Financial Administration
- Give2Good Foundation

## Can the Public Trustee write my Will?

Yes. Our solicitors and paralegal can prepare your Will and know about issues that can arise when deciding how to divide your estate. Depending on your circumstances, you may be referred to a specialist for complex legal, taxation or family law advice that is outside the scope of our Wills service.

## Wills nominating the Public Trustee as Executor

The Public Trustee drafts Wills that nominate the Public Trustee as your executor. Our expert team of estate managers provide a professional, reliable and impartial service when carrying out this important role.

## Wills nominating a Private Executor

The Public Trustee also drafts Wills for people who nominate someone else, such as a family member or friend, as their executor.

## Enduring Powers of Attorney

The Public Trustee drafts Enduring Powers of Attorney that appoint the Public Trustee or your spouse (or de facto partner) as attorney.

## What are the fees?

Will drafting fees are calculated based on whether the Public Trustee, or someone else, is named as the executor. Discounts apply to one Will per 12 month period for some concession card holders.

Straightforward Wills can often be completed and signed during the initial consultation. Fees for the initial consultation are:

	Public Trustee as executor	Private executor	Enduring Power of Attorney *
Concession holders	\$80	\$80	\$80 (each)
Non-concession holders	\$334	\$334	\$113 (each)
Couple (or both are de facto concession holders)	\$137 (each)	\$123 (each)	\$50 (each)
Couple (non-concession holders)	\$223 (each)	\$223 (each)	\$113 (each)

\* Conditions apply.

If subsequent work is required, it will be charged at our standard hourly legal rate. Total fees will not exceed \$1650. Additional incidental charges for disbursements and other out-of-pocket expenses incurred by the Public Trustee on your behalf may also be payable (e.g. Landgate & charity search fees).

Note: To be treated as a couple, your individual circumstances and intended Wills need to be substantially similar. "Public Trustee as executor" includes couple Wills when spouses or de facto partners nominate each other as executor and then the Public Trustee is nominated as a substitute executor.

In exceptional circumstances, such as where a hospital or home visit is made for a Will appointing the Public Trustee as Executor, a travelling fee of \$28 per visit will apply.

Cancellation fees of up to \$50 may also apply.

Refer to our [2017-18 Scale of Fees](#) for a comprehensive list of our fees and charges.

## What is the Process?

Arrange an appointment by calling 1300 746 116. If you live outside the metropolitan area your appointment can be conducted by telephone. Please plan and prepare for your scheduled appointment as we have waiting lists and changing an appointment can significantly add to your waiting time.



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Department of Justice

Fees and charges are subject to change from time to time without notice. Other fees and charges may also apply. For detailed information regarding our fees, please refer to our Scale of Fees. The information contained in this brochure is to be used as a guide only. It has been prepared without consideration of any specific client and does not constitute legal advice. To the maximum extent permitted by law, the Public Trustee disclaims all liability and responsibility for any direct or indirect loss or damage that may be suffered by any reader through relying on information contained in or omitted from this brochure.

## Wills, WA Will Bank and Enduring Powers of Attorney



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*Note: We regret that we cannot always accommodate requests for a specific Officer.*

You will need to provide at least two approved identification documents and a list of your assets, as well as the full names, dates of birth and addresses of your beneficiaries.

Your Will will be prepared, signed, witnessed and retained by the Public Trustee in the **WA Will Bank**. You will be provided with a copy of your Will.

Independent interpreters are available for non-English speaking people and assistance can be provided for those with a hearing impairment or accessibility problems. If you are a couple and need an interpreter, you and your spouse or de facto partner are usually seen separately.

### Trusts

Your Will might specify that a trust be established (e.g. a trust that holds assets for a child, disabled beneficiary or gives a beneficiary a life interest in all or part of your estate). You may wish to name the Public Trustee as trustee of that trust. Fees for acting as trustee of these types of trusts include an annual transaction fee, an annual asset management fee and may also include an annual residence and property management fee.

A fee for the cessation of the trust will also apply. These fees will be further explained during your appointment. You can also refer to the Public Trustee's Scale of Fees for more information.

### Where do I store my Will?

The Public Trustee's **WA Will Bank** is a community service that keeps Western Australian's Wills safe from loss, theft or damage. Original Wills are stored in a purpose-built, fireproof vault and are also scanned and electronically stored for added security.

There is no charge for people who deposit their own Wills in the **WA Will Bank**. While alive, normally only the testator or their lawyer can retrieve the original Will. After death, the executor (or another authorised person) can retrieve the original Will on production of a copy of the death certificate and approved identification (or written legal authorisation). There are no charges to retrieve the Will but all requests for Wills must be made in writing.

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*Note: The Public Trustee does not give legal advice related to privately prepared Wills or on Deceased Estates where the Public Trustee is not the administrator.*

### Investments

If necessary, (e.g. when managing a trust set up under a Will) the Public Trustee may choose to place some of the trust funds in a Public Trustee Investment Fund as well as in the Common Account. Management fees apply. Money held in the Common Account earns interest calculated daily and is credited to the trust account on a twice-yearly basis. The Public Trustee Investment Funds are sometimes also called Strategic Investment Accounts, which are strategic common accounts under the *Public Trustee Act 1941*.



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553 Hay Street, Perth  
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