

# PRIVATE CLIENT

## Australia



# Private Client

Consulting editors

**Simon Gibb, Abigail Nott, Nicholas Holland**

*McDermott Will & Emery*

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Quick reference guide enabling side-by-side comparison of local insights, including into tax; trusts and foundations; same-sex marriages; civil unions; succession; capacity and power of attorney; immigration; and recent trends.

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# Table of contents

## **TAX**

**Residence and domicile**  
**Income**  
**Capital gains**  
**Lifetime gifts**  
**Inheritance**  
**Real property**  
**Non-cash assets**  
**Other taxes**  
**Trusts and other holding vehicles**  
**Charities**  
**Anti-avoidance and anti-abuse provisions**

## **TRUSTS AND FOUNDATIONS**

**Trusts**  
**Private foundations**

## **SAME-SEX MARRIAGES AND CIVIL UNIONS**

**Same-sex relationships**  
**Heterosexual civil unions**

## **SUCCESSION**

**Estate constitution**  
**Disposition**  
**Intestacy**  
**Adopted and illegitimate children**  
**Distribution**  
**Formalities**  
**Foreign wills**  
**Administration**  
**Challenge**

## **CAPACITY AND POWER OF ATTORNEY**

**Minors**

**Age of majority**  
**Loss of capacity**

**IMMIGRATION**

**Visitors' visas**  
**High net worth individuals**

**UPDATE & TRENDS**

**Key developments**

## Contributors

### Australia



**Kimi Shah**  
kshah@kkilawyers.com.au  
*Kalus Kenny Intalex*



**Josephine Sergi**  
jsergi@kkilawyers.com.au  
*Kalus Kenny Intalex*

## TAX

### Residence and domicile

#### How does an individual become taxable in your jurisdiction?

In Australia there are four tests to determine if a person is an Australian tax resident. These are outlined as follows.

#### Residency status

The Commissioner of Taxation (the Commissioner) will consider the following:

- physical presence;
- intention and purpose;
- the location of your family;
- business or employment ties;
- maintenance and location of assets; and
- social and living arrangements.

In the event an individual does not satisfy the residency test, they may still be considered an Australian tax resident if any of the three statutory tests below are satisfied:

#### The domicile test

The domicile test assesses an individual's permanent residence. If the Commissioner is satisfied an individual's permanent home is located in Australia, the individual will be liable to pay tax in Australia.

#### The 183-day test

If an individual spends at least 183 days per calendar year in Australia, whether continuously or not, the individual will be considered an Australian tax resident.

#### The superannuation test

An individual will be considered an Australian tax resident if they, or their spouse, is a contributing member of a Public Sector Superannuation Scheme of the Commonwealth Superannuation Scheme.

If the Commissioner is satisfied an individual is an Australian tax resident, the individual may be required to pay:

- income tax;
- land tax on any real property owned by the individual subject to exemptions for a principal place of residence;
- goods and services tax (GST); and
- capital gains tax (CGT).

*Law stated - 01 November 2021*

**Income****What, if any, taxes apply to an individual's income?**

Australian tax residents are required to pay income tax on their personal taxable income (including from employment, business interests, dividends, trust distributions, foreign income and the like). The marginal income tax rate increases according to the level of income earned. For the 2021–2022 financial year, the marginal income tax rates are:

Taxable income	Tax on this income
A\$0–A\$18,200	Nil
A\$18,201–A\$45,000	19 cents for each A\$1 over A\$18,200
A\$45,001–A\$120,000	A\$5,092 plus 32.5 cents for each A\$1 over A\$45,000
A\$120,001–A\$180,000	A\$29,467 plus 37 cents for each A\$1 over A\$120,000
A\$180,001 and over	A\$51,667 plus 45 cents for each A\$1 over A\$180,000

The above rates do not include the Medicare levy of 2 per cent. The Medicare levy is a levy payable to fund Medicare, the national healthcare provider in Australia.

High income-earning individuals may also be liable to pay a Medicare levy surcharge (MLS), an additional levy payable by individuals who reach a certain level of income and do not have private health insurance. In this instance, the government imposes a further levy of calculated at approximately 1–1.5 per cent of an individual's taxable income over and above the existing Medicare levy of 2 per cent.

The MLS encourages those who can afford private health insurance to obtain appropriate health coverage for themselves and their dependants, reducing the financial burden on Medicare.

*Law stated - 01 November 2021*

**Capital gains****What, if any, taxes apply to an individual's capital gains?**

An individual may be liable to pay capital gains tax (CGT) upon disposal of an asset. Most assets are subject to CGT, including real estate and assets purchased for personal enjoyment (such as boats, household items, cryptocurrency and electronics) over the value of A\$10,000.

Some exemptions and discounts apply, including:

- Principal residence exemption: CGT is not payable if an individual sells or disposes of a property that is their principal place of residence. For a property to be considered a principal place of residence, the individual, their partner or their dependants must have lived in it for the entire period of ownership, provided the property has not been used as a place of business during the period of occupation.
- CGT discount: when an individual disposes of an asset, Australian tax residents are entitled to discount the capital gain by 50 per cent, provided the asset has been held for at least 12 months.

CGT may also be rolled over (or deferred) in certain circumstances, including a transfer between spouses upon the

breakdown of a marriage or relationship, or in the event of loss or destruction of the asset.

*Law stated - 01 November 2021*

## **Lifetime gifts**

### **What, if any, taxes apply if an individual makes lifetime gifts?**

Lifetime gifts are known as inter vivos gifts in Australia. Although there is no gift tax in Australia, depending on the nature of the assets gifted, there can be other tax implications of making an inter vivos gift.

There are no immediate tax consequences for gifts of money or personal chattels. However, for gifts of dutiable assets such as real property or shares, there may be tax consequences such as stamp duty or CGT, calculated on the market value of the asset gifted. Which of the parties (donor or donee) is liable to pay the tax on a gift will depend on the type of tax triggered.

CGT is triggered and payable by the donor upon the gifting of dutiable assets. The capital gain on assets held in excess of 12 months will be discounted by 50 per cent for Australian tax residents. However, the full gain is taxable upon the gifting of assets held for less than 12 months.

Stamp duty rates vary between states and territories in Australia and is payable by the donee.

*Law stated - 01 November 2021*

## **Inheritance**

### **What, if any, taxes apply to an individual's transfers on death and to his or her estate following death?**

There are no inheritance or estate taxes payable in Australia. The legal personal representative of an estate will be responsible for lodging a tax return on behalf of the deceased for the year of their death, called a date of death return. Subsequently, an estate tax return is required to be lodged for income earned by an estate for each financial year until the estate is fully administered. There is no tax payable for transmission of assets from the estate to beneficiaries. However, if an estate asset is sold to a third party, there may be CGT payable by the estate upon disposal of the asset.

*Law stated - 01 November 2021*

## **Real property**

### **What, if any, taxes apply to an individual's real property?**

Land transfer duty (stamp duty), land tax, council rates and capital gains tax (CGT) are the main taxes that apply to an individual's real property.

Stamp duty is tax payable upon acquisition of real property. Stamp duty is calculated based on the dutiable value of the property and whether any concessions or exemptions are available. Different rates of stamp duty are generally payable by foreign residents. Concessions and exemptions are available in various circumstances, including for eligible first home buyers and in other circumstances such as transfers between spouses (or ex-spouses) or between trusts and beneficiaries.

An annual land tax is generally payable on the taxable value of real property. An individual's principal place of residence is generally exempt from land tax.

Council rates are a tax payable to the municipal council, to cover costs of local government services such as waste



management and the like. Council rates are calculated based on an assessment of capital improved value undertaken by the municipal council.

CGT is payable by the vendor upon the sale or disposal of dutiable property other than a principal place of residence. A 50 per cent discount of any taxable gain is available on the disposition of dutiable assets held in excess of 12 months. However, the full gain is taxable for any assets held for less than 12 months. CGT may be rolled over (or deferred) in certain circumstances, including a transfer between spouses upon the breakdown of marriage or relationship, or in the event of loss or destruction of the asset.

*Law stated - 01 November 2021*

## Non-cash assets

What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to your jurisdiction?

There are generally no taxes payable at the Australian border for goods imported with a value less than A\$1,000. This excludes tobacco, tobacco products and alcoholic beverages.

Import taxes apply to goods over the value of A\$1,000 and an import declaration must be lodged with the goods being imported into Australia.

All goods exported from Australia must be reported to the Australian Border Force using either an Export Declaration or an exemption code.

Goods that are exempt from export declaration include:

- personal effects;
- pets;
- goods with a value of less than A\$2,000;
- some goods temporarily imported under section 162A of the Customs Act 1901 (Cth);
- Australia Post or diplomatic bags of mail;
- Australian aircraft and ships' spares;
- military goods of any value that are the property of Australian government for use overseas by Australian Defence Forces;
- Australian domestic cargo; and
- containers for the international carriage of cargo and ships' stores.

There are no taxes on exports that do not require an export declaration.

*Law stated - 01 November 2021*

## Other taxes

What, if any, other taxes may be particularly relevant to an individual?

Medicare levy, goods and services tax (GST) and CGT are generally the main taxes applicable to an individual other than income tax.

## Medicare levy

The Medicare levy primarily funds Australia's public health system. In addition to the marginal income tax rates of tax, an additional 2 per cent of an individual's taxable income is applied towards the Medicare levy. Reductions or exemptions may be available depending on the individual's circumstances or that of their spouse. A Medicare levy surcharge of a further 1 to 1.5 per cent may also be imposed for higher income earners who do not hold private health insurance.

## Goods and service tax

GST is compulsory tax included in the price payable for goods and services in Australia. Businesses with a turnover of over A\$75,000 must be registered for GST and the rate currently payable is 10 per cent. Basic foods, some education, medical and healthcare products and services are exempt from GST.

## Capital gains tax

In addition to income tax, CGT is payable by individuals on the capital gain from disposing of dutiable assets such as real property or shares. The amount of the capital gain is included as part of an individual's taxable income and taxed at marginal income tax rates. The amount of capital gain is discounted by 50 per cent discount where the asset disposed of has been owned for at least 12 months and where the owner is an Australian resident.

*Law stated - 01 November 2021*

## Trusts and other holding vehicles

What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?

Assets in Australia are able to be owned by an individual person, by trustees on trust and through companies.

Trusts are recognised in Australia. Although a trust itself is not a separate legal entity, the trustee is the legal entity which holds the assets on trust for a beneficiary or class of beneficiaries. A trustee can be either a company or an individual. A trustee is responsible for dealing with the management and administration of a trust including its tax affairs. Depending on the powers provided by the governing trust deed, the trustee may elect to accumulate income or make distributions in each financial year. If a trustee elects to accumulate income, this income is taxable at the highest marginal rate of 45 per cent. Alternatively, if the trustee declares a distribution of the income to an eligible beneficiary of the trust, and the beneficiary becomes 'presently entitled' to the income, this income is taxed at the hands of the beneficiary at the applicable marginal income tax rates. A beneficiary may be either an individual, a company or another trust.

Companies are subject to a tax rate of 30 per cent on taxable income except for 'base rate entities' which are subject to the reduced tax rate of 25 per cent for the 2020/2021 financial year. Base rate entities are companies with an aggregate turnover of less than A\$50 million and 80 per cent or less of their assessable income is passive income such as royalties and rent, interest income, or a net capital gain.

*Law stated - 01 November 2021*

## Charities

How are charities taxed in your jurisdiction?

Charities in Australia must be endorsed by the Australian Taxation Office to be eligible for income tax exemptions .

Concessions are also available to endorsed charities in each state or territory which include income tax exemptions, GST concessions and fringe benefit tax concessions.

To be endorsed, the charity must have an Australian business number, be a registered charity with the Australian Charities and Not-for-profits Commission and meet certain requirements relating to the type of concessions sought.

*Law stated - 01 November 2021*

## Anti-avoidance and anti-abuse provisions

What anti-avoidance and anti-abuse tax provisions apply in the context of private client wealth management?

Anti-avoidance provisions in Part IVA of the Income Tax Assessment Act 1936 (Cth) apply to schemes where an individual obtains a benefit from a scheme that would have otherwise not been available and the scheme was entered into for the sole or dominant purpose of obtaining the tax benefit.

Common tax avoidance schemes include those where the taxpayer is able to reduce their taxable income, increase deductions against their income or avoid tax and other obligations entirely.

*Law stated - 01 November 2021*

## TRUSTS AND FOUNDATIONS

### Trusts

Does your jurisdiction recognise trusts?

Trusts are recognised and can be established under the laws of Australia. There is no Commonwealth legislation governing the establishment or proper administration of trusts; however, each state and territory has enacted its own legislation that are similar in nature that deal with the operation and management of trusts. The management and interpretation of trusts is also governed by common law in Australia.

Trusts established under the laws of other jurisdictions are also recognised in Australia, with Australia being a member of the Hague Convention on the Law Applicable to Trusts and on their Recognition.

Trusts can be categorised as either inter vivos trusts (established during the lifetime) or testamentary trusts (established upon death). Inter vivos trusts can further be categorised as either discretionary, fixed or hybrid (combination of discretionary and fixed) trusts.

Discretionary trusts usually have multiple beneficiaries with the trustee having discretion on which one or more beneficiaries should benefit from the corpus or income of the trust. However, a trustee does not have any discretion with a fixed trust and the beneficiaries entitlements are pre-determined by the terms of the trust deed .

*Law stated - 01 November 2021*

### Private foundations

Does your jurisdiction recognise private foundations?

Private foundations, also known as private ancillary funds (PAFs), are a form of charitable organisation recognised in Australia. PAFs are funds set up by a private individual or family, either inter vivos (during their lifetime) or upon the death of the benefactor.

Since 1 January 2014, to be registered, a PAF must comply with the requirements of being a 'charity' pursuant to section 5 of the Charities Act 2013 (Cth) . The general compliance requirements include being not-for profit, with a charitable purpose that is for public benefit.

PAFs can be for a general or a specific charitable purpose and are generally set up as a vehicle for tax effective private philanthropy projects. PAFs need to be correctly established to obtain deductible gift recipient (DGR) status with the Australian Taxation Office (ATO). DGR status allows the PAF to receive tax deductible gifts.

The characteristics of PAFs are governed by the Taxation Administration (Private Ancillary Fund) Guidelines 2019 (Cth) and include:

- being charitable and vehicles for private philanthropy;
- being a fund only and must not provide services;
- must operate in Australia only;
- being established under a will or trust deed. The ATO provides a model trust deed which outlines the requirements of setting up a PAF;
- operating on a non-profit basis;
- solely providing money or benefits to recipients with DGR status;
- each trustee must be a constitutional corporation; and
- each trustee must agree in writing to comply with the ATO rules and guidelines relating to PAFs.

*Law stated - 01 November 2021*

## **SAME-SEX MARRIAGES AND CIVIL UNIONS**

### **Same-sex relationships**

Does your jurisdiction have any form of legally recognised same-sex relationship?

On 9 December 2017, same-sex marriage was legalised in Australia, and covered by the same legislation and rules as marriage between heterosexual couples, including general recognition of foreign same-sex marriages. Married same-sex couples are subject to identical taxation, government benefit and succession obligations and entitlements as married heterosexual couples.

Same-sex relationships in the absence of marriage are considered to be de facto relationships. De facto partners are also subject to primarily identical taxation, government benefit and succession obligations and entitlements as married parties. Provided certain geographical and other preconditions are met, de facto partners are also entitled to make claims against the other in relation to financial and parenting matters in the same manner as married parties, in the event of separation.

Each of the Australian states and territories have legislation enabling same-sex couples and heterosexual couples to formally register a de facto relationship, with similar, but varied eligibility requirements. A registered relationship allows unmarried couples to formalise and register their relationship and avoid the burden of having to prove the existence and length of a de facto relationship in the event of dispute or death.

*Law stated - 01 November 2021*

### **Heterosexual civil unions**

Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?

In the absence of marriage, heterosexual couples are considered to be in a de facto relationship, defined in the Family Law Act 1975 (Cth) as 'a relationship as a couple living together on a genuine domestic basis.' Similar definitions apply in other state and federal legislation relating to taxation, superannuation, succession and the like.

De facto relationships may be registered pursuant to state or territory legislation, provided the relevant eligibility requirements are met. Registration avoids any doubt or challenge to the existence or commencement of the de facto relationship.

There is no formal requirement to deem the formation or commencement of a de facto relationship. A determination of the existence and commencement of a de facto relationship is an objective assessment of all the circumstances of the parties and their relationship and reaching a conclusion that they are 'living together on a genuine domestic basis'. Cohabitation is a significant factor, however, not essential.

*Law stated - 01 November 2021*

## SUCCESSION

### Estate constitution

What property constitutes an individual's estate for succession purposes?

A deceased estate comprises assets and liabilities that were legally held by the deceased in their personal capacity on their date of death. If the individual had any equitable claim to property, those claims generally survive death and the executor can pursue those equitable rights.

If an individual commenced family law financial proceedings during their life, those rights survive the death of the testator and the executor can continue those proceedings in the place of the deceased. Assets which are required to be transferred to or by the deceased are done so from the deceased's estate.

The manner in which real property is held is a relevant factor determining whether the property forms part of a deceased's estate. Property held by two or more persons as 'joint tenants', will automatically transfer to the surviving owners, and will not form part of the deceased's estate. However, property held by two or more individuals as 'tenants in common', in pre-determined percentages of ownership, the deceased's share of the property will form part of their estate.

*Law stated - 01 November 2021*

## Disposition

To what extent do individuals have freedom of disposition over their estate during their lifetime?

Individuals are generally free to dispose of their property during their lifetime if the property is not otherwise subject to asserted equitable claims, family law claims or other clawback provisions such as through bankruptcy.

Gifts of real property during an individual's lifetime will likely trigger land stamp duty and capital gains tax, unless prescribed exemptions apply. Further, gifting assets during an individual's lifetime can impact an individual's eligibility to receive government welfare benefits as the gifted assets will generally be included in any income or asset eligibility test when applying for welfare assistance.

Australia does not have a principle of community (marital) property. Generally, all assets held by a party to a marriage or de facto relationship are subject to claim by the other party, and entitlements are determined in accordance with the Family Law Act 1975 (Cth). There are provisions in the Family Law Act which provide for clawback of such assets in the event disposition is considered to defeat the claim of the other spouse.

## To what extent do individuals have freedom of disposition over their estate on death?

Individuals generally have a freedom of disposition, to the extent that they may dispose of their estate by way of their will to beneficiaries of their choice, including to the exclusion of other potential beneficiaries.

This freedom of disposition is, however, balanced against a moral duty to make adequate provision to eligible next of kin such as spouses and children. The relevant succession legislation differs in each state and territory in Australia; however, all generally enable eligible applicants to contest a will on the basis the testator had a moral obligation to make adequate provision for their proper maintenance and support, and failed to do so.

Law stated - 01 November 2021

## Intestacy

### If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

If an individual dies without a valid will (referred to as dying 'intestate'), each state and territory in Australia has enacted legislation to govern distribution of assets to prescribed beneficiaries. Generally, if a person dies intestate, the following beneficiaries will be entitled to a share of the estate (in order of priority):

1. a partner or partners of the deceased;
2. children of the deceased;
3. grandchildren of the deceased;
4. parents of the deceased;
5. siblings of the deceased;
6. nieces and nephews of the deceased;
7. grandparents of the deceased;
8. aunts and uncles or cousins of the deceased; and lastly
9. the Crown.

The portion of the estate distributed between the beneficiaries varies according to the legislation of the state or territory in which the deceased was domiciled.

Law stated - 01 November 2021

## Adopted and illegitimate children

### In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?

In Australia, there is no distinction between adopted or illegitimate children and both are treated as legitimate children for the purposes of distribution upon death without a valid will (intestate). Stepchildren are not considered eligible for distribution if an individual dies intestate. However, stepchildren are generally eligible to make a claim against a deceased's estate for provision.

Law stated - 01 November 2021

## Distribution

What law governs the distribution of an individual's estate and does this depend on the type of property within it?

In Australia, the law of the jurisdiction where real property is situated applies to the distribution of the property unless there is a contrary intention such as in a person's will.

Movable property or personal property is generally dealt with by the law of domicile of an individual.

*Law stated - 01 November 2021*

## Formalities

What formalities are required for an individual to make a valid will in your jurisdiction?

In Australia, each state and territory has its own legislation governing the validity of wills. Generally, for a will to be valid in Australia it must be:

- in writing;
- signed by the testator with the intention of executing a will; and
- signed in the presence of two witnesses present at the same time.

The testator must also have full legal capacity to make a will and must not be unduly influenced.

Following the covid-19 pandemic, states and territories have enacted legislation to allow wills to be signed electronically, where the testator and two witnesses must appear on an audiovisual link at the same time.

Through this link, the witnesses must be able to see the testator electronically sign the will. One of the witnesses must be an authorised witness such as an Australian legal practitioner, who will then need to certify that they witnessed the will in accordance with the state or territory legislation.

Australia also recognises 'informal wills', being wills that do not comply with the legislative requirements determining validity, but are nonetheless still deemed to be testamentary instruments. However, an application for a grant of an informal will is a costly exercise without any guarantee that a grant will be issued. For example, courts have issued grants of representations on 'text message wills' and other audio-visual wills. However, care should be taken if not complying with the requirements of a valid will.

*Law stated - 01 November 2021*

## Foreign wills

Are foreign wills recognised in your jurisdiction and how is this achieved?

Australia recognises international wills. An international will is a document executed by the testator with the intention to apply in any jurisdiction in the world. Australia is a party to the Uniform Law on the Form of an International Will contained in the UNIDROIT Convention. The Convention was signed in Washington, DC in 1973. The states and territories of Australia have adopted the principles in the Convention which stipulate that an international will is recognised as a valid form of will by courts of countries party to the Convention. This is irrespective of where the will was made, the location of assets, or where the will-maker lives, and without having to look to the internal laws

operating in foreign countries to determine whether the will has been properly executed.

Further, Australia also recognises wills executed in foreign places. A will is deemed to be valid if its execution conforms to the requirements for a valid will in the jurisdiction the will was executed.

*Law stated - 01 November 2021*

## Administration

### Who has the right to administer an estate?

The legal personal representative of the deceased has the right to administer the estate. In Australia, there is a priority system on who can validly represent an estate.

The order of priority for a legal personal representative of an estate is as follows.

- If there is a valid will:
  - the executor or executors validly appointed by a will.
  - If no appointment is made or an executor predeceases, then the residual beneficiary or beneficiaries with the greatest entitlement can apply to be the legal personal representative.

Where there is no valid will, then the next of kin with the greatest entitlement can apply to be the legal personal representative.

*Law stated - 01 November 2021*

### How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

Distribution of an estate is dependent on whether the deceased left a valid will or not. If a deceased left a valid will, the distribution of assets will be in accordance with the terms of the will. However, if a deceased dies intestate (without a will), distribution of the deceased's assets is governed by intestacy provisions. A grant of probate or letters of administration enables a legal personal representative to obtain title to assets of the deceased's personal estate and distribute them to beneficiaries.

In Australia, assets are generally classified as personal assets, superannuation or other. Personal assets are those held in an individual's name that are distributed in accordance with their will or intestacy provisions (as the case may be). Superannuation and other types of assets, such as those held on trust or by companies, are not automatically dealt with by a person's will or intestacy provisions.

*Law stated - 01 November 2021*

## Challenge

### Is there a procedure for disappointed heirs and/or beneficiaries to make a claim against an estate?

Each state and territory has its own legislation enabling eligible applicants to make a claim for provision or further provision against a deceased estate. Generally, for an application to be successful, the following elements need to be



satisfied:

## Eligible applicant

The following persons are generally considered to be eligible applicants:

- a spouse or domestic partner of the deceased at time of death;
- a child, including a stepchild, of the deceased; and
- a person who was wholly or partially dependent on the deceased, to the extent the deceased had a moral obligation to provide for that person in the will.

## Relevant considerations

A claim must generally be made within six months of a grant of representation being issued by the court. When assessing the validity of a claim the court will consider various factors including:

- The terms of the deceased's will (if any);
- evidence of why the deceased drafted their will in any certain way; and
- any evidence as to the deceased's intentions in relation to provision for the applicant.

The court may also consider other factors such as:

- the size of the estate;
- the relationship between the deceased and the applicant;
- the applicant's personal and financial circumstances;
- the circumstances of the other beneficiaries; and
- any other circumstances that the court sees fit.

Australian courts have placed a strong focus on whether the deceased had a moral obligation and the adequacy of any provision made. The courts also consider whether or not the applicant has a need for provision from the estate.

*Law stated - 01 November 2021*

## CAPACITY AND POWER OF ATTORNEY

### Minors

What are the rules for holding and managing the property of a minor in your jurisdiction?

In Australia, a minor (under 18 years of age) can generally hold property, including real property. However, a minor is unable to validly enter a contract with the exceptions of a contract for employment or for necessities. Therefore, any contract entered into to deal with the property by the minor or the legal guardian, such contract may be voided. An application must be made to the relevant court to obtain a court order for the sale of real property registered in a minor's name.

*Law stated - 01 November 2021*

## Age of majority

At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?

The age of majority in Australia is 18 years of age for the purposes of holding and managing property.

*Law stated - 01 November 2021*

## Loss of capacity

If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?

If a person loses capacity in Australia, each state and territory has its own legislation governing how the affairs of the proposed represented person should be managed. Generally, there are two methods of dealing with the affairs of the proposed represented person upon incapacity:

- During the period of capacity, the proposed represented person may execute valid enduring powers of attorney for financial, personal and medical decisions. If the proposed represented person validly executed the necessary documents, the person or persons appointed will act as attorneys on behalf of the proposed represented person. Generally, the appointment of an attorney can take place either immediately upon execution or at the time the proposed represented person loses capacity. If more than one attorney is appointed, they may be appointed to act jointly or jointly and severally.
- Alternatively, if the proposed represented person has not validly appointed an attorney, an interested party can make an application to the relevant tribunal for an administration or guardianship order. The tribunal oversees the decisions of an appointed administrator or guardian and their appointments and decisions are reviewable by the tribunal. If there is no appropriate person to act as an administrator or guardian, then each state and territory have offices such as the Office of Public Advocate or Public Trustee to act as administrators or guardians.

*Law stated - 01 November 2021*

## IMMIGRATION

### Visitors' visas

Do foreign nationals require a visa to visit your jurisdiction?

Foreign nationals other than New Zealand citizens require a valid Australian visa to enter Australia.

New Zealand citizens can apply for a visa upon arrival. There are a number of different visa types including tourist, working holiday, skilled worker or protection visas.

*Law stated - 01 November 2021*

### High net worth individuals

Is there a visa programme targeted specifically at high net worth individuals?

Australia has a significant investor visa which provides an individual with a pathway to permanent residency in

Australia by investing at least A\$5 million in complying investments over four years. Complying investments include Commonwealth, state or territory government bonds, managed funds regulated by the Australian Securities and Investment Commission and investments within Australian proprietary companies.

*Law stated - 01 November 2021*

## UPDATE & TRENDS

### Key developments

Are there any proposals in your jurisdiction for new legislation or regulation, or to revise existing legislation or regulation, in areas of law relevant to high-net worth individuals, particularly those coming to or investing in your jurisdiction? Are there any other current developments or trends relevant to such individuals that should be noted?

### Marginal income tax rate changes

In the Federal Budget for 2019–2020, the government announced a plan to reduce the marginal income tax rate of low to middle-income earners.

The notable change commences from financial year 2024, where it is intended to reduce the 32.5 per cent marginal tax rate bracket to 30 per cent, aligning it towards tax rates applicable to corporations.

For high income-earning individuals, this provides an opportunity to improve income streaming benefits of income generated via family discretionary trusts to those beneficiaries who fall within the middle-income tax bracket.

### Electronic signing of wills and other documents

Since the covid-19 pandemic, the federal and state governments have enacted legislation to allow for many legal documents to be signed electronically, provided certain obligations are met, including contracts, statutory declarations, court documents, financial documents and documents that require a qualified witness.

In most states and territories in Australia, wills can now be signed electronically in the presence of two witnesses. This is a significant departure from the previous position that a will must be signed with wet ink in the presence of two witnesses. Generally, the legislation in each respective jurisdiction requires additional requirements are met to ensure that electronic signing by the testator and the witnesses has been completed correctly, including that one of the witnesses must be an authorised witness such as a legal practitioner.

### Foreign investment reform

In 2021, the federal government enacted changes to the Foreign Acquisitions and Takeovers Act 1975 (Cth) and the Foreign Acquisition and Takeovers Regulation 2015 (Cth) . Among other things, the changes provide that an interest in securities, assets, a trust or Australian land that is acquired through a will by a beneficiary who is regarded as a 'foreign person' may be subject to review by the Treasurer under the Foreign investment reform regime.

*Law stated - 01 November 2021*

## Jurisdictions

	<b>Andorra</b>	Cases & Lacabra Abogados SLP
	<b>Australia</b>	Kalus Kenny Intalex
	<b>Austria</b>	DORDA
	<b>Belgium</b>	Loyens & Loeff
	<b>Bermuda</b>	Butterfield Trust
	<b>Cayman Islands</b>	Butterfield Trust
	<b>Colombia</b>	Rimôn
	<b>Cyprus</b>	Patrikios Pavlou & Associates LLC
	<b>Germany</b>	POELLATH
	<b>Guernsey</b>	Butterfield Trust
	<b>Hong Kong</b>	Charles Russell Speechlys LLP
	<b>Ireland</b>	Matheson
	<b>Japan</b>	Anderson Mōri & Tomotsune
	<b>Liechtenstein</b>	Gasser Partner
	<b>Malta</b>	GVZH Advocates
	<b>Monaco</b>	CMS Pasquier Ciulla Marquet Pastor Svara & Gazo
	<b>Panama</b>	Pardini & Asociados
	<b>Spain</b>	Cases & Lacabra Abogados SLP
	<b>Switzerland</b>	Kellerhals Carrard
	<b>United Kingdom - England &amp; Wales</b>	McDermott Will & Emery
	<b>USA</b>	Holland & Knight LLP