

Wills register provides a useful convenience

by John Flynn, Public Trustee, & Graham Nicholson, Crown Counsel

There is a statutory obligation under the Public Trustee Act for the Public Trustee to provide a depository for, and register of, wills.

Wills may be deposited with the Public Trustee, regardless of who is executor, at no cost.

The Office already holds some 10,000 wills.

The Public Trustee will not normally accept a will unless it is enclosed in an envelope.

The envelope should have written on it at least the name, address and occupation of the testator and the full name, address and occupation of the executor(s).

Once a will is deposited with the Public Trustee it can only be recovered by the testator personally or on their written authority.

If the testator dies, the Public Trustee is obliged to deliver the will to the executor or one of the executors named on the envelope if that executor can be found.

The staff of the Public Trustee's office check major newspapers in the NT daily for the names of people who have died.

The names are checked against the will index and, if there is a will and the executor is other than the Public Trustee, the executor is notified as soon as possible.

The Supreme Court Rules recognise the extent of the Public Trustee's depository of wills because the Rules require a seeker of a grant of Probate or Administration to testify in the affidavit of publication and search that the index of wills kept by the Public Trustee has been searched. The Rules also require the result of such a search. In a 1988 decision, the majority of the High Court held in *Hawkins v Clayton and Ors* that the solicitor who prepared and held a will for safe custody may be liable for resultant injury to a beneficiary for failure to promptly notify the executor of the will of its existence.

The solicitor in that case was aware of the death of his client, but did not take any steps to locate the executor/residuary beneficiary for some years, resulting in loss to the estate.

The dissenting judges took the view that this imposed too greater a duty upon the holder of a will and the obligation that could arise, extending over many years in some cases, would be far too great.

The Court certainly did not say that in every case there was a legal obligation on solicitors who hold wills to search papers for death notices, although no doubt it would be wise to do so.

The obligation of a solicitor is uncertain.

In view of this decision, practitioners who prepare wills for clients may wish to give consideration to obtaining their clients' instructions to lodge the will with the Public Trustee rather than hold the will in their company office.

Copyright examined in federal report

A recent federal government report recommends that the remedies of conversion damages and an action for detinue should no longer be available to owners of copyright as of right.

The report, produced by the Copyright Law Review Committee, is available from the Australian Government Publishing Service.

Under the Copyright Act 1968, infringing copies are deemed to be the property of the copyright owner.

The copyright owner, in an action for infringement, may seek conversion

damages in respect of those infringing copies dealt with by the infringer in a manner inconsistent with the rights of the owner, for example in respect of copies which have been sold.

Detinue

The copyright owner may also bring an action for detinue of those infringing copies still in the possession of the infringer; the remedy would be either the return of the goods or damages. The Attorney-General, Michael

Duffy, said there were circumstances where the present law relating to remedies operated harshly and oppressively.

"The Committee recommended that the availability of the remedies of conversion damages and detinue should be within the discretion of the Court.

"The adoption of such a measure would enable the Courts to protect the interests of copyright owners in the appropriate circumstances," Mr Duffy said.