

SUPERANNUATION IN CHARITABLE GIFTS IN WILLS

PREPARED BY
Bequest Assist

SPONSERED BY:
Include A Charity

Disclaimer

This report contains general information in relation to deceased estates and is not intended as formal legal or accounting advice. All information is based on our data and experience administering deceased estates and is intended as general education and guidance for charities only. The contents of this report are the Intellectual Property of Bequest Assist and are not to be reproduced without their express permission.

Report partners

Report authors: Bequest Assist

Bequest Assist was founded in 2019 by Maureen Koegel with the aim of improving bequest administration for Australian charities. The goal was simple: to make the charity estate administration process more efficient and improve outcomes for charities. In that time, we've secured over \$3 million for charities that they otherwise would have missed out on, or not received for years to come.

Our work is focused on estate administration and to date we have recorded over 4,000 bequests for charities in our database. This data represents a treasure trove of information about bequests and insights into the people who leave them.

We offer estate administration outsourcing to charities around Australia and New Zealand, regular training for Gifts in Wills team members and free monthly webinars.

If you would like to learn more about Bequest Assist's services, visit www.bequestassist.com.au or email info@bequestassist.com.au.

Report sponsors: Include A Charity

Include a Charity is a social change campaign - managed by Fundraising Institute Australia - broadly seeking to inspire and encourage people to leave charitable gifts in their Will.

The Include a Charity team strives to build awareness, community, knowledge and engagement for its members and Australian society through active campaigning, training, research and networking. Members hail from more than 100 not-for-profits - in the fields of health, education, international development, community services, animal welfare, the environment, the arts and more. We provide support, education and encouragement for gift-givers and influencers such as solicitors and financial planners. And charities benefit through contemporary training, upskilling, collaboration, social networking and the pooling of ideas and resources.

This interaction between key stakeholders enables us to:

- Increase public awareness of gifts in Wills as a philanthropic act and to make it as commonly recognised and enacted as all other fundraising channels.
- Develop the knowledge, experience and skills of the gifts in Wills fundraising sector in Australia to ensure best practice and promotion of member bequest programs.
- Advocate for operational and legislative change with government to smooth channels for growth in bequest fundraising in Australia.
- Encourage estate planning professionals and solicitors to reference gifts in Wills during the will-writing phase or in public forums to grow and support campaign objectives.
- Undertake world-first research projects in the charitable gifts in Wills fundraising space.

Include a Charity promotes Gifts in Wills fundraising across the NFP sector and to the general public to transform the landscape around leaving charitable bequests to vital causes: To make leaving a gift in Will to charity the norm.

Introduction

Gifts in Wills are a major source of income for many charities – allowing them to conduct medical research, care for injured animals or advocate for political change. The incredible individuals who include charities in their final wishes leave a lasting legacy of generosity and hope for a better future that the writers of this report want to honour.

The estates that include bequests for charities are made up of a range of assets including real estate, bank accounts and shares. Increasingly, these estates include superannuation as a major asset.

Different assets require different approaches for a charity estate administrator, for example, shares and some pieces of real estate can attract Capital Gains Tax which charities are exempt from. Superannuation is no exception and presents its own unique set of challenges in the estate administration process.

This report seeks to explore some of the challenges of superannuation as an asset in deceased estates from the perspective of charities as well as provide some data to inform understanding of this issue.

Data collection

As a normal part of Bequest Assist's estate administration process, we collect data on each bequest left to one of our charity clients. This includes reading and entering information available through public documents, searching for obituaries of the deceased and recording the impact of any legal problems on the estate funds realised. This report is possible as collecting this data is essential to the day-to-day work we do, which also means it is regularly checked to ensure complete accuracy.

The data in this report comes from our administration on behalf of 25 different Australian charity entities. All data has been deidentified and irrelevant records have been excluded. Every effort has been made to record and analyse data accurately.

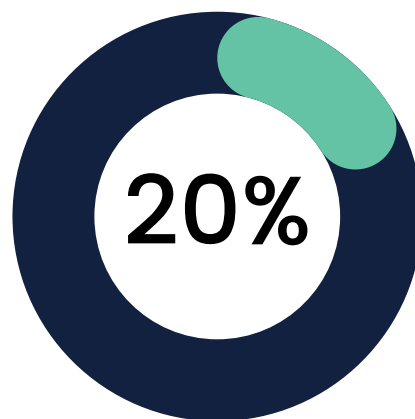
It is important to note that the analysis in this report is not a generalised overview of the occurrence of superannuation in deceased estates, but is specific to estates where a gift has been left to at least one charity. There are likely differences in these statistics from what would be seen in the general pool of deceased estates, for example, estates with a gift to charity are far more likely to come from an individual without a spouse or children.

Frequency of superannuation as an asset

Bequest Assist began collecting data on superannuation as an asset in deceased estates at the end of 2022 after increasingly noticing it on asset lists. Now, we regularly see superannuation as an estate asset. This increasing frequency makes sense given the Superannuation Guarantee was only introduced in 1992. Likely the portion of estates that include superannuation as an asset will continue to grow as more deceased individuals will have worked beyond 1992.

One of the first challenges for charities when it comes to superannuation is that it is inconsistently included or excluded from asset lists. Different solicitors and trustees appear to be taking different approaches to whether or not superannuation should be listed as an asset. On one hand, sometimes superannuation is listed only to later be claimed directly by a family member and not form part of the estate, resulting in the charity receiving less than they had initially expected. On the other hand, sometimes the superannuation is not mentioned, making it impossible for the charity to track or correctly forecast their gift size.

With the caveat that some estates contain superannuation that is not mentioned in the asset list, 101 of 498 estates did include some amount of super in the asset list. This means that at least 20% of estates with a gift for charity include superannuation.



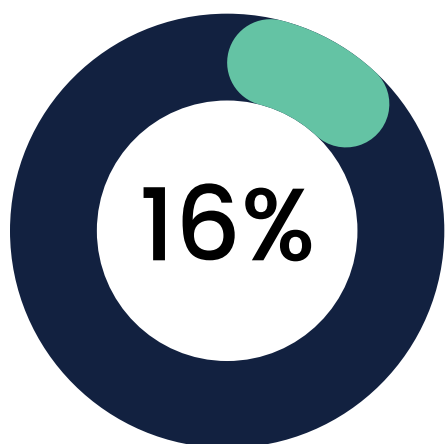
Value of superannuation as an asset

\$298,394

Median value of superannuation in an estate with a gift left to charity

The value of superannuation left in an estate with gifts to charities varies significantly. Across the estates analysed for this research, the higher value within any one estate was \$5.5 million and the lowest was \$80. The mean average value of superannuation was \$556,785 and the median value was \$298,394.

We further analysed what percentage of the total estate value superannuation represented. In some instances, superannuation made up very little of the total estate value with the bulk coming from



assets such as real estate, shares and bank accounts. In other instances, superannuation was the major asset in the estate. Overall, superannuation made up 23% of the total value of the estate on mean average, or 16% when looking at the median.

Bequestor trends with superannuation

While the sample size for analysis is limited, we noted that men were about 1.5 times more likely to have superannuation than women. It was also noticeable that people who passed away younger were far more likely to have superannuation as an asset in their estate, but the value of the superannuation increased with age.

Taxation on superannuation

Charities with tax exempt status are able to avoid taxation on assets such as shares and non-primary residence real estate when handled correctly within a deceased estate. Where these assets are either transferred directly to the charity or they are made “presently entitled” to their income, the unnecessary taxes are avoided and charities receive substantially more funds from their Gifts in Wills.

Unfortunately, superannuation cannot be handled in the same way and currently the tax on this asset is unavoidable, even for tax exempt charities. The amount of the asset lost to taxation varies, but is usually around 15-17%. This means not only a challenge to charities in terms of forecasting what funds they will receive from a gift in a will, but reduces the income that they can in turn put to their important work.

There is currently such variability in the outcomes we see for superannuation handling that Bequest Assist follows a special process just for this asset:

1. When superannuation is mentioned in the asset list, approach the solicitor/trustee and check if they anticipate that the super will indeed flow into the estate.
2. If the solicitor/trustee suggests that they are unsure if there is a family member that might claim the superannuation directly, reforecast excluding the superannuation from the value we expect the charity to receive.
3. If the solicitor/trustee suggests that the superannuation will flow into the estate, reforecast by conservatively subtracting 17% of the total value of the super from the funds expected.

CASE STUDY 1:

Superannuation formed a large part of a deceased estate where the house was left to the deceased's sister and the residue left to charities. The deceased had not made a binding death nomination for his superannuation. The charities approached the solicitor and enquired whether he expected the superannuation to flow into the estate to which he replied that he did even though the sister had expressed an intention to claim it.

The deceased's sister approached the superannuation company directly and was successful in having the funds awarded directly to her, rather than the estate. The charities, having relied on the information provided by the estate solicitor, significantly over-estimated the amount they were to receive and had to reforecast.

To put this loss in perspective, using the mean average value of superannuation discussed above, a rate of 17% taxation would mean a loss of \$94,653 to residuary charity beneficiaries. When superannuation features in 20% of total estates leaving a gift to charity, this loss of income becomes quite significant.

Binding death nominations

Bequest Assist frequently sees instances where an individual has died having made no binding death nomination on their super, or has made a nomination that is invalid for a variety of reasons. Where there is no nomination, there is often a long period in the estate administration process where there is unsureness if the superannuation will form part of the estate. In instances where there is a binding death nomination made to a non-eligible person or incorrectly executed, sometimes the confusion can be even greater.

CASE STUDY 2:

The deceased wrote a will leaving his entire estate to charities. He began, but did not complete a binding death nomination on his superannuation in favour of his nieces and nephews, who are not eligible people for such a nomination.

The executor of the estate is the brother of the deceased (and father of the nieces and nephews). He approached the charity beneficiaries and asked that they voluntarily give away a share of their gifts to the value of the superannuation to be paid as an ex gratia payment to the nieces and nephews despite the lack of a binding death nomination.

This is a case study that Bequest Assist has seen multiple times where an improperly executed nomination places the charity in a difficult position.

Conclusion

Superannuation is becoming an increasingly common asset in deceased estates with a gift left to charity in the will. Charities are already experiencing a variety of challenges in the administration of estates that include superannuation, the largest of which is unavoidable taxation on the asset despite charities' tax exempt status.

With changes to policy allowing charities to be nominated directly as beneficiaries of superannuation, more essential funds can be protected for the benefit of all Australians.

Recommendation

Allow for the inclusion of charitable organisations in superannuation death benefit nominations and work in consultation with fundraising bodies, wills and estates lawyers and financial planners to improve the passing of superannuation funds to charities. Any changes should be considered in light of charities' tax status and allow superannuation funds gifted to them to be exempt from tax as other assets are.

Making improvements to this process will not only increase essential funds for charities, but make the process simpler and smoother for estate administrators such as solicitors and executors.