



Wills



Who is this booklet for?

This booklet is for people who are over 18 and who want to make a Will.

What assistance can ALSWA provide?

ALSWA can help with drafting Wills, depending on the complexity of the Will and whether ALSWA has the capacity to provide assistance. ALSWA does not store Wills. ALSWA will not provide a Will template to you and will only take instructions to draft a Will in person. When you come to ALSWA for assistance, we will assess your circumstances and advise what level of assistance we can provide. It's important to note that ALSWA services are means tested (according to your income and assets), which means not every Aboriginal and Torres Strait Islander person is automatically eligible for assistance.

Who else can help you make a Will?

If ALSWA is unable to help you with drafting a Will, the Public Trustee or a private lawyer can help you make a Will for a fee. You can contact the Law Society of Western Australia to obtain contact details for a private lawyer (contact details for the Public Trustee and the Law Society of Western Australia are at the end of this booklet). While there are - Do it Yourself Will packs available from some newsagents and post offices, if you write your own Will you should still get legal advice about how it is set out to make sure it will be legally enforceable when you pass away.

What is a Will?

A Will is a legal document that contains your instructions about how you want your assets to be distributed and who will look after your children if you pass away. Your Will also states whether you want to be buried or cremated and where you would like to be buried. In your Will you will need to choose an 'Executor' who will be responsible for carrying out your wishes and instructions and overseeing the necessary legal process after you have passed away. Please note that ALSWA will not act as or agree to be the Executor of a Will under any circumstances. You should think carefully about all of these decisions before you make a Will.

Choosing an Executor

You need to pick a person or persons who you trust, who you think will follow your instructions properly and who will be able to understand the legal processes that have to be carried out. You will need to pick another person as back up to act as your Executor if the first person or persons you pick cannot do it.

Signature, date and witnesses

A Will must be signed, dated and witnessed on every page by 2 people over the age of 18 or it will be invalid. These people cannot be beneficiaries under the will.

Superannuation

You cannot specify who is to receive your superannuation in your Will. Any superannuation money you have will go to the person or persons nominated as your beneficiary/beneficiaries with your superannuation company, even if your Will states that you want your superannuation to go to someone else. For this reason, always let your superannuation company know who you want your superannuation money to go to before you make your Will.

Who can make a Will?

Everyone over 18 years, with the capacity to make decisions for themselves and to understand the act and consequences of making a Will, is able to make a Will. ALSWA will evaluate whether you are capable of making and understanding a Will and make sure you are not being influenced by others before we agree to assist you.

Can you change your Will?

Because of changing employment, tax or family conditions (like having children) you may wish to change your Will over time. You can change a Will by either:

- making a new will and destroy the old one, or
- making a codicil to your current Will (a codicil is a statement changing the wording of your current Will).

What happens after someone with a Will passes away?

If a person who has died has made a Will, the person or persons named as Executor in the Will need to apply to the Probate Officer at the Supreme Court for a 'grant of probate' which authorises the Executor to carry out the wishes and requests in the Will.

What happens after someone with a Will passes away?

No one should receive or take any of the assets or property of the deceased person before the Executor has received a grant of probate. When making a Will, you should keep in mind that some family members may be able to challenge or 'contest' your Will if they can prove that you should have left them something in your Will and you didn't. For this reason, if you want to exclude anyone from your Will it is important to let our lawyers know so your reasons for excluding them can be clearly stated in your Will. The Supreme Court will resolve any disputes or challenges that do arise if they can't be worked out between the people challenging a Will.

What happens if you don't make a Will?

If you are an Aboriginal person or a Torres Strait Islander and you die without a Will (which is called 'intestate'), the Public Trustee is, by default, given the right to be the Executor of your estate. This means the Public Trustee will have the right to divide your estate and make decisions about your children, burial or cremation, and assets. The Public Trustee's decisions are usually governed by who the law says should benefit from your estate. There is no guarantee they will consider your wishes or make the same decisions you would have if you had a Will, therefore it is very important to make a Will. The Public Trustee also charges fees if it becomes involved and these fees will be taken out of any assets you have left behind.

What if a family member has died without a Will?

If an Aboriginal or Torres Strait Islander family member of yours has died without a Will, it's a good idea to contact the Public Trustee first to discuss arrangements for how their estate is to be handled. The Public Trustee may agree to make a family member or someone else Executor of the deceased person's estate instead of the Public Trustee. If there is any disagreement, it may be possible for someone to apply to the Supreme Court to be appointed as the Executor of the deceased person's estate. The Aboriginal Mediation Service also assists with burial and other disputes between family members (contact details for the Public Trustee, Supreme Court and Aboriginal Mediation Service are at the end of this booklet).

What happens to your Will if you marry or divorce?

By law, if you have been married or divorced after 2008, any Will you made before your marriage or divorce may now be automatically invalid. If you're not sure whether your Will is still valid, you should get legal advice. If it's no longer valid you will need to make a new Will.

Where should you keep your Will?

Only the original of your current Will is a valid legal document. No copy of your Will is legally binding, although it may be used as evidence of your intentions. So if you do have your original Will, you must keep it in a safe place.

ALSWA stores all Wills drafted by our lawyers in the WA Wills Bank at the Office of the Public Trustee. The WA Wills Bank is a fire proof vault that keeps Wills safe from loss, theft or damage. The WA Wills Bank service is free if your Will is deposited by you or your legal representative. If ALSWA is assisting you to make your Will, you will need to bring a photo or other ID document (such as a Centrelink or Pension Card) with you to your Will appointment so that ALSWA can deposit your Will on your behalf.

Important contact details

Aboriginal Mediation Service

Level 12, 141 St Georges Terrace, Perth WA 6000

Ph: 08 9264 6150

Freecall: 1800 045 577

Law Society of Western Australia

Ph: 08 9322 7877

Office of the Public Trustee of Western Australia

Includes the WA Will Bank

553 Hay Street, Perth WA 6000

Ph: 1300 746 116 (local-call rates apply)

Supreme Court of Western Australia

Probate Office

Level 14, 111 St Georges Terrace, Perth WA 6000

Ph: 08 9421 5152

Notes



Aboriginal Legal Service of Western Australia offices

PERTH (Head office)	Piccadilly Suites 7 Aberdeen Street (near Mclver Train Station) PERTH WA 6000 Ph: 08 9265 6666 or Freecall: 1800 019 900
ALBANY	Shop 13 The Link, 24 St Emilie Way (cnr Aberdeen Street) ALBANY WA 6330 Ph: 08 9841 7833 or Freecall: 1800 016 715
BROOME	1/41 Carnarvon Street BROOME WA 6725 Ph: 08 9192 1189 or Freecall: 1800 351 067
BUNBURY	Unit 7 Koombana Court, 141 Victoria Street BUNBURY WA 6230 Ph: 08 9791 2622 or Freecall: 1800 630 375
CARNARVON	58 Robinson Street CARNARVON WA 6701 Ph: 08 9941 1534 or Freecall: 1800 645 942
FITZROY CROSSING	Shop 7, Tarunda Shopping Complex FITZROY CROSSING WA 6765 Ph: 08 9191 5147
GERALDTON	73 Forrest Street GERALDTON WA 6530 Ph: 08 9921 4938 or Freecall: 1800 016 786
HALLS CREEK	Office 7, Halls Creek Community Centre, Thomas Street HALLS CREEK WA 6770 Ph: 08 9168 6156
KALGOORLIE	42 Maritana Street KALGOORLIE WA 6430 Ph: 08 9021 3666 or Freecall: 1800 016 791
KUNUNURRA	81 Konkerberry Drive KUNUNURRA WA 6743 Ph: 08 9168 1635
MEEKATHARRA	7 Main Street MEEKATHARRA WA 6642 Ph: 08 9981 1712
NEWMAN	Unit 2/20 Hilditch Avenue NEWMAN WA 6753 Ph: 08 9175 0764
NORTHAM	125A Fitzgerald Street NORTHAM WA 6401 Ph: 08 9622 5933 or Freecall 1800 442 015
ROEBOURNE	Harding Street ROEBOURNE WA 6718 Ph: 08 9182 1107
SOUTH HEDLAND	Unit 7 Lotteries House, Leake Street SOUTH HEDLAND WA 6722 Ph: 08 9172 1455 or Freecall: 1800 650 162

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