

# The “New Inheritance Tax” — Myth, Reality, and What to Do About It

A Victorian estate-planning and tax-structuring response to the proposed 30% minimum tax on discretionary trusts and the rising cost of Victorian probate.

## 1. Australia still has no inheritance tax

Despite the political noise, Australia has no standalone inheritance tax or death duty. The ATO position is unchanged: a beneficiary who receives estate assets does not pay a federal levy merely because someone has died. What exists, and what is easily mistaken for an inheritance tax, is a patchwork of impositions that are triggered around death — CGT on later disposal of inherited assets, super death benefit tax depending on the recipient, land tax, and probate filing fees.

The current debate is really about a federal proposal that would, from 1 July 2028, impose a 30% minimum tax on the taxable income of discretionary trusts. Beneficiaries would still declare trust income in their own returns, but non-corporate beneficiaries would receive non-refundable credits for the tax paid by the trustee. The label “inheritance tax” has stuck because so many wills use discretionary *testamentary* trusts.

## 2. What the Budget actually carves out

The Budget papers say the 30% minimum will **not** apply to:

- deceased estates during administration;
- fixed trusts and widely-held trusts;
- complying superannuation funds;
- special disability trusts and charitable trusts;
- certain excluded income, including income from assets of discretionary testamentary trusts *in existence at announcement*.

The drafting risk is obvious: new discretionary testamentary trusts created under wills signed after Budget night may not be grandfathered unless the legislation changes course. That is why every Victorian will using a discretionary testamentary trust needs a structural review before 30 June 2028.

### 3. The Victorian estate-planning angle

In Victoria, three pressures now compound at the moment of death:

- **Probate filing fees.** From 18 November 2024 the Supreme Court of Victoria moved to a sliding scale by gross Victorian estate value — nil under \$250,000, rising to \$16,803.60 for estates of \$7 million or more. Not a tax, but it behaves like one because a grant is almost always required to deal with real property, shares and managed funds.
- **Testamentary-trust uncertainty.** Discretionary testamentary trusts have been the backbone of Victorian estate planning for asset protection, second marriages, vulnerable beneficiaries, and business succession. The 30% floor, if it applies to post-Budget trusts, removes much of the income-splitting rationale.
- **State land tax and the absentee surcharge.** Inherited Victorian land may push beneficiaries over the land-tax threshold; non-resident beneficiaries can trigger the absentee-owner surcharge unless the will is drafted carefully.

The practical response is to redraft Victorian wills now with three features:

- an **optional** testamentary-trust structure — beneficiaries can choose to take outright, into a fixed sub-trust, or into a discretionary sub-trust based on the law as it stands at the date of death;
- **fixed testamentary trust** templates for beneficiaries whose primary need is asset protection rather than income splitting (these remain exempt);
- **probate-cost planning** — joint tenancies, binding death benefit nominations and lifetime gifting (carefully) to reduce the gross Victorian estate value that drives the filing-fee scale.

### 4. The tax-structuring angle

For business and investment families, the design choice is no longer “discretionary trust by default.” The 30% floor reframes the options:

Structure	Effect under proposal	Best for
Discretionary family trust	30% floor on trust income from 1 Jul 2028	High-income beneficiaries; asset protection where the rate is already $\geq 30\%$
Existing discretionary testamentary trust (pre-Budget)	Grandfathered — no floor	Preserve and use; do not vary in a way that resettles the trust
New discretionary testamentary trust	Likely caught unless legislation changes	Use only with a fixed-trust fallback in the will
Fixed testamentary trust	Exempt; flows through at beneficiary's rate	Asset protection for spouse/children without income splitting
Corporate beneficiary	Already at 25%/30%; no change	Retaining profits in the business
Complying SMSF	Exempt; 15% accumulation / 0% pension preserved	Long-term wealth held outside the trust

The Treasurer has explicitly confirmed that fixed testamentary trusts and existing discretionary testamentary trusts remain available and exempt. The winners over the next 24 months are families that act early and lock in a hybrid architecture.

## 5. What not to do

The worst response is panic restructuring. Transferring assets during life to “escape” a future trust or probate impost typically creates worse problems:

- Victorian duty on dutiable transfers, often at full rates;
- CGT event A1 on the transfer, with no main-residence exemption for investment assets;
- loss of control and exposure to the transferee's relationship or bankruptcy risk;
- family-provision exposure — gifts within three years of death can be clawed back into the notional estate analysis;
- Centrelink gifting limits and the five-year deprivation rule;
- elder-abuse and capacity issues where transfers are pushed by adult children.

## 6. Our recommended six-step review

- **Audit the will.** Identify every testamentary trust clause and whether it is discretionary, fixed, or hybrid.
- **Date-stamp the trust deed.** For any existing discretionary family or testamentary trust, capture evidence of pre-Budget existence to support grandfathering.
- **Refresh binding death benefit nominations** on every superannuation interest — the super pathway is unaffected by the trust reforms.
- **Model the Victorian probate fee** on current gross Victorian estate value, then test the impact of joint-tenancy and super re-routing.
- **Insert a fixed-trust fallback** in the will so the executor can elect the best structure at the date of death.
- **Diarise 30 June 2027 and 30 June 2028.** The rollover window for restructuring discretionary trusts opens and closes inside that period.

## 7. Key dates

Date	Event
18 Nov 2024	New Victorian probate-fee scale in force
1 Jul 2027	CGT reforms commence; trust rollover window opens
1 Jul 2028	30% minimum tax on discretionary trusts commences
1 Jul 2028	Last day of the three-year restructuring rollover relief

## Need tailored advice?

Elamine Lawyers acts for Victorian families, professional practices and family businesses on wills, testamentary trusts, SMSF documentation, family-trust restructures and probate. We work with your accountant to model the 30% floor, redraft trust deeds, and execute restructures inside the rollover window. Call (03) 8400 0100 or email [admin@elaminelaw.com.au](mailto:admin@elaminelaw.com.au).

Disclaimer: This newsletter is general information current at June 2026 and is based on announcements in the 2026–27 Federal Budget ([budget.gov.au](http://budget.gov.au)), Treasury Ministers' media releases, the Supreme Court of Victoria probate-fee scale, and ATO published guidance. It is not legal or tax advice. Legislation as enacted may differ from announcements. Obtain advice tailored to your circumstances before acting.