



Australian Government
Inspector-General of Taxation
Taxation Ombudsman

DEATH AND TAXES: AN INVESTIGATION INTO AUSTRALIAN TAXATION OFFICE SYSTEMS AND PROCESSES FOR DEALING WITH DECEASED ESTATES

By the Inspector-General of Taxation

July 2020

© Commonwealth of Australia 2020

ISBN: 978-1-925832-10-5

Ownership of intellectual property rights in this publication

Unless otherwise noted, copyright (and any other intellectual property rights, if any) in this publication is owned by the Commonwealth of Australia (referred to below as the Commonwealth).

Creative Commons licence

With the exception of the Coat of Arms (see below), the IGT logo and ATO sourced material, this publication is licensed under a Creative Commons [Attribution 3.0 Australia](https://creativecommons.org/licenses/by/3.0/au/) Licence.



Creative Commons Attribution 3.0 Australia Licence is a standard form licence agreement that allows you to copy, distribute, transmit and adapt this publication provided that you attribute the work. A summary of the licence terms is available from:

<http://creativecommons.org/licenses/by/3.0/au/deed.en>. The full licence terms are available from <http://creativecommons.org/licenses/by/3.0/au/legalcode>.

The Commonwealth's preference is that you attribute this publication (and any material sourced from it) using the following wording:

Source: Licensed from the Australian Government Inspector-General of Taxation under a Creative Commons *Attribution 3.0 Australia* Licence.

The Australian Government Inspector-General of Taxation does not necessarily endorse third party content of this publication.

Use of the Coat of Arms

The terms under which the Coat of Arms can be used are set out on the It's an Honour website (see www.itsanhonour.gov.au).

ACKNOWLEDGEMENT OF CONTRIBUTIONS

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) is pleased to present this report on our investigation into the Australian Taxation Office's (ATO) systems and processes for dealing with deceased estates.

This report has benefited from submissions and insights provided by individual taxpayers as well as a range of professionals in tax, law, estate planning, end-of-life services and their respective representative bodies. The IGTO gratefully acknowledges the contributions of many stakeholders, including the following industry and professional organisations and individuals:

| | |
|---|--|
| Chartered Accountants Australia and New Zealand | Mr Andrew Broadbent, Smarter Numbers |
| CPA Australia | Mr Andrew Parkinson, Morgans |
| Institute of Public Accountants | Mr Ben Veling, Registered Tax Practitioner |
| Law Council of Australia | Mr David Marks QC |
| National Funeral Directors Association of Australia | Mr Ian Raspin, BNR Partners |
| New South Wales Trustee and Guardian | Ms Irene Liew, BNR Partners |
| Norman J Penhall Funeral Directors | Mr John Hockley, Counsel |
| Queensland Law Society | Ms Lyn Freshwater, BNR Partners |
| Society of Trust and Estate Planners | Ms Mary-Ze (Defreitas) Korbay, Anderson & Associates |
| The Tax Institute | Mr Michael Flynn QC |
| | Professor Miranda Stewart |
| | Mr Tony Riordan, Cornwalls |

Furthermore, the IGTO acknowledges and thanks officers of the ATO for their professionalism, assistance and insights during the conduct of this review.

TABLE OF CONTENTS

| | |
|---|-----------|
| 1. Introduction..... | 1 |
| Concerns previously raised with the IGTO | 3 |
| Concerns previously raised with the ATO | 3 |
| 2. Background Information – What happens after someone passes away | 7 |
| Registration and notification of death | 7 |
| Administering the Estate..... | 10 |
| 3. Background Information - Tax obligations after death..... | 17 |
| Overview of Tax Administration | 17 |
| Interaction and consistency between state/territory and federal laws | 29 |
| ATO Developments since commencing this Review | 31 |
| 4. Our recommendations and reasons | 33 |
| Recommendations and the Terms of Reference Considerations | 42 |
| ATO Response to Recommendations..... | 42 |
| 5. Our key findings..... | 43 |
| Some key statistics..... | 43 |
| It is difficult (especially for non tax experts) to navigate the Tax system on behalf of a deceased taxpayer and to understand their obligations | 43 |
| The compliance obligations for executors and administrators of deceased estates are unnecessarily complex and costly (especially for non tax experts) | 44 |
| It is difficult to obtain information about the deceased taxpayer’s affairs, access ato systems, or engage with the right ato personnel | 45 |
| Obtaining final clearance from the commissioner is too uncertain and may expose executors and administrators to potential personal liability and delay administration | 46 |
| 6. Our findings in detail..... | 49 |
| It is difficult (especially for non tax experts) to navigate the Tax system on behalf of a deceased taxpayer and to understand their obligations | 50 |
| The compliance obligations for executors and administrators of deceased estates are too complex and costly | 57 |
| It is difficult to obtain information about the deceased taxpayer’s affairs, access ato systems, or engage with the right ato personnel | 72 |
| Obtaining final clearance from the commissioner is too uncertain and may expose executors and administrators to potential personal liability | 81 |
| Other issues raised in the review..... | 84 |
| Annexure A — Terms of Reference | 85 |
| Annexure B — ATO Response | 87 |

| | |
|---|------------|
| Annexure C — Examples of Notification of Death Forms..... | 99 |
| Annexure D — ABS Statistics on death – 2014 to 2018 – by location | 111 |
| Annexure E — Information reported to registries of births, deaths and marriages (BDM)..... | 121 |
| Annexure F — Excerpts from ATO legislative instrument on lodgement | 137 |
| Annexure G — Our investigation process | 139 |
| Annexure H — Glossary and defined terms | 141 |

1. INTRODUCTION

Australia has operated a self-assessment system of taxation since 1986-1987. Under this system, the taxpayer is personally responsible for lodging a return with detailed information to calculate their taxable income.¹ Upon lodgement, an assessment is issued by the Commissioner of Taxation (Commissioner, through processes of the Australian Taxation Office (ATO)) to an individual taxpayer which then triggers a limited period of review for the ATO. The self-assessment system has been supported since 1992² by a system of legally and administratively binding advice (private and public rulings and determinations) and non-binding guidance issued by the ATO to provide information to assist taxpayers meet their tax compliance obligations.

The self-assessment design principles clearly become more difficult to apply following the death of an individual taxpayer, notwithstanding recent data gathering developments which allow the ATO to receive, and continue to receive, a significant amount of data about taxpayers, to aid in their administration of the tax system.

Following the death of a taxpayer, a representative (that is not the taxpayer) must now:

- Notify authorities and provide proof of death;
- Obtain information about the deceased's income and other tax related matters - pre and post death; and
- Be recognised as an authorised representative for dealing with the ATO on behalf of the deceased.

This representative may be formally appointed (an executor or administrator, collectively known as the legal personal representative (LPR)) or an 'informal' representative. The representative will typically be a trusted family member or friend – a surviving spouse, a child of the deceased, a family friend or other next of kin or beneficiary of the deceased's estate³. The representative would not normally have tax expertise or legal qualifications – they are appointed because they were or would be expected to be trusted by the deceased. The tax and other compliance burdens following the death of a taxpayer can be extensive. This collective 'compliance' burden can cause significant additional stress for affected individuals, at an already emotional and difficult time for them. The situation may be further exacerbated where there is no valid will that sets out the deceased's wishes as to how their affairs should be managed after death.

Some of these compliance burdens and related steps are explored and explained later in this report.

¹ Michael D'Ascenzo and Tony Poulakis, 'Self Assessment: Quo Vadis?' *Taxation in Australia* Vol 36 No 8 March 2002 page 412

² While taxation rulings had existed since 1982, the current system of binding public and private rulings was introduced in 1992 following the enactment of the *Taxation Laws Amendment (Self-Assessment) Act 1992*. See: Australian National Audit Office, *The Australian Taxation Office's Administration of Taxation Rulings* (2002) pp 176 – 181.

³ This is also consistent with rules for granting administration under various State and Territory laws of Intestacy (refer for example *Probate and Administration Act 1898 (New South Wales)*) and information provided by various State and Territory Public Trustees – refer for example Footnote 14.

Given the number of deaths each year, the ‘collective’ compliance burden that is being carried by surviving family and friends of the deceased is significant. Figures from the Australian Bureau of Statistics (ABS) indicate that in recent calendar years, there were approximately 160,000 deaths across Australia each year. Figures for the past three calendar years are set out in Table 1.

Table 1: Number of Deaths in Australia in the 2016, 2017 and 2018 Calendar Years

| | 2016 | % | 2017 | % | 2018 | % |
|------------------------|---------|------|---------|------|---------|------|
| Total | 158,503 | 100% | 160,909 | 100% | 158,495 | 100% |
| Aged 0 to 14 | 1,407 | 0.9 | 1,472 | 0.9 | 1,348 | 0.9 |
| Aged 15 to 64 | 27,400 | 17.3 | 27,065 | 16.8 | 27,194 | 17.2 |
| Aged 65 to 79 | 42,339 | 26.7 | 43,559 | 27.1 | 43,365 | 27.4 |
| Aged 80 or over | 87,354 | 55.1 | 88,808 | 55.2 | 86,549 | 54.6 |

Source: Australian Bureau of Statistics (33020D0003_2018 Deaths, Australia, 2018). In each of 2016, 2017 and 2018 respectively there were 3, 5 and 3 deaths where age was not stated in the data. As at the date of this report, the ABS has not released statistics in relation to deaths for the 2019 Calendar Year.

Based on the ABS statistics, it appears that most taxpayers have reached retirement age at the date of their death. In these circumstances, they may not have been required to engage with the tax system for some years before their death. This is a relevant factor that contributes to the compliance burden for both taxpayers, their representatives and the administration.

This investigation does not seek to address every compliance requirement that arises after a person dies. Rather, it seeks to identify opportunities to reduce the tax compliance burden and associated costs, as well as improve or simplify the tax administration arrangements on behalf of a deceased. The IGTO has for these purposes examined and considered each of the following:

1. the experiences of the community (family and friends) in managing the tax affairs for the deceased;
2. the ATO’s policies, processes and guidelines for receiving information from and dealing with deceased estates;
3. the public guidance issued by the ATO to assist executors or administrators;
4. the ATO’s systems, including the ATO Portals, for dealing with deceased estates;
5. any legislative impediments to the efficient administration of deceased estates; and
6. any other relevant issues to the administration of deceased estate tax obligations.

CONCERNS PREVIOUSLY RAISED WITH THE IGTO

Since 1 May 2015, the IGTO has, as the Taxation Ombudsman, received approximately 130 complaints in the area of deceased estates. The issues raised in these tax complaints canvass a range of concerns including:

- lack of clarity as to why a grant of probate or letters of administration from a Court is necessary for authority to engage with the ATO – to provide or receive the deceased taxpayer’s information;
- difficulties for tax agents accessing information of the deceased taxpayer or dealing with tax matters on behalf of the deceased;
- delay by the ATO in providing executors with access to unclaimed superannuation;
- ATO requirements for lodgement of the deceased taxpayer’s past tax returns;
- Executor/Administrator confusion in relation to how the tax affairs of the deceased should be handled;
- Lack of ATO guidance and advice for deceased estates;
- Delays in obtaining a Tax File Number for the deceased estate;
- Delay in registering the death of the taxpayer following notification; and
- Uncertainty regarding how a foreign executor should deal with the affairs of the taxpayer in Australia.

CONCERNS PREVIOUSLY RAISED WITH THE ATO

Tax Complaints

The ATO also receives tax complaints directly in relation to deceased estates.

Table 2: ATO complaints on deceased estates received in FY17, FY18 and FY19

| 2016-17 | 2017-18 | 2018-19 |
|---------|---------|---------|
| 263 | 291 | 289 |

Source: ATO

An analysis of these complaints, undertaken by the ATO, showed that the concerns raised with the ATO were not dissimilar to those raised in complaints with the IGTO.

In the main, the areas of concern raised with the ATO were:

- Timeliness, including delays in issuing an assessment of a tax return or a tax refund, processing claims for access to superannuation, processing TFN applications, all of which lead to a delay in the finalisation of the deceased person’s affairs;

- Outcomes and ATO processes, including calculation of tax payable, inability to deal with the taxpayer's affairs via the ATO Portal or Online Services for Agents (OSfA) and dissatisfaction with the process to notify the ATO of a taxpayer's death; and
- Dissatisfaction with the level of assistance offered by the ATO or the advice that was provided.

The Individuals Fix-It Squad

The IGTO became aware during the review that concerns had also been raised in other forums – in particular an internal workshop undertaken by the ATO's 'Individuals Fix-It Squad' in 2015.⁴ This is separate from the complaints lodged with the ATO as noted above. The ATO has explained that:

The Fix-it Squad team undertook research (interviews, blogs, website reviews, academic papers), interviews, and sought feedback via a workshop from the community, state and federal government agencies, not for profit representatives, accountants, and legal professionals. This exploratory process enabled the Fix-it Squad team to identify a number of key issues and developed a preliminary list of recommendations requiring validation and further exploration.⁵

The IGTO sought further information from the ATO in relation to this project and several documents were provided by the ATO. The ATO summarised the stakeholder concerns identified through the Fix-It Squad consultation process as follows:

1. It is a complicated process for clients to notify the ATO and other agencies of a death;
2. Inconsistent information provided and unsympathetic treatment of clients;
3. Proof of identity is challenging for clients acting on behalf of the deceased person;
4. Correspondence is not worded appropriately and does not keep clients informed;
5. Forms and returns are not processed in timely manner and clients are not kept informed of progress. The trust return is long and complex;
6. There are particular issues for rural, economically disadvantaged, non-English speaking background and indigenous clients;
7. Information on ato.gov.au is difficult to find and does not differentiate between deceased estates and final returns;
8. Clients have difficulty locating and accessing superannuation for someone who has died; and
9. Increase the use of digital channels e.g., MyGov.

Although the Fix-It Squad explored 9 recommendations to respond to these concerns, four were deemed not feasible to implement or otherwise did not proceed, while the remaining five were progressed in part only - namely in areas of internal ATO scripting, internal guidance and correspondence reviews.

The 9 recommendations to respond to the issues raised and how they were implemented are set out in the Table 3.⁶

⁴ Australian Taxation Office (ATO), *Finalising a deceased estate* (2016) [Internal ATO document].

⁵ ATO, Communication to the IGTO, 13 February 2020.

⁶ Above n 4.

Table 3: Fixit Squad Recommendations and Outcomes

| Recommendation | Outcome or Implementation |
|---|--|
| Establishing procedures to enable a single notification to Government when someone passes away. | Deemed unfeasible to implement |
| Providing the right information at the first contact through the establishment of a dedicated team to answer deceased estate queries. | Deemed unfeasible to implement |
| Developing a consistent and streamlined 'proof of record ownership' with representatives of the deceased taxpayer contacted the ATO. | No further action undertaken as part of the Fixit Squad recommendation although some internal scripting changes were made as part of the ATO's general reviews of its scripting. |
| Reviewing correspondence to ensure appropriate language and tone are used in particular situations and circumstances. | Selected correspondence review undertaken although scope of the review is unclear |
| Engaging with Public Trustees to develop a single point of contact and simplified processes, including further exploration of pre-filling of trust tax returns. | Did not appear to be implemented following initial limited trial. |
| Providing more guidance and education to the community on deceased estate matters. | ATO eWiki page on deceased estates updated and development of an ATO Deceased Estate Checklist which was published on ato.gov.au |
| Improving the useability and access to information through the ATO's website. | Website updates through the ATO's Content Rationalisation and Improvement Project |
| Streamlining access to superannuation and information about the deceased taxpayer's information for representatives. | Scripting updated |
| Increasing use and functionality of myGov to enable LPRs to manage deceased estate matters online. | Did not appear to proceed following initial planning |

The IGTO notes that many of the issues raised in the Fix-it Squad consultation remain concerns that have been raised with the IGTO through submissions and other consultations as part of the IGTO's review.

The ATO undertook its own internal workshops with officers working with deceased estates to identify potential improvement opportunities for the purposes of participating in this review. The IGTO did not participate in these internal ATO workshops. This is a positive step and one that has aided the IGTO in discussions with the ATO as part of this review on key areas of concern and potential improvement opportunities.

2. BACKGROUND INFORMATION – WHAT HAPPENS AFTER SOMEONE PASSES AWAY

REGISTRATION AND NOTIFICATION OF DEATH

Registration of death and funeral arrangements

When a person passes away, a registered medical practitioner (typically the medical practitioner assisting immediately prior to death) usually certifies their death and finalises details on the cause of death.⁷ In some instances, this task may fall on a coroner.⁸

The family or next of kin are then responsible for laying the deceased to rest (burial or cremation) – which is usually completed following the location of any will, which may set out the deceased's instructions on how they wish to be laid to rest. The family is typically assisted by a funeral director who arranges burial or cremation of the body and other specific requirements such as obituary notices, flower arrangements, religious ceremonies and wakes.

The funeral director also provides information to the relevant State or Territory Births, Deaths and Marriages (BDM) registry⁹ necessary to finalise the registration of death. This information differs from that provided by the registered medical practitioner or coroner and includes the following details:¹⁰

- a. the date and place of death of the deceased,
- b. the sex, date of birth (or age at death) and place of birth of the deceased,
- c. the usual occupation of the deceased before death and whether or not the deceased was a pensioner or was retired immediately before death,
- d. the date of disposal of the remains of the deceased,
- e. the full name and business address of the funeral director or other person who arranged for the disposal of the remains,
- f. if the deceased was born outside Australia, the period of residence in Australia of the deceased before death,
- g. whether or not the deceased was of Aboriginal or Torres Strait Islander origin,
- h. whether, immediately before death, the deceased was married, divorced, widowed, in a registered relationship or an interstate registered relationship or in a de facto relationship or had never married,

⁷ See for example: *Births, Deaths and Marriages Registration Act 1995*, s 39 (NSW).

⁸ See for example: *Births, Deaths and Marriages Registration Act 1995*, s 40 (NSW).

⁹ See for example: *Births, Deaths and Marriages Registration Act 1995*, s 41 (NSW).

¹⁰ *Ibid.*; *Births, Deaths and Marriages Regulation 2017* (NSW) reg 16.

- i. if the deceased had married, the date of marriage (or age of the deceased at the date of marriage), the place of marriage and the full name (including, if applicable, the original surname) of his or her spouse (and the same particulars in relation to each marriage of the deceased if the deceased had married more than once),
- j. if the deceased had been in a registered relationship or an interstate registered relationship, the date of registration of the relationship (or age of the deceased at the date of registration), the place of registration and the full name (including, if applicable, the original surname) of his or her partner in the relationship (and the same information in relation to each registered relationship or interstate registered relationship of the deceased if the deceased had been in more than one such relationship),
- k. the full name (including, if applicable, the original surname) of any de facto partner of the deceased,
- l. the full names, sex and date of birth (or age) of the children (if any) of the deceased (including deceased children),
- m. the full name (including, if applicable, the original surname) and occupation of each parent of the deceased.

Notifying others of the death

Registration of a death with a BDM registry may not alleviate the need to notify other government and business organisations of the deceased's passing. In some cases, these notifications can be extensive, as the list below demonstrates.

Commonwealth Government

- Australian Electoral Commission
- ATO
- Department of Veterans' Affairs
- My Aged Care
- Services Australia (formerly the Department of Human Services which includes agencies such as Centrelink, Child Support, Medicare)

State and Territory Government

- Department of Transport – OPAL and other travel cards
- Public Trustee
- Vehicle registration and licensing authorities

Other Government

- Foreign pension authorities. If the authority's details are unknown, contact Centrelink's International Services
- Local council

Business and Community Organisations

- Banks and credit unions
- Clubs such as the Returned and Services League
- Credit card and hire purchase providers
- Education providers such as school, TAFE or university
- Employers
- Funeral bond provider
- Health professionals - such as doctor, physiotherapist, dentist, podiatrist, optometrist, hearing centres
- Hospital
- Insurance companies – Funeral, Life, Health, Building, etc
- Landlord or tenants
- Local post office
- Professionals such as solicitor, accountant, financial advisor
- Public services such as library and state authorities
- Religious advisor
- Social worker
- Superannuation fund
- Telecommunication providers - such as phones and internet
- Utilities such as gas, electricity and phone companies

Where the taxpayer maintained a presence or conducted business via social media or other channels, notification to those organisations may also be necessary. Similarly, if the taxpayer had assets or conducted their affairs in overseas jurisdictions, steps may also need to be taken to inform those overseas organisations of the taxpayer's death. Some foreign jurisdictions, such as New Zealand, may recognise the right of Australian representatives of the deceased to deal with New Zealand-based assets through a 'resealing' of an Australian grant of probate.¹¹ Discussions on grants of probate and letters of administration are set out later in this section.

¹¹ *Administration Act 1969* (NZ), s 71.

ADMINISTERING THE ESTATE

A family representative of the deceased will most likely need to assist in finalising the deceased estate. These processes are formally referred to as ‘administering the estate’ and can be complicated for lay persons who seldom engage with the legal system, and more so, for those who are grieving the loss of a friend or loved one.

The complications may be exacerbated due to differences in relevant State and Territory succession laws where the deceased person held assets across multiple States and Territories. While each State and Territory has broadly similar requirements, differences will arise in the detail of each regime.¹² Across Australia, there are currently 23 pieces of legislation specifically dealing with inheritance, wills, administration of estates and the grant of probate¹³ excluding other legislation such as family law, partnership and corporations law, electoral legislation, social security law and, of course, taxation law (State and Federal).

If there is a valid will

If a valid will is located, it usually names a person or persons as executor(s) of the estate. In some cases, solicitors, public trustees, trustee companies or a professional advisor may be named executors, but in many cases it will be a surviving spouse, friend or close relative¹⁴. The role of the executor is to manage the estate within the terms of the will and protect the assets of the estate.¹⁵ The executor derives their authority from the terms of the will itself, but legal title to certain assets and the power to distribute or sell them generally arises only after probate has been granted.¹⁶

The executor will need to determine whether probate is required in the particular circumstances of their estate. For example, information from the Supreme Court of New South Wales states:

*Depending on the type, size and value of the assets located in New South Wales it may not be necessary to obtain a grant of probate in New South Wales. There is no statutory requirement to obtain probate in every case. Some asset holders will often release smaller amounts without the need for probate to be obtained.*¹⁷

In other States, such as Queensland, ownership of assets automatically vests in the executor and probate may not be required even when dealing with very large assets, such as real property. For example, where the will directs the transfer of real estate to a beneficiary, the executor may make an application to the

¹² Miranda Stewart and Michael Flynn, *Death and Taxes: Tax-effective Estate Planning*, 6th ed. (2014) p 30.

¹³ *Ibid.*, pp 30-31.

¹⁴ Public Trustee of South Australia, *Commonly Asked Questions* <<https://publictrustee.sa.gov.au/executor-services/commonly-asked-questions/>>.

¹⁵ New South Wales Trustee and Guardian, *What is an Executor?* <www.tag.nsw.gov.au>.

¹⁶ Above n 12, p 33.

¹⁷ Supreme Court of New South Wales, *Applying for Grant of Probate* <http://www.supremecourt.justice.nsw.gov.au/Pages/sco2_probate/sco2_filing_instructions/applying_for_probate.aspx#probate2>.

Queensland Registrar of Titles to register the beneficiary as the owner(s) and the Registrar may do so without requiring evidence of a grant of probate.¹⁸

NSW and Queensland are used here only as illustrative examples and should not be taken to be representative of practices adopted in other States and Territories. Each State and Territory will have its own rules about whether and when the grant of probate will be necessary, often having regard to the type, size and value of assets within the estate.¹⁹

Once grant of probate has been obtained, or the executor has determined that no probate is warranted, the next steps include identifying and collecting assets of the estate, settlement of any legitimate liabilities (including any tax liabilities) and distribution of the residual assets to beneficiaries in accordance with the will.

If there is no will

The New South Wales Trustee and Guardian has observed that at least 45% of Australians do not have a will.²⁰

Where a person dies without a will (intestate) or where the will is invalid or otherwise names an executor who is either unable or unwilling to fulfil the role of executor, different processes will apply. As with the grant of probate discussed earlier, these processes will vary in each State or Territory, depending on the particular requirements of succession laws in operation,²¹ and the type, size and value of the assets within the estate.

The assets of an intestate estate usually vests in the Public Trustee of the relevant State or Territory who may undertake the administration of the estate themselves or appoint another person to administer the estate.²² In NSW, the assets of an intestate estate are 'distributed according to a pre-determined formula with certain family members receiving a defined percentage of [the deceased's] assets despite what the deceased may have wished.'²³ The distribution rules can vary quite significantly between different States and Territories. As a result, the tax treatment of those distributions can also vary significantly.²⁴

Alternatively, the relevant State or Territory Supreme Court may appoint an administrator of the deceased estate.²⁵ Once again, each State and Territory will have its own rules about standing to apply for letters of

¹⁸ *Land Title Act 1994* (QLD) s 112.

¹⁹ See for example: Supreme Court of Victoria, *Grants of Probate and Administration of Deceased Estates* <supremecourt.vic.gov.au>; Supreme Court of Western Australia, *Wills & Probate: Before Applying* <supremecourt.wa.gov.au>; Courts Administration Authority of South Australia, *Applying for a Grant* <courts.sa.gov.au>; Supreme Court of the Northern Territory, *Wills & Probate* <supremecourt.nt.gov.au>; Legal Aid Commission of Tasmania, *Wills and Estates – distributing the estate fact sheet* <legalaid.tas.gov.au>; Supreme Court of the Australian Capital Territory, *Probate, Administration, Reseal of Foreign Grant* <courts.act.gov.au>.

²⁰ New South Wales Trustee and Guardian, *Wills Frequently Asked Questions* <<https://www.tag.nsw.gov.au/wills-faqs.html>>

²¹ Above n 12, p 35.

²² *Ibid*, p 31.

²³ Above n 20.

²⁴ See, for example: *Income Tax Assessment Act 1936*, s 102AG(7)(b).

²⁵ Above n 12, p 31.

administration. In New South Wales, the surviving spouse or de facto of the deceased has priority to make these applications. Other potential applicants include children of the deceased, the deceased's parents or siblings, grandparents and aunts and uncles.²⁶

As with a grant of probate, it may not always be necessary to obtain letters of administration. Information from the NSW Supreme Court states:

*Depending on the type, size and value of the assets located in NSW it may not be necessary to obtain a grant in NSW. There is no statutory requirement to obtain a grant of representation in every case. Some asset holders will often release modest amounts without the need for a grant being made provided you can establish that you are the next of kin.*²⁷

An estate may also be administered informally (i.e., without a grant of letters of administration) where the only assets needing to be dealt with are personal possessions which are not being held by any third party institutions.²⁸

The key differences between an executor and an administrator are that:

- the executor is appointed under the will, while the administrator is appointed by a court where a person has died intestate (i.e., without a will) or where a person has died leaving a will but there is no executor able or willing to discharge the duties of an executor.
- The executor derives their authority from the will although in some jurisdictions, legal title to assets and the power to distribute those assets derive from the grant of probate.²⁹ The executor distributes assets in accordance with the terms of the will. The executor's distribution of assets may be altered as a result of family provision claims (i.e., claims for a share or a larger share of the estate) which may have consequential tax implications.³⁰ On the other hand, the distribution of assets by an administrator is governed by the laws of the relevant State and Territory legislation.³¹

The need for probate or letters of administration

The need to obtain a grant of Probate or apply for Letters of Administration differs between the various States and Territories. Generally, this involves:

- **Probate** - Satisfying the court that the will is the last will made by the deceased, and the person applying for a grant is the appropriate person to be recognised as personal representative of the estate. As part of the application, proof of the death of the deceased is required. There may also be a requirement to give notice/advertise of the intention of the executor to apply for probate

²⁶ See for example: *Succession Act 2006* (NSW) chapter 4.

²⁷ Supreme Court of New South Wales, *Applying for a grant of letters of administration* <http://www.supremecourt.justice.nsw.gov.au/Pages/sco2_probate/sco2_filing_instructions/applying_for_letters_of_administration.aspx>.

²⁸ See for example: Supreme Court of Western Australia, *Wills & Probate: Before Applying* <[supremecourt.wa.gov.au](http://www.supremecourt.wa.gov.au)>.

²⁹ Above n 12, pp 33-34.

³⁰ LawAccess NSW, Family Provision Claims <www.lawaccess.nsw.gov.au>; Above n 12, p 35. In NSW, the court may order that certain property be designated as the notional estate of the deceased – see *Succession Act 2006* (NSW) s 80.

³¹ See for example: *Succession Act 2006* (NSW) chapter 4.

- **Administration** - The grant that the court makes to the administrator of an intestate estate is a grant of letters of administration on intestacy. The grant made by the court, where there is a will but no executor willing or able to apply for a grant, is a grant of letters of administration *cum testamento annexo* (with the will annexed).

The basic requirements for each application are:

- A death certificate in respect of the deceased; and
- proof of the entitlement of the applicant to apply in priority to other persons interested in the estate of the deceased.

Notice of the intention of the applicant to apply for a grant may also be required.

Where a court approves or appoints a representative of the estate, various statutory obligations and responsibilities are imposed on that representative, including the vesting of assets of the deceased and the power to generally dispose of or distribute the assets of the estate in accordance with the wishes of the deceased. Queensland is a notable exception, since it provides an automatic vesting of real property in the hands of the Executor upon the death³² - refer section 45 of the *Succession Act 1981 Queensland*.

However, as previously noted, a deceased estate can be administered informally in some circumstances – that is, without obtaining a grant of representation. This will generally depend on the nature of the assets of the deceased, the jurisdictions involved and in some circumstances, the value of those assets.

For example, if the estate is small and the assets comprise say a motor vehicle, furniture and personal effects and a small bank, credit union or building society account, these can usually be dealt with:

- **Where there is a will** – by production to the bank or financial institution of the will, a death certificate, evidence of the executor’s identity, a completed withdrawal form and a completed indemnity in the form required by the bank or institution. In this case the executor is personally liable for the payment of the funeral expenses and debts of the deceased, up to the value of the estate, and is personally liable to the beneficiaries for payment of their entitlement.
- **Where there is no will** - subject to production of the death certificate, a completed withdrawal form and a completed indemnity as above, and evidence of the identity of the next of kin, payment may be made to the next of kin who will then be liable for payment and distribution as above to the persons entitled.

One disadvantage to proceeding without a grant of probate or letters of administration is that the person dealing with assets is not able to obtain protection from liability for claims through the publication of statutory notices. There may also be consequences for third party asset holders when dealing with assets in the absence of grants of probate or letters of administration. For example, in the case of *Public Trustee v CBA & Ors*,³³ the Public Trustee (with probate) successfully brought action against CBA and Bank SA for repayment of some \$177,000 which had been released to the deceased’s son who had not obtained a grant of probate.

³² *Succession Act 1981* (QLD) s 45.

³³ *Public Trustee v CBA & Ors* [2018] SASC 25.

An option to refer a small estate to (say) the New South Wales Trustee and Guardian who has additional powers in dealing with small estates including the filing of an election to administer the estate which provides all the protections of a grant of probate or administration.

The precise requirements and procedures will depend on the laws of the relevant State or Territory and the requirements of the institutions with which the deceased held assets. However a high level summary and guide as to how various assets may be dealt with upon death is as follows:

- **Banks and building societies** - Every bank and building society has its own guidelines and requirements for releasing funds without requiring a grant of probate and enquiries need to be made with the relevant institution.

- **Joint accounts** - On the death of one of the joint owners, the account can be noted without any formality and the account reverts to the surviving account owner or owners. Production of the death certificate is usually sufficient to have the change made to the account.

- **Life insurance** - Some policies of assurance mature on death, under which the proceeds are payable to their personal representatives. These are commonly known as whole of life policies.

A life assurance society is empowered by an Act of Parliament to pay the proceeds of such a policy or policies, so long as the amount of insurance or the aggregate amounts of insurance (in the case of more than one policy with the society) does not exceed a prescribed amount. The insurance must be paid to the widow or widower, to certain next of kin, to the legatee or to the personal representative of the deceased. It may be paid without production of probate or letters of administration. Bonus additions are disregarded when ascertaining the amount payable.

- **Motor vehicles** - A transfer of the registration of a motor vehicle following the death of the owner may be done without production of a grant of probate or letters of administration to the Department of Transport and Main Roads. It may be a simple matter of producing a certified copy of the Will.
- **Furniture, jewelry and personal belongings** - Ownership of furniture, jewelry and personal belongings can be handed over to those entitled following the death of the owner without the need for a grant of probate or letters of administration.
- **Superannuation** - The distribution of superannuation proceeds is generally a matter for the trustee of the Superannuation Fund. The proceeds will not form part of the deceased estate where they are distributed directly to the surviving spouse or dependant. A binding death benefit nomination can override a trustee decision to pay the proceeds to the spouse or dependant. Whether the trustee of the fund want to sight the probate/letters of administration will depend on the fund.
- **Real Property** - A sale or distribution of real property to beneficiaries is usually accompanied by a grant of probate or letters of administration – except perhaps in Queensland. However, it should be noted that joint tenants (unlike tenants in common) possess a right of survivorship - that is, the interest of a deceased joint tenant passes to the surviving joint tenant(s) 'automatically'. This means that a joint tenant does not have an interest in the land that can be passed to another through a will unless they become a sole owner because the other joint tenants have predeceased him or her. The noting of the survivor(s) on NSW Torrens title land is achieved by simply registering a [Notice of Death form O2ND](#).

Accordingly, a deceased estate can be administered informally in some circumstances – that is, without any legal requirement to obtain probate or a grant of administration. This has implications for both the deceased estate, its representatives and the Commissioner.

3. BACKGROUND INFORMATION - TAX OBLIGATIONS AFTER DEATH

OVERVIEW OF TAX ADMINISTRATION

A threshold question arises – **Who should finalise the deceased’s tax affairs after their death?** This includes notifying the ATO of the death, lodging outstanding tax returns, paying taxes and claiming refunds.

Legally, the issue is complicated - it depends on the interaction between State and Territory (succession, probate, property, administration and other) laws and Federal taxation laws. Although the position is reasonably clear *after* a grant of probate and letters of administration, as noted above, this is not always required as a matter of State and Territory law.

Practically, if the deceased has indicated their intention (by their last will and testament) is to appoint a ‘named’ representative, should this determine who can represent the deceased to finalise outstanding tax matters? If there is no will, should the surviving spouse or other beneficiaries be recognised for tax purposes? Who can engage with the ATO if there has been no grant of probate? What if family members and next of kin of the deceased wish to engage with the ATO to access refunds or credits due? When do representatives of the estate have certainty that tax matters have finalised and assets may be distributed to beneficiaries (i.e., the ATO is out of time to recover unpaid taxes from the assets of the deceased or beneficiaries)? Clarity on these issues would assist representatives of the deceased, as this can affect their personal liability (and reputation), the timing and value of distributions and asset transfers and ultimately equity as between beneficiaries.

This Review has highlighted that improved and simplified taxation administration for deceased taxpayers and their estates may depend on how the ATO administers tax laws which necessarily raise issues of intersection between State/Territory and Federal laws.

This is a threshold issue that is outlined below to help identify some questions that require clarity for the purposes of improved tax administration. The ATO have agreed to confirm their position on this threshold question (refer Recommendation 7) but it should be noted that implementation of a number of simplification recommendations depend on the position to be confirmed.

Introduction

As noted earlier:

- State and Territory laws will ultimately determine whether a deceased estate requires a grant of probate or letters of administration and a Court appointed (or recognised) LPR, by reference to the type, size and value of assets within the estate;

- different institutions with which the deceased held assets will have different requirements on whether the grant of probate or letters of administration is necessary in order for them to release the assets; and
- the release of assets to a person without grant of probate (even if that person is named in a will) is not without risk.

It is noted that definitions of 'legal personal representative'³⁴ and 'trustee'³⁵ as they apply to deceased estates within the tax laws includes an executor or administrator and does not qualify these roles by reference to whether or not the person has a grant of probate or letters of administration. Practically, however, whether a deceased representative has or has not obtained probate or letters of administration can affect how the Commissioner may raise liabilities and pursue recovery of unpaid taxes.

No tax liability arises unless and until the Commissioner issues an assessment (usually following lodgement of the income tax return) or the Commissioner otherwise makes an amended assessment or determination as to liability of the deceased estate. The recovery mechanisms in these circumstances are set out in sections 260-140 and 260-145 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953).

- Section 260-140 of Schedule 1 to the TAA 1953 provides that where either probate or letters of administration have been obtained³⁶ the trustee **must**, *inter alia*, 'provide any returns and other information that the deceased person was liable to provide, or would have been liable to provide if he or she were still alive.'³⁷ The returns lodged provide a basis for assessment of the liability and recovery actions to be taken by the Commissioner.
- Where, after six months following the death of the taxpayer, neither probate nor letters of administration have been obtained, the Commissioner is empowered to make a determination of the liability of the deceased taxpayer (section 260-145 of Schedule 1 to the TAA 1953) and to take recovery action in accordance with section 260-150 of Schedule 1 to the TAA 1953.

The challenges associated with this situation, both for the deceased representative and for the ATO are illustrated in the example below.

EXAMPLE 1

Beth lives in Brisbane. She owns 6 rental properties, a small bank account and some personal effects.

Beth dies. By her Will she appoints her niece Bella as her sole executor and beneficiary.

Bella is advised that she does not need to obtain probate from the Queensland Supreme Court. This appears to be consistent with information on the Queensland Supreme Court website, which includes the following statement:

³⁴ *Income Tax Assessment Act 1997*, s 995.1.

³⁵ *Income Tax Assessment Act 1936*, s6(1).

³⁶ *Taxation Administration Act 1953*, Sch 1, sub-s 260-140(1).

³⁷ *Taxation Administration Act 1953*, Sch 1, para 260-140(3).

Do you need probate?

You should ask the organisation involved (e.g. financial institution) whether you need a grant of probate. You may not need one if:

1. the value of the assets is relatively small (e.g. a small bank account)
2. the real estate is to be transferred to a beneficiary named in the will
3. you have to sell real estate.

You don't need a grant of probate if the asset (e.g. the family home) is in joint names because it already belongs to the surviving joint owner.

The Land Titles registry has a special procedure for 2 and 3, and you don't usually need a grant of probate.

Bella can transfer the properties to herself – she does not need to obtain probate to do this – because particular Queensland laws operate to vest real property in the named executor and transfer of that property to a named beneficiary is possible without the need for probate³⁸. However, before she does so, she will need to consider her duties and obligations under succession law, including those relating to the payment of liabilities of Beth's estate.

Bella is unsure whether Beth had any outstanding tax obligations at the time of her death (i.e., unpaid tax amounts or unlodged tax returns). Bella wants to be sure that all outstanding tax matters have been addressed before she formally proceeds to distribute the assets and wind up the estate³⁹.

Bella (as Executor) contacts the ATO to obtain information about Beth's tax affairs but the ATO officer requests that Bella must first obtain a grant of probate of Beth's Will.

This example poses a number of questions for Bella:

- does Bella need to obtain probate for tax purposes only?
- how can Bella be confident that she knows what tax liabilities and lodgements are outstanding for Beth and her estate?
- without a grant of probate⁴⁰ - what information could be disclosed by the ATO to Bella about Beth's affairs to assist her in lodging any outstanding returns on Beth's behalf?
- should/can Bella nonetheless lodge any returns on Beth's behalf?
- can Bella receive any refunds or credits owing to Beth in the absence of probate? and

³⁸ See for example: *Succession Act 1981* (Qld) ss 33E and 45; *Land Titles Act 1994* (Qld) ss 111 and 112; *Land Act 1994* (Qld) ss 376-379.

³⁹ Bella prudently does so having regard to the Commissioner's power to recover outstanding tax liabilities under sections 260-145 and 260-150 of Schedule 1 to the *Taxation Administration Act 1953*, and having regard to any duties and obligations she has under succession law. Bella may also be personally liable under section 254(1) of the *Income Tax Assessment Act 1936* for any tax payable in respect of any income, profits or gains arising *after* Beth's death, to the extent of any amount that she has retained, or should have retained

⁴⁰ The Legislative Instrument to recognise a tax practitioner representing an LPR of the deceased and relevant ATO Data Packs are only available where there has been a grant of probate or letters of administration.

- *what confidence does Bella have in winding up Beth's estate that there won't be any residual tax liabilities that could be recovered from her personally?*⁴¹

What ought to have occurred, in this case, is that the ATO officer with whom Bella spoke should have recognised that some limited information to help Bella pay any outstanding tax liabilities and to identify and lodge any outstanding returns could be provided under section 355-50(2) of the Schedule 1 to the TAA 1953 as the provision of that information would be for the purposes of administering the tax laws (i.e., facilitating lodgement).⁴² Had that occurred, Bella would have more easily understood which were the outstanding tax obligations that she needed to attend to before proceeding to distribute assets of the estate. With that information, she would also have been in a better position to attend to those obligations

Even without the information provided by the ATO, Bella may nonetheless be able to compile a sufficient return. In the absence of probate or letters of administration, the ATO has indicated it is able to process a return and may be able to release refunds to her depending on the amount.

As to the question of what confidence Bella may have in winding up Beth's estate, because Practical Compliance Guideline (PCG) 2018/4 only applies to an LPR if probate or letters of administration have been obtained and there is no equivalent guidance for taxpayers where probate or letters of administration has not and does not need to be obtained – LPRs and their advisers wanting certainty in excess of the certainty provided by lodging all outstanding returns may perceive that their only option is to incur otherwise unnecessary compliance costs.

The issues requiring clarification are noted below and in the section – *Interaction and Consistency between State/Territory and Federal laws*.

Notifying the ATO of the death a taxpayer

The ATO receives information on deceased taxpayers monthly through data from State and Territory Births, Deaths and Marriages (BDM) registries around Australia.⁴³

The numbers of deaths notified to the ATO in each of FY17, FY18 and FY19 are set out in Table 4 and they do not differ markedly from numbers reported by the ABS. It should be noted that a direct comparison of the two figures is not possible as the ABS data is measured on a calendar year basis while the ATO data is based on financial years.

⁴¹ See: ATO, Practical Compliance Guideline (PCG) 2018/4 - *Income tax - liability of a legal personal representative of a deceased person*. The PCG notes at paragraph 7 that this Guideline does not apply if probate or letters of administration have not been obtained because in these cases an LPR is not made personally liable for the deceased's outstanding tax liabilities. A different collection mechanism applies under sections 260-145 and 260-150 of Schedule 1 to the TAA 1953.

⁴² In the past, the ATO has provided the requested information under the performance of duties exception, but the training and systems were such that this would not have happened all the time, and there would have been instances where its officers adopted a conservative approach to information disclosure.

⁴³ ATO, *Deceased estate checklist* (12 December 2019) <<https://www.ato.gov.au/individuals/deceased-estates/deceased-estate-checklist/>>.

Table 4: Number of Deaths reported to the ATO in FY17, FY18 and FY19

| FY17 | FY18 | FY19 |
|---------|---------|---------|
| 166,310 | 169,994 | 164,305 |

Source: ATO

The IGTO is not aware of any statutory requirement for the family or other representative of the deceased taxpayer to notify the ATO specifically. However, the ATO website states that:⁴⁴

When someone has died, it is a good idea to let us know about their death if any of the following applied:

- *the deceased person had a tax file number (TFN)*
- *the deceased person has ever lodged a tax return*
- *the deceased person should have lodged a tax return.*

One purpose of the ATO notification (which is separate from data the ATO receives from BDMs) is to ensure the ATO's systems have identified the taxpayer as deceased so that further correspondence will not be issued to the deceased – this is particularly necessary in cases where the ATO has not been able to match State and Territory death records with information on its own systems. Another purpose for notification is to inform the ATO of any authorised representative (such as an executor or administrator with a grant of probate or letters of administration), or agent appointed by them who may seek to engage with the ATO to finalise the affairs of the deceased. The ATO considers this an 'official' notification and correspondence may issue to the authorised representative thereafter.

This is not a mandated, statutory or formal requirement.

The LPR will typically publish a notice in relation to the estate's administration so that creditors, including the ATO, are notified of the death and the requirement to register their claim on the assets of the estate.⁴⁵ Approaches to notification may differ between different States and Territories.

Accessing information of the deceased taxpayer held by the ATO

Should a representative (including the LPR) need to access tax information about the deceased taxpayer, the ATO's administration, having regard to the tax secrecy provisions, is that the disclosure of protected information can only be made if any of the specified exceptions apply. In relation to information of the deceased, this is where the disclosure is made to an LPR with the grant of probate or letters of

⁴⁴ ATO, *Deceased Estates Notifying Us* (27 June 2019) <<https://www.ato.gov.au/Individuals/Deceased-estates/Notifying-us/>>

⁴⁵ See for example: *Probate and Administration Act 1898 (NSW)* s 92 and *Succession Act 2006 (NSW)* s 93; *Trustee Act 1936 (SA)* s 29.

administration or in limited other circumstances.⁴⁶ Towards the end this review investigation, the ATO updated its website to state:

*Except in limited circumstances, we can't disclose the deceased person's information to other people. This includes family members, an individual named as executor in a will, or their nominated representatives. We'll assess any request for information on a case-by-case basis. We won't record the person or any nominated representative as an authorised contact for the deceased estate.*⁴⁷

Generally, however, we understand that the ATO's administrative approach is that its officers are not authorised, except in the limited circumstances noted above, to disclose protected information prior to the LPR having obtained a grant of probate or letters of administration, because the ATO does not consider that the authority of a person to act as the representative of a deceased taxpayer is confirmed until grant of probate or letters of administration is obtained. This administrative approach is a result of the secrecy provisions set out in Division 355 of Schedule 1 to the TAA 1953 and different State and Territory laws on the nature of a person's representation. However, although the limited circumstances are unspecified, the IGTO understands there is no general exception or limited circumstances applying where there is no need to obtain probate nor letters of administration in respect of the deceased or their estate.

There are exceptions contained within Division 355 that enable ATO officers to disclose protected information without committing an offence.⁴⁸ These exceptions include, *inter alia*, where the disclosure is made for the purposes of administering any taxation law,⁴⁹ or where the disclosure enables an entity to understand and comply with their obligations under any taxation law⁵⁰. For example, that exception should allow the ATO to provide information needed in order to lodge a tax return, or that a tax return is not required to be lodged, but if other information is sought, it may not fall within this exception. The ATO does not believe that these exceptions are sufficient to allow it to provide unrestricted access to protected information to a representative of the deceased taxpayer absent the grant of probate or letters of administration and each disclosure must be assessed on a case-by-case basis. Specifically, the ATO has informed the IGTO that:

*The Commissioner can also disclose information in the performance of his duties as a taxation officer pursuant to section 355-50. The scope of this exception is limited, and must be judged on a case by case basis. For example, it may be necessary in a particular case to disclose information in order to obtain lodgement of an outstanding return. But the disclosure would be limited by, for example, what was necessary for the taxation officer to obtain the return, and the taxation officer may be unable to provide further information that the citizen may want to know. The exception does not allow the ATO to provide carte blanche access to a deceased person's information, for example, through online ATO systems.*⁵¹

⁴⁶ ATO, *Accessing a deceased person's information* (20 May 2020) <<https://www.ato.gov.au/Individuals/Deceased-estates/Accessing-a-deceased-person-s-information/>>.

⁴⁷ Above n 46.

⁴⁸ *Taxation Administration Act 1953*, Sch 1, s 355-50.

⁴⁹ *Taxation Administration Act 1953*, Sch 1, s 355-50(2) Table Item 1.

⁵⁰ *Taxation Administration Act 1953*, Sch 1, s 355-50(2) Table Item 6.

⁵¹ ATO, Communication to the IGTO, 19 December 2019.

Some practical difficulties can arise for representatives of deceased taxpayers particularly where, as observed earlier, in some States and Territories, probate or letters of administration are not required (in simple or low value estates).

The ATO's administrative approach to dealing with representatives of deceased estates where probate or letters of administration are not required could be made clearer in relation to the type of information that may be disclosed to such representatives, whether the ATO will accept and process lodgements and the types of refunds or credits that may be issued without probate or letters of administration.

Lodgement obligations

The LPR may be expected to lodge the tax returns on behalf of the deceased and their estate due to requirements imposed by tax laws (in some cases because there is an obligation to pay tax and in some cases to obtain tax credits or refunds – consistent with their duties of administration) or as a result of the desire to complete the tax affairs of the deceased having regard to any duties and obligations under succession law. This includes:

- any prior year returns that are outstanding;⁵²
- a date of death return from 1 July to the date of death of the taxpayer;⁵³ and
- where required, a deceased estate trust return for the remainder of the financial year and any other financial years during which the estate is administered. It should be noted that there are some exclusions to the requirement to lodge such a return within the first three years following the death of a taxpayer.⁵⁴

The statutory obligation to lodge a tax return arises under section 161 of the *Income Tax Assessment Act 1936*. Every person is required to file a return for a year of income if required by the Commissioner by legislative instrument published in the Gazette. For example, the *Legislative Instrument - Notice of Requirement to Lodge a Return for the Income Year Ended 30 June 2019*, as the name suggests, sets out the Commissioners' requirements for lodging an income tax return for the financial year ended 30 June 2019.⁵⁵

Extracts from this Legislative Instrument are set out in Annexure F but in summary, a person is required to lodge a return *inter alia* when:

- taxable income for the income year was more than \$18,200 (or a lesser amount if resident for only part of the income year) (Table B);

⁵² Above n 12, p 70; ATO, *Doing tax returns for a deceased person* (17 April 2019)

<<https://www.ato.gov.au/individuals/deceased-estates/doing-tax-returns-for-a-deceased-person/>>.

⁵³ For example: *Legislative Instrument – Notice of Requirement to lodge a return for the Income Year ended 30 June 2019*; see also ATO, *Doing tax returns for a deceased person* (17 April 2019) <<https://www.ato.gov.au/individuals/deceased-estates/doing-tax-returns-for-a-deceased-person/>>.

⁵⁴ ATO, *Doing trust tax returns for a deceased estate* (30 August 2019) <<https://www.ato.gov.au/individuals/deceased-estates/doing-trust-tax-returns-for-a-deceased-estate/>>.

⁵⁵ *Legislative Instrument - Notice of Requirement to Lodge a Return for the Income Year Ended 30 June 2020* is the most current version to cover lodgement requirements for FY20. The requirements do not differ materially from those in FY19.

- where an amount has been withheld from payments or an amount paid to the Commissioner under the Pay As You Go (PAYG) withholding system (Table A);
- where a PAYG instalment amount has been paid (Table A);
- where a taxpayer has made a loss or capital loss or has carried forward losses from prior years (Table A).

The above represent only some of the circumstances in which a person needs to lodge a tax return. The Legislative Instrument sets out all the circumstances in which the Commissioner requires a person to lodge a return.

Separately a trustee of a trust estate must lodge a return unless specifically exempted (see Table E of the Legislative Instrument). The Legislative Instrument also sets out that a trustee is not required to lodge a return if the trustee of a trust estate that is a resident trust estate of a deceased person and each of the following apply:⁵⁶

- (1) The deceased person died less than 3 years before the end of the *income year;
- (2) No beneficiary is presently entitled to a share of the income of the trust estate;
- (3) The net income of the trust estate under section 95 of the ITAA 1936 is **less than \$18,201**; and
- (4) There are no non-resident beneficiaries of the trust estate.

In both cases above, even in circumstances where a return is not required to be lodged, a person or trustee may nonetheless furnish a return.

Where a deceased estate trust return needs to be lodged,⁵⁷ the LPR (as trustee of the deceased estate trust) will need to apply for a deceased estate Tax File Number (TFN)⁵⁸, because after the date of death, the deceased person's estate is treated as a separate taxpayer from the deceased person for tax purposes⁵⁹. Separate rates of tax also apply – although for the first three years they are mostly aligned with the individual rates of tax (for Australian resident deceased estates) as described later in the report.

As discussed earlier, executors and administrators are potentially personally liable for the debts of the deceased where they distribute assets before satisfying known liabilities of the estate or where they have notice of a potential claim by the Commissioner⁶⁰. The statutory right of the Commissioner to recover liabilities from a deceased person either in an administered estate (section 260-140 of Schedule 1 to the TAA 1953) or an unadministered estate (section 260-145 of Schedule 1 to the TAA 1953), together with their duty to deal with the affairs of the deceased person pursuant to State and Territory succession

⁵⁶ Above n 55, Table O.

⁵⁷ See the relevant Legislative Instrument – for example – *Notice of Requirement to lodge a return for the Income Year ended 30 June 2019*, Table E and Table O

⁵⁸ ATO, *Deceased estate checklist* (12 December 2019), <www.ato.gov.au>. See also Above n 12 for more detailed information on taxation and estate planning.

⁵⁹ ATO, *Tax File Number – Application for A Deceased Estate* <www.ato.gov.au>.

⁶⁰ Above n 41.

regimes, mean that it would be imprudent and unlikely that any executor or administrator would ignore any outstanding tax lodgement obligations.

Furthermore, it is also important to note that a tax return is not always lodged for the purposes of reporting and paying tax. Australia's income taxation system is designed in large part to collect income taxes progressively and before any tax liability arises. Accordingly, there is likely to be circumstances where a tax return is filed on behalf of a deceased or their estate for assessment of taxable income and refund of refund of monies or credits owing by the Commissioner.

The rules of engagement between the ATO and the deceased's representative *after* probate and letters of administration are obtained are reasonably clear (especially following the Legislative Instrument) and information flows to the LPR are not hindered by tax secrecy provisions.

However, probate and letters of administration are not always required, as noted previously, even when dealing with very large assets such as real property. In these circumstances, the rules of engagement between the deceased's representatives and the ATO are less clear. Two examples to illustrate these circumstances are set out below.

EXAMPLE 2

A retiree (Betty) dies on 31 March 2019. At the time of her death, she held shares in an Australian bank and a joint bank account with her spouse. These are the only assets in her estate. As the bank account was held jointly, it does not form part of Betty's estate and is transferred into her spouse's name. As the value of the shares were relatively low, the company transferred them into the name of Betty's surviving spouse without requiring probate or letters of administration to be obtained. However, before her death (Scenario A) (or alternatively after her death and before the shares are transferred into the name of the surviving spouse (Scenario B)), the Australian bank pays a franked dividend to Betty.

Were Betty still alive at 30 June 2019, Betty could simply lodge an application to claim a refund of the franking credits⁶¹. That is, the franking credits would be refunded without a need to lodge a tax return. It should be noted that there would otherwise be no requirement to lodge a tax return under Table A or Table B of the Legislative Instrument – unless the dividend income exceeds \$18,200.

A. *Where Betty dies on 31 March 2019 and the dividend is paid prior to her death – a date of death return will need to be filed on behalf of Betty to secure the refund, even though there is no statutory obligation to lodge under the Legislative Instrument because under Table A and Table B Betty will be below the tax free threshold of \$18,200.*

B. *Where Betty dies on 31 March 2019 and the dividend is paid after her death but before the name change is registered with the share registry – the tax laws require a tax return to be filed in the name of Betty's deceased estate. A return is required under the Legislative Instrument because Table E applies and the exception under Table O does not apply because the amount is paid to the beneficiary – Betty's surviving spouse. This would necessitate an application for a TFN for the estate*

⁶¹ ATO, *Refunding Franking Credits – Individuals – Applying for a Refund* (8 May 2019) <www.igt.gov.au>.

and a trust return to be lodged by the executor named in Betty's will (or an administrator where Betty died intestate).

On the current administrative practice, where Betty's spouse seeks to have the franking credits (on dividends received before Betty's death) refunded, there is presently no other option than to lodge a date of death income tax return. In respect of franking credits on dividends issued after Betty's death, her spouse may be able to claim the franking offset in their own income tax return (although a deceased estate trust return will still be required to be lodged).

If probate or letters of administration are not required or otherwise not obtained by the representatives of Betty's deceased estate, the ATO is of the view that the tax secrecy provisions do not prevent ATO officers from disclosing information about Betty's tax affairs to her spouse for the purposes of completing Betty's outstanding tax returns under the performance of duties exception (section 355-50(2) Item 1 of Schedule 1 to the TAA 1953) because the disclosure is for the purpose of administering a tax law. Any such request for access to Betty's information is assessed by the ATO officer on a case-by-case basis.

However, as Betty's spouse does not have a grant or probate or letters of administration, they are not able to be added as an authorised contact for Betty to be able to access all information held by the ATO in relation to Betty. As such information that may be desired for other purposes (unrelated to Betty's tax compliance) would not be provided by the ATO.

EXAMPLE 3

John dies in November 2019. At the time of his death, John was working full time and earning an income in excess of \$18,200. His main asset is his house in Brisbane. Under Queensland law, John's real property vests in the named executor (Carol) in his will who is able to deal with that asset without needing to obtain a grant of probate. Carol discovers that John had failed to lodge his income tax returns for the past seven years. Under the legislative instrument, there is a requirement for a date of death return to be lodged and prior year returns to be lodged.

To discharge her obligations as an executor, Carol wishes to ensure that all of John's lodgements are up to date, and any tax liabilities discharged, before distributing any assets.

She is advised to do so to protect her against risk of personal liability under tax law⁶² as well as succession law.

This also provides protection for both herself as Executor and the beneficiaries of the estate - should the Commissioner choose to exercise his powers under section 260-145 of Sch 1 of the TAA 1953 to recover any outstanding liabilities from John's estate after assets have been distributed.

As no probate or letters have been obtained, there is no right for Carol (or her representative) to obtain information about John's tax affairs from the ATO. Carol contacts the ATO call centre and speaks with an officer, asking for information relating to John's salary and wages to assist her with

⁶² The Commissioner's ability to collect pre-death tax liabilities is provided for in sections 260-140, 260-145 and 260-150 of Schedule 1 to the *Taxation Administration Act 1953* and, in relation to post-death tax liabilities of the estate, in section 254 of the *Income Tax Assessment Act 1936*.

lodging the outstanding returns. The officer refuses to provide any information citing tax secrecy and the fact that Carol does not have grant of probate or letters of administration.

If Carol was wanting the information in order to lodge the outstanding tax returns, or to establish whether there were any outstanding returns to lodge, the ATO officer is not correct in refusing Carol's request for information. The officer should have considered whether the information requested by Carol is able to be released under an exception to the secrecy laws where such information is provided in the performance of the taxation officer's duties to enable the lodgement of John's outstanding income tax returns.

In the past, the ATO has provided the requested information under the performance of duties exception, but the training and systems were such that this would not have happened all the time, and there would have been instances where its officers adopted a conservative approach to information disclosure. The ATO has informed the IGTO that as a result of the current review, it is developing more detailed guidance and training for its staff as well as escalation processes for more experienced and knowledgeable officers to consider these requests.

Tax assessments and liability of the LPR

A concessional tax period applies for the first three financial years following the death of the taxpayer. The deceased estate income is taxed at the individual income tax rates, with the benefit of the full tax-free threshold [currently \$18,200], but without the tax offsets (concessional rebates), such as the low-income tax offset. No Medicare levy is payable. Different tax rates apply in the fourth income year and thereafter.⁶³

This concessional tax period is provided by law and cannot be extended.⁶⁴

The current individual income tax rates (FY20) are as follows:

Table 5: Tax rates for first three (3) financial years after death*

| Taxable Income | FY20 – Tax Rates |
|----------------------|---|
| 0 – \$18,200 | Nil |
| \$18,201 – \$37,000 | 19c for each \$1 over \$18,200 |
| \$37,001 – \$90,000 | \$3,572 plus 32.5c for each \$1 over \$37,000 |
| \$90,001 – \$180,000 | \$20,797 plus 37c for each \$1 over \$90,000 |
| \$180,001 and over | \$54,097 plus 45c for each \$1 over \$180,000 |

*equivalent to Individual income tax rates) in FY20

Most estates would be fully administered within three (3) years of the date of death – especially simple estates. There will be some estates where family or legal disputes may cause administration delays or where the complexity of the estate results in the administration extending the estate beyond three years.

⁶³ ATO, *Tax rates – deceased estates* (27 June 2019) <<https://www.ato.gov.au/Individuals/Deceased-estates/Doing-trust-tax-returns-for-a-deceased-estate/Tax-rates---deceased-estate/>>; see also *Income Tax Rates Act 1986*, s 14.

⁶⁴ *Ibid.*

Where a Testamentary trust is established under the will, a separate TFN for that estate would be required - that is, for each testamentary trust established under the terms of the Will.

After the three financial year period expires, different tax rates apply as follows:

Table 6: Tax rates applicable to deceased estates after three (3) financial years

| Deceased estate taxable income (no present entitlement) | FY20 – Tax Rates |
|---|--|
| \$0 – \$416 | Nil |
| \$417 – \$670 | 50% of the excess over \$416 |
| \$671 – \$37,000 | \$127.30 plus 19% of the excess over \$670 If the deceased estate taxable income exceeds \$670, the entire amount from \$0 will be taxed at the rate of 19% |
| \$37,001 – \$90,000 | \$7,030 plus 32.5% of the excess over \$37,000 |
| \$90,001 – \$180,000 | \$24,255 plus 37% of the excess over \$90,000 |
| \$180,001 and over | \$57,555 plus 45% of the excess over \$180,000 |

EXAMPLE 4:

Hannah's mother passed away on 1 October 2018. Hannah was appointed executor under her mother's will.

Hannah may need to lodge a date of death income tax return for mother, covering the period 1 July 2018 to 1 October 2018 (that is, for the financial year ended 30 June 2019). Any tax payable in this return would be assessed at individual income tax rates.

The deceased estate of Hannah's mother is entitled to concessional income tax rates (Table 5) for any deceased estate trust returns lodged for the following periods:

- *2 October 2018 to 30 June 2019*
- *1 July 2019 to 30 June 2020; and/or*
- *1 July 2020 to 30 June 2021*

Any deceased estate trust return lodgements made after 30 June 2021 would not have the benefit of concessional income tax rates and will be assessed on rates applicable to deceased estates.

An LPR may be personally liable for the tax obligations of the deceased and the deceased estate. Accordingly an LPR (with grant of probate or letters of administration where required and without such a grant where it is not required) will be advised to complete the tax lodgement and payment obligations of

the deceased person⁶⁵. However they may draw from the estate in meeting those obligations. Where an LPR has already distributed all of the assets of the deceased estate, the LPR may still be held personally liable to fulfil those obligations. Similarly, an LPR (with grant of probate or letters of administration where required and without such a grant where not required) will be advised to complete the tax lodgement and payment obligations of the deceased estate, in their capacity as trustee of that estate. This includes payment of any outstanding tax debts due to the Commonwealth - to the extent of assets in the estate or any further estate assets which may later come into the hands of the LPR in their capacity as trustee of that estate. The LPR would be entitled to an indemnity out of the estate for expenses properly and personally incurred in the administration of the estate.

The ATO no longer issues a 'clearance' or 'finalisation' certificate that confirms whether an LPR has fulfilled all relevant tax obligations before the LPR distributes assets. The Commissioner has more recently issued a Practical Compliance Guideline⁶⁶ to provide some certainty to LPRs in limited circumstances – that is, for smaller, less complex estates.

INTERACTION AND CONSISTENCY BETWEEN STATE/TERRITORY AND FEDERAL LAWS

The interaction between relevant State and Territory laws on issues of succession, probate and administration and Federal taxation laws is a threshold issue that can affect tax administration outcomes. A potential tension arising from this intersection is manifested most clearly in relation to the manner in which the ATO deals with and administers tax in relation to deceased taxpayers and their estates.

As set out above, the taxation laws provide very clear collection and recovery mechanisms to allow the Commissioner to collect taxes – both with (administered) and without (unadministered) a grant of probate or letters of administration. Section 260-140 of Schedule 1 to the TAA 1953 provides a mechanism for lodgement of the deceased returns and payments of liabilities where probate or letters of administration have been obtained. Sections 260-145 and 260-150 of Schedule 1 to the TAA 1953 enable the ATO to make a determination of the tax liabilities of the deceased and a recovery mechanism against the assets of the estate where probate or letters of administration have not been obtained. Accordingly, a person administering an estate that has not obtained probate or letters of administration, acting prudently may be expected to lodge tax returns and to pay tax debts of the deceased as a result of the potential operation of sections 260-145 and 260-150 of Schedule 1 of the TAA 1953 and because of their obligations under State and territory succession law to properly administer the estate.

⁶⁵ See for example: BNR Partners, *The Tax Obligations of a Legal Personal Representative* <<https://bnrpartners.com.au/wp-content/uploads/2018/12/ebook-17.12.18.pdf>>; Paxton Hall, *Death and Taxes – Risk of Personal Liability for Executors* <<https://www.paxton-hall.com.au/2019/09/death-and-taxes-risk-of-personal-liability-for-executors/>>; Cooper Grace Ward, *Duties of Executors and Administrators* <<http://www.cgw.com.au/wp-content/uploads/2017/11/Duties-of-executors-and-administrators-general-overview-3436-1850-1892-v.6.pdf>>

⁶⁶ Above n 41.

The threshold questions for tax administration purposes are:

- Can State and Territory laws determine the operation of Commonwealth laws (for example, to define who is a representative of a deceased individual)?; or
- Does the Commonwealth taxation law operate as a Code for the purpose of recognising representatives of the deceased?; and
- Can federal law, such as the TAA 1953, operate to qualify or limit the application of State and Territory laws?

Interaction between State succession laws and Commonwealth taxation laws has previously been considered by the High Court in *Taylor & Anor v Deputy Commissioner of Taxation*⁶⁷ – albeit in relation to another taxation act⁶⁸ which was in these terms:

216. When tax not paid during lifetime.

The following provisions shall apply in any case where, whether intentionally or not, a taxpayer escapes full taxation in his lifetime by reason of not having duly made full complete and accurate returns:

(a) The Commissioner shall have the same powers and remedies against the trustees of the estate of the taxpayer in respect of the taxable income of the taxpayer as he would have against the taxpayer if the taxpayer were still living.

(b) The trustees shall make such returns as the Commissioner requires for the purpose of an accurate assessment.

(c) The trustees shall be subject to additional tax to the same extent as the taxpayer would be subject to additional tax if he were still living:

Provided that the Commissioner may in any particular case, for reasons which he thinks sufficient, remit the additional tax or any part thereof.

(d) The amount of any tax payable by the trustees shall be a first charge on all the taxpayer's estate in their hands.

In that case, the Deputy Commissioner sought to recover an unpaid tax liability (totalling \$106,998.50 and covering a period of 10 years prior to death) from the deceased estate⁶⁹. The amended assessments issued almost 7 years after the date of death and notwithstanding that the executors had taken prior necessary

⁶⁷ *Taylor v Deputy Commissioner of Taxation* [1969] HCA 25; 123 CLR 206.

⁶⁸ *Income Tax and Social Services Contribution Assessment Act 1936-1960*, s 216.

⁶⁹ The taxpayer passed away on 6 December 1954. After his death the Deputy Commissioner of Taxation issued amended assessments of income tax and social services contributions on the income of the deceased for the years ended 30th June, 1945, to 30th June, 1954, (some 10 years) and for the period commencing 1st July, 1954, and ending with his death. The amended assessments totalling \$106,998.50 were made on 24th March, 1961, and notice thereof was served on the Executor/Executrix on or about 18th April, 1961, while the amount assessed became payable on 26th April, 1961 – almost 7 years after his death

action to advertise their intention to distribute assets of the estate and to transfer real property to its intended beneficiary.⁷⁰

The High Court ultimately found in favour of the executors, and that the real property had been appropriately transferred such that it could not be used to satisfy the tax liabilities of the deceased.⁷¹

The case demonstrates that certain elements of State law can operate to bind the Commonwealth, in this case, notice and advertising requirements under NSW wills, probate and administration legislation operating at the time.

In the context of this review, similar complexities arise where the Commonwealth Tax Act recognises representatives of a deceased but only in circumstances *after* probate or letters of administration have been granted. Where a representative of the deceased may seek to administer the deceased estate where there is otherwise no requirement for probate or letters of administration – for example by obtaining a refund of franking credits or other taxes due - the question as to whether a representative that is recognised for other State or Federal law purposes should also be recognised for tax purposes.

However, as highlighted in previous sections, should there be no individual upon whom the tax laws would impose obligations to lodge and pay tax liabilities, there are nonetheless statutory mechanisms for the Commissioner to seek recovery of tax - directly against the assets of the deceased estate.⁷² While the ATO adopts a bright line that absent these grants of Court, that the deceased representative cannot be held to obligations of liabilities of the deceased, the position is far from certain. This creates an unsatisfactory and uncertain position for representatives of a deceased which do not require probate or letters of administration and especially for representatives seeking tax credits or refunds and how this may be achieved ... simply, efficiently and without a need to obtain probate or letters of administration. This issue is explored further into this report.

ATO DEVELOPMENTS SINCE COMMENCING THIS REVIEW

Registered tax practitioner and solicitor access to deceased taxpayer information

The tax secrecy provisions provide that a taxation officer commits an offence if they disclose protected taxpayer information to anyone other than an entity covered (a 'covered entity') by section 355-25(2) of Schedule 1 to the TAA 1953.

Prior to 15 May 2020, registered tax agents, BAS agents and legal practitioners appointed by the LPR with a grant of probate or letters of administration were not covered entities to whom the ATO may provide protected information about the deceased taxpayer. On 13 January 2020, a delegate of the Commissioner

⁷⁰ *Taylor v Deputy Commissioner of Taxation* [1969] HCA 25; 123 CLR 206.

⁷¹ *Taylor v Deputy Commissioner of Taxation* [1969] HCA 25; 123 CLR 206.

⁷² *Taxation Administration Act 1953*, Sch 1, ss 260-140 and 260-145.

signed a legislative instrument, pursuant to the Commissioner's Remedial Powers, to modify section 355-25 of Schedule 1 to the TAA 1953 to add that a 'covered entity' may include:⁷³

- a registered tax agent or BAS agent of an executor or administrator of the primary entity's estate; or
- a legal practitioner representing an executor or administrator of the primary entity's estate in relation to the primary entity's affairs relating to one or more taxation laws.

The legislative instrument came into effect on 15 May 2020 after the period for its disallowance had passed (as set out in section 42 of the *Legislation Act 2003*).⁷⁴

Deceased Estate Data Package

In December 2019, the ATO announced that it had developed a deceased estate data package which can be made available to LPRs (after a grant of probate or letters of administration). The data pack includes the deceased taxpayer's asset and income information (where it exists), including:⁷⁵

- individual tax return information for the last three income years;
- an extract of income and investment data for the last three income years;
- an extract of notices of assessment issued for the last three income years;
- a copy of the most recent statement of account;
- any outstanding debts with the ATO;
- any superannuation accounts identified; and
- payroll data received for the current year.

The deceased estate data package is only made available to LPRs who have received a grant of probate or letters of administration, and who have notified the ATO of their appointment.⁷⁶

A registered tax practitioner or solicitor appointed by the LPR with grant of probate or letters of administration is also able to request the deceased estate data package be made available to them as a 'covered entity', after 15 May 2020 (since the aforementioned legislative instrument has come into effect). The legislative instrument also enables registered tax practitioners appointed by the LPR to access the same information via OSfA.

⁷³ *Taxation Administration (Remedial Power – Disclosure of Protected Information by Taxation Officers) Determination 2020*.

⁷⁴ ATO, *Online access to deceased estate information* (20 May 2020) <www.ato.gov.au>

⁷⁵ ATO, *Deceased estate data package* (6 February 2020) <<https://www.ato.gov.au/Individuals/Deceased-estates/Accessing-a-deceased-person-s-information/Deceased-estate-data-package/>>.

⁷⁶ *Ibid.*

4. OUR RECOMMENDATIONS AND REASONS

RECOMMENDATION 1 [THIS RECOMMENDATION SHOULD BE READ IN CONJUNCTION WITH RECOMMENDATION 7]

The IGTO recommends that the ATO, in consultation with external stakeholders, review and refresh its advice and guidance on dealing with deceased estate matters and, as part of that work:

- a. the ATO provides clear guidance on the rules for engaging with representatives of the deceased taxpayer, including the LPR (particularly those who are not required to seek grants of probate or letters of administration), on issues such as:
 - i. information required by the ATO for ATO confirmation of the death of a taxpayer;
 - ii. information necessary to register a person as an LPR or authorised representative of the deceased taxpayer;
 - iii. who can submit information to the ATO on behalf of the deceased taxpayer;
 - iv. who can access ATO-held information of the deceased taxpayer;
 - v. the circumstances in which the ATO will require probate or letters of administration before dealing with a representative of the deceased taxpayer; and
 - vi. how the ATO deals with simple deceased estates where neither probate nor letters of administration are required by State and Territory succession laws;
- b. the ATO provide binding advice on the circumstances when:
 - i. prior year income tax returns need not be lodged;
 - ii. a TFN for a deceased estate is not required; and
 - iii. a date of death tax return and/or deceased estate trust returns is not required to be lodged – for example, in the year of death or in each of the subsequent three financial years where the taxable income does not exceed the tax free threshold;
- c. the ATO improve its guidance on deceased estate trust returns to inform representatives of deceased estates on which parts of the trust return are mandatory and which can be ignored;
- d. the ATO:
 - i. consolidate the above advice and guidance in an easy to understand and easily accessible format [the Information Guide]; and
 - ii. leverage end-of-life processes to distribute the Information Guide – for example providing it as part of a funeral parlour information package, to tax agents and solicitors who practice in the area of deceased estates and Public Trustee offices; or
 - iii. otherwise make the Information Guide available to individuals who directly notify the ATO of the death of a taxpayer.

REASONS

- Australia's tax system is predicated on principles of self-assessment in which the taxpayer, or their representative, assumes responsibility for assessing their own liabilities and reporting those liabilities to the ATO. One important aspect of the ATO's role within the self-assessment system is to ensure that it provides sufficient advice and guidance that importantly is binding upon the ATO so that taxpayers and their representatives may rely upon this advice with certainty to meet and discharge their compliance obligations.
- The LPR may be personally liable for the tax affairs of the deceased, in addition to other duties and obligations under succession law, and accordingly is likely to adopt a 'conservative' or 'over-compliant' position regarding tax obligations in the absence of binding ATO advice, if acting prudently. This is so, as the Commissioner is able to recover outstanding tax liabilities, including any tax liabilities that arise after the death of the taxpayer from the LPR (where probate or letters of administration have been obtained) as if they were the taxpayer up to the limit of assets within the estate (unless the LPR had distributed the assets in breach of their obligations – for example, where they had prior knowledge of an outstanding tax liability). The Commissioner also has the power to recover against the assets of the estate in the absence of a grant of probate or letters of administration. Without a formal tax clearance, there is uncertainty as to when the Commissioner 'clears' an estate to be finalised and wound up such that the LPR would no longer be personally liable for tax liabilities of the estate and can distribute the assets of the estate to the relevant beneficiaries.
- Current ATO advice and guidance on deceased estates is extensive, spanning over 30 pages for general information such as notification and lodgements and over 260 pages for trust return information. This is non-binding advice. It would be difficult for most people to navigate and to understand this volume of information to discharge their obligations.
- The current advice and guidance also does not make clear a number of critical tax compliance obligations - such as whether a person needs to notify the ATO of the death of a taxpayer, who can provide or receive information about the deceased taxpayer, when new TFN applications need to be lodged and what returns need to be lodged and when.
- To assist representatives of deceased taxpayers, a consolidated, easily understood and accessible information pack would ensure these representatives can meet their compliance obligations easily and as early as possible. The information pack could be distributed directly to representatives who contact the ATO or made available through funeral parlours, other government services, solicitors or public trustees to ensure it is received when it is most needed.

RECOMMENDATION 2:

The IGTO recommends that, consistent with a 'tell us once' approach, the ATO explore opportunities to:

- a. better integrate notification of death across whole of government (Commonwealth, State and Territory) and with existing end-of-life processes; and
- b. liaise with key stakeholders within the end-of-life processes, such as Services Australia (for Medicare and pensions), religious institutions and funeral parlours as well as related associations to further enhance the efficiency of the notification process and content of death notification information.

REASONS

- There are multiple notifications following the death of a person where information is collected and reported about the person's death – by medical practitioners, coroners and funeral directors. Information is reported to various BDM registries. Federal government agencies, such as Services Australia and the Australian Taxation Office, also collect information about the deceased from BDMs registries and through their own forms.
- While these processes do not necessarily collect the same information, there are overlaps in the information collected.
- There is limited sharing of information across government due to the use of different identifiers within each agency and the limitations imposed on the collection and use of TFNs.
- A 'tell us once' approach at the federal government level would assist to alleviate the administrative burden of representatives when seeking to deal with multiple agencies.
- Opportunities exist for agencies such as the ATO to leverage existing end-of-life processes (e.g., funeral directors who assist families in laying the deceased to rest and with other notification requirements) and information sources to reduce any duplication in its notification requirements and streamline information gathered in relation to deceased persons.

RECOMMENDATION 3:

The IGTO recommends that the ATO, having regard to its own IT development programs and broader whole-of-government IT priorities :

- a. allow for official notification of death to be done digitally and develop appropriate channels to facilitate this outcome; and
- b. enable such notifications to be made by registered tax practitioners who were previously engaged by the deceased person and/or who have been newly appointed by the deceased person's legal personal representative.

REASONS

- A representative of the deceased taxpayer may need to notify the ATO separately of the death of a taxpayer. This notification is separate to BDM notification.
- The current processes for this notification require the representative to complete a paper form and to either send it via post or attend an Australia Post outlet to submit it along with supporting documentation (e.g., death certificate and the deceased's last will and testament). There is uncertainty as to when the ATO has received this notification and updated their systems appropriately.
- A digital channel to make such lodgements could provide further efficiencies for representatives of the deceased and aligns with whole-of-government digital imperatives. Registered tax practitioners with access to OSfA may be well-placed to provide such notifications to the ATO in a timely manner if such functionality were available.

RECOMMENDATION 4:

The IGTO recommends that the ATO:

- a. promote the availability of the digital channel to lodge deceased estate TFN applications; and
- b. in the longer term, implement options to enable easier application for deceased estate TFNs, for example by adding the functionality to the Online Services for Agents system, the ATO website or MyGov.

REASONS

- Deceased estate TFN applications may be lodged by mail or through a digital channel on the Australian Business Register (ABR). Statistics from the ATO show that where a deceased person's representative uses the services of a registered tax practitioner, the digital channel is used in most cases. When the representatives do not use such services, they are more likely to resort to paper applications.
- This may be due to the digital application form being located on the ABR (a business channel) and it is not intuitive for representatives of the deceased person to consider the ABR as a channel for dealing with any aspects relating to the tax affairs of the deceased.

- Further promotion of the digital channel may assist to fill this information gap in the short term. However, in the longer term, also providing a digital channel for the application through more intuitive channels, such as the OSfA system, the ATO website or MyGov would aid to reduce timeframes and make it easier for representatives of the deceased to lodge such applications.

RECOMMENDATION 5:

The IGTO recommends that the ATO:

- a. Simplify tax filing requirements for a deceased taxpayer following consultation with relevant stakeholders:
 - i. This could include, for example, simplified processes for obtaining tax credits or refunds (for example franking credit refund concessions currently available for taxpayers before their death could be extended) or developing a simplified and dedicated tax return for a deceased taxpayer – such as a ‘D’ return form – that minimises tax administration compliance for simple estates (especially for franking credit refunds);
 - ii. incorporates information routinely acquired by the ATO as part of their administration of deceased estates; and
 - iii. permits use by next of kin or LPRs administering low-value or straightforward deceased estates – for example, where a return is lodged simply to obtain franking credit refunds;
- b. consider options for ‘hiding’ or non-display of irrelevant labels and expanding use of ATO data to pre-fill the return; and
- c. where the ‘D’ return form is to apply in limited circumstances, develop a ‘bright line’ test to determine the threshold whereby complex estates may be required to use the standard Trust Tax Return form and engage with the ATO more extensively.

REASONS

- A requirement to lodge a trust return for a deceased individual after their death is counter-intuitive for most taxpayers.
- Representatives of the deceased taxpayer, including LPRs, may need to lodge a deceased estate trust return simply to access low value or simple credits (e.g. franking credits) in circumstances where a return is otherwise not required (being below a relevant tax free threshold).
- Most deceased estates are fully administered within three (3) years of the date of death and accordingly are taxed at individual tax rates and have the benefit of an individual’s tax free threshold.
- Deceased estates are currently required to use the standard Trust Tax Return form that is used by all other trusts, including some of the largest and most complex listed trusts in Australia. The instructions for completing this form run to some 260 A4 pages. This adds to complexity and costs for the deceased’s representatives who would likely need to engage expert advice and assistance to complete the form.

- A dedicated and simple form for deceased estates, with pre-filled data where available, would reduce the compliance burden for representatives of the deceased taxpayer.

RECOMMENDATION 6:

The IGTO recommends that the ATO:

- a. explore with external stakeholders, such as members of the National Tax Liaison Group or other consultation forum, the consequences and challenges associated with applying general taxation of trusts principles to deceased estates; and
- b. where appropriate, make submission for further inquiry to bodies such as the Board of Taxation or lodging minutes with the Treasury noting the potential for law change.

REASONS

- The undifferentiated application of general taxation of trusts principles to deceased estates may give rise to unintended tax consequences, such as a deceased estate being treated as a non-resident trust simply by virtue of the named executor being (or becoming) a non-resident for tax purposes. Furthermore, it leads to requirements such as the need to obtain a new TFN for the deceased estate and to lodge trust tax returns to obtain small refunds and credits.
- The majority of deceased estates are simple and finalised within three financial years following the death of the taxpayer. There is generally no intention to create testamentary trusts and nor would there likely have been specific consideration of the residency status of the deceased estate during the taxpayer's lifetime.
- It is unlikely that the Commissioner could rely on his Remedial Powers to adopt a different residency treatment for a deceased estate as the principles set out in Division 6 of the *Income Tax Assessment Act 1936* are clear on the residency rules.
- Any changes to the broader policy approach to taxation of deceased estates falls outside of the tax administration remit of the IGTO and will therefore require broader inquiry by a body such as the Board of Taxation or the Treasury.

RECOMMENDATION 7:

The IGTO recommends that the ATO:

- a. confirm its position on the interaction between State and Territory succession laws and tax laws to confirm which ‘representatives’ of the deceased can represent the deceased for various tax purposes, particularly in circumstances where neither probate nor letters of administration are required by State and Territory succession laws; and
- b. leverage expertise in the community and from its consultative forums to seek feedback on the position and any proposed changes to administrative arrangements or the need for legislative change to find a workable solution.

REASONS

- There are various State and Territory laws of succession, wills and estates, and probate which govern the administration of a deceased person’s estate. The requirements imposed on an LPR differ between each State and Territory, particularly in relation to the need to obtain a grant of probate or letters of administration. These requirements operate independent of the tax laws. In some States and Territories, probate is not required to deal with low value estates or certain types of assets.
- The ATO position is that, except in limited circumstances under the performance of duties exception, it can only disclose protected information to a representative of the deceased taxpayer once probate or letters of administration have been obtained. The ATO is clarifying its position on a narrow set of circumstances in which a representative may be treated as an executor or administrator under a State or Territory law without obtaining probate or letters of administration. Where the performance of duties exception cannot be applied, a requirement to obtain probate or letters of administration before the ATO can provide information may lead to additional compliance costs and delays where probate and letters of administration are not otherwise required.
- A requirement to obtain probate or letters of administration for tax purposes only (that is, where it is otherwise not required) is unnecessary red tape and adds compliance costs from the perspective of a representative and an administrative solution would be welcome.
- Some stakeholders have suggested that there may be incongruities between different provisions within the tax legislation itself (e.g., section 260-140 of the ITAA 1936 and Division 355 of Schedule 1 to the TAA 1953) where some estates may be treated as being administered (i.e., as if probate has been granted or letters of administration obtained) but the ATO is nonetheless not able to disclose protected information. The ATO does not believe, on its current administrative approach that such incongruities exist.
- The ATO could not confirm its position on these issues within the review period. Once the ATO has confirmed its position on these matters, it should share the information with external experts through its consultative forums to identify any need for administrative or legislative change to reduce uncertainty and inconsistencies.

RECOMMENDATION 8: [this recommendation should be read in conjunction with recommendation 7]

The IGTO recommends that the ATO provide registered tax practitioners (appointed by LPRs with whom the ATO is authorised to engage⁷⁷) with access to any correspondence sent to the deceased taxpayer's MyGov that is not otherwise accessible through Online Services for Agents.

REASONS

- Taxpayers may receive correspondence about their tax affairs via the MyGov inbox. Not all correspondence sent to the MyGov inbox is available through OSfA or otherwise accessible by registered tax practitioners.
- This may create an information gap for registered tax practitioners seeking to assist representatives of the deceased estate.
- Where an LPR with whom the ATO is authorised to engage appoints a registered tax practitioner to act on behalf of the deceased estate, it is important that all ATO correspondence is available to finalise their tax affairs. However, it is unclear whether tax agents can access historical communications that have been sent to the deceased's MyGov inbox.
- Accordingly, the ATO should ensure that where such information gaps are identified, that relevant correspondence is provided to the registered tax practitioner appointed by an LPR (with whom the ATO is authorised to engage).

RECOMMENDATION 9:

The IGTO recommends that the ATO:

- a. engage with external stakeholders, especially tax practitioners, solicitors and barristers with expertise in succession law, wills and estates to identify the key enquiries that may require escalation;
- b. develop escalation channels to dedicated areas within the ATO who are trained to provide specialist advice on deceased estate issues; and
- c. recognise and acknowledge the needs of bereaving family members – so that advice is delivered with empathy and sensitivity.

⁷⁷ Currently this is known to include LPRs after a grant of probate or letters of administration but subject to Recommendation 7, the ATO may recognise other representatives of the deceased.

REASONS

- The ATO does not presently have a dedicated team to deal with deceased estate matters, unlike other government agencies, such as Services Australia. This may contribute to the complaints received about lack of empathy in officers' dealings with representatives of the deceased and the tone of correspondence not being appropriate in the circumstances.
- Deceased estate issues do not only involve taxation matters but also matters of inheritance, property law, family law, trust law, as well as various State and Territory succession laws. Expertise should be developed within the ATO to advise holistically on deceased estate taxation issues.
- It is positive that the ATO has committed to re-routing deceased estate calls to a number of appropriately trained officers. However, for more complex issues, appropriate escalation channels to expert teams within the ATO would be appropriate. The ATO's internal expertise on these issues could be developed through greater consultation and engagement with external experts in succession law, wills and estates.

RECOMMENDATION 10:

The IGTO recommends that the ATO conduct a post implementation review, in consultation with external stakeholders (within five years) to assess the effectiveness of:

- a. improvements to the administration of deceased estates including the measures recommended in this report that aim to deliver greater certainty for representatives of deceased estates; and
- b. PCG 2018/4 in providing sufficient certainty for LPRs to finalise an estate, as necessary.

REASONS

- The aim of this investigation has been to identify opportunities to streamline information processes and reduce the compliance burden for representatives of deceased estates. This includes providing greater certainty for those seeking to assist the deceased taxpayer finalise their affairs.
- In 2018, the ATO has issued Practical Compliance Guideline (PCG) 2018/4 to assist representatives of the deceased taxpayer to finalise the administration of the estate. However, the PCG is limited in its application to simple and straightforward estates.
- The recent administrative changes implemented by the ATO and the recommendations flowing from this report may assist to provide greater certainty to deceased estate representatives and reduce their compliance costs.
- It would therefore be worthwhile undertaking a post-implementation review of the effectiveness of these recommendations in delivering greater certainty for representatives of deceased taxpayers. As part of this process, the role and effectiveness of PCG 2018/4 in providing finality for LPRs could also be examined and its scope of operation expanded, as appropriate.

RECOMMENDATIONS AND THE TERMS OF REFERENCE CONSIDERATIONS

Each of the recommendations has been reviewed and linked with the relevant considerations required as part of the Terms of Reference for this review. In many cases, one recommendation may be linked to a number of different Terms of Reference. The recommendations and their linkages to the Terms of Reference are set out in the matrix below:

| Terms of Reference Considerations | 1 | 2 | 3 | 4 | 5 | 6 |
|-----------------------------------|---|---|---|---|---|---|
| Recommendation 1 | 1 | 2 | 3 | 4 | | |
| Recommendation 2 | 1 | 2 | | | | |
| Recommendation 3 | | | | 4 | | |
| Recommendation 4 | | 2 | | 4 | | |
| Recommendation 5 | 1 | 2 | | 4 | | |
| Recommendation 6 | 1 | | | | 5 | 6 |
| Recommendation 7 | | 2 | 3 | 4 | 5 | |
| Recommendation 8 | | 2 | | 4 | | |
| Recommendation 9 | 1 | 2 | 3 | 4 | 5 | 6 |
| Recommendation 10 | 1 | 2 | 3 | 4 | 5 | 6 |

ATO RESPONSE TO RECOMMENDATIONS

The ATO's response to each of the recommendations is set out in Appendix B.

5. OUR KEY FINDINGS

SOME KEY STATISTICS

- ABS data shows that approximately 160,000 Australians die each year:

| | 2016 | % | 2017 | % | 2018 | % |
|------------------------|---------|------|---------|------|---------|------|
| Total | 158,503 | 100% | 160,909 | 100% | 158,495 | 100% |
| Aged 0 to 14 | 1,407 | 0.9 | 1,472 | 0.9 | 1,348 | 0.9 |
| Aged 15 to 64 | 27,400 | 17.3 | 27,065 | 16.8 | 27,194 | 17.2 |
| Aged 65 to 79 | 42,339 | 26.7 | 43,559 | 27.1 | 43,365 | 27.4 |
| Aged 80 or over | 87,354 | 55.1 | 88,808 | 55.2 | 86,549 | 54.6 |

Source: Australian Bureau of Statistics (33020D0003_2018 Deaths, Australia, 2018). In each of 2016, 2017 and 2018 respectively there were 3, 5 and 3 deaths where age was not stated in the data. As at the date of this report, the ABS has not released statistics in relation to deaths for the 2019 Calendar Year.

- A more detailed breakdown of the number of deaths, age of the deceased at their date of death and geographic distribution between States and Territories is provided in Annexure D.
- Approximately 82% of Australians are aged 65 or over at their date of death and approximately 55% are over the age of 80.
- It is estimated that approximately 45% of Australians die intestate – without a will.
- Statistics from the ATO which tracked deceased estates that lodged their first return in 2013-14 found that 86% do not lodge more than 3 years of deceased estate trust returns, suggesting that most deceased estates are finalised within 3 years of the date of death.
- Multiple notifications of a death are currently required across Federal, State and Territory and local government and various other business and community organisations.

IT IS DIFFICULT (ESPECIALLY FOR NON TAX EXPERTS) TO NAVIGATE THE TAX SYSTEM ON BEHALF OF A DECEASED TAXPAYER AND TO UNDERSTAND THEIR OBLIGATIONS

- ATO systems and processes could be better integrated across whole of government (Commonwealth, State and Territory) and with existing end-of-life processes.
- Integration and information sharing on deceased estate matters across government is limited due to the limited availability of unique or shared identifiers and restrictions on the use of TFNs.

- The ATO rules for engaging with ‘representatives’ of the deceased taxpayer are unclear in some circumstances.
- Notification of death to the ATO is a manual, paper-based system, and can lead to tax filing delays and/or uncertainty.
- ATO guidance on deceased estates is not clear, easily accessible and not consolidated in a single location or a single resource.

THE COMPLIANCE OBLIGATIONS FOR EXECUTORS AND ADMINISTRATORS OF DECEASED ESTATES ARE UNNECESSARILY COMPLEX AND COSTLY (ESPECIALLY FOR NON TAX EXPERTS)

- An application for a TFN for a deceased estate is currently being made in circumstances where one is not required – adding to unnecessary compliance costs.
- Although a digital channel is available to apply for a TFN for a deceased estate where one is actually needed, it is not well known – except by specialist tax practitioners. An application can currently be made via a business channel - the Australian Business Register (ABR). As deceased taxpayers are not generally in business, the business channel is accordingly counter intuitive and not well known or understood.
- Where a deceased estate TFN is needed, the current process is largely paper based, particularly for applicants who may not be represented, and may be inefficient in some cases.
- The digital business channel may contribute to the volume of paper based TFN applications being made, particularly by LPRs or other representatives of the deceased who do not have the benefit of professional tax or legal advice.
- There may be circumstances where the only reason an LPR will obtain a new TFN is to avoid TFN withholding tax – that is, where the bank account or term deposit in the name of the deceased is interest bearing and withholding tax at the highest marginal tax rate (currently 47%, inclusive of the 2% Medicare Levy)⁷⁸ will otherwise apply.
- There is a requirement to lodge a tax return (Individual Tax Form) up to the date of death in circumstances where, in that financial year the taxpayers taxable income exceeds the tax free threshold or where any tax credits (e.g. franking credits) or refunds are to be claimed. The circumstances where a return is required to be lodged is published annually by the Commissioner via legislative instrument.⁷⁹
- There is a requirement to lodge a tax return for a deceased estate (Trust Tax Form) from the date of death until the estate is finalised and for each financial year from the date of death where the taxable income exceeds the tax free threshold or where any tax credits or refunds (e.g. franking credits) are

⁷⁸ ATO, *Individual Income Tax Rates* (27 June 2019) <www.ato.gov.au>.

⁷⁹ Above n 55.

to be claimed. The circumstances where a return is required to be lodged is published annually by the Commissioner in a legislative instrument.⁸⁰

- Although administrative arrangements⁸¹ are available for taxpayers during their lifetime to claim franking credits in circumstances where there is no need to lodge a tax return, these arrangements do not apply after the taxpayer has died⁸². This is so even where the amount would have been paid to the bank account of the deceased.
- A requirement to file a trust return in order to simply claim a franking credit refund (of low value) appears to create an unnecessary compliance burden and red tape.
- The standard form trust tax return is not well designed for a deceased estate – it is unnecessarily complicated and asks for irrelevant information in relation to deceased estates.
- The general application of trust taxation principles, and the ‘trust’ nomenclature, to deceased estates creates complexity due to the inherent complexities found in trust and succession law.

IT IS DIFFICULT TO OBTAIN INFORMATION ABOUT THE DECEASED TAXPAYER’S AFFAIRS, ACCESS ATO SYSTEMS, OR ENGAGE WITH THE RIGHT ATO PERSONNEL

- Section 355-25 of Schedule 1 to the TAA 1953 provides that a taxation officer commits an offence punishable by up to 2 years imprisonment if they disclose ‘protected information’ unless the disclosure is made (*inter alia*) to a ‘covered entity’.
- The law provides certain exceptions where the record or disclosure is made by a taxation officer in the performance of their duties, including where the taxation officer is making the disclosure to assist the entity to understand and comply with their taxation obligations (TAA 1953, Sch 1, s 355-50). Furthermore, not all information collected and held by the ATO is considered ‘protected information’ falling within the parameters of these secrecy provisions (TAA 1953, Schedule 1, s 355-30).
- A TFN is expressly noted in section 355-30 of Schedule 1 to the TAA 1953 as not being protected information. However, regard needs to be given to other provisions which govern TFNs, namely Subdivision BA of Division 2 of Part III of the TAA 1953 and the *Privacy (Tax File Number) Rule 2015* issued under section 17 of the *Privacy Act 1988*.

⁸⁰ Above n 55.

⁸¹ ATO, *Refund of franking credit instructions and application for individuals 2020 – Completing your Application* (28 May 2020) <https://www.ato.gov.au/Forms/Refund-of-franking-credit-instructions-and-application-for-individuals-2020/?page=6#Completing_your_application>.

⁸² ATO, *Refund of franking credit instructions and application for individuals 2020 – Can you use this application for refund of franking credits?* (28 May 2020) <https://www.ato.gov.au/Forms/Refund-of-franking-credit-instructions-and-application-for-individuals-2020/?page=3#Can_you_use_this_application_for_refund_of_franking_credits_>.

- The ATO requires that probate or letters of administration has been granted by the Supreme Court of a State or Territory before protected taxpayer information can be provided – including to a legal personal representative.
- Not all deceased estates require probate or letters of administration as a matter of succession law.
- The requirement to obtain probate or letters of administration in order to obtain information from the ATO creates unnecessary compliance costs for many deceased estates.
- The ATO presently only recognises an ‘authorised representative’ that may engage with the ATO on behalf of the deceased estate to be an executor or administrator (with a grant of probate or letters of administration) and registered tax practitioners or solicitors appointed by these persons..
- At the commencement of this review it was not possible for an LPR (with grant of probate or letters of administration) to appoint a registered tax or BAS agent, or legal practitioner, to act on their behalf and to deal directly with the ATO. On 13 January 2020, the ATO issued a legislative instrument to address the issue. The legislative instrument came into effect on 15 May 2020.⁸³
- There is currently no arrangement for accessing deceased taxpayer information sent by the ATO through myGov, if that information is not held on the ATO systems or otherwise available through OSfA.
- Tax agents don’t receive all communications that are sent to taxpayers – which means their records of ATO communications with the deceased are incomplete.
- The ATO does not have a dedicated bereavement line like some other Government agencies – such as Services Australia. This makes accessing ‘the right personnel’ (with knowledge, expertise and experience of deceased estate tax issues) to discuss and receive advice on dealing with deceased estates difficult.

OBTAINING FINAL CLEARANCE FROM THE COMMISSIONER IS TOO UNCERTAIN AND MAY EXPOSE EXECUTORS AND ADMINISTRATORS TO POTENTIAL PERSONAL LIABILITY AND DELAY ADMINISTRATION

- The LPR may be personally liable for the tax affairs of the deceased and accordingly is likely to adopt ‘conservative’ tax compliance positions in the absence of binding ATO advice.
- The Commissioner may be able to recover outstanding tax liabilities, including any liabilities that arise after the death of the taxpayer but which relate to the period before death from the LPR as if they were the taxpayer (to the extent of assets within the estate, unless the LPR has breached their obligations by, for example, distributing assets in circumstances where they had prior knowledge of an outstanding tax liability). An LPR as trustee of a deceased estate may also be liable for any tax liabilities incurred by the deceased estate and is required to retain moneys to satisfy those liabilities.

⁸³ Above n 74.

The LPR is indemnified by the deceased estate for all expenses properly incurred. Where probate or letters of administration are not obtained, the Commissioner may also be able to recover outstanding tax liabilities against the assets of the estate.

- The ATO has issued limited administratively binding advice on practical compliance with deceased estate tax obligations, such as obtaining a TFN, lodgement of prior year returns and lodgement of deceased estate trust returns. Existing ATO binding advice (rulings and determinations) focus on specific tax technical issues which have limited application in the majority of deceased estate administrations.
- Separately, the LPR may be liable, or potentially assets of the estate affected, under State and Territory laws if they have not complied with their obligations under succession law to administer the estate appropriately.
- The ATO has not issued final clearance certificates to deceased estates since 1986 – i.e., following the move from full assessment to self-assessment. There is accordingly uncertainty as to when the Commissioner ‘clears’ an estate to be finalised and wound up, such that the LPR would no longer be personally liable for tax liabilities of the estate and can distribute the assets of the estate to the relevant beneficiaries.

6. OUR FINDINGS IN DETAIL

The investigation seeks to identify opportunities to improve the administration and tax compliance for deceased taxpayers and their estates. For this purpose, the IGTO examined and considered each of the following areas, as previously set out in the Terms of Reference:

| | | |
|----|--|--|
| 1. | the experiences of the community (family and friends) in managing the tax affairs for the deceased; | |
| 2. | the ATO’s policies, processes and guidelines for receiving information from and dealing with deceased estates; | |
| 3. | the public guidance issued by the ATO to assist executors or administrators; | |
| 4. | the ATO’s systems, including the ATO Portals, for dealing with deceased estates; | |
| 5. | any legislative impediments to the efficient administration of deceased estates; and | |
| 6. | any other relevant issues to the administration of deceased estate tax obligations. | |

Each section of the discussion that follows has been colour-coded with the corresponding term(s) of reference which the issue raises to assist with reader navigation and cross-referencing.

Terms of Reference Considerations



IT IS DIFFICULT (ESPECIALLY FOR NON TAX EXPERTS) TO NAVIGATE THE TAX SYSTEM ON BEHALF OF A DECEASED TAXPAYER AND TO UNDERSTAND THEIR OBLIGATIONS

ATO systems could integrate better across whole of government (Commonwealth, State and Territory) and with existing end-of-life processes

| | | | | | | |
|-----------------------------------|---|---|--|---|--|--|
| Terms of Reference Considerations | 1 | 2 | | 4 | | |
|-----------------------------------|---|---|--|---|--|--|

The IGTO consultation and research did not identify a mandatory or statutory requirement for a surviving family to notify any government or non-government organisation, including the ATO, about who is authorised to represent the deceased after death. However, various representatives (surviving spouse or child, next of kin, tax agent, solicitor, etc) will often voluntarily notify the ATO and other organisations about the death of the deceased. Examples of the forms that different organisations provide for this purpose are included in Annexure C.

In order to engage with many government organisations, the LPR needs to notify multiple organisations about their role as an LPR. Information about who is an LPR is not presently shared between different organisations.

An individual is often required to notify many government organisations of the death of a person. An extensive list of organisations was set out earlier in this report (refer pages 8 and 9). At the federal government level, organisations that may need to be notified include (but are not limited to):

- ATO
- Australian Electoral Commission
- Department of Veterans' Affairs
- Services Australia
- My Aged Care

As an LPR is often a relative or a friend of the deceased (without specific legal, tax or estate planning qualifications), multiple communications and dealing with multiple organisations with different procedural requirements can be both time consuming as well as emotionally stressful.

Findings (existing ATO notification process)

There are, in effect, two stages of notification of a death to the ATO. The first stage involves death data which the ATO obtains from the State and Territory BDM registry records.

When a person passes away, the deceased person's family is usually assisted at the very early stages by a doctor who had been treating the deceased, a coroner or a funeral director. There are specific legislative requirements and timeframes in each State and Territory mandating the reporting of a death by either the

doctor, coroner or funeral director to the relevant BDM registry.⁸⁴ For example, in NSW, a medical practitioner is required to report the death to a BDM registry within 48 hours, whilst a funeral director is required to do so within seven days of burial or cremation. The NSW BDM registry then issues a death certificate, which is an official certified copy of the registration data held by the BDM registry.

The ATO explained that not all BDM data can be matched to taxpayers on its own systems, primarily due to the lack of TFN information within the BDM data. The ATO has indicated that it is only able to match data to taxpayers on its own systems where there is a high enough confidence level that the personal details, such as name, date of birth or residential address, has been correctly matched. Currently, approximately 77% of the BDM data can be reliably matched to the individuals on the ATO systems.

Data from BDM registries can inform organisations, such as the ATO, so that their systems may be updated and they cease or change their interactions and communications with the deceased. For example, the ATO would cease to send out certain compliance communications to the deceased if they are able to match BDM data to a taxpayer on the ATO systems.

The ATO uses the BDM data to update its systems so that further correspondence or compliance activities cease in relation to the deceased person. Although it is not specifically mandated and there is no statutory requirement to do so, the ATO encourages LPRs and representatives of the deceased to notify it of the taxpayer's death. This second line of notification assists the ATO to confirm the death of any taxpayers they were not able to match through the BDM data. Furthermore, this second notification also enables the ATO to record details of the named executor and other authorised contacts for future dealings on the tax affairs of the deceased taxpayer.

Future Developments

During the course of this review, the IGTO was informed that the Digital Transformation Agency is currently undertaking work to develop digital death certificates in conjunction with Services NSW and with input from the ATO. The project is forecasted to be completed in 2025.

The implementation of a digital death certificate should allow for a more streamlined notification process by enhancing the confidence of the data being shared by the BDM registries with the ATO and other organisations. While digital death certificates will likely enhance the confidence levels for matching BDM data, they may not address the lack of TFN for ATO matching purposes or the requirement for LPRs to inform the ATO and other agencies of their authority to act on behalf of the deceased estate.

Other projects which may have a bearing on the manner in which the ATO deals with deceased estates include Services Australia's upgrades of MyGov functionality and the New South Wales Government's National Death Notification Service (currently in beta pilot phase). The system lets 'people notify ANZ Bank directly about a person that has died, without needing to visit a bank branch with their death certificate'.⁸⁵ The IGTO did not obtain any specific information about the scope of these projects or plans for future implementation.

⁸⁴ See for example: the *Births, Deaths and Marriages Registration Act 1995 (NSW)* ss 39 – 41

⁸⁵ New South Wales Government and ANZ, *Notify Us Online* <anz.bereavement.nsw.gov.au>.

Existing Interactions

At present, notwithstanding the BDM notification, it is necessary to contact the ATO and provide sufficient information to establish who would be the LPR authorised to represent the deceased estate. In any case, the notification of an LPR to the ATO does not result in other government agencies being notified.

It is noted that the ATO is also supportive of the “*tell us once*” government approach in relation to notification of death, and this was explored during the ATO’s 2015 ‘Individuals Fix-It Squad’ project.⁸⁶ At that point in time, the ATO considered the use of myGov as a platform to potentially enable the sharing of information, such as the notification of death, across multiple federal government organisations. The ATO ultimately determined that implementation of this recommendation was not feasible having regard to cost and its systems and processes.⁸⁷

Other organisations like Services Australia also receive information about the deceased (refer Annexure C) and is likely to have up to date contact details for a deceased (in light of their Medicare function). It is helpful to see that organisations like Services Australia share notification of death across various parts of its department, including Centrelink, Medicare and Child Support. Given that communication channels and data sharing arrangements currently exist between Services Australia and the ATO, there may be potential for them to co-ordinate processes and share information regarding deaths and authorised LPRs of deceased estates.

Furthermore, it is noted that BDM registries also collect a large amount of information about the deceased, often from funeral directors – refer Annexure E. Leveraging existing end-of-life notification processes seems both sensible and efficient.

Conclusion and Recommendations

Ideally, representatives of a deceased should only need to notify the federal government (across all agencies) once about the deceased’s passing and related and relevant details. A single point of notification reduces time and effort that individuals are required to spend resolving the affairs of the deceased person. Providing information that the different government agencies need, should also improve timeliness of processing and accuracy of data across different government systems. Importantly, as explained above, reducing the number of times that the representative needs to tell the government about the death of a person would greatly reduce the stress placed on representatives who are likely the relatives or friends of the deceased.

The IGTO recognises the difficulties of implementing a “*tell us once*” approach. Different government agencies have different systems and they do not necessarily align. Furthermore, current sharing of information across government is limited due to restrictions surrounding the use of some unique identifiers (such as TFN) and the limited availability of other unique identifiers (such as Services Australia’s Client Reference Numbers). More universal unique identifiers, for example Medicare numbers, could provide a possible identifier for government information sharing and data matching purposes. Legislative restrictions, constitutional issues, intra-government co-operation and systems’ capabilities would also

⁸⁶ Above n 4.

⁸⁷ Ibid.

need to be considered. Resolution of such issues indicate that a single window for notification of death is likely to be a longer term solution.

Successful sharing of information across government would likely require further conversations and collaborations between stakeholder agencies to determine what options currently exist to facilitate these outcomes, any necessary process and systems changes and how these may be effected in a timely manner.

In the interim however, the IGTO considers that stakeholders which are part of the natural end of life processes, such as funeral directors, may be well-placed to assist grieving friends and relatives to reduce their stress in dealing with the ATO by obtaining information from them which fills ATO data and information gaps. BDM Registries across Australia obtain significant details about the deceased (and in respect of a significant proportion of the deceased population) from funeral directors (see pages 7 and 8). It may be more efficient for stakeholders like funeral directors to provide the information (on behalf of the deceased) directly to federal government organisations (like the ATO). Where the information is available, for example if valid wills have been provided, funeral directors may also be able to assist in notifying the ATO of LPRs. It should be noted that the ATO has informed the IGTO that it is unable to list an LPR as an authorised contact on its systems until probate or letters of administration have been granted and considers that it would be unlikely that either will have been granted prior to the funeral.

Additionally, there may be benefit in exploring with partner organisations (such as Services Australia) ways in which greater integration of systems and processes to collect and share death information could be achieved and action which needs to be taken to realise these outcomes. The use of Medicare numbers for example as a possible identifier for information sharing and data matching purposes.

RECOMMENDATION

Please see Recommendations 1, 2 and 3.

Notification of the death and appointment of an LPR is a manual and paper-based process, leading to delays and uncertainty

| | | | | | | |
|--|--|----------|--|----------|--|--|
| Terms of Reference Considerations | | 2 | | 4 | | |
|--|--|----------|--|----------|--|--|

As set out earlier in the report, there are two sources of notification of death which the ATO receives. The latter stage typically involves a representative (such as an LPR) of the taxpayer directly notifying the ATO of the taxpayer’s death. A number of complaints received from family members and LPRs of the deceased by the IGTO have emphasised the frustration they experience due to the requirement to lodge death notifications via a manual and paper-based process, which is often lengthy and leads to uncertainty (including uncertainty of status in the system). Stakeholders have also raised concern that once the notification is submitted, they are unsure whether and when the ATO has received and processed the notification to update the deceased estate accounts.

One of the ways in which a representative of the deceased taxpayer can notify the ATO of the taxpayer's death involves the representative physically attending an Australia Post outlet. Submissions to the IGTO identified that where a particular Australia Post outlet does not have systems or capability to deal with these matters, it is necessary for the representative to make multiple visits to different outlets. These processes appear to be unnecessarily onerous and do not appear to align with the digital by default approach for other ATO services.

Current processes to notify the ATO

The ATO website explains that an individual can telephone to provide an **unofficial** notification of a death. An unofficial notification will result in the ATO ceasing to send correspondence to the deceased taxpayer.⁸⁸

However, an **official** notification of death requires the LPR to post a completed paper form along with relevant evidence, or to complete an online form followed by submitting documents at an interview at a participating Australia Post outlet.

There are currently two options to officially notify the ATO of a death:

- Option 1- online form in conjunction with visiting a participating Australia Post outlet

The LPR can choose to complete and submit an online form. The LPR is then required to print the summary of the online form, and take this to a participating Australia Post for an interview in person within 30 days of submitting the online form. There is an option for the LPR to make an appointment at the Australia Post outlet, and in this case, the LPR is required to bring the original death certificate or a certified copy of the certificate.

- Option 2- via standard mail to the ATO

The LPR can choose to complete a paper form (NAT 74279) and manually post this to the ATO. The LPR is required to provide the death certificate as evidence with this form. As the ATO does not return any documents mailed to them via this method, it explains that the LPR can submit certified copies of documents under this option.

When lodging an official notification of death via mail, the ATO website states that it can take up to 28 days for this to be processed. However the ATO does not appear to have provided clear public guidance on the processing timeframe for Option 1. In any case, unlike other ATO interactions (such as the lodgement of a tax return), there does not appear to be any way for the LPR to track the processing of the official notification of a death.

Conclusion and Recommendations

In recent years, the ATO has steadily moved towards interacting with the public via a digital by default approach, including the encouragement of electronic lodgements. Equally and consistently, there should be a digital option for the official notification of death, as it does not appear to be significantly different to other interactions with the ATO. It is unclear whether there are any legislative requirements preventing

⁸⁸ Above n 44.

the notification of death by digital means. If not, then notification should also be available via digital channels, in addition to white mail or attending Australia Post in person.

Digital notification channels would enhance processing times and provide more certainty for LPRs, especially those who are overseas or in remote areas. Perhaps electronic communication via email or MyGov with attached certified documents can be considered as appropriate channels for the notification of death. Existing postal options can be kept so that LPRs are not forced to use digital channels to notify the ATO. Furthermore, the ATO may wish to explore whether notification can be made by registered tax practitioners who have been newly appointed by the LPR (with probate or letters of administration), who are recognised as ‘covered entities’ following the aforementioned legislative instrument taking effect on 15 May 2020. The IGTO recognises that while the ATO presently only provides access to registered tax practitioners appointed by LPRs *after* a grant of probate or letters of administration, the position may need to be revisited once the ATO has confirmed its position in relation to the interaction between State/Territory laws and tax laws. It may be necessary when revisiting the position to consider the need for any law change.

RECOMMENDATION

Please see Recommendations 2 and 3.

ATO guidance on deceased estates is not clear to lay persons and not consolidated into a single resource

| | | | | | | |
|-----------------------------------|---|---|---|---|--|--|
| Terms of Reference Considerations | 1 | 2 | 3 | 4 | | |
|-----------------------------------|---|---|---|---|--|--|

Based on the complaints received by the IGTO, a number of executors of deceased estates with simple affairs do not engage independent professional assistance to deal with the affairs of the deceased. As a result, they often lack specialist tax knowledge. ATO information and guidance is especially important in these circumstances. Concerns have been raised that while the ATO provides guidance on its website and via its telephone call centres, the information may at times be confusing or difficult to find and online information is not in a single location.

ATO website information on deceased estates

The ATO website provides a specific and separate deceased estate web page providing general information and guidance (<https://www.ato.gov.au/Individuals/Deceased-estates/>). It also includes a checklist for those dealing with the affairs of the deceased.⁸⁹ The ATO deceased estate web page also provides a link to the Services Australia website which provides guidance on what to do following a death.

⁸⁹ ATO, *Deceased Estate Checklist* (12 March 2020) <<https://www.ato.gov.au/individuals/deceased-estates/deceased-estate-checklist/>>.

Aspects of the ATO online information appear to be unclear. For example, it is unclear whether and when LPRs are required to obtain a deceased estate trust tax file number and lodge trust returns. When there is a requirement to lodge trust tax returns, the guidance for lodging deceased estate trust returns could be improved. Concerns about the guidance on completing trust returns is discussed below in the section *“The standard form trust tax return is unnecessarily complicated and asks for irrelevant information in relation to deceased estates”*.

In terms of notification of death, the ATO website currently states that it receives ‘information from government agencies about deaths, but it is a good idea to notify us if someone has died or if you want to tell us of the appointment of the executor or administrator’⁹⁰. This change was made towards the end of the IGTO review process to clarify that while other death information may be made available to the ATO to update its systems, it does rely on separate notification from representatives of the deceased in order to identify relevant authorised contacts.

The IGTO has received complaints about the ATO guidance concerning the ability of the next-of-kin to lodge a tax return for the deceased where there is no will. Having reviewed the ATO advice available online, it is unclear what level of the authority is required for the next-of-kin to lodge a date of death tax return if there is no will.

Furthermore, there appears to be additional advice on technical tax issues dealing with deceased estates which are not consolidated with the main deceased estates section of the website. Examples include:

- Deceased estate distribution objections;⁹¹ and
- Deceased estate private ruling application.⁹²

The IGTO has reviewed various pieces of advice provided by other government and non-government organisations in relation to dealing with the affairs of the deceased. For example, the Services Australia website contains a separate section which provides general guidance on what to do following a death.⁹³ This guidance section advises on the interactions which may be necessary between the LPR and Services Australia itself, as well as with other organisations, and also how to seek financial and emotional assistance. Services Australia also consolidates its information into a brochure which is made available for distribution to those who require it – that is, through existing end-of-life services, such as funeral parlours.

Several Australian banks provide an online and paper brochure (under 20 pages) which consolidates information for representatives of the deceased (including LPRs) to review. The brochures reviewed present this information in simple, easy to read English and had a step by step approach to help LPRs with basic banking knowledge and to understand what they should do after a death. The bank brochures also had a glossary and frequently asked questions sections. These sections would be helpful for a person with

⁹⁰ Above n 44; Above n 58.

⁹¹ ATO, *Deceased Estate Distributions Objections* (4 July 2017) <<https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/In-detail/Information-for-your-objection/Capital-gains/Deceased-estate-distributions/>>.

⁹² ATO, *Deceased Estates – Supporting Information* (20 December 2017) <<https://www.ato.gov.au/General/ATO-advice-and-guidance/In-detail/Private-rulings/Supporting-documents/Capital-gains/Deceased-estates/>>.

⁹³ Services Australia, *Death and Bereavement* (20 March 2020)

<<https://www.servicesaustralia.gov.au/individuals/subjects/death-and-bereavement>>.

limited knowledge of deceased estates to more easily digest and improve their understanding of how to deal with the affairs of the deceased.

Conclusion and Recommendations

Many LPRs appointed are lay people (next of kin or a relative of the deceased). They are likely appointed by the deceased because they are ‘trusted’ to carry their final wishes into effect. They may have limited tax knowledge and experience. It is acknowledged that the ATO already has a lot of information available on its website, but much of it is highly technical and unlikely to be readily digestible by non-tax or non-legal professionals. A consolidated checklist approach would be helpful to assist representatives to finalise the tax affairs of the deceased and the deceased estate.

While the ATO does provide a link to the Services Australia website providing guidance to the LPR regarding what to do after death, it may be useful for the ATO to also include other links from other government organisations that may assist people to deal with deceased estates. For example, links to the various BDM registry websites, Public Trustee offices or My Aged Care.

A number of other public and private organisations, such as Services Australia and the major banks, have available easy to use consolidated brochures. These are made available in print and online versions for access by LPRs and others assisting in finalising a deceased estate. The ATO could also prepare a plain English Information Guide to assist families and representatives of deceased taxpayers. In discussions that the IGTO has had with funeral directors, these guides could be made available at the parlours and included in information packs that are prepared and provided to LPRs and family members of the deceased. This would be an easy and effective channel of information dissemination.

| |
|--|
| <p>RECOMMENDATION</p> <p>Please see Recommendations 1(d) and 2.</p> |
|--|

THE COMPLIANCE OBLIGATIONS FOR EXECUTORS AND ADMINISTRATORS OF DECEASED ESTATES ARE TOO COMPLEX AND COSTLY

There is uncertainty surrounding the need to obtain a deceased estate Tax File Number (TFN) and, where one is needed, the current process is paper-based and inefficient

| | | | | | | |
|--|----------|----------|--|----------|--|--|
| Terms of Reference Considerations | 1 | 2 | | 4 | | |
|--|----------|----------|--|----------|--|--|

The deceased estate is treated as a separate taxpayer from the deceased for taxation purposes. Concessional tax rates may apply to assessable income earned after the date of death for a limited period

of time. Accordingly, it may become necessary for the LPR to obtain a new tax file number (TFN) for the trust (i.e. the deceased estate) so that deceased estate trust returns can be lodged and that the income earned will be taxed at the correct tax rate.

Complaints lodged with the IGTO and submissions made to this review have observed that the current TFN application processes are unnecessarily cumbersome, paper-based, and reliant on white mail processes and can result in delays in the TFN issuing. Furthermore, due to the paper-based processes involved in obtaining a deceased estate TFN, there is uncertainty on the part of the applicant as to the status of the application.

As noted earlier in this report, a TFN is sometimes obtained simply to avoid TFN withholding tax being imposed on bank or term deposit interest.

An ancillary observation was made that where the deceased person did not have a personal TFN at the time of their death, the application process to obtain a deceased estate TFN can be messy and difficult where the ATO cannot easily match the name and date of birth of the deceased with the ATO's own records.

The need to obtain a deceased estate TFN

In discussions with the ATO, the IGTO was advised that there were a number of deceased estates which applied for TFNs where none was required. The ATO's website provides that where a tax return needs to be lodged for a deceased estate, then a TFN will need to be obtained.⁹⁴ However, the circumstances in which tax returns may or may not need to be lodged on behalf of a deceased estate are not immediately apparent and are discussed later in this report.

Current processes to apply for a deceased estate TFN and ATO statistics

The ATO website suggests there are currently three ways to apply for a deceased estate TFN:⁹⁵

- online through the Australian Business Register (ABR) at abr.gov.au;
- via a registered tax agent; or
- by downloading, completing and posting the form [Tax File Number – application for a deceased estate \(NAT 3236\)](#).

When a tax agent is engaged to assist, they can either do so via the ABR or paper form. There does not appear to be a channel to lodge TFN applications through OSfA.

The ABR process is electronic throughout the end-to-end process, save for the issuing of the TFN itself, which presently involves the issuance of a formal letter.

⁹⁴ Above n 89.

⁹⁵ ATO, *TFN application for a deceased estate* (14 September 2016) <www.ato.gov.au>.

Where LPRs opt to lodge a form with the ATO, there is necessary reliance on white mail processes and the ATO's form indicates that the ATO:

...will aim to provide a decision on your registration within 28 days of receiving all the necessary information. If the application is incomplete, incorrect or needs checking, it may take us longer to complete the process.⁹⁶

Statistics provided by the ATO (as set out in Table 7 below) show that the majority of deceased estate TFN applications are lodged electronically through the ABR (72%), with most of these electronic lodgements having been done so by an agent on behalf of their client (64%). Only a small fraction of taxpayers who opted not to lodge via an agent used the ABR as a channel. However, the majority of those using white mail processes were non-agent lodgers (17%), while only 11% of agents opted to use paper applications.

Table 7: TFN applications via channel in 2019 calendar year

| Channel | Deceased estate TFN applications received in 2019 Calendar Year | % of Total Applications |
|--------------------------------|---|-------------------------|
| White mail applications | 7,227 | 28% |
| Agent | 2,824 | 11% |
| Non-Agent | 4,403 | 17% |
| ABR applications | 18,301 | 72% |
| Agent | 16,310 | 64% |
| Non-Agent | 1,991 | 8% |
| Total | 25,528 | 100% |

Source: ATO. Figures in this Table are reported on a calendar year basis while Table 8 reports on financial years. As such, there is a discrepancy in 2019 figures.

Once the lodged application (regardless of the channel through which it is lodged) reaches the internal ATO processing systems, the majority are processed and finalised within the same day (18,820 out of 24,901 in 2019), as set out in Table 8.

Table 8: Processing times for TFN applications in FY17, FY18 and FY19

| Days to Process | FY17 | % | FY18 | % | FY19 | % | Total | % |
|---------------------|---------------|-------------|---------------|-------------|---------------|-------------|---------------|-------------|
| 0 (same day) | 18,240 | 73% | 18,470 | 74% | 18,820 | 76% | 55,530 | 74% |
| 1 – 14 days | 4,037 | 16% | 946 | 4% | 2,127 | 8% | 7,110 | 9% |
| 15 – 28 days | 1,928 | 8% | 1,915 | 8% | 2,047 | 8% | 5,890 | 8% |
| Over 28 days | 696 | 3% | 3,707 | 15% | 2,055 | 8% | 6,458 | 9% |
| Total | 24,901 | 100% | 25,038 | 100% | 25,049 | 100% | 74,988 | 100% |

Source: ATO. Figures in this Table are reported on a financial year basis while Table 7 reports on calendar years. As such, there is a discrepancy in 2019 figures.

⁹⁶ ATO, *Tax file number – application for a deceased estate*, p 5.

Across three years of data provided by the ATO, it is evident that the vast majority of TFN applications (55,530 out of 74,988, or 74%) are processed within the ATO systems on the same day that it is received, with a further 17% processed within the ATO's 28 day service standard. The remaining 9% of applications take longer than 28 days to process and, according to the ATO, these applications are those in which further enquiries or additional supporting information are sought before the application can be processed.

Conclusion and Recommendations

A deceased estate TFN may be obtained (by the LPR themselves or with the assistance of a registered tax practitioner) by post or through the ABR.

The concerns raised by stakeholders regarding TFN applications being paper-based and inefficient appear to be a result of taxpayers applying for these TFNs without the assistance of an agent and turning to white mail processes rather than lodging through the ABR. The data provided by the ATO shows clearly that where agents are engaged, the preferred method for TFN applications is through the ABR's electronic system with only a small proportion of agents opting for a paper-based lodgement.

Although a digital channel is available to apply for a TFN for a deceased estate where one is actually needed, it may not be well known by LPRs. An application can currently be made via a business channel - the 'Australian Business Register' (ABR). As deceased taxpayers are not generally in business, the business channel is accordingly counter intuitive and may not be well known or understood.

The lack of LPR awareness of this digital business channel may contribute to the volume of paper based TFN applications being made, particularly by LPRs who do not have the benefit of professional tax agent advice.

Interestingly, while the ATO provides a digital channel through which Tax agents can interact with its systems and undertake a range of activities on behalf of their clients, TFN application functionality does not appear to be available through the OSfA system. This system is the tax agent's main channel of interaction with the ATO and the ATO's preferred channel for tax agents to use when they wish to provide taxpayer identification details to the ATO. Given that almost 75% of TFN applications are lodged by tax agents, it would be beneficial for the ATO to consider adding this functionality to the OSfA system in the longer term.

The IGTO considers that unnecessary TFN applications may arise as a result of an 'abundance of caution approach' on the part of the deceased's representative wishing to demonstrate they have discharged all of their taxation obligations. In this regard, it is similar to the situation concerning lodgement of returns discussed in the next section. In either case, the IGTO considers that clearer and unequivocal binding advice on the need for deceased estate TFNs would assist both representatives of the deceased to understand their obligations, minimise compliance costs and reduce the administrative costs for the ATO in processing these applications.

RECOMMENDATION

Please see Recommendations 4 but also 1, 2 and 3.

Representatives are subject to unnecessary compliance burdens including lodging income tax returns where none is required, lodging two types of returns or lodging complex trust returns to claim simply to claim franking credits or other refunds

| | | | | | | |
|-----------------------------------|---|--|---|--|---|--|
| Terms of Reference Considerations | 1 | | 3 | | 5 | |
|-----------------------------------|---|--|---|--|---|--|

Stakeholders have raised concerns that while the LPR is required to lodge two different returns in finalising the affairs of a deceased taxpayer, these returns are unnecessarily burdensome, will incur professional fees of engaging registered tax agents to assist in lodgement and yield little benefit to the trust estate or the revenue.

A related issue that was raised with the IGTO is the potential compliance burden for LPRs where they may need to lodge prior year returns - going back many years – on behalf of the deceased. This may be because a formal obligation exists under the relevant Legislative Instruments and where probate or letters of administration have been granted)⁹⁷ or, even where there is no legal requirement or *need*, but they are advised to do so to minimise their risk of personal liability or to access tax refunds and credits as part of their obligations under succession laws. For example, where at the time of their death the deceased person had 10 years of outstanding income tax returns, it would be an onerous task for the LPR to go through records to determine whether years of non-lodgement needed a return to be lodged or if they could simply notify the ATO that lodgement was not necessary, though expected to discharge their obligations under succession law. It is an issue that has been raised and reported in the media.⁹⁸

Date of Death and Deceased Estate Trust Return lodgements

An LPR may be required, or advised or absent an obligation may nonetheless wish, to lodge a final tax return for the deceased taxpayer (called a ‘date of death tax return’) which covers the period from 1 July in the year the taxpayer died to their date of their death.⁹⁹ In addition, where the administration of an estate runs through more than one financial year, a deceased estate trust return may also be required.¹⁰⁰ In respect of the deceased estate trust return, lodgement is required where one of the following applies in an income year:

- The net income of the trust estate exceeds the tax-free threshold for the year,
- the deceased died more than 3 years before the end of the income year,
- there are non-resident beneficiaries, or
- beneficiaries are presently entitled to a share of the income of the trust.

⁹⁷ Above n 12, p 70.

⁹⁸ Nassim Khadem, ‘Australia doesn’t have a death tax, but someone has to pay your bills after you die,’ *ABC News* (9 December 2019) <<https://www.abc.net.au/news/2019-12-09/new-review-into-deceased-estates-death-taxes/11769118>>.

⁹⁹ ATO, *Doing a date of death tax return* (17 April 2019) <www.ato.gov.au>.

¹⁰⁰ Above n 54.

The Commissioner issues a legislative instrument annually setting out the circumstances in which certain returns are to be lodged.¹⁰¹

However even where there is no tax obligation to lodge, an LPR acting consistently with their duties, may still be obliged to lodge deceased estate trust returns (e.g., to seek payment of post-death refunds or obtain franking credits).

As noted in Table 5 and Table 6 earlier in this report, returns lodged on behalf of the deceased taxpayer are taxed at individual income tax rates (without Medicare levy) for the first three financial years following death and in the fourth year and thereafter at deceased estate tax rates. The ATO does not keep statistics on the length of time deceased estates are administered (and therefore may require lodgement of deceased estate trust returns). As part of this review, the ATO's Revenue Analysis Branch undertook some work to track through the TFNs of deceased estates which lodged an initial trust return in FY14 to determine what proportion of these estates continued to lodge after 3 years from the date of death – see Table 9.

Table 9: Number of years of deceased estate trust return lodgements

| FY | Number of Deceased Estate Trust Returns lodged | Number of Deceased Estate Trust Returns not lodged from this point onwards | % of deceased estates that ceased lodging trust returns | Number of Years lodged |
|------|--|--|---|------------------------|
| FY14 | 14,292 | 0 | 0% | 1 |
| FY15 | 8,950 | 5,342 | 37% | 2 |
| FY16 | 4,067 | 10,225 | 72% | 3 |
| FY17 | 2,051 | 12,241 | 86% | 4 |
| FY18 | 1,222 | 13,070 | 91% | 5 |
| FY19 | 484 | 13,808 | 97% | 6 |

Source: ATO.

While the above data is indicative only, it accords with the general view that the vast majority of deceased estates are finalised relatively quickly, with 86% never reaching the point of having deceased estate tax rates applied to them.

Where a deceased taxpayer has taxable income below the tax free threshold, a date of death tax return is generally not necessary. This may be due to a number of reasons, including for example - that the taxpayer was in retirement and in receipt of exempt pension income and other investment income prior to death which did not exceed the tax-free threshold. An LPR acting conservatively (and in the absence of binding guidance) is likely to be advised nonetheless to lodge a return to reduce the risk of personal liability or subsequent recovery action by the Commissioner that may impact the beneficiaries of the estate. Additionally, where a franking credit or refund is to be claimed, it is necessary to lodge a tax return to claim back the refund (even though this would be unnecessary were the deceased still alive).

¹⁰¹ Above n 55, Table O.

When compared to the numbers of deaths notified to the ATO each year, the numbers of returns actually lodged is relatively low. Table 10 below provides some comparative figures.

Table 10: Number of Date of Death and Deceased Estate Trust Returns lodged in FY17 and FY18

| | FY17 | FY18 |
|--|---------------------|---------------------|
| Deaths notified to the ATO | 166,310 | 169,994 |
| Total DOD returns lodged | 33,593 | 33,303 |
| % of DOD returns lodged to number of deceased taxpayers | 20% | 19.5% |
| Total deceased estate trust returns lodged | 14,698 ¹ | 13,388 ² |
| % of deceased estate trust returns lodged to number of deceased taxpayers | 8.8% | 7.9% |

Source: ATO

Note 1: Figure only includes trust returns lodged by deceased estates of taxpayers who died after 30 June 2016.

Note 2: Figure only includes trust returns lodged by deceased estates of taxpayers who died after 30 June 2017.

Based on the figures provided by the ATO, in approximately 80% of cases, no return has been lodged on behalf of the deceased taxpayer. It should be noted, however, that the IGTO has not investigated the ATO data to ascertain whether the non-lodgement arose because:

- no return was necessary for the deceased taxpayer; or
- a return was in fact required to be lodged but was not.

Similarly, approximately 90% of deceased estates do not lodge deceased estate trust returns. That is, for those taxpayers who died after 30 June 2016, the deceased estates only lodged trust returns in 8.8% of cases. In FY18, only 7.8% of estates that came into being after 30 June 2017 lodged a trust return.

However, these figures are not surprising when the data in Table 1 is examined further. That Table showed that in each calendar year, more than 80% of people who died were aged 65 or above – 81.8% in 2016, 82.2% in 2017 and 81.9% in 2018. Moreover, in each year, only about 27,000 people who died were aged between 15 and 64 – 27,400 in 2016, 27,065 in 2017 and 27,194 in 2018. These figures are significant and may explain the low proportion of DOD returns that are lodged. In the main, the data shows that the vast majority of people at the time of their death have been at retirement age and may be expected to be ‘disengaged’ with the tax system. There is a low likelihood of them having taxable affairs requiring the lodgement of a return.

The vast majority of DOD and deceased estate returns are lodged through registered tax agents. In FY17 and FY18, 96.1% and 94.4% of DOD tax returns were lodged by agents. Similarly, 95.9% of all deceased estate trust returns were lodged through registered tax agents in both FY17 and FY18.

A significant majority of DOD tax returns that were lodged, irrespective of whether through a registered tax agent or otherwise, reported zero or low taxable income and net tax positions, as set out in Table 11 below. Taxpayers could be lodging without a need to lodge or could be lodging simply to access a low value refund or franking credit. It should be noted that Table 11 sets out the net tax positions (i.e., the amount

of tax needing to be paid after any refunds are issued) which is different to the data presented in Table 12 which presents net income reported on deceased estate trust returns.

Table 11: Date of Deaths tax returns, lodgement method and net tax positions

| Range of Net Tax | FY17 | | | FY18 | | |
|-------------------------|--------|----------------------|---------------|--------|----------------------|---------------|
| | Count | Total Taxable Income | Total Net Tax | Count | Total Taxable Income | Total Net Tax |
| Tax agent lodged | | | | | | |
| Nil | 21,126 | 267,185,366 | 0 | 20,387 | 251,727,488 | 0 |
| \$1 - \$500 | 1,018 | 30,793,752 | 227,413 | 923 | 27,466,945 | 208,167 |
| \$501 - \$1000 | 718 | 24,569,570 | 534,779 | 711 | 23,511,827 | 530,281 |
| \$1001 - \$5000 | 3,079 | 113,708,139 | 8,376,319 | 2,898 | 108,311,141 | 7,953,738 |
| \$5001 - \$10000 | 1,744 | 87,959,195 | 12,701,092 | 1,821 | 90,114,285 | 13,358,052 |
| \$10001 - \$15000 | 1,118 | 71,475,602 | 13,734,636 | 1,164 | 73,959,442 | 14,308,416 |
| \$15001 - \$20000 | 810 | 63,340,968 | 13,986,260 | 768 | 60,338,497 | 13,410,109 |
| \$20001 - \$25000 | 573 | 53,829,875 | 12,775,388 | 551 | 51,310,130 | 12,292,249 |
| More than \$25000 | 2,094 | 464,338,804 | 162,673,276 | 2,224 | 623,698,202 | 228,712,694 |
| <i>Total</i> | 32,280 | 1,177,201,271 | 225,009,161 | 31,447 | 1,310,437,957 | 290,773,707 |
| Non-agent lodged | | | | | | |
| Nil | 988 | 11,370,397 | 0 | 49 | 1,388,327 | 13,422 |
| \$1 - \$500 | 35 | 1,025,675 | 7,650 | 32 | 944,215 | 23,178 |
| \$501 - \$1000 | 24 | 720,663 | 16,782 | 158 | 5,615,897 | 422,076 |
| \$1001 - \$5000 | 103 | 3,563,119 | 248,826 | 91 | 4,470,746 | 658,261 |
| \$5001 - \$10000 | 55 | 2,842,711 | 398,900 | 52 | 3,440,227 | 660,289 |
| \$10001 - \$15000 | 34 | 2,351,492 | 413,211 | 28 | 2,149,913 | 489,340 |
| \$15001 - \$20000 | 27 | 2,085,667 | 469,044 | 17 | 1,537,743 | 379,521 |
| \$20001 - \$25000 | 11 | 989,510 | 245,378 | 40 | 10,944,395 | 3,979,915 |
| More than \$25000 | 36 | 8,357,303 | 3,055,705 | 49 | 1,388,327 | 13,422 |
| <i>Total</i> | 1,313 | 33,306,537 | 4,855,495 | 1,856 | 45,567,881 | 6,626,002 |

Source: ATO

In FY17, 22,114 (65.8%) of DOD tax returns reported nil tax payable. FY18 reported similar figures, with 21,776 (65.4%) reporting no tax payable by the deceased taxpayer. A further 14.8% in FY17 and 14.3% in FY18, showed a net tax position of less than \$5,000.

As with DOD tax returns, deceased estate trust returns that have been lodged show that a significant proportion reporting less than \$20,000 in net income (i.e., the taxable income term that applies for trusts) – 37,201 returns (70.9%) and 33,347 returns (69.4%) in each of FY17 and FY18, respectively. As noted in Table 9, 86% of estates are administered and wound up within 3 years of the date of death.

This figure is significant given the majority of deceased estates are not administered beyond three years following death and therefore would have the benefit of the tax free threshold of \$18,200. Accordingly, estates within 3 years of the date of death with net income under \$20,000 are likely to owe no amount of tax to the ATO.

Table 12: Deceased Estate trust returns, lodgement method and net income

| Range of Net Income | FY17 | | | FY18 | | |
|-------------------------|---------------------|---------------|------------------|---------------------|---------------|------------------|
| | Count | Total income | Total Net income | Count | Total income | Total Net income |
| Tax agent lodged | | | | | | |
| Nil or less | 6,865 | -7,905,646 | -32,425,218 | 6,475 | -11,011,187 | -43,897,209 |
| \$1 - \$500 | 3,768 | 2,761,803 | 785,689 | 3,357 | 2,084,355 | 699,213 |
| \$501 - \$1000 | 2,540 | 3,038,397 | 1,873,039 | 2,154 | 2,668,738 | 1,594,514 |
| \$1001 - \$5000 | 9,835 | 33,462,038 | 26,510,494 | 8,722 | 29,793,094 | 23,459,252 |
| \$5001 - \$10000 | 5,910 | 48,504,223 | 42,822,420 | 5,374 | 44,778,073 | 39,064,913 |
| \$10001 - \$15000 | 3,814 | 52,184,746 | 47,083,104 | 3,393 | 46,375,666 | 41,957,282 |
| \$15001 - \$20000 | 2,762 | 51,950,428 | 47,943,222 | 2,381 | 45,057,333 | 41,408,319 |
| \$20001 - \$25000 | 1,985 | 47,944,054 | 44,264,950 | 1,803 | 43,689,387 | 40,287,716 |
| More than \$25000 | 12,845 | 1,840,538,845 | 1,779,498,136 | 12,482 | 2,110,761,745 | 2,051,348,985 |
| <i>Total</i> | 50,324 ¹ | 2,072,478,888 | 1,958,355,836 | 46,141 ¹ | 2,314,197,204 | 2,195,922,985 |
| Non-agent lodged | | | | | | |
| Nil or less | 284 | 529,350 | -1,365,808 | 228 | 75,723 | -1,616,763 |
| \$1 - \$500 | 249 | 68,589 | 51,419 | 209 | 66,416 | 42,754 |
| \$501 - \$1000 | 153 | 119,635 | 111,807 | 143 | 113,935 | 105,171 |
| \$1001 - \$5000 | 514 | 1,496,164 | 1,360,499 | 458 | 1,284,101 | 1,214,325 |
| \$5001 - \$10000 | 270 | 2,029,351 | 1,956,916 | 233 | 1,799,113 | 1,725,099 |
| \$10001 - \$15000 | 156 | 2,044,016 | 1,952,489 | 123 | 1,620,770 | 1,527,347 |
| \$15001 - \$20000 | 81 | 1,453,757 | 1,416,778 | 97 | 1,729,705 | 1,689,997 |
| \$20001 - \$25000 | 76 | 1,772,651 | 1,692,216 | 67 | 1,524,742 | 1,497,746 |
| More than \$25000 | 372 | 46,443,027 | 44,287,546 | 376 | 45,891,772 | 43,562,860 |
| <i>Total</i> | 2,155 ¹ | 55,956,540 | 51,463,862 | 1,934 ¹ | 54,106,277 | 49,748,536 |

Source: ATO

Note 1: These figures represent all deceased trust returns received by the ATO in FY17 and FY18. They include returns lodged by deceased estates that came into being prior to FY17 and FY18.

Conclusion and Recommendations

The data above tends to support the stakeholder views that the current compliance burdens imposed on LPRs in respect of these returns is disproportionate. While it has not been possible to directly weigh up the costs and benefits associated with these lodgements, as the ATO does not hold data in relation to costs incurred by LPRs, it is reasonable to expect that such costs may outweigh the benefits in terms of tax collections (being nil).

The costs associated with lodgement compliance by LPRs may include engaging tax agents (demonstrated by the significantly high proportion of agent lodgements), obtaining probate or letters of administration to gain access to taxpayer information held by the ATO and the associated legal costs of doing so. Where the values of DOD tax returns and deceased estate trust returns are so low, such costs are either likely to outweigh any returns or render them immaterial.

It is necessary to also acknowledge that in a very large number of cases, neither a DOD tax return nor a deceased estate tax return is necessary, nor lodged by LPRs, thereby limiting any compliance burden that might be imposed. Although an LPR may simply notify the ATO that a DOD tax return lodgement is not

necessary, it is reasonable to expect that before the LPR can submit this notification, some binding advice from the ATO would be necessary to satisfy the LPR that this is the correct course of action.

Here, as set out in scenarios earlier in this report, the issues in relation to prior year outstanding returns are also relevant. If the strict letter of the law is considered, an LPR after a grant of probate or letters of administration would be required to lodge those outstanding returns to ensure that all known liabilities are addressed before distributing assets. Whether the Commissioner chooses to insist and enforce these lodgement requirements are matters that the ATO considers internally as part of its risk-based compliance approaches.

In the case of an LPR where probate or letters of administration are not required, it would nonetheless be prudent to make enquiries as to whether any outstanding returns need to be lodged and to discharge those obligations before distributing assets to guard against a risk of personal liability - for example, where the Commissioner may elect to issue a determination as to tax liability and take recovery action from the estate.¹⁰²

In the absence of binding advice to provide comfort for LPRs (in particular, in circumstances and jurisdictions where grants of court are not required), it is likely that a conservative approach to the administration of the estate would be adopted (or be advised to be adopted) by an LPR. This will include applying for deceased estate TFNs when one may not be required, taking steps to lodge prior year returns and lodging deceased estate trust returns where they are not required. Another reason why deceased estate trust returns may be lodged is to claim franking credits and other small refunds that may arise following the death of the taxpayer. While administrative arrangements apply while the individual taxpayer is alive to enable the release of these credits and refunds without the need for a return, these arrangements do not apply after death. As such, where no return is lodged to claim the franking credits or other refunds, the ATO does not refund them to the deceased. The current process of needing to lodge a deceased estate trust return to claim small value tax credits seems to add unnecessary compliance steps and red tape to the process.

This is particularly so where it is reasonable to expect that the ATO would have sufficient data to construct any necessary DOD tax returns and even trust returns, to further reduce the compliance burden on LPRs needing to obtain information or to formally lodge returns confirming the ATO information.

With this in mind, the IGTO considers that there are opportunities for the ATO to streamline the lodgement process of DOD tax returns, in particular, through leveraging its data capabilities. While the IGTO recognises that binding instruction already exists in the form of the annually issued legislative instrument, having regard to the foregoing discussion, the IGTO considers that the ATO could also reduce the compliance burden by providing binding advice on key practical areas such as whether prior year returns need to be lodged – for example, LPRs need not lodge income tax returns or apply for new TFNs where taxable income in the first three financial years following death would not exceed the relevant tax free thresholds, where lodgement is made only for the purposes of obtaining refunds or franking credits, or in respect of prior year outstanding returns.

¹⁰² *Taxation Administration Act 1953*, Sch 1, ss 260-145 and 260-150.

RECOMMENDATION

Please see Recommendation 1(b).

The standard form trust tax return is unnecessarily complicated and asks for irrelevant information in relation to deceased estates

| | | | | | | |
|-----------------------------------|---|---|--|---|--|--|
| Terms of Reference Considerations | 1 | 2 | | 4 | | |
|-----------------------------------|---|---|--|---|--|--|

One of the key compliance responsibilities for LPRs is to lodge a trust tax return (where required) for each financial year in which the deceased estate is administered.

Submissions lodged with the IGTO to this review have acknowledged that it is necessary to provide the ATO with information on any income earned by and any other transactions entered on behalf of the deceased estate during its administration. However, stakeholders also observe that the current trust tax return form is unnecessarily complicated and not fit for this purpose with accompanying instructions and guidelines creating further confusion. In one submission, a former ATO officer recounted having to seek advice from a colleague specialising in trust law in order to complete the return on behalf of a relative.

ATO guidance and website information

Not all LPRs need to lodge trust tax returns for deceased estates. The ATO website provides that LPRs need not lodge a trust tax return if ‘the administration of the deceased estate is in the same income year as the date of death’¹⁰³ and:

- No beneficiary is presently entitled to any of the estate's income.
- The taxable income of the estate is below the tax-free threshold for individuals.¹⁰⁴

The ATO website also states that where administration of the deceased estate does not complete in the same income year as the date of death, a trust return does not need to be lodged if:¹⁰⁵

- the deceased person died less than three years from before the end of that income year;
- no beneficiary is presently entitled to a share of the income of the trust estate at the end of that income year;
- the net income of the trust estate under section 95 of the Income Tax Assessment Act 1936 is less than \$18,200 for that income year; and
- there are no non-resident beneficiaries of the trust estate during the income year.

¹⁰³ Above n 54.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.; ATO, *Trust tax return instructions 2019*, Appendix 8 (30 May 2019) <www.ato.gov.au>.

Year on year, the ATO's statistics show that approximately 50,000 trust tax returns are lodged for deceased estates - refer Table 12 earlier. Some of these returns necessarily relate to deceased estates that have been in administration for two or more years since the date of death.

However, the ATO has advised the IGTO that the numbers of deceased estate trust returns lodged exceed what they would expect is required.

Trust tax return and instructions

Where a trust tax return is necessary, the ATO standard Trust form is required to be completed and lodged. The current form (2019) is 16 pages long and contains 58 questions. Beyond the usual questions seeking identifying details from the trust, other questions are aimed at ascertaining details in relation to income, tax withheld, rent, gross interest, dividends and superannuation lump sum payments.¹⁰⁶

More complex questions seek details in relation to primary and non-primary production income from partnerships and trusts, income from forestry managed investment schemes, foreign income, landcare and water facility tax offsets, overseas transactions and thin capitalisation, and taxation of financial arrangements.¹⁰⁷

At present, the trust tax return is only available in paper form and must be manually completed and lodged. Accordingly, it cannot be pre-filled with data based on ATO systems.

The trust form also does not provide the ATO with all the information that the ATO may find relevant to simplify the administration of taxes for the deceased and their estate – including for example, the date of death, the estate's intestacy status, the need to obtain probate or letters of administration under State and Territory laws and so on.

The ATO website provides instructions to accompany the trust tax return, which are available online only and not in print format.¹⁰⁸ The trust tax return instructions are extensive and when printed from the ATO's website in its totality, runs to approximately 260 A4 pages. The trust instructions cover the entirety of the trust tax return itself. Appendix 8 of these instructions is devoted to providing advice on how to complete the form for deceased estates.

It should be noted that Appendix 8 does not, in itself, provide fulsome instructions to assist LPRs to complete the trust tax return. Rather it provides simple guidance which necessitates the reader to refer back to the main body of the instruction for further details. For example, in respect of question 8 on partnership and trusts, the Appendix 8 instructions state:¹⁰⁹

Show at A or B any amount of primary production or non-primary production partnership income.

Show at Z or R and F the trust's share of primary production or non-primary production income which has been included in the net income (for tax purposes) of other trusts after the date of death.

¹⁰⁶ ATO, *Trust tax return 2019*, see questions 5, 6, 9, 11, 12 and 13.

¹⁰⁷ ATO, *Trust tax return 2019*, see questions 8, 10, 17, 22, 28, 29 and 31.

¹⁰⁸ ATO, *trust tax return instructions 2019* (30 May 2019) <www.ato.gov.au>.

¹⁰⁹ *Ibid.*, Appendix 8.

Show at S any deductions for the deceased estate's own expenses in relation to distributions of primary production income.

Show at T and G any deductions for the deceased estate's own expenses in relation to distributions of non-primary production income.

Show at C any share of credit for tax withheld where an ABN was not quoted.

Show at D any share of franking credit from franked distributions.

Show at E any share of credit for TFN amounts withheld from interest, dividends and unit trust distributions.

Show at O any credit for TFN amounts withheld from payments from closely held trusts.

In order to appreciate what may need to be completed at each of the above labels, the reader would need to refer back to the main instructions on primary production and non-primary production partnership income.

The Appendix 8 instructions also appear to cease at question 27 and therefore provides no specific guidance to deceased estates on questions 28 – 58 which includes complex matters such as thin capitalisation and taxation of financial arrangements.¹¹⁰ Where these questions are not relevant to a deceased estate it would be useful to expressly state which questions can be disregarded.

Conclusion and Recommendations

The completion of a trust tax return is complicated, by any standard. Many LPRs and even some registered tax agents and legal practitioners would find compliance with this requirement difficult. The complexity arises in part because there is seemingly no distinction in the information and lodgement compliance requirements between a straightforward deceased estate and (say) a listed public unit trust (that is, a managed investment trust), both of which are required to complete and lodge the same trust tax return form.

The IGTO appreciates that the ATO requires fulsome information in order to make an appropriate assessment of the estate's net income. However, the manner in which LPRs are required to lodge this information is onerous and raises unnecessary compliance costs. The ATO's own statistics suggest that, in each of FY17 and FY18, only approximately 30% (or approximately 15,000) of deceased estate trust returns lodged reported net income exceeding \$20,000. Additionally, this 30% of lodged deceased estate returns account, in total, for approximately 90% of net income reported to the ATO.

While it is not entirely possible to ascertain the complexity of deceased estates by reference to their net income alone, it does provide a good benchmark or proxy – especially absent a review of each return lodged individually. It is likely to be the case that those estates reporting more than \$20,000 in net income (see Table 12) are likely to be more complex and hence the trust tax return form may be more applicable to the affairs of these estates. However, for the majority of deceased estates, the trust tax return form asks seemingly irrelevant questions, which are likely to have nil responses when the return is finalised.

¹¹⁰ Above n 108, Appendix 8.

Before that can occur, the LPR would need to assess and be satisfied that a nil response is appropriate and having reviewed the trust tax return form instructions and the return itself. The IGTO is of the view that for many LPRs, this is not achievable without engaging an expert tax professional. Although accessing the services of an expert tax professional should be encouraged in more complex cases, where it is the default position then there is a risk that small value estates will be diminished by professional fees unnecessarily.

The trust tax return form is an approved form developed by the Commissioner and may be varied, withdrawn or replaced at his or her discretion. In the current case, the IGTO considers that there would be merit in the Commissioner simplifying the lodgement requirements for deceased taxpayers. This could include developing a simplified and dedicated return for a deceased taxpayer that may be used by LPRs – especially low-value or straightforward deceased estates. For example, this could apply to low value estates – determined using a maximum dollar value or one that aligns with exceptions from probate requirements under various State and Territory wills and estates.

In addition to addressing concerns regarding irrelevant trust tax return form information and labels, such a form should also consider issues of terminology. The mere fact that the return to be used for deceased individual is labelled a ‘trust’ return creates immediate confusion. A newly created, simplified return could be named a “Deceased Taxpayer Income Tax Return” or a “D Return” to clearly distinguish it from Individual Income Tax Returns (“I Returns”) which apply to individuals before their death and Trust Tax Returns (“T Returns”), which apply to commercial and family trusts (and perhaps some complex estates).

RECOMMENDATION

Please see Recommendations 1(c) and 5.

Applying general taxation of trust rules to deceased estates can create unintended outcomes

| | | | | | | |
|-----------------------------------|---|--|--|--|---|--|
| Terms of Reference Considerations | 1 | | | | 5 | |
|-----------------------------------|---|--|--|--|---|--|

One submission lodged to this review has raised a concern highlighting that the undifferentiated taxation treatment of deceased estates from other types of trusts can give rise to some unintended consequences. The example provided noted that where the executor of the deceased estate is non-resident, the deceased estate would be treated at law as a non-resident trust and taxation rules applicable to non-resident taxpayers would then apply.

The stakeholder highlighted an example taken from Taxation Determination TD 2017/24:¹¹¹

The trustee of a foreign trust for CGT purpose sells shares in an Australian public company that it had owned for five years. The shares are not taxable Australian property.

The trustee makes \$50,000 capital gains from the share sale but these are not relevant in calculating the trust's net income.

The trustee distributes an amount attributable to the capital gains to Erin, a resident of Australia. Erin has a \$40,000 net capital loss that she has carried forward.

Erin must include the entire \$50,000 in her assessable income under section 99B. She cannot reduce the amount by her net capital loss or by the CGT discount.

The current legal position

Section 95(2) and (3) of the *Income Tax Assessment Act 1936* (ITAA 1936) provides that:

- (2) *For the purposes of this Division, a trust estate shall be taken to be a resident trust estate in relation to a year of income if:*
- (a) a trustee of the trust estate was a resident at any time during the year of income; or*
 - (b) the central management and control of the trust estate was in Australia at any time during the year of income.*
- (3) *In this Division, a trust estate that is not a resident trust estate in relation to a year of income is referred to as a non-resident trust estate in relation to that year of income.*

Furthermore, where a trust ceases to be a resident trust (because for example the Executor ceases Australian tax residency), CGT event I2 would be activated¹¹² to impose new requirements on the LPR to determine whether the trust has made a capital gain or loss on *each* CGT asset that is owned by the estate¹¹³.

Conclusion

The issue highlighted by the stakeholder stems from the undifferentiated treatment of deceased estates from other types of trust for taxation law purposes. This undifferentiated treatment has also contributed to other complications, including the need to obtain new TFNs for the deceased estate and lodge trust tax return forms (not different from those lodged by other listed and unlisted trusts).

Having regard to the generally simple affairs of most deceased taxpayers in Australia (referenced earlier in low value DOD and trust returns being lodged), it is unlikely that deceased persons will turn their minds to the residency of their deceased estate when nominating their executor. It may also be the case that at

¹¹¹ ATO, *Taxation Determination TD2017/24: Income tax: where an amount included in a beneficiary's assessable income under subsection 99B(1) of the Income Tax Assessment Act 1936 (ITAA 1936) had its origins in a capital gain from non-taxable Australian property of a foreign trust, can the beneficiary offset capital losses or a carry-forward net capital loss ('capital loss offset') or access the CGT discount in relation to the amount?*

¹¹² *Income Tax Assessment Act 1936*, s 140.170(1).

¹¹³ *Income Tax Assessment Act 1936*, s.140.170(3).

the time of establishing their will, they could not foresee a situation where their nominated executor would become a non-resident for Australian tax purposes. The lack of control in such a situation places both the executor and the estate’s beneficiaries in a difficult situation and having to navigate not only laws on taxation of trusts, but additional rules specific to non-residents. This would be so even if the deceased person was resident at the time of their death, all assets are held in Australia and all beneficiaries are Australian resident for taxation purposes.

It has also been submitted that the Commissioner could apply his powers of general administration to treat deceased estates as being resident for a limited number of years following the death of the taxpayer, or take into account extenuating factors (such as the intent of the deceased person) to treat the estate as being resident for taxation purposes. Given the unambiguous nature of the definitions within Division 6 of the ITAA 1936, the IGTO does not believe that the Commissioner could rely on either his general powers of administration or remedial powers to apply a different residency treatment to deceased estates.

There are broader taxation policy issues at play which fall outside of the IGTO’s tax administration functions. However, these policy issues should be carefully considered and where possible designed to minimise or reduce the complexity and compliance costs for people seeking to finalise the estate of their loved ones. To this end, the IGTO considers that these could be issues that the ATO explores through consultation with members of its National Tax Liaison Group or other specific forums with a view to making submissions for further inquiry to bodies such as the Board of Taxation or lodging minutes with Treasury, noting any factors and considerations relevant for any potential law change.

RECOMMENDATION

Please see Recommendation 6.

IT IS DIFFICULT TO OBTAIN INFORMATION ABOUT THE DECEASED TAXPAYER’S AFFAIRS, ACCESS ATO SYSTEMS, OR ENGAGE WITH THE RIGHT ATO PERSONNEL

The requirement to obtain probate or letters of administration in order to obtain information from the ATO creates unnecessary compliance costs

| | | | | | | |
|--|----------|--|--|----------|----------|--|
| Terms of Reference Considerations | 1 | | | 4 | 5 | |
|--|----------|--|--|----------|----------|--|

A common complaint raised with the IGTO in respect of deceased estates has been the requirement for the named executors in a will to obtain probate. Otherwise, the ATO insists that family members of a deceased taxpayer should seek letters of administration before the ATO can release any information in respect of the deceased. Complainants to the IGTO and submissions to this review have observed that the process to obtain probate or letters of administration is not mandated in all jurisdictions, or for all estates.

In some circumstances, it is unnecessary to obtain probate or letters of administration, except for ATO purposes. In addition, it can be time consuming and costly and can outweigh any credits or refunds sought to be claimed by the deceased estate.

Two further concerns were raised in this regard. Firstly, that even where an LPR has obtained probate or letters of administration, the current wording of the legislation does not permit the LPR to appoint a registered tax agent or solicitor on act on their behalf and to deal with the ATO directly. This results in the LPR acting as an intermediary between their professional representative and the ATO to request, receive and pass on information.

Secondly, stakeholders have suggested that there may be incongruity between two tax provisions. It has been suggested that there may be instances in which section 260-140 of Schedule 1 to the TAA 1953 could operate to treat certain estates as being administered (i.e., as if probate or letters of administration had been granted) but the same position does not extend to the secrecy provisions in Division 355 of Schedule 1 to the TAA 1953. It was suggested that such incongruity is recognised by the ATO in its Practical Compliance Guideline (PCG) 2018/4 which notes:

Succession law in Australia is State and Territory based. While the laws of each State and Territory operate in a broadly similar manner, there are differences. For example, in most States assets that a deceased person owned and which form part of their estate vest in their LPR once a grant of probate or letters of administration have been obtained. However in Queensland, those assets vest automatically in the deceased's executor if they died leaving a will. This can mean that section 260-140 of Schedule 1 of the TAA applies to some, but not all executors.¹¹⁴

Accordingly, tax officers may nonetheless commit a statutory breach of confidentiality by disclosing any information to the LPR. It would be useful if this inconsistency was clarified.

The legislative framework and current ATO position

Section 355-25 of Schedule 1 to the TAA 1953 provides that a taxation officer commits an offence punishable by up to 2 years imprisonment if they disclose 'protected information'¹¹⁵. An exception is made where the information is disclosed to a 'covered entity'¹¹⁶. A covered entity includes the primary entity's (i.e., a taxpayer's) registered tax agent¹¹⁷ or a primary entity's (i.e., a deceased taxpayer's) LPR¹¹⁸.

A further exception exists in relation to the performance of duties of a taxation officer. Section 355-50 of Schedule 1 to the TAA 1953 provides that section 355-25 of Schedule 1 to the TAA 1953 does not apply where the taxation officer made the record of information or disclosed information in the performance of their duties as a taxation officer.¹¹⁹ The performance of duties includes, *inter alia*, disclosure 'for the

¹¹⁴ Above n 41, para 31.

¹¹⁵ *Taxation Administration Act 1953*, Sch 1, s355-30. It essentially refers to tax information relating to a particular entity.

¹¹⁶ *Taxation Administration Act 1953*, Sch 1, s355-25(1)(b)(ii).

¹¹⁷ *Taxation Administration Act 1953*, Sch 1, s355-25(2)(a).

¹¹⁸ *Taxation Administration Act 1953*, Sch 1, s355-25(2)(d).

¹¹⁹ *Taxation Administration Act 1953*, Sch 1, s355-50(1)(a)-(b).

purpose of administering any taxation law’ and ‘for the purpose of enabling the entity to understand or comply with its obligations under a taxation law.’¹²⁰

Moreover, it is also important to appreciate that not all information about a taxpayer is considered ‘protected information’ as defined by the TAA 1953. For example, the TAA 1953 specifically provides that TFNs, in and of themselves, do not constitute protected information.¹²¹ The ATO’s current position, based on its interpretation of the secrecy provisions within the tax laws, is that it can, except in (unspecified) limited circumstances that are assessed on a case-by-case basis, only disclose protected information to an LPR once probate or letters of administration has been obtained. However, there may be legitimate reasons why probate or letters of administration are not necessary, or otherwise difficult to obtain. For example, in complaints lodged with the IGTO, examples were given where the process to obtain letters of administration would involve the applicant establishing contact with estranged family members, creating unmanageable personal difficulties. In other cases, the IGTO has been informed that the cost of probate or letters of administration would outweigh any credits or refunds that the ATO could issue to taxpayers. Indeed, a general scan of the court fees involved in obtaining probate or letters of administration show that fees can vary between different States and Territories, with some applications not requiring any filing fees or very low fees¹²² but in other cases they may be as high as \$5,860.00 for the court filing fee alone.¹²³

In addition to the filing fees, there are also associated costs of legal representation in the Supreme Courts and other disbursements, such as the costs of advertising intention to obtain probate. The ATO recognises some of these costs and in areas unrelated to the disclosure of protected information, the ATO has, for example, adopted internal policies to assist in the release of funds such as low value sums of unclaimed superannuation without the need for probate or letters of administration.

There are further instances in which State and Territory succession laws may not require the LPR to obtain probate or letters of administration. These create a situation where an LPR’s only reason to seek probate or letters of administration is to satisfy the secrecy provisions within the tax laws.

The ATO does not believe, based on its current interpretation that the interaction between section 260-140 and the secrecy provisions in Division 355 of Sch 1 of the TAA 1953 result in incongruous outcomes. The ATO has advised the IGTO that section 260-140 would only apply where probate or letters of administration have been obtained, and PCG 2018/4 is intended only to apply to LPRs with grants of court, and in those circumstances, disclosure of deceased estate information could be disclosed to the LPR with the relevant grants of court, or their appointed representative. However, the ATO does recognise that there may be situations where uncertainty arises when dealing with estates in jurisdictions where probate and letters of administration are not required before estate assets can be dealt with. As a result of this review, the ATO is seeking to confirm its position on these issues.

¹²⁰ *Taxation Administration Act 1953*, Sch 1, s355-50(2) Items 1 and 6.

¹²¹ *Taxation Administration Act 1953*, Sch 1, s355-30(1).

¹²² See for example, in Victoria where the value of the estate is less than \$500,000: Supreme Court of Victoria, *Probate Office Fees List* (Effective 1 July 2019) <https://www.supremecourt.vic.gov.au/sites/default/files/2019-06/2019_-_2020_probate_office_fees_list.pdf>.

¹²³ See for example, in New South Wales where the value of the estate is more than \$5,000,000: Supreme Court of New South Wales, *Filing Fees as at 11 July 2019* <<http://www.supremecourt.justice.nsw.gov.au/Pages/Current-fees.aspx>>.

ATO developments since the commencement of this review

In relation to concerns about the inability for professional representatives of an LPR (after probate or letters of administration has been obtained) to deal directly with the ATO, a legislative instrument was issued on 13 January 2020, pursuant to the Commissioner's Remedial Powers, to modify section 355-25 of Schedule 1 to the TAA 1953 to add that a 'covered entity' may include:¹²⁴

- a registered tax agent or BAS agent of an executor or administrator of the primary entity's estate; or
- a legal practitioner representing an executor or administrator of the primary entity's estate in relation to the primary entity's affairs relating to one or more taxation laws.

The legislative instrument came into effect on 15 May 2020 after the period for its disallowance had passed (as set out in section 42 of the *Legislation Act 2003*).¹²⁵

Conclusion and Recommendations

The IGTO recognises the strict requirements for secrecy and confidentiality within the tax laws and appreciates the need to maintain community confidence that personal and sensitive information provided to the ATO is protected against inappropriate disclosure. This is particularly important within a self-assessment tax system where the ATO relies on the voluntary provision of accurate and fulsome information from taxpayers to aid in its administration of the system.

However, there is a need to also assist taxpayers to comply with their tax obligations and particularly so in situations following the death of a taxpayer – where it is left to a friend or loved one to finalise their estate. There are other examples where the ATO has sought to administratively provide assistance where amounts involved are *de minimis*.

As noted earlier, there are exceptions contained within Division 355 that enable ATO officers to disclose protected information without committing an offence.¹²⁶ These exceptions include, *inter alia*, where the disclosure is made for the purposes of administering any taxation law,¹²⁷ or where the disclosure enables an entity to understand and comply with their obligations under any taxation law¹²⁸.

The ATO has publicly stated that while limited disclosure may be made in certain circumstances which are assessed on a case-by-case basis, it does not consider these exceptions operate to enable it to disclose protected information in an unrestricted manner to a representative of the deceased taxpayer absent the grant of probate or letters of administration.

In discussions between the IGTO and the ATO during this review, the ATO position in relation to its limitation on sharing information, particularly protected information, where the LPR has not obtained grants of probate or letters of administration has been explored. As a result of these discussions, the ATO agreed that there was opportunity to improve how its officers responded to information requests where neither probate nor letters of administration had been (or needed to be) obtained. The ATO is currently

¹²⁴ *Taxation Administration (Remedial Power – Disclosure of Protected Information by Taxation Officers) Determination 2020*.

¹²⁵ Above n 74.

¹²⁶ *Taxation Administration Act 1953*, Sch 1, s 355-50.

¹²⁷ *Taxation Administration Act 1953*, Sch 1, s 355-50(2) Table Item 1.

¹²⁸ *Taxation Administration Act 1953*, Sch 1, s 355-50(2) Table Item 6.

developing further guidance to ensure its staff are aware of when it is appropriate to make a disclosure of protected information relying on the limited exception to make disclosures in the course of a tax officer’s duty.

The IGTO also posed to the ATO some questions regarding the possible incongruities in the operation of different legislative provisions. This includes situations where:

- the ATO is dealing with representatives of deceased estates where there is no requirement to obtain probate or letters of administration; or
- actions may be taken by the Commissioner against certain deceased estates while the secrecy provisions may prevent the ATO from disclosing information to the relevant LPRs in those circumstances, without probate or letters of administration.

Such incongruities are clearly undesirable, if they exist.

The IGTO understands that the ATO has taken steps to confirm its position on the matter. This has been progressed in response to the current IGTO review, as well as to explore what ramifications there may be for the ATO’s administration in this area.

The IGTO considers this to be a positive step and one that would assist to better inform the ATO on its administrative approach. The IGTO believes that given the complexities in this regard, there would be merit in the ATO engaging with its consultative groups (for example, the National Tax Liaison Group) to seek feedback and advice on how to address these matters moving forward, including, where necessary, providing a briefing through Treasury for law change to allow for disclosure of protected information to LPRs who are unable, or otherwise not required to, obtain probate or letters of administration.

RECOMMENDATION

Please see Recommendation 7 and also 1(a)(ii)-(iv)

There is currently no arrangement for accessing deceased taxpayer information sent through myGov

| | | | | | | |
|--|---|---|--|---|--|--|
| Terms of Reference Considerations | 1 | 2 | | 4 | | |
|--|---|---|--|---|--|--|

The Commissioner’s Remedial Power is likely to assist LPRs (with grant of probate or letters of administration) to finalise the deceased estate through greater and more ready access to the deceased taxpayer’s information, particularly where registered tax agents are engaged by these LPRs and are able to access that information through OSfA. Despite this development, some concern has been raised about situations where a taxpayer did not have a tax agent prior to their death (which may be reasonable where they have been in retirement for many years), or had tax correspondence sent directly to their MyGov

inbox. There is little opportunity for the representatives of the deceased to access these records and correspondence.

During the course of the review, the IGTO was informed anecdotally by practitioners that some LPRs have been advised to locate passwords for the deceased taxpayer's MyGov account and to access the relevant information *before* informing the ATO about the death of the taxpayer. A better solution is desirable.

How deceased taxpayer information is currently managed on myGov

MyGov is a platform through which a range of government services may be accessed by individuals.¹²⁹ ATO services offered through MyGov allows taxpayers to:¹³⁰

- Manage personal details
- View tax information
- Lodge and pay tax
- View and manage super
- Manage lodgements as a sole trader

Where a taxpayer has opted to use MyGov, communications from the ATO which have previously been sent by post, would now be sent digitally through their MyGov inbox. The ATO's website explains:¹³¹

If you have linked us to your myGov account, most of your ATO mail will now come directly to your myGov Inbox, rather than through the post. This is to help you manage your taxation and superannuation affairs in one place and make record keeping easier and more secure.

If you have a tax agent or BAS agent managing your affairs, they may have asked you to set your communication preferences. Where you have selected to have mail preferenced to come to you, it will be sent to your myGov Inbox if you have linked to us. Where the preference is set to the agent, it will be sent to your agent's digital mailbox.

You can still view your mail in your Communication history in ATO online. Not all agents are using communication preferences.

Complaints lodged with the IGTO suggest that where taxpayers with registered tax agents opt to receive correspondence directly through the MyGov Inbox, the agent receives details of that correspondence via a correspondence list. Where a person has not retained a registered tax practitioner, correspondence is only issued to the MyGov Inbox and there would be no other records of it, save for any that have been retained by the ATO on its own systems. In discussions with the ATO during the course of the review, the IGTO was informed that OSfA will only display system-generated correspondence such as notices of

¹²⁹ Services Australia, *About MyGov* (13 February 2020) <<https://www.servicesaustralia.gov.au/individuals/subjects/about-mygov>>.

¹³⁰ ATO, *Online services – individuals and sole traders* (11 February 2020) <<https://www.ato.gov.au/General/Online-services/Individuals-and-sole-traders/>>.

¹³¹ ATO, *ATO and the MyGov Inbox* (17 January 2020) <<https://www.ato.gov.au/General/Online-services/In-detail/myGov/ATO-and-the-myGov-Inbox/>>.

assessment, lodgement reminders and bulk mail outs generated and recorded on Siebel, the ATO's enterprise case management system. Other types of communications, such as letters that are issued to taxpayers during the course of a review or audit or bulk mail outs generated outside of Siebel would not be available for viewing by the tax practitioner.

Upon notification of the death of a taxpayer, correspondence will cease to be sent to the MyGov account. However, there is at present no information to confirm what happens to a person's MyGov account when the ATO, or Services Australia, have been informed that the person has died. Specifically whether information that had been previously been sent to the Inbox would be captured or archived by the relevant agencies.

Conclusion and Recommendations

From 15 May 2020 at least, when the Legislative Instrument came into effect, registered tax and BAS agents, appointed by an LPR with a grant of probate or letters of administration, are now able to add a deceased taxpayer's account to their client list and access relevant information pertaining to that account. However, the IGTO was unable to ascertain whether the agent would be able to access historical communications that may have previously been sent to the taxpayer's MyGov inbox and how this would be effected.

As government services are increasingly being provided through online digital channels, it is not unexpected that information previously sent to the taxpayer would be of relevance to LPRs and their representatives in seeking to finalise the affairs of the deceased. The issue is not peculiar to government or to tax administration and has been contemplated in other fields.¹³² Where tax is concerned, it is necessary to consider these questions to ensure that information critical to assisting the LPR to finalise the deceased estate and to enable the ATO to administer the tax laws effectively and efficiently are easily accessible.

The information provided by the ATO during the course of this review suggests there is an information gap – that is information that may have been sent to the taxpayer during their lifetime which is not automatically made available to representatives of the deceased (including LPRs) and registered tax agents appointed to assist in finalising the estate.

Fundamentally, the IGTO considers that the ATO should ensure all information necessary for the representative of the deceased and or registered tax agents to comply with their taxation obligations is readily accessible or able to be provided upon request. As part of this work, the ATO may wish to engage in discussions with partner agencies, such as Services Australia, to determine the best way forward in this regard.

¹³² Amy Gibbs, 'Life after death in the digital dimension,' *PwC Digital Pulse* (29 October 2019) <<https://www.digitalpulse.pwc.com.au/life-after-digital-death/>>.

RECOMMENDATION

Please see Recommendation 8.

Access to the right personnel to discuss and receive advice on dealing with deceased estates can be difficult

| | | | | | | |
|--|----------|----------|----------|--|--|--|
| Terms of Reference Considerations | 1 | 2 | 3 | | | |
|--|----------|----------|----------|--|--|--|

In addition to difficulties with accessing information, stakeholders' raised concerns in submissions that, at times, reaching the right personnel within the ATO to seek advice and guidance on dealing with deceased estates can be difficult. This is particularly so as there is no dedicated team dealing with deceased estate tax issues.

An ancillary issue raised in this respect was that the ATO had little or only limited engagement with legal practitioners as part of its administration, with consultation being focused on registered tax practitioners. In relation to the ATO's administration on estates and succession issues, stakeholders observed that where engagement with the legal profession occurred, it tended to be on tax technical matters rather than other issues affecting tax administration and did not draw in expertise from estates and succession lawyers. It was suggested that greater and more effective engagement with experts in these fields would aid to bolster the ATO's work and guidance in this area as well as providing a channel for external stakeholders to engage with the ATO on irritants within the system.

Current ATO resourcing to deal with deceased estate issues

At present, there are no dedicated telephone lines or teams within the ATO that deal specifically or expertly with deceased estate issues. This contrasts with some other government departments, such as Services Australia, that have dedicated bereavement support lines.¹³³

All calls to the ATO on deceased taxpayer matters, whether by an individual or a registered tax practitioner, are made through the standard contact centre telephone lines and may be answered by one of approximately 1,500 contact centre officers. These officers would then turn to internal ATO scripting to provide information to callers on deceased estates.

The ATO has previously received feedback that this setup or arrangement was not optimal. In 2015, as part of its Fix-It Squad workshops on deceased estate matters, the ATO received feedback that at times, inconsistent information had been provided to LPRs or that the ATO officers appeared unsympathetic to the fact that they were managing a deceased estate.¹³⁴ Flowing from this feedback, a recommendation was made internally for the ATO to consider creating 'a dedicated contact centre team/ additional skill set

¹³³ Services Australia, *Contact Us* (7 February 2020) <<https://www.servicesaustralia.gov.au/individuals/contact-us/phone-us>>.

¹³⁴ ATO, *Making It Easier to Finalise a Deceased Estate* (2016) – [internal ATO document].

for finalising the affairs of someone who has died'. Although a dedicated contact centre team was deemed unfeasible¹³⁵ approval had been obtained to examine options to update the ATO's contact centre IVR to route calls to appropriately trained and skilled personnel. However, it did not appear that this improvement was actioned.

The ATO's key stewardship and stakeholder relationship groups are not focussed on specific deceased estate issues. The majority of these groups are aimed at specific tax and tax administration matters with only the Legal Practitioners Round Table being dedicated to legal professionals.¹³⁶ Generally, these forums did not have deceased estate matters as points of discussion, although limited life consultations and groups may be established to deal with certain issues, such as the development of the Commissioner's Remedial Power.

Conclusion and Recommendations

The nature of deceased estate work can be complicated, drawing in a range of different laws and practices both at the federal and state levels, including succession law, property law and trust law. The information needs of those working in these areas, as LPRs or advisers, is likely to be different to those dealing in other areas of tax law and compliance and may involve both registered tax practitioners as well as legal practitioners.

During the course of the review, the ATO Review Team advised that it was considering ways in which the contact centre phone lines could be used to re-route deceased estate calls to a smaller sub-set of the contact centre staff who would be given specific training on how to deal with deceased estate matters.

The IGTO considers that the ATO's efforts to better route calls to trained and dedicated staff dealing with deceased estates is a positive development. As this review has shown, the complexities within deceased estate law may require a greater level of expertise than is presently available through general ATO call centres. Furthermore, clearer channels of escalation when such issues are raised with the ATO would be beneficial. In developing these channels and internal ATO expertise as well as by enquiries that may require specialist advice and guidance, there is merit in the ATO engaging with external stakeholders, not only in tax but also in succession, wills and estate laws.

RECOMMENDATION

Please see Recommendation 9.

¹³⁵ Above n 134.

¹³⁶ ATO, *Services and Support – Consulting with Tax Professionals* (8 January 2020) <<https://www.ato.gov.au/Tax-professionals/Services-and-support/Consultation,-open-forums-and-speakers/Consulting-with-tax-professionals/>>.

OBTAINING FINAL CLEARANCE FROM THE COMMISSIONER IS TOO UNCERTAIN AND MAY EXPOSE EXECUTORS AND ADMINISTRATORS TO POTENTIAL PERSONAL LIABILITY

There is uncertainty as to when the Commissioner ‘clears’ an estate to be finalised and wound up such that the LPR would no longer be personally liable.

| | | | | | | |
|-----------------------------------|---|---|---|---|--|--|
| Terms of Reference Considerations | 1 | 2 | 3 | 4 | | |
|-----------------------------------|---|---|---|---|--|--|

Stakeholders have expressed concern that it is not always possible to obtain certainty from the ATO that there are no outstanding taxation liabilities remaining to enable them to distribute the assets of the estate and to wind it up. They consider such a step to be important so as to limit their personal liability exposure should assets have been distributed before all debts (notably tax debts) have been paid.

Current administrative processes to provide LPRs with certainty in limited cases

As a general rule, the LPR is only liable for any unpaid taxes up to the extent of assets in the estate (i.e., in the hands of the LPR).¹³⁷

The Commissioner is able to recover outstanding tax liabilities, including any liabilities that arise after the death of the taxpayer from the LPR (after a grant of probate or letters of administration) as if they were the taxpayer.¹³⁸ However the Commissioner’s ability to recover from the LPR only extends to the assets in the estate (and any amount that may come into the hands of the LPR thereafter).¹³⁹ In circumstances where no representative has obtained probate or letters of administration, other provisions operate to empower the Commissioner to make a determination on tax liability and to recover those liabilities from the estate.¹⁴⁰

This ‘limited liability’ only applies in favour of the LPR (or an estate, if the LPR is not pursued personally) where they have satisfied the notice requirements and acted in good faith, a threshold which can be difficult for any LPR to confirm since the introduction of self-assessment. Under the full assessment system (prior to 1986), the ATO issued finalisation certificates effectively providing LPRs with a high degree of certainty that there are no further tax claims on the estate so that an LPR had certainty that a distribution to beneficiaries would not create a personal liability exposure.

However, since the move to self-assessment, such certificates have no longer been issued. In 2018, the Commissioner issued the aforementioned PCG 2018/4 which aimed to provide limited relief and a degree

¹³⁷ Above n 12, p 84; *Levy v Kum Chah* (1936) 56 CLR 159 at 168.

¹³⁸ *Binetter v FCT* [2016] FCFC 163.

¹³⁹ *FCT v Prestige Motors Pty Limited* 94 ATC 4570 at 4573; *FCT v Brown* (1958) 100 CLR 32; *Stapleton v FCT* (1955) 93 CLR 603; *Patterson v FCT* (1936) 56 CLR 507; *Taylor v FCT* (1969) 123 CLR 206. See also: Above n 12, p 82.

¹⁴⁰ *Taxation Administration Act 1953*, Sch 1, ss 260-145 and 260-150.

of certainty for LPRs of smaller, less complex estates.¹⁴¹ The PCG applies to LPRs (with probate or letters of administration) for deceased estates that:¹⁴²

- in the four years before the person's death
 - the deceased did not carry on a business
 - the deceased was not assessable on a share of the net income of a discretionary trust
 - the deceased was not a member of a self-managed superannuation fund
- the estate assets consist only of
 - public company shares or other interests in widely-held entities
 - death benefit superannuation
 - Australian real property
 - cash and personal assets such as cars and jewellery, and
- the total market value of the estate assets at the date of death was less than \$5 million and none of the estate assets are intended to pass to a foreign resident, a tax exempt entity or a complying superannuation entity.

The PCG sets out a range of scenarios and obligations which the LPR (with grant of probate or letters of administration) needs to meet. Once those obligations are met, the ATO has 6 months to inform that LPR of any intended compliance action, assessment or amended assessment. If the ATO does not inform the LPR of its intentions, then the LPR may be taken to have no knowledge of any ATO claims and can therefore proceed to finalise the estate and distribute the assets.¹⁴³

Conclusion and Recommendations

The Commissioner may be able to recover tax liabilities of the deceased directly from the LPR (or an estate, if the LPR is not pursued personally). While in most cases the liability of such an LPR is limited to the value of assets held by the estate, the risk of personal liability is likely to drive prudent behaviour by LPRs. This conservative approach likely results in 'over-compliance' as seen in actions discussed earlier such as applying for TFNs and lodging returns where neither is required. At the tail end of deceased estate administration, LPRs (whether with grants of court or without) seek comfort from the Commissioner that the estate has fulfilled all tax obligations so that it can be 'cleared' for distribution. In the case of LPRs who have no need of grants of court, certainty from the Commissioner operates to protect the estate against later recovery which could adversely impact beneficiaries.

While the ATO no longer issues finalisation or clearance certificates, stakeholders have reflected positively on the development and issue of PCG 2018/4 as a form of administrative certainty provided to some LPRs (those with probate and letters of administration), where previously no such certainty existed. However,

¹⁴¹ Above n 41.

¹⁴² Ibid., para 6.

¹⁴³ Ibid., paras 9 to 29.

it is clear both on a reading of the PCG and in discussions with stakeholders that the circumstances in which the PCG would apply are limited and only in cases where finalisation of the estate was unlikely to be contentious. For those LPRs responsible for larger, more complex estates, or those who have no need to obtain grants court, the issue of certainty to finalise distributions still persists.

Some stakeholders have submitted that the ATO should revert to a system of issuing finalisation certificates. However, the IGTO understands that this is unlikely to occur and unlikely to be administratively implemented without significant time and costs for both the ATO and the representatives of the deceased. This is so because the Commissioner is statutorily bound to ensure that tax obligations are complied with and any revenue owing to the Commonwealth is assessed and collected. In order for the Commissioner to positively attest (and therefore provide certainty) that the deceased estate owed no more tax to the Commonwealth, it is likely that a comprehensive compliance audit would need to be taken to review the deceased taxpayer's affairs – effectively, a return to full assessment.

Such an approach would not be desirable as it will likely impose further compliance burdens on representatives of the deceased. For the ATO, the costs and resources involved in such comprehensive compliance activities would be high and unmanageable alongside its broader administrative work.

Accordingly, the IGTO does not consider such an approach to be appropriate.

However, the IGTO believes that the suite of recommendations made in this report should go some way to significantly reducing the compliance burden and personal liability risk for LPRs (or estates, where the LPR has no need to obtain probate or letters of administration). This includes:

- Pre-filling of deceased estate tax returns;
- Information sharing by the ATO;
- administratively binding guidance on TFN and lodgement requirements;

The effectiveness of the recommendations as implemented should be examined in a post-implementation review after the passage of some time, together with the effectiveness of the PCG itself and, where necessary, augmentations made to the process of dealing with deceased estates.

RECOMMENDATION

Please see Recommendation 10.

OTHER ISSUES RAISED IN THE REVIEW

| | | | | | | |
|-----------------------------------|---|--|--|--|--|---|
| Terms of Reference Considerations | 1 | | | | | 6 |
|-----------------------------------|---|--|--|--|--|---|

A number of other issues were raised with the IGTO as part of this review. The IGTO recognises that these issues are causing concern for stakeholders but due to the nature of the current review, it was not possible to examine these in any detail. These issues are briefly set out below and may be areas the IGTO will revisit in future, resources permitting or they may be areas which stakeholders may wish to raise directly with the ATO through its consultation forums and other engagements.

Some of these issues are practical or systems irritants from tax practitioners and those engaged in deceased estate work while others relate to policy matters around taxation. We have set out these issues below, briefly, to reflect the concerns that have been raised but not investigated in full. These concerns may be revisited at a later date by the IGTO if they manifest through further feedback or in complaints data. Additionally, the IGTO encourages the ATO and other agencies involved in these areas to undertake their own investigations and implement improvement, as appropriate.

The concerns which have been raised but not explored in this review are set out in the table below.

| Issue | Description |
|---|---|
| Inability to lodge DOD returns electronically through OSfA | It is not presently possible for registered tax practitioners, even those appointed by the LPR, to generate a DOD return through OSfA, the ATO's recently implemented replacement for the Tax Agent Portal, until the end of the financial year. Accordingly, where a taxpayer dies prior to that and a DOD return needs to be lodged, the practitioner will need to manually complete a paper return and submit it to the ATO. |
| Difficulties obtaining share registry information | There can be difficulties providing advice on CGT implications of share movements due to the absence of an investment ledger or other reliable record of when shares were first purchased. Current services offered by some share registries to assist in pinpointing the dates when shares have been purchased and/or transferred can become costly if an estate holds a large number of shares. The absence of reliable share information operates to diminish the accuracy of any tax returns submitted to the ATO, creates a risk for LPRs making those lodgements and potentially deprives the revenue of taxes that are rightfully due. |

ANNEXURE A — TERMS OF REFERENCE

The death of a loved one, friend or business partner can be stressful and emotional. Managing the affairs of the deceased includes a range of final tax obligations and financial and legal complexities. The tax obligations include lodging the final individual return for the deceased taxpayer, obtaining a tax file number for the deceased estate (which is treated in tax law as a trust), lodging a trust return,¹⁴⁴ paying any outstanding tax debts and ensuring that any refunds, credits or other entitlements are paid to the estate correctly. Cultural and language considerations can also arise.

Complexities may arise in dealing with the Australian Taxation Office (ATO) on deceased estates as all previously authorised contacts of the deceased taxpayer are removed and only the executor (or the administrator, where letters of administration have been granted by a court) may deal with the ATO. The change in authorised contacts has flow on effects requiring additional steps to be taken for proof of identity, requirements to obtain probate or letters of administration in situations where they are not otherwise required.

These complications relate to legislative impediments, which, except in limited circumstances, prevent the ATO from disclosing a deceased person's information, unless the disclosure is made to the executor or administrator of their estate with a grant of probate or letters of administration. This includes preventing the ATO from disclosing such information to representatives (such as a registered tax practitioner or solicitor) of an executor or administrator, or other persons. This impediment creates practical inefficiencies as it, in effect, requires the executor to personally attend to tax matters which they may not have the expertise to do. Furthermore, the inability to make such disclosures to registered tax practitioners removes their ability to access deceased taxpayers' information via the ATO Portals which may complicate and delay finalisation of lodgements.

The ATO has issued some general guidance on its website to assist executors to deal with deceased estates¹⁴⁵. The Inspector-General of Taxation and Taxation Ombudsman (IGTO) understands that the ATO has implemented some workarounds to assist executors and administrators where they can and has been engaging with professional bodies to address some of the issues in part, including by making use of the Commissioner's Remedial Power. However, feedback received in stakeholder forums and through the IGTO complaints handling service suggest that the experience of dealing with deceased estates is not optimal.

¹⁴⁴ Above n 89.

¹⁴⁵ ATO, *Deceased Estates* (10 October 2018) <www.ato.gov.au>.

The investigation seeks to identify opportunities to improve the administration of deceased estate tax compliance. The IGTO will examine and consider:

1. the experiences of the community (family and friends) in managing the tax affairs for the deceased;
2. the ATO's policies, processes and guidelines for receiving information from and dealing with deceased estates;
3. the public guidance issued by the ATO to assist executors or administrators;
4. the ATO's systems, including the ATO Portals, for dealing with deceased estates;
5. any legislative impediments to the efficient administration of deceased estates; and
6. any other relevant issues to the administration of deceased estate tax obligations.

ANNEXURE B — ATO RESPONSE



Australian Government
Australian Taxation Office

Second Commissioner of Taxation

Karen Payne
Inspector-General of Taxation and Taxation Ombudsman
GPO Box 551
SYDNEY NSW 2001

Dear Karen,

Death and Taxes – An investigation into ATO systems and processes for dealing with deceased estates.

Thank you for the opportunity to provide comment on the final draft of your report.

The report offers the ATO an opportunity to improve on our existing procedures, communications and the support we offer the community. We believe this will help build community confidence in the way we interact with those seeking to manage the affairs of deceased persons. This is an important issue for the ATO as we understand this can be a difficult time for relatives, executors and their appointed agents who may still be grieving over the loss of a loved one as they seek to finalise the estate. We want to ensure that the interactions with the ATO are as efficient and simple as possible.

We consider that while challenging, there are three main areas of change that would significantly improve the client experience. These are:

- Digital notification of death – in this regard, there is work underway exploring what may be possible from a whole-of-government perspective
- the digitisation of interactions required in the course of managing the affairs of a deceased person and to the extent possible, using technology to assist in 'masking complexity' where possible, for example, for deceased estates with simple affairs
- an approach for simple estates that do not have probate or letters of administration that meets people's needs.

Our detailed response to the recommendations is contained in Annexure 1.

Finally, I would like to acknowledge the efforts of all involved in undertaking this review, and thank you and your team for the collaborative manner in which it was undertaken.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jeremy Hirschhorn'.

Jeremy Hirschhorn
Second Commissioner

3 July 2020

FOR OFFICIAL USE ONLY

IGT Review into Death and Taxes – Investigation into ATO systems and processes for dealing with Deceased Estates

ATO response/comments regarding the final report recommendations

| Recommendations | ATO Response |
|---|--|
| <p>RECOMMENDATION 1 <i>[THIS RECOMMENDATION SHOULD BE READ IN CONJUNCTION WITH RECOMMENDATION 7]</i></p> <p>The IGTO recommends that the ATO, in consultation with external stakeholders, review and refresh its advice and guidance on dealing with deceased estate matters and, as part of that work:</p> <ol style="list-style-type: none"> a. the ATO provides clear guidance on the rules for engaging with representatives of the deceased taxpayer, including the LPR, (particularly those who are not required to seek grants of probate or letters of administration), on issues such as: <ol style="list-style-type: none"> i. information required by the ATO for ATO confirmation of the death of a taxpayer; ii. information necessary to register a person as an LPR or authorised representative of the deceased taxpayer; iii. who can submit information to the ATO on behalf of the deceased taxpayer; iv. who can access ATO-held information of the deceased taxpayer; v. the circumstances in which the ATO will require probate or letters of administration before dealing with a representative of the deceased taxpayer; and | <p>ATO RESPONSE</p> <p>Recommendation 1a – Agree in part</p> <p>The ATO agrees to review its guidance regarding deceased estates in consultation with external stakeholders, with a view to improving this guidance where it is needed.</p> <p>In doing so, our guidance material needs to strike a balance between being easy to understand for people who are not familiar with the topic and don't need to go into detail, and providing links to more detailed information as required by tax professionals who seek information on more complex scenarios.</p> <p>We want to make it easy for someone dealing with a deceased estate to be able to deal with us and, to, where permitted by law, get the information they need to lodge returns; and to know how to lodge a return</p> <p>In our response to recommendation 7 below we have agreed to confirm our position as to how the tax law applies in relation to information disclosures where a grant of probate or letters of administration have not yet been obtained or will not be obtained. Once this is completed the ATO will consider what further guidance can be provided in relation to the matters set out in Recommendation 1 a. v. and vi.</p> |

FOR OFFICIAL USE ONLY

| Recommendations | ATO Response |
|--|---|
| <p>vi. how the ATO deals with simple deceased estates where neither probate nor letters of administration are required by State and Territory succession laws;</p> <p>b. the ATO provide binding advice on the circumstances when:</p> <ul style="list-style-type: none"> i. prior year income tax returns need not be lodged; ii. a TFN for a deceased estate is not required; iii. a date of death tax return and/or deceased estate trust returns is not required to be lodged – for example, in the year of death or in each of the subsequent three financial years where the taxable income does not exceed the tax free threshold; <p>c. the ATO improve its guidance on deceased estate trust returns to inform representatives of deceased estates on which parts of the trust return are mandatory and which can be ignored;</p> <p>d. the ATO:</p> <ul style="list-style-type: none"> i. consolidate the above advice and guidance in an easy to understand and easily accessible format [the Information Guide]; and ii. leverage end-of-life processes to distribute the Information Guide – for example providing it as part of a funeral parlour information package, to tax agents and solicitors who practice in the area of deceased estates and Public Trustee offices –; or iii. otherwise make the Information Guide available to individuals who directly notify the ATO of the death of a taxpayer. | <p>Recommendation 1b – Disagree</p> <p>The ATO already provides binding information relevant to these topics via the legislative instrument that sets out when returns must be lodged for each income year and this information is currently included on the ATO’s website. To the extent advice would be about the application of the Commissioner’s general power of administration, the ATO does not have the ability to give binding advice on that.</p> <p>The ATO agrees that representatives should be able to access information that they can rely on regarding the points raised in Recommendation 1b. As per our response to Recommendation 1a, the ATO will review this information with a view to making it easier for LPRs to understand what is required of them. Similarly, the ATO needs to consider when and in what depth it is appropriate for guidance material to outline how the law applies to each of the various issues raised in this recommendation, in order to best assist representatives to understand what they need to do.</p> <p>Recommendation 1c - Agree in principle</p> <p>Our goal is to make the experience as simple as possible for people with simple affairs and we will review the trust return instructions with this in mind. Naturally, not every deceased estate trust return is simple. More complex situations must also be catered for.</p> <p>In reviewing the instructions, we will need to consider whether there are any systems’ or software limitations that may impact on how the instructions could be simplified.</p> |

FOR OFFICIAL USE ONLY

| Recommendations | ATO Response |
|--|--|
| | <p>Recommendation 1d - Agree in principle</p> <p>The ATO notes its responses to recommendations 1 a., b., and c., including the commitment to review its guidance and instructions. We agree with the principle of communicating information in an accessible and easily understood manner. We have noted above the balance our guidance needs to strike between being easy to understand and providing links to more detailed information for more complex scenarios.</p> <p>We agree to work with stakeholders to better understand what the best natural channels and formats are for disseminating deceased estate information to relatives and executors, whether that be in the form and manner recommended or otherwise. This improved understanding will guide the development and delivery of our information products.</p> <p>The Digital Transformation Agency is currently undertaking work to develop digital death certificates to allow a more streamlined notification process through a digital channel. We will continue to be involved in this work that focuses on a whole of government solution to help relatives understand what is required by government after a death. This might be preferable, from a client experience perspective, to an agency by agency approach.</p> |
| <p>RECOMMENDATION 2:</p> <p>The IGTO recommends that, consistent with a ‘tell us once’ approach, the ATO explore opportunities to:</p> <p>a. better integrate notification of death across whole of government (Commonwealth, State and Territory) and with existing end-of-life processes; and</p> | <p>ATO RESPONSE:</p> <p>Recommendation 2a - Agree</p> <p>The ATO agrees that ideally, relatives would not need to notify government of a death, or at the very least, to only need to ‘tell us once’. Furthermore, the ATO considers this, together with the ability for the notification to be digital, to be a change that would significantly transform the client experience and, whilst challenging to achieve, is worthy of pursuit.</p> |

FOR OFFICIAL USE ONLY

| Recommendations | ATO Response |
|--|--|
| <p>b. liaise with key stakeholders within the end-of-life processes, such as Services Australia (for Medicare and pensions), religious institutions and funeral parlours as well as related associations to further enhance the efficiency of the notification process and content of death notification information.</p> | <p>The ATO understands that there are various state government based projects currently underway, seeking to reduce the requirement for relatives to notify the government of the death of a relative, including though the Digital Transformation Agency.</p> <p>The ATO will seek to be an active collaborator in these projects and will look for further opportunities to progress a national digital death notification service for relatives, notwithstanding that this is a complex challenge.</p> <p>Recommendation 2b - Agree in principle</p> <p>The ATO has had initial discussions with Services Australia and we will consult further with them to more fully explore potential options to enhance the notification process. The ATO will also liaise with other key stakeholders on this issue.</p> |
| <p>RECOMMENDATION 3:</p> <p>The IGTO recommends that the ATO, having regard to its own IT development programs and broader whole-of-government IT priorities:</p> <p>a. allow for official notification of death to be done digitally and develop appropriate channels to facilitate this outcome; and</p> <p>b. enable such notifications to be made by registered tax practitioners who were previously engaged by the deceased person and/or who have been newly appointed by the deceased person’s legal personal representative.</p> | <p>ATO RESPONSE:</p> <p>Recommendation 3a – Agree in principle</p> <p>The ATO agrees that relatives may benefit from having a digital option available to them to notify the ATO of a relative’s death. Furthermore, the ATO considers this, together with the ability for the notification to be a single notification across Government as contemplated through the Digital Transformation Agency Digital Death Certificate project, would significantly transform the client experience and, whilst challenging to achieve, is worthy of pursuit.</p> <p>The ATO will monitor the progress of these potential solutions as touched on in Recommendation 2, and the ATO will explore developing its own digital solution.</p> <p>It is important to note that, as with any IT proposal, the timing of development, design and delivery of such a change would need to be considered in the context</p> |

FOR OFFICIAL USE ONLY

| Recommendations | ATO Response |
|---|---|
| | <p>of other digital programs and improvements that the ATO needs to implement within a finite IT program, having regard to the relative priority and return on investment of IT proposals for the Government and the broader community.</p> <p>Recommendation 3b - Agree in part</p> <p>The ATO worked closely with tax practitioners to develop the CRP law modification and agrees to continue to work with them to better understand their role in the deceased client process and identify if they require a digital notification channel. In many cases a tax practitioner would not become aware of a death until some time has elapsed after death. As mentioned previously, the ATO considers that a whole of government solution to notification of death would be preferable from a client experience perspective.</p> |
| <p>RECOMMENDATION 4:</p> <p>The IGTO recommends that the ATO:</p> <ol style="list-style-type: none"> a. promote the availability of the digital channel to lodge deceased estate TFN applications; and b. in the longer term, implement options to enable easier application for deceased estate TFNs, for example by adding the functionality to the Online Services for Agents system, the ATO website or MyGov. | <p>ATO RESPONSE:</p> <p>Recommendation 4a - Agree</p> <p>The ATO agrees to further promote the digital channel on abr.gov.au for Trust tax file number applications. Currently around 72% of all applications use this digital channel.</p> <p>Recommendation 4b – Agree in principle</p> <p>The ATO agrees to explore how we can make it easier to access the existing digital channel and consult with appropriate stakeholders to determine if there is a more appropriate channel to apply digitally for a deceased estate TFN.</p> |
| | |

FOR OFFICIAL USE ONLY

| Recommendations | ATO Response |
|--|--|
| <p>RECOMMENDATION 5:</p> <p>The IGTO recommends that the ATO:</p> <ol style="list-style-type: none"> a. Simplify tax filing requirements for a deceased taxpayer following consultation with relevant stakeholders: <ol style="list-style-type: none"> i. This could include, for example, simplified processes for obtaining tax credits or refunds (for example franking credit refund concessions currently available for taxpayers before their death could be extended) or developing a simplified and dedicated tax return for a deceased taxpayer – such as a ‘D’ return form – that minimises tax administration compliance for simple estates (especially for franking credit refunds); ii. incorporates information routinely acquired by the ATO as part of their administration of deceased estates; and iii. permits use by next of kin or LPRs administering low-value or straightforward deceased estates – for example, where a return is lodged simply to obtain franking credit refunds; b. consider options for ‘hiding’ or non-display of irrelevant labels and expanding use of ATO data to pre-fill the return; and c. where the ‘D’ return form is to apply in limited circumstances, develop a ‘bright line’ test to determine the threshold whereby complex estates may be required to use the standard Trust Tax Return form and engage with the ATO more extensively. | <p>ATO RESPONSE</p> <p>Recommendation 5a - Agree in principle</p> <p>It is important to note that at the time of writing, the COVID-19 pandemic has resulted in a re-alignment of some of the ATO’s priorities and workforce and will likely have an ongoing impact for some time to come. This would inevitably impact our ability to deliver large IT based improvements.</p> <p>The ATO considers these recommendations to be a change that would significantly transform the client experience and, whilst challenging to achieve, are worthy of further exploration.</p> <p>The ATO agrees that a dedicated tax return for deceased estates has merit.</p> <p>In our experience, the development and implementation of a new income tax return, or other forms, requires significant resources to design, develop and implement.</p> <p>As with any project, the ATO will need to assess the cost, priority and benefits associated with this work against other priorities, and the existing legal framework, so that we can best use our limited resources to improve client experience across the whole tax system.</p> <p>Included in these considerations is that the number of deceased estate trust returns lodged each year totals approximately 48,000. Around 95% are lodged by tax practitioners and of those, approximately 95% are lodged digitally.</p> <p>The ATO will explore if there are ways to simplify the tax filing requirements, including the use of information acquired by the ATO, within the existing legal framework for deceased estates.</p> <p>Recommendation 5b - Agree in principle</p> |

FOR OFFICIAL USE ONLY

| Recommendations | ATO Response |
|--|---|
| | <p>The ATO will explore options for making it easier to complete the trust return and whether pre-filing is possible within the existing legal framework and current IT priorities.</p> <p>Recommendation 5c - Agree in principle</p> <p>The ATO agrees in principle with the recommendation but notes our response in relation to paragraphs i., ii. and iii. above.</p> <p>The opportunity costs associated with the development of a new return where use may be relatively low must be considered with respect to the prioritisation of our limited IT resources.</p> |
| <p>RECOMMENDATION 6:</p> <p>The IGTO recommends that the ATO:</p> <ol style="list-style-type: none"> a. explore with external stakeholders, such as members of the National Tax Liaison Group, or other consultation forum, the consequences and challenges associated with applying general taxation of trusts principles to deceased estates; and b. where appropriate, make submission for further inquiry to bodies such as the Board of Taxation or lodging minutes with the Treasury noting the potential for law change. | <p>ATO RESPONSE</p> <p>Recommendation 6a – Agree</p> <p>The ATO agrees to explore the consequences and challenges associated with applying general taxation of trust principles to deceased estates through our usual consultative forums., which may include the National Tax Liaison Group members. The ATO notes that it’s a matter for government to determine policy change for the taxation of deceased estates.</p> <p>Recommendation 6b - Agree</p> <p>The ATO agrees that where appropriate, it will make submissions to bodies for further inquiry, including the Board of Tax or lodge minutes with Treasury noting opportunities for potential law change.</p> |
| <p>RECOMMENDATION 7:</p> <p>The IGTO recommends that the ATO:</p> | <p>ATO RESPONSE</p> <p>Recommendations 7a and 7b</p> |

FOR OFFICIAL USE ONLY

| Recommendations | ATO Response |
|---|---|
| <p>a. confirm its position on the interaction between State and Territory succession laws and tax laws to confirm which ‘representatives’ of the deceased can represent the deceased for various tax purposes, particularly in circumstances where neither probate nor letters of administration are required by State and Territory succession laws; and</p> <p>b. leverage expertise in the community and from its consultative forums to seek feedback on the position and any proposed changes to administrative arrangements or the need for legislative change to find a workable solution.</p> | <p>The ATO considers that improving the experience of people dealing with the affairs of a deceased person in the absence of a requirement for probate or letters of administration has the capacity to significantly transform the client experience. We will look to confirm the position under the current law as to who the ATO can disclose a deceased person’s information to and engage with the community to see whether what is possible under the existing legal framework meets people’s needs, or not. We note legislative change is a matter for Government.</p> <p>Recommendation 7a - Agree in part</p> <p>The ATO has outlined its position in relation to access to protected information of a deceased person. We have noted that a disclosure cannot be made, except in limited circumstances, other than to an LPR with a grant of probate or letters of administration.</p> <p>The ATO agrees to confirm its position as to how the tax law applies in relation to disclosures of a deceased person’s information where a grant of probate or letters of administration have not yet been obtained or will not be obtained.</p> <p>We note our response to Recommendation 1 that we will review our guidance with a view to improving that advice where needed.</p> <p>Any legislative change to Division 355 of Schedule 1 to the <i>Taxation Administration Act 1953</i> is a matter for Government.</p> <p>Recommendation 7b - Agree in part</p> <p>The ATO agrees that it will consult with its usual consultative forums in relation to administrative arrangements for access to a deceased person’s information. We note legislative change or policy is a matter for Government.</p> |

FOR OFFICIAL USE ONLY

| Recommendations | ATO Response |
|--|--|
| <p>RECOMMENDATION 8 [this recommendation should be read in conjunction with recommendation 7]:</p> <p>The IGTO recommends that the ATO provide registered tax practitioners (appointed by LPRs with whom the ATO is authorised to engage with a grant of probate or letters of administration) with access to any correspondence sent to the deceased taxpayer’s MyGov that is not otherwise accessible through Online Services for Agents.</p> | <p>ATO RESPONSE</p> <p>Recommendation 8 - Agree in principle</p> <p>The ATO agrees that, ideally, appointed tax practitioners should be able to view all correspondence that has been issued to the deceased person pre and post their death. The reason that some existing documentation is not visible to a tax practitioner is because some correspondence issued by ATO officers is from systems that don’t automatically become viewable in Online Services for Agents.</p> <p>The ATO is working towards moving all items of correspondence onto systems that will allow tax practitioners to view them. As part of this work, the ATO needs to consider opportunities, costs and other IT priorities and so we have not finalised a timeline for these changes.</p> |
| <p>RECOMMENDATION 9:</p> <p>The IGTO recommends that the ATO:</p> <ol style="list-style-type: none"> engage with external stakeholders, especially tax practitioners, solicitors and barristers with expertise in succession law, wills and estates to identify the key enquiries that may require escalation; develop escalation channels to dedicated areas within the ATO who are trained to provide specialist advice on deceased estate issues; and recognise and acknowledge the needs of bereaving family members – so that advice is delivered with empathy and sensitivity. | <p>ATO RESPONSE</p> <p>Recommendation 9a - Agree</p> <p>The ATO agrees to review its escalation process for cases that have complexity that can’t be managed by front line staff. The ATO agrees to encourage its technical staff to share and discuss key deceased estate topics or themes with industry experts where they are able to.</p> <p>Recommendation 9b – Agree</p> <p>The ATO is currently in the process of reviewing how it allocates and escalates deceased estate related work to its staff.</p> <p>Recommendation 9c - Agree</p> |

FOR OFFICIAL USE ONLY

| Recommendations | ATO Response |
|---|--|
| | As per b. above, the ATO is reviewing its work allocation procedures. The ATO will ensure that staff who are actioning deceased estate do it while displaying empathy and sensitivity to relatives of the deceased. |
| <p>RECOMMENDATION 10:</p> <p>The IGTO recommends that the ATO conduct a post implementation review, in consultation with external stakeholders (within five years) to assess the effectiveness of:</p> <ul style="list-style-type: none"> a. improvements to the administration of deceased estates including the measures recommended in this report that aim to deliver greater certainty for representatives of deceased estates; and b. PCG 2018/4 in providing sufficient certainty for LPRs to finalise an estate, as necessary. | <p>ATO RESPONSE</p> <p>Recommendations 10a and 10b - Agree</p> <p>The ATO agrees to revisit the recommendations made by the Inspector General in this report and the responses provided by the ATO in consultation with external stakeholders within a 5-year timeframe.</p> |

ANNEXURE C — EXAMPLES OF NOTIFICATION OF DEATH FORMS

Australian Taxation Office



Australian Government
Australian Taxation Office

Notification of a deceased person

Use this form to officially notify us of a person's death. If you are the executor or administrator, you can also use this form to add your contact details on the deceased person's record.

i Before you complete this form

You can officially notify us of a person's death and who has been appointed as the executor or administrator:

- **online** – if you are able to attend one of the participating Australia Post retail outlets, go to ato.gov.au/austpostformdeceased, or
- **phone** – if you don't have the death certificate you can phone us on **13 28 66** and we may still be able to add some information about the person's death to our records.

See **Find out more**.

When completing this form

This form can be completed on screen. When complete, print, sign and date the declaration at the end of the form.

Make sure you provide acceptable supporting documents (see question 9).

If completing this form by hand:

- print clearly in **BLOCK LETTERS** using a black or dark blue pen only
- place **X** in **ALL** applicable boxes
- do not use correction fluid or covering stickers
- sign next to any corrections with your full signature (not initials).

Find out more

For more information on managing the tax affairs of someone who has died, you can:

- phone us on **13 28 61** between 8.00am and 6.00pm, Monday to Friday
- visit our website at ato.gov.au

If you phone, we need to know we are talking to the right person before we can discuss the tax affairs of someone who has died. You will need to provide information about yourself and the person who has died. If you can, have your tax file number (TFN) and information about the deceased person with you (see the privacy note in the declaration on page 4).

Section A: Deceased person's details

1 Do you have the death certificate for the deceased person?

No You cannot use this form. See **Find out more** above.

Yes You need to provide the death certificate with this form. It needs to be a certified copy. See page 2 for more information about supporting documentation requirements.

2 What is the full name of the deceased person?

Title: Mr Mrs Miss Ms Other

Family name

First given name

Other given names

3 What is the deceased person's TFN? (See the privacy note in the declaration on page 4.)

If you do not know their TFN, leave this blank.

4 What was the deceased person's date of birth?

Day / Month / Year

5 What was the deceased person's date of death?

Day / Month / Year

6 What was the postal address of the deceased person?

Provide the postal address as it was when the person last dealt with the ATO – for example, on their last notice of assessment.

| | | |
|---------------------------------|--|---|
| | | |
| | | |
| Suburb/town/locality | State/territory <small>(Australia only)</small> | Postcode <small>(Australia only)</small> |
| | ▼ | ▼ |
| Country if other than Australia | | |
| | | |

7 Was the deceased person's home address different from their postal address?

Provide the home address as it was when the person last dealt with the ATO – for example, on their last notice of assessment.

This needs to be a street address, for example, 123 Smith St. This cannot be a post office box number, roadside mail bag, roadside delivery or other delivery point address.

No Yes Provide their home address details below

| | | |
|---------------------------------|--|---|
| | | |
| | | |
| Suburb/town/locality | State/territory <small>(Australia only)</small> | Postcode <small>(Australia only)</small> |
| | ▼ | ▼ |
| Country if other than Australia | | |
| | | |

i If you are not providing executor or administrator details, go to section C.

Section B: Executor or administrator details

We need to ensure you are authorised to act on behalf of the deceased person. If you do not provide all the supporting documents we ask for, we will not be able to add you as an authorised contact on the deceased person's record.

8 Are you an executor or administrator?

Executor – an executor is a person named in a will to carry out the wishes of a person after they die. Generally, the executor will seek probate of the will. Probate may not be required for low value, less complex estates.

Administrator – an administrator is a person appointed by the court under letters of administration to manage a deceased estate which has no executor.

No Go to section C.

Yes

9 What supporting document will you provide?

You need to provide one of the following current supporting documents in addition to the death certificate, stating you are the executor or administrator of the deceased estate.

Supporting documents you provide must be certified. Certified copies of documents that you mail to us may not be returned. We may check the supporting documents you supply with the agencies that issue them.

i If you are an executor and have been granted probate, then a certified copy of the grant of probate must be provided. If you have decided not to apply for probate or are awaiting court appointment, then a copy of the will must be provided as evidence of your appointment as executor.

In the absence of probate or letters of administration you cannot be an authorised contact on the deceased person's record. Also, we may not be able to release certain information or transfer assets to you.

We will advise you if probate or letters of administration is required when we assess your circumstances.

Place **X** in the applicable box.

The deceased person's last will and testament

Letters of administration

Grant of probate

> For more information on certified copies of documents, refer to:

- [Copies of documents – applicants within Australia](#)
- [Copies of documents – applicants outside Australia](#)

10 What is your TFN? (See the privacy note in the declaration on page 4.)

11 What is your full name and contact details?

Full name

Title: Mr Mrs Miss Ms Other

Family name

First given name

Other given names

i A contact number must be provided.

Business hours phone number

Mobile phone number

Email address (use BLOCK LETTERS)

12 What is your date of birth?

Day / Month / Year

13 What is your postal address?

Suburb/town/locality

State/territory
 ▼
(Australia only)

Postcode

(Australia only)

Country if other than Australia

14 Is your home address different from your postal address?

This needs to be a street address, for example, 123 Smith St. This cannot be a post office box number, roadside mail bag, roadside delivery or other delivery point address.

No Yes Provide your home address details below

Suburb/town/locality

State/territory
 ▼
(Australia only)

Postcode

(Australia only)

Country if other than Australia

i If you need to add additional executors or administrators, provide their details on a separate sheet of paper, including their full name and all of the details listed above in Section B.

15 What postal address do you want on the deceased person's record for service of notices and correspondence?

Suburb/town/locality

State/territory
 ▼
(Australia only)

Postcode

(Australia only)

Country if other than Australia

Section C: Declaration – this section is compulsory

16 Who is the person signing this declaration?

(Complete all of the fields below)

Full name of signatory

Business hours phone number

Mobile phone number

Email address (use BLOCK LETTERS)

Before you sign this form

Make sure you have answered all the relevant questions correctly and read the privacy statement below before you sign and date this page. An incomplete form may delay processing and we may ask you to complete a new form.

 Penalties may be imposed for giving false or misleading information.

Privacy

The ATO is authorised by the *Taxation Administration Act 1953* to request tax file numbers (TFNs). We will use the TFN to identify the deceased person and the executor or administrator in our records. It is not an offence not to provide TFNs. However, if you do not provide a TFN, there may be a delay in processing this form.

Taxation law authorises the ATO to collect information and to disclose it to other government agencies. For information about your privacy go to ato.gov.au/privacy

We may check the supporting documents you supply with the agencies that issued them.

I declare that the information given on this form is true and correct.

Signature

You MUST SIGN here

Date

| | | | | | | | | | | | |
|-----|--|--|---|-------|--|--|---|------|--|--|--|
| Day | | | / | Month | | | / | Year | | | |
|-----|--|--|---|-------|--|--|---|------|--|--|--|

Lodging this form

You can lodge your completed application with current certified supporting documents to us by mailing it to:

Australian Taxation Office
 PO Box 9942
 MOONEE PONDS VIC 3039

 **Make a copy of your application for your own records before you lodge it.**

We will aim to process this form within 28 days of receiving all the necessary information. If your form is incomplete, incorrect or needs checking, it may take longer. Do not lodge another form during this time.

Print form

Save form

Reset form

Funeral director's details (if known)

11 Name

12 Address

 Postcode

13 Daytime phone number

 () **Executor of the Estate (if known)**14 Dr Mr Mrs Miss Ms Other

Family name

First given name

15 Organisation name (if applicable)

16 Postal address

 Postcode

17 Daytime phone number

 () **Your details**18 Dr Mr Mrs Miss Ms Other

Family name

First given name

19 Organisation name (if applicable)

20 Postal address

 Postcode

21 Relationship to deceased person

22 Daytime phone number

 () **Privacy notice**

23 Your personal information is protected by law (including the *Privacy Act 1988*) and is collected by the Australian Government Department of Human Services for the efficient delivery of payments and services.

Your information may be used by the department, or given to other parties where you have agreed to that, or where it is required or authorised by law (including for the purpose of research or conducting investigations).

You can get more information about the way in which the department will manage your personal information, including our privacy policy, at humanservices.gov.au/privacy

Statement

24 I declare that:

- the information I have provided in this form is complete and correct.

I understand that:

- giving false or misleading information is a serious offence.

Your full name

Your signature

 On completion of this form, please print and sign by hand

Date

 / / **Print****Clear**

Australian Electoral Commission



Notification of a relative who has died

If your relative has died, please complete the following form to request their name be removed from the electoral roll.

Authorisation to collect this information is contained in the *Commonwealth Electoral Act 1918*.

Note: Giving false or misleading information is a serious offence.

* Denotes mandatory field

My information

Given names *

Family name *

Relationship to deceased *

Email address *

Phone number

Information about the person who has died

Given names *

Family name *

Date of birth (dd/mm/yyyy)*

Street address *

Suburb or town *

State *

Postcode *

Further information

Date of death (dd/mm/yyyy)*

Commonwealth Bank of Australia



CID/File reference number

Deceased Customer Notification

We're sorry for your loss

If you have recently suffered the loss of a loved one, we are here to help you through this difficult time.

For support in completing this form, please call our Estate Settlement and Support Specialist team on **1800 686 153**, Monday to Friday.

What you need to know and do

- This form will be used by the Bank to identify accounts held by our customer.
- This form should be completed by the Estate's representative ie. Executor or Next-of-Kin.
- All copies of documents must be certified. Our Branch staff can certify the documents if you attend a Branch and bring the original document with you.
- Accounts and cards belonging solely to the deceased are stopped to prevent further transactions, including existing recurring payments and direct debits. If you have any of these cards, please destroy them.
- Any credit cards in which the deceased was the primary cardholder will be cancelled. If you're an additional cardholder, your cards will also be cancelled, and you'll need to apply for a credit card in your own name. You can do this either in the branch or over the phone.
- The name, contact details and relationship to the customer from Section 2 on who you would like us to correspond with; may be shared with Colonial Mutual Life Assurance Society Limited (CMLA) where the customer holds a product that is issued or administered by CMLA.
- Attach or provide the Bank with evidence of death (e.g. Death Certificate) and any other relevant documents you may have such as a Will.

Section 1 – Deceased customer details (This is so we can locate all of the relevant accounts)

Full name

Provide CBA account number(s), if known

Address

State

Postcode

Date of Birth

Date of Death

Marital status

Widowed
 Married
 Never Married
 In a de facto relationship
 Separated
 Divorced

Length of time the deceased was separated, divorced or in a de facto relationship

Section 2 – Your details (This is so we can reply to you)

Title

Mr
 Mrs
 Miss
 Ms
 Other

Daytime phone number

Full Name

Your residential address (required in all instances for identification purposes)

State

Postcode

Alternative address or PO Box (if you would rather us send correspondence there)

State

Postcode

Email address

I am the: Spouse (wife/husband) Parent (mother/father) Child (over 18)

Domestic Partner
 Sibling (brother/sister)
 Other

I am the: Executor Administrator Other (please specify)

Select if you hold a 'Power of Attorney' for the immediate next-of-kin (a copy will be required if not already held by the Bank)

Section 2 – Your details (This is so we can reply to you - continued)

Who would you like us to correspond with?

- Option 1** ▶ For estate matters, please deal with me directly.
- Option 2** ▶ If the estate's Solicitor/Lawyer/Executor/Administrator contacts the Bank, please deal with them directly. Their details are:

Section 3 – Will/Probate details (This will help determine what documents you will need to provide to us)

Is there a Will?

- Yes No Unsure

Has anyone applied (or is intending to apply) for Probate?

- Yes No Unsure

▶ **Grant of Probate** is a document issued by the Supreme Court. It confirms that a Will is valid, and gives the executors the authority to act. You may need to provide a Grant of Probate depending on the value of the estate. We'll let you know.

Has anyone applied (or is intending to apply) for Letters of Administration?

- Yes No Unsure

▶ **Letter of Administration** are documents granted by Supreme Court, giving authority to an administrator to collect and distribute the assets of the estate, in the absence of a valid Will. You may need to provide a letter of administration depending on the value of the estate. We'll let you know if you do.

▶ Please provide us with **certified copies** of the documents if you answered 'Yes' to any of the questions in this section.

Section 4 – Your identification (this is a Government requirement)

 **Please note:** You only need to complete this section if you are the Authorised Representative of the estate.

To satisfy Government Regulations it is necessary for the Bank to identify you by sighting direct evidence of your identity using **one** of the following options. (Select the option for how you wish to be identified).

- Option 1** ▶ Provide one of your existing CBA account numbers:
- Option 2** ▶ Provide acceptable identification details to us at a CBA branch for endorsing by branch staff.

| Document type | Document number | Name on document | Place of issue | Issue date | Expiry date |
|---------------|-----------------|------------------|----------------|------------|-------------|
| | | | | DD/MM/YYYY | DD/MM/YYYY |
| | | | | DD/MM/YYYY | DD/MM/YYYY |

Verification has been performed for the customer

- Full name, **and** Date of birth, **or** Residential Address

Bank Officer's name

Bank Officer's signature

Date

- Option 3** ▶ Alternatively, complete a '**Certified Copies Identification**' form. You will need to provide the original and a copy of acceptable identification documents to a prescribed person who is required to complete the actions as set out in the form. (For more details on acceptable identification documents and prescribed persons, refer to Sections 4 & 5 of the Certified Copies Identification Form).

Next steps

Attend any CommBank Branch with certified copies of all required supporting documentation. If you bring the original document, we can certify the documents at the Branch.

OR

Mail this form with certified copies of all required supporting documentation to:

Processing Services
Estate Settlement & Support
PO BOX 334
Silverwater NSW 2128
Australia

Please don't send original documents – certified copies will do.

Privacy Statement

The Commonwealth Bank of Australia and its subsidiaries (the Group) provide banking, finance, insurance, funds management, financial planning and advice, superannuation, stockbroking and other services. The Group includes the CommSec, Commlnsure, Commonwealth Financial Planning, and Financial Wisdom, Bankwest and Colonial First State businesses. All of the Group's Australian members must follow the Privacy Act and Australian Privacy Principles (APPs).

For more information about the Group, including a complete list of Group members, see CommBank's latest Annual Report, available at commbank.com.au/shareholders.

In this policy, "we", "us" or "our" means each Australian member of the Group, except the businesses that have their own privacy policy.

We collect, use and exchange your information for the relevant deceased estate so we can:

- Identify the deceased customer's details
- Confirm your identity as an informant to the estate
- Manage our relationship with you
- Minimise risks and identify or investigate fraud and other illegal activities
- Contact you, for example, when we need to tell you something important
- Improve our service to you and your experience with us
- Comply with laws, and assist government or law enforcement agencies for example the Anti- Money Laundering and Counter-Terrorism Financing Act 2006, Taxation Administration Act 1953 and Income Tax Assessment Act 1936
- Manage our businesses.

We may also collect, use and exchange your information for other reasons where the law allows or requires us.

You may decline to share certain personal information with us, in which case we may not be able to proceed with managing the deceased estate process.

We may share your information with other members of the Group. This helps us offer you a high-quality customer experience. We may also share your information with third parties for the reasons listed above or where the law otherwise allows. These third parties can include:

- Service providers — for example, mortgage insurers, loyalty program partners and our product distributors
- Businesses who do some of our work for us — including direct marketing, statement production, debt recovery and IT support
- Brokers, agents, advisers and people who act on your behalf — such as your parent (if you are under 14), guardian, or a person with Power of Attorney
- Guarantors and other security providers
- Organisations involved in our funding arrangements — like loan purchasers, investors, advisers, researchers, trustees and rating agencies
- People who help us process claims — like assessors and investigators
- Other banks and financial institutions — for example, if we need to process a claim for a mistaken payment
- Auditors, insurers and re-insurers
- Current or previous employers — for example, to confirm your employment
- Government and law enforcement agencies or regulators
- Credit reporting bodies and credit providers
- Organisations that help identify illegal activities and prevent fraud
- Other people (like cardholders) using the same account.

Sometimes, we may send your information overseas, including to:

- Overseas businesses that are part of the Group
- Service providers or third parties who store data or operate outside Australia
- Complete a transaction, such as an International Money Transfer
- Comply with laws, and assist government or law enforcement agencies

Sometimes, we may send your information overseas, including to:

You can find out which countries your information may be sent to at commbank.com.au/security-privacy/country-list.pdf.

For further information on how we manage privacy please refer to our [Group Privacy Policy](#). Our Privacy Policy applies to the handling of your personal information by our Australian businesses. The Privacy Policy also contains information about how you may access the personal information we hold or if seeking the correction of such information.

To ask a question, access your personal information, make a correction or a complaint, or get a printed version of this policy, [contact us](#). To find more information about how we manage your complaint please also refer to our Privacy Policy as it contains information about how an individual may complain about a breach of the Australian Privacy Principles, or a registered APP code (if any) that binds us.



Branch Use Only Deceased Customer Notification Branch Checklist



Purpose of this Branch Checklist

- This checklist has been designed to enable **Branch staff** to effectively complete all of the required steps.
- The process has been streamlined so all staff can take accountability for the process and manage it in an effective manner.
- It is important to ensure you follow these steps, as failure to do so may have a negative impact on the customer experience.
- Complete **all** of the applicable actions below.

If you have any questions, please call the Estate Settlement and Support hotline on **1800 686 153** for assistance.

Bank use only – Branch Checklist

| Please obtain from the informant: | Provided | Outstanding |
|--|--------------------------|--------------------------|
| Any documents, such as the Death Certificate, the Will or Probate, and take a copy and certify the document (return the original). Submit the copy with this form. Alternately, the informant may provide staff with certified copies of the documents. | <input type="checkbox"/> | <input type="checkbox"/> |
| Probate: all estates worth over \$50,000 will require one. | <input type="checkbox"/> | <input type="checkbox"/> |
| Please provide the informant with: | | |
| A copy of the 'Losing a loved one support guide' brochure (ADB487) to assist them to understand what may be required to proceed further. | <input type="checkbox"/> | <input type="checkbox"/> |

| i | Products/Services | Action Required | Completed |
|---|-------------------|--|---|
| a | Accounts | All accounts in the sole name of the deceased have been stopped. | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A |
| b | Cards stopped | All cards in the sole name of the deceased have been stopped including debit, credit and travel money. | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A |
| c | Safe Custody | SCS has been searched and customer status has been changed to 'Deceased'. Any facilities in the sole name of the deceased have been annotated. Mailing name has been updated to remove the name of the Deceased customer (for joint facilities with surviving facility holders). | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A |



Please Note: This form and any other documents provided by the informant must be imaged onto the deceased customer's profile under one cover sheet. The customer facing team member collecting them must certify all documents.

Creating a CommSee Work Item (from customer chevron): Select Request> Category: Client Management> Request Type: Deceased> Assign to: SMT – DECEASED ESTATES> Template: Branch – New Deceased Notification

Notes

NSW Roads and Maritime Services

Advice of Death **C****Important information**

This form can be used for the purpose of recording a customer as deceased on Roads and Maritime Services (Roads and Maritime) records. In the case of a missing person presumed dead, a 'Presumption of Death Order' issued by the Supreme Court (original or copy) must be provided to record the deceased customer.

The person seeking to notify the death must attend a registry or service centre, complete this form, provide proof of identity for themselves and provide an Roads and Maritime Acceptable Proof of Identity (POI) document of the deceased.

Please note that there are additional requirements for transfer of vehicles registered to deceased persons to prevent unauthorised transfers. For more information about Registration transfers due to death or details of acceptable POI documents, visit the Roads and Maritime website at www.rms.nsw.gov.au, go to a registry, service centre or contact our Contact Centre on 13 77 88.

Attachments

1. Deceased

Name of deceased

Usual address

RMS Customer number/ NSW driver licence number/ NSW boat licence number/vessel registration number

Date of birth

Gender

Date of death

2. Death Notified by:

Name

Address

RMS Customer number/ NSW driver licence number

Date of birth

Gender

Signature

Date

3. Privacy Statement and Declaration

Roads and Maritime Services (Roads and Maritime) is collecting your personal information for the purpose of receiving your notification of the death of another person and may retain and use it to verify that the information you have provided is correct.

Roads and Maritime may disclose your personal information in order to verify the information you provided for other purposes related to the person whom you have nominated as being deceased. Otherwise Roads and Maritime will not disclose your personal information without your consent unless authorised by law.

Your personal information will be held by Roads and Maritime at 20-44 Ennis Rd, Milsons Point NSW 2061 generally you can contact the Roads and Maritime to access or correct it.

You declare that the information on this form is true and complete.

In providing this information you are stating that you understand that under Part 5A of the Crimes Act 1900 it is an offence to make a false or misleading statement and you may be prosecuted for doing so.

Signature

Date

RMS / SNSW Office Use - BUNDLE CMailing address checked on DRIVES (if applicable)

Stand alone or primary proof

Secondary proof

Customer Service representative signature

Document number

Identity document of the deceased Date of issue or E/Date

Staff number

Date

ANNEXURE D — ABS STATISTICS ON DEATH — 2014 TO 2018 — BY LOCATION

The IGTO constructed the tables below based on data from the Australian Bureau of Statistics (ABS).¹⁴⁶ In certain years and for certain jurisdictions, the IGTO has noted that there are minor discrepancies between the sum of individual rows and columns with the stated totals. The reasons for the discrepancies are unknown.

Total annual deaths across states

| Age | 2014 | 2015 | 2016 | 2017 | 2018 |
|----------------|---------|---------|---------|---------|---------|
| ACT | 1,814 | 1,859 | 1,837 | 2,322 | 2,128 |
| NSW | 52,320 | 53,601 | 53,694 | 52,780 | 53,635 |
| NT | 1,167 | 1,169 | 1,045 | 1,107 | 1,107 |
| QLD | 28,705 | 29,782 | 29,690 | 31,555 | 30,860 |
| SA | 13,261 | 13,649 | 13,337 | 14,052 | 13,571 |
| TAS | 4,474 | 4,635 | 4,596 | 4,782 | 4,285 |
| VIC | 38,042 | 39,904 | 39,450 | 39,791 | 38,231 |
| WA | 13,787 | 14,448 | 14,838 | 14,495 | 14,652 |
| Australia-Wide | 153,580 | 159,053 | 158,503 | 160,909 | 158,495 |

Australia-wide annual deaths

| Age | 2014 | 2015 | 2016 | 2017 | 2018 |
|--------------|---------|---------|---------|---------|---------|
| 0-9 | 1,327 | 1,333 | 1,274 | 1,332 | 1,248 |
| 10-19 | 522 | 623 | 543 | 583 | 593 |
| 20-29 | 1,537 | 1,531 | 1,594 | 1,521 | 1,474 |
| 30-39 | 2,482 | 2,529 | 2,507 | 2,484 | 2,502 |
| 40-49 | 4,877 | 5,071 | 4,928 | 4,938 | 4,686 |
| 50-59 | 10,133 | 10,359 | 10,122 | 9,873 | 10,000 |
| 60-69 | 18,780 | 18,953 | 18,803 | 18,813 | 18,849 |
| 70-79 | 29,979 | 31,096 | 31,375 | 32,552 | 32,591 |
| 80-89 | 51,838 | 53,132 | 52,332 | 52,213 | 50,548 |
| 90-99 | 30,405 | 32,687 | 33,206 | 34,637 | 34,204 |
| 100 and over | 1,666 | 1,736 | 1,816 | 1,958 | 1,797 |
| Not stated | 34 | 3 | 3 | 5 | 3 |
| All ages | 153,580 | 159,053 | 158,503 | 160,909 | 158,495 |

¹⁴⁶ Australian Bureau of Statistics, *3302.0 - Deaths, Australia, 2018* (25 September 2019) <www.abs.gov.au> see dataset "Deaths, Year of registration, Age at death, Age-specific death rates, Sex, States, Territories and Australia".

Australian Capital Territory annual deaths

| Age | 2014 | 2015 | 2016 | 2017 | 2018 |
|--------------|-------|-------|-------|-------|-------|
| 0-9 | 16 | 24 | 19 | 23 | 29 |
| 10-19 | 10 | 10 | 4 | 10 | 17 |
| 20-29 | 25 | 20 | 19 | 27 | 23 |
| 30-39 | 34 | 39 | 28 | 39 | 38 |
| 40-49 | 65 | 57 | 70 | 84 | 74 |
| 50-59 | 139 | 140 | 140 | 142 | 133 |
| 60-69 | 211 | 242 | 205 | 239 | 243 |
| 70-79 | 335 | 363 | 370 | 486 | 411 |
| 80-89 | 600 | 569 | 584 | 740 | 673 |
| 90-99 | 364 | 378 | 379 | 499 | 462 |
| 100 and over | 15 | 17 | 19 | 33 | 25 |
| Not stated | 0 | 0 | 0 | 0 | 0 |
| All ages | 1,814 | 1,859 | 1,837 | 2,322 | 2,128 |

New South Wales annual deaths

| Age | 2014 | 2015 | 2016 | 2017 | 2018 |
|--------------|--------|--------|--------|--------|--------|
| 0-9 | 413 | 440 | 365 | 368 | 384 |
| 10-19 | 160 | 180 | 163 | 188 | 185 |
| 20-29 | 433 | 406 | 481 | 440 | 453 |
| 30-39 | 702 | 710 | 683 | 677 | 728 |
| 40-49 | 1,547 | 1,565 | 1,425 | 1,431 | 1,415 |
| 50-59 | 3,329 | 3,396 | 3,436 | 3,130 | 3,317 |
| 60-69 | 6,304 | 6,209 | 6,222 | 6,022 | 6,224 |
| 70-79 | 10,254 | 10,571 | 10,630 | 10,652 | 11,024 |
| 80-89 | 17,857 | 18,149 | 18,139 | 17,443 | 17,333 |
| 90-99 | 10,743 | 11,360 | 11,509 | 11,742 | 11,941 |
| 100 and over | 571 | 613 | 641 | 683 | 628 |
| Not stated | 7 | 2 | 0 | 4 | 3 |
| All ages | 52,320 | 53,601 | 53,694 | 52,780 | 53,635 |

Northern Territory annual deaths

| Age | 2014 | 2015 | 2016 | 2017 | 2018 |
|--------------|-------|-------|-------|-------|-------|
| 0-9 | 32 | 34 | 36 | 42 | 36 |
| 10-19 | 23 | 19 | 9 | 17 | 14 |
| 20-29 | 60 | 57 | 33 | 47 | 37 |
| 30-39 | 66 | 71 | 54 | 64 | 66 |
| 40-49 | 115 | 129 | 109 | 105 | 97 |
| 50-59 | 199 | 191 | 153 | 203 | 162 |
| 60-69 | 251 | 237 | 216 | 214 | 231 |
| 70-79 | 215 | 224 | 224 | 210 | 222 |
| 80-89 | 154 | 159 | 160 | 150 | 183 |
| 90-99 | 32 | 47 | 46 | 51 | 58 |
| 100 and over | 1 | 1 | 3 | 4 | 1 |
| Not stated | 19 | 0 | 2 | 0 | 0 |
| All ages | 1,167 | 1,169 | 1,045 | 1,107 | 1,107 |

Queensland annual deaths

| Age | 2014 | 2015 | 2016 | 2017 | 2018 |
|--------------|--------|--------|--------|--------|--------|
| 0-9 | 346 | 350 | 314 | 338 | 269 |
| 10-19 | 105 | 137 | 121 | 116 | 145 |
| 20-29 | 337 | 358 | 342 | 357 | 350 |
| 30-39 | 509 | 585 | 539 | 543 | 585 |
| 40-49 | 917 | 1,039 | 1,088 | 1,136 | 1,031 |
| 50-59 | 2,054 | 2,110 | 2,066 | 2,094 | 2,110 |
| 60-69 | 3,732 | 3,820 | 3,876 | 4,028 | 3,903 |
| 70-79 | 5,847 | 6,108 | 6,166 | 6,692 | 6,715 |
| 80-89 | 9,278 | 9,358 | 9,212 | 9,637 | 9,444 |
| 90-99 | 5,319 | 5,619 | 5,663 | 6,260 | 6,002 |
| 100 and over | 257 | 298 | 303 | 354 | 306 |
| Not stated | 4 | 0 | 0 | 0 | 0 |
| All ages | 28,705 | 29,782 | 29,690 | 31,555 | 30,860 |

South Australia annual deaths

| Age | 2014 | 2015 | 2016 | 2017 | 2018 |
|--------------|--------|--------|--------|--------|--------|
| 0-9 | 74 | 86 | 83 | 78 | 81 |
| 10-19 | 31 | 37 | 33 | 45 | 48 |
| 20-29 | 93 | 119 | 94 | 111 | 93 |
| 30-39 | 181 | 151 | 188 | 199 | 156 |
| 40-49 | 401 | 394 | 360 | 381 | 326 |
| 50-59 | 788 | 815 | 828 | 823 | 852 |
| 60-69 | 1,470 | 1,562 | 1,505 | 1,620 | 1,584 |
| 70-79 | 2,474 | 2,568 | 2,411 | 2,700 | 2,637 |
| 80-89 | 4,719 | 4,728 | 4,585 | 4,624 | 4,470 |
| 90-99 | 2,861 | 3,020 | 3,071 | 3,302 | 3,178 |
| 100 and over | 167 | 166 | 179 | 169 | 146 |
| Not stated | 2 | 3 | 0 | 0 | 0 |
| All ages | 13,261 | 13,649 | 13,337 | 14,052 | 13,571 |

Tasmania annual deaths

| Age | 2014 | 2015 | 2016 | 2017 | 2018 |
|--------------|-------|-------|-------|-------|-------|
| 0-9 | 38 | 26 | 32 | 27 | 21 |
| 10-19 | 14 | 22 | 13 | 18 | 8 |
| 20-29 | 34 | 40 | 31 | 31 | 38 |
| 30-39 | 63 | 57 | 71 | 71 | 56 |
| 40-49 | 123 | 108 | 134 | 108 | 124 |
| 50-59 | 325 | 308 | 302 | 312 | 267 |
| 60-69 | 599 | 610 | 646 | 644 | 529 |
| 70-79 | 941 | 995 | 1,003 | 1,033 | 997 |
| 80-89 | 1,526 | 1,565 | 1,496 | 1,556 | 1,419 |
| 90-99 | 771 | 858 | 825 | 938 | 794 |
| 100 and over | 37 | 46 | 39 | 44 | 32 |
| Not stated | 3 | 0 | 4 | 0 | 0 |
| All ages | 4,474 | 4,635 | 4,596 | 4,782 | 4,285 |

Victoria annual deaths

| Age | 2014 | 2015 | 2016 | 2017 | 2018 |
|--------------|--------|--------|--------|--------|--------|
| 0-9 | 279 | 250 | 283 | 332 | 306 |
| 10-19 | 109 | 135 | 122 | 112 | 102 |
| 20-29 | 354 | 313 | 373 | 322 | 288 |
| 30-39 | 615 | 596 | 584 | 542 | 540 |
| 40-49 | 1,109 | 1,173 | 1,165 | 1,101 | 1,047 |
| 50-59 | 2,356 | 2,334 | 2,231 | 2,172 | 2,114 |
| 60-69 | 4,407 | 4,448 | 4,360 | 4,286 | 4,292 |
| 70-79 | 7,183 | 7,518 | 7,651 | 7,787 | 7,520 |
| 80-89 | 13,371 | 13,983 | 13,510 | 13,599 | 12,623 |
| 90-99 | 7,813 | 8,712 | 8,704 | 9,037 | 8,923 |
| 100 and over | 446 | 442 | 467 | 499 | 476 |
| Not stated | 0 | 0 | 0 | 2 | 0 |
| All ages | 38,042 | 39,904 | 39,450 | 39,791 | 38,231 |

Western Australia annual deaths

| Age | 2014 | 2015 | 2016 | 2017 | 2018 |
|--------------|--------|--------|--------|--------|--------|
| 0-9 | 127 | 120 | 138 | 128 | 123 |
| 10-19 | 71 | 87 | 77 | 75 | 70 |
| 20-29 | 200 | 218 | 220 | 186 | 192 |
| 30-39 | 311 | 318 | 360 | 348 | 333 |
| 40-49 | 600 | 606 | 576 | 590 | 572 |
| 50-59 | 943 | 1064 | 965 | 996 | 1,045 |
| 60-69 | 1,805 | 1,824 | 1,770 | 1,756 | 1,842 |
| 70-79 | 2,729 | 2,748 | 2,915 | 2,985 | 3,055 |
| 80-89 | 4,332 | 4,619 | 4,642 | 4,450 | 4,396 |
| 90-99 | 2,499 | 2,693 | 3,009 | 2,805 | 2,843 |
| 100 and over | 170 | 151 | 165 | 174 | 181 |
| Not stated | 0 | 0 | 1 | 2 | 0 |
| All ages | 13,787 | 14,448 | 14,838 | 14,495 | 14,652 |

2014 deaths across states and territories (Australia-wide, States and Territories)

| Age | Australia | ACT | NSW | NT | QLD | SA | TAS | VIC | WA |
|--------------|-----------|-------|--------|-------|--------|--------|-------|--------|--------|
| All ages | 153,580 | 1,813 | 52,320 | 1,168 | 28,704 | 13,262 | 4,476 | 38,042 | 13,787 |
| 0 - 4 | 1,191 | 16 | 372 | 28 | 318 | 63 | 37 | 247 | 110 |
| 5 - 9 | 136 | 0 | 41 | 4 | 28 | 11 | 1 | 32 | 17 |
| 10 - 14 | 126 | 3 | 40 | 11 | 21 | 7 | 5 | 23 | 17 |
| 15 - 19 | 396 | 7 | 120 | 12 | 84 | 24 | 9 | 86 | 54 |
| 20 - 24 | 690 | 8 | 207 | 26 | 153 | 42 | 13 | 146 | 94 |
| 25 - 29 | 847 | 17 | 226 | 34 | 184 | 51 | 21 | 208 | 106 |
| 30 - 34 | 1,100 | 13 | 291 | 28 | 235 | 73 | 27 | 288 | 144 |
| 35 - 39 | 1,382 | 21 | 411 | 38 | 274 | 108 | 36 | 327 | 167 |
| 40 - 44 | 2,092 | 31 | 630 | 50 | 409 | 173 | 47 | 481 | 271 |
| 45 - 49 | 2,785 | 34 | 917 | 65 | 508 | 228 | 76 | 628 | 329 |
| 50 - 54 | 4,302 | 55 | 1,389 | 102 | 888 | 337 | 129 | 1,011 | 391 |
| 55 - 59 | 5,831 | 84 | 1,940 | 97 | 1,166 | 451 | 196 | 1,345 | 552 |
| 60 - 64 | 7,955 | 96 | 2,627 | 123 | 1,623 | 648 | 236 | 1,834 | 768 |
| 65 - 69 | 10,825 | 115 | 3,677 | 128 | 2,109 | 822 | 363 | 2,573 | 1,037 |
| 70 - 74 | 12,991 | 148 | 4,397 | 110 | 2,653 | 1,018 | 402 | 3,074 | 1,188 |
| 75 - 79 | 16,988 | 187 | 5,857 | 105 | 3,194 | 1,456 | 539 | 4,109 | 1,541 |
| 80 - 84 | 23,209 | 248 | 8,001 | 82 | 4,243 | 1,981 | 712 | 5,966 | 1,975 |
| 85 - 89 | 28,629 | 352 | 9,856 | 72 | 5,035 | 2,738 | 814 | 7,405 | 2,357 |
| 90 - 94 | 22,381 | 266 | 7,869 | 26 | 3,880 | 2,129 | 570 | 5,788 | 1,851 |
| 95 - 99 | 8,024 | 98 | 2,874 | 6 | 1,439 | 732 | 201 | 2,025 | 648 |
| 100 and over | 1,666 | 15 | 571 | 1 | 257 | 167 | 37 | 446 | 170 |
| Not stated | 34 | 0 | 7 | 19 | 4 | 2 | 3 | 0 | 0 |

2015 deaths across states and territories (Australia-wide, States and Territories)

| Age | Australia | ACT | NSW | NT | QLD | SA | TAS | VIC | WA |
|--------------|-----------|-------|--------|-------|--------|--------|-------|--------|--------|
| All ages | 159,052 | 1,859 | 53,600 | 1,171 | 29,782 | 13,647 | 4,633 | 39,904 | 14,448 |
| 0 - 4 | 1201 | 23 | 390 | 33 | 314 | 78 | 23 | 231 | 108 |
| 5 - 9 | 132 | 1 | 50 | 1 | 36 | 8 | 3 | 19 | 12 |
| 10 - 14 | 147 | 4 | 33 | 8 | 38 | 9 | 4 | 34 | 21 |
| 15 - 19 | 476 | 6 | 147 | 11 | 99 | 28 | 18 | 101 | 66 |
| 20 - 24 | 678 | 11 | 167 | 27 | 183 | 48 | 24 | 130 | 88 |
| 25 - 29 | 853 | 9 | 239 | 30 | 175 | 71 | 16 | 183 | 130 |
| 30 - 34 | 1,106 | 13 | 310 | 28 | 266 | 68 | 26 | 251 | 142 |
| 35 - 39 | 1,423 | 26 | 400 | 43 | 319 | 83 | 31 | 345 | 176 |
| 40 - 44 | 2,138 | 21 | 652 | 63 | 459 | 164 | 37 | 494 | 248 |
| 45 - 49 | 2,933 | 36 | 913 | 66 | 580 | 230 | 71 | 679 | 358 |
| 50 - 54 | 4,381 | 42 | 1,442 | 96 | 887 | 369 | 123 | 963 | 458 |
| 55 - 59 | 5,978 | 98 | 1,954 | 95 | 1,223 | 446 | 185 | 1,371 | 606 |
| 60 - 64 | 7,923 | 100 | 2,631 | 127 | 1,531 | 694 | 247 | 1,792 | 801 |
| 65 - 69 | 11,030 | 142 | 3,578 | 110 | 2,289 | 868 | 363 | 2,656 | 1,023 |
| 70 - 74 | 13,482 | 150 | 4,669 | 103 | 2,682 | 1,070 | 448 | 3,150 | 1,209 |
| 75 - 79 | 17,614 | 213 | 5,902 | 121 | 3,426 | 1,498 | 547 | 4,368 | 1,539 |
| 80 - 84 | 23,359 | 228 | 7,997 | 84 | 4,204 | 2,018 | 725 | 6,021 | 2,082 |
| 85 - 89 | 29,773 | 341 | 10,152 | 75 | 5,154 | 2,710 | 840 | 7,962 | 2,537 |
| 90 - 94 | 23,813 | 286 | 8,234 | 41 | 4,084 | 2,181 | 634 | 6,396 | 1,957 |
| 95 - 99 | 8,874 | 92 | 3,126 | 6 | 1,535 | 839 | 224 | 2,316 | 736 |
| 100 and over | 1,736 | 17 | 613 | 1 | 298 | 166 | 46 | 442 | 151 |
| Not stated | 3 | 0 | 2 | 0 | 0 | 3 | 0 | 0 | 0 |

2016 deaths across states and territories (Australia-wide, States and Territories)

| Age | Australia | ACT | NSW | NT | QLD | SA | TAS | VIC | WA |
|--------------|-----------|------|--------|-------|--------|--------|-------|--------|--------|
| All ages | 15,8504 | 1839 | 53,694 | 1,044 | 29,690 | 13,337 | 4,595 | 39,450 | 14,839 |
| 0 - 4 | 1,161 | 18 | 331 | 33 | 296 | 74 | 30 | 257 | 121 |
| 5 - 9 | 113 | 1 | 34 | 3 | 18 | 9 | 2 | 26 | 17 |
| 10 - 14 | 133 | 2 | 41 | 2 | 32 | 11 | 1 | 25 | 19 |
| 15 - 19 | 410 | 2 | 122 | 7 | 89 | 22 | 12 | 97 | 58 |
| 20 - 24 | 728 | 10 | 213 | 12 | 167 | 39 | 16 | 170 | 100 |
| 25 - 29 | 866 | 9 | 268 | 21 | 175 | 55 | 15 | 203 | 120 |
| 30 - 34 | 1,135 | 11 | 306 | 28 | 250 | 90 | 29 | 253 | 168 |
| 35 - 39 | 1,372 | 17 | 377 | 26 | 289 | 98 | 42 | 331 | 192 |
| 40 - 44 | 2,070 | 32 | 573 | 46 | 483 | 145 | 47 | 488 | 256 |
| 45 - 49 | 2,858 | 38 | 852 | 63 | 605 | 215 | 87 | 677 | 320 |
| 50 - 54 | 4,174 | 59 | 1,389 | 70 | 847 | 349 | 123 | 952 | 384 |
| 55 - 59 | 5,948 | 81 | 2,047 | 83 | 1,219 | 479 | 179 | 1,279 | 581 |
| 60 - 64 | 7,839 | 80 | 2,579 | 99 | 1,556 | 644 | 276 | 1,834 | 770 |
| 65 - 69 | 10,964 | 125 | 3,643 | 117 | 2,320 | 861 | 370 | 2,526 | 1,000 |
| 70 - 74 | 13,753 | 147 | 4,651 | 127 | 2,780 | 1,086 | 470 | 3,224 | 1,265 |
| 75 - 79 | 17,622 | 223 | 5,979 | 97 | 3,386 | 1,325 | 533 | 4,427 | 1,650 |
| 80 - 84 | 23,166 | 254 | 7,994 | 101 | 4,114 | 1,954 | 710 | 5,986 | 2,051 |
| 85 - 89 | 29,166 | 330 | 10,145 | 59 | 5,098 | 2,631 | 786 | 7,524 | 2,591 |
| 90 - 94 | 23,974 | 275 | 8,249 | 36 | 4,073 | 2,200 | 605 | 6,345 | 2,191 |
| 95 - 99 | 9,232 | 104 | 3,260 | 10 | 1,590 | 871 | 220 | 2,359 | 818 |
| 100 and over | 1,816 | 19 | 641 | 3 | 303 | 179 | 39 | 467 | 165 |
| Not stated | 3 | 0 | 0 | 2 | 0 | 0 | 4 | 0 | 1 |

2017 deaths across states and territories (Australia-wide, States and Territories)

| Age | Australia | ACT | NSW | NT | QLD | SA | TAS | VIC | WA |
|--------------|-----------|-------|--------|-------|--------|--------|-------|--------|--------|
| All ages | 160,909 | 2,320 | 52,778 | 1,106 | 31,555 | 14,052 | 4,780 | 39,791 | 14,494 |
| 0 - 4 | 1,209 | 20 | 330 | 39 | 311 | 68 | 24 | 299 | 117 |
| 5 - 9 | 123 | 3 | 38 | 3 | 27 | 10 | 3 | 33 | 11 |
| 10 - 14 | 140 | 3 | 46 | 1 | 30 | 12 | 4 | 24 | 18 |
| 15 - 19 | 443 | 7 | 142 | 16 | 86 | 33 | 14 | 88 | 57 |
| 20 - 24 | 679 | 15 | 197 | 19 | 173 | 58 | 13 | 125 | 79 |
| 25 - 29 | 842 | 12 | 243 | 28 | 184 | 53 | 18 | 197 | 107 |
| 30 - 34 | 1,089 | 14 | 274 | 34 | 261 | 87 | 28 | 238 | 153 |
| 35 - 39 | 1,395 | 25 | 403 | 30 | 282 | 112 | 43 | 304 | 195 |
| 40 - 44 | 1,958 | 45 | 562 | 39 | 484 | 134 | 37 | 425 | 231 |
| 45 - 49 | 2,980 | 39 | 869 | 66 | 652 | 247 | 71 | 676 | 359 |
| 50 - 54 | 4,008 | 62 | 1,253 | 75 | 836 | 348 | 109 | 879 | 446 |
| 55 - 59 | 5,865 | 80 | 1,877 | 128 | 1,258 | 475 | 203 | 1,293 | 550 |
| 60 - 64 | 7,806 | 118 | 2,513 | 102 | 1,623 | 679 | 264 | 1,756 | 749 |
| 65 - 69 | 11,007 | 121 | 3,509 | 112 | 2,405 | 941 | 380 | 2,530 | 1,007 |
| 70 - 74 | 14,535 | 219 | 4,739 | 109 | 3,011 | 1,206 | 478 | 3,428 | 1,342 |
| 75 - 79 | 18,017 | 267 | 5,913 | 101 | 3,681 | 1,494 | 555 | 4,359 | 1,643 |
| 80 - 84 | 23,029 | 318 | 7,735 | 86 | 4,440 | 1,976 | 680 | 5,819 | 1,969 |
| 85 - 89 | 29,184 | 422 | 9,708 | 64 | 5,197 | 2,648 | 876 | 7,780 | 2,481 |
| 90 - 94 | 24,683 | 366 | 8,320 | 39 | 4,461 | 2,370 | 699 | 6,427 | 1,998 |
| 95 - 99 | 9,954 | 133 | 3,422 | 12 | 1,799 | 932 | 239 | 2,610 | 807 |
| 100 and over | 1,958 | 33 | 683 | 4 | 354 | 169 | 44 | 499 | 174 |
| Not stated | 5 | 0 | 4 | 0 | 0 | 0 | 0 | 2 | 2 |

2018 deaths across states and territories (Australia-wide, States and Territories)

| Age | Australia | ACT | NSW | NT | QLD | SA | TAS | VIC | WA |
|--------------|-----------|-------|--------|-------|--------|--------|-------|--------|--------|
| All ages | 158,493 | 2,127 | 53,633 | 1,110 | 30,860 | 13,571 | 4,287 | 38,231 | 14,652 |
| 0 - 4 | 1,146 | 26 | 346 | 36 | 251 | 74 | 20 | 286 | 107 |
| 5 - 9 | 102 | 3 | 38 | 0 | 18 | 7 | 1 | 20 | 16 |
| 10 - 14 | 136 | 6 | 44 | 1 | 30 | 13 | 1 | 24 | 13 |
| 15 - 19 | 457 | 11 | 141 | 13 | 115 | 35 | 7 | 78 | 57 |
| 20 - 24 | 677 | 12 | 215 | 18 | 163 | 38 | 18 | 129 | 84 |
| 25 - 29 | 797 | 11 | 238 | 19 | 187 | 55 | 20 | 159 | 108 |
| 30 - 34 | 1,043 | 17 | 303 | 29 | 253 | 71 | 18 | 214 | 138 |
| 35 - 39 | 1,459 | 21 | 425 | 37 | 332 | 85 | 38 | 326 | 195 |
| 40 - 44 | 1,822 | 28 | 557 | 36 | 421 | 112 | 50 | 408 | 210 |
| 45 - 49 | 2,864 | 46 | 858 | 61 | 610 | 214 | 74 | 639 | 362 |
| 50 - 54 | 3,979 | 59 | 1,277 | 76 | 841 | 348 | 107 | 850 | 421 |
| 55 - 59 | 6,021 | 74 | 2,040 | 86 | 1,269 | 504 | 160 | 1,264 | 624 |
| 60 - 64 | 8,075 | 123 | 2,645 | 124 | 1,670 | 685 | 223 | 1,811 | 793 |
| 65 - 69 | 10,774 | 120 | 3,579 | 107 | 2,233 | 899 | 306 | 2,481 | 1,049 |
| 70 - 74 | 14,837 | 167 | 5,001 | 108 | 3,172 | 1,218 | 446 | 3,379 | 1,342 |
| 75 - 79 | 17,754 | 244 | 6,023 | 114 | 3,543 | 1,419 | 551 | 4,141 | 1,713 |
| 80 - 84 | 22,688 | 299 | 7,738 | 115 | 4,373 | 2,031 | 614 | 5,522 | 1,992 |
| 85 - 89 | 27,860 | 374 | 9,595 | 68 | 5,071 | 2,439 | 805 | 7,101 | 2,404 |
| 90 - 94 | 24,265 | 330 | 8,498 | 42 | 4,252 | 2,256 | 559 | 6,355 | 1,971 |
| 95 - 99 | 9,939 | 132 | 3,443 | 16 | 1,750 | 922 | 235 | 2,568 | 872 |
| 100 and over | 1,797 | 25 | 628 | 1 | 306 | 146 | 32 | 476 | 181 |
| Not stated | 3 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 |

ANNEXURE E — INFORMATION REPORTED TO REGISTRIES OF BIRTHS, DEATHS AND MARRIAGES (BDM)

Australian Capital Territory¹⁴⁷

Notification of deaths by funeral directors

(1) For the Act, section 37 (1) (d), the following information is required:

- (a) the date and place of death of the deceased;
- (b) the sex of the deceased;
- (c) the date and place of birth of the deceased;
- (d) whether the deceased was an Aboriginal or Torres Strait Islander person;
- (e) the usual occupation of the deceased;
- (f) if the deceased was born outside Australia—the length of the period during which he or she has been in Australia;
- (g) whether or not the deceased was in a domestic partnership at the time of death;
- (h) if the deceased had been in a domestic partnership at any time—
 - (i) if the deceased had been married, in a civil union or civil partnership—the date and place of each marriage, civil union or civil partnership; and
 - (ii) in any case—the name and any former name of each domestic partner.
- (i) the name of each child of the deceased (including any adopted child but not including any child given up for adoption) in order of birth, indicating the age of the child at the date of death of the deceased and whether the child predeceased the deceased;
- (j) the name, any former name and the occupation of the birth parent of the deceased;
- (k) the name, any former name and the occupation of the other parent (other than the birth parent) of the deceased;
- (l) the date of the disposal of the remains of the deceased;
- (m) the name and address of the funeral director or other person who arranged for the disposal of the remains;
- (n) if a celebrant was present at the burial or cremation—the name of the celebrant and, if the celebrant is a minister of religion, his or her denomination;
- (o) the name of a person who witnessed the disposal of the remains.

¹⁴⁷ Births, Deaths and Marriages Registration Regulation 1998 (ACT) Reg 9.

(2) In this section:

"Aboriginal or Torres Strait Islander person" means a person who—

(a) was a descendant of an Aboriginal person or Torres Strait Islander person; and

(b) identified as an Aboriginal person or Torres Strait Islander person; and

(c) was accepted as an Aboriginal person or Torres Strait Islander person by an Aboriginal community or Torres Strait Islander community.

New South Wales¹⁴⁸

16 Registration of death

For the purposes of section 42 (1) of the Act, the following particulars are required-

- (a) the date and place of death of the deceased,
- (b) the sex, date of birth (or age at death) and place of birth of the deceased,
- (c) the usual occupation of the deceased before death and whether or not the deceased was a pensioner or was retired immediately before death,
- (d) the date of disposal of the remains of the deceased,
- (e) the full name and business address of the funeral director or other person who arranged for the disposal of the remains,
- (f) if the deceased was born outside Australia, the period of residence in Australia of the deceased before death,
- (g) whether or not the deceased was of Aboriginal or Torres Strait Islander origin,
- (h) whether, immediately before death, the deceased was married, divorced, widowed, in a registered relationship or an interstate registered relationship or in a de facto relationship or had never married,
- (i) if the deceased had married, the date of marriage (or age of the deceased at the date of marriage), the place of marriage and the full name (including, if applicable, the original surname) of his or her spouse (and the same particulars in relation to each marriage of the deceased if the deceased had married more than once),
- (j) if the deceased had been in a registered relationship or an interstate registered relationship, the date of registration of the relationship (or age of the deceased at the date of registration), the place of registration and the full name (including, if applicable, the original surname) of his or her partner in the relationship (and the same information in relation to each registered relationship or interstate registered relationship of the deceased if the deceased had been in more than one such relationship),
- (k) the full name (including, if applicable, the original surname) of any de facto partner of the deceased,
- (l) the full names, sex and date of birth (or age) of the children (if any) of the deceased (including deceased children),
- (m) the full name (including, if applicable, the original surname) and occupation of each parent of the deceased.

Northern Territory¹⁴⁹

For section 36(1) of the Act, the following information is to be provided to the Registrar after the disposal of human remains (other than the remains of a still-born child):

- (a) the date and place of death of the deceased;

¹⁴⁸ Births, Deaths and Marriages Registration Regulation 2017 (NSW) Reg 16.

¹⁴⁹ Births, Deaths and Marriages Registration Regulations 1996 (NT) Reg 7.

- (b) the sex or gender, date of birth (or age at death) and place of birth of the deceased;
- (c) the usual occupation of the deceased before death and whether or not the deceased was a pensioner or was retired immediately before death;
- (d) if the deceased was born outside Australia, the period of residence in Australia of the deceased before death;
- (e) whether or not the deceased was of Australian Aboriginal or Torres Strait Islander origin;
- (f) the marital status of the deceased immediately before death;
- (g) if the deceased had married at any time before death, the date of marriage (or age of the deceased at the date of the marriage), the place of marriage and the full name of his or her spouse or, if the deceased had married more than once, the date of each marriage (or age of the deceased at the date of each marriage), the place of each marriage and the full name of each spouse;
- (h) if the deceased was in a de facto relationship immediately before death, the full name of the de facto partner of the deceased;
- (j) the full name, sex or gender and date of birth (or age) of each child of the deceased (including deceased children);
- (k) the full name, maiden family name (if applicable) and occupation of each of the deceased's parents;
- (n) other particulars relating to the death necessarily required for statistical or medical research purposes and as specified in the form approved by the Registrar.

Queensland¹⁵⁰

13 Particulars to be stated in court order for registration of death-Act, ss 26 and 31

For *sections 26 (1)(b)(ii)(B) and 31 (3)(d) of the Act*, the particulars about the death, to the extent the particulars are reasonably available to the court at the time of making the order, are as follows—

- (a) information about the cause of death;
- (b) information about the disposal of the body;
- (c) the information in *schedule 1, part 3*.

Schedule 1 Part 3

1 The deceased person's—

- (a) name at the date of death; and
- (b) place of birth, if known; and
- (c) date of death; and
- (d) place of death; and
- (e) age at the date of death; and
- (f) sex at the date of death; and
- (g) occupation; and
- (h) marital status at the date of death.

2 If the deceased person was ever married—

- (a) the name of each person to whom the deceased person was married; and
- (b) the deceased person's age at the date of each marriage; and
- (c) the place of each marriage.

3 If the deceased person was ever in a civil partnership—

- (a) the name of each civil partner; and
- (b) the deceased person's age at—
 - (i) for a civil partnership entered into under the Civil Partnerships Act 2011, section 6 (a) —the date the civil partnership was registered; or
 - (ii) for a civil partnership entered into under the Civil Partnerships Act 2011, section 6 (b) —the date, under the Civil Partnerships Act 2011, section 13 (2), on which the civil partnership had effect; or

¹⁵⁰ Births, Deaths and Marriages Registration Regulation 2015 (QLD) Reg 13 and Sch 1 Part 3.

(iii) for a relationship taken to be registered as a civil partnership under the Civil Partnerships Act 2011, section 33 —the date the civil partnership was entered into under the relevant corresponding law; and

(c) the place—

(i) for a civil partnership entered into under the Civil Partnerships Act 2011, section 6 (a) —the civil partnership was registered; or

(ii) for a civil partnership entered into under the Civil Partnerships Act 2011, section 6 (b) —the deceased person made the declaration of civil partnership; or

(iii) for a relationship taken to be registered as a civil partnership under the Civil Partnerships Act 2011, section 33 —the civil partnership was entered into under the relevant corresponding law.

4 If the deceased person was born outside Australia—the year the person first arrived in Australia.

5 If the deceased person had children—

(a) for each child living at the date of the person's death, the child's—

(i) name; and

(ii) age; and

(b) for a child who predeceased the deceased person—

(i) the child's name; and

(ii) a statement to the effect that the child predeceased the deceased person.

6 The deceased person's father's—

(a) name; and

(b) occupation.

7 The deceased person's mother's—

(a) name; and

(b) maiden surname, if applicable; and

(c) occupation.

8 Each applicant's—

(a) name; and

(b) residential address; and

(c) relationship to the deceased person.

South Australia¹⁵¹

9- Particulars required in notification by funeral director etc

A statement to be given under section 38(1) or (3) of the Act, relating to the disposal of human remains, must include the following information:

- (a) the deceased's date and place of birth;
- (b) the deceased's age at the deceased's last birthday;
- (c) the deceased's sex or gender identity (if known);
- (d) the date and place of death;
- (e) whether the deceased was of Aboriginal or Torres Strait Islander descent (or both);

- (f) if the deceased was of or over the age of 16 years, the following information:
 - (a) the deceased's marital status at the time of death;
 - (b) the deceased's registered relationship status at the time of death;
 - (c) whether, at the time of death, the deceased was in a de facto relationship;
 - (g) in relation to each marriage of the deceased—the deceased's age at the date of the marriage and the name of the person that the deceased married;
 - (ga) in relation to each registered relationship entered into by the deceased—the deceased's age at the commencement of the registered relationship and the name of the other person in the relationship;
 - (gb) if, at the time of the deceased's death, the deceased was in a de facto relationship—the name of the other person in the relationship;
- (h) if the deceased was of or over the age of 15 years—the deceased's occupation and whether the deceased was retired at the date of death;
- (i) if the deceased was born overseas—the deceased's period of residence in Australia or, if the deceased had more than 1 period of residence in Australia, the aggregate of those periods;
- (j) the name, sex or gender identity and date of birth of each child of the deceased born prior to the death of the deceased;
- (k) the names of the deceased's parents and, if a parent's name is different to the parent's current name, the name of the parent at birth (or on adoption);
- (l) if the deceased was under the age of 15 years—the deceased's parents' occupations;
- (m) —
 - (i) if a doctor's certificate as to the cause of death was given under section 36(3) of the Act—the name and business address of the doctor;

¹⁵¹ Births, Deaths and Marriages Register Regulation (2011) Reg 9 and 10.

- (ii) if an authorisation for the disposal of human remains was issued under the *Coroners Act 2003*—the date of issue and the name of the person who issued it;
- (ma) if the deceased's remains were interred in a prescribed area outside a cemetery or natural burial ground—
 - (i) the address of the property where the deceased's remains were interred; and
 - (ii) the certificate of title reference for the property; and
 - (iii) the GPS coordinates of the interment site;
- (n) the name and address of the person who gives the Registrar the statement;
- (o) the name and address of any person who provides information used in the preparation of the statement and the relationship of any such person to the deceased.

10- Particulars of death to be included in Register

- (1) An entry to be made in the Register under section 39(1) of the Act about the death of a person must include the following particulars:
- (a) the deceased's name and last residential address;
 - (b) the deceased's place of birth;
 - (c) the deceased's date of birth;
 - (d) the deceased's age at the deceased's last birthday;
 - (e) the deceased's sex or gender identity (if known);
 - (f) the date and place of death;
 - (g) whether the deceased was of Aboriginal or Torres Strait Islander descent (or both);
 - (h) if the deceased was of or over the age of 16 years, the following information:
 - (a) the deceased's marital status at the time of death;
 - (b) the deceased's registered relationship status at the time of death;
 - (c) whether, at the time of death, the deceased was in a de facto relationship;
 - (i) in relation to each marriage of the deceased—the deceased's age at the date of the marriage and the name of the person that the deceased married;
 - (ia) in relation to each registered relationship entered into by the deceased—the deceased's age at the commencement of the registered relationship and the name of the other person in the relationship;
 - (ib) if, at the time of the deceased's death, the deceased was in a de facto relationship—the name of the other person in the relationship;
 - (j) if the deceased was of or over the age of 15 years—the deceased's occupation;

(k) if the deceased was born overseas—the deceased's period of residence in Australia or, if the deceased had more than 1 period of residence in Australia, the aggregate of those periods;

(l) the name, sex or gender identity and date of birth of each child of the deceased born prior to the death of the deceased;

(m) the names of the deceased's parents and, if a parent's name is different to the parent's current name, the name of the parent at birth (or on adoption);

(n) the cause of death as certified by a doctor in accordance with section 36(3) of the Act and the length of time that the deceased had the illness or condition (if any) that caused the death;

(o) the date and place of disposal of the deceased's remains;

(p) the name and address of the person who gave the Registrar a statement under section 38 of the Act;

(q) the name and address of any person who provided information used in the preparation of a statement given to the Registrar under section 38 and the relationship of any such person to the deceased;

(r) if a court appointed guardian has given the Registrar a notice under section 38A of the Act—the name and address of the court appointed guardian.

(2) If the deceased's remains were interred in a prescribed area outside a cemetery or natural burial ground, the entry to be made in the Register as to the place of disposal must include—

(a) the address of the property where the deceased's remains were interred; and

(b) the certificate of title reference for the property; and

(c) the GPS coordinates of the interment site.

Tasmania¹⁵²

37. Notification by funeral director

(1) A funeral director or other person who arranges for the disposal of human remains must, within 7 days after disposal of the remains, give the Registrar a written statement of –

- (a) the name and last residential address of the deceased; and
- (b) if the death was reported to a coroner, a statement of that fact; and
- (c) the place and manner of disposal; and
- (d) any other information required by the Registrar.

Penalty: Fine not exceeding 10 penalty units.

(2) If human remains, other than cremated remains, are removed from the State, the funeral director or other person who arranges for the removal of the remains from the State must, within 28 days after the remains are disposed of outside the State, give the Registrar a written statement of where and how the remains were disposed of, and any other information required by the Registrar.

Penalty: Fine not exceeding 10 penalty units.

(3) If human remains have not been disposed of within 30 days after the date of death, the funeral director or other person who has custody of the remains must give the Registrar a written statement of –

- (a) the name and last residential address of the deceased; and
- (b) if the death was reported to a coroner, a statement of that fact; and
- (c) any other information required by the Registrar.

Penalty: Fine not exceeding 10 penalty units.

¹⁵² Births, Deaths and Marriages Registration Act 1999 (Tas) s 37

Victoria¹⁵³

Regulation 8

Particulars to be specified by doctors in death notices

(1) For the purposes of section 37(1) and (2) of the Act, the following particulars are prescribed—

- (a) the deceased's full name;
- (b) the deceased's date of birth or, if unknown, the deceased's age at death;
- (c) the causes of death;
- (d) the date and place of the death;
- (e) whether the deceased was Aboriginal or Torres Strait Islander;
- (f) the full name and business address of the doctor giving the notice and the doctor's Australian Health Practitioner Regulation Agency registration number;
- (g) whether the doctor has notified the death as a reviewable death or reportable death within the meaning of the Coroners Act 2008 ;
- (h) if known, the full name and address of the deceased's next of kin;
- (i) if known, the full name and business address of the funeral director or other person arranging for the disposal of the human remains;
- (j) if known, whether the deceased had a cardiac pacemaker or other battery-powered device.

(2) If the notice of death is for a child, the following particulars in relation to each living or deceased sibling of the deceased child are also prescribed—

- (a) full name;
- (b) date of birth or, if unknown, age at the time of the deceased child's death;
- (c) place of birth;
- (d) whether living or deceased;
- (e) the full name of each parent (if known).

(3) If the notice of death is for a perinatal death, the following particulars in relation to each parent of the deceased child are also prescribed (if known)—

- (a) full name;
- (b) address;
- (c) date of birth or, if unknown, age at the time of the death;
- (d) whether the parent is Aboriginal or Torres Strait Islander.

Regulation 9

¹⁵³ Births, Deaths and Marriages Registration Regulation 2019 (Vic) Regs 8, 19 and 10.

Particulars to be included in notification by funeral director

(1) For the purposes of section 39(1) of the Act, the following particulars are prescribed—

- (a) the deceased's full name and any other names by which the deceased was known;
 - (b) the date and place of death;
 - (c) the sex, date of birth (or, if unknown, age at death) and place of birth of the deceased;
 - (d) the usual occupation of the deceased before death;
 - (e) the date, place and manner of disposal of the remains of the deceased;
 - (f) the full name and business address of the funeral director or other person who arranged for the disposal of the human remains;
 - (g) whether the deceased was Aboriginal or Torres Strait Islander;
 - (h) if the deceased was born outside Australia, the total period of the deceased's residence in Australia to the date of death;
 - (i) if known, the relationship status of the deceased at the time of death;
 - (j) in relation to each relationship partner of the deceased at the time of death—
 - (i) the person's full name and sex; and
 - (ii) if applicable, the year of marriage or registered domestic relationship (or age of the deceased at the year of marriage or registered domestic relationship) and the place of marriage or registered domestic relationship;
 - (k) in relation to each previous relationship partner of the deceased—
 - (i) if known, the person's full name and sex; and
 - (ii) if applicable, the year of marriage or registered domestic relationship and the place of marriage or registered domestic relationship;
 - (l) the full name and date of birth (or, if unknown, age) of each child of whom the deceased had legal parentage (including deceased children);
 - (m) the full name, birth name, date of birth and usual occupation of each parent of the deceased;
 - (n) the last usual residence of the deceased;
 - (o) the full name and business address of—
 - (i) the doctor who gave notice under section 37(2) of the Act that the death has occurred and the doctor's Australian Health Practitioner Regulation Agency registration number; or
 - (ii) the coroner who ordered the release of the body of the deceased.
- (2) If the notice is a notice of disposal of the remains of a deceased child, the following particulars in relation to each living or deceased sibling of the deceased child are also prescribed—
- (a) full name;
 - (b) date of birth or, if unknown, age at the time of the deceased child's death;

- (c) place of birth;
- (d) whether living or deceased.

Regulation 10

For the purposes of section 39(2) of the Act, the following particulars are prescribed—

- (a) the deceased's full name and any other names by which the deceased was known;
- (b) the date and place of death;
- (c) the sex, date of birth (or, if unknown, age at death) and place of birth of the deceased;
- (d) the usual occupation of the deceased before death;
- (e) the full name and business address of the funeral director or other person who has custody of the remains of the deceased and the reason for non-disposal of the remains;
- (f) the full name and business address of—
 - (i) the doctor who gave notice under section 37(2) of the Act that the death has occurred and the doctor's Australian Health Practitioner Regulation Agency registration number; or
 - (ii) the coroner notified of the death;
- (g) whether the deceased was Aboriginal or Torres Strait Islander;
- (h) if the deceased was born outside Australia, the total period of the deceased's residence in Australia to the date of death;
 - (i) if known, the relationship status of the deceased at the time of death;
- (j) in relation to each relationship partner of the deceased at the time of death—
 - (i) the person's full name and sex; and
 - (ii) if applicable, the year of marriage or registered domestic relationship (or age of the deceased at the year of marriage or registered domestic relationship) and the place of marriage or registered domestic relationship;
- (k) in relation to each previous relationship partner of the deceased—
 - (i) if known, the person's full name and sex; and
 - (ii) if applicable, the year of marriage or registered domestic relationship and the place of marriage or registered domestic relationship;
- (l) the full name and date of birth (or, if unknown, age) of each child of whom the deceased had legal parentage (including deceased children);
- (m) the full name, birth name, date of birth and usual occupation of each parent of the deceased;
- (n) the last usual residence of the deceased.

Western Australia¹⁵⁴

Particulars to be included in notification by funeral director

(1) For the purposes of section 39(1) of the Act, the following particulars are prescribed—

- (a) the deceased's full name and any other names by which the deceased was known;
- (b) the date and place of death;
- (c) the sex, date of birth (or, if unknown, age at death) and place of birth of the deceased;
- (d) the usual occupation of the deceased before death;
- (e) the date, place and manner of disposal of the remains of the deceased;
- (f) the full name and business address of the funeral director or other person who arranged for the disposal of the human remains;
- (g) whether the deceased was Aboriginal or Torres Strait Islander;
- (h) if the deceased was born outside Australia, the total period of the deceased's residence in Australia to the date of death;
 - (i) if known, the relationship status of the deceased at the time of death;
- (j) in relation to each relationship partner of the deceased at the time of death—
 - (i) the person's full name and sex; and
 - (ii) if applicable, the year of marriage or registered domestic relationship (or age of the deceased at the year of marriage or registered domestic relationship) and the place of marriage or registered domestic relationship;
- (k) in relation to each previous relationship partner of the deceased—
 - (i) if known, the person's full name and sex; and
 - (ii) if applicable, the year of marriage or registered domestic relationship and the place of marriage or registered domestic relationship;
- (l) the full name and date of birth (or, if unknown, age) of each child of whom the deceased had legal parentage (including deceased children);
- (m) the full name, birth name, date of birth and usual occupation of each parent of the deceased;
- (n) the last usual residence of the deceased;
- (o) the full name and business address of—
 - (i) the doctor who gave notice under section 37(2) of the Act that the death has occurred and the doctor's Australian Health Practitioner Regulation Agency registration number; or
 - (ii) the coroner who ordered the release of the body of the deceased.

¹⁵⁴ Births, Deaths and Marriages Registration Regulation 2019 (WA) Reg 9 and 10.

(2) If the notice is a notice of disposal of the remains of a deceased child, the following particulars in relation to each living or deceased sibling of the deceased child are also prescribed—

- (a) full name;
- (b) date of birth or, if unknown, age at the time of the deceased child's death;
- (c) place of birth;
- (d) whether living or deceased.

Particulars to be included in notification by funeral director—human remains not disposed of within 30 days of death

For the purposes of section 39(2) of the Act, the following particulars are prescribed—

- (a) the deceased's full name and any other names by which the deceased was known;
- (b) the date and place of death;
- (c) the sex, date of birth (or, if unknown, age at death) and place of birth of the deceased;
- (d) the usual occupation of the deceased before death;
- (e) the full name and business address of the funeral director or other person who has custody of the remains of the deceased and the reason for non-disposal of the remains;
- (f) the full name and business address of—
 - (i) the doctor who gave notice under section 37(2) of the Act that the death has occurred and the doctor's Australian Health Practitioner Regulation Agency registration number; or
 - (ii) the coroner notified of the death;
- (g) whether the deceased was Aboriginal or Torres Strait Islander;
- (h) if the deceased was born outside Australia, the total period of the deceased's residence in Australia to the date of death;
 - (i) if known, the relationship status of the deceased at the time of death;
- (j) in relation to each relationship partner of the deceased at the time of death—
 - (i) the person's full name and sex; and
 - (ii) if applicable, the year of marriage or registered domestic relationship (or age of the deceased at the year of marriage or registered domestic relationship) and the place of marriage or registered domestic relationship;
- (k) in relation to each previous relationship partner of the deceased—
 - (i) if known, the person's full name and sex; and
 - (ii) if applicable, the year of marriage or registered domestic relationship and the place of marriage or registered domestic relationship;

(l) the full name and date of birth (or, if unknown, age) of each child of whom the deceased had legal parentage (including deceased children);

(m) the full name, birth name, date of birth and usual occupation of each parent of the deceased;

(n) the last usual residence of the deceased.

ANNEXURE F — EXCERPTS FROM ATO LEGISLATIVE INSTRUMENT ON LODGEMENT

The following are some excerpts from the *Notice of Requirement to Lodge a Return for the Income Year Ended 30 June 2019* referred to in earlier sections of this report. It should be noted that the Commissioner of Taxation issues a new Notice each FY in relation to lodgement matters.

3.2 Requirement to Lodge

Income Tax Returns

Under section 161 and related sections 91, 130 and 148 of the ITAA 1936, I require every *person described in any of Tables A, B, C, D, E, F, G, H, I, and J to give me a return for the *income year.

Table A

Every *person not covered by Table L or Table M who during the *income year met one or more of the following conditions:

- (1) had an amount withheld from payments or an amount paid to the Commissioner under the Pay As You Go (PAYG) withholding system other than:
 - (a) payments covered by one of the following:
 - (i) sections 12-140 and 12-145 of Schedule 1 to the TAA (relating to an unfranked or partially franked dividend where the amount of dividends or distributions received and any franking credits totalled \$18,200 or less); or
 - (ii) Subdivision 12-F of Schedule 1 to the TAA (relating to certain dividend, interest and royalty payments); or
 - (iii) Subdivision 12-FA of Schedule 1 to the TAA (relating to departing Australia superannuation payments); or
 - (iv) section 12-319A of Schedule 1 to the TAA (relating to payments to persons participating in the Seasonal Labour Mobility Program); or
 - (v) section 12-320 of Schedule 1 to the TAA (relating to mining payments); or
 - (vi) Subdivision 12-H of Schedule 1 to the TAA (relating to fund payments from withholding *MITs); or
 - (vii) Subdivision 12A-C of Schedule 1 to the TAA (relating to deemed payments by *AMITs); or
 - (b) payments withheld from a superannuation lump sum to which section 303-10 of the ITAA 1997 applies (relating to certain superannuation lump sum payments received by a person with a terminal medical condition);
- (2) incurred a tax loss or is entitled to deduct a tax loss;
- (3) made a net capital loss, or is entitled to apply a net capital loss of an earlier *income year;
- (4) was a company or trust estate that has undeducted tax losses or unapplied net capital losses of **more than \$1,000** from any earlier *income year;

...

- (11) paid an instalment amount under the PAYG instalment system;

Table B

Every *person who was not a *full self-assessment taxpayer, except where they are described in Table K, and who was:

- (1) an Australian resident:
- (a) for the whole of the *income year, and whose *taxable income for the income year was more than \$18,200; or
 - (b) for only part of the *income year, and whose *taxable income exceeded the lesser of \$18,200 or \$13,464 plus \$395 for each month the person was an Australian resident (including the month in which the person became, or ceased to be, an Australian resident); or
- (2) not an Australian resident at any time during the *income year and derived income (including capital gains) that is taxable in *Australia other than payments listed in Table A(1)(a)(ii), or Table A(1)(a)(vi) or Table A(1)(a)(vii).

Table E

Every trustee of a trust estate not covered by Tables K, L, M, or O that derived income (including capital gains) during the *income year. The return must be lodged by the trustee resident in *Australia. If there is no trustee resident in Australia, the return must be lodged by the trust's public officer or, if no public officer is appointed, by the trust's agent in Australia.

Note:

The trustee of an AMIT to which this Table applies is required to lodge an *Attribution managed investment trust tax return 2019*.

Other trustees to which this Table applies are required to lodge the *Trust tax return 2019*.

Table O

Any trustee of a resident trust estate of a deceased person where each of the following apply:

- (1) The deceased person died less than 3 years before the end of the *income year.
- (2) No beneficiary is presently entitled to a share of the income of the trust estate.
- (3) The net income of the trust estate under section 95 of the ITAA 1936 is **less than \$18,201**.
- (4) There are no non-resident beneficiaries of the trust estate.

ANNEXURE G — OUR INVESTIGATION PROCESS

Our investigation process is generally set out in the IGTO-ATO Review Operational Guidelines, which are available on our website.¹⁵⁵ However, each investigation is different and processes may need to be augmented to suit the particular review investigation. We have set out below a brief timeline of key milestones in the conduct of this investigation.

| | |
|-----------------|--|
| 31 October 2019 | IGTO publishes terms of reference and invites submissions |
| 6 December 2019 | <p>Submissions officially closed although due to the upcoming Christmas and New Year break, the IGTO agreed to a number of extensions for the lodgment of submissions and continued to receive them in January and February 2020.</p> <p>In all, the IGTO received 28 submissions, the majority of which were from tax and legal professionals and their respective representative bodies.</p> <p>Throughout the investigation process, the IGTO engaged with external stakeholders to draw on their expertise in exploring key issues that emerged.</p> |
| 9 December 2019 | Formal review investigation opening meeting between the IGTO and the ATO, attended by the IGTO herself and the ATO Second Commissioner, together with other IGTO and ATO executives and investigation team members. |
| 29 January 2020 | IGTO-ATO Workshop to discuss preliminary findings and potential recommendations which may be made to improve the administration of the tax system. |
| 6 April 2020 | The IGTO provides the ATO with a preliminary draft report for its consideration. This is in line with statutory requirements for the IGTO to afford the ATO an opportunity to make submission on any implied or expressed criticisms. The usual period for response is 4 weeks. However, the IGTO recognised that the ATO resources at the time were being engaged in priority COVID-19 stimulus response following the Government's announcements. Accordingly the IGTO allowed the ATO a period of 8 weeks (to 29 May 2020) to provide a response. |

¹⁵⁵ IGTO, *IGTO-ATO Review Operational Guidelines* (May 2019) <<https://www.igt.gov.au/about-us/guidelines>>.

- 15 June 2020 The IGTO provides the ATO with a final draft report for its consideration and formal response to recommendations made.
- The IGTO review team engaged with the ATO review team to discuss the final draft, develop and incorporate case study examples to illustrate the issues discussed and work through any potential factual and legal inaccuracies in the report.
- 3 July 2020 The ATO’s formal response to the IGTO’s recommendations is provided.
- 7 July 2020 The IGTO’s report is publicly released.

ANNEXURE H — GLOSSARY AND DEFINED TERMS

| Abbreviation/Term | Definition |
|-------------------|---|
| AAT | Administrative Appeals Tribunal |
| ABR | Australian Business Register |
| ADJR Act 1977 | <i>Administrative Decisions (Judicial Review) Act 1977</i> |
| Administrator* | The person appointed by a court to administer the estate of a person who dies <i>intestate</i> . An administrator performs the same function as an <i>executor</i> . A court may also appoint an administrator if a person dies leaving a will but there is no <i>executor</i> willing and able to apply for <i>probate</i> . |
| ANAO | Australian National Audit Office |
| ATO | Australian Taxation Office |
| BAS | Business Activity Statement |
| BDM | Births, Deaths and Marriages |
| Beneficiary* | A person who has a beneficial interest in the assets of a deceased estate under a will or by statute, and so is entitled to take either a specific gift or a portion of the residue of the deceased estate once it is fully administered. |
| CDDA | Scheme for Compensation for Detriment caused by Defective Administration |
| CGT | Capital Gains Tax |
| Commissioner | Commissioner of Taxation |
| Complaint | A complaint is defined AS/NZS 10002:2014 Guidelines for complaint management in organizations <i>Expression of dissatisfaction made to or about an organization, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.</i> |

| Abbreviation/Term | Definition |
|-------------------|--|
| | <p><i>Disputes - Unresolved complaints escalated internally or externally, or both.</i></p> <p><i>Feedback - Opinions, comments and expressions of interest or concern, made directly or indirectly, explicitly or implicitly to or about the organization, its products, services, staff or its handling of a complaint. Organizations may choose to manage such feedback as a complaint.</i></p> |
| Deceased Estate* | The property owned by a deceased individual that can be inherited under a <i>will</i> . Most individuals also have other assets that they own or control that are dealt with on death outside the <i>will</i> , e.g. joint property, life insurance or a family trust. |
| DOD | Date of Death |
| DPN | Director Penalty Notice |
| entity | <p>an entity is defined in section 960-100 of the <i>Income Tax Assessment Act 1997</i> that is:</p> <ul style="list-style-type: none"> an individual a body corporate a body politic a partnership any other unincorporated association or body of persons a trust a superannuation fund |
| Executor* | The person appointed by a will to execute, manage, administer, direct and dispose of the deceased person's property under the <i>will</i> . A female executor is sometimes known as an <i>executrix</i> . |
| FY | Financial year. For example, FY19 is the financial year ended 30 June 2019. |
| GST | Goods and Services Tax |
| IGT Act 2003 | <i>Inspector-General of Taxation Act 2003</i> |
| IGTO | Inspector-General of Taxation and Taxation Ombudsman. The acronym "IGTO" is used throughout the submission to denote both the "Inspector-General of Taxation", as named in the enabling legislation, and "Inspector-General of Taxation and Taxation |

| Abbreviation/Term | Definition |
|-------------------------------|---|
| | Ombudsman” as recently adopted due to recent calls for greater understanding and awareness of our complaints services function. |
| Intestate/Intestacy* | A person who dies without leaving a valid <i>will</i> dies <i>intestate</i> . The person's <i>deceased estate</i> is managed by an <i>administrator</i> . |
| ITR | Income tax return |
| Legal Personal Representative | Executor or Administrator |
| Letters of Administration | A court order issued by the Supreme Court of a State or Territory permitting the person appointed by the Court (administrator) to administer the estate of the deceased. |
| OSfA | Online Services for Agents |
| PAYG | Pay As You Go |
| Probate* | A grant of <i>probate</i> is a certificate granted by the Supreme Court of a State or Territory that a <i>will</i> has been proved valid and that authority to administer the <i>deceased estate</i> has been granted to the <i>executor</i> |
| Registered Tax Practitioner | A registered tax or business activity statement (BAS) agent under the <i>Tax Agent Services Act 2009</i> . |
| Representative | A representative of the deceased taxpayer, including the legal personal representative |
| TAA 1953 | <i>Taxation Administration Act 1953</i> |
| Tax Official | <p>The term ‘tax official’ is defined in section 4 of the <i>IGT Act 2003</i> to mean:</p> <ul style="list-style-type: none"> d. an ATO official; or e. a Board member of the Tax Practitioners Board; or f. an APS employee assisting the Tax Practitioners Board as described in section 60-80 of the <i>Tax Agent Services Act 2009</i> ; or g. a person engaged on behalf of the Commonwealth by another tax official (other than an ATO official) to provide services related to the administration of taxation laws; or h. a person who: |

| Abbreviation/Term | Definition |
|-------------------|---|
| | <ul style="list-style-type: none"> i. is a member of a body established for the sole purpose of assisting the Tax Practitioners Board in the administration of an aspect of taxation laws; and ii. receives, or is entitled to receive, remuneration (but not merely allowances) from the Commonwealth in respect of his or her membership of the body. <p>For the purpose of this submission, the term ‘tax official’ is also used to refer to a ‘taxation officer’ to whom subdivision 355-B of Schedule 1 to the TAA 1953 applies.</p> |
| TFN | Tax File Number |
| TPB | Tax Practitioners Board |
| Will* | The Last Will and Testament is a formal statement of a testator's wishes as to the disposition of assets of the <i>testator</i> on death. To be valid and effective it must comply with strict conditions |

* Miranda Stewart and Michael Flynn, *Death and Taxes: Tax-effective Estate Planning*, 6th ed. (2014) p 30.