

# Bequests Promised vs Bequests Realised

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## 2024 National Research Project

Understanding what happens to confirmed gifts in wills that don't materialise

### Led by:

Bequest Assist

### Made possible by:

Include a Charity

Philanthropy Australia



**Bequest Assist**

**PHILANTHROPY  
AUSTRALIA**



**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 Bequest Assist's data and experience administering deceased estates and is intended as general education and guidance for charities only.

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Examples and case studies throughout this report are based on real cases that Bequest Assist has observed, but names and details have been altered to protect privacy.

# Thank you

This report has been anonymised and we will not share the names of the 27 Australian charities who participated in this research. Nonetheless, we would like to say a massive thank you to each of those charities and their Gifts in Wills teams. It has only been through your energy, time and willingness to collaborate that this research has been made possible. Thank you for taking a chance on research that we hope will benefit the entire charitable sector and spark big conversations about the management of probate in Australia.

# Report Summary

- This project sought to understand what happens to gifts that were promised by a bequestor to a charity, but never materialise after they pass away. This included looking for “missing gifts” that are written into wills, but never notified or paid to charities.
- We looked at the wills of individuals all over Australia who had promised a gift to at least one of the 27 participating charities and who were suspected to have died between 2016 and 2021.
- 1586 names of bequestors were able to be assessed and included in the research.
- In 283 cases, the charity who reported the name was a beneficiary of the estate (termed Bequest Acknowledged) – including the missing gifts.
- In 1303 cases, the charity who reported the name was not a beneficiary of the estate (termed Bequests Denied).
- 43% of the time when the bequest was denied, we were unable to confirm that the individual was deceased, or they were deceased but probate was not required.
- 23% of the time when the bequest was denied, the gift was left entirely to individuals with no charities mentioned in the Will. 20% of the time, at least some portion of the Estate was left to charities other than the one who had reported the name.
- 43% of the time when a bequest was acknowledged, it turned out that the charity had already received the funds, but had not marked them correctly in their system.
- 16% of the time when a bequest was acknowledged, it was a missing gift. This means 2.8% of the total records searched were missing gifts.
- The report contains a number of recommendations to address the issue of missing gifts, as well as others raised by the research, for charities and policy makers.

# 2016-2021

The years this project focussed on searching for probate of confirmed bequestors who passed away

# 27 Charities

Participated in the research

# 2002

Confirmed bequestors names were included

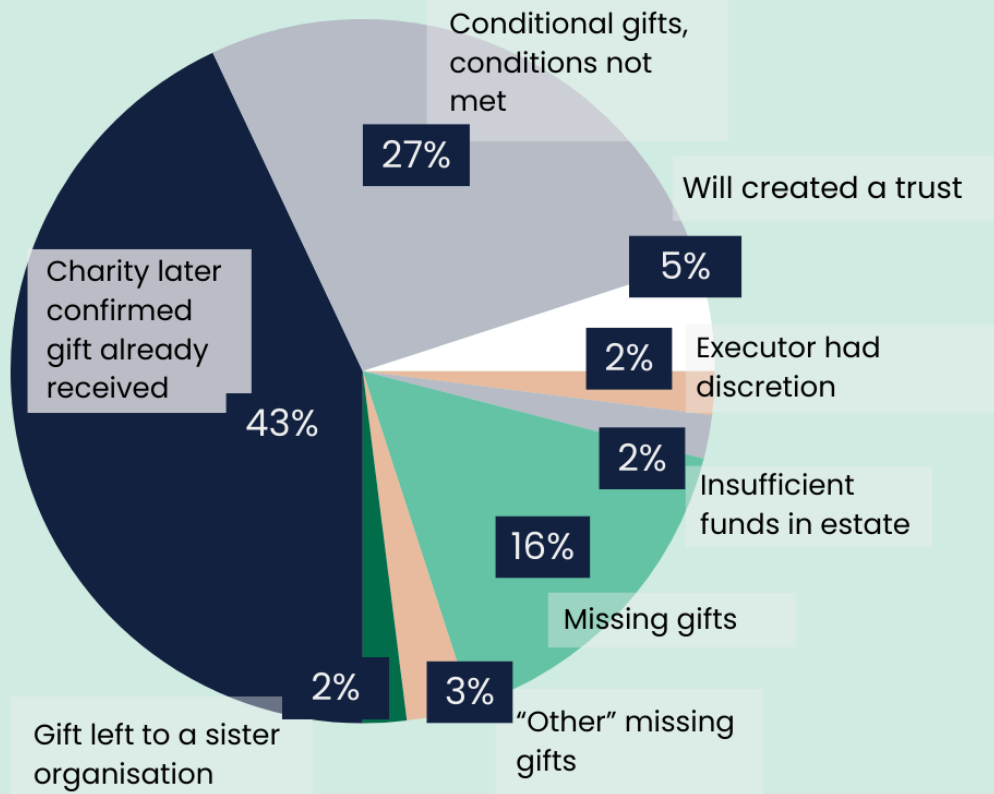
# In 283 cases

there was a bequest to that charity in the will

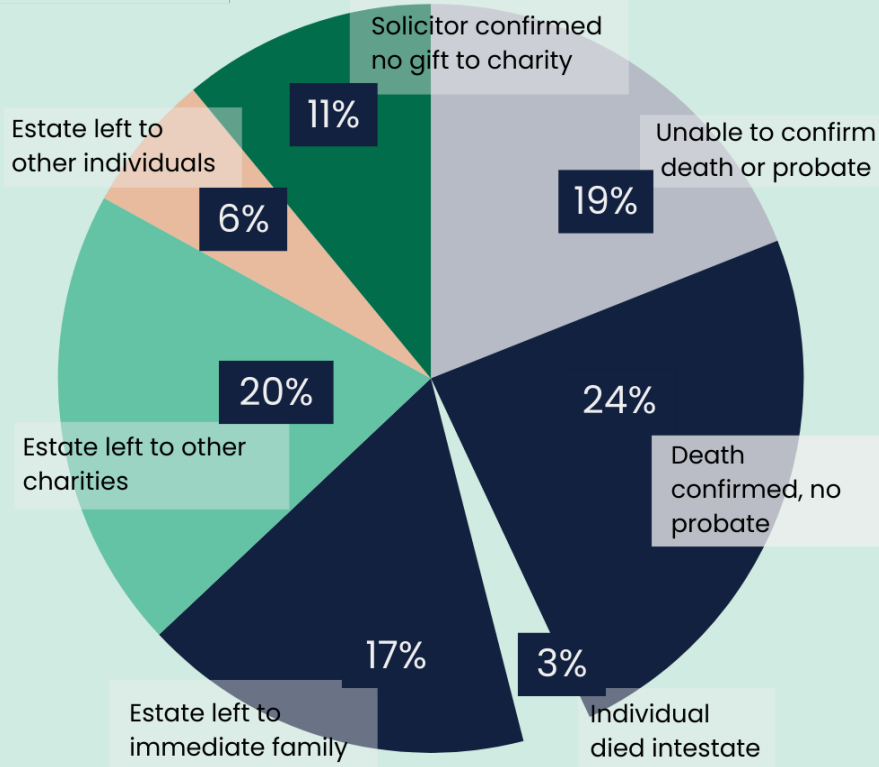
# In 1303 cases

there was not a bequest to that charity in the will

## Bequests Acknowledged



## Bequests Denied



## 44 missing gifts

(charity never notified or paid) were found for participating charities.

### \$273,000

So far, has been returned to charities from missing gifts

### 2.8%

Results suggest 2.8% of gifts left in wills end up being missing gifts

### \$40 Million

This could mean a loss of \$40 million to the charitable sector each year

## 1.5 Years

It took participating charities 1.5 years on average to mark a confirmed bequestor as deceased after they had passed away

## Data

Data cleanliness is essential for being able to assess your bequestor profile and prevent missing gifts

## Caution

Gifts in Wills pipelines should be viewed with caution – a confirmed bequest is not a sure thing



# Section 1: Introduction

Gifts in Wills play a crucial role in ensuring charities can continue their important work and achieve their missions, whether that be to search for a cure, protect natural habitats or care for animals. Within charities, estate administrators play a key role in ensuring that the organisation receives all of the funds intended for them and that the final wishes of generous bequestors are honoured. We approached this research project with that sense of responsibility in mind.

This report is the culmination of two years of research into why some gifts that were promised by a living individual do not culminate into a gift in their will after that person has passed away. At the same time, we undertook a search for missing gifts: bequests left in wills that have never been paid to the charity recipient as the bequestor intended.

## Why this project?

Through our work at Bequest Assist, we have had the opportunity to observe a range of instances where a gift intended for a charity went “missing”. We have long suspected that this problem is more common than charities are aware of, and overseas data has reinforced this suspicion. This has led us to want to investigate the issue further.

In addition, charities often express concern and confusion that gifts promised by confirmed bequestors don't ultimately materialise after they pass away. We have been concerned that some charities treat their confirmed bequestor pipeline as a near guarantee of future income when we know that many of these gifts will ultimately not arrive. Charities need better information about why some gifts don't materialise and to what extent they can rely on their pipeline as an indication of future income.

With these issues in mind, in 2023, 14 charities participated in a pilot research project in Victoria. This revealed that an estimated 1% of all gifts in wills may be missing with an estimated loss of millions of dollars to the charitable sector each year. Include A Charity and Philanthropy Australia generously agreed to partner to take this research nationwide in 2024.

## What is a “missing gift” for the purposes of this project?

We define a missing gift as a bequest that is never paid because the executor or solicitor either intentionally or accidentally does not notify a charity that they are a beneficiary. This happens in a number of ways, all of which Bequest Assist has observed in the past:

- The will is misread and one or more charities are missed;
- The will is accidentally or intentionally destroyed or lost, resulting in the deceased being found to be intestate (dying without a valid will) with the estate passing to family;
- The will is probated, but the executor or solicitor decides to pay some beneficiaries but not others due to a personal objection to one or more of the charities listed;
- The will is probated, but the executor or solicitor fail to finalise estate administration (for example as a result of ill health or retirement);
- The will is probated, but the executor or solicitor does not pay out gifts as the will specified, instead keeping some or all of the money for themselves; and
- The solicitor or executor notify the charity purely through a cheque in the mail, but the cheque is either sent to the wrong address or lost in the post.

Before the 2023 pilot project, Bequest Assist had identified close to a dozen missing gifts and had reason to suspect more. In one case, a nephew of the deceased had her declared intestate despite him knowing she had written a valid will, and then disappeared with the funds before the deceit was uncovered. This man is now cooperating to repay the millions he tried to steal from the charities in order to avoid jail. In another example, we found that one charity client had been paid while another had not. When we made further enquiries, the executor expressed their personal distaste for the charity that had not been paid. The most egregious example made the news when a solicitor in New South Wales was jailed for stealing more than \$6 million from two estates that had been left to charities.

We have always known it would be impossible to fully quantify the issue of missing gifts without purchasing every will in Australia (at a cost of millions), and even then some cases would go unidentified. With current probate laws and processes in Australia, this would be impossible, so we designed the *Bequests Promised vs Bequests Realised* research project as a targeted analysis of the issue of missing gifts.

It is worth noting that there are many other instances where a gift for charity is partially missing. For example, we know of one instance where an executor paid a charity \$10,000 when they had been left \$100,000 in the will. Bequest Assist often sees estates where solicitors and executors have failed to finish estate administration and make a

final payment due to beneficiaries. These cases are well worth the attention of charity estate administrators, but not what we would consider a true “missing gift”. This report is focussed on instances where the charity has never been notified or paid at all.

## Why aren't missing gifts caught by the probate court?

The missing gifts listed above are mainly examples of illegal conduct by solicitors and executors who are obliged to administer an estate consistently with the instructions in the will. It would be ordinary for some missing gifts to occur through accident, for example, a will being unable to be found, or a cheque going missing in the mail. But where missing gifts are caused by illegal acts on the behalf of the solicitor or executor, it's natural to ask how this is possible.

Probate is a formal legal process that most wills in Australia go through in order to be administered. While this process imposes obligations on the executor, it often shocks people when we point out that the Supreme Court (where probate is granted) is not designed to carefully watch the conduct of executors. For most estates, there is limited interaction with the probate court and no-one checking that gifts are paid consistently with the will. In effect, *there is no probate police*.

We believe that one of the reasons that missing gifts aren't more broadly talked about and seen as an issue that needs to be addressed by law makers is that they are more likely to happen to unaware charities than individuals. To explain this with an example: if your grandmother passed away today you would likely know the executor of her estate and have at least a rough idea of what is happening with the administration. You would likely know roughly what her assets are and who is receiving gifts from the will. If the executor kept all the money for themselves and disappeared, you and your family would likely be aware and take action.

For charities this is much harder. A charity might not know that a bequestor is deceased or whether or not they are likely to be in a particular will. In fact, we find that in around 33% of cases, the charity didn't even know the individual leaving the gift! It is much easier for an executor to decide not to pay a gift and only get caught if the charity somehow knows to purchase a copy of that particular will.

We know that missing gifts are probably more likely in the wills of people who were not known to the charity or were not confirmed bequestors, but the cost to purchase every will in Australia would be astronomical. For that reason, for this project we focussed in on a group whose wills we knew are an area of interest: confirmed bequestors whose gifts never materialised for the charity.



## A note on the frequency of missing gifts

It should be noted that the vast majority of solicitors and executors are honest, diligent and careful to ensure that charities receive the gifts that bequestors intended. This research and its findings should in no way diminish their skill and generosity.

For a charity relying on Gifts in Wills income to fund their important work, however, the devil is in the detail. Given that the average bequest for a charity is around \$143,000, the impact on a charity of just one missing gift in a year could be enormous. What's more, the generous bequestor who left that gift to charity made it their final wish that those funds would be put to good use by their chosen cause – we feel it is owed to them and all bequestors to ensure that wills are properly administered.

Missing gifts are in the minority, but as past experience and this report show, they do happen and do cost charities funds intended for them.

Our hope is that all players in estate administration whether they be within a charity or a solicitor's office are equally concerned by these findings and eager to find a solution.

## Section 2: Project design

From the success of our smaller-scale Victorian pilot project in 2023, we designed this larger nationwide study. The cost and method to purchase wills varies in each state and territory, so the work involved in collecting relevant wills was more time intensive than in 2023.

We determined that we would look at the period of 2016–2021 for several reasons. Firstly, if a will was probated between 2016–2021, any charity beneficiaries certainly should have been notified and likely paid by now, so we knew that unpaid gifts we found from that period would qualify as “missing gifts”. Secondly, the period is recent enough that charities are more likely to have accurate records of whether they received a gift, and if not, we would have a better chance of locating the executor and asking for the funds to be paid.

Charities were approached about the project and asked to participate. 27 agreed and shared the names of confirmed bequestors who they suspected had died between 2016 and 2021. This was determined by the charity having marked the supporter record

as deceased during that time – likely as the result of a return-to-sender on mail, a phone being disconnected, a family member reporting that the bequestor had passed away or as a result of data-washing.

Using these names, we then searched for probate records or evidence that the individuals were deceased (using searches such as *Ryerson Index*, *Find A Grave* and *Herald Sun Obituaries*). In most states and territories, the probate record is easily searchable and includes the name, address and date of will of the deceased as well as the executor's name and the contact details of the individual placing the probate advertisement (usually a solicitor).

### **Note**

While sometimes wills are considered by members of the public to be “private”, they are by law public documents that can be viewed by anyone following the process laid out by the probate court. All of the information gleaned throughout this research has come from publicly available obituaries, grave data and probate documents.

After confirming death and/or probate for the individual, we then excluded some records, for example, where the individual died outside of the 2016–2021 period. For the individuals whose probate records were accessible, we assessed which records could be viewed at a Public Records Office (some in Victoria or Queensland), viewed online (all in South Australia), or purchased. Where a solicitor was the estate administrator listed on probate, we reached out and asked whether or not the charity was included in the Will of the deceased. Where an executor was listed on probate, or we received no response, we triaged which wills would be purchased.

The biggest limitation of this project was this cost. While wills are relatively inexpensive in most states and territories (often around \$30 per document), in NSW the cost is closer to \$200. We kept costs to participate in this project as low as possible which limited the number of records that could be purchased in that state. We made an assessment in each instance which wills would be most likely to contain a missing gift, and prioritised those for purchase.

Wills were read to determine where the estate was directed, including if any charities were beneficiaries. We recorded all of the data related to these wills and confirmed

with charities whether or not their gift was paid. In instances where the charity could not find a record that the gift was paid, we approached the solicitor or executor.

In some instances, we were able to have missing gifts funds returned to the rightful beneficiaries. In other instances, we continue to pursue options for these funds to be claimed.

## Future research areas

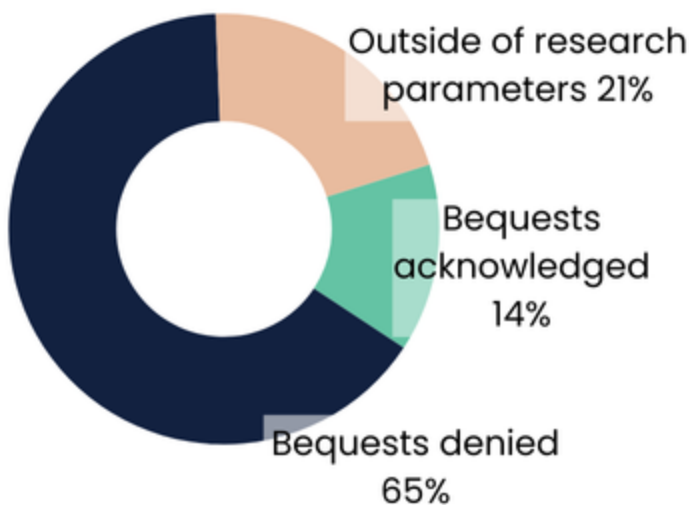
There are many more directions this research could be taken to better understand the issue of missing gifts and the charitable intentions of bequestors. A few areas of particular interest include:

- A sample of wills from high net worth and ultra-high net worth families;
- State by state comparison of will accessibility and executor's duties;
- The role of professional advisers in ensuring bequests are passed on;
- How superannuation assets can be gifted in wills to charity;
- Bequest management for charity fundraisers.

# Section 3: Results

## Quick Statistics

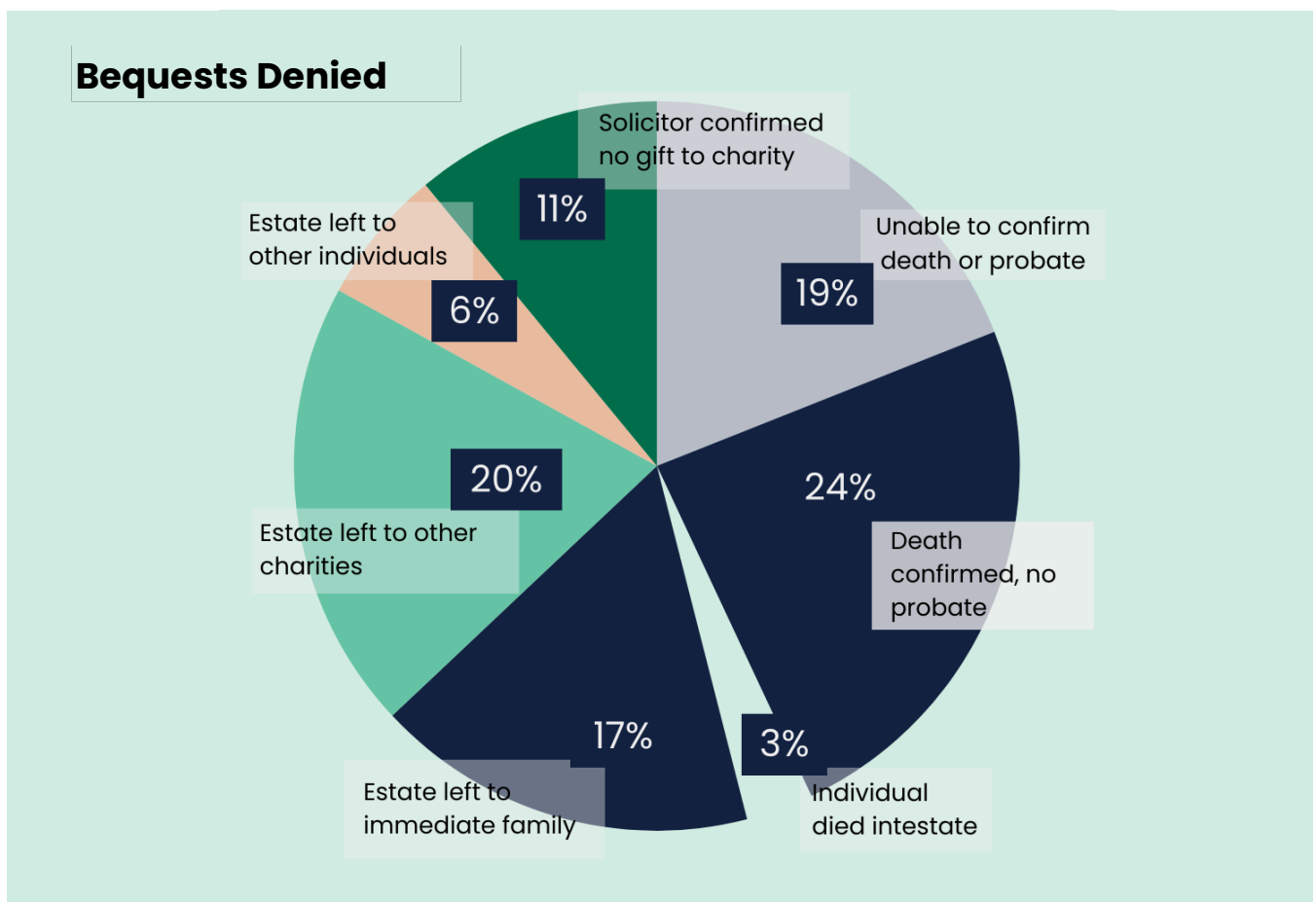
- 2002 names of confirmed bequestors were provided by charities and included in the research.
- 1586 names were able to be assessed and included in the research.
- In 283 cases, the charity who reported the name was a beneficiary of the estate (discussed below as Bequests Acknowledged)
- In 1303 cases, the charity who reported the name was not a beneficiary of the estate (discussed below as Bequests Denied)
- In 416 cases, the individual died outside of the project study period, there was insufficient identifying information or we did not have the funds to purchase the will.



It is worth noting that what classifies a bequestor as “confirmed” differed between charities. Some participating charities provided us with names of individuals that other charities would consider to be “intenders” who had not subsequently confirmed that they had indeed put a gift into their will. This issue will be discussed in further detail under Recommendations.

Reason denied	Number	Percent
Unable to confirm death or probate	249	19%
Death was confirmed, but no probate was granted	310	24%
The individual died intestate	33	3%
Solicitor confirmed no gift in the will	139	11%
The estate was actually left to the deceased's immediate family	227	17%
The estate was actually left to other individuals known to the deceased (not charities)	82	6%
The estate was left at least in part to charities, but not the charity who had reported the individual as a confirmed bequestor (of these gifts some were conditional)	263	20%
<b>TOTAL:</b>	<b>1303</b>	<b>100%</b>

## Bequests Denied: Why didn't the gift materialise?



Prior to working at Bequest Assist, the writers of this report suspected that there were two main reasons that charities did not ultimately receive funds from those who had confirmed bequests before death:

1. The person had promised a gift but changed their mind at a later date, writing a new will; or
2. The person really intended to leave a gift to the charity, but never got around to rewriting the will to include that charity.

After working at Bequest Assist and conducting this research, our impression has evolved that it is more likely that there simply never was a gift in the person's will for the charity, and never a concrete intention to include them. We have seen many examples where it appears that the person was simply confused about which charity was which (eg confirming their bequest status to a charity with a similar mission or name to the one that was actually in their will) or simply wanted to give the answer that the charity would like to hear (eg confirming to many charities that they were being left a gift in their will, only for the entire estate to be left to family).

It must be emphasised that there are many individuals who confirm and even reconfirm their gifts in wills to the charity, but there were no charities in their will at all. Perhaps individuals want to provide an answer that makes a trusted charity worker respond positively, but have not really turned their mind to the act of changing their will.

Each of the following headings provides more details about the circumstances in which a gift has not materialised from the will of a confirmed bequestor.

## Unable to confirm death or probate

### *19% of bequests denied*

In 19% of cases where the bequest was denied we were unable to confirm that the individual was deceased and unable to find probate. This could happen for a range of reasons including:

- The person was marked by the charity as deceased but is actually still alive;
- The person is deceased but there was no public obituary and probate was not required (potential reasons why identified below); or
- The charity had an incorrect name or contact details for the individual, or their name and location were too common to trace.

In some instances the person may have moved and not provided new contact details, leading them to be marked as deceased after becoming dormant in the charity's

database. Our approach at Bequest Assist when a charity gives us the name of a confirmed bequestor they suspect is deceased is to search for evidence of death or probate for a period of five years from the last date of contact. In some cases, the individual has moved into aged care where the average stay in Australia is two and a half years. By searching over a period of five years, we ensure that these bequests do not slip between the cracks.

It is worth noting that we often find that individuals had a full name quite different than what the charity had recorded them as. As a hypothetical example, a charity might have a person named Lizzie Smythe in their system, only for us to discover that Lizzie's full name at probate is Helen Elizabeth Smythe – so checking variations of a person's name and relying on information such as their previous address is necessary. One of the most reliable pieces of information for this research that charities sometimes have is a date of birth for the individual.

The potential value of washing donor lists through the Australian Death Check is discussed later in this paper.

## Death was confirmed, but no probate was granted

### *24% of bequests denied*

For 24% of the bequests denied we were able to confirm the death of the individual (for example through an obituary) but could not find a grant of probate. In our experience, there are two main reasons that probate is not required:

- The individual's assets were of a low value and a grant was not required to release them to the executor; and/or
- The individual's assets were jointly owned (such as with a partner) so passed directly to them without the need for probate.

In addition, in some states and territories, locating probate can be more challenging than others.

Sometimes the executor had advertised for probate, but never gone on to have it granted. We presume this happened when they subsequently found out it would not be required to collect assets. Every financial institution has its own limit for the amount of funds they will release before requiring a formal grant.

In most states and territories, we expect to see a grant of probate within 12 months of the date of death.

During the pilot project we had been keen to better understand instances where there was no probate granted because the majority of the deceased's assets were jointly held with their spouse. We looked at seven instances where the confirmed bequestor and their spouse must have had mirror wills (where two spouses have two wills that are identical in how assets are divided). The outcomes in those cases were:

- In four cases, the charity was not mentioned at all – the estate was left first to the spouse and, if they died first, to children.
- In three cases, the charity was mentioned as a beneficiary, but only if other individuals pre-deceased the testator. In none of these cases were the conditions met for the charity to receive the gift.

Notably, there very well may be missing gifts amongst this group. These would be excessively difficult (if not impossible) for charities to find and address unless they knew where a copy of the will was held.

### **Hypothetical example: missing gift when no probate granted**

John leaves 50% of his estate to charity and 50% to his neighbour, the executor. When the executor sees that John's entire estate is worth only \$60,000 spread across bank accounts and physical possessions, they are able to administer the estate without the formal process of probate. They collect the assets and keep all funds for themselves. When the charity wonders why they never received a gift from John who was a confirmed bequestor, they search and find that he is deceased, but there was no probate granted. Unless the charity knew where John's will was stored or the solicitor he wrote it with, they have no-one to contact to make further enquiries and the estate funds are lost.

## The individual died intestate

### *3% of bequests denied*

In 33 instances, there was no bequest for charity because the individual was found to be intestate. A person is said to die "intestate" when there is no valid will that can be located at the time of death. When this happens, the individual's estate passes to their nearest family through a hierarchy set by the state the person died in.



Hypothetically, charities should not see confirmed bequestors pass away intestate – after all, this is a person that confirmed to the charity that they were already in their will (so therefore a will exists) – but these estates represented 3% of total bequests denied in this project. There may be two main reasons this happens:

- The individual never had a will – they confirmed to the charity but never got around to writing one; or
- The individual had some form of will (whether informal or formal) that could not be located or was destroyed either before or after death.

This could happen in a whole range of ways. Imagine a person who writes a will from an at-home-will-kit and leaves it in a huge stack of papers in their office – it is entirely possible that family members cleaning out the house would not notice the significance of the document and save it from shredding. Alternatively, imagine if someone has written and stored their will with a solicitor, but left no notes for their next of kin on which solicitor that was. Unless the solicitor has cause to find out the person is deceased and search their records for a will, the document might not come to light.

We recently worked on an estate where we suspected that the deceased had drafted a formal will with a solicitor, but this was not located at the time of death. Even with our connections and experience in this area, it took Bequest Assist months of hard work and investment of funds to eventually locate the solicitor who had drafted the will. This demonstrates how easily a missing will can impact charitable bequests.

Bequest Assist has observed a few examples where the charity was very certain that a gift had been left to them, but the individual was declared intestate. Take this deidentified example that we observed below.

### **Case study: confirmed bequestor declared intestate**

Betty had a longstanding relationship with her charity of choice and confirmed on multiple occasions that she had left a gift in her will to the charity. This included a conversation where she shared that she had recently updated her will, but the charity was still in it.

When Betty passed away, the charity asked Bequest Assist to start watching for probate as is standard policy. When Bequest Assist located probate, it stated that Betty died intestate and her brother had been named as executor. By the laws of intestacy, Betty's brother would also inherit her estate if there are no closer living relatives such as a spouse or children, which there were not in this case.

Bequest Assist made enquiries with local solicitors, but could not find anyone who had assisted Betty or knew where her will may be. The charity did not have a record of which solicitor had assisted Betty, or if she had used an at-home will kit.

Ultimately no will could be found and Betty's brother inherited the estate. This shows a challenge for charities upholding the wishes of confirmed bequestors: Betty clearly wanted the charity to know her intentions, but they are not in a position to really observe what happens after she passes. Likely Betty's brother was amongst the people who cleaned out her house and would have been able to discover any notes or documents relating to her will that may have directed funds away from his interests.

### **Solicitor confirmed no gift in the will**

#### *11% of bequests denied*

In 11% of cases where the bequest was denied, we relied on a solicitor or trustee confirming that there was no gift to the charity who had provided that name to deny the bequest. Ideally, we would read all wills and identify where those funds went instead, but funds were limited and wills are expensive to purchase in some jurisdictions.

While it is possible that a solicitor or trustee could be dishonest or make a mistake in answering this question, we consider that a low risk in the circumstances. We suspect

if we were to be able to review these wills, they would follow similar patterns as the rest of the data – eg being left to individuals or other charities.

## The estate was actually left to the deceased's immediate family or other individuals

### *23% of bequests denied*

In 17% of cases, no charity appeared in the will and the entire estate was left to immediate family members (spouse or children). In 6% of cases, no charity and no immediate family received a gift in the will with the estate instead left to other individuals (extended family, neighbours, friends).

The frequency with which the whole gift is left to immediate family reinforces our findings in previous research that gifts to charity decrease substantially for individuals with spouses or children. The majority of bequests come from individuals who do not have these family members.

Equally, where individuals have left their estate to individuals who are not immediate family, this reinforces Dr Christopher Baker's findings in 2014 that even where a person does not have a spouse or children, 70% of those estates are still not left to charity. This is an enormous potential pool of bequestors for charities, but likely requires some cultural change and rethinking of approaches to donors.

## The estate was left at least in part to charities, but not the charity who had identified the individual as a confirmed bequestor

### *20% of bequests denied*

20% of the time when a bequest was denied, there was a gift to at least one charity in the will, but not for the charity that reported the individual's name as a confirmed bequestor. In previous research we discovered that on average when there is one gift in a person's will to charity, four other charities are also named. It is no surprise that people who are charitable are broadly charitable and might have many favourite causes, some of which they choose to include in their will. It may be difficult for the person to remember which charities were included, or they may wish to give an affirmative answer to the question posed by a fundraiser of "have you left a gift in your will?"

In some cases, it appeared that the person could be genuinely confused about what charity was in their will – for example two charities with similar activities and missions

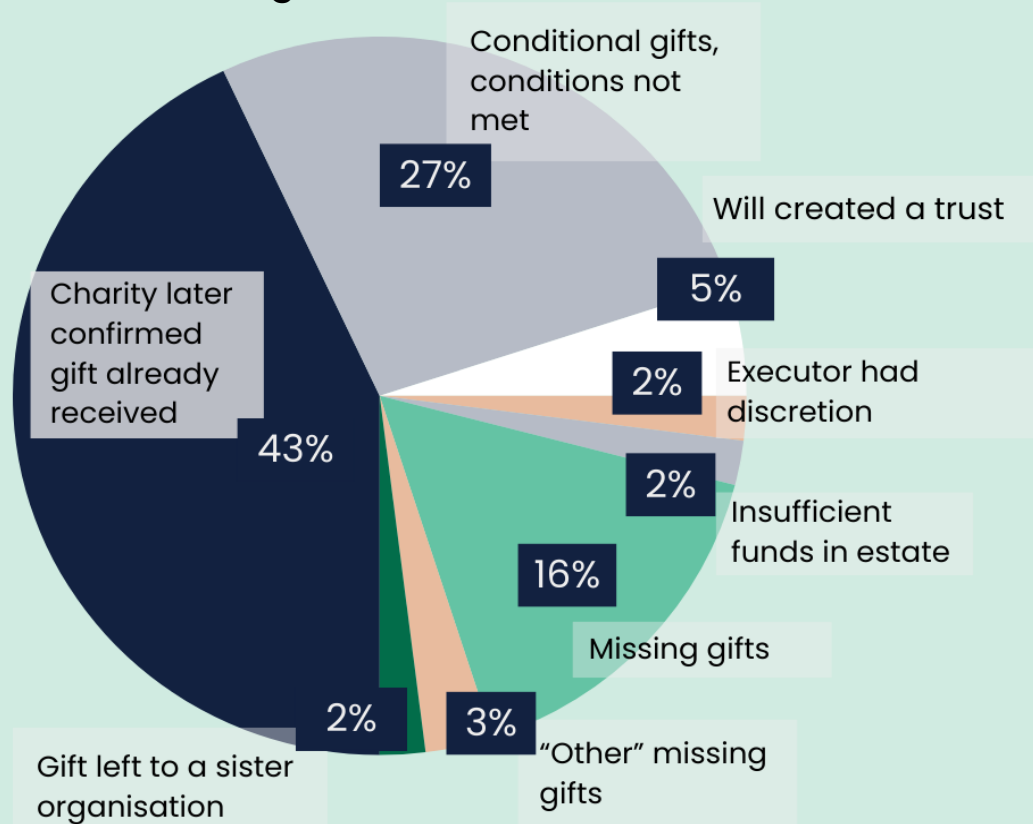
or two charities with similar names. In other cases, the charities did not appear to have any particular relationship to one another.

## Bequests Acknowledged: charity was a recipient of estate

In 283 cases, the charity who had reported the name of the confirmed bequestor as a gift that had never materialised were named in the will. This occurred in a few ways:

<b>Outcome of gift</b>	<b>Number</b>	<b>Percent</b>
Charity later confirmed that gift was already received	122	43%
Gift was left to a sister organisation of the charity	5	2%
Will created a trust that the charity is receiving funds from	14	5%
Executor had discretion about paying gift	5	2%
Insufficient funds or gift was adeemed	7	2%
Conditional gift, conditions not met	77	27%
Missing gifts	44	16%
"Other" missing gifts	9	3%
<b>TOTAL:</b>	<b>283</b>	<b>100%</b>

## Bequests Acknowledged



### Charity later confirmed that gift was already received

*43% of bequests acknowledged*

Almost half of the time when a charity was in the will of a confirmed bequestor they'd reported not receiving a gift from, they had in fact already received the funds. That is to say – in 122 instances, the charity believed they had not received a gift from a confirmed bequestor, but upon reviewing their records for this project discovered that they had already been notified and paid. In these instances, the gift had been paid years ago but not correctly coded in the charity's system against the bequestor's record. These examples highlighted the importance of data cleanliness in being able to track the fulfillment of gift in will promises.

### Gift was left to a sister organisation of the charity

*2% of bequests acknowledged*

In 2% of cases where a gift was left to the charity who reported the confirmed bequestor's name, the gift had been left to (and paid to) a different arm of the charity.

In one case, we saw that one arm of a charity was expecting a gift (eg the Victorian branch) but the gift had been left (and paid) to another arm (eg the federated branch). In several cases, the notification letter and cheque/transfer were sent to a particular arm of the charity and banked there when in reality the will had specified the gift for another arm. This mistake went unnoticed until this project.

In another instance an individual had confirmed their bequest to the Australian branch of a charity but the address in the will was to the USA branch and was paid to them. This is a good reminder on the importance of using an ABN or address to clarify which charity is to receive the gift.

## Will created a trust that the charity is receiving funds from

*5% of bequests acknowledged*

In 5% of cases where the bequest was acknowledged, the bequestor had created a trust in-perpetuity in their will that the charity was receiving funds from. In some instances, a different team within the charity may have been managing the income from that trust, leaving the Gifts in Wills team member unaware unless the trust was coded against the bequestor's record in their system.

## Executor had discretion about paying gifts

*2% of bequests acknowledged*

Normally a will provides definite instructions of how funds are to be distributed, but in 2% of cases where a bequest was acknowledged, the executor had been left discretion as to whether or not the gift would be made to charity. In one example, the bequestor had left the choice of which charities to leave the money to for his carer to choose. This is an interesting example where there is really no oversight – because no charity is technically a beneficiary to be able to ask about the funds.

One example in this category could well be considered a missing gift for four participating charities, and in total fifteen charities. Through a complex arrangement in the will, the funds were intended to come from a trust if there were insufficient funds from the estate to pay the gifts. This did not happen and Bequest Assist is still in the process of working to collect the funds. We have only excluded this from the list of

missing gifts because of the complexity of the will and situation has arguably created some discretion.

## Insufficient funds or gift was deemed

*2% of bequests acknowledged*

We saw a small number of instances where a charity were left a gift, but either there were insufficient funds to pay their gifts or the specific gift they had been left (for example a coin collection) could not be located. In these instances, the beneficiary should still be notified, but this does not appear to not happen when the beneficiary is a charity.

## The gift to charity was conditional and the conditions were not met

*27% of bequests denied*

In 27% of cases where the bequest was denied, it was because the charity was named but their gift was conditional on someone pre-deceasing the bequestor, but that person actually outlived the bequestor. A conditional or contingent gift is where the benefit to the charity was reliant on another beneficiary pre-deceasing the bequestor. For example, a bequestor might leave their entire estate to their spouse with a condition that if the spouse pre-deceases the estate is divided amongst four charitable beneficiaries.

When the conditions of the gift are not met (eg the first person or people are still living), there is no gift for the charities. Charities left a conditional gift where the conditions are not met are not notified by the executor or solicitor which could lead them to wonder where their promised gift went.

In some instances, these gifts come to materialise – particularly when the gift is conditional upon the person's spouse pre-deceasing them. But we see many more examples where the conditional gift does not come to pass and upon reading the will, it becomes clear that this was incredibly unlikely because of the age of the first recipients. For example, many charities that were part of this project had confirmed bequestors on their list whose wills read something like this:

*I leave the rest and residue of my estate to my husband Garry Smith if he survives me by 30 days. If Garry does not survive me, I leave the estate to be divided equally amongst my children. If my children do not survive me, I leave my estate to be divided equally amongst my grandchildren. If none of those gifts are able to take place, I leave my estate to the following charities...*

Clearly this confirmed bequestor's gift was extremely unlikely to ever flow to the charity beneficiaries. The possibility that many of your confirmed bequestor's gifts are conditional is important to understand for a charity analysing the strength of their Gifts in Wills pipeline.

## Missing gifts

*16% of bequests acknowledged*

This research wasn't just about why charities were left out of a person's will, but the potential that some charities *had* been left a gift in will that was never paid. When the average size of a gift in will is \$143,000, this is a terrifying prospect. Sure, a missing gift might be a \$1000 cheque that went astray in the mail, but it could just as easily be a gift in the hundreds of thousands of dollars that has been ignored by an executor.

In total, **definitive missing gifts** were found **in 36 estates**.

Discretionary gifts and "other" missing gifts (discussed below) were also discovered. So far more than **\$278,000 has been recovered** for charities.

Overall, we found definite missing gifts in 36 estates (representing bequests for 44 participants) through this project where it is likely the gift would never have been paid to charities if not for this project. Even more significantly, while this was only 44 missing gifts for participants, within these wills there were many non-participating charities whose gifts were also unpaid. Missing funds have been collected on some gifts but not others, as discussed below.



Further missing gifts were discovered that likely would have been paid even if not discovered, or the charity may never receive funds from.

This is equivalent to 16% of all the bequests that were acknowledged for charities. More importantly, it is 2.8% of the total names we were given by charities as confirmed bequestors that were able to be included in the project. This percentage is higher for charities that have cleaner data (because they have fewer individuals marked as confirmed bequestors who are not leaving a gift and do not have as many instances where they have already been paid but are not aware).

For example, the charity, let's call them 'A', with cleaner data may have 100 confirmed bequestors compared to charity 'B' with 150 confirmed bequestors. After following up on their gifts in wills Charity 'A' discovered 3 missing gifts (3%) and Charity 'B' discovered 3 as well (2%). At first glance it looks like Charity 'B' has fewer percentage of missing gifts. But after cleaning up their data, Charity 'B' found that half of those bequestors had either already paid or were not confirmed, leaving them with 75 confirmed bequestors and a rate of 4% missing gifts.

A note that while these are the missing gifts that could be uncovered through this research, they are likely not the only ones in this pool of confirmed bequestors. As discussed earlier, there could have been gifts left to charity amongst those who were found to be intestate or where probate was not required, but those instances are near impossible for a charity to discover and prove their missing gift.

This means that if the average charity has 100 names of confirmed bequestors who they suspect are deceased but have not received a gift from, likely three would be a missing gift that can be proven and possibly reclaimed through investigation. This figure may continue to evolve with a larger scale project of this nature.

### *Example missing gift #1*

This missing gift was an instance where a solicitor had handled probate, but the nephew of the deceased had acted as executor. We contacted the solicitor and then the executor on behalf of the charity who was missing funds. His aunt had died in January 2020 and the executor claimed he had called the charity to make the distribution but was not clear where he needed to deposit the funds. When we clarified that the funds were definitely directed to that charity and asked if he was ready to pay, he said that the funds might be difficult to access because of the account they were held in and it might be six months before he could access them.

We gently stated that because the pecuniary gift was three years overdue, interest would normally be payable, but the charity was willing to waive their claim to the interest if the payment was made within the month. This prompted the executor into action.

The \$10,000 was immediately paid to the charity.

### *Example missing gift #2*

Similarly to the first example, a family member of the deceased hired a solicitor to seek probate, but then administered the Estate themselves. Four charities were left a residuary portion of the Estate, but none had ever received notification or payment.

When the executor was eventually confronted, he claimed first that he had mailed a cheque and it must have been lost. Then it was claimed that there was fraud at the bank. Further excuses were made before the funds were finally received by all charities.

Each charity received almost \$45,000.

### *Example missing gift #3*

A solicitor mistakenly believed that a charity no longer existed, when in fact they had simply changed their name. This was easily identifiable through a Google search and was spelled out clearly on the charity's website, but nonetheless the funds for their pecuniary gift had been paid to residuary beneficiaries.

After our contact, the solicitor requested the funds back from the residuary beneficiaries and paid the gift to the charity.

The charity received \$2000.

### *Example missing gift #4*

Two different participating charities provided the name of the same individual as a confirmed bequestor from whom they had not received a gift. When we viewed a copy of the will, it was apparent that there were three gifts to charities (including our two research participants) of \$3000 each. We checked with all three charities and they confirmed that they have never received these payments.

While the solicitor in this matter was unresponsive, through corresponding with the prothonotary we were able to see the gifts paid.

The charities received \$9000 between them.

### *Example missing gift #5*

Two different charities provided the name of the same individual as a confirmed bequestor from whom they had not received a gift. When we viewed a copy of the will, one of the two reporting charities was included along with another participant and seven non-participating charities. Each of the eight gifts were for \$3000, meaning a total of \$24,000 in pecuniary gifts that have not been paid.

The solicitor who filed for probate was under the impression that the gifts had been paid, but acknowledged that the executor (the daughter of the deceased) had handled the administration herself. When we got in touch with her to make further enquiries, she expressed personal objections to the charities and insisted that she didn't need to pay the gifts and did not intend to.

Ultimately all but one charity received their gifts, totalling \$21,000 recovered.

### *Example missing gift #6*

Another missing gift was administered by an executor who was the brother of the deceased. His sister died in 2019 and when contacted the executor responded that he thought he'd paid the gift back when the estate was administered, but having reviewed the bank account, must have forgotten to pay it.

The \$5000 was immediately paid to the charity.

### *"Other" missing gifts of note*

There were several "other" missing gifts that we are not counting towards our official tally above. In these instances, likely the charity would have eventually been paid without intervention even though they were not aware of the gift, or the funds may never be received. For example:

- A charity was left a life interest where the life tenant is still living. Either the charity was never notified or had not kept records that they were a beneficiary. This was the case in several instances.
- An individual had confirmed they were leaving their gift to a particular charity. When we viewed a copy of the will, it emerged that instead the testator had created a discretionary trust for charities that could be applied to for funding.

Up until this point, the charity that had expected to receive a gift was unaware of the existence of the discretionary trust and so had never applied for the funds.

## What do these missing gifts mean for the charitable sector?

While it is impossible to quantify the exact number or value of missing gifts without significant probate reform, this project points to some major potential losses to the Gifts in Wills sector as a result of missing gifts. Emphasising that some assumptions and extrapolation is needed, these findings would suggest:

- 2.8% of deceased confirmed bequestors where a gift never materialised for the charity are in fact missing gifts.
- Conservatively, this would mean that overall, 2.8% of gifts left to charity are missing (not just from confirmed bequestors). We suspect this number is likely higher.
- This means for every 100 gifts left in a will to charity, about three will never be notified or paid.
- A missing gift could be of any size – but the average gift size is around \$143,000.
- Applying a 2.8% loss to a charity's annual Gifts in Wills income would mean that perhaps a charity that receives \$1 million per year would be missing \$28,000

Missing gifts may be costing the charitable sector  
**\$40 million per year**

### **3 in 100**

gifts in wills are possibly missing gifts – never notified or paid to charity.

while a charity that receives \$10 million per year, would be missing \$280,000. Of course, any charity of any size could be missing a large gift without realising it.

- Given the charitable sector as a whole receives an estimated \$1.6 billion per year from bequests, missing gifts could be costing somewhere around \$40 million missing per year.
- This is higher than our estimates after the initial pilot project as a higher proportion of missing gifts were found this time.

## Other reflections

A reflection that kept rising to the surface during this project was the frequency with which diverse charities are clearly speaking to the same group of individuals as potential bequestors. Often there would be the same person's name as a confirmed bequestor on several charities' lists who had ultimately given no gifts to charities or left their estate to other charities.

### **Case study: multiple charities, same potential bequestor**

Four charities participating in this research shared the same individual as a confirmed bequestor who had reconfirmed and was highly engaged. Of the four reporting charities, two were not listed in the will at all. The other two were in the will as part of 18 charities to benefit only if the main beneficiary, the bequestor's nephew, predeceased him. This was highly unlikely based on age and indeed the nephew inherited the whole estate.

Sometimes charities benefit when the bequest left is contingent, but it is not a certain bequest.

As discussed above, this makes sense given that someone who is charitable towards one organisation is likely to be to another, but raises the wicked problem of how to broaden the potential pool of bequestors beyond the small group that is apparent to charities right now. All charities would benefit if there were more individuals to have conversations with rather than a competition for funds from the same small pool of estates.

Because of the overlap of the same potential bequestors to different charities, it occurred to us that this is an exercise better performed by charities collectively than individually. For example, a person may have been a donor or confirmed bequestor to several charities, but perhaps only one of them has realised they are deceased and obtained the will. Moreover, it is far more efficient for that person's will to be purchased once on behalf of all the potential charitable beneficiaries than individually by each of those charities. This is a service that Bequest Assist provides on behalf of our estate administration clients but this project has emphasised to us that it could benefit the Gifts in Wills sector as a whole.

# Section 4: Recommendations

## For charities

### Data cleanliness and accessibility

The importance of data cleanliness and accessibility for charities was emphasised to us many times over during this project. Just a few examples included:

- Charities who could not participate in the project because their historical data on confirmed bequestors was not accessible;
- Charities who reported they had never received a gift from a confirmed bequestor, only for it to be discovered that the gift had long since been paid but not coded correctly against that individual's record. This raises the risk of offending or alarming an executor by suggesting a gift has not been paid when in fact it had already been received and receipted;
- Charities who were unable to confirm whether or not they had received a gift – often because data migration had made older records difficult or impossible to access; and
- Charities who could not determine why they had believed that someone was a confirmed bequestor (eg had that person simply ticked a box or had there been a conversation to confirm their intentions?)

A theme that emerged for some charity participants was inconsistent use of terminology such as “intender” or “confirmed” within their team. Some examples we heard were:

- Discrepancies between how the Gifts in Wills team use terms and how the Customer Support team use the same terms. For example, marking an individual as “confirmed” when the solicitor or executor got in touch to notify the charity of a gift (even if the individual was previously unknown to the charity) or using “notified” to refer to the person confirming their bequest while still alive.
- Having different ideas of what “confirmed” meant to the charity. For example, is a person a confirmed bequestor when they've ticked a box or only after they've had a subsequent conversation with a team member? After all, a person who has re-confirmed their bequest and been to events run by the charity is a very different prospect than someone who has ticked a box once, but for many charities were recorded the same way.

Having consistency between teams for the use of these terms and taking clear notes made the process much easier for charities. For some of the participating charities, their knowledge of which bequests were more likely was made stronger by:

- Sub-classifying confirmed bequestors as either “qualified” or “unqualified” depending on whether they have had a conversation with a team member after ticking a box saying they were leaving a gift in their will.
- Creating a rating system (for example out of ten) of how likely a bequest is based on what is known about the confirmed bequestor. This could help the charity choose whether or not they would like to purchase a copy of the will if a gift does not materialise.

### **Recommendations**

1. Ensure that records of communications with living bequestors stay accessible (for example when changing CRMs). This information may not be needed for twenty years, but then becomes essential.
2. When a bequest is paid from the estate of an individual who was known to the charity, ensure that payment gets linked with their donor record.
3. Consider further sub-classifying bequestors to build understanding of how likely their gift is and therefore whether the charity might want to invest in understanding further if that gift does not materialise.

### **Recording individuals as deceased**

Similar to issues with data cleanliness, we found that some charities were slow to recognise that a confirmed bequestor was deceased. On mean average, it took charities 1.5 years after the date of death to mark an individual as deceased in their system. In 20 cases, it took more than 5 years to record the individual as deceased with the longest example being 13.6 years.

It took charities

**1.5 years**

on average to record an individual who had passed away as deceased in their database

There are several potential issues with not having individuals marked as deceased in a charity's database. Firstly, it uses valuable charity time and money to continue sending mail to an individual who has passed away. Secondly, it may be distressing to family and friends of the deceased to see requests for funds come in from a charity after their loved one has passed away. Lastly, knowing a narrower date range when a person may have passed away is helpful for being able to correctly identify which probate record belongs to them if the individual has a common name.

Of course, it is difficult for charities to find out that a donor has passed away without someone reporting it to them.

### **Recommendations**

1. Distinguish the last real contact (a phone conversation or reply) the charity had with an individual from the last date that a communication was sent to them to help better determine when they may have passed away.
2. Consider investing in cleaning your donor data through the Australian Death Check so that you are not continuing to try to contact individuals who are deceased.

### **Managing confirmed bequestors suspected deceased**

The outcomes of this research have emphasised to us once again the importance of charities staying aware of what happens to the estates of individuals who were confirmed bequestors and are now believed to be deceased. For charities who have someone administering their estates, this should be part of their responsibilities.

There are a few main reasons this step is important:

- It prevents missing gifts (such as those found through this research);
- It speeds up notification of incoming bequests for your charity and improves forecasting;
- It allows you to communicate proactively about issues such as Capital Gains Tax with solicitors and executors – saving your charity thousands if not hundreds of thousands in unnecessary taxes. This issue is discussed further in our report *Fixing the Leaky Bucket*;



- Improves charity understanding of their realisation rate of bequests – such as what percentage of confirmed bequestor gifts they should expect to materialise; and
- Offers an opportunity to pass on information to the charity's Trusts team where a discretionary trust is created so that funds can be applied for.

It is an internal decision for the charity of how carefully they would like to monitor potential bequests – for example, if they are willing to purchase wills to check and if they monitor only confirmed bequestors' estates or their wider donor list. Another option is philanthropic investment for charities to help purchase wills. This will enhance transparency and accountability and support the realisation of bequests for charities.

To assist with this consideration, the following process is what we undertake on behalf of our charity clients at Bequest Assist and could be replicated internally by other charities:

- When a confirmed bequestor is marked as deceased in the charity's database, they provide their details to us (name, state they lived in and other information that may help identify them).
- We look for evidence of death (obituaries) and probate. (A note to assist: our previous research has shown that on average, people die within 10 kms of the residence they lived in when writing their will. This can help identify if an individual is the same person you are looking for).
- Where death is confirmed, we continue looking for probate for a following 18 months.
- Where death is not confirmed, we continue looking for probate every six months for a period of five years.
- When we find probate, we contact the solicitor whose contact details are attached and explain that the individual was a confirmed bequestor and we wondered if there was indeed a gift for the charity in their will. If only a lay executor's details are listed against probate, we do not make contact as this may be more sensitive.
- Where confirmation cannot be gained through an email and phone call, we ask the charity if they would like us to purchase a copy of the will on their behalf. This is where internal charity data on their confidence in the gift is helpful.
- We record the outcome including if there was no gift, why not, so the charity has data on what percent of their confirmed bequests materialise.

## Recommendations

1. Charities should make a decision about how closely they would like to monitor the estates of confirmed bequestors suspected deceased. Based on the missing gifts located as part of this research, our recommendation is that all charities take this step to avoid missing out on funds their generous bequestors intended for them.
2. Internal estate administrators should get pre-approval to be able to purchase wills on behalf of the charity where they have concerns as to why a gift has not materialised. The cost to purchase a will differs state to state – see Bequest Assist’s website or our *Estate Administration Guidebook*.
3. Consider sharing data with other charities in the spirit of collaboration. For example, a charity might review all of the life interests they are aware of and share a list with the charity co-beneficiaries who also appear in those wills. You might discover another life interest for your charity if they reciprocate!

## Relationships with spouses of confirmed bequestors

In the majority of cases where a confirmed bequestor was leaving their estate to their spouse, there was no charity included in the will. In a minority of cases, the confirmed bequestor left their estate primarily to their spouse with a condition that if the spouse pre-deceased them, it would go to their charity of choice. This is represented in the data not just under “conditional gifts” but in some of the examples where no probate was required.

A future area of exploration for this research is to better understand if the spouses who outlive confirmed bequestors leave their estates in turn to charity, or to other individuals. It would be helpful to understand if they make similar arrangements with their estates as their spouses did.

This is a sensitive topic, but spouses may have similar charitable interests to one another. It is worthwhile for charities to consider how they are engaging with confirmed bequestors who have a spouse. For example:

- Is there an opportunity to include the spouse of a confirmed bequestor in events or communications?
- If a charity’s confirmed bequestor passes away, when is it appropriate to reach out to their spouse to share condolences?

Perhaps there is an opportunity for more charities to help not just one but both members of a couple see the incredible value of gifts in wills.

### **Recommendations**

1. Consider what your charity's approach is where a confirmed bequestor is deceased but they have a living spouse. Is it appropriate to reach out to that person to offer your condolences perhaps?

### Carefulness in relying on confirmed bequestor data

This research as well as a previous study on the same topic should encourage caution for charities seeking to rely on their pipeline of confirmed bequestors as certain gifts.

*The final outcome of charitable bequest gift intentions: Findings and implications for legacy fundraising (2020)* looked at data on 700 confirmed bequestors from ten Australian charities. The authors found that in 35% of cases, there was no gift in the will of confirmed bequestors – a statistic that varied from 17% to 60% depending on the organisation. That significant variability reinforces the importance of individual charities being aware of the strength of their pipeline – for the charity where 83% of their confirmed bequestors' gifts materialise, they are in a very different forecasting position than the charity where only 40% of those bequests materialised.

The study further found that the average loss rate of gifts was much higher for confirmed bequestors who had not had at least one communication within the two years prior to death than those who had. This accords with previous research by Bequest Assist that on average a person who leaves a gift to charity in their will writes their final will just under three years before death. This means that a charity needs to be at the forefront of someone's mind not just when they write their first will, but their last.

Charities can benefit from both:

- Understanding the strength (likelihood of a gift materialising) from their bequest pipeline; and
- Considering reasons why people might be marked as confirmed when there is no gift in their will.

To improve the accuracy of whether or not someone is actually a confirmed bequestor, a charity might want to understand:

- The age of the bequestor and therefore how likely they are to rewrite their will. A 2019 study from Giving USA has suggested that people rewrite their will three to four times on average;
- How have they confirmed that they are leaving a gift? For example, just a tickbox or through a conversation with your team; and
- Other relevant information that can be gleaned through a conversation: might the gift be conditional? Who is in the person's family? Are there family members who are likely to contest the will? What type of gift might they be considering leaving (eg pecuniary or residuary)?

Of course, charities will have different feelings on what questions are appropriate to ask – these sorts of questions are just a suggestion of what would be helpful to know in determining the likelihood of someone leaving a gift in their will. Some of this information may be offered freely by the bequestor without prompting from the charity and is worth noting. Equally, charities need to consider internally what is the appropriate amount of resourcing to direct towards potential bequestors at different stages in the pipeline.

### **Recommendations**

1. Consider methods to internally evaluate the accuracy of your charity's Gifts in Wills pipeline, or to improve that accuracy for the future.

## **For will writers**

While this research may be alarming to individuals seeking to leave a gift in their will to charities, it should be emphasised that the vast majority of gifts are handled in an honest and competent manner by executors and solicitors. This research looks at the small number of instances where things go awry, which admittedly can have a large impact on charities reliant on bequests to support their important work.

There are steps individuals can take to ensure their gifts reach the charities important to them.

## Recommendations

1. It can help for the individual to discuss the gift, and the reasons for the gift, with friends or family members. This can also be done in writing in the will. This can help to reinforce the intention, as well as set expectations for those involved in the administration of the estate.
2. Include specific details such as the name, address and ABN of the charity. This will help correctly identify the organisation.
3. Notifying the charity and/or not-for-profit that they are named as a beneficiary.
4. Storing the will securely and where it can easily be located is essential.

## For Executors

Executors play an essential role in ensuring that estates are administered effectively and gifts reach charities safely. There are a few recommendations for this group that flow from this research.

## Recommendations

1. Notifying charities and/or not-profits that they have been left a charitable bequest as early in the process as possible.
2. Distributing the assets to the charity and/or not-for-profit to the intended organisation within a reasonable about of time. Charities can assist if there is any confusion as to which organisation has been named.

## For policy makers

Before writing this report, Bequest Assist already held concerns about the lack of accessibility to wills for charities in Australia. This research reinforces that there is a lack of oversight that wills are administered as the testator intended and that charities are particularly at risk of missing gifts.

The cost to purchase wills varies state-to-state, as does the process for checking probate and ordering copies of wills. Overseas, such as in the UK, a bulk-will-reading service that charities can subscribe to exists because wills are inexpensive to buy and centralised. Here in Australia, such a service would currently be impossible both financially and administratively.

According to the Australian Bureau of Statistics, there was 183,114 deaths in Australian in 2023. If 80% of the deceased in each state & territory wrote a will that was probated the cost to purchase these wills would be in excess of \$6 million, not including additional costs such as photocopying for some jurisdictions.

A solution to increase transparency of the probate process and decrease the dishonesty and errors that result in missing gifts would be to make wills free and easy to access as they are in South Australia. Alternatively, charities could be offered no or low-cost access to probate documents to overcome the problems identified in this report.

A second issue is the concern that some individuals are creating wills that cannot be found when they pass away. Some states offer safe will storage options for individuals, but these appear to be under-utilised. We have heard of examples where individuals want a charity to store their will because they are nervous that it will not be honoured by their extended family when they pass away. Perhaps there are opportunities to calm the anxieties of these individuals and encourage uptake of safe will storage that would prevent those individuals from being found intestate.

## Recommendations

1. Increase the transparency of the probate process by making wills free and easy to access online, or offer a cost exemption for charities to be able to check probate documents. While legislative reform is complex, the most immediate and simplest solution is enabling more cost efficient access to wills for charities.
2. Consider opportunities to encourage use of safe will storage in the general population. Investigating legacy issues around digital storage and access to wills that inhibited progress a decade or two ago could be alleviated by better options available today (see: 'Losing It – State schemes for storing and locating wills').
3. Further research could explore what the scope legislative and practice reform could look like to ensure the transfer of wealth to nominated beneficiaries improves information flows, is efficient, effective and upholds the respect for the deceased and their family (such as through the Succession Acts, Administration and Probate Acts and other Wills Acts).
4. Further engagement with the legal profession bodies and regulators to make responsibilities clearer.

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