

**PHILANTHROPY
AUSTRALIA**

Bequests Promised vs Bequests Realised

UNDERSTANDING WHAT HAPPENS TO CONFIRMED GIFTS IN
WILLS THAT DON'T MATERIALISE

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Bequest Assist

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**INCLUDE
A CHARITY**

What is a 'missing gift' to a charity and why does it matter?

A 'missing gift' is 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 can happen in a number of ways uncovered through this research such as: a will being misread, a will lost or destroyed, the will is probated but the executor or solicitor does not want to pay the beneficiaries, the charity is notified only through a cheque in the mail that is sent to the wrong address or lost or the executor or solicitor is unable to finalise the estate administration (for example as a result of health or retirement).

Most executors and solicitors are honest, diligent and careful to ensure that charities receive the gift as the bequestor intended, however given the importance of gifts in wills and the large average size of a gift – around \$143,000 – the impact of just one missing gift a year is enormous. Charitable gifts in wills feature in the total transfer of inheritance of wealth; across the nation there is an estimated \$140 billion in inheritance in 2024 and an intergenerational transfer of \$5.4 trillion over the next two decades indicating the immense importance of more honest and diligent executors, solicitors and advisers to ensure a smooth transition to the beneficiaries of this wealth.¹

Charities are bearing the full cost of this 'missing gifts' issue because no-one is consistently checking if gifts are being paid. Even if a charity could contact every single one of their donors interested in leaving a bequest that still won't likely cover everyone; in 66% of cases, the donor had not confirmed to the charity that they were leaving a gift in their will. One other approach is to purchase every probated will and check the nominated beneficiaries, but this would be practically unachievable for charities without additional support since the estimated cost to do this for a single year is estimated to be in excess of \$6 million.

¹ JBWere, 2024, 'The Bequests Report.'

This matters because the will reflects the final wishes of the donor generously contributing to the supporting the work of the charities they care about. Charities are strengthened to continue their work in the future thanks to these donations.

Two cases of bequests promised being realised during this project

These two cases uncovered the details of how and why the promised gift was never paid until intervention. As a result of diligent following up made possible by this project, the funds were successfully received by the nominated charities (more cases are detailed in the full report).

Morgan Koegel, Managing Director of Bequest Assist and the lead on the research, says: "The number of missing gifts uncovered by this research demonstrates the urgent need for reform to ensure that charities receive every dollar generous bequestors wanted them to have."

Case 1

A family member of the deceased hired a solicitor to seek probate, but then administered the Estate themselves. When we purchased a copy of the Will and examined it, we noticed four charities were left a residuary portion of the Estate. None had ever received notification or payment when we started investigating as part of this project. At least three of the four charities had recorded the deceased individual as a confirmed bequestor before she passed away.

When the executor was eventually confronted, he claimed first that he had mailed a cheque and it must have been lost. When we asked for further details, he then claimed there was fraud at the bank. When we pushed the issue further, he suggested the charities would need to pursue a legal intervention to reclaim the funds. We continued following up and eventually the funds were received by all charities.

Ultimately all four charities were paid around \$45,000, totalling an additional \$180,000 for charities recovered.

Case 2

A solicitor was named as executor of this Estate which included three \$1000 pecuniary gifts to charities. When we tried to get in touch with the solicitor, it became apparent that he had retired. We spoke with his firm and they acknowledged that the gifts must have been overlooked as he was administering the Estate while in the process of concluding his time at the firm. They agreed to pay the gifts and we requested interest be included to reflect the delay in payment. Ultimately all charities received their gifts.

What can we do about it? Recommendations for will writers, policy makers and charities

Recommendations for will-writers

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.

Recommendations for Executors

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.

Recommendations for Policy makers

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.
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.

Recommendations for charities

Keep your data meaningful and accessible now and for use in the future

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.

Clear recording of individuals as deceased – on average it took charities 1.5 years after the date of death to mark an individual as deceased in their system:

4. 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.
5. 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.
6. 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.
7. 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.
8. 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!

Relationship with the spouse of a confirmed bequestor

9. 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?

Improve your accuracy of confirmed bequestor revenue pipeline by having more accurate data

10. Consider methods to internally evaluate the accuracy of your charity's Gifts in Wills pipeline, or to improve that accuracy for the future. Data cleaning described above is one of the methods to improve data accuracy.

Background of the research initiative

Philanthropy Australia and Include a Charity partnered with Bequest Assist in 2024 to investigate this troubling problem following Bequests Assist pilot project in Victoria on 'missing gifts' in 2023 revealed that this issue was greater than initially feared. In 2024, the project scaled up to other states & territories demonstrating that this issue was widespread across the nation.

If you are a Philanthropy Australia member you can access the full report on the Better Giving Hub.

If you are a government policy maker, journalist or other interested party and would like to request a copy of the report, please contact [Rebecca Moriarty](#).

Find out more at [Include a Charity website](#)



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