

Swinburne Business School

Asia-Pacific Centre for Social Investment & Philanthropy

Encouraging Charitable Bequests by Australians

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Background

Principal funding support for this research has been made available by the Fred P. Archer Charitable Trust, for which The Trust Company is Trustee. The Trust was established by Fred P. Archer prior to his death in 1977 after spending 54 years in Papua New Guinea. The funding was made available as part of the Engaged Philanthropy approach championed by The Trust Company, part of Perpetual.

Additional funding support has been made available by the Include a Charity campaign, a consortium of Australian charitable organisations with an interest in encouraging charitable bequests by Australians and in disseminating evidence, ideas and best practices to support Australian charities in this endeavour.

The funding, the encouragement and the support of both The Trust Company and Include a Charity have contributed to the collection and analysis of information on the bequest practices of Australians that is unprecedented in relation to both its depth and its scale. The result is a robust and substantive body of data from which it is possible to make evidence-based observations and recommendations.

Through the analysis of the information captured, this project seeks to:

- provide an unprecedented evidentiary base for policy reflection and development by government and regulatory bodies with an interest in encouraging charitable giving in Australia
- inform the Australian public and provide adult Australians with an improved information base upon which to factor their own will-making choices
- similarly inform interested accountants, financial advisers, solicitors and other advisory professionals involved in helping individual Australians to prepare their wills
- provide the not-for-profit sector in Australia with insights into how they might encourage Australians collectively to include a charity in their will
- expand the knowledge base of fundraisers to enable them to refine their approaches to market segmentation and the encouragement of individuals.

The Asia-Pacific Centre for Social Investment and Philanthropy

The Asia-Pacific Centre for Social Investment and Philanthropy (ACSIP) is committed to promoting and advancing social investment and philanthropy in Australia and throughout the Asia-Pacific Region.

ACSIP, at the Swinburne Centre for Social Impact, is itself part of the wider cross-university collaboration known as the Centre for Social Impact (CSI), in the Swinburne Business School. Established in 2001 as an educational unit focusing on philanthropy, ACSIP launched one of the first post-graduate courses specialising in grant making and philanthropic giving. As part of the offerings of Swinburne Business School, ACSIP provides a Graduate Certificate and a Masters program in Social Investment and Philanthropy and maintains an integrated research capability.

By contributing to the development and dissemination of new data and knowledge in this arena, ACSIP strives to facilitate a complementary relationship between the teaching, community engagement and research programs of the Centre.

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Executive Summary

At the heart of this project is the quest to provide a robust evidentiary base for the development of policy and practices aimed at encouraging charitable bequests by Australians.

In doing so, this project seeks to provide an understanding of:

- charitable bequest giving practices by contemporary Australians
- the inheritance practices that help shape charitable bequest giving.

Through the analysis of the information captured, this project seeks to:

- inform the Australian public and provide adult Australians with an improved information base upon which to factor their own will-making choices
- similarly inform interested accountants, financial advisers, solicitors and other advisory professionals involved in helping individual Australians to prepare their wills
- provide the not for profit sector in Australia with insights into how they might encourage Australians collectively to include a charity in their will
- expand the knowledge base of fundraisers to enable refinement of approaches to market segmentation and the encouragement of individuals towards charitable giving
- provide an unprecedented evidentiary base for policy reflection and development by government and regulatory bodies with an interest in encouraging charitable giving in Australia.

As a research project, this initiative also seeks to contribute to national and international understanding of charitable bequest giving and philanthropy more broadly, especially in the Australian context.

What we already know

This report includes an overview of a range of theoretical and research-based insights that inform our understanding of charitable bequest giving, as summarised below:

Inheritance, Bequests and Giving

Classic sociological theory established obligations to family are particularly powerful in inheritance practices.

Gifts are “‘total’ social phenomena” governed by the complex interaction of societal norms and a dynamic network of obligations of giving, receiving and reciprocating.

The obligations that are met in the act of estate transmission are laden with moral meaning and with both conscious and unconscious motives.

Attitudes to Bequests

In many Western nations it is commonplace for will-makers to leave their estate to their spouse, and for that person to leave the family estate to the children in equal share.

While the pattern of equal distribution is the prevailing norm in Australia, individual are prepared to deviate from this norm in response to circumstance.

Attitudinal shifts in older Australians reflect moves away from self-sacrifice and towards a shared understanding that the assets of the ageing are theirs to use as they see fit.

Behaviour and Charitable Bequests

People tend to respond to queries about charitable giving with a 'socially desirable' response; more how they think they 'should' behave than how they actually do.

Social influence has been shown to affect charitable giving behaviour. This has been recently demonstrated in trials with will-writers in the UK where compared to a control group, individuals who were 'nudged' to include a charitable bequest were three times more likely to do so.

Making a decision to include a charitable bequest is often associated with self-reflection on life history and mortality, and the desire to be remembered beyond the grave.

Economics of Charitable Bequests

Day to day charitable giving is made from income; charitable bequests are made from capital.

US research into charitable bequests finds:

- on average as the value of estates increases, so does the proportion given to charity
- charitable bequest giving is sensitive to wealth and to tax
- the presence of a spouse and children diminishes the likelihood of a charitable bequest.

Charitable Bequests in Australia

A major Government commissioned study examining giving in Australia estimated in 2005 that 58% of adult Australians have a will, and 7.5% of those include a charity.

A study of 1,000 Australian donors found that the biggest influences over the decision to leave a charitable bequest are believing the family is adequately provided for; or not having a family.

A study of Victorian probate files processed in 2006 found:

- 5.4% of all probated estates, and 7% of all 'final estates' included a charitable bequest
- family inheritance norms are very strong; Australians leave their estate first to their spouse, who then leaves all to the children in equal share.

Results

The total dataset is made up of a sample of not less than 5% of the files that each jurisdiction processed in the calendar year 2012 (with the exception that in Queensland the files accessed were processed in 2010).

File Types

3793	total valid probated files
373	intestate estates
738	first estates (willed estate, with surviving spouse)
2661	final estates (willed estate, without surviving spouse)

Intestate Estates

- 10%** of all estates in the study
- 6%** of the net value of all estates

The four distinctive features of intestate estates as identified in the earlier study of Victorian probate files (Baker and Gilding 2011) also hold for this larger national sample. Compared to willed estates, those who died intestate, were:

1. Younger
2. Less wealthy
3. More likely to not have children
4. More likely to be male.

Age

The average age of the owners of estates in this study was:

- **81.4 years**

Nearly 30% of individuals included in this study were 90 years or older at the time of their death.

Less than 10% were less than 60.

Country of Birth

Just short of three quarters (74%) of all estates belonged to individuals born in Australia.

Charitable Bequests

From the full set of probate files:

- **6.5%** made some form of charitable bequest
- **1.4%** included a contingent bequest

Overview of Probate Files and Charitable Bequests

An overview of the data relating to probate files and charitable bequests made with a break down by jurisdiction is provided as Table 7.

Table 7: Overview of probate files, file type and charitable bequests, with breakdown by State and Territory

	<i>ACT</i>	<i>NSW</i>	<i>NT</i>	<i>Qld</i>	<i>SA</i>	<i>Tas</i>	<i>VIC</i>	<i>WA</i>	<i>Total</i>
files	53	1375	13	738	264	118	899	333	3793
intestate	3	127	1	72	16	13	94	47	373
first	10	264	6	142	50	22	179	65	738
final	40	975	6	523	193	83	620	221	2661
bequests	2	92	1	64	21	3	51	15	249
% bequests	3.8	6.7	7.7	8.7	8.0	2.5	5.7	4.5	6.5%
Contingent bequests	-	25	-	7	2	4	7	9	54
% contingent		1.8		0.9	0.8	3.3	0.8	2.7	1.4%

Charitable Bequests from Final Estates

Of the 2661 final estates (with a will and without a surviving spouse):

- **7.6%** made some form of charitable bequest
- **1.3%** included a contingent bequest

Final Estates and net value:

Charitable bequests from final estates account for 97% of the \$ value of all charitable bequests in this study.

Approximately 60% of the final estates with recorded financial values had a net value of less than \$500,000; and a further 26% had net value of between \$500,000 and \$1m.

At the high end of the capacity spectrum, those estates with net worth of **more than \$2 million**, accounted for:

- **5%** of all final estates, by number
- **34%** of the total \$ value of final estates
- **56%** of all charitable dollars bequeathed

Participation rates:

- There is a broad pattern of participation in charitable bequests increasing in line with increasing estate values.

Proportional giving:

- While the highest value estates did gift a higher proportion of their value to charity, across the sample as a whole there was no statistically significant relationship between the value of estates and the proportion of those estates directed to charitable bequests.

The presence of children:

Estates without a surviving child are far more likely to make a charitable bequest, than are those with children. Statistical analysis also indicates a significant association between the size of a charitable bequest and having no surviving children.

Nevertheless

- **70%** of final estates with no children did not include a charitable bequest.

Beneficiaries from Final Estates:

Where children survive the will-maker they are overwhelmingly the primary beneficiaries of contemporary final estates in Australia.

For final estates with surviving children:

- **7 out of 10** the children were the primary beneficiaries in equal share nevertheless
- **3 out of 10** will-makers did not follow this prevailing norm.

Charitable beneficiaries:

For all will-makers who did include a charitable bequest

- **47%** gave to a single charitable beneficiary
- **53%** shared their bequest amongst multiple charitable beneficiaries.

Against a framework the Australian Taxation Office (ATO) general categories of Deductible Gift Recipients:

- Human Welfare organisations were the major category of charitable beneficiary, with
 - 61% of all charitable organisation inclusions
 - 56% of all charitable dollars bequeathed.
- Education and Other (including the Arts) both fared poorly.
- The Environment received very few bequests (3) and these were low in value.

Will Gap:

This study included an analysis of the gap between the year in which a final will was made, and the year of death of the will-maker. On average the gap was significantly smaller for those who left a charitable bequest:

- **10 yrs** no bequest
- **5.6 yrs** included a charitable bequest.

Statistical analysis showed this relationship to be significant; however it also revealed the size of the effect to be small.

Will preparation and charitable bequests:

The wills examined were overwhelmingly prepared with the assistance of professional advisers:

- **5%** Will Kit
- **12%** Self-prepared
- **83%** Adviser / lawyer.

The predominance of advised wills made no difference to charitable bequest inclusions. Analysis indicated that there is no statistical relationship between the form in which a will is prepared and the likelihood of including a charitable bequest.

Specified Vs. Residual charitable bequests:

Charitable bequests made as a specified \$ value gift were on average significantly lower in value than those made as a residual of the estate:

- **\$7,000** median value of specified charitable bequests
- **\$200,000** median value of residual bequests.

Testing confirmed the statistical association between the form in which a charitable gifts are specified and the value of charitable bequests. The effect size of this difference was shown to be large.

Glossary

Beneficiary: a person or organisation benefiting under a will.

Bequest: a gift of property to a person or organisation in a will. In common usage the term bequest is used to include gifts of money. Consequently both bequest and legacy are generally understood to mean any gift in a will.

Bequest officer: a person employed, usually by a single charitable organisation, to generate charitable gifts.

Charity: in its broadest sense charity is the practice of benevolent giving.

Charitable purpose: a nonprofit purpose for the public good, including: the relief of poverty or sickness or the needs of the aged; the advancement of education; the advancement of religion; and other purposes beneficial to the community.

Contingent bequest: a gift under a will dependent upon a specified event occurring.

Decedent: a deceased person.

Deductible Gift Recipient (DGR): an entity that is entitled to receive income tax deductible gifts under Australian law. All DGRs are endorsed by the Australian Taxation Office.

Distribution: a generic term for assets transferred from an estate to a beneficiary of a will.

Elasticity: a term used in economics as a measure of responsiveness to change.

Estate: the totality of a person's assets (property, entitlements and obligations) at the time of death.

Estate Tax: a tax levied on the assets of a deceased estate prior to distribution to beneficiaries. (Inheritance Tax is levied on an individual beneficiary once the distribution has been received.)

Executor: a person appointed by a will-maker to take charge of the deceased's assets and property, see that debts, funeral and administration expenses and taxes are paid and to distribute the residual estate to beneficiaries in accordance with the will.

Family provision: the term used in Australia for provision made for family members in a will.

Financial assets: term used in financial services industry to describe assets that are potentially available for investment – financial assets exclude the family home, consumer durables and collectables.

High Net Worth Individual (HNWI): a term used in the wealth management industry to describe individuals with investable financial assets (excluding their primary residence) in excess of US\$1 million.

Inheritance Tax: a tax levied on the value of assets inherited by a beneficiary of a will. (Inheritance Tax is levied on an individual beneficiary once the distribution has been received. Estate Tax is levied on a deceased estate prior to distribution to beneficiaries.)

Inter vivos: a Latin term meaning “during life” - used to refer to a transfer or gift made during a person's lifetime.

Intestate: when a person dies without a valid will. The property of an intestate estate passes by the laws of succession rather than by the direction of the deceased.

Investable Assets: synonym for financial assets, above.

Legacy: a gift of money to a person or organisation in will. In common language the terms legacy and bequest are used interchangeably and generally understood to mean any gift in a will.

Pecuniary legacy (bequest): a fixed sum of money expressed as a gift in a will.

Philanthropy: Defined by Philanthropy Australia as: “The planned and structured giving of money, time, information, goods and services, influence and voice to improve the wellbeing of humanity and the community”. Term derived from the Ancient Greek *philanthrōpía*: love of mankind.

Prescribed Private Fund (PPF): a form of private charitable trust to which individuals and other Australian taxable entities can make tax deductible donations. PPFs can only make distributions to organisations designated as deductible gift recipients (Superseded by Private Ancillary Funds in 2009).

Private Ancillary Fund (PAF): a form of private charitable trust to which individuals and other Australian taxable entities can make tax deductible donations. PAFs can only make distributions to organisations designated as deductible gift recipients. PAFs are required to have a formal investment plan and to distribute at least 5% of their corpus value each year (Superseded Prescribed Private Funds in 2009).

Probate: the process of proving and registering the last will of a deceased and granting of the right to its administration.

Post mortem: a Latin term meaning “after death” - used to refer to a transfer or gift made from a person’s will after his or her death.

Public Ancillary Fund (PuAF): the name given to a form of charitable trust to which the public are able and invited to contribute tax deductible donations. A Public Ancillary Fund is required to be operated in a public manner for public benefit.

Residue of estate: the possessions, property and money remaining after all debts and gifts are distributed in accordance with the will.

Succession law: the law relating to wills and estates.

Testate: when a person dies having made a valid will.

Testamentary: referring to a will.

Ultra High Net Worth Individual (UHNWI): a term used in the wealth management industry to describe individuals with investable assets (excluding their primary residence) in excess of US\$30 million.

Will: a legal document expressing the intentions of a person for the distribution of their assets after death.

Will-maker: a person who makes a will.

Introduction

This project report is founded on data gathered from a nation-wide study of Australian probate files.

Through the capture and analysis of a representative sample of probate data from each Australian State and Territory, this project seeks to:

- inform the Australian public and provide adult Australians with an improved information base upon which to factor their own will-making choices
- similarly inform interested accountants, financial advisers, solicitors and other advisory professionals involved in helping individual Australians to prepare their wills
- provide the not-for-profit sector in Australia with insights into how they might encourage Australians collectively to include a charity in their will
- expand the knowledge base of fundraisers to enable them to refine their approaches to market segmentation and the encouragement of individuals towards charitable giving
- provide an unprecedented evidentiary base for policy reflection and development by government and regulatory bodies with an interest in encouraging charitable giving in Australia.

As probate data is fundamental to this report, it is appropriate to supplement the short definition provided in the glossary with a brief overview of the relevant aspects of the processes of probate.

In Australia there are no estate duties and no inheritance taxes.

This is unusual in the context of developed Western nations so the section below includes an overview of the death duties and related gift taxes which were operative in Australia prior to their demise at the end of the 1970s.

Probate in Australia

In contemporary Australia, to give effect to a transfer of assets from the previous ownership of a deceased individual, an order is required under the auspices of the Supreme Court in each state and territory. The respective Supreme Courts are responsible for the processing of probate in their jurisdiction and as a result there are variations in details and in procedures, including variations in the content of death certificates.

In broad terms, to obtain a grant to enable the assets of a deceased estate to be distributed in accord with an individual's will, the executor of that will needs to file an application to the Probate Office of the Supreme Court of the state or territory in which the will-maker deceased.

A Grant of Probate is a court order confirming the validity of a will and authorising the Executors to disperse the assets of the estate accordingly.

Individuals who do not make a will are said to have died **intestate** and an application can be filed with the Probate Office for a grant of administration in relation to the distribution of the estate assets. The set formula for the distribution of intestate estates also varies by jurisdiction, (see insert: *The complexities of Intestacy provisions around Australia*).

The number of estates requiring probate is considerably less than the number of deaths in any jurisdiction for the following reasons:

- where assets are jointly owned (for example by husband and wife) on the death of one owner the jointly owned assets can be transferred to the other without requiring a grant of probate
- individuals may already have transferred assets prior to death into a trust or other entity
- where individuals die with little by way of assets (impecunious) small cash and other holdings can be transferred, without need for a court order.

The value at or above which a grant of probate is required is not set by any statute or regulation. In practice it is for amounts above about \$10,000 that asset holding institutions such as banks and share registries generally require a grant of probate. This is primarily about risk management as without a court order (a grant of probate) the asset holders cannot be certain that any will presented to them is the “last will” or that the terms of the will presented may not be contested. Correspondingly, in broad terms, low asset value estates overwhelmingly do not require or seek probate.

The complexities of Intestacy provisions around Australia

The following summary is not comprehensive. Neither can it be taken as legal advice. This summary serves simply to highlight the multiple areas in which intestate provisions can differ by both circumstance and jurisdictions.

In the absence of a will: state or territory law specifies the distribution of estates. In all state and territory jurisdictions, the first claim belongs to the spouse. A spouse can be: (i) legally married; (ii) be in a de facto relationship if it has been for two years or longer in states like Victoria, New South Wales and Queensland; (iii) be a same-sex partner in Western Australia and the Australian Capital Territory; (iv) be a domestic partner of three years in South Australia or two years in the Northern Territory; or (v) be in a “significant relationship” in Tasmania.

In the absence of children: across every state and territory jurisdiction, the spouse inherits the entire estate. Each jurisdiction treats distributions differently when there are multiple spouses, but the distribution will generally be divided based on a written agreement between spouses, a court order for an equal division of property, or a court order distributing the estate as it deems just and equitable (which can mean that a spouse can receive the entire estate).

When there is a spouse and children: NSW stands alone. The NSW Act was amended in 2009 such that the spouse is entitled to the whole of the deceased’s estate, including where there are children. In other jurisdictions a specified statutory sum is first distributed to the spouse, and then a specified share of the estate, with the remaining share going to the children equally. Where a child of the deceased has died, the share proportioned to that child will go to that child’s own children (the grandchildren), where they exist.

In the absence of a spouse: the estate usually goes equally to the children, or if a child or children have died, to their children (the grandchildren).

In the absence of a spouse, children and grandchildren: each jurisdiction distributes the assets according to a statutory hierarchical order. The order is not consistent across state and territory jurisdiction, but the categories include parents, siblings, half-brothers and half-sisters, nieces and nephew, aunts and uncles and even cousins in some states. In some jurisdictions like South Australia, there are statutory provisions that expressly prohibit categories of persons from benefiting under intestacy rules.

History of Probate in Australia

Probate in Australia initially ceased to be an issue of any great public concern following the abolition in the late 1970s of the regime of death and gift duties which had been operational throughout the nation (Gans & Leigh 2006: 2; Smith 1993: 78-81).

- ❖ Up until that time the Australian Commonwealth Government and the state governments in Australia had levied taxes on the estates of deceased individuals.
- ❖ State tax was levied by the government of the state in which the deceased was living at the time of his or her death.
- ❖ While there were variations in approaches to calculation and to application in different states, in general the tax was applied to all real and personal property within the state and on personal property located outside the state.
- ❖ Some states made allowances for taxes paid in other states and some concessions were made for estates passing to immediate family members.
- ❖ Gift Duties were levied by the individual states, largely through Stamp Duties, in an effort to prevent avoidance of death duties.

The Commonwealth Inheritance Tax involved a straight forward levying of tax:

- on the net value of all the Australian assets of an estate
- at a progressive rate to a maximum of 27.9%; applied to estates worth one million dollars or more in 1979.

The tax was payable less state death taxes paid or payable (McLeod 1994). Following the death of his brother, Justice Sydney Negus of the Western Australian Supreme court, was outraged that probate duties had a serious impact on property left to a widow. The campaign to end death duties began in earnest in 1970 when Sydney Negus was elected to the upper house of the Federal parliament of Australia with the singular and express intent of ridding Australia of probate duties.

The then Premier of Queensland, Johannes Bjelke Peterson, took the first legislative steps with the exemption of spouses in 1975 from internal transfer charges, followed in 1977 by the abolition in Queensland of all estate and gift duties (Pedrick 1981).

- ❖ As removal of inheritance duties in one state could make it advantageous for the holders of private wealth to die in that jurisdiction, the other state governments moved quickly to also abolish inheritance and gift duties in order to avoid the potential for a wealth drain.
- ❖ While the rationale for removing inheritance duties at the state level was clear, it was less clear when the Commonwealth Government followed the states and introduced legislation abolishing the related Commonwealth taxes in June 1978.

Prior to the abolition of duties payable on an estate at death, it had been common practice for those with wealth to seek to minimise the value of their personal estate in order to avoid or minimise tax(es) payable (Rubinstein 1979). As such, the demise of tax on deceased estates in Australia removed one of the major motivations for individuals and/or their executors to seek to downplay the value of the estate.

While wealthy Australians continue to seek to minimise the value of their personal estate, this is now primarily a function of wealth protection (to limit liability in the event of business failure or legal proceedings). It should also be noted that there is little support an argument put forward by some in the popular press that Capital Gains Tax (CGT) in Australia has effectively substituted for death duties.

In brief, “special CGT rules” in Australian taxation regulations allow any capital gain or loss to be disregarded for capital gains tax purposes if, when a person dies, the asset they owned passes to a beneficiary, or to their legal personal representative (ATO 2013a).

The important role played historically in Australia by estate taxes in facilitating charitable bequests was highlighted in an address on philanthropy by Sir James Gobbo in 2000. Sir James pointed to the bequeathing standard set by Alfred Felton (1831 to 1904) with his renowned gift of a fortune (£383,000) to a perpetual trust; with the income from the bequeathed endowment divided equally between the National Gallery of Victoria and for general charitable objects. On the role played by large-scale charitable bequests Gobbo observed:

If Felton was the model, taxation and death duties were the major stimulants ... [the impact of which] began to abate only when death duties were effectively abolished in the 1970s (Gobbo 2001).

This issue recently resurfaced in 2009 in a wide-ranging review of Australia’s taxation system, undertaken by the then Treasury Secretary, Ken Henry. The “Henry Review” provided a clear assessment on Wealth Transfer Taxes:

A bequest tax would be an economically efficient way of raising revenue and would allow reductions in other, less efficient taxes. It would not affect saving decisions to fund an adequate standard of living in retirement. Saving decisions motivated by the desire to leave a bequest would be affected, but only to a limited extent.

Given the controversial history of bequest taxation in Australia, the Review has not recommended the introduction of a bequest tax, but believes that there should be full community discussion and consultation on the options. Most OECD [Organisation for Economic Cooperation and Development] countries impose bequest taxes — either through taxes on the whole estate or individual inheritances.

Henry, K 2009, *Australia’s future tax system: Report to the Treasurer*, page 37

Despite the strength of this assessment by the “Henry Review”, the political challenges of such a change meant that the ultimate recommendation was gentle in the extreme:

Recommendation 25: While no recommendation is made on the possible introduction of a tax on bequests, the Government should promote further study and community discussion of the options.

Even with this non-prescriptive wording, the recommendation to “promote further discussion and community discussion” on the “possible introduction” of a bequest tax was one of the very few of the 138 recommendations made which was rejected outright by the Australian Government on the release of its response to the Henry Review in May 2010. As a consequence, at a policy level, the issue has since remained dormant.

For the reasons raised in the Henry Review assessment however, the issue has not simply gone away. By way of example, an article in the *Revenue Law Journal* reviewing potential advantages and disadvantages of the (re)introduction of an estate tax in Australia, concludes that provided protective measures are put in place for concessionary treatment for family farms and for businesses: “the introduction of a bequest tax will have the potential to reverse the alarming trend of wealth concentration and inequality in Australia in an economically efficient manner” (Villios 2012: 10).

A study by two American political scientists (Scheve & Stasavage 2012) of inheritance taxation across multiple countries and over a period of close to 200 years, has however found that arguments for progressive taxation and reducing inequity through the redistribution of wealth have in practice held little sway. The authors find that the arguments most effective in securing estate taxes have been those in support of shared sacrifice, usually in a time of war, and these authors (2013) further argue that contemporary advocates for estate taxes will need to present a case that goes beyond that of redistribution.

The issue of estate taxes is no doubt a politically sensitive one. It passes two of three tests in public policy: the 'social equity test' and the 'economic efficiency test', however it may struggle to pass the 'political feasibility' test. Political parties of all persuasions are reluctant to make changes that impact on those with wealth and influence, in ways that could be considered by those parties to be detrimental to them. The risk to a political party in proposing the (re)introduction of an estate tax, is that powerful and well-resourced vested interests may invest heavily in preventing such an outcome.

Tax on estates

While "estate tax" and "inheritance tax" are terms that tend to be used interchangeably, they tend to have distinct and separate meanings depending on the countries in which they operate. As both forms of taxes are applied in the United States of America (USA), the distinctions drawn there are instructive.

Estate Tax is a tax levied on the assets of a deceased estate prior to distribution to beneficiaries. Estate tax is applied to the full value on an estate, after debts and estate expenses have been met, but before distribution to beneficiaries. Estate tax is paid by the estate.

Inheritance Tax is a tax levied on the value of assets inherited by a beneficiary of a will. Inheritance tax is applied to the value of the distribution received and is paid by the inheritor. Inheritance tax is levied by the states.

Gift Tax is a tax on the transfer of assets by one individual to another while receiving nothing, or less than full value, in return. The tax applies whether the donor intends the transfer to be a gift or not.

Australia is now one of the few countries in the Organisation for Economic Co-operation and Development (OECD) without estate/inheritance taxes.

Table 1: Summary of estate, inheritance and gift taxes in the OECD-10 countries

Country	Estate/Inheritance tax	Gift tax
Australia		
Canada (a)		
Ireland	X	X
Japan	X	X
Netherlands	X	X
New Zealand		X
Spain	X	X
Switzerland	X	X
United Kingdom	X	
United States	X	X

a. *While Canada does not levy any estate, inheritance or gift taxes, they are effectively imposed through deemed disposition provisions in income tax legislation.*

Sources: International Comparison of Australian Taxes, 2006, Section 9.5;
OECD Revenue Statistics 2012 - Country tables, 1965-2010

Table 1 shows that of the ten OECD countries identified as most relevant for comparison¹ in a 2006 Australian Treasury report on Australian tax practices in an international context (Warbuton & Hendy 2006):

- Australia is one of two out of 10 comparator OECD countries that do not impose any estate, inheritance and gift taxes.

This situation remains unchanged in the most recent figures available via the OECD (2012). The only other OECD-10 country that does not impose any estate, inheritance or gift taxes is Canada.

While it is beyond the scope of this study to go into detail in relation to the operation of estate related taxes in each of the countries listed above, it is instructive to look to the essence of the related taxation regimes in the two nations to which Australia and Australians most frequently turn for comparison, the United States and the United Kingdom.

United States (US)

In the US estates with combined gross assets that exceed an inflation-indexed threshold (\$5,250,000 in 2013) are required to file an estate tax return. The applicable threshold for a surviving spouse is up to double.

- ❖ If an asset is left to a spouse or a Federally recognized charity, the tax usually does not apply.
- ❖ The rate payable is 40% in 2013.

The estate tax combines with gift tax to form the Unified Gift and Estate Tax system. The gift tax applies during a person's life and is a tax on transfers. The gift tax functions to prevent estate tax avoidance.

United Kingdom (UK)

In the UK estates with combined gross assets exceeding a set threshold (£325,000 in 2013/2014) are required to pay tax (Inheritance Tax) on the amount over the threshold. The applicable threshold for a surviving spouse is up to double.

- ❖ If an asset is left to a spouse or a 'qualifying' charity, the tax usually does not apply.
- ❖ The rate payable is 40% in 2013/2014, or 36% if the estate qualifies for a reduced rate as a result of a charitable donation.

A "Charity Exemption" applies: Any gifts made by a decedent to a 'qualifying' charity - during his or her lifetime or in his or her will - will be exempt from Inheritance Tax (HM Revenue & Customs 2013).

In order to qualify for the reduced rate, at least 10% of the net value of an estate must be left to a 'qualifying' charity.

What we already know

The extent to which individuals and their families participate in charitable bequest giving will inevitably be influenced by a multiplicity of factors ranging from the time and place in which the associated estate transfers take place, the prevailing cultural norms and expectations, the economic imperatives and associated taxation incentives, and the needs of family members, to name but a few. While of research into charitable bequest giving by Australians is a recent development, there is a body of theoretical and research-based insights that inform our understanding.

For the purposes of this report, ‘what we already know’ is addressed under the following five separate, but inevitably interrelated, categories:

- Sociology of Giving and Bequests
- Attitudes to Bequests
- Behaviour and Charitable Bequests
- Economics of Charitable Bequests
- Charitable Bequests in Australia

Sociology of Giving and Bequests

Summary

Classic sociological theory has established obligations to family are particularly powerful in inheritance practices.

Gifts are “‘total’ social phenomena” governed by the complex interaction of societal norms and a dynamic network of obligations of giving, receiving and reciprocating.

The obligations that are met in the act of estate transmission are laden with moral meaning and with both conscious and unconscious motives.

One of the foundational concepts at the heart of our understanding of the way in which society operates, and which provides a theoretical underpinning for our understanding of inheritance and related behaviours is the classical sociological concept of solidarity (i.e. the unity developed by individual members of any group in order to pursue their collective interests).

Two of the seminal thinkers who laid the foundations for our understanding of inheritance and charitable giving from this perspective of social solidarity and civil society are Émile Durkheim (1858–1917) and Marcel Mauss (1872-1950).

In 1883 Durkheim (1964) observed:

- solidarity, by way of cultural and structural ties in particular, is a precondition for the effective functioning of social systems
- the internalisation of the rules of the collective results in their assuming the form of moral obligations
- obligations to and within the family are particularly powerful and are made clear in expectations and practices of estate transmission

... we are all so well conditioned, so accustomed to it, that the prospect of hereditarily transmitting the fruits of our labour has become the preeminent force behind our activity (Durkheim 1978: S.236).

In 1925 Mauss (1990), Durkheim’s nephew and student, argued:

- the social bonds created by gift exchange are a major avenue to the achievement of social solidarity
- gifts are “‘total’ social phenomena” (1990: 76) governed by the complex interaction of societal norms and an a dynamic network of obligations of giving, receiving and reciprocating
- the giving process involves a motivational mix which varies with the individuals involved in the exchange, the time and place in which it takes place, and the prevailing economic and social context.

These theoretical foundations on the importance of relationships, trust and reciprocal obligations to the effective functioning of society have underpinned subsequent sociological insights, such as those which follow.

- Sahlins (1972) and Gouldner (1973):
 - emphasised the unique power of culture to motivate individuals over and above the influences of biology and the pivotal role played by giving and reciprocating
 - used gift exchange within families to exemplify Mauss's notion of giving as a combination of altruism and selfishness.
- Coleman (1988, 1990) and Putnam (2000):
 - furthered the concept of social capital and the development of trust in complex societies
 - emphasised the important role of giving (time and resources) through participation in voluntary associations.
- The Dutch sociologist Komter (1996, 2007) who, like Mauss, has explored the social significance of the giving process itself:
 - identified that those who lack active social networks tend to participate less and less in gift exchange and consequently to be increasingly distanced from related feelings of gratitude and reciprocal obligation
 - found that giving to immediate family members has not been displaced in contemporary society by giving to others, as familial obligations remain strong (Komter & Vollebergh 1997)
 - argued that the "moral meaning" of gifts and their "conscious and unconscious motives" vary according to the gift itself and the context in which it is given.

These insights inform our understanding of the role played by gift giving in the effective functioning of society in general, and within families in particular.

- ❖ If we think of a will as passing on a gift, that gift is representative of the end of an era, the end of the life of a loved one, and ultimately the end of a generation for a family.
- ❖ It is a gift like no other and it is made only once-in-a-lifetime.
- ❖ The obligations that are both met and (re)created in the act of estate transmission are, in Komter's terms, likely to be especially laden with moral meaning and with conscious and unconscious motives.

These moral meanings and related motives will themselves function, at least in part, to shape the prevailing social and cultural attitudes to bequeathing.

Attitudes to Bequests

Summary

In many Western nations it is commonplace for will-makers to leave their estate to their spouse, and for that person to leave the family estate to the children in equal share.

While the pattern of equal distribution is the prevailing norm in Australia, individual are prepared to deviate from this norm in response to circumstances.

Attitudinal shifts in older Australians reflect moves away from self-sacrifice and towards a shared understanding that the assets of the ageing are theirs to use as they see fit.

Studies in the United States, the United Kingdom and Australia find it is commonplace in each of these countries for a will maker (Finch & Mason 2000; Menchik & David 1983; O'Dwyer 2001):

- firstly, to leave their personal estates to their spouses
- then, for the sole surviving spouse to leave the estate to their children equally.

The prevailing norm of 'Equal Distribution' of estates to children, nevertheless:

- has an exception in relation to business assets, especially the family farm (Barclay, Foskey & Reeve 2007; Mulholland 2003)
- is at odds with differential distribution by parents during their lifetimes, where the children in most need tend to receive the greatest financial support (Chang 2007; Dunn & Phillips 1997)
- does not sit comfortably with the principle of testator freedom.

Studies into the attitudes of older members of society in both the UK and Australia point to a shift away from notions of inheritance as an entitlement.

In the UK, researchers have found:

- reduced certainty in contemporary Britain about normative agreement in relation to obligations to relatives, 'the proper thing to do' (Finch & Mason 1991: 346), but much stronger consensus remains in relation to parent/child obligations
- people most likely to inherit and to bequeath substantial amounts are already affluent, and those who are least affluent have little chance of inheriting (Rowlingson & McKay 2005: xii)
- two thirds of those with potential to pass on assets reported they would enjoy life and not overly worry about leaving an inheritance (Rowlingson & McKay 2005)
- widespread agreement across all ages that parents have the right to dispose of their home and other assets as they see fit; an inheritance should not be viewed as an expected right (Finch & Mason 2000: 110)
- the principle of testator freedom, the right of will-makers to decide how to dispose of their property, remains highly supported (Finch & Mason 2000: 180) despite common outcomes in actual estate distributions (equal distribution)
- a strong move amongst the over 50s away from the view that children have 'an inalienable right' to inherit the assets of their parents (Rowlingson 2006: 182).

In Australia, findings include:

- evidence that equal distribution was already the norm in colonial Australia amongst non-farm based citizens (Ferry 1999)
- wide support amongst contemporary older Australians for the notion of equal distribution, as a principle
- nevertheless, 80% of individuals surveyed in a late 1990s study were prepared to deviate from the equal distribution norm in response to circumstance:
 - ‘adapting social norms’ and
 - ‘giving personal meanings to the concept of equality’ (Drake & Lawrence 2000: 271)
- inheritance (estate transfer) is widely regarded as the final act in a relationship:
 - an act that is both public and private
 - highly personal in nature
 - at the same time both formal and legal (Drake 2007)
- an attitudinal shift is emerging amongst older Australians:
 - away from self-sacrifice in order to leave their kids an inheritance, ‘the right thing to do’
 - towards self-interest, ‘put yourself first’
- older Australians believe they should be free to use and to pass on their assets as they see fit:
 - ‘the desire to bequeath assets to the next generation seems to be significantly diminishing’ (Olsberg & Winters 2005: 90).

Testamentary freedom

- The notion that the asset owners should be free to determine what to do with their accumulated estate assets is part and parcel of the attitudinal shifts that have been identified in both the UK and Australia.
- In Australia, the potential for the intent of a will-maker to be thwarted if appropriate professional advice is not taken is highlighted by research into the practical operation of family law provisions as they relate to charitable bequests (McGregor-Lowndes & Hannah 2008).
- McGregor-Lowndes & Hannah:
 - note that while the original purpose of family provision law was to enforce the proper maintenance and support of a will-maker’s spouse and children
 - find challenges have also become increasingly successful
 - observe the courts have been ‘vigorous’ in upholding family provision as against all other bequests, and portraying this provision as based on moral obligation
 - conclude that testamentary freedom in Australia is under serious challenge (2008: 5).

The research outlined in the section above on attitudes also highlights that as the life span of individuals continues to lengthen, so too does the expectation of increased health costs in the latter part of individuals’ life cycles. The attitudinal shift identified in the UK and Australia reflects a shared understanding that the accumulated assets of the aging will be drawn upon to meet these costs.

The economics of bequeathing plays a significant role, and that issue is addressed in the following section, especially in relation to charitable bequests.

Behaviour and Charitable Bequests

Summary

People tend to respond to queries about charitable giving with a 'socially desirable' response; more how they think they 'should' behave than how they actually do.

Social influence has been shown to affect charitable giving behaviour. This has been recently demonstrated in trials with will-writers in the UK where compared to a control group, individuals who were 'nudged' to include a charitable bequest were three times more likely to do so.

Making a decision to include a charitable bequest is often associated with self-reflection on life history and mortality, and the desire to be remembered beyond the grave.

What people do, and what people say they intend to do are not always the same thing.

Reliance on self-reporting when asking individuals about their giving intentions is subject to the general risk of socially desirable responding (Paulhus & Reid 1991):

- Where respondents are prone to give responses they believe are socially desirable, and consequently to respond in line with how they believe they "should" behave as opposed to their actual practice (Edwards 1982).
- The tendency for socially desirable responding has been found to be active in surveys of personal charitable giving (Andreoni 2006; Breeze 2005):

It is notoriously hard to extract honest answers from people on an issue as charged as personal generosity, because lies and exaggeration are tempting and difficult to detect (Breeze 2005: 2).

- A longitudinal US study found many of the respondents who reported within two years of their death that they had included a charitable beneficiary in their will did not actually do so, though the reasons for these discrepancies may also have included will-makers had changed their wills or had made arrangements so that their assets would not require probate (James 2009).

Social influences have also been shown to affect actual behaviour in giving to charity:

- field experiments on the influence of social information on charitable giving in the US demonstrate that people tend to adjust the amount they give according to the amount that they believe is given by others (Shang & Croson 2005)
- this normative amount is in large part independent of the income or wealth of the person making the giving decision (Shang, Reed & Croson 2008; Wiepking & Heijnen 2011).

The phenomenon of social influence is of course not new. An analysis of charitable giving from 17th century wills in England pointed to the normative nature of bequest giving, in the early 1600s:

Perhaps it is not that individuals derive utility from the act of giving, but rather that they derive utility from being perceived of as a generous, compassionate, and philanthropic individual. In the case of wills, individuals give to charity in order to influence how they will be remembered (McGranahan 2000: 1289).

The importance of social influences has been demonstrated much more recently in a series of randomised, controlled trials conducted by the Behavioural Insights Team (BIT), of the UK Cabinet Office (BIT 2013). The BIT analysis showed that when solicitors or will-writers simply mentioned to people that

leaving a gift to charity was an option, the percentage of people who did so rose from just 5% to 11%. When will-makers advised of the practices of others and asked if there were any charities that they were passionate about, those including a charitable bequest rose to 15%.

These trials involved 1,000 individuals preparing new wills over a 6 month period (see Table 2).

Table 2: UK will-writers including a charitable bequest in response to being ‘nudged’

<i>Will-writer approach</i>	<i>Question asked of will-maker</i>	<i>% including a bequest</i>
<i>Base Line</i>	No question asked about charitable intent	5%
<i>Plain Ask</i>	“Would you like to leave any money to a charity in your will?”	11%
<i>Social Norm – ‘nudged’</i>	“Many of our customers like to leave money to charity in their will. Are there any causes you’re passionate about?”	15%

Source: derived from Behavioural Insights Team 2013, *Applying Behavioural Insights to Charitable Giving*, Cabinet Office, London (BIT 2013).

The insights derived by Behavioural Insights Team included Insight 3: ‘Focus on the social’

We are all influenced by the actions of those around us, which means we are more likely to give to charity if we see it as the social ‘norm’ (Behavioural Insights Team 2013: 11)

In another thread of insight into influences over charitable bequeathing behaviour, researchers have emphasised the important link between making a decision to include a charitable bequest and self-reflection on personal life history and mortality (James & O’Boyle 2012; Routley 2011; Routley, Sargeant & Scaife 2007; Schervish 2006).

In an unprecedented use of brain scanning – more accurately - functional magnetic resonance imaging (fMRI) – the US researchers James and O’Boyle (2012) observed that:

- visualising desired outcomes is important to decisions to give
- visualisation regions of the brain were more active during charitable bequest decision making than during current giving decision making
- bequest decision-making equates to visualising the final chapter in one’s own life
- fundraisers may do well to help donors visualise their autobiographical connections with the charity.

These findings are consistent with evidence from other studies on a range of influences that are particularly relevant to charitable bequest decision making, including:

- the importance of being remembered beyond the grave (Curasi, Price & Arnould 2003; Scaife et al. 2012); especially amongst the wealthy (Schervish, Havens & Whitaker 2006)
- the enhanced role of reciprocity in bequest giving, relative to *inter vivos* (Sargeant & Hilton 2005)
- the greater attraction of specific purpose, longer-term bequest options that enable the person making a bequest to make a difference that is differentiated from general purposes and operational support (Routley, Sargeant & Scaife 2007).

Economics of Charitable Bequests

Summary

Day to day charitable giving is made from income; charitable bequests are made from capital.

US research into charitable bequests finds:

- on average as the value of estates increases, so does the proportion given to charity
- charitable bequest giving is sensitive to wealth and to tax
- the presence of a spouse and children diminishes the likelihood of a charitable bequest.

In broad terms, higher income and greater wealth will increase the capacity of an individual to give but not necessarily the propensity to give.

An important distinction when considering types of charitable giving is the source of the gift:

- *inter vivos* charitable dollars are mostly sourced from income
- charitable bequests are made from capital.

Researchers into *inter vivos* giving in the US have found:

- giving as a proportion of income is highest for low income earners and again for high income earners: the “U-shaped curve” (Banks & Tanner 1997; James & Sharpe 2007).

Others however have also found evidence:

- that the proportion of income gifted is inversely correlated with income earned (i.e. the poor give a higher proportion of their income); in the US (Brooks 2006; Hoge & Yang 1994) and in the UK (Egan 2001).

In an analysis of over 16,000 US households James and Sharpe (2007) found the relative generosity by low income earners as a whole is distorted by a small number of highly committed, lower-income households who have the capacity to gift a larger proportion of their income because they are holders of significant underpinning wealth.

This difference is important. Just as income and wealth are different measures, they are inter-related and the existence of underlying wealth may distort measures that rely on income alone.

Wealth, rather than income, is the major consideration when investigating charitable bequests.

US research into charitable bequests finds that on average as the value of estates increases, so does the proportion given to charity (Clotfelter 1985; Havens & Schervish 1999; Schervish 2003; Schervish et al. 2006).

For example, an analysis of US Federal tax returns filed in 2003 revealed a very clear trend in increasing charitable giving:

- the smallest estates filed (\$1m to \$2.5m) distributed on average 5% of their value to charitable purposes
- the larger estates (\$10m to \$20) distributed on average 17%
- the largest estates (>\$20m) distributed 32%.

The mathematics of larger proportions from larger estate means that 43% of the total amount bequeathed to charities came from 1.1% of all estates filed for estate tax purposes in 2003 (Schervish et al. 2006: 12).

The price of giving

Income is generally defined as monetary receipts.

Price is the amount paid for a purchase.

In the case of charitable giving, the price of giving a dollar is that dollar less any tax reduction received.

Hence, in progressive tax regimes the price of giving a dollar is higher for a low-income earner than it is for a high-income earner.

By way of example:

- if person A is a high income earner and pays tax at the rate of (say) 40 cents in the dollar the “cost” of a deductible dollar gifted by person A is 60 cents
- if person B is a lower income earner and pays tax at the rate of (say) 30 cents in the dollar the “cost” of a deductible dollar gifted by person B is 70 cents.

Tax regimes in many western countries are structured in such a way as to stimulate charitable giving by those with the greatest capacity to give (Roodman & Standley 2006) by providing them with the greatest incentive (the lowest price of giving).

Nevertheless, as exemplified above, from a financial perspective an income earning taxpayer will always be better off financially by not making a donation at all.

Since proposed changes to taxing of US estates in the 1970s considerable economic modelling has been done on the potential implications for *post mortem* charitable giving (Joulfaian 1991; McNeese 1973; Munnell & Sundén 2003; Schervish & Havens 2001).

Key economic insights into charitable bequests include:

- charitable bequest giving is sensitive to the tax price (negative price elasticity)
- charitable bequest giving is responsive to wealth increases (positive wealth elasticity)
- wealth, income, savings and the effects of the tax regime all influence the decision to make a charitable bequest (Boskin 1976)
- the presence of surviving spouse and children diminishes the size of charitable bequests (Barthold & Plotnick 1984; Joulfaian 2000; Sargeant, Hilton & Wymer 2005; Sargeant & Jay 2010)
- the presence of spouse and children decreases the likelihood of a charitable bequest (Joulfaian 1991; Sargeant & Hilton 2005)
- the interaction of estate taxes, gift taxes and capital gains taxes is an important consideration in the timing and the choice between gifts and bequests (Joulfaian 2005).

Charitable Bequests in Australia

Summary

A major Government commissioned study examining giving in Australia, estimated in 2005 that 58% of adult Australians have a will, and 7.5% of those include a charity.

A study of 1,000 Australian donors found that the biggest influences over the decision to leave a charitable bequest are believing the family is adequately provided for; or not having a family.

A study of Victorian probate files processed in 2006 found:

- 5.4% of all probated estates, and 7% of all 'final estates' included a charitable bequest
- family inheritance norms are very strong; Australians leave their estate first to their spouse, who then leaves all to the children in equal share.

The past decade has shed more light on charitable bequests in Australia than ever before.

The 2005 *Giving Australia* report, commissioned by the Federal Government, found generosity in Australia to be on a consistently upward trend.

While the report overwhelmingly addressed *inter vivos* giving and volunteering practices, it did touch on charitable bequests giving, noting:

- it is not possible to estimate the value of a bequest in advance
- that there were no reliable estimates available on bequests made by Australians.

Given the lack of empirical data, the household survey data commissioned by Giving Australia estimated:

- 58 per cent of adult Australians have a will
- 7.5 per cent of these have included a charitable provision in that will (*Giving Australia* 2005: 35).

The net result therefore is that some 4.4% of adult Australians (7.5% of the 58% with wills) self-reported the inclusion of a charitable gift in their will.

This compares with the estimate in the *Giving Australia* report that 87% of adult Australians participate in monetary charitable giving:

Giving Australia estimates of participation rates in charitable giving by adult Australians:

- | | |
|--|------|
| • <i>inter vivos</i> charitable giving | 87% |
| • charitable bequests | 4.4% |

A number of Australian studies have sought to garner insights into this gap (Baker 2008; Baker & Gilding 2011; Madden & Scaife 2008; Wiepking, Madden & McDonald 2010; Wiepking, Scaife & McDonald 2012).

By way of examples, a study (Madden & Scaife 2008) exploring the differences in attitudes and behaviours of 1,000 Australian charity donors (roughly half of which had pledged to make a charitable bequest) found:

- those who pledge a charitable bequest explain their bequests in terms of family responsibilities

- the two strongest influences over the decision to leave a charitable bequest were:
 - perceiving the family to be already adequately provided for
 - having no family to provide for.

Interviews with a sample of bequest fundraisers in Australia (Baker 2008) concluded that:

- attitudes towards asset transmission and charitable giving are overwhelmingly influenced by expectations of honouring family ties
- relationships individuals have with charitable organisations are less influential than family obligations when making estate distribution decisions.

In two studies involving detailed analysis of survey response data from donors to a sample of major Australian charities:

- one study found support for two indicators of likelihood that an individual would make a bequest:
 - belief in the efficacy of beneficiary organisations (effective stewardship of funds)
 - a history of *inter vivos* generosity (Wiepking, Madden & McDonald 2010)
- the other study confirmed that bequest giving behaviour and its associated motives and barriers are distinct from those of *inter vivos* giving (Wiepking, Scaife & McDonald 2012)
- both found that amongst the surveyed Australian donors, those with the most wealth were least likely to make a bequest.

In this context it is also of note that while the recent study (BIT 2013) in the UK indicated the potential influence of solicitors and advisors over the decision to include a charitable bequest, research into Australian financial advisors has found:

- a high degree of reluctance by advisors to engage their clients on philanthropic issues (Madden 2004)
- while there is evidence of adviser interest in charitable bequests increasing over time, many advisers remain unprepared to raise charitable giving with their clients (Madden 2009; Madden & Newton 2006).

Two other studies undertaken into charitable giving by Australians, inclusive of bequest giving:

- found that major gifts, *inter vivos* &/or bequests, often come from people reflecting on the meaning of their lives, as part of a 'natural closing of a chapter' (Scaife et al. 2012: 109)
- highlighted the attractiveness of transformational impact of major gifts, noting
(Major) gifts transform those who ask, those who give and even their children and future generations (Scaife, McDonald & Smyllie 2011: iii).

Finally, an analysis of probate files processed in Victoria in 2006 (Baker & Gilding 2011) which found:

- 5.4% of probated estates included a charitable gift
- the vast majority (98%) of these came from 'final estates' (with a will and a without a surviving spouse)
- 7% included a charitable gift
- estates with no surviving children were significantly more likely to make a charitable gift than those with a surviving child or children
- unlike in the US, wealthier Australians on average left a smaller proportion of their estates as charitable bequests, compared to the proportion left by the less wealthy

- the familial inheritance norms in Australia are very strong: the first spouse leaves all to the surviving spouse, who subsequently distributes the family estate to the children in equal share
- nevertheless, about one in five will-makers exercise a degree of testamentary freedom and deviate from the prevailing norms.

Method and Approach

Objectives

At the heart of this project is the quest to provide a robust evidentiary base for the development of policy and practices aimed at encouraging charitable bequests by Australians.

In doing so, this project seeks to provide an understanding of:

- charitable bequest giving practices by contemporary Australians
- the inheritance practices that help shape charitable bequest giving.

Through the analysis of the information captured, this project seeks to:

- provide an unprecedented evidentiary base for policy reflection and development by government and regulatory bodies with an interest in encouraging charitable giving in Australia
- inform the Australian public and provide adult Australians with an improved information base upon which to factor their own will-making choices
- similarly inform interested accountants, financial advisers, solicitors and other advisory professionals involved in helping individual Australians to prepare their wills
- provide the not for profit sector in Australia with insights into how they might encourage Australians collectively to include a charity in their will
- expand the knowledge base of fundraisers to enable refinement of approaches to market segmentation and the encouragement of individuals.

As a research project, this initiative also seeks to contribute to national and international understanding of charitable bequest giving and philanthropy more broadly, especially in the Australian context.

Data Capture and Analysis

The starting point for an understanding of practice, of behaviour as it is lived as opposed to envisaged, is to access empirical evidence of actual transactions.

- ❖ This holds as true for intergenerational wealth transfers via estate transmissions and for charitable bequests as it does for other forms of lived behaviour.
- ❖ This study varies from the more common methodology of examining the perspectives of those who have pledged to make charitable gifts from their wills (Richardson & Chapman 2005) to using probate files to gather publicly available empirical information on how deceased Australian estates are distributed, including charitable bequests.
- ❖ This approach overcomes the limitations of estimates and assumptions about the levels of giving from estates in Australia and avoids the potential distortions associated with self-reporting in relation to socially desirable behaviours.
- ❖ This study draws upon and extends an earlier investigation into the inheritance and *post mortem* charitable giving practices as revealed by probate files processed in the Australian state of Victoria in 2005 (Baker & Gilding 2011).

<p>The responsibility for processing probate in Australia is state/territory-based and there are no consolidated holdings of probate files nationally.</p>
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- ❖ Details of individual estates and the associated grants of probate are maintained in individual files.
- ❖ Given that personal estates in Australia are not subject to estate or inheritance taxes, probate is more of an individual matter than one of public interest.
- ❖ There are no databases at the state/territory or national level in which details of probate files are available for aggregated review or analysis.

At a state or territory level detailed probate information is not retained in any existing databases:

- the only way of gathering data on the actual practice of estate transmission and associated charitable bequests in contemporary Australia is by way of on-site, detailed examination of individual, paper-based probate files.

For the purposes of this national study the objective was to access a sample of 5% of files processed for probate in 2012 in five of the six states of Australia and the two mainland territories (see Table 3).

Table 3: Basis for 5% probate sample; number of Deaths and Probate files processed in major Australian Supreme Courts in 2012

	<i>ACT</i>	<i>NSW</i>	<i>NT</i>	<i>Qld</i>	<i>SA</i>	<i>Tas</i>	<i>VIC</i>	<i>WA</i>
<i>No. of Deaths^a</i>	1,800	49,000	1,000	27,000	13,000	4,500	36,000	13,000
<i>No. of Probate applications processed^b</i>	700	22,400	200	14,000	5,100	2,300	18,000	6,000
<i>Sample @ 5%</i>	35	1,120	10	700	255	115	900	300

Notes: ^a Rounded to the nearest 1,000

^b Estimates from Probate Offices obtained by phone, rounded to nearest 100

Probate files are searchable court records while retained by the Probate Office, at which time they are released to the relevant public records facility. The retention period varies by jurisdiction. While the public has access to contemporary probate files once processed (given their status as searchable court records), this access requires application to the relevant Supreme Court Probate Office and the payment of a fee-per-file accessed; ranging from \$12.60 per file in New South Wales to \$31.00 in the Northern Territory.

As this study proposed examining nearly 4,000 individual files, an application was made via the Attorney General in each State and Territory for a fee waiver for accessing the files for research purposes. A waiver was granted by all with the exception of Queensland where there is no provision in the Regulations for a waiver to be granted. In that state however probate files are transferred from the Probate Office to the public records facility (Queensland State Archives) after two years. Consequently, data in Queensland was gathered fee-free at Queensland State Archives from probate files processed predominantly in 2010 (two years earlier than in the each of the other jurisdictions).

A comprehensive code book was developed for the guidance of those doing the data input.

- ❖ Data entry was completed in the Australian Capital Territory, the Northern Territory and Tasmania by the project Chief Investigator, Dr Christopher Baker.
- ❖ In each other jurisdiction Research Assistants were engaged for data entry.
- ❖ Training in the use of the code book was also provided face-to-face by Dr Baker for each data entry person. In each jurisdiction, data was entered directly into an Excel spread sheet.

- ❖ Completed Excel spread sheets were then converted to IBM SPSS software where data entered was checked for quality and consistency before the data for each State and Territory was consolidated into a single data set.

The information gathered from the probate files includes a valuation of the deceased estate in terms of:

- Real Estate (property)
- Personal Estate (including cash, insurance policies and shares)
- Debt

In most circumstances, superannuation (pension) assets are excluded from personal estates as they do not form part of the estate, given that superannuation assets are distributed by and at the discretion of the trustees of the superannuation fund.

Probate files generally include the last will of the deceased, where one exists, and a copy of the death certificate for the individual. There is variation by State and Territory in the detail contained in death certificates. With some variations, the basic biographical information contained in the death certificates includes the marital status of the individual, country of birth, and basic age related data for surviving children at the date of the will-maker's death.

Significantly, in the light of the nature of changes to family structures and relationships over recent decades, death certificates do not record de facto relationships or step-children, despite changes for example to intestacy laws in the state of Victoria in 1997 to acknowledge the potential legitimate claim on an estate by individuals with de facto &/or step relationships.

This study focuses on the review of a random sample individual probate files processed in 2012 (and 2010 in Queensland). The random samples were generated by sorting through probate files as batched in the respective Probate Offices / Archives. As probate applications are processed in each jurisdiction in order of processing, the way in which they are stored is in itself random, with no batching by way of location, person/firm lodging the application, size or degree of complexity of file. With very few exceptions, the files accessed were for individuals who had died in 2011 or 2012 (and 2009 or 2010 in Queensland). From the full dataset, two sets of files were excluded: those for which adequate information was not available; those where the individual had died in a jurisdiction other than that in which the probate file was being processed.

The total number of files available for analysis is 3793.

There are two areas in which full data was not captured.

Firstly, after the initial set of data had been gathered in Western Australia, two additional fields for information gathering were added:

- i. the format in which each will was prepared (kit or form based; by the individual; by a service provider/solicitor)
- ii. the name of the service provider, where used.

Consequently, this information is not available for Western Australia.

Secondly, the probate files in the Queensland State Archives did not include financial information:

- no data is available for the \$ value of Queensland estates (and/or their constituent components of real estate, personal estate and debt).

Consequently, no data is available for the \$ value of any residual (percentage based) charitable bequests made in Queensland.

Notwithstanding these two caveats, the full list of fields for which data was recorded is provided at Appendix A.

Data Analysis

The analysis firstly addressed the entire sample of 3793 files and therefore included those estates where there was a surviving spouse; and intestate estates for which an application had been made to the relevant Probate Office.

All estate distributions that could potentially be characterised as having been made to charitable purposes and/or organisations were coded as “charitable”.

- ❖ If an organisation was named as a beneficiary and it was not a commercial organisation, it was also coded charitable, without reversion to definitions of charitable or tax-deductible status at law.
- ❖ Transfers to family members were not deemed to be charitable.
- ❖ Distributions to named individuals (often with no indication as to the familial or other relationship to the deceased) similarly were not coded as charitable gifts.

The analysis begins with the full dataset, inclusive of both what have been described by Schervish and Havens (1997: 11) as “first estates (estates of the first spouse to die)” and “final estates (estates for which there is no surviving spouse)”. These US authors argue that as it is common for individuals with a surviving spouse to pass through an estate in its entirety to the spouse, the source of more meaningful charitable giving analysis is the wills of individuals who do not have a surviving spouse. After an examination of all estates, this report goes on to a more detailed analysis of “final estates”.

From the total data set of 3793 probate files, a more targeted data set of 2661 “final estates” was established by eliminating all intestate estates (N = 373) and all first estates (N = 738) with a will and a surviving spouse.

The data captured from individual probate files was entered directly into an Excel spread sheet, with much of the data entered in coded form (e.g. Male = 0; Female =1) so as to enable ready conversion to IBM SPSS software for analysis. Analysis of the data was undertaken against most of the categories of information collected.

There were two exceptions: “Residence” and “Occupation”.

“Residence”:

- The residence of the individual was frequently that of the hospital, hospice or residential care facility in which the individual had spent the final part of his or her life.
- This address was not necessarily an indication of where the individual had lived and worked prior to moving into a care facility where they would eventually die.
- As a result, the data was assessed as not being fit for the purpose of undertaking residential analysis.

“Occupation” as provided on most death certificates was similarly limited:

- There is no common standard for recording occupation on a death certificate.
- The descriptions often do not address the working life of the individual but their working status at the time of their demise; e.g. frequently recorded occupations included those of “retired”, “widow”, “widower”, “pensioner” and “home duties”.
- As such descriptors are of such a generic nature as to provide no meaningful insights, for this report no analysis has been undertaken on the basis of occupation.

Analysis of charitable giving as a proportion of estates was undertaken against the total net value of estates. The net value of each estate was calculated by deducting total liabilities from total assets. For example, if an estate had assets to the value of \$500,000 and an outstanding loan to the value of \$100,000 then the total net value of the estate is calculated as \$400,000. For the purposes of analysis estates were grouped firstly on the basis of net value in \$500,000 increments; and secondly on the basis of deciles (10% of all estates). The participation rate in charitable giving from estates was calculated, as was the proportional value of estates directed to charitable gifts. A separate comparison was undertaken of estates with and without surviving children to analyse differences in transfer patterns.

Context of Probate Analysis

As already detailed, this study includes data recording and analysis of contemporary probate files. The data from each Australian State and Territory provides a snapshot of the transmission of individual estates as given effect in a particular society at a particular point in time. Estate transmission is universally associated with family, family practices and expectations. As Gilding (1997: 27) observed, the ways in which families raise their children and “the ways in which they see their obligations and responsibilities are not simply private decisions” but decisions made in the wider social context in which they take place.

Understanding wealth and its distribution is particularly relevant when considering *post mortem* charitable giving capacity. In October 2011 the Australian Bureau of Statistics (2011) noted that despite the preceding global economic turbulence, private wealth in Australia was on the rise. The *Household Wealth and Wealth Distribution, Australia* report for 2011-12 (ABS 2013) revealed:

- the average Australian household in 2011-12 had a net worth of \$728,000
- this was up by 24% on 2003-04, despite the intervening global financial crisis.

Averages however provide no insight into general wealth distribution in the country:

- while the mean household net worth in 2011-12 was \$728,000
- the median (i.e. the mid-point when all households are ranked in ascending order of net worth) was substantially lower at \$434,000.

In terms of relative share, in 2011/12:

- the top 20% of Australian households held more than 60% of the total net worth of all households
- the poorest 20% of households held less than 1%.

Australian wealth distribution has also been included in an international study which found personal wealth to be highly concentrated in developed Western nations and much more concentrated than the distribution of income (Davies et al. 2006). This study identified:

- the poorest 50% of Australian households hold less than 10% of the nation's private wealth
- the wealthiest 5% account for 32% of private wealth.

In Australia, the capacity of the few to give is far greater than the capacity of the majority.

The extent of unequal distribution of economic wellbeing in Australia has been further highlighted in two reports released in October 2013. The first report, the Credit Suisse Global Wealth Report 2013, used standardised wealth assessment measures to evaluate Australians as the richest people in the world (based on median wealth). The second report used Economic Co-operation and Development (OECD) methodology to assess that 11.8% of Australian households are living in poverty; that is on incomes of less than \$20,000 per year (Phillips et al. 2013).

Of additional significance to this study is the strong correlation between age and wealth.

- ❖ The longer an individual continues to earn an income from paid employment the more they are able to build their wealth holdings or at least delay in drawing on those accumulated assets.
- ❖ In Australia, well before government policy initiatives to extend the participation of older workers in the labour force (see Encel & Ranzin 2007), older individuals were continuing to work in paid employment beyond their "retirement".
- ❖ Australian researchers have demonstrated that older Australians are relatively wealthy, in part because wealth takes time to accumulate (Kelly 2002).
- ❖ The Australian Bureau of Statistics (ABS 2012a) specifically notes that the unequal distribution in household net worth in part reflects "the common pattern of people generally accumulating wealth throughout their working life".

In general terms, older Australians are comparatively well placed in terms of their capacity to make a charitable bequest, even in circumstances where they are income poor.

Longevity is a characteristic of the Australian population. Table 4 shows that the average lifespan for Australian men and women is amongst the highest in the world.

The combined average life expectancy of Australian males and females in 2011 was 81.4 years (ABS 2012b). Indeed, *Australia to 2050: future challenges* (the 'Intergenerational Report') released by the Australian Treasurer in 2010 projected that the life expectancy of Australians will continue to rise.

For Australians born in 2050:

- men are projected to live an average of 7.6 years longer than those born in 2010
- women are projected to live an average of 6.1 years longer.

For Australians aged 60 in 2050:

- men are projected to live an average of 5.8 years longer than those aged 60 in 2010
- women are projected to live an average of 4.8 years longer (Australian Treasury 2010).

Table 4: Average Life Expectancy at birth, in 2011: How Australia Compares

Top 15		Female	
Country	Life Expectancy	Country	Life Expectancy
Qatar	83	Japan	86
San Marino	82	Switzerland	85
Iceland	81	Italy	85
Switzerland	80	Singapore	85
Italy	80	Andorra	85
Singapore	80	Spain	85
Australia	80	Monaco	85
Israel	80	France	85
Sweden	80	Iceland	84
Canada	80	Australia	84
Kuwait	80	Israel	84
Japan	79	Sweden	84
Andorra	79	Canada	84
Spain	79	Luxembourg	84
Monaco	79	Cyprus	84

Source: World Health Organisation, *World Health Statistics 2013*

One of the significant implications of such longevity in the population is that the majority of Australians dying over the course of a year will be elderly. As a consequence:

- the surviving children of those who die are themselves likely to be in their fifties, sixties and seventies
- their children are most unlikely to be economically dependent on their parent/s
- surviving children will in most cases be past the point in time where they are establishing their career, home and/or family
- while an inheritance will in most circumstances provide a welcome economic fillip, it is no longer likely to contribute substantially to laying the foundations of the lives of a surviving child.

Another outcome of longevity in the Australian population is that:

- the majority of the estates covered by this study are not baby boomers
- an Australian dying in 2011 at or around the average age of approximately 81 will have been born in 1930; prior to the commencement of World War II
- if raised in Australia, this person will have almost certainly been brought up in a largely homogenous culture significantly influenced by the strong British heritage of the time
- s/he will most likely have entered into family building relationships after having gone through the privations of the Depression and WWII
- s/he will have been part of a time in Australian history when the nuclear family was the predominant family form, and the vast majority of the population were active in primarily Christian religious practice
- s/he will have been raised in a culture that expected and extolled charitable giving.

The year of death and estate distribution for most of the estates included in this study was at a time when:

- private wealth in Australia had resumed its upward trend after the global financial crisis
- *inter vivos* charitable giving (as measured by trends in tax deductible donations made and claimed) resumed an upward trend in real terms (McGregor-Lowndes & Pelling 2013).

The hope, and for many the expectation, of those involved in the nonprofit sector in Australia was that charitable bequest giving would increase, in line with improved personal wealth and financial confidence. This expectation was supported by the high profile estimates in the United States (Havens & Schervish 1999) that some 16% of the value of estates to be transferred over the first half of this century would be directed to charitable purposes.

Advantages and limitations of probate data

Probate data provides empirical evidence of how transfers from individual estates have actually been given effect. In Australia the examination and extraction of detail from individual probate files is a labour intensive and time consuming process. The cost to contemporary probate files in sufficient numbers is also an impediment to research using this source. The funding support provided for this study has enabled the collection and analysis of a substantial set of probate data which contributes in a material way to what is known about intergenerational transfers and the extent to which charitable gifting is included.

As probate deals with actual deceased estates, in a nation where life expectancy is above 80 years of age, the majority of any sample of probate files will relate in large part to an older generation.

Most of the wills processed through probate in 2010 and 2012 belong to individuals:

- born in or before 1930s
- who experienced the privations of World War II.

The probate data gathered therefore provides clear insight into how this particular segment of the population is currently behaving in relation to estate transfers. From the data in this study it is not possible to assess or infer what younger individuals may be planning or contemplating; nor is it possible to infer the intentions of what has become a far more ethnically diverse Australia. As observed by the Australian historian and social scientist WD Rubinstein (1979), generalisations about society as a whole from probate data will inevitably be flawed.

Probate data does:

- provide a snapshot of the practices of a particular generation
- provide insight into prevailing charitable bequest giving norms
- identify the estate transfer practices that are currently being role-modelled
- provide clear insight into transfers that have been made from deceased estates.

Probate data does not:

- provide insight into *where, why or how* individuals give during their lifetimes; either to children or to charitable causes
- adequately capture the wealth of affluent individuals, as the greater the wealth of a household, the greater the probability that assets will not be held in an individual's name but held by a separate legal entity such as a discretionary trust.

The Findings

Introduction

This section presents an analysis of the data gathered from probate files from around the nation. It provides a snapshot of estate transmission and charitable giving from personal estates in contemporary Australia.

The reporting and analysis in this section takes place in two parts. The first provides an overview of the results of the total sample of 3793 probated estates. The second provides the same analysis of the smaller number of 2661 “final estates”, for which there is a will but no surviving spouse. Additional analysis of “final estates” is provided from the perspective of the impact of familial obligations on charitable bequests and in particular the influence of surviving children on estate transmission patterns.

The final component of this section provides an analysis of the kinds of charities which are the major beneficiaries of the charitable bequests made from the willed estates examined, in those relatively rare circumstances where charitable bequests are made.

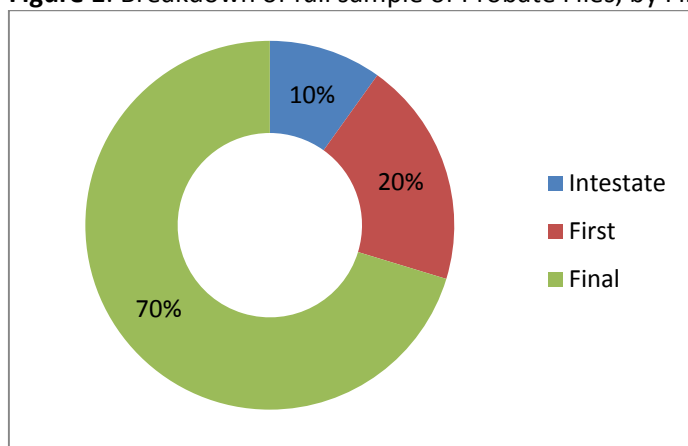
All estates – key data and charitable bequests

As previously detailed, the total dataset is made up of a sample of not less than 5% of the files that each jurisdiction processed in the calendar year 2012 (with the exception that in Queensland the files accessed were processed in 2010).

File Types

3793	total valid probated files
373	intestate estates
738	first estates (willed estate, with surviving spouse)
2661	final estates (willed estate, without surviving spouse)

Figure 1: Breakdown of full sample of Probate Files, by File Type



“Intestate estates” are included in this overview analysis as in most circumstances intestate estates are processed by a Probate Office of the Supreme Court only where the estates are of sufficient value to require a court ruling to enable their subsequent transmission. As such, intestate estates processed by

the court have sufficient net worth to make possible a charitable bequest, had a will been prepared. Whether considered and declined or simply overlooked, no charitable bequest is made from probated intestate estates despite ostensible capacity to do so.

Therefore, from the perspective of the capacity of an estate to make a charitable gift, intestate estates are included in this overarching analysis.

The full sample provides an overview of charitable bequest giving by including all those individuals with a formal will and all those who died intestate with sufficient wealth in their estate to require a court order for its settlement.

Intestate Estates

- 10% of all estates in the study
- 6% of the net value of all estates

The four distinctive features of intestate estates as identified in the earlier study of Victorian probate files (Baker and Gilding 2011) also hold for this larger national sample.

Table 5: Differences between intestate estates and willed estates

<i>Difference</i>	<i>Intestate Estates</i>	<i>Willed Estates</i>	<i>Statistically Significant</i>
<i>Average Age</i>	66	83	Yes ⁱⁱ
<i>Average Estate Value</i>	\$418,000	\$690,000	Yes ⁱⁱⁱ
<i>Without Children</i>	32%	12%	Yes ^{iv}
<i>Gender</i>	61% male	41% male	Yes ^v

As outlined in Table 5, compared to willed estates, those who died intestate, were:

1. Younger
2. Less wealthy
3. More likely to not have children
4. More likely to be male.

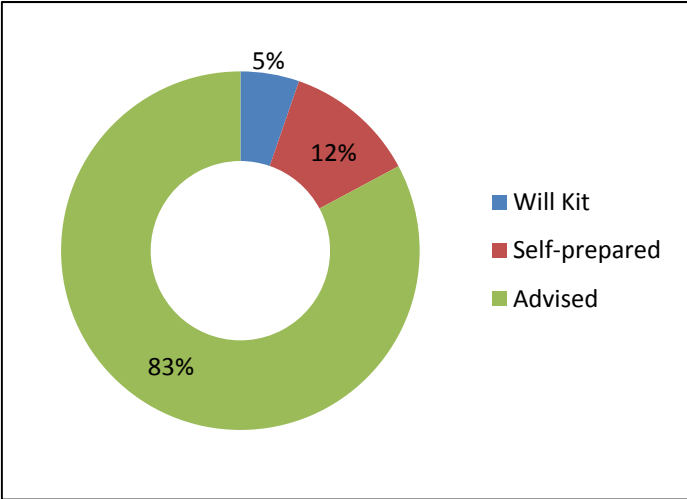
Willed Estates

- **86%** of males had a will
- **93%** of females had a will.

The overwhelming majority of wills were prepared with guidance by professional advisers - sole practitioner lawyers, law firms or trustee companies (see Figure 2).

- **5%** used a Will Kit (fill in the form)
- **12%** prepared their own will with no evidence of a pro-forma
- **83%** had their will prepared by professional advisers

Figure 2: Source of wills for willed estates



Gender

The estates across the full sample of probate files belonged more to females than to males:

- **43%** Male
- **57%** Female

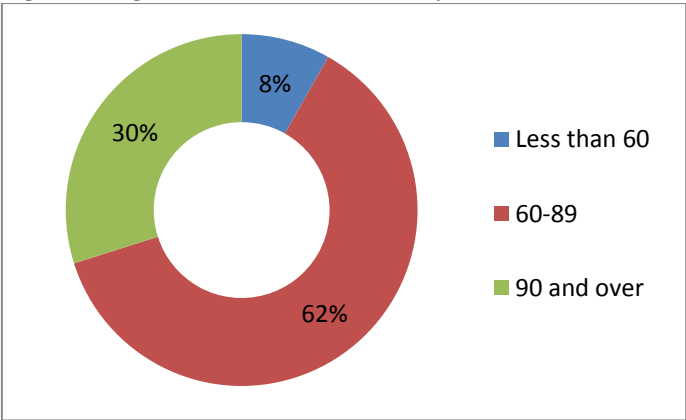
Age

The age distribution for those whose estates were included in this sample gives testament to the longevity of Australians. The average age of the owners of estates in this study was as follows:

- **81.4 years** All
- **78.2 years** Male
- **83.8 years** Female

As demonstrated in Figure 3, nearly 30% of individuals included in this study were 90 years or older at the time of their death.

Figure 3: Age distribution of full sample



Country of Birth

The distribution of birth countries is a reflection of the age distribution detailed above and the relative lack of diversity, relative to contemporary Australia (see Table 6).

Table 6: Country of Birth

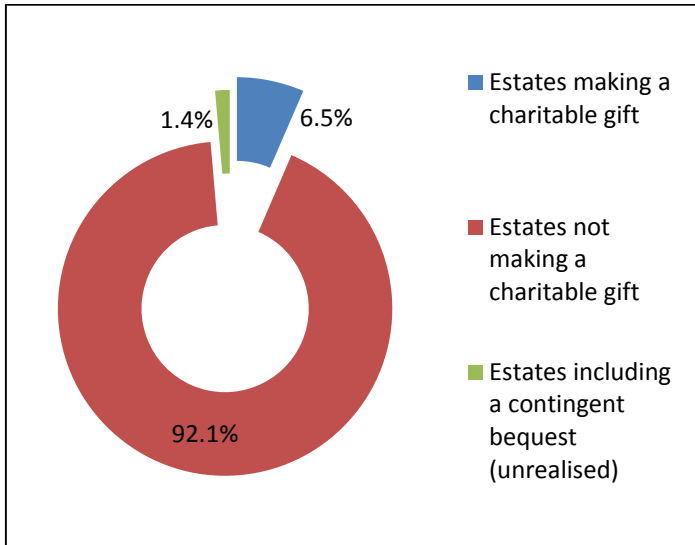
<i>Birth Country</i>	<i>Percentage</i>
Australia	73.7
United Kingdom	8.5
Italy	3.2
New Zealand	1
China	0.9
Greece	0.8
All others	11.9

Charitable bequests

The estates across the full sample of probate files included both direct charitable bequests and those which were contingent on other named beneficiaries no longer being alive (see Figure 4):

- **6.5%** made some form of charitable bequest
- **1.4%** included a contingent bequest

Figure 4: Participation in charitable bequests – all probated estates



As the unrealised contingent bequests delivered no actual distribution, they are not included in any \$ value analyses in this report.

This participation rate in charitable bequest giving of 6.5% compares with:

- the 87% participation rates in *inter vivos* charitable giving estimated by *Giving Australia* (2005).

This very large difference in participation between charitable giving during life and from personal estates strongly supports the contention that in the charitable giving behaviour of individuals there are significant differences in considerations that come into play between the two modes. The extent to which probate data provides insight into the differences is explored below.

The participation rate in charitable bequest giving of 6.5% for this national sample compares with:

- 7.5% of Australians with a will estimated to have included a charitable bequest (*Giving Australia* 2005)
- 5% participation rate in charitable bequests identified from 2006 Victorian probate files (*Baker & Gilding* 2011)

this in turn compares with:

- 5.7% participation rate in the 2012 Victorian sample for this study.

Value

As financial data was unavailable in files accessed in Queensland, all calculations involving \$ values are exclusive of Queensland.

Total net value of estates in the full data set

\$2.03 billion

- 2.3% debt (total liabilities as a percentage of total assets)
- roughly even split of total net value provided by real estate and personal estate
- Average estate value = \$663,375 Median estate value = \$388,504

Total value of charitable bequests made ¹	\$41.14 million
Bequests as a proportion of total net estates	2.0%

Key State Data

An overview of the data relating to probate files, their type and the number and type of charitable bequests made is provided at Table 7 with a break-down by State and Territory.

Table 7: Overview of probate files, file type and charitable bequests, with breakdown by State and Territory

	<i>ACT</i>	<i>NSW</i>	<i>NT</i>	<i>Qld</i>	<i>SA</i>	<i>Tas</i>	<i>VIC</i>	<i>WA</i>	<i>Total</i>
files	53	1375	13	738	264	118	899	333	3793
intestate	3	127	1	72	16	13	94	47	373
first	10	264	6	142	50	22	179	65	738
final	40	975	6	523	193	83	620	221	2661
bequests	2	92	1	64	21	3	51	15	249
% bequests	3.8	6.7	7.7	8.7	8.0	2.5	5.7	4.5	6.5%
Contingent bequests	-	25	-	7	2	4	7	9	54
% contingent		1.8		0.9	0.8	3.3	0.8	2.7	1.4%

Further analysis of the breakdowns within the collected data is undertaken below in relation to final estates, where the data set has been reduced to remove estates without a will (intestate) and willed estates where there is a surviving spouse.

Surviving Spouses

Schervish, Havens and Whitaker (2006: 11) have argued that in the analysis of charitable bequest giving from estates, it is important to separate out the estates of the first spouse to die, first estates, and to focus on estates for which there is no surviving spouse: final estates. The underlying rationale is that the common practice of couples is for the transmission of their estate to be by default to the surviving spouse. Only in the event of the spouse not surviving the will-maker, do alternative and more detailed

¹ Excludes charitable bequests which: i) did not have a dollar value, such as organs, goods and chattels; and ii) residual bequests in Queensland, which could not be calculated given the absence of estate values.

instructions come into play for the distribution of the estate. As such, analysis of charitable giving practices from estates will be more meaningful if the focus is confined to final estates.

Analysis of the data set used for this study supports Schervish, Havens and Whitaker's (2006) contentions:

- **3.8%** of first estates (with a surviving spouse) in this study included a charitable bequest.

A statistical test demonstrates that, in the willed estates in this study, the presence of a surviving spouse significantly reduces the likelihood of a charitable bequest.^{vi}

The lower level of charitable bequests from first estates and the confirming statistical relationship supports the argument by Schervish, Havens and Whitaker (2006) for analysis of charitable bequests being focused on final estates.

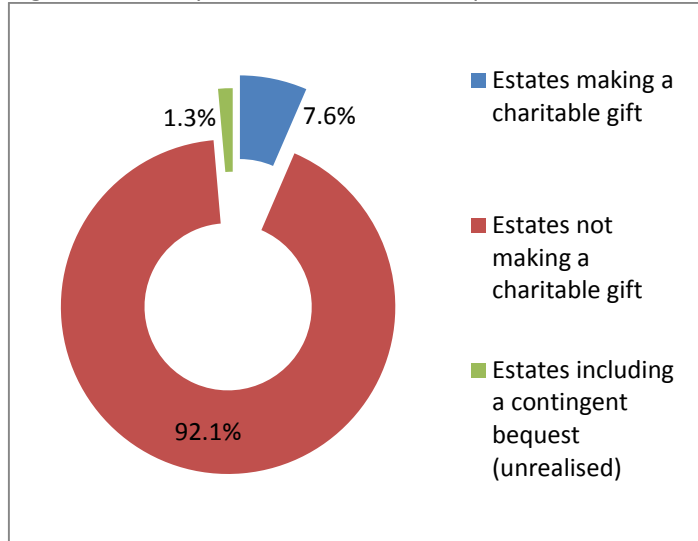
Charitable Bequests from Final Estates

For this second stage of analysis the 738 first estates were removed along with the 373 intestate estates, where there was no will to indicate the individual's intentions for the transmission of his or her estate.

Of the 2661 final estates (with a will and without a surviving spouse):

- **7.6%** made some form of charitable bequest
- **1.3%** included a contingent bequest (see Figure 5)

Figure 5: Participation in charitable bequests – final estates



As the unrealised contingent bequests delivered no actual distribution, they are not included in any \$ value analyses in this report.

This participation rate in charitable bequest giving of 7.6% compares with:

- the 87% participation rates in *inter vivos* charitable giving estimated by *Giving Australia* (2005).

This very large difference in participation between charitable giving during life and from personal estates strongly supports the contention that in the charitable giving behaviour of individuals there are significant differences in considerations that come into play between the two modes. The extent to which probate data provides insight into the differences is explored below.

The final estate participation rate in charitable bequests of 7.6% for this national sample compares:

- **7.5%** of Australian will-makers estimated to have included a charitable bequest (*Giving Australia* 2005)
- **6.9%** participation rate in charitable bequest giving identified from 2006 Victorian probate files (*Baker & Gilding* 2011).

Charitable bequests from final estates account for 97% of the \$ value of all charitable bequests in this study.

Charitable bequests from final estates:

- **\$185,000** average
- **\$10,000** median

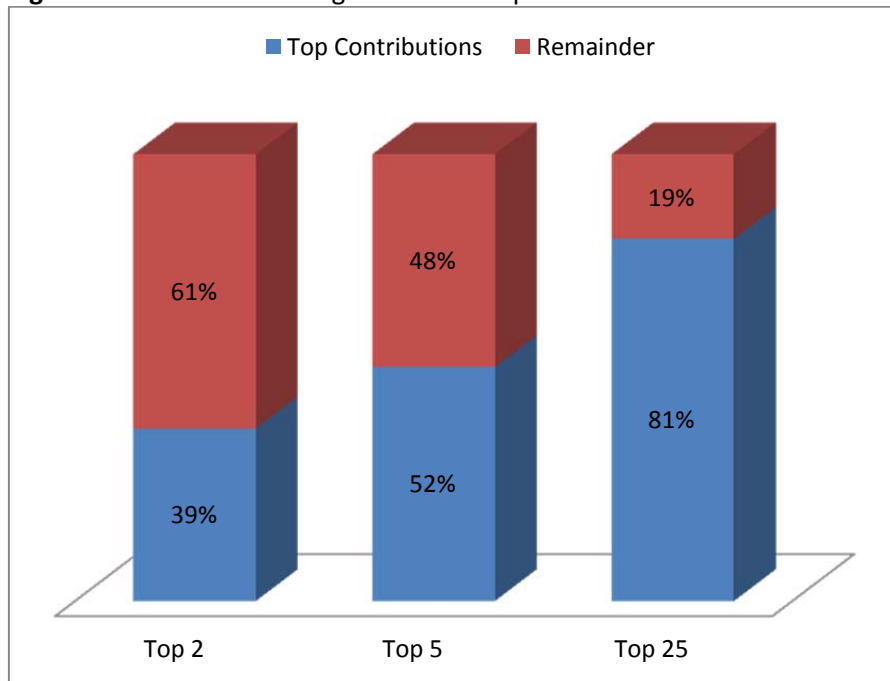
The very large average in the value of charitable bequests from final estates provides a clear indication of the distorting influence when there are disproportionately large bequests:

- **\$10.2m** largest charitable bequest
- **\$5.9m** second largest charitable bequest

The relative contribution by value of the largest gifts is staggering (see Figure 6):

- Top 2 charitable bequests 39% of all charitable bequest \$s
- Top 5 52%
- Top 25 81%

Figure 6: Contribution of highest value bequests relative to total value of all charitable bequests



As an indication of capacity, the estates were grouped by net value. For the purposes of this aggregate analysis, increments of five hundred thousand dollars are used. The five categories used start at “less than \$0.5m”. They go up in half million dollar increments and end with “more than \$2.0m” (see Table 8).

Approximately 60% of the final estates with recorded financial values had a net value of less than \$500,000; and a further 26% had net value of between \$500,000 and \$1m.

Final estates with a **net value of less than \$1m**, accounted for:

- **85%** of all final estates, by number
- **49%** of the total \$ value of final estates
- **29%** of all charitable dollars bequeathed

At the high end of the capacity spectrum, those estates with net worth of **more than \$2 million**, accounted for:

- **5%** of all final estates, by number
- **34%** of the total \$ value of final estates
- **56%** of all charitable dollars bequeathed

This is in line with expectations based on research in the United States that, on average, the proportion of an estate directed to charity increases with the value of the estates. It should also be noted that the 'average' proportion of estate gifted is significantly boosted by the presence of very large charitable bequests.

Table 8: Final estates and charitable bequests by value of estate

<i>Value of Estate (Millions)</i>	<i>% of all estates</i>	<i>% of aggregate net value of final estates</i>	<i>% of charitable bequests by value</i>
< \$0.5	59%	23%	14%
\$0.5 to \$0.999	26%	26%	15%
\$1.0 to \$1.499	7%	11%	6%
\$1.5 to \$2.0	3%	7%	9%
> \$2.0	5%	34%	56%
Totals	100%	100%	100%

Notes: As a result of rounding, percentages may not add to exactly 100.
Excludes estates with missing residuary \$ values.

Additional insights into the differences in charitable bequests by capacity are also provided by analysis of participation rates and of gifts as a percentage of estate value (see Table 9).

Participation rates:

- There is a broad pattern of participation in charitable bequests increasing in line with increasing estate values.
- Of estates valued at less than \$0.5m a charitable gift was made by 6%.
- The participation rate of estates valued at more than \$2 million is 3 times higher, at 18%.

Proportional giving:

- There is a broad pattern of the proportion of estates distributed as charitable bequests increasing in line with increasing estate values.
- Estates valued at less than \$0.5m the average proportion of final estate gifted is 1.6%.
- Estates valued at more than \$2m the average portion of final estate gifted is 4.5%.

Table 9: Participation rate and share of final estates as charitable bequests

<i>Estates by wealth (decile)</i>	<i>Participation rate %</i>	<i>Gifts as a percentage of Estate Value</i>
<i>Lowest value 10%</i>	<i>4.7%</i>	<i>2.1%</i>
<i>2nd wealth decile</i>	<i>5.7%</i>	<i>1.2%</i>
<i>3rd wealth decile</i>	<i>6.7%</i>	<i>1.9%</i>
<i>4th wealth decile</i>	<i>7.6%</i>	<i>1.8%</i>
<i>5th wealth decile</i>	<i>5.2%</i>	<i>2.3%</i>
<i>6th wealth decile</i>	<i>7.1%</i>	<i>1.3%</i>
<i>7th wealth decile</i>	<i>7.1%</i>	<i>1.4%</i>
<i>8th wealth decile</i>	<i>9.0%</i>	<i>2.1%</i>
<i>9th wealth decile</i>	<i>7.6%</i>	<i>1.4%</i>
<i>Highest value 10%</i>	<i>14.8%</i>	<i>4.0%</i>
<i>Sample Average</i>	<i>7.6%</i>	<i>2.7%</i>

Notes: Excludes estates with missing \$ values.

It should again be noted that the ‘average’ proportion of estate gifted is distorted by the presence of very large charitable bequests, necessarily from large estates.

Table 9 indicates that on average higher value estates which included a charitable bequest directed a greater proportion of the estate to charity, compared to lower value estates.

Testing of estate values using 10 groups of estates equal in number (bottom 10%, next 10%, up to top 10% of wealth) indicates that while the highest value estates did gift a higher proportion of their value to charity, across the sample as a whole there was no statistically significant relationship between the value of estates and the proportion of those estates directed to charitable bequests.^{vii}

This relationship between final estate size and the proportion of the estate charitably gifted in Australia:

- is broadly in line with the findings of the Baker and Gilding (2011) study of Victorian probate data – that the value of Australian estates does not significantly influence the share gifted as charitable bequests
- is not consistent with findings on estate transmission practices in the United States where the proportion of estates gifted to charitable purposes has been found to increase as the value of the estates increases (Schervish 2003a)
- does indicate nevertheless that at the wealthiest end of the spectrum, the highest value estates which did include a charitable bequest directed a greater proportion to charity.

The impact of children on charitable bequest giving

The data collected from the probate files in this study indicates that those estates without a surviving child are far more likely than those with surviving children to make a charitable bequest, (see Table 10).

Table 10: Final estates: charitable bequests by surviving children

<i>Estate Type</i>	<i>Surviving children</i>	<i>No surviving children</i>
	<i>%</i>	<i>%</i>
Nothing left to charity	94.1	69.9
Charity as secondary beneficiary	1.2	1.8
Charity as primary beneficiary	3.3	28.3
Total	100	100
Median charitable bequest	\$2,000	\$21,000

Note: 'Median' is the mid-point when all values are ranked in ascending order.

From final estates, charitable bequests were included by

- **4.5%** **with** a surviving child or children
- **30%** **without** a surviving child

Statistical analysis demonstrated that the absence of surviving children has a strong statistical relationship with the likelihood of the inclusion of a charitable gift from a willed estate.^{viii}

While final estates without a surviving child were much more likely to include a charitable bequest and to make charity the primary beneficiary of the estate:

- **70%** of final estates with no children did not include a charitable bequest.

For these will-makers the estates were primarily directed to other family members (especially nieces and nephews).

Table 11 sets out in detail the distribution of individual charitable bequests by size of bequest, and from which type of estate they were made: final estates with and without surviving children; and first estates with and without surviving children.

Table 11: \$ value of charitable bequests and surviving children (all estates)

		<i>Value of gift (\$000)</i>											
		<1 to <5	1 to <10	5 to <25	10 to <50	25 to <100	50 to <250	100 to <500	250 to 1m	500 to >1m	>1m		
No. of Gifts	<i>Final Estate</i>	<i>Children</i>	16	18	6	14	4	6	2	1	0	1	68
		<i>No Child</i>	12	15	12	23	8	13	13	14	10	6	126
	<i>First Estate</i>	<i>Children</i>	4	4	3	2	5	1	1				20
		<i>No Child</i>	1	2	0	1	0	1	1				6
Total No.											220		

Note: Excludes charitable bequests without an identifiable \$ value, including those made in the form of organs or goods.

Of those estates which did include a charitable bequest, the average value of the bequest was significantly higher where there were no surviving children:

- \$256,000** average bequest from childless estates making a bequest
- \$89,000** average bequest from estates with a child or children

Statistical analysis indicates a significant association between the size of a charitable bequest and having no surviving children.^{ix}

Equal Distribution

The strength of the prevailing social norms in relation to estate transmission and the consequent patterns of charitable giving are exemplified by the high value final estates.

The author's favourite example comes from the 2006 Victorian data set - that of a woman who had passed away aged 91. She had no surviving spouse, and three surviving children. The children were aged 71, 69 and 65 at the time of the will-maker's death. Because the 71 year old son was the executor of the will, the probate file included information that he was a retired barrister of an exclusive and prestigious Melbourne suburb. As a retired barrister the son was unlikely to be an economic dependent of his mother. The \$10 million of her estate was distributed in total and in equal share to her three children.

This example is illustrative of a general pattern. As fundraisers have often commented in response to this case, had widow in this case gifted 10 per cent of the value of her estate to charitable purposes, the resultant \$1m would have constituted a significant contribution to a beneficiary charity or charities. The net distribution to each of her three children would have reduced, in broad terms, from \$3.3m each to \$3.0m each. One of the most experienced and most successful of these fundraisers responded immediately: "She had never been asked!" This practitioner went on to explain that in her experience elderly people who believe their children not to be in need of the entire proceeds of the parental estate, will often consider distributing a portion of that estate to a charity. This requires that the charity has previously taken the time to "nurture" a relationship with the will-maker. Being asked to consider leaving part of the estate to the charity is often a further precondition for such a gift to be made.

Beneficiaries from final estates

There is a wide discrepancy in the participation rates of charitable giving from final estates with and without children. These very different participation rates support the thesis that in the contemporary practice of sole surviving parents, the bonds of kinship and of immediate family in particular take precedence. The presence of surviving children results in a very low propensity for a charitable gift to be made from a final estate. The absence of children significantly increases the propensity to gift.

In relation to this study, where children survive the will-maker they are overwhelmingly the primary beneficiaries of contemporary final estates in Australia (see Table 12).

Table 12: Final estates with surviving children by primary beneficiary

<i>Estate Type</i>	<i>Number</i>	<i>Per cent</i>
Children equally	1532	71%
Children unequally	334	16%
Complex distributions	125	6%
Grandchildren	17	0.8%
Charity	5	0.2%
Other	132	6%
Total	2145	100.00%

Notes: As a result of rounding, percentages may not add to exactly 100.
Excludes estates with missing \$ values

For final estates with surviving children: the children were the primary beneficiaries in equal share, in 7 out of 10 cases.

Those estates where the transmission process effectively jumps a generation by directing most of the estate's assets to grandchildren were in a very small minority.

- ❖ Grandchildren were the primary beneficiaries of an estate in less than 1% of cases.
- ❖ The practice of bequeathing estates directly to grandchildren remains a rarity.

Charitable bequests from final estates with surviving children were scarce, but not non-existent.

- ❖ Charity was the primary beneficiary in 0.2% of all final estates with surviving children.

Despite the apparent strength of the prevailing social norm to distribute estates to the children in equal share, Table 13 also demonstrates that individual will-makers can and do exercise testamentary freedom and make distributions that differ from the standard.

29% of final estates with surviving children did not follow the prevailing norm and make the children primary beneficiaries in equal share.

Charitable beneficiaries

In estates sampled, the common practice for those will-makers who did leave a charitable bequest was to name multiple charitable beneficiaries (see Figure 7).

Figure 7: Number of charitable beneficiaries named in individual wills with a charitable bequest

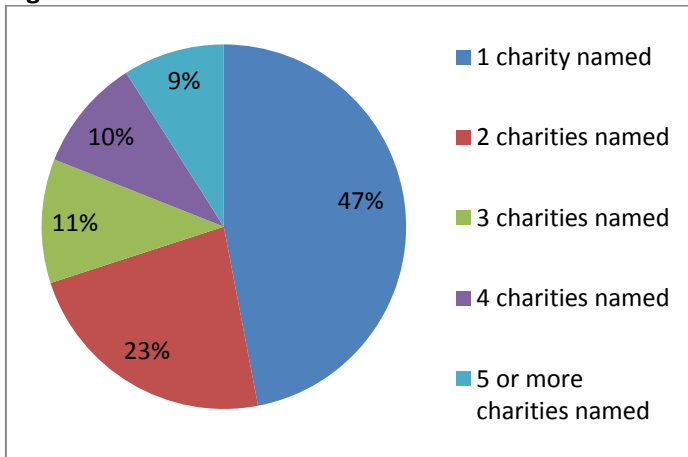


Table 13 uses as its framework the Australian Taxation Office (ATO 2013b) general categories of Deductible Gift Recipients to show the frequency with which charitable beneficiaries were named; and to show their relative share of total charitable dollars gifted.

Key insights from this table include:

- Human Welfare organisations were the major category of charitable beneficiary, with
 - 61% of all charitable organisation inclusions
 - 56% of all charitable dollars bequeathed.
- Education and Other (including the Arts) both fared poorly.
- The Environment received very few bequests (3) and these were low in value.

It is difficult to draw firm conclusions from this data given the lack of any insights provided by probate data about the relevant networks, associations and relationships of the deceased outside the family.

- ❖ It is impossible to tell from probate data what if any form of pre-existing relationship a charitable bequest donor may have had with a named charitable beneficiary.
- ❖ It may be that the nomination of a particular charitable beneficiary is the result of a strong sense of reciprocity.
- ❖ It may be the result of a desire for specific reciprocity arising from the nature of the services provided by the charitable beneficiary to the donor or a relative, or arising from specific interactions such as by way of volunteering which have generated and reinforced systems of mutual trust and obligation.
- ❖ It may be that the donor's decision is influenced more by a trust in the "good work" of the charitable beneficiary and a more generalised sense of reciprocity.

Table 13: Charitable Beneficiaries

<i>Beneficiary category</i>	<i>Frequency beneficiary included</i> Number	<i>Frequency beneficiary included</i> %	<i>Value of charitable gifts</i> (000s)	<i>Share of charitable gifts</i> %
Health	118	19.7%	\$7,056	17.6%
<i>Hospitals</i>	19	3.2	1,100	2.7
<i>Health Research</i>	67	11.2	3,017	7.5
<i>Health Promotion</i>	1	0.2	20	0.05
<i>Other</i>	31	5.2	2,919	7.3
Education	9	1.5%	\$206	0.6%
<i>Tertiary</i>	1	0.2	10	0.02
<i>Other</i>	8	1.3	196	0.5
Human Welfare	363	60.5%	\$22,460	55.9%
<i>Christian Orgs</i>	154	25.7	6,448	16.1
<i>Jewish Orgs</i>	8	1.3	10,439	26.0
<i>Other</i>	201	33.5	5,572	13.8
Animal Welfare	60	10.0%	\$3,988	9.9%
Environment	3	0.5%	\$7	0.02%
International Affairs	20	3.0%	\$4,737	11.8%
Fire & Emergency Services	3	0.5%	\$108	0.3%
OTHER <i>Including the Arts</i>	24	4.0%	\$1,595	4.0%

Notes: Grouped drawing on relevant ATO Deductible Gift Recipient general categories.
As a result of rounding, percentages may not add to exactly 100.

The high rate of naming of Health Research organisations (11.2%) may be an indication that the donor is looking to support research into amelioration or cure for the illness that eventually took their life, or the life of a loved one.

The naming of particular religious organisations as beneficiaries suggests an element of religious affiliation or a sense of reciprocity for the contribution religious organisations have made to the wellbeing of the individual in their lifetime.

Welfare services may be nominated because of a belief and trust in the work of a particular welfare organisation or service or as a result of the will-maker directly benefiting on a personal level from the associated good works.

Probate data however cannot validate these inferences. While it can be reasonably inferred from the name of a charitable organisation so nominated that reciprocity may have played a role in the decision to make it a beneficiary, in the majority of cases probate data does not provide any means of identifying the strength or nature of the relationships or obligations involved.

The low rate of participation in including a charitable bequest does however highlight that when it comes to the transmission of a person’s residual estate, the prevailing norm is that existing relationships with charitable organisations are in most cases rendered subservient to the operation of ties and obligations to family.

Will gap and charitable bequests

The data gathered in this study included the year in which a final will was made and the year of death of the will-maker. This data enables the calculation of the time elapsed time (gap) between making a will and dying. Analysis of that information reveals that those who included a charitable bequest in their will, had on average a smaller time lapse than those who did not include a charitable bequest (see Table 14):

Table 14: Charitable bequests and average gap in years between will year and year of death

<i>Estate Type</i>	<i>Average gap</i>
Nothing left to charity	10.00 years
Charitable bequest included	5.63 years

Two sets of analysis were undertaken to examine the impact on charitable bequests of the difference in the gap between the writing of a will and death:

A statistical test indicates that for estates with and without a charitable bequest, the gap between the year of will finalisation and the year of death was statically significant.^x

A second statistical test shows that the size of this effect was small.^{xi}

Will preparation and charitable bequests

The data gathered in this study included identification of how wills were prepared. As previously detailed, the wills examined were overwhelmingly prepared with the assistance of professional advisers:

- 5% Will Kit
- 12% Self-prepared
- 83% Adviser / lawyer

Analysis indicated that there is no statistical relationship between the form in which a will is prepared and the likelihood of including a charitable bequest.^{xii}

Specified Vs. Residual charitable bequests

The data gathered in this study included identification of charitable bequests as

- specified bequests (with a specific dollar value, e.g. \$1,000); or as
- residual bequests (specifying a percentage of the estate to be gifted, e.g. 10% of the residual of the estate)

Some estates included both specified and residual bequests. For those where a \$ value was available, the two types were included in similar numbers. Even with the largest single bequest removed from the calculation, the difference in the value of the two types was large indeed (see Table 15).

Table 15: Bequest types – Average and Median value (rounded to nearest \$1,000)

<i>Bequest Type</i>	<i>Average</i>	<i>Median</i>
<i>Specified \$ Amount</i>	\$25,000	\$7,000
<i>Residual Estate %</i>	\$400,000	\$209,000

Notes: Median = the mid-point when all bequests of the specified type are ranked in ascending order of value. Median values indicate that on average residual bequests result in much greater \$ value charitable bequests than do those which specify a \$ amount.

Tests conducted demonstrated that there is a statistical association between the form of charitable bequest and the mean size of charitable bequests. The size of charitable bequests from estates leaving \$ specified amounts and those leaving residual % was significantly different, with residual % bequests being of higher value. The tests indicate that the effect size of the difference was large.^{xiii}

Wrapping up the results

- Participation in charitable bequest giving is higher for those with the greatest capacity than it is for those with less capacity.
- By participation rate: final estates with a net value of more than \$2m included a charitable bequest at three times the rate of estates with a net value of less than \$0.5m (18.3% : 6%).
- By proportional contribution: while the highest value estates did gift a higher share of their value to charity, across the sample as a whole there was no statistically significant relationship between the value of estates and the proportion of those estates directed to charitable bequests.
- While these findings do not provide insight into the extent to which older Australians are acting on their reported increased propensity to spend rather than to protect assets to leave them to the children, the findings of this study show no evidence (yet) in support of the observation by of Olsberg and Winters (2005) that the attitudes of older Australians are moving away from obligation to leave assets to the kids.
- The probate data demonstrates that in cases where there were remaining estate assets, those assets went overwhelmingly to the children.
- Estates with no surviving children were significantly more likely to make a charitable gift than those with a surviving child or children.
- Where children survive, they receive the estate.
- Where more than one child survives the parent, then the children mostly receive the estate in equal share, irrespective of age, gender, need or relative wealth.
- The presence of this apparently deeply seated norm of familial primacy may well result in a self-reinforcing corollary of the absence of social expectation of charitable bequest giving.
- Nevertheless, 29% of will-makers deviated in some way from this prevailing pattern of the distribution of an estate in its entirety to the children in equal share.
- While the prevailing patterns are undoubtedly pervasive, as Australians can and do make conscious decisions to act outside the standard estate distribution practices: there is a clear opportunity to influence more Australians to include a charitable bequest.

Avenues for action

Encouraging charitable bequests

The time is right to be seeking to encourage charitable bequests.

This nation is one of many with an unprecedented demographic wave known as baby boomers. The large scale of this cohort is unprecedented, and it is a contributor to and beneficiary of an era of unprecedented wealth.

The first of the baby boomers were born in 1946. Based on current estimates, this generation will begin to pass on in large numbers in the late 2030s and continue for two decades or more. Consequently, there is lead time available. Many baby boomers will end their lives with unspent accumulated wealth. Even a small increase in the proportion of individuals leaving a charitable bequest will result in a significantly increased flow of charitable funds.

For a practical and insightful approach to encouraging giving in general, see Seares and Edwards (2010) report for Lotterywest, on the future of giving in Western Australia.

In relation to charitable bequest giving there is no one single solution, no one right answer. What is required is a multiplicity of strategies and initiatives to inform, to influence and to encourage the inclusion of a charitable bequest from their estate.

That process has begun in Australia with the establishment of the *Include a Charity* campaign, where some 140 Australian charities with an interest in charitable bequests have come together in an effort to encourage more charitable bequest giving. This is a very positive development as over the coming years the challenge is for charitable organisations, fundraisers, donors, professional advisors and policy makers to work together to identify and implement a multiplicity of influencing strategies.

The avenues identified below are a contribution to the required debates, plans and actions. They are born of the information and data explored and presented in this report. It is the hope and indeed the expectation of all involved in the production of this report that its readers will be enabled and inspired to develop a whole new set of initiatives to encourage charitable bequests.

The avenues for influence explored below address areas for influencing charitable bequeathing behaviour as suggested by the content of this report.

1. Market focus *Who are the most likely prospects?*

The findings of this report highlight that charitable bequests are made more frequently from:

- high value estates
- final estates (willed estates without a surviving spouse)
- childless estates.

Recent demographic analysis in the United States (James 2013) confirms that both single person and childless estates are on the increase in that country.

With the ageing of the population the kinds of estates most likely to include a charitable bequest will also be on the increase. While this study does not include demographic analysis for Australia of the kind undertaken by James for the US, anecdotal evidence would suggest that in Australia too, the potential for increased charitable bequest giving will be boosted over the coming decades via a combination of:

- increases in capacity
 - ongoing increases in private wealth and consequently increases in the value of estates
- increases in propensity
 - increases in the proportions of Australians in those cohorts most likely to include a charitable bequest.

2. Rational encouragement *What are the facts?*

The results from this study of Australian estate transmission practices indicate that where there is sufficient cause to do so, many will-makers exercise testamentary freedom to some degree.

In the sample addressed by this study, some 29% of final estates (willed estates without a surviving spouse) did not follow the prevailing norm of equal distribution of their estate to their children.

This suggests that there is real opportunity for charitable organisations and their fundraisers to seek to influence donor behaviour towards including a charitable bequest by providing rational information to guide decision making. This includes, but is not limited to:

- needs of those who the organisation assists
- the sound stewardship by the organisation of bequeathed funds
- the special purposes that bequeathed funds are committed to
- the longer term difference that bequeathed funds contribute to.

3. Social encouragement *What is my legacy?*

Probate data does not in itself provide evidence as to the motivations of those who do or do not include a charitable bequest.

The information covered in this report nevertheless has highlighted the social context in which making estate transition decisions take place, including charitable bequest decisions.

- ❖ Estate transmission is a form of gift giving like no other. It is made only once-in-a-lifetime.
- ❖ The obligations that are both met and (re)created in the act of estate transmission are likely to be especially laden with moral meaning and with conscious and unconscious motives.
- ❖ Social influence has been shown to affect charitable giving behaviour.
- ❖ The power of social influence in the context of charitable bequest decision making has been recently demonstrated in trials with will-writers in the UK where compared to a control group, individuals who were ‘nudged’ to include a charitable bequest were three times more likely to do so.
- ❖ Making a decision to include a charitable bequest is often associated with self-reflection on life history and mortality, and the desire to be remembered beyond the grave.

4. Advisory encouragement ‘How to’ leave a charitable bequest?

Australian research (Madden 2004; Madden & Newton 2006) has highlighted the potential influence on charitable bequest decision making by those who provide financial and legal advice to will-makers.

Include a Charity in Australia has also recognised the importance of solicitors and trustees in the will-making process and their potential to encourage charitable bequests. The evidence from this study suggests that while the potential is real, the role of will advisers has not contributed to greater charitable bequest inclusion amongst the sampled estates:

- those who are advised by professionals in the writing of their will are no more likely to include a charitable bequest than those who use a will-kit or simply write their own
- those who leave a charitable bequest in the form of a residual % leave larger bequests than those who leave a specified dollar amount.

The review of individual files also indicated that for many, the specification of a residual % of their estate is more likely to result in their intentions and the spirit of their will being more fully met. This is perhaps best demonstrated by looking at an example:

This is the example of a will-maker who had left the bulk of her estate to her children, and a specified amount of \$1000 to each of two charities. She passed on some 20 years after finalising her will. So, whereas at the time of writing the will, \$1000 was – and was intended to be – a significant sum, 20 years later the buying power of \$1000 was considerably diminished, and the relative share of the estate was similarly dwarfed.

The option of electing to gift a percentage of the residue of a will-maker’s estate also provides a form of protection against fears associated with the costs of funding a long life. If the value of the will-maker’s assets decreases over time, so too does the value of charitable bequest decrease commensurately.

The data from this study supports the provision of easily accessible guidance on practical issues, including:

- why, where and how to access support in preparing a will
- appropriate wording of a bequest clause in wills
- the relative strengths and weaknesses of including a charitable bequest in the form of a specified amount or a residual %
- how best to have a conversation with family members about including a charitable bequest
- when and under what circumstances it might be better to give now rather than in the form of a bequest.

5. Taxation incentives

What are the financial advantages?

Probate data provides no insights into the extent to which a will-maker had contributed charitable dollars during their life time. What the data in this study does show is:

- less than one in five (18.3%) of the highest value final estates make some form of monetary charitable bequest
- the share of higher value estates directed to charitable bequests is not statistically different to the share gifted by lower value estates.

The historical overview provided in this report and the experience of other countries highlight that like most behaviour, charitable giving is influenced by incentives. In Australia, there is a complete absence of tangible incentives. Significantly, there is no taxation incentive to include a charitable bequest from an Australian estate.

Research in the US has found that taxation incentives do influence charitable bequest giving and anecdotal evidence suggests that taxation incentives also influenced charitable bequest giving in Australia's past. In the view of the author of this report, in principle the largest and most powerful lever available for encouraging charitable bequest giving in Australia is the taxation system; via the operation of an estate tax on large estates, with incentives for charitable giving.

It does have to be recognised that the (re)introduction of an estate tax in Australia would at best politically difficult for a government of any persuasion. Nevertheless, the 2009 Henry Report on Australia's future tax system provides support for an assessment that a tax on estates would meet the public policy tests of 'social equity' and 'economic efficiency'. It may well struggle with meeting the third public policy test of 'politically feasible', but that does not take away from the evidence that an estate tax would be the most efficacious means of boosting charitable bequests in Australia.

The findings of this report support the sentiment expressed in Recommendation 25 of the 2009 Henry Report on Australia's future tax system:

While no recommendation is made on the possible introduction of a tax on bequests, the Government should promote further study and community discussion of the options.

Henry, K 2009, *Australia's future tax system: Report to the Treasurer*, page 37.

The Coalition parties elected to office in Australia in September 2013 are on record as planning to 'encourage a culture of philanthropy and giving' (Liberal Party Media Release, 15 June 2013). An estate tax of the nature that applies in the United Kingdom would function to meet this policy objective and to assist in meeting the challenges of a growing budget deficit.

The essence of the UK model includes:

- leaving the overwhelming majority of estates exempt from estate tax
- having the tax become applicable at a high net value
- making charitable bequests tax deductible
- providing for reduction in estate tax payable based on charitable donations made during the estate holder's lifetime.

The final element above would help incidentally to encourage and reward *inter vivos* giving, as well as charitable bequest giving.

Those who make significant charitable deductions during their lifetime would receive taxation concessions on their estate. Those whose *inter vivos* charitable donations were less significant, would have the opportunity of accessing estate tax concessions by making a charitable bequest from their estate.

An Australian approach would need to ensure that protective measures are put in place for concessionary treatment for family farms and for businesses.

The design of taxation systems is not within the scope of this study. The findings of this study however do support the recommendations of the Henry Report that the Government promote further study of the taxation options.

The findings of this study could also be used to help inform the second part of the Henry Report recommendation for community discussion of the options.

At the heart of this research project has been the quest to provide a robust evidentiary base for the development of policy and practices aimed at encouraging charitable bequest giving. This is entirely consistent with The Trust Company's *Engage Philanthropy* initiatives and those of Include a Charity.

In some circumstances, the data provides a clear line of sight in relation to strategies and initiatives that can be taken to encouraging charitable bequests by Australians. The next step in this process will be to work closely with multiple partners, from practitioners to policy makers:

- to address the range of encouragement processes that are proving successful
- to address those have been tried in other countries
- to adapt and adopt the most relevant of these according to the social, cultural, legal and economic circumstances in Australia
- to engage the community
- to use the foundations laid by this data to further contribute to the development of new initiatives to encourage bequests.

Perhaps most importantly of all, this report provides a basis for members of our community to engage directly in conversations around estate transmission and the decision to include a charitable bequest or otherwise.

The avenues for action explored above are based on the evidence in this report and are directed at informing and assisting any and all who are currently and/or potentially involved in encouraging charitable bequests by Australians.

You don't have to be rich or famous to make a difference. You just have to make a simple decision. Whoever you are, whatever your situation, you can help create a better world by including a charity in your will. *Include a Charity*

Appendix – fields of data collected

State or Territory of Probate Office

Probate File Number

Nature of Probate Grant

Surviving Spouse

Gender

Residence

Occupation

Year of Birth

Date of Death

Birth Country

Net Value of Real Estate

Net Value of Personal Estate

Debt (outstanding liabilities)

Number of Surviving Children

Gender and Date of Birth for each Surviving Child

Primary Beneficiaries

Year Will Finalised

Source of Will Format and Preparation

Name of Will Service Provider

Inclusion of Charitable Bequest

Inclusion of Contingent Charitable Bequest

Name of Charitable Beneficiary

Dollar Value of Charitable Bequest

Type of Charitable Bequest:

- Specified \$
- Residual %
- Other

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Endnotes

ⁱ These 10 countries were selected for the Treasury study comparing Australia's tax settings as those which are broadly similar in terms of their overall tax burden and the role of the government sector in the economy.

ⁱⁱ The mean age of those who did not leave a will was 66 ($M=65.62$, $SD=20.32$, $N=338$), compared with 83 for those who left a will ($M=82.98$, $SD=11.72$, $N=3410$). An independent groups t-test shows that the difference is statistically significant: $t(359.55)=-15.45$, $p<.001$.

ⁱⁱⁱ The mean value of their estates was \$418,072 ($SD=103,1316$, $N=299$), compared with \$689,999 for those who left a will ($SD=215,2870$, $N=2755$). An independent groups t-test again shows that the difference is statistically significant: $t(3052)= 2.157$, $p<.05$.

^{iv} A Chi-square test for independence (with Yates Continuity Correction) indicates a significant association between intestacy and having no surviving children: $\chi^2(1, N=3737)=45.70$, $p<.001$, $phi=-.111$.

^v Another Chi-square test for independence (with Yates Continuity Correction) indicates a significant association between intestacy and gender: $\chi^2(1, N=3787)=55.57$, $p<.001$, $phi=-.12$.

^{vi} A chi-square test of independence was performed to examine the statistical relationship between the presence of a surviving spouse and the making of a charitable gift from willed estates. The relationship between these variables was highly significant, $X^2(1, N = 1494) = 16.14$, $p <.001$.

^{vii} A one-way analysis of variance (ANOVA) test was performed to determine whether or not the proportion of estates gifted to charitable purposes was statistically significant, relative to the level of wealth of the estates. The average proportion of estate value gifted to charity was tested against the five categories of estate value in Table 8. The effect of estate value on the proportion of estate gifted to charity is non-significant $F(4,176) = 0.745$, $p > .05$. The test demonstrates that in the final estates in this study the value of the estates does not significantly influence the proportion of the estate gifted.

The estates were then divided into ten equal groups by wealth in Table 9 (10 wealth deciles: bottom 10%, next 10%, up to top 10% of wealth). A simple linear test was run yielding a result that there was no statistically significant relationship between the value of estates and the proportion of those estates directed to charitable bequests.

^{viii} A Chi-square test for independence (with Yates Continuity Correction) was undertaken, revealing a significant association between having no surviving children and making a charitable bequest: $\chi^2(2, N=2622)=339.522$, $p<.001$, Cramers $V=.360$.

^{ix} The mean charitable bequest of estates with children at \$89,014.94 ($SD=634,533$, $N=87$) was significantly below the mean bequest of estates without children at \$256,202 ($SD=949,834$, $N=131$): $t(69.526)=3.122$, $p<.01$.

^x An independent samples t test ($t(371.6100)=10.673$, $p<0.001$) indicated that for estates with and without a charitable bequest, the gap between year of will and year of death, was statically significant. A separate Mann_Whitney U test ($U=300478.500$, $z=-6.631$, $p=.000$) similarly indicated that the gap between year of will and year of death between estates with and without a charitable bequest was statically significant. The mean rank statistics for both groups showed that the gap between year of will

and year of death of estates without a charitable bequest (Mean Rank = 1775.23, n = 3239) was higher than that of those with a charitable bequest (Mean Rank = 1336.11, n = 248).

^{xi} The mean time elapsed between the final will and death was on average less for those who left a charitable bequest than for those who did not: $t(329.382) = 9.716$, $p < 0.001$. The effect size was small ($\eta^2 = 0.015$).

^{xii} A Chi-square test for independence indicates there is no statistically significant association between how will is prepared and including a charitable bequest: $\chi^2(1, N=3175) = 0.038$, $p > 0.05$.

^{xiii} To test the relationship between bequest type and the \$ value size of charitable bequests, a new variable `besquest_type_1` was created by calculating the percentage of frequency of residual % within one single estate (for example: among 4 bequests, there is 1 residual %, then `bequest_type_1=25%`). Due to the violation of normality distribution of the total \$ value of bequests from individual estates, 4 outliers with highest values of charitable bequest were removed. Three tests were conducted.

a) To assess the association between the forms of charitable bequests and the size of charitable bequests, a bivariate Pearson's product moment correlation coefficient (r) was calculated. The bivariate correlation between these two variables was positive and strong: $r = 0.514$, $p < 0.001$.

b) An independent samples t test ($t(58.920) = -6.355$, $p < 0.001$) indicated that the size of bequest of estates leaving \$ specified amounts and those leaving residual % charitable bequests was significantly different. The mean statistics for both groups showed that the charitable bequest size of estates leaving residual % bequest (Mean = 271567.96, n = 58) was higher than that of those leaving \$ specified amount bequest (Mean = 27203.48, n = 137). Cohen's $d = 1.48$ indicates a large effect size (Cohen 1988).

c) Given the small sample size a Mann-Whitney U test was conducted, as this test does not require data to be normally distributed. The general conclusion from this test and the independent samples t test were similar. The Mann-Whitney U test ($U=1355.000$, $z=-7.273$, $p=.000$) indicated that difference in the size of charitable bequest between estates leaving \$ specified amounts and those leaving residual % charitable bequests was statistically significant. The mean rank statistics for both groups showed that the charitable bequest size of estates leaving residual % charitable bequest (Mean Rank = 143.14, n = 58) was higher than that of estates leaving \$ specified amount bequest (Mean Rank = 78.89, n = 137). $r = 0.521$ and indicates a large sized effect (Cohen 1988).

