

## ***Board of Director's Value Statement***

### **"Care**

The Trust places its highest priority on caring for the interest of its clients through the provision of personal support services and the establishment of residential facilities.

### **Reliability**

Parents and carers can have confidence that their arrangements with the Trust for the future of their child will be carried out in accordance with their wishes.

### **Fairness and Equity**

The Trust's dealings with its clients and the public will conform with principles of natural justice, fairness and merit.

### **Accountability**

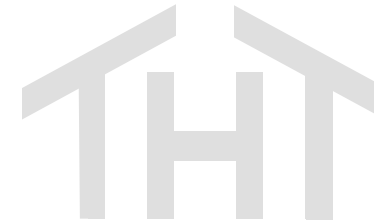
The work of the Trust is carried out with integrity and its financial and management performance is open to the scrutiny of its members.

### **Cooperation**

The Trust aims to work in full cooperation with agencies working in the area of disability to avoid duplication of services."

***If you would like to know more about the work the Trust is doing and how the Trust can assist you please contact the Executive Officer, for written information or an appointment.***

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# **THE HAWKEVALE TRUST INCORPORATED**

## **INFORMATION**

## **AND**

## **POLICY BOOKLET**

*The Hawkevale Trust Mission is to provide a means for parents or carers of people with developmental disability to make plans for the time when the parents or carers are no longer able to look after them and to assist in the implementation of those plans.*

# FOREWORD

As the inaugural patron of Hawkevale Trust it is my pleasure to endorse this unique organisation, which is the first of its kind in Western Australia.

As parents we are all concerned for the future of our children. For parents of children with developmental disability, the problem of ensuring that their needs will be looked after when parents are no longer able to care for them is of great concern.

In responding to the needs of parents in this complex area, Hawkevale Trust is providing a valuable service to families by helping to provide a secure future for their disabled sons and daughters.

**Mrs Marlana Jeffery**  
*Wife of the Governor of Western Australia*

## Board Members

Our board members have a range of qualifications and experience including legal, real estate, actuarial, finance, banking, business management, marketing, disability and advocacy services.

CHAIRMAN:	Mr Laurence Iffla
VICE CHAIRMAN/SECRETARY:	Mr Ken Booth
TREASURER:	Ms Lee-Anne Martin
MEMBERS:	
	Mr Dennis Barton
	Ms Diane Carey
	Mr Colin Carle
	Mr Leo Schaper
	Mr Tom Panizza
EXECUTIVE OFFICER:	Ms Grada Roberts

# Comments About HVT

## *From Parents or Carers*

I believe an organisation such as the Hawkevale Trust is needed to ensure that when some unforeseen tragedy occurs, particularly to the parents or carers, that there is someone that the family has previously arranged who will take care of the disabled family member in a way that suits the disabled person's specific needs . **Mr Tom Panizza**



It is great to find an organisation that will look after my son, according to my wishes. **Mr John Corbett**



As an ageing parent I have been constantly worrying about the future for my son, who has lived his lifetime in the family home and familiar surroundings. Friends say "don't worry", but I do worry.

It was during my never-ending "shopping around" for help that I came across the Hawkevale Trust. Through the Trust I have made arrangements for my son to remain in the family home after my death, on condition that my son can live there as long as his health and ability allow. The Trust will assist my son to choose two other residents who will share our family home. Support will be arranged by the Trust with professional care organisations. The Trust will also provide their Personal Support (visiting and advocacy) Service as part of the agreement.

At last I am confident that I made the best possible arrangements to ensure a secure future for my son. **Mrs Bernice Peters**



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# From the Chairman

For many years parents have been asking "*what will happen to our son or daughter when we are no longer able to provide the care?*"

Activ Foundation [as it is now known] conducted many studies by committees to try to find an answer. Legal advice given to Activ at the time indicated that it would be difficult for a service delivery organisation to promise continued support for a person with a developmental disability on the basis that the family had gained a guarantee from the organisation.

The Hawkevale Trust was formed to assist families wishing to make future provision for their son or daughter. With its capacity to accept properties and other assets from families on behalf of a disabled family member, to establish trust funds, to give assistance with Wills and to provide a personal support service it was deemed to have all the necessary powers to overcome the problems previously encountered.

Hawkevale Trust is a family based organisation, its members being the Honorary Life Members of Activ Foundation plus others invited to join. Its major goal is to fulfil the wish of parents and other family members for someone to take on the parental role when it can no longer be offered by the family.

If this is your concern then I ask you to read the information in this booklet and then discuss your needs with our Executive Officer.

- (c) The Hawkevale Trust will apply the balance of the income and capital of the Trust Fund (after payment of the Hawkevale Trust's charges) to the benefit, maintenance and advancement of my [son or daughter{name}] as it sees fit [or add specific requirements here].

## ***Taxation***

Funds held on trust will earn interest or other income that is likely to be in excess of the fees charged by the Trust. The disabled family member may need to pay taxation on these earnings.

Trust fund earnings may also affect the pension entitlements of the disabled family member. These aspects should be checked with your accountant or with the Department of Social Security.

If the disabled family member has made a valid Will, the Trust will hold the funds remaining after the disabled family member's death on trust for the beneficiaries of the disabled person's Will. If the disabled person is incapable of making a valid Will, the name of the person who is to receive the funds must be nominated.

### ***Managed Funds Will Clause***

" I give the sum of [\$ {amount goes here } ] ( "**the Trust Fund**") to THE HAWKEVALE TRUST (INC.) of 116 Jersey Street, Jolimont in Western Australia to be held on trust and invested for and on behalf of my [son or daughter {full name}] on the following conditions:

- (a) The Trust will invest the Trust Funds in [here specify if usual investments not required].
- (b) The Trust may charge the higher of:
  - (i) the fees charged by Perpetual Trustees W.A. Ltd (or, if that company ceases to exist, of any licensed trustee company) for the management of amounts similar to the Trust Funds, or
  - (ii) the actual costs and expenses incurred by the Hawkevale Trust in managing the Trust Funds, together with any reasonable fee charged by the Hawkevale Trust to recover a portion of its overhead expenses associated with managing the Trust Funds, and

## **From the Executive Officer**

### ***How can Hawkevale Trust help you?***

If you are trying to plan for the future of your disabled family member through your Will, the Trust can offer you the following assistance:

- ◆ Information on the various options by which to organise a plan that covers your wishes.
- ◆ Through the Personal Support Service the Trust can arrange that a volunteer visitor regularly visits your disabled family member and keeps an eye on their overall wellbeing, including accommodation, employment, day activity, financial management, medical needs, social activities, personal appearance and hygiene.
- ◆ If you would like to leave money in trust for your disabled family member the Trust can assist in management of the fund. As the staff and Board of the Trust are familiar with the disability field the Trust also looks after personal needs as well as financial aspects.
- ◆ If you would like your disabled family member to continue living in the family home or suitable accommodation of your choice the Trust may also be able to assist you through its property management service.

All enquiries are welcome and are treated in strict confidence.

## Most Frequently Asked Questions

*Q Who will look after the interests of my disabled family member when I no longer can?*

A While there are organisations which will probably look after your disabled family member when you are no longer able, they cannot give you a guarantee that his or her needs will be undertaken in the way your family would wish.

Hawkevale Trust was established to provide some options for parents that will enable them to make arrangements that will be carried out according to an agreement made between the parents or carer and the Trust.

*Q Where can I go for information that will assist me in making future plans for my disabled family member through my Will?*

A Hawkevale Trust provides a free Wills Advice Service that can help you go through the planning process to take account of the needs of your disabled family member. The Trust does not draft Wills but can provide information on where to have your Will drawn up.

*Q Will the Hawkevale Trust act as Executor to my Will?*

A No, the Hawkevale Trust is a body which cannot act as trustee under the law relating to Probate. Only trustee companies or individuals can be nominated as Executor.

## Managed Funds

Families frequently have difficulty in leaving money to a disabled family member due to a lack of capacity to deal with finances. Families may also have found that relatively small amounts of money are not welcome as managed funds with professional trustees.

There is also a perception that some degree of personal experience and involvement with disabled people is needed in order to spend the money in a way that the disabled person's family would have liked.

The Trust has developed a service that covers the establishment of trust funds (Managed Funds) under a Will or during a disabled person's lifetime (Living Trust).

Funds will be invested in common with other Managed Funds held by the Trust, but will be separately identified in the Trust's books as trust monies.

### ***Policy***

The Trust will take funds on trust and invest them on behalf of a disabled family member in common with other funds under its management. It will maintain separate accounts for each person's funds.

The funds will only be invested in licensed banks unless the Hawkevale Trust is authorised to invest in other investments. It will avoid speculative investments.

### ***Taxation***

All Wills can have taxation implications. The Trust is not able to provide any advice on the financial consequences of the clauses as drafted and strongly suggests you obtain legal or accounting advice.

The Trust is a tax exempt body. The Trust understands that if someone bequeaths a property acquired after 19 September 1985 to an exempt body it could mean the estate would be liable for capital gains tax on the increased value of the property since its purchase, after allowing for inflation. The Trust is seeking its own advice on this situation in order to try and have the position reversed.

### ***Other Options***

The Trust is continually looking at a range of options to assist families to obtain the accommodation and care they want for their disabled family member.

The Executive Officer will assist you to explore other options. For example, the Trust may take on the Head Lease of a home built by Homeswest and negotiate with other organisations for the care.

Another option the Trust is exploring is shared equity. However this concept is still being developed.

*Q Can I leave our family home for my disabled family member to continue to live in, with an assurance for his or her continued wellbeing?*

**A** Yes! The Trust can assist you through its Property Trust Service.

*Q How does the Trust ensure that the necessary support services are available?*

**A** Through the Property Trust the disabled family member continues to live in the family home and shares with two or three other compatible disabled persons. The Trust negotiates with organisations who provide relevant services to provide support to their clients who are residents of the home and also to the Trust's client. The Trust may also use the rent received from the property to pay for Support Care.

*Q How can I ensure that money or assets which I leave to my disabled family member will be managed as I wish, addressing financial aspects and personal needs?*

**A** Through Hawkevale Trust you can establish either a Living Trust, or a Trust through your Will that will be managed in accordance with your wishes. Hawkevale Trust also has the expertise to ensure that the personal needs of your disabled family member will be looked after.

*Q Can my disabled family member make a Will?*

**A** Only if he or she has Testamentary Capacity, ie. he or she is able to give instructions to a Will maker and to understand the implications of his or her instructions.

*Q Can I make funeral arrangements for my disabled family member with Hawkevale Trust?*

*A Yes, Hawkevale Trust can assist you with information and specific arrangements that the Trust will ensure will be carried out.*

*Q Can I nominate a guardian for my adult disabled family member?*

*A Yes, you can nominate a guardian. It is up to the Guardianship and Administration Board however, to decide on the suitability of a guardian and what type of guardianship is necessary.*

You should show this to your solicitor or the person drafting your Will. It is preferable that they follow the wording exactly, but the Trust will consider different wording if necessary. Please be aware however, that different wording is likely to fall outside the Trust's policy, which means the Trust may not be able to accept the gift.

"I give my house at [address and legal description goes here] **the [described] (Property)**" to THE HAWKEVALE TRUST (INC) of 116 Jersey Street, Jolimont in Western Australia, free of all taxes and duties on condition that during the lifetime of my [son or daughter {full name}]:

- (a) The Trust will use the [described] Property for the accommodation of my [son or daughter{name}] so long as he or she is reasonably capable of living there with other persons of a similar level of disability;
- (b) In the event that my [son or daughter {name}] is not reasonably capable of living at the [described] Property, the Trust will sell or lease the [described] Property and apply the proceeds to acquiring a suitable property or an interest in a suitable property that he or she will be reasonably capable of living in with other persons of a similar level of disability;
- (c) In the event that my [son or daughter{name}] becomes incapable of living at the [described] Property or any property bought or rented in its place but instead requires fully supported hostel or nursing home accommodation, the Trust to apply the proceeds of the sale or rental of the [described] Property to the accommodation needs of my [son or daughter{name}] to the extent they are not otherwise provided by Government subsidy, rebate, payment, pension or allowance: and
- (d) The Trust will provide a Personal Support Service to my [son or daughter{name}] on the terms set out in the PSS Contract dated this the \_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_

The Trust's decision as to whether my [son or daughter{name}] is capable of living at the [described] Property is entirely at its discretion, but it must exercise its discretion reasonably and in good faith."

The Trust's Board is made up of people who are familiar with the predicament facing families in trying to provide future housing for a disabled family member where there are no other family members able or willing to take on a "parent" role when the immediate family is unable to do so.

While the Trust cannot act in all ways as a "parent", it can be the legal means by which a family's wishes about the family home or the proceeds of its sale can be carried out. It does however, have a number of legal restrictions that must be complied with in order to act in this way.

The Policy tries to provide a balance between what a disabled person's family wants and what the Trust can legally and responsibly promise to do.

It is important to understand that the giving of property to the Hawkevale Trust is not a guarantee of a full or even partial care service. What it does guarantee however, is that the Trust will act on behalf of the disabled family member to carry out the wishes of the parent or family by negotiating with other human service organisations to provide the care and support needed. The cost of ongoing care and support is covered by offering accommodation to clients of other organisations. This is in exchange for support for the Trust's client and through the rents received from the property.

The Personal Support Service is a visiting and advocacy service that endeavours to see the disabled family member is visited on a regular basis and their quality of life is maintained.

### ***Property Trust Will Clause***

*The following clause has been prepared for the Trust. It is how the Trust would like to have the gift of the property recorded in you Will.*

# **The Trust's Aims and Services**

## ***Vision***

- ◆ Parents and carers will have peace of mind in relation to the welfare of their children in the future.
- ◆ People with a disability will have access to the quality of lifestyle their parents and carers plan and desire for them.
- ◆ Parents and carers of people with a disability will be aware of the importance of planning for the future of their children.

## ***Services***

The Trust provides services in four key areas:

- ◆ **Wills Advice Service**
  - assistance is provided in preparing a Will to ensure the future for your child in the way you want
  - assistance in understanding the responsibilities and consequences for people with developmental disability making a Will in terms of testamentary capacity.
- ◆ **Personal Support Service**
  - visiting and advocacy
- ◆ **Property Trust Service**
  - bequests of Real Estate to the Trust for use by the Hawkevale Trust for the benefit of the disabled family member (Property Trust)
- ◆ **Managed Trust Funds Service**
  - Trust funds managed on a personal basis.

***The following pages explain each service in more detail.***

## Wills Advice Service

This is a free service, with no obligation to use the Trust's other services. Prior to making your Will it is important to look at as many options as possible in terms of leaving assets for the benefit of your disabled family member.

The Trust has developed a schedule of options covering the major areas that we have found need to be addressed. However, as each family's situation is different there are various individual needs to be considered.

The Trust does not draft the Will but will provide you with written information to assist you in instructing your solicitor or a trustee officer. The Trust liaises with a number of solicitors who are familiar with the needs of people with developmental disability and their families.

### *Policy*

- 1 Collect and maintain useful information on Will provisions which will benefit people with developmental disability.
- 2 Liaise with Activ Foundation and other bodies to avoid duplication of services.
- 3 Establish links with professional advisers experienced in the area of preparation of Wills.
- 4 To ensure possible Hawkevale Trust donor parents receive independent advice if requested through Conflict of Interest Policy.
- 5 Publish information about preparation of Wills.

## Property Trust

### *The Need*

The Trust has identified a need for parents or the family of a disabled family member to make arrangements for their son or daughter to stay in the family home or to have a suitable house to live in once other family members have died.

- ♦ families sometimes wanted to see that the family home continued to be the home of the disabled family member
- ♦ others wanted the disabled family member to keep living in the same locality
- ♦ others were simply keen to make sure that someone else would see that the proceeds from the disposal of the family home was used to buy suitable accommodation wherever possible.

### *Policy*

- 1 The Trust will accept property on condition that it be used for accommodating the disabled family member.
- 2 The property must be given to the Trust as an absolute gift, but the Trust will abide by any specific wishes the giver has made and which the Trust has agreed to, as far as is practicable.
- 3 The Trust cannot accept property as a life interest only - in other words it cannot accept property if the property is to return to someone else after the disabled family member dies, or ceases to be able to live in it.
- 4 The Trust will provide a Personal Support Service to the disabled family member as part of the Property Trust Contract.

### **Personal Support Service Will Clause**

*The following clause provides a sample of the provision which would be included in your Will if you take out a PSS Contract with the Hawkevale Trust.*

You should show this to your solicitor or the person drafting your Will. It is preferable that they follow the wording exactly, but the Trust will consider different wording if necessary. Please be aware however, that different wording is likely to fall outside the Trust's policy, which means the Trust may not be able to accept the gift.

" I direct that my trustees pay whatever sum is determined by

THE HAWKEVALE TRUST (INC.) of  
116 Jersey Street, Jolimont in Western Australia

in accordance with its usual practice as its fee for the provision of a Personal Support Service to my [son or daughter {name}] in accordance with the Personal Support Service Contract dated \_\_\_\_\_19\_\_".

The Personal Support Service need not be specifically dealt with in your Will unless you wish to pay for PSS out of your estate.

## **Personal Support Service**

The Personal Support Service responds to the question raised by parents; *"Who will care for our son or daughter when we are no longer able?"*

The Personal Support Service (PSS) provides a volunteer visitor who will monitor the services and needs of each individual and ensure that your family member receives the help and assistance he or she needs including:

- ◆ health
- ◆ personal appearance (hygiene)
- ◆ social activities
- ◆ work or day placement
- ◆ accommodation
- ◆ finances
- ◆ overall lifestyle

The volunteer visitor will visit on a regular basis (usually every two months unless otherwise arranged) to keep an eye on the individual's well-being and to ensure that birthday and Christmas cards and presents are provided.

The volunteer visitor is recruited and oriented by the Trust's Executive Officer and is subject to a careful selection process. Families can nominate a person who is already familiar with the disabled family member. All prospective PSS visitors must meet the Trust's criteria.

After each visit the volunteer returns a checklist to the Executive Officer commenting on the areas mentioned above. Any concerns are taken up by the Executive Officer and the Board. Volunteer visitors are paid out-of-pocket expenses as determined by the Board.

The Trust will keep other family members and staff up to date with the Trust's activities.

A contract which states the terms of the PSS is drawn up between the Trust and the parents or caregivers.

It is important to understand that the PSS is **NOT** a full or even partial care service. It is a visiting and advocacy service that tries to make sure that the disabled family member is seen regularly. The service **DOES** include the Trust seeking to obtain the appropriate care to which the disabled family member is entitled, or which is available from suitable support providers.

### **Personal Support Service Contract and Fees**

A Personal Support Service Contract is drawn up between the parent or carer and The Hawkevale Trust.

#### ***The Contract includes:***

- ◆ Name and Address of Contributor or Parent or Guardian
- ◆ Name and Address of Recipient
- ◆ Method of payment
- ◆ Acceptance of Application
- ◆ Service
- ◆ Checklist
- ◆ Reviews
- ◆ Gifts (Birthday and Christmas)
- ◆ Record-keeping procedures
- ◆ Visitor's Qualifications
- ◆ Visitor Nominations
- ◆ Commencement and Completion of Service

- ◆ Limitations of Service
- ◆ Limit of Liability
- ◆ Definitions and Interpretation
- ◆ The Common Seal of The Hawkevale Trust Inc.
- ◆ Signatures of the Chairman and Secretary or Treasurer or Executive Officer.

#### ***Fees***

The fees charged for the Personal Support Service are reviewed annually and are calculated by a professional Actuarial Consultant. Fees are calculated individually and are based on the ages of the parent or carer and the disabled family member.

Payments can be made in the following ways:

- ◆ A single premium (one total payment)
- ◆ Annual premiums (paid over time as negotiated and depending on the age of the parent)
- ◆ Utilising an insurance policy to provide for a lump sum to cover the cost
- ◆ Making provision in your Will (paid from your estate - as costs are subject to inflation the cost at the time of death will be significantly more than paying under the above methods)
- ◆ No payment is needed if the Trust is accepting a gift of suitable real estate that will be used to accommodate the disabled family member.