



Giving. For good.

Incorporating your giving structure into your estate and legacy planning

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By the end of this year, an extraordinary \$150 billion in inheritances is expected to have been transferred, with a further \$5.4 trillion projected over the next two decades. As we witness the largest intergenerational wealth transfer in history, many individuals are reflecting on how to pass on their lifetime's accumulation of assets, memories, and values. Beyond providing for loved ones, this process offers a unique opportunity to consider your legacy and establish a lasting connection with the people and communities that matter most.

For APS clients, structured giving not only brings **purpose and joy** during their lifetime but is also becoming an integral cornerstone of legacy and estate planning.

Giving funds in the APS Foundation and Private Ancillary Funds (both structures collectively referred to here as "funds") are not only practical from an estate planning perspective but also deeply purposeful. These funds enable you to dedicate wealth to the community, fostering a meaningful and lasting connection with the organisations and causes you care about - one that can extend well beyond your lifetime.

Recognising the growing interest in integrating giving structures into estate and legacy plans, APS will launch its **Giving Legacy service** in February 2025. This service will equip clients and their professional advisers with tools and resources to thoughtfully plan their philanthropic legacy and ensure a smooth and secure transition of stewardship in the event of death or incapacity.



In the meantime, here are five considerations at the intersection of death, taxes, and giving structures.

1. Your Will governs your personal assets, not the assets of your fund

Your Will distributes estate assets that you own in your name or as tenants in common. It cannot distribute the assets already held within your fund, as these belong to the Trustee, held for the benefit of the community. While your Will cannot distribute the assets already held within your fund, it can distribute assets from your estate to your fund.

To leave assets from your estate to your fund, your Will is the essential tool. It should include a clause specifying the circumstances under which assets, or a portion of your estate, will be directed to your fund. While some individuals choose to leave specific assets, allocating a share of your estate can provide greater flexibility and longevity, eliminating the need to update your Will if you sell or dispose of specific assets during your lifetime.

For Private Ancillary Funds (PAFs), your Will plays a crucial role in ensuring a **smooth transition of control**. Most PAFs are managed by a corporate Trustee and owning shares in the Trustee company provides you with some control over the PAF's decision-making, including the distribution of gifts.

Through your Will, you can transfer this control by bequeathing your personally held shares in the Trustee company to individuals you wish to serve as your successor(s).

It is essential that your Will includes a clause specifically addressing the transfer of these shares to your chosen successor(s). Failing to clearly specify the recipients of Trustee company shares can cause delays in the administration of your PAF, disrupt distributions to the community, and potentially lead to regulatory complications. It is crucial to ensure that shares in the Trustee company are explicitly addressed in your Will, as they cannot be treated as residual assets left to the PAF - such an arrangement would fail.





Despite the importance of having a Will, nearly 40% of Australians do not have one, and around 10% pass away without a valid Will. In such cases, the distribution of their estate defaults to succession laws, which may not reflect their intentions. Creating or updating your Will is essential to ensure your personal and philanthropic wishes are fulfilled.

However, a Will alone cannot address all aspects of control and distribution of your assets and interests. To provide guidance to your successor(s) on managing and distributing assets held within your fund, a separate document called a **Giving Plan** should also form part of your suite of testamentary documents.

2. Your Giving Plan governs your legacy

You can designate family members or friends to carry forward your charitable vision as your successor(s). For those with a PAF, this involves transferring the controlling shares you hold in the PAF Trustee company to your chosen successor(s). For those with a giving fund, it means nominating those that you trust to step into your shoes as giving fund holder when you can no longer perform the role.

Succession is both a gift of giving and an act of trust.

As you cannot legally compel your successor(s) to give in a specific way, you are entrusting them to carry forward your legacy with integrity and care. This trust empowers your successor(s) to make thoughtful decisions that balance their own passions with the values and priorities you established. In doing so, you are not only passing on a legacy but also gifting them the profound joy of giving to causes that matter to you and them.

To help your successor(s) understand your values and priorities for giving, we encourage you to establish a Giving Plan.

A Giving Plan serves as a personal roadmap for the future stewards of your fund, capturing your charitable intentions and providing a structured way to communicate your vision.



A Giving Plan allows you to outline preferences for gifts, such as the causes and organisations to support, timing of gifts and amounts. It also provides clarity to you and the Trustee for the future, in the event that health or other issues disrupt life.

You can preference whether your fund operates indefinitely or for a defined period, with the option to include a sunset clause specifying when and how the fund should be concluded. Alternatively, you may want to encourage your successor(s) to embrace flexibility and freedom from the fund's history, empowering them to chart a new course for its future and redefine its impact in their own way.

Unlike a Will, a Giving Plan does not require legal drafting, making it a simple yet powerful tool for articulating your philanthropic goals. It can be updated easily as your priorities or circumstances evolve.

You can specify in your Will how much of your estate you wish to allocate to your legacy, while leaving the details of charitable distributions to your Giving Plan. This approach allows you to adjust your charitable beneficiaries and giving preferences effortlessly during your lifetime, ensuring your intentions remain current without the need for costly or time-consuming legal updates to your Will.





3. APS Foundation as a succession solution

Our clients come from a range of diverse familial circumstances, including those without a successor to continue their legacy and those who value the simplicity and assurance of professional stewardship. For these individuals, the **APS Foundation** offers a practical solution for establishing an enduring succession plan for their fund.

Many clients have planned to transition their giving fund into an endowed giving fund, or to port their Private Ancillary Fund (PAF) into an endowed giving fund, within the APS Foundation. The APS Foundation Trustee provides governance, compliance administration and professional investment management, with giving from an endowed fund guided by the intentions and preferences outlined in the client's Giving Plan.

An endowed giving program ensures your legacy is managed with care, supported by APS' team of giving specialists.

The Trustee conducts due diligence on the selected charities to ensure they remain aligned with your intentions and continue to achieve their purpose.

When gifts are distributed from your endowed giving fund, acknowledgements are tailored to your preferences, ensuring a **meaningful connection** between your legacy and the charities or communities you support.

If you wish to remain anonymous, your privacy will be fully respected.

Alternatively, if you choose to be recognised, APS ensures that acknowledgments highlight the enduring impact of your generosity and the connection between your vision and the communities benefiting from your legacy.



4. Giving while living is the most tax effective option

When it comes to giving, there is no option more tax-effective than giving during your lifetime. Your estate cannot claim a tax deduction for charitable gifts made after your death; the ability to claim such deductions ends with you. As a living donor, however, you can receive tax deductions for contributions to your fund. You can claim these tax deductions in full in the year in which you make your donation or spread it over that and the following four years. Whenever resources allow, lifetime donations will always be more tax-efficient than bequests made through your estate.

Of course, a fund is more than just a financial tool – giving now is an opportunity to bring your legacy to life. If you have the means, consider the benefits of making an impact now and enjoy watching your generosity shape the future.

5. Giving on death can offer CGT relief

While giving during your lifetime offers the greatest personal tax benefit, there are also potentially tax advantages for charitable gifts made at the time of your death. If your estate includes highly appreciated assets, incorporating a gift of these assets to your fund can provide substantial Capital Gains Tax (CGT) relief.

Under Australian tax law, CGT is disregarded on assets that pass from your estate to a Deductible Gift Recipient (DGR) charity, this includes a public ancillary fund like the APS Foundation or a PAF, provided the charity was in existence at the time of your death. This means that appreciated CGT assets can be bequeathed to your fund without triggering CGT liabilities, enabling the full value of these assets to support charitable purposes.

With proper Will wording, Executors can optimise tax efficiency by funding gifts to your fund with assets that have substantial capital gains, while allocating other assets to non-charitable beneficiaries. By aligning tax planning with charitable giving, you can ensure that more of your wealth is directed to the causes that you care about.

During their lifetime, structured giving brings **purpose and joy** to our clients. Through tools like Wills, Giving Plans, and succession solutions with the **APS Foundation**, you can **maximise the impact of your philanthropy** while offering **clarity and guidance** to those who will carry your legacy forward.

Rachael Rofe, Head of the APS Foundation, is a legal practitioner with expertise in estate planning. The information provided is of a general nature and should not be considered legal advice.

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