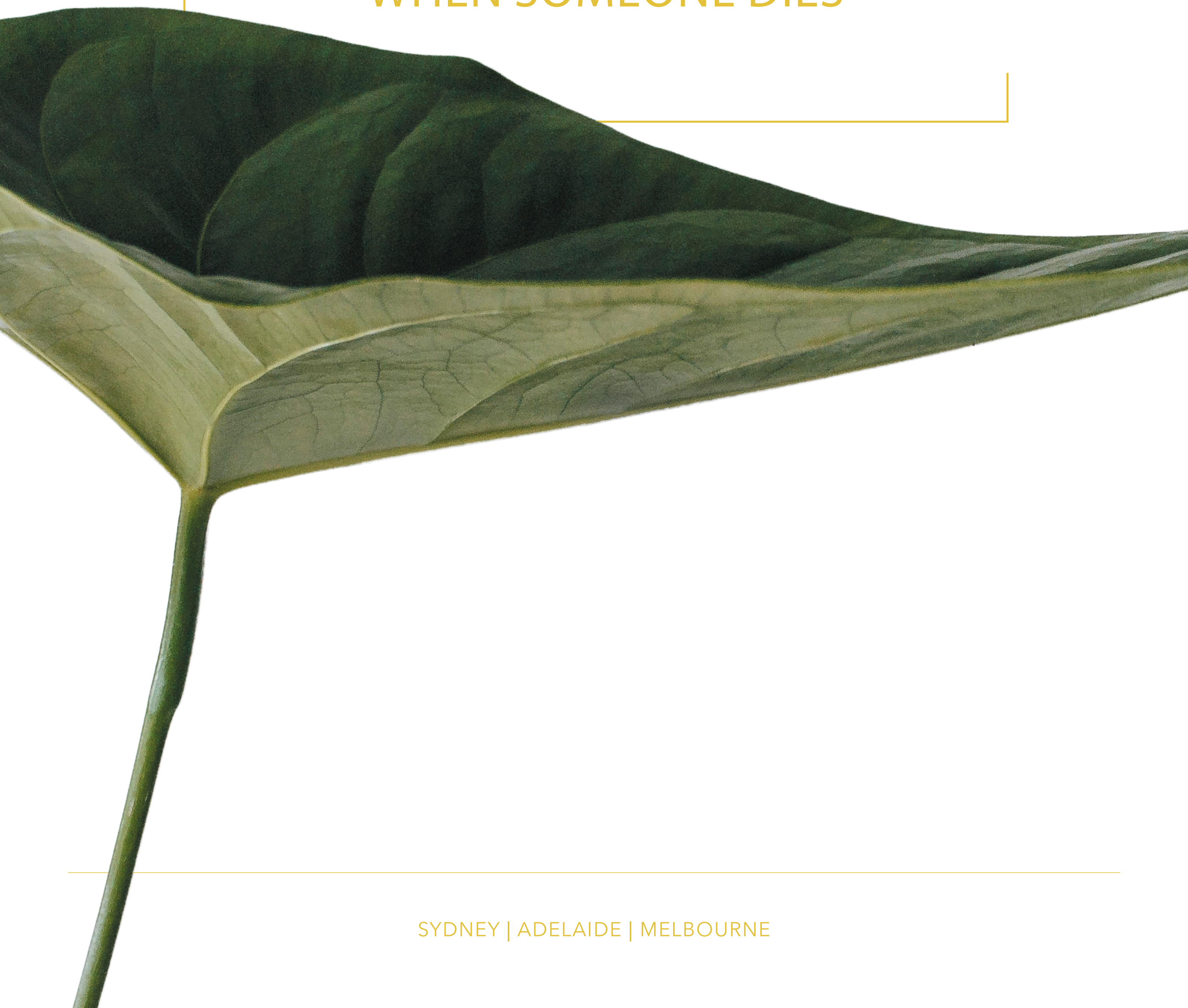
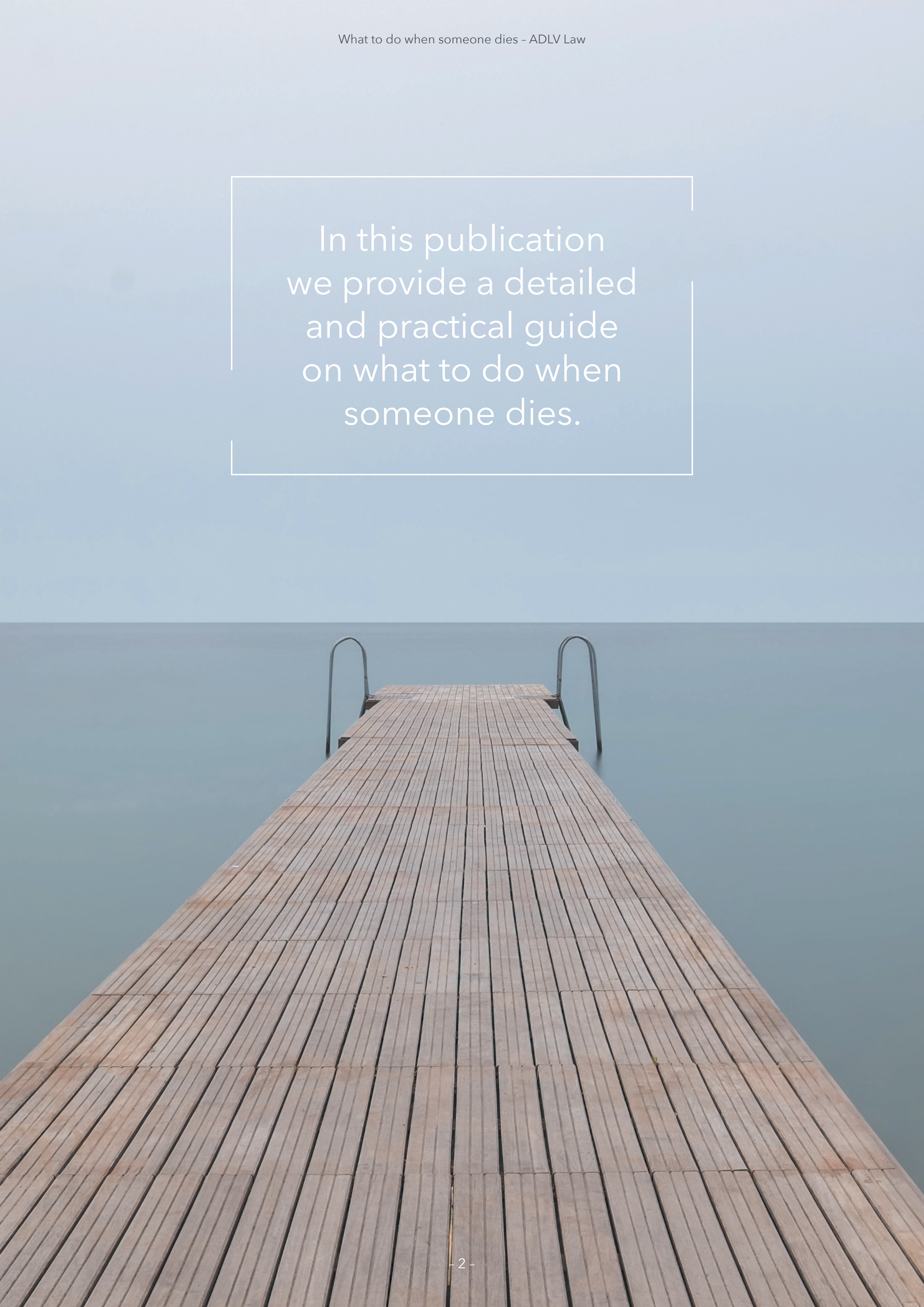
ADLV LAW

FIERCELY ON YOUR SIDE

WHAT TO DO

WHEN SOMEONE DIES





In this publication we provide a detailed and practical guide on what to do when someone dies.

CONTENTS

01
WHAT TO DO WITHIN HOURS

Confirmation of death and signed doctors certificate

DEATH AT HOME

Phone a doctor

If someone dies at home, you will need to contact their doctor to have the death confirmed and a Cause of Death Certificate signed.

A Cause of Death Certificate is the official registration of death. It is signed by the doctor who pronounces the death, and is then lodged with the relevant State or Territory Government office. You cannot make funeral arrangements without a signed Cause of Death Certificate.

Phone the police

If the death is a reportable death, you must call the police or the coroner. A 'reportable death' includes:

- A death by unexpected, unnatural, unusual, violent or unknown cause; or
- A death that occurs during, as a result of, or within 24 hours, of surgery, an invasive medical procedure or the administration of an anaesthetic for those purposes; or
- A death that occurs at a place other than a hospital but within 24 hours of the person having been discharged from a hospital after being a patient or the person having sought emergency treatment at a hospital.

There are penalties if you do not report a reportable death, which may include a fine or imprisonment.

You must comply with any directions that the police give to you and provide them with any information relating to the death.

In certain circumstances, a coronial investigation may be required. In particular, a coronial investigation will usually be required if:

- The death is caused by a violent, unusual or unknown cause; or
- The death is caused by a fire or similar accident.

The police will let you know if this is the case, and the deceased will be transferred to the Coroner.

If you are in any doubt as to whether the death is a reportable death, or may result in a coronial investigation, then call the police and let them know what has happened.

Phone a funeral home

If the police give clearance for the deceased to be transferred to a funeral home, you will need to contact your preferred funeral home to arrange the transfer of the deceased. This can be delayed for a little while if you would like some private time.

DEATH IN HOSPITAL

If the deceased has died in a hospital, the hospital staff will take care of the confirmation of death and will organise the Death Certificate.

Phone a funeral home

The deceased's body will remain at the hospital until you have arranged a funeral director and you have given them permission to move the body to a funeral home (or other location).

Organ donation

If the deceased had signed up with the Australian Organ Donor Register to be an organ/tissue donor, the suitability of their organs or tissues for donation must be assessed quickly. You can obtain more information from the **Australian Organ Donor Register website.**

You can register by filling out the form on the **Medicare Australia website.**

You must be 16 or older to register.

The Australian Organ Donor Register is the only register for organ and/or tissue donation for transplantation after death. Even if you have already recorded your donation wishes somewhere else, for example, by ticking a box on a driver's licence renewal, it is important you update your details by registering your decision on the Australian Organ Donor Register. The Australian Organ Donor Register is **not** for recording decisions about donating organs and/or tissue for scientific research.

Despite registering on the Australian Organ Donor Register, family consent is still needed before donation can go ahead, so remember to discuss your decision with your family and those close to you.

Organ donations can take place when the deceased has suffered brain death in a hospital's Intensive Care Unit while on a ventilator, as this keeps the blood flowing to their organs (meaning that their organs do not get damaged by lack of oxygen).

Before organ donation after death can occur, two senior doctors must separately test the deceased for brain death and the deceased's family's consent must also be obtained.

Corneas can be donated within 12 hours of brain death and other tissues (including organs) within 24 hours.

Organs can only be removed following cardiac death in very specific circumstances. You will be told if the deceased's organs are suitable for donation following cardiac death.

A coronial investigation does not usually prevent a person from being a donor. In these cases, an organ donor coordinator contacts the Coroner to seek permission for donation to proceed.

Selecting a funeral home

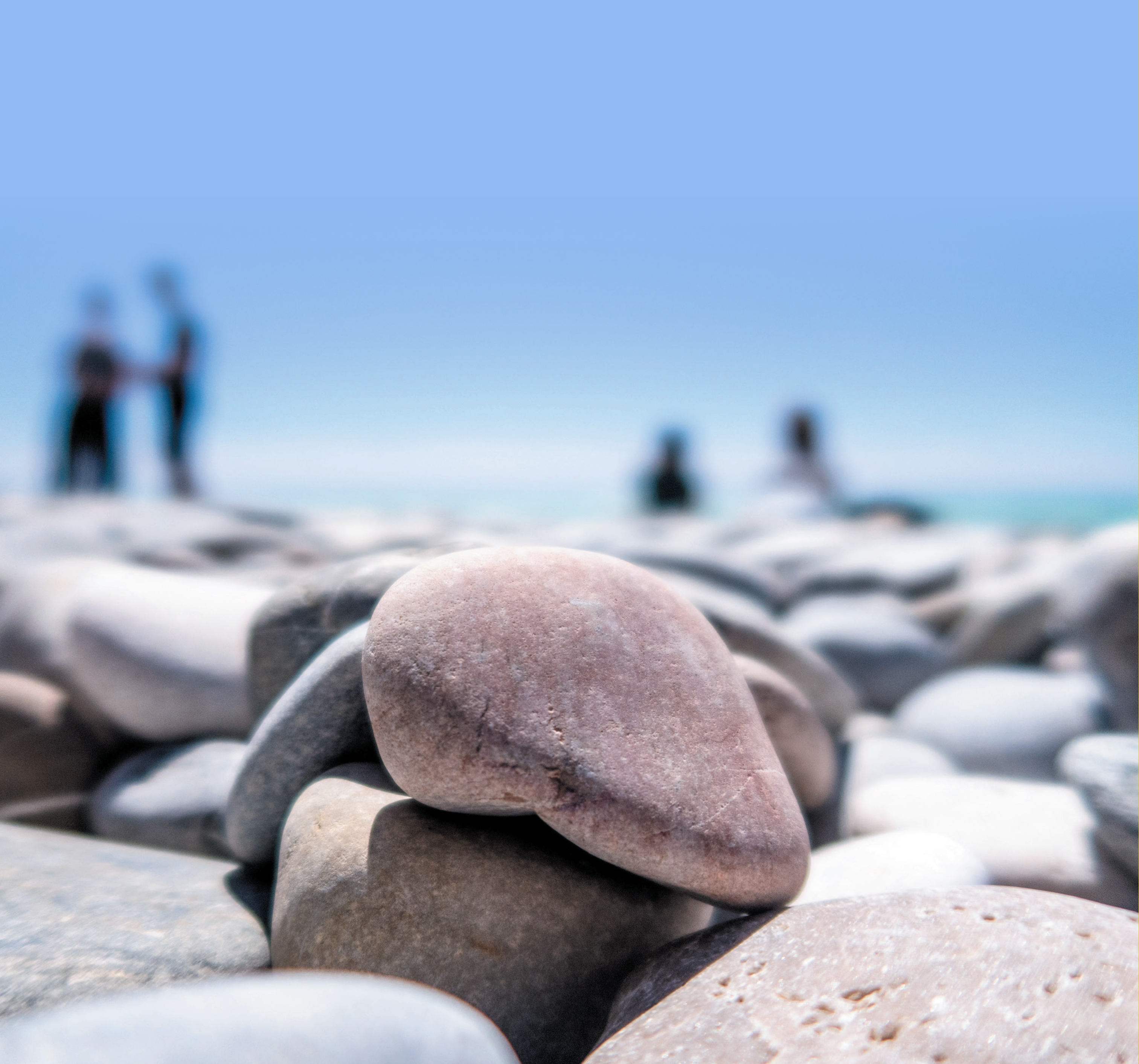
In the hours after the deceased has died you will need to select a funeral director and start thinking about funeral and burial arrangements.

You should locate the deceased's Will (if any), or other 'letter of wishes', so that you can find out if they had any special preferences regarding their funeral arrangements and the disposal of their body.

Burial or cremation arrangements should be discussed with a funeral director as soon as possible so that they can prepare the deceased's body appropriately.

The deceased may have a pre-paid funeral or a funeral bond to cover expenses. This may also help you to select which funeral home to use. It may be that the pre-paid funeral or funeral bond is linked to a particular service provider.

Discuss your decision with those close to you and register with the Australian Organ Donor Register.



02
WHAT TO DO WITHIN DAYS

Funeral and burial arrangements

Once you have selected a funeral director, they will arrange most aspects of the funeral for you.

They can also arrange other things such as newspaper notices, flowers and religious services.

NOTIFYING PEOPLE ABOUT THE DEATH AND FUNERAL

If you elect to arrange the newspaper notices yourself, you may wish to consider publishing:

- a notice of death, including an indication of the expected funeral date, time and place; and
- a separate notice of the confirmed funeral arrangements closer to the time of the funeral, as well as on the particular day.

By this time you may also wish to contact the deceased's friends, work and professional colleges and remote family, to inform them of the death and the funeral arrangements, giving them time to make leave and travel arrangements.

COVERING THE FUNERAL COST

The cost of a funeral can be thousands of dollars. If the deceased did not have a pre-paid funeral or funeral bond, then you need to consider how you are going to cover this cost.

In some instances, you may be able to cover this cost from the deceased's own resources (see section below titled 'Payment of Immediate Expenses').

Insurance cover

Sometimes private health insurance, sickness and accident insurance or life insurance policies may contribute an amount towards the cost of a funeral. If the deceased had insurance, you should enquire with their insurer as to whether there is any contribution towards the funeral expenses.

The contribution can depend on the level of cover and certain conditions including:

- your relationship to the person who has died;
- the length of time he or she had the cover; and
- whether a health condition that contributed to the death had existed before the policy was taken out.

Centrelink assistance

Some people are entitled to apply through Centrelink for financial assistance for funerals in the form of a bereavement payment or early release of their superannuation to pay for a dependant's funeral.

You may wish to make this enquiry early on if you do not think you will be able to meet the costs of the funeral. For more information you can contact the Bereavement Services Team at Centrelink on **132 300** or visit their website at **www.humanservices.gov.au.**

Department of Veterans' Affairs

If the deceased was an eligible Australian war veteran, you may be entitled to receive a funeral benefit from the Department of Veterans' Affairs. This amount can be used to assist with funeral costs or to assist with the costs of transporting the veteran's body from the place of death to their usual place of residence.

Eligibility for the maximum amount will depend on whether the deceased was receiving or had received a Special Rate Disability Pension or was eligible for permanent impairment compensation at the time of death.

In addition, the dependent spouse, partner or children of the deceased (if any) may be eligible for an additional bereavement payment. The amount of the payment is determined by reference to the financial support that the deceased was receiving from the Department of Veterans' Affairs at the time of death.

To determine if you may be eligible for one of these payments and to obtain an application form, you can contact the Department of Veterans' Affairs on **1800 838 372** or visit their **website at www.dva.gov.au.**

Death Certificate

The funeral director will also give you a copy of the official Death Certificate if it is ready. You may receive an interim Death Certificate if there is any enquiry as to the cause of death, in which case the final Death Certificate may take months.

You will need the Death Certificate to administer the estate and apply for probate, so you must keep it in a safe spot.

Copy of the deceased's Will

In the days after the deceased has died you will need to establish whether or not the deceased left a Will, and who will be the executor (under the Will) or the administrator (if there was no Will). If you locate more than one Will purporting to be the Will of the deceased, then you should try and determine which is the most recent and valid Will. You may require the assistance of a solicitor to do this.

If there is no Will then the administrator will be the deceased's next of kin – usually a spouse or partner, a parent or a sibling, (see more information about Letters of Administration below under the heading 'What to do ... Within Weeks: Apply for Probate or Letters of Administration').

It is important that you preserve the deceased's Will in its original state, as any alteration is considered 'damage' (which could result in the Will being invalid, or requiring further legal work to be done before probate is granted). For example, you cannot remove a staple or other binding of a Will because this is considered 'damage'. If you wish to make copies of a Will, you must do so page-by-page.

You should also avoid pinning or clipping things to the Will, as the marks left by these things may give the Probate Registry reason to make further enquires as to the nature of the thing pinned or clipped to the Will, which can delay the grant of probate and lead to more legal costs.

The Will is an important document in dealing with the deceased's affairs, particularly the distribution of his or her assets. If there is no Will, then there is legislation to outline how the assets of the estate are to be distributed.

In the course of administering an estate, an executor or administrator will usually have to:

- File an application for probate or letters of administration (please note that this is not required for all estates);
- Pay any bills owing by the deceased (e.g. utility bills) for which they will be reimbursed by the estate following the grant of probate or letters of administration;
- Determine what debts and liabilities have to be satisfied from the assets of the estate;
- Collect and realise the value of the assets which will be used to pay any debts and liabilities;
- Determine the order in which assets are to be used to pay any debts and liabilities – in some cases this is set out in the Will;
- Lodge a final tax return for the deceased (personally, up to the time of death) and for the estate (for each tax year during the period of administration of the estate);
- In some cases, arrange for documents to show that the executor or administrator is the legal owner of certain types of assets before these can be sold;
- Pay the debts and liabilities; and
- Distribute the remaining assets to beneficiaries according to the terms of the Will or according to law (if there is no Will, or a successful challenge to the Will is made).

In some cases the executor will also be involved in making funeral arrangements – this will usually be the case if the executor is a close family member.

If the executor is someone more removed (i.e. a lawyer or other advisor), they will need to be given a copy of the invoice for the funeral, as this is an expense of the estate.

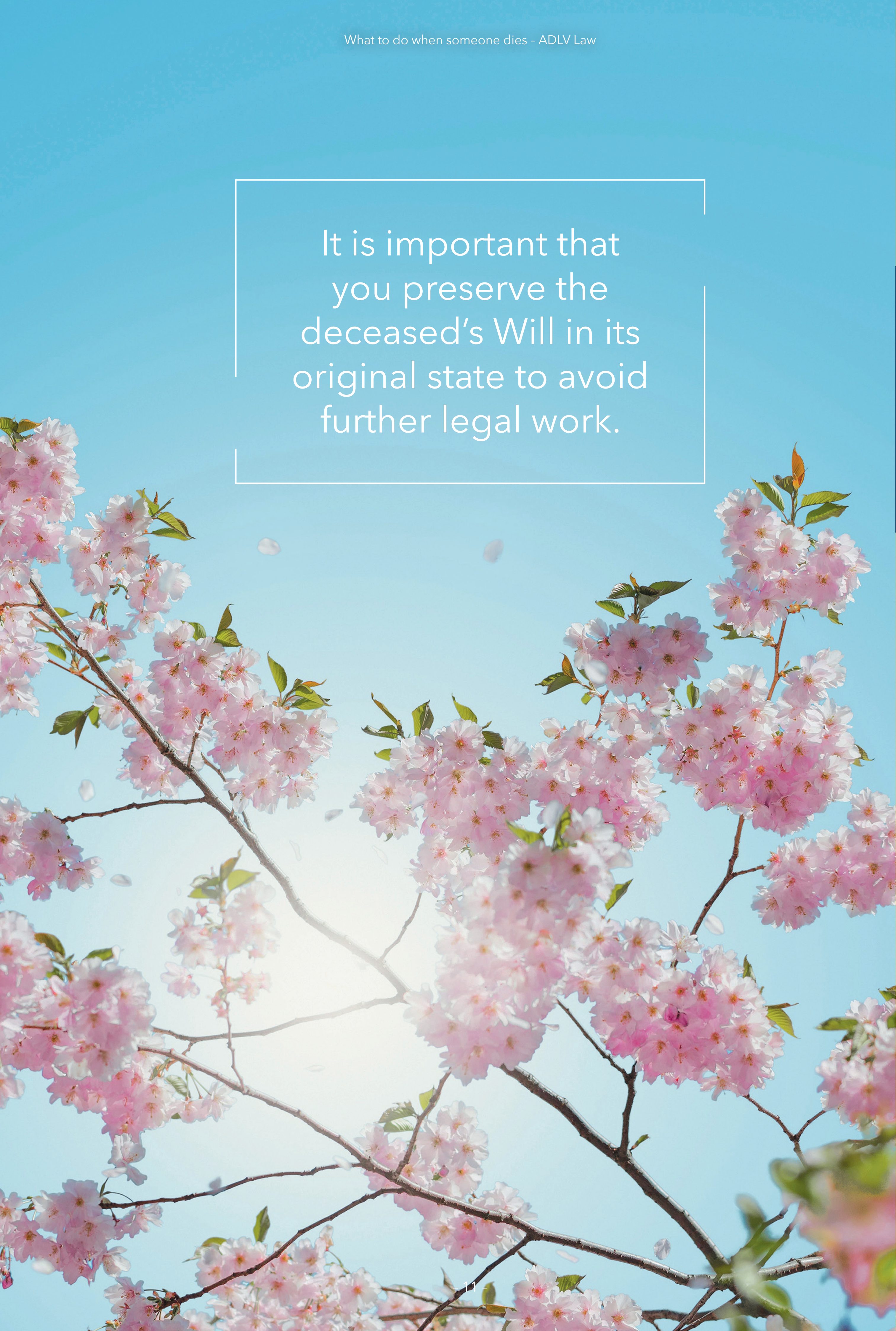
Lost Wills

It may be the case that you know the deceased had a Will, but you cannot locate it. This is more common than you may think.

You should of course make every effort to find the Will, including looking through the deceased's personal effects, contacting the deceased's bank, solicitor, accountant, financial planner and any trusted friends.

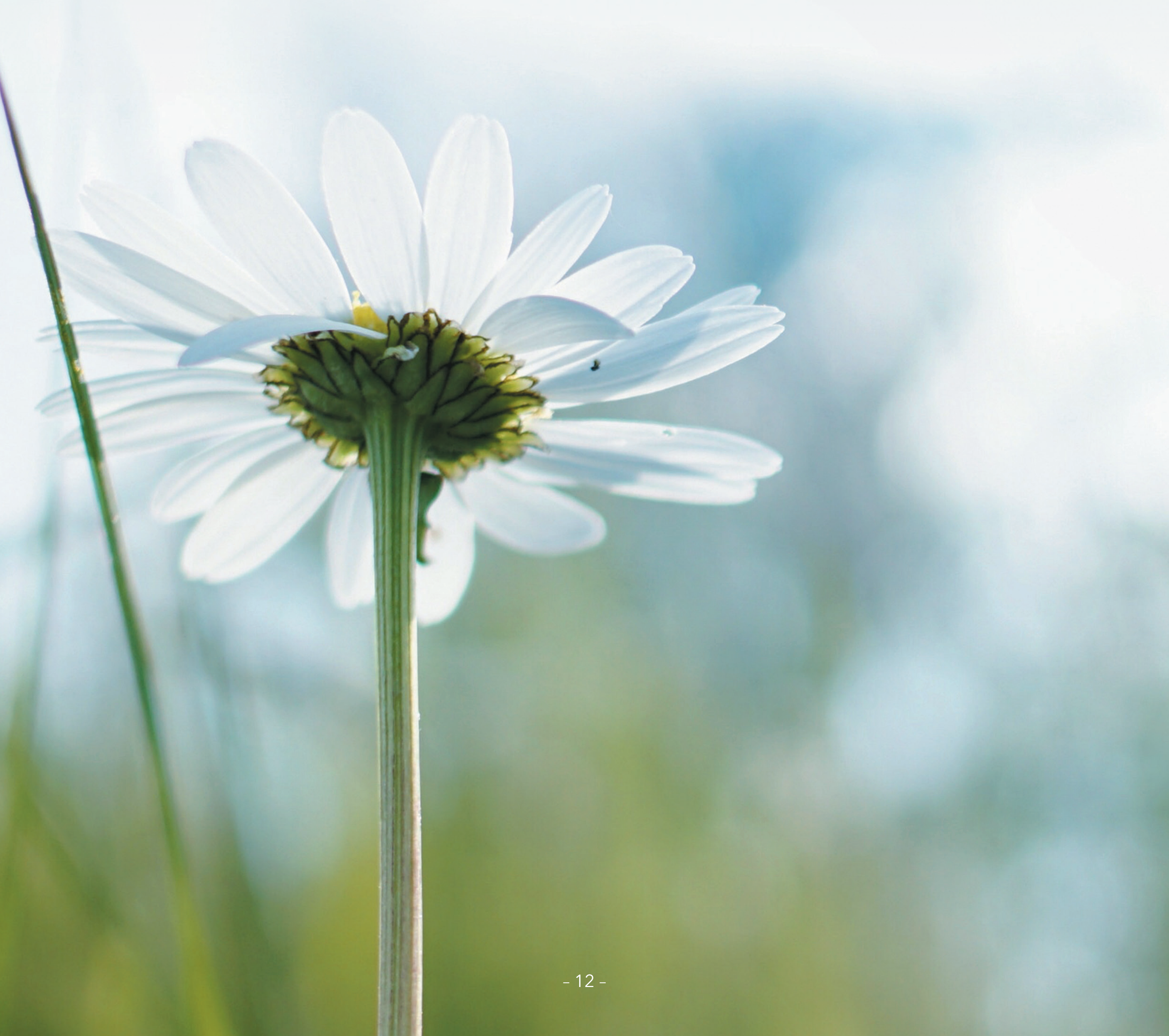
You should also contact the various trustee companies and consider placing an advertisement in the local newspaper and in the journal of the local law society (this may alert a solicitor who may have made the Will).

If you are not able to find the Will, then the estate will be treated as if a Will did not exist, and the estate will be distributed according to the rules that apply to intestacy. This is the case even if you know what the deceased intended for the distribution of their estate.



It is important that you preserve the deceased's Will in its original state to avoid further legal work.

If you wish, banks will usually allow access to funds to meet immediate expenses such as the funeral.



Payment of immediate expenses

It is likely that the deceased had a bank account they were using at the time they died. Depending on how much money is available in the account, you may wish to access some of it to meet immediate expenses, such as the funeral and the probate application. The bank will usually let you do this, even if you were not an authorised operator of the account before the deceased died.

We recommend meeting with someone from the deceased's local bank branch to discuss how much money is available and how much you might need to cover immediate expenses.

It is likely that the bank will freeze the deceased's account once you have taken the money you immediately require, so you will need to make alternative arrangements to pay any other bills or expenses that might come up in the time between the death and the grant of probate (such as ongoing utility bills and periodic payments, such as mortgage interest).

You may wish to enquire as to any direct debits that are regularly made from the deceased's accounts so that you can notify these providers to cease their services (some may require a Death Certificate in order to do this).

As a general rule, any reasonable and necessary expenses that you meet on behalf of the deceased after their death may be reimbursed from the deceased's estate after probate is granted.

Make sure to keep a copy of all invoices paid on behalf of the deceased, and evidence of how these expenses have been met.

You should also keep a copy of all of your correspondence relating to the deceased, both in the period before their death (to the extent that you were involved), and after their death. This will help you to keep track of what you have done and what still needs to be finalised.

Notification of key organisations

Some organisations should be notified as soon as possible after the deceased has died.

These include:

- Centrelink – if the deceased was in receipt of a Centrelink payment, or your Centrelink payments are made by reference to the deceased;
- The Department of Veterans' Affairs – if the deceased was a pensioner or a borrower under any of the Defence Service Homes Schemes;
- Any foreign pension authority (if applicable);
- Banks and other financial institutions; and
- Insurance providers.

Contact details for some of the above are listed at the back of this booklet.

03
WHAT TO DO WITHIN WEEKS

Notifying other organisations

When someone dies a number of people and organisations need to be told. This helps to finalise the person's affairs and makes sure you can get the help you need.

DOCUMENTATION

Before you start contacting the relevant people or organisations, it might help to have a look around and see if the deceased had a filing cabinet, folder or document case. They may have records that give important reference numbers such as an account number, Medicare number or health fund membership number.

A very organised person may have left a list of their key information (including computer passwords and key locations) with their Will.

Some important documents to look for are:

- A Will;
- Birth and marriage certificates;
- Certificates or confirmations of title;
- Home loan statements;
- Leases (if the deceased rented any real property);
- Tax records, such as copies of past tax returns;
- Property insurance policies (for example, home, contents and car);
- Life insurance and superannuation policies;
- Share certificates and dividend statements; and
- Savings account details (showing where the savings are kept);
- Loan statements for any loans owed to the deceased; and
- Any outstanding invoices payable by the deceased

You should also contact the deceased's professional advisers and ask for any documents or other relevant information that they have in relation to the deceased's affairs.

These professional advisers include the deceased's solicitor, accountant, tax agent, financial planner and insurance broker. They may not be able to provide you with some of this information until probate has been obtained due to privacy laws.

However, you will be entitled to a copy of the Will if you are named as an executor, or you must be told that you are not named as an executor.

Life insurance policies

Depending on what insurance policies the deceased held, the deceased's next of kin or nominated beneficiary of the policy may be entitled to a payout.

To make a claim, you should first call the insurance company. The insurance company will generally then send you the relevant claim forms in the mail. Once these have been completed and signed, they should be sent back to the insurance company, after which a Case Manager will generally be assigned to assess your claim and make a payout.

The exact method of making a claim may vary between insurance companies. To ensure that you get the maximum payout as quickly as possible, you should read over the insurance policy documents, contact the insurance company early, and make notes of relevant information so that the insurance company has all the details it needs to process the claim.

If the deceased took the policy out through a financial planner then you should make contact with that person as soon as possible, and involve them in the claim process. It may be that they take over this process on your behalf, but you will still need to follow them up and promptly provide them with any additional information that they may require. If the financial planner is not helpful, then you should request of copy of the planner's file, on which you will find helpful information to assist with the claim.

Other insurance policies

The deceased may have held a number of insurance policies over particular assets such as:

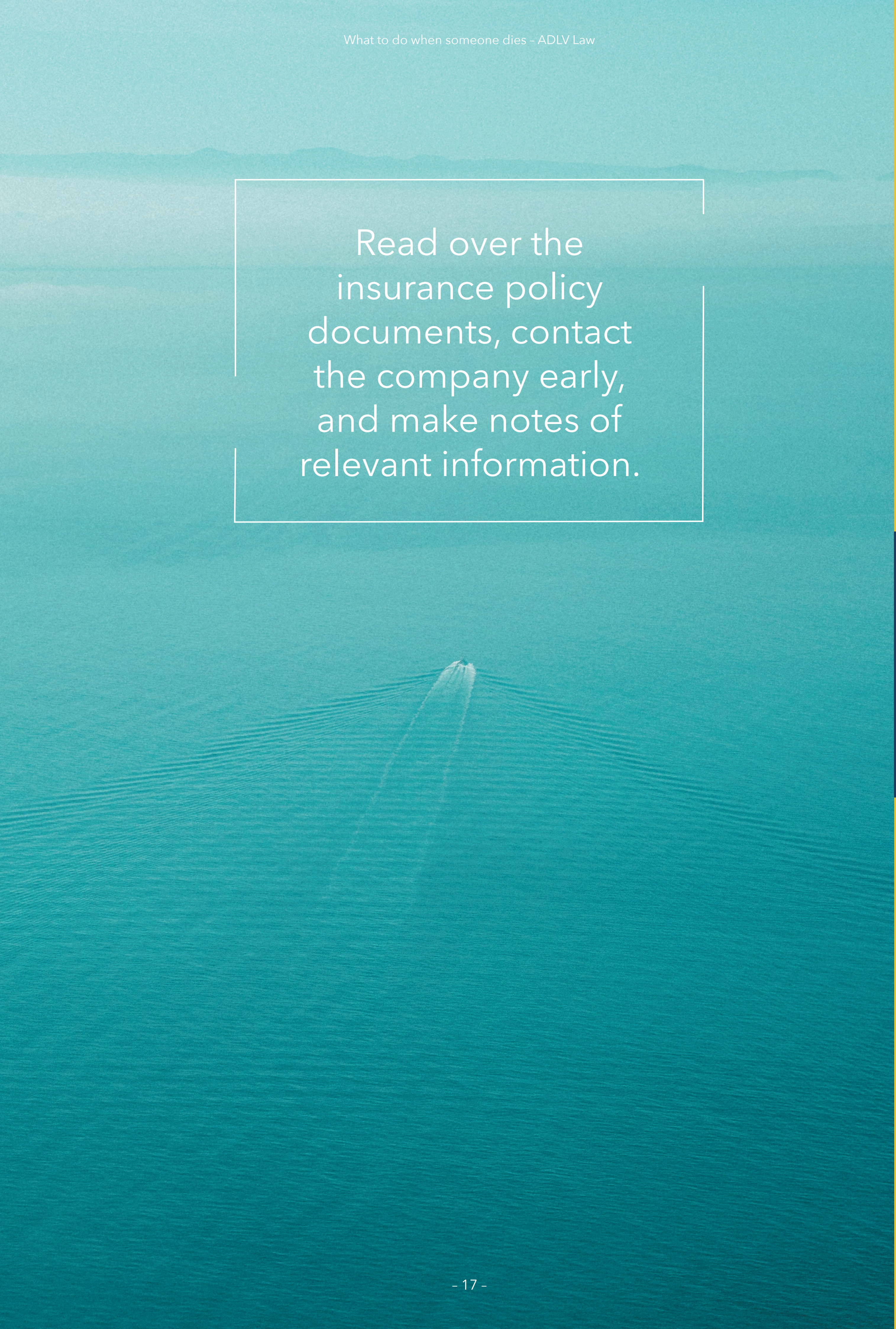
- Home and contents insurance;
- Motor Vehicle insurance;
- Landlord's insurance; and
- Portable Items insurance.

You should try and get a copy of each policy held by the deceased. The items and assets covered by these insurance policies need to be maintained, secured and preserved until they can be formally dealt with under the deceased's Will or under the rules of intestacy (if there was no Will).

To do this effectively, it is usually a good idea to:

- Check the existing insurance policies to make sure that the deceased's assets are appropriately covered;
- Maintain or update these policies to ensure continuation of an appropriate level of insurance coverage; and
- Avoid taking any steps to void or cancel any insurance policies, unless this is specifically intended.

If you are unsure whether to maintain a particular insurance policy, you may wish to seek specific advice from an insurance broker or lawyer.



Read over the insurance policy documents, contact the company early, and make notes of relevant information.

Apply for probate or letters of administration

WHAT IS PROBATE?

'Probate' is the official recognition that a Will is legally valid.

The 'Grant of Probate' is a document which certifies that the Supreme Court recognises that the document presented is the last valid Will of the deceased, and that the executor(s) now have the authority to deal with the estate.

The Grant of Probate allows the executor(s) to collect the assets and pay any debts of the deceased, and then to distribute the estate as directed by the Will.

To understand whether probate will be necessary, visit our website **www.adlvlaw.com.au** or call us on **1300 654 590.**

WHAT ARE LETTERS OF ADMINISTRATION?

If there is no Will (or no valid Will), the next of kin may need to apply to the Supreme Court for Letters of Administration, so that they can be appointed as the administrator of the estate of the deceased.

The person (or persons) who are able to take on the role of administrator is determined by their relationship to the deceased, in the following order of priority:

1) Spouse or domestic partner
2) Child
3) Parent
4) Sibling
5) Grandparent
6) Uncle/aunt
7) Cousins
8) Cousins once removed

Alternatively, someone may nominate themselves as administrator, and this is usually possible as long as people with a higher priority agree to the nominated person taking on this role by 'renouncing' their priority in the role.

To understand whether letters of administration will be necessary, visit our website **www.adlvlaw.com.au** or call us on **1300 654 590.**

The Public Trustee

If the deceased does not have any next of kin (or no next of kin are willing to act as the executor), and the deceased did not have a Will, then the role of administrator will fall by law to the Public Trustee.

The Public Trustee in South Australia will charge a 'tiered commission' for administering the estate, calculated on the gross capital value of the estate.

A general commission is charged for any income received by the estate and collected by Public Trustee. There are also a number of other fixed charges, for things such as preparing deeds, audits, and preparing tax returns.

PROBATE VS LETTERS OF ADMINISTRATION

The main difference between probate and letters of administration is that under administration the administrator must distribute the assets of the estate (after meeting any debts and liabilities) in a manner prescribed by law (as opposed to according to the wishes of the deceased as expressed in a Will).

WHEN WILL PROBATE OR LETTERS OF ADMINISTRATION BE REQUIRED?

The main reason that probate or letters of administration are required is that some organisations which hold assets of the estate, or registers who record title to such assets, will not release them or record a transfer to the executor or the administrator for distribution to the beneficiaries unless they have first seen the grant from the Supreme Court.

Jointly held property

Probate or letters of administration will not be required if the deceased's assets are held as joint tenants (not tenants in common) with another person (such as their spouse). This is because the deceased's interest in the asset automatically passes to the surviving joint tenant, without anything further being required. For example, if a husband dies (survived by his wife), and his bank accounts, motor vehicles and real property are all held in joint names (as joint tenants), probate or letters of administration will not be required. It may be necessary to lodge a notice of death with various registries to record the passing of the joint interest to the surviving owner. This is usually a relatively simple process, and only requires a copy of the Death Certificate.

Low value assets

An estate can also generally avoid probate or letters of administration when there are some solely-held assets of low value, such as small share parcels or bank accounts. Each institution and share register has its own 'cap' as to the value that the asset must reach before it considers that probate or letters of administration are required to transfer ownership of that asset. A person who holds money or personal property for the deceased of up to $15,000 in value may pay the money or transfer the personal property to their surviving spouse, domestic partner or child without a grant of probate or letters of administration.

The decision process

In order to decide whether probate or letters of administration are required, the following steps should be taken:

- A list of all assets in the deceased's name (both solely and jointly) should be compiled.
- If all assets are held as joint tenants, there is no need for probate or letters of administration. The assets can be dealt with by providing a copy of the Death Certificate and relevant paperwork to each organisation with which the assets are held. Each particular organisation will have its own paperwork.
- If some assets are held solely or as tenants in common, then each organisation with which those assets are held should be contacted to determine their deceased estate transfer policy. If the value of the assets held with each organisation is under their low value threshold, then probate or letters of administration are not required. The assets can generally be dealt with by providing:
    - the Death Certificate;
    - a copy of the Will (if there is one); and
    - relevant paperwork required by the organisation (which may include an indemnity form from the beneficiary, where there is no Will) to each organisation with which the assets are held.
- If any of the assets which are held solely or as tenants in common exceed the particular organisation's low value threshold, then probate or letters of administration will be required before those assets can be transferred to the beneficiary.

HOW TO APPLY FOR PROBATE OR LETTERS OF ADMINISTRATION

Probate or letters of administration applications can be prepared and made personally by the Executor (for probate) or next of kin (for letters of administration), or a lawyer can be engaged to prepare the application on behalf of the estate.

We can help. Call us on **1300 654 590** to discuss how.

Is a lawyer necessary?

There is no legal requirement to involve a lawyer in the application for probate or letters of administration, but it is usually a good idea. What may appear a relatively simple application and administration process can quickly become complicated, and an experienced professional can save you considerable time, potential costs and a great deal of frustration and uncertainty.

The cost of engaging a lawyer to undertake this process on behalf of the estate is an expense that may be met out of the estate.

For friendly and practical assistance, visit our website **www.adlvlaw.com.au** or call us on **1300 654 590.**

Apply for probate or letters of administration (cont.)

Required documents

To prepare an application for probate or letters of administration the following documents will be required:

- The deceased's Last Will (original) (if applicable);
- Death Certificate (original);
- Records of all assets of the deceased and their value at the time of death, including:
  - Bank statements;
  - Share dividend statements;
  - Superannuation fund statements;
  - Certificate or confirmation of title;
  - Registration papers of motor vehicles; and
  - Copies of any relevant agreements whereby the deceased is owed money (loan agreements, mortgages, etc); and
- Records of all debts/liabilities of the deceased, including:
  - Mortgage statements;
  - Copies of any relevant agreements whereby the deceased owed money to someone else;
  - Outstanding bills (outstanding as at date of death); and
  - Funeral expenses.

A copy of the Death Certificate and the original Will (for probate) are submitted with the application, and the Court retains these documents. The issued Grant of Probate or Letters of Administration is evidence of death and (for probate) the testamentary wishes of the deceased.

Application cost

The Court application fee varies from State to State. Court application fees are payable separately to a solicitor's fees to prepare the application documents.

We can help. Call us on **1300 654 590** to discuss how.

PROBATE

The complexity of a probate application will depend on the number and type of assets that the deceased had at the date of death, as well as the extent and nature of the deceased's debts and other obligations.

In South Australia, a probate application is prepared and submitted online, however you will need to deposit the original Will at the Probate Registry. The online application will produce four core documents:

- Will coversheet;
- Grant application;
- Statement of Assets & Liabilities; and
- Registrar's Certificate(s).

Other documents that may often be required as part of the application in South Australia are:

- Affidavit of Alias (if the deceased's name was misspelt on the Will or if the deceased used multiple names or versions of their name);
- Affidavit of Plight and Condition (if the Will has been altered from its original form – i.e. a staple removed); and
- Affidavit as to Due Execution (if there are any questions as to the validity of the Will or the testamentary capacity of the deceased – this affidavit will usually be required for estates that have been caveated).

In New South Wales, applications for probate should be made within 6 months of the date of death of the deceased. The application is prepared and submitted online through the Online Registry. The online application will produce the following documents:

- Summons (UCPR Form 111);
- Grant (UCPR Form 112);
- Affidavit of executor and inventory of property (UCPR Forms 117 and 118); and
- A notice of intended application.

Similar to South Australia, the original Will and any Codicils need to be submitted deposited with the Court. Any additional supporting documents or affidavits are uploaded through the Online Registry.

For New South Wales estates – account to the Court

In New South Wales, the executor or administrator of an estate may be required by the Supreme Court to account to the Registrar of the Court.

This generally occurs:
- When the executor/administrator (or one of them) is a solicitor or an accountant;
- When the executor/administrator (or one of them) is a creditor of the estate; or
- Where any of the beneficiaries are minors or charities, with some exceptions.

If this applies to you, you will be notified by the Court.

If you are required to account to the Court, you will need to first file an inventory of the estate and then later prepare and file accounts of the estate as directed by the Court.

We can help. Call us on **1300 654 590** to discuss how.

Superannuation death benefits

If the deceased had superannuation, the deceased's superannuation entitlements (plus any applicable life insurance held within superannuation) convert to 'death benefits' at the time of the deceased's death.

You will need to make enquiries as to who is entitled to receive the death benefits. The actual recipient of the superannuation death benefits will be determined based on whether or not a valid binding nomination was in place at the date of death. It is common for couples to nominate their surviving spouse or partner as the recipient of all the death benefits, or to nominate their estate as the recipient (in which case the death benefits will be dealt with together with the rest of the estate).

If no valid binding nomination is in place, the trustee of the superannuation fund will have discretion to pay to any one or more of the deceased's 'superannuation dependants', or alternatively to the deceased's estate.

'Superannuation dependants' for the purposes of death benefits payments will usually be:
- The deceased's spouse or de facto partner;
- A child of the deceased that is under 18 years old;
- Any person who was financially dependent on the deceased; and
- Any person with whom the deceased had a relationship of financial interdependence.

Certain superannuation dependants have the option to take the death benefits as either a lump sum or a pension. Some funds also permit the deceased to specify in advance (via a nomination) how the death benefits are to be paid.

If you are eligible to receive death benefits you should seek advice on the most tax-effective way of receiving those benefits.

We can help. Call us on **1300 654 590** to discuss how.

04
WHAT TO DO WITHIN MONTHS

Distribute assets

As soon as you have been appointed as the executor or administrator of the deceased's estate, collected in all relevant assets, and met (or provided for) all relevant debts and liabilities, then you can start the process of distributing assets to the beneficiaries.

DISTRIBUTION IN ACCORDANCE WITH WILL

If the deceased left a Will, then you will need to distribute the assets in accordance with the deceased's wishes in the Will. There may be some complexity associated with this, particularly if the debts and liabilities required the sale of certain assets, or when a beneficiary has died before receiving the assets.

DISTRIBUTION OF INTESTATE ESTATE

If the deceased does not have a Will (or no valid Will), then as administrator you must distribute the assets in accordance with the entitlements set down by law.

South Australia

In South Australia the *Succession Act 2023* governs an intestate estate. This Act applies a formula to distribute assets based on the dependants of the deceased at the time of death, as follows:

- First if there are no children, the spouse (married or de facto) of the deceased gets everything;

- Second, if the deceased has children and a spouse, a 'prescribed amount' is given to the spouse, with half of any excess going to the spouse, and the other half of any excess to be divided equally between the children;

- Third, if there are children and no surviving spouse, the children get equal shares of the estate. If any of the children has already died but left children of their own (i.e. grandchildren of the deceased) then those grandchildren inherit their parent's share;

- Fourth, if there are only grandchildren (and no children), then each grandchild gets an equal share of the whole of the estate;

- Fifth, any living 'relatives' (but only if there are no living spouse or children, or further issue). If necessary, a search will be made to identify any relevant persons, including parents, siblings, grandparents, uncles and aunts, and cousins (and any issue of those persons). The estate is passed down the respective 'tiers' of relatives in an order of priority; and
- Finally, to the Government.

The spouse is also entitled to the personal chattels of the deceased, and has an option to purchase any house that they were living in with the deceased at market value within 3 months of the date of granting of the letters of administration or being given notice of this right. If there is more than one spouse, then they must share the spouse entitlement equally.

Distribute assets (cont.)

New South Wales

The *Succession Act 2006* governs who gets the deceased's assets if the laws of New South Wales apply. These rules use a formula to distribute assets based on the dependants of the deceased at the time of death. There is a hierarchy of claimants, and it also partly depends on the amount of the estate.

The rules can be summarised as:

- All personal effects go to the surviving spouse;
- The first $350,000 (plus indexation from 2005) of assets goes to the surviving spouse;
- If the deceased's children are from the surviving spouse, the balance of the estate goes to the surviving spouse;
- If the deceased's children are not from the surviving spouse, then the balance is split between the spouse and the children;
- If there are children and no surviving spouse, the children get equal shares of the estate. If any of the children has already died but left children of their own (i.e. grandchildren of the deceased) then that child inherits their parent's share;
- If there are no living children or spouse, the deceased's parents get the whole estate in equal shares. If there are no living children, spouse or parents, the estate will go to the deceased's siblings, then grandparents, then aunts and uncles. If necessary, a search will be made to identify any living next of kin, including parents, siblings, half-siblings, grandparents, uncles and aunts and half-blood aunts and uncles;
- Finally, to the Government.

There are special rules that apply to the family home. The deceased's spouse may inherit the home to the exclusion of any children. As well, there are particular problems where both a spouse and a de facto survive the deceased if the de facto lived with the deceased for a two year or longer continuous period. In these more complex situations we strongly recommend that you call us on **1300 654 590** for specific legal advice.

ONGOING TESTAMENTARY TRUSTS

When an executor completes the general administration of a deceased estate but there is an ongoing interest, the 'trustee' continues to administer the estate until it can be distributed.

This happens for instance, when beneficiaries of a Will are infants and payment is deferred until they reach 18 years, or when there is 'life interest' in a property or a charitable fund is set up. Trusts can be established for various reasons including providing for a disabled child, and providing funds for education or charitable purposes.

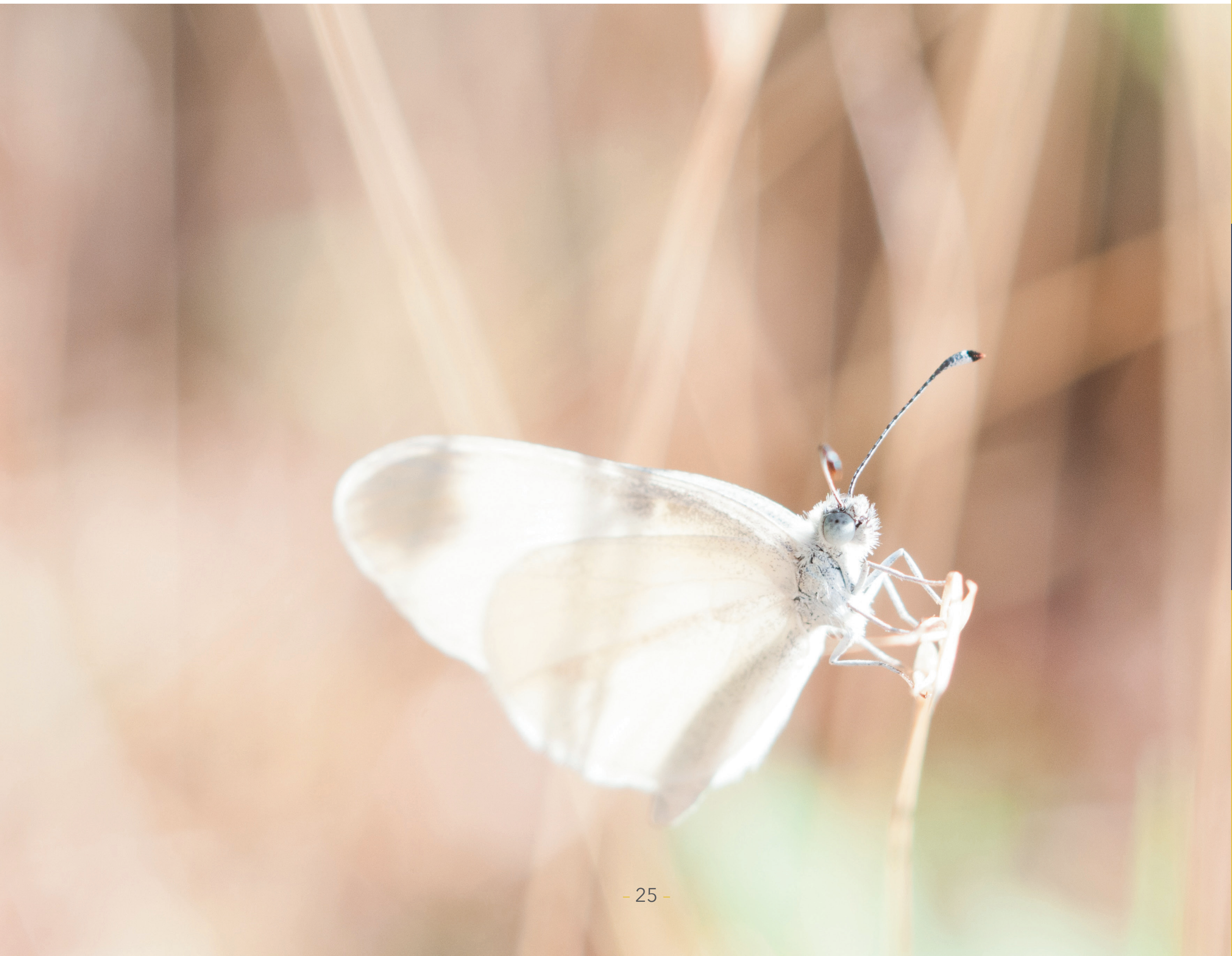
Lodge the final tax return for the deceased

The executor or administrator of the estate is required to lodge a 'date of death' final tax return for the deceased if:

- Tax has been withheld from the income earned by the deceased;
- The deceased earned taxable income exceeding the tax-free threshold;
- Tax has been withheld from interest or dividends because no tax file number was quoted to the investment body; and/or
- The deceased had lodged returns in prior years.

In some cases, the executor or administrator may also be responsible for lodging prior-year tax returns for the deceased, if the deceased's tax affairs were not up to date at the time of death.

It is best to contact the deceased's accountant or the Australian Taxation Office directly if you are unsure of what to do. The Australian Taxation Office will only be able to provide you with general advice until you are able to satisfy them that you are legally entitled to deal with them on behalf of the deceased, i.e. by presentation of the Grant of Probate or Letters of Administration.



Remove the deceased's name from mailing lists

It is likely that the deceased's name is on a number of mailing lists, and it can be quite distressing to continue to receive mail for the deceased in the months (and sometimes even years) after they have died.

If you want to have the deceased's name and telephone number removed from mailing lists, you can ask the Australian Direct Marketing Association (ADMA) to do it for you.

To register the details, submit the relevant form through the ADMA website at **www.adma.com.au/do-not-mail.**

For grants of letters of administration in South Australia – report to the Public Trustee

In South Australia, an administrator of an intestate estate (one where there was no valid Will) is required to report to the Public Trustee on the administration (i.e. collection, realisation and distribution) of the estate within six months of the grant of letters of administration.

This is done by completing and returning a statement of account which will be sent to you by the Public Trustee. There is also an examination fee to be paid to the Public Trustee.

You are not required to have completed the administration of the estate within six months. However, the system of having to 'report' to the Public Trustee helps keep the estate administration on track.

We can help. Call us on **1300 654 590** to discuss how.

Contesting an estate

If you are the beneficiary of an estate under a Will and do not believe you have been given your fair share, or if you expected to benefit from an estate but have been left out, you may be entitled to contest the Will.

There is usually a narrow timeframe for challenging a Will, calculated either by reference to the grant of probate or the date of death. If the date of grant of probate is relevant, you can find this out by asking the executor of the estate, or by enquiring at the Probate Registry of the State within which the deceased had assets (usually the deceased's home State).

Below is a table of people who may be eligible to make a claim for provision from an estate in each State and the time limit for a claim. If you believe that you may be eligible, you should seek legal advice about your individual situation as early as possible.

We can help. Call us on **1300 654 590** to discuss how.

Contesting an estate (cont.)

State	The law	People entitled to claim (relationship to the deceased at time of death)	General time limit for claim	Assets that can be subject to a provision order
SA	Succession Act 2023 (SA)	– Spouse or domestic partner – Fomer spouse or domestic partner – Biological/adopted child – Step-child who is disabled or significantly vulnerable, cared for or maintained the deceased, substantially contributed to the estate of the deceased, was maintained by the deceased, or whose biological parent substantially contributed to the estate of the deceased – Biological grandchild who cared for or maintained the deceased – Biological parent who cared for or maintained the deceased – Biological siblings who cared for or maintained the deceased	Within **6 months** of the date probate or letters of administration is granted. Extension of time may be granted upon such conditions as the Court sees fit.	Personal estate only
NSW	Succession Act 2006 (NSW)	– Spouse or De facto partner – Ex-spouse – Biological/adopted child – Child of the deceased under the Status of Children Act 1996 (where the deceased was in a de facto relationship) – Child for whose long-term welfare the deceased had a parental responsibility – Grandchild who was wholly or partly dependant on the deceased – A person that was living in a close personal relationship with the deceased at the date of death – Any other person who was wholly or partly dependent on the deceased and a member of the deceased's household	Within **12 months** of the date of death of the deceased. Extension available if the applicant can show sufficient cause.	Personal and notional estate (including superannuation)
VIC	Administration and Probate Act 1958 (VIC)	– Spouse or Domestic Partner – Child/stepchild – A person who, for a substantial period during the life of the deceased, believed the deceased was a parent and was treated as a natural child – Ex Spouse or Domestic Partner – A person in a registered caring relationship with the deceased – Grandchild – Spouse or domestic partner of a child or stepchild of the deceased (only if child/ stepchild dies within 1 year of deceased's death) – A member of the deceased's household	Within **6 months** of the date probate or letters of administration is granted. Extension for a further period by the Court after hearing such of the parties affected as the Court thinks necessary.	Personal estate only

Contesting an estate (cont.)

State	The law	People entitled to claim (relationship to the deceased at time of death)	General time limit for claim	Assets that can be subject to a provision order
TAS	**Testator's Family Maintenance Act 1912 (TAS)**	– Spouse or Partner (in a significant relationship) – Biological/adopted child – Ex-spouse or former partner receiving or entitled to receive maintenance from the deceased – Parents, if the deceased dies without leaving a spouse, partner or child	Within **3 months** of the date probate or letters of administration is granted. Extension may be granted if the court sees fit.	Personal estate only
WA	**Family Provision Act 1972 (WA)**	– Spouse or De facto partner – Ex-spouse or former de facto partner receiving or entitled to receive maintenance from the deceased – Biological/adopted child – Biological/adopted child in the womb at date of death – Grandchild being wholly or partly maintained by the deceased or whose parent (being a child of the deceased) had predeceased the deceased – Grandchild in the womb at date of death whose parent (being a child of the deceased) had predeceased the deceased – Stepchild being wholly or partly maintained by the deceased – Stepchild if the deceased received certain property from stepchild's parent – Parent of the deceased (whether by birth, marriage or acknowledgement by the deceased)	Within **6 months** from the date that a person becomes entitled to administer the deceased estate. Extension may be granted if the court is satisfied that the justice of the case requires it.	Personal estate only
QLD	**Succession Act 1981 (QLD)**	– Spouse – De facto partner who lived with the deceased for a continuous period of 2 years ending on the deceased's death – Dependant ex-spouse – Biological/adopted child – Stepchild – Child in the womb at the date of death – Dependant parent of the deceased – Dependant parent of a surviving minor child of the deceased – Person under the age of 18 years being wholly or partly maintained by the deceased at date of death	Within **9 months** of the date of death of the deceased. The court may at its discretion hear and determine an application if a grant has not been made.	Personal estate only

There is no set amount that you may be entitled to if you challenge a Will or a distribution of assets by an administrator. The Court must take into consideration a number of factors to determine what each person is entitled to from the estate. In South Australia, the Court must consider whether the applicant has been left without adequate provision for their 'proper maintenance, education or advancement in life' as well as the deceased's intentions. In making the order the Court may, if it thinks fit, order that the provision to consist of a lump sum or periodic or other payments, (or both).

05
FURTHER INFORMATION

Planning for the future

WHY YOU NEED TO THINK ABOUT ESTATE PLANNING

Take a few minutes out to ask yourself the following important questions:

- Do you want to choose who benefits from your wealth, and when?
- Do you want to protect the wealth you give your children from unjust claims?
- Do you want to make sure your children only receive wealth as and when they are mature enough to handle it constructively?
- Do you want to ensure your family's wealth remains available to support your children, even if your spouse re-partners?
- Do you want to minimise taxes on the assets that you leave your partner and children?
- Do you want to smoothly pass control of your business and investment structures to the next generation (such as superannuation, family trusts and private companies)?
- Do you want to minimise the costs of administering your wealth when you die?

Estate Planning is the process of ensuring that:

- You have a clear understanding of the legal structures through which you hold and control your wealth;
- You have appropriate strategies in place to ensure your wealth is there to support your family when you die;
- Your children are adequately provided and cared for by people they know and trust; and
- There is a smooth transition of control over your legal structures.

We follow a simple and logical process:

- First, we identify your objectives (through our comprehensive 'Fact Find');
- Then we provide you with clear recommendations as to how to achieve your objectives, together with a fixed quote of what we will charge;
- Next, we promptly implement our recommendations; and
- Finally, we keep in touch and offer a periodic review.

YOUR WILL

Your Will is your most important estate planning document, as it dictates who receives the benefit of your wealth when you die.

The level of complexity of your Will depends in part on the size and nature of your personal asset pool and in part on the people whom you want to benefit from your wealth (or specifically exclude from benefitting, as the case may be).

It is important to get tailored advice about your estate planning needs to minimise dissipation of your wealth as a result of tax and estate administration expenses. Investing in quality estate planning documents now will usually save a lot of money in the future.

TESTAMENTARY TRUSTS

Most people by now have heard of 'family trusts'. They can be an effective way to protect assets, divide income, provide flexibility and reduce tax liabilities.

You can also set up what is known as a 'testamentary trust' through your Will. This is like a family trust, but it only comes into existence on your death. You can even set up separate trusts for each of your beneficiaries.

There are a number of benefits that testamentary trusts can offer, including:

- Wealth protection;
- Keeping your assets within your family line;
- Giving assets to your children over time;
- Income flexibility;
- Tax minimisation (including capital gains tax and stamp duty benefits); and
- Reduced likelihood of claims against your estate.

We can help. Call us on **1300 654 590** to discuss how.

Planning for the future (cont.)

GENERAL AND ENDURING POWER OF ATTORNEY

A Power of Attorney is a legal document which appoints one person (the 'Attorney') to act on your behalf (as 'Donor') in respect of your property and financial affairs. An 'Attorney' in this sense does not necessarily mean your lawyer. The Attorney is usually a family member or close friend.

A Power of Attorney does not enable your Attorney to make medical or lifestyle decisions on your behalf. The person to make these decisions is your Enduring Guardian, Substitute Decision-Maker or Medical Power of Attorney (appointed in a separate document, discussed below).

You can make either a general 'Power of Attorney' or an 'Enduring Power of Attorney'. The difference is that a general Power of Attorney ceases to have effect when you lose mental capacity, but an Enduring Power of Attorney continues in force after that time. Anyone can develop conditions like dementia or Alzheimer's, or suffer a stroke or be injured in a car accident, so that they are unable to manage their financial affairs. Making an Enduring Power of Attorney is a practical step you can take while you still have mental capacity. It means that essential financial matters will be attended to by someone you choose on your behalf.

Any adult can appoint a Power of Attorney. If a person has a mild intellectual disability or is in the early stages of dementia, they may still be able to make a Power of Attorney. This will depend on their understanding of the nature and effect of the document. If their capacity is in doubt, then an assessment of the person's understanding should be made by a medical practitioner.

As long as you retain mental capacity you retain full authority to deal with your property and money, even if a Power of Attorney is in place. Also, you can state in the Power of Attorney that it is not to come into effect unless you become of unsound mind or are incapable of making your own decisions. Your Attorney can be required to obtain a doctor's certificate which says this.

You can only appoint a Power of Attorney while you are of sound mind. It is too late if you become of unsound mind. If you become of unsound mind and have not made an Enduring Power of Attorney then you lose the ability to appoint someone to manage your property and finances. Someone will need to apply to the Guardianship Tribunal, Administrative Affairs Tribunal or the Supreme Court of the relevant state to have a manager appointed. This means a government official could be making decisions on your behalf, and regular fees are charged for this service. Having a caring friend or relative acting as your Attorney is usually a much cheaper and better alternative.

Your Attorney will be able to do anything you legally could do. Therefore, you need to choose a person who is trustworthy and responsible enough to manage your property and finances. Before you appoint someone you should be sure the he or she will in fact do all the things that you want. Your Attorney is legally bound to carry out the written instructions in the document. You can appoint more than one Attorney, and this is often a good idea. You should choose people who are able to coordinate well with each other. You will need to decide whether you want your Attorneys to act jointly (together) or severally (individually). The benefit of having two Attorneys acting jointly is that there is less chance of both Attorneys acting contrary to your interests.

Any Power of Attorney automatically ceases to operate if your Attorney notifies you that he or she will no longer act under the power, or when you notify your Attorney that the power has ceased. It also ceases if you become bankrupt or die.

You can cancel your Power of Attorney at any time, as long as you are of sound mind. You must make sure that your Attorney knows that you are cancelling the Power of Attorney.

We can help. Call us on **1300 654 590** to discuss how.

Planning for the future (cont.)

ENDURING GUARDIANSHIP/ ADVANCE CARE DIRECTIVE

An appointment of a Guardian (or 'Substitute Decision-Maker' (SA) or 'Medical Treatment Decision Maker' (Vic) under an Advance Care Directive) is a legal document in which you appoint a person to make personal or lifestyle decisions (in particular, health and care decisions) on your behalf when you are not capable of doing this yourself. Obviously you will prefer to make decisions for yourself. However, sometimes it is not possible for us to make these decisions. We can become sick, be injured in an accident, suffer a stroke or have a condition which makes it impossible for us to make informed decisions on our own behalf.

Usually the types of decisions your Guardian may need to make on your behalf relate to where you will live (for example, in a nursing home), what health care you will receive, who will be your treating doctor, and what other personal services you may receive (for example, home nursing support). Certain medical treatments can only be approved by the relevant government board or tribunal and your Guardian cannot override your wishes in refusing medical treatment (without the approval of such board or tribunal).

Many people think that if they are ill or injured, then the appointment of a Guardian can take place at that time. Unfortunately, that is not always possible. If you have already lost the capacity to make decisions about your own welfare and medical treatment, you have also lost the legal capacity to make a decision to appoint a Guardian.

If you do not appoint a Guardian (or 'Substitute Decision-Maker' (SA) or 'Medical Treatment Decision Maker' (Vic) under an Advance Care Directive) then if the circumstances arise where one is needed it could be necessary for someone to make application to the relevant government authority to be appointed your Guardian. Such authority might agree to this appointment or alternatively, might appoint the Public Advocate (a Government Official) to act as your Guardian. An application to the government authority is more complicated and potentially more costly for you than making your own appointment now. And if a Public Advocate is appointed they will charge a fee for administering your affairs.

The person you appoint must be over 18 years of age. They should be someone who you trust and someone who will have an interest in making decisions in your best interest. Your Guardian cannot be a person providing treatment or care to you at the time of the appointment.

A Guardian cannot make a Will for you, vote on your behalf, consent to marriage, manage your finances, transfer your property, or override your objections to medical treatment.

We can provide you with the document that you need to validly appoint a Guardian / Substitute Decision-Maker / Medical Treatment Decision Maker. Certain specific information must be contained within the document for it to be valid. Additional instructions can be inserted – for example, you can choose what decisions you want your Guardian to make, and give directions to your Guardian as to how you wish them to perform the functions they are entitled to do under the appointment.

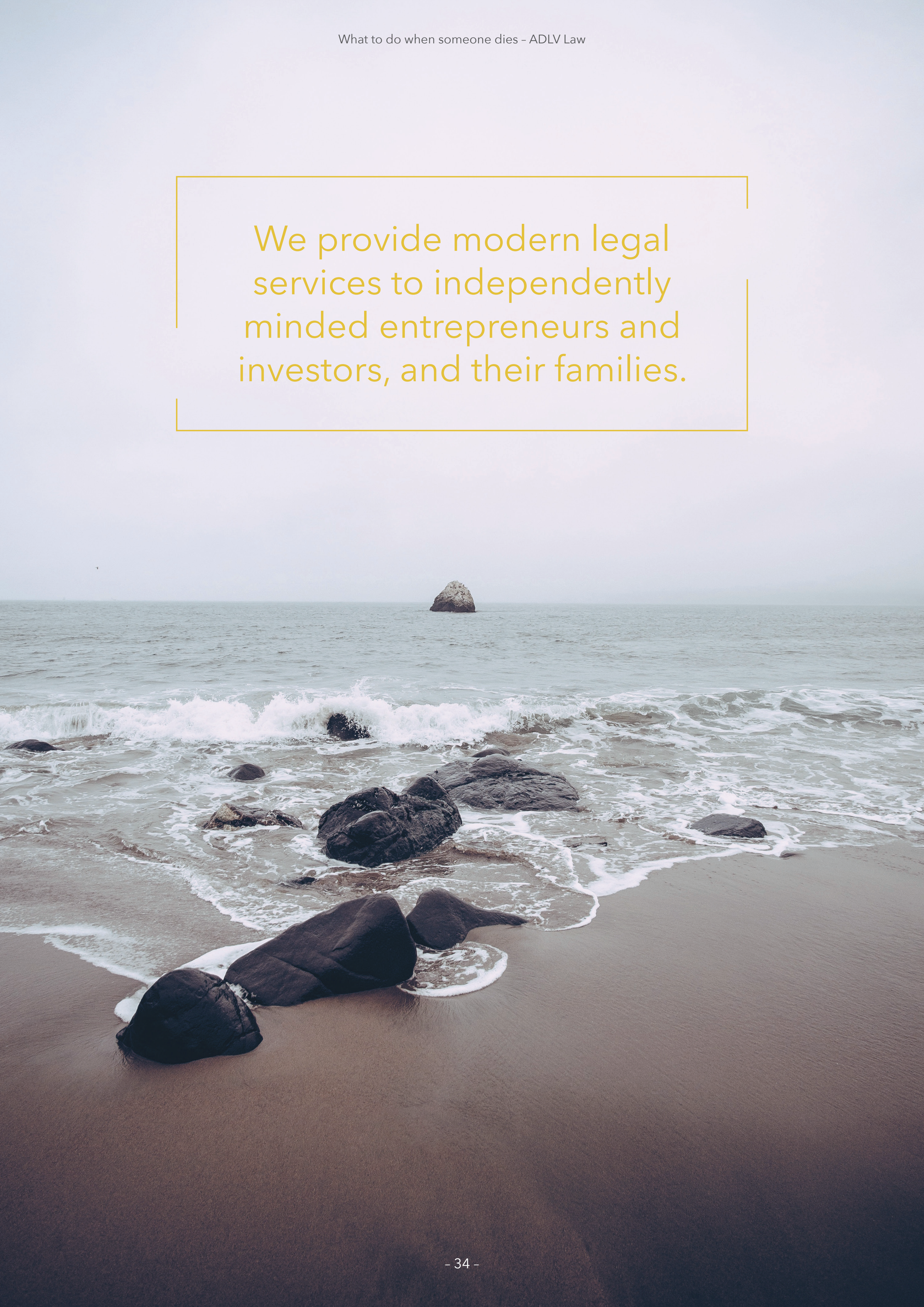
The appointment of a Guardian only takes effect when you are unable to make your own personal or lifestyle decisions. It will be up to your Guardian to consult with a medical practitioner about your capacity to make decisions before taking any steps on your behalf.

At the appropriate time your Guardian would approach your doctor for a certificate to the effect that you are totally or partially incapable of making your own decisions. The certificate, along with a copy of the appointment, would provide evidence to others of the fact that a Guardian is then entitled to make decisions on your behalf.

The appointment continues until you die or the appointment is revoked.

We can help. Call us on **1300 654 590** to discuss how.

We provide modern legal services to independently minded entrepreneurs and investors, and their families.



Who are we?

We provide modern legal services to independently minded entrepreneurs and investors, and their families.

People who use us take business and investments personally, as we do. They seek a diverse range of views from quality counsel, but feel strongly about making their own decisions.

We work with families that believe wealth is a responsibility, and not a score. They understand that as you build your wealth you must surround your family with independent and diverse sources of views, guidance, mentors and longer term stability.

Our entrepreneurial clients understand that growing a successful business comes down to the proactive management of choices. They see opportunity in uncertainty. They manage, rather than avoid risk.

Overall our clients are concerned to ensure that the money they accumulate during their lifetime is able to foster, rather than harm, the entrepreneurial spirit of future generations.

We offer a full commercial law service. But we understand that you come to us for guidance directly from our key people. For this reason we shun growth for its own sake. We will only take on your matter if our team can provide you with relevant and tangible value.

If we sound like people you can work with, call us now on **1300 654 590.**

If you need more information, visit our website **www.adlvlaw.com.au.**

Contact checklist

Person or organisation to be contacted	Phone number	Relevant details of the deceased (i.e. member number, account number)	Notified of death?	Date notified
Centrelink – Human Services	**132 300**		☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Department of Veterans' Affairs	**1800 838 372**		☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Child Support	**131 272**		☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Medicare	**132 011**		☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Australian Tax Office	**132 861**		☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
SA Water	**1300 729 283**		☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Sydney Water	**132 092**		☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
ServiceSA	**131 084**		☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
NSW Roads & Maritime Services	**132 213**		☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Australian Electoral Commission	**132 326**		☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Department of Human Services – International Services – for foreign pension authority information/details	**131 673**		☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Computershare	**1300 850 505**		☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Link Market Services	**1300 554 474**		☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Australian Red Cross	**1800 733 276**		☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Superannuation Fund #1			☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Superannuation Fund #2			☐Y ☐N ☐N/A	☐☐/☐☐/☐☐

Person or organisation to be contacted	Phone number	Relevant details of the deceased (i.e. member number, account number)	Notified of death?	Date notified
Bank/credit union #1			☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Bank/credit union #2			☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Health insurance provider			☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Property insurance provider			☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Electricity provider			☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Gas provider			☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Credit card provider			☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Telephone company			☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Local council			☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Local Post Office			☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Lawyer			☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Accountant			☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Financial advisor			☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Religious advisor			☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Hospital			☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
RSL Club			☐Y ☐N ☐N/A	☐☐/☐☐/☐☐
Rotary Club			☐Y ☐N ☐N/A	☐☐/☐☐/☐☐

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