

Law Reform Submission:

Removing Barriers for Vulnerable People Accessing Information and Funds from the ATO concerning deceased Persons Estates

About the University of Newcastle Legal Centre

The University of Newcastle Legal Centre (UNLC) is a community legal centre and teaching law firm dedicated to improving access to justice across the Hunter region. As a community legal centre located within a university, the UNLC provides free legal assistance to disadvantaged community members while offering practical legal education for law students.

The UNLC provides legal advice, casework and advocacy across a range of areas of law. Our work prioritises individuals experiencing financial hardship, systemic disadvantage, language barriers, disability or other vulnerabilities that limit their ability to navigate the legal system.

Acknowledgement

We acknowledge the Traditional Custodians of the lands on which we live, learn and work across the Hunter region and broader New South Wales. We pay our respects to Elders past and present of the Awabakal and Worimi nations. This is, was and always will be Aboriginal land.

We also acknowledge the lived experiences of the individuals and communities who face grief, poverty, disability and systemic barriers when attempting to engage with government institutions following the death of a loved one.

Introduction

1. This submission examines the barriers created by the Australian Taxation Office's strict requirements governing who may access information or funds held by the ATO for a deceased person.
2. In practice, these requirements disproportionately disadvantage vulnerable individuals — in particular family members of deceased people who have small or negligible estates — who require access to modest ATO-held information or funds but are unable to satisfy formal requirements.

3. The submission argues that the current framework prioritises procedural formality over accessibility, resulting in financial loss, prolonged distress and avoidable exclusion, particularly where the cost of obtaining Probate or Letters of Administration exceeds the value of the funds held by the ATO.
 4. This analysis is informed by community legal practice assisting disadvantaged clients experiencing grief, family violence, poverty, disability, unstable housing and limited access to legal assistance.
-

The Current ATO Framework

1. The ATO requires a person to be recognised as an authorised Legal Personal Representative (LPR) before granting full access to a deceased person's tax information or releasing funds such as tax refunds or lost superannuation held by the ATO.
 2. For tax purposes, recognition as an authorised LPR requires a grant of:
 - Probate (where the deceased left a will and the applicant is the executor of that Will), or
 - Letters of Administration (where the deceased left no valid will and the applicant is administering the estate in accordance with the Succession Act 2006 (NSW) or equivalent state or territory legislation)
 3. Without such a grant, the ATO will not:
 - Communicate any information regarding the affairs of a deceased person;
 - Release any funds held.
-

How the Current Framework Operates in Practice

1. Many vulnerable clients assisted by community legal centres are:
 - The next of kin where the deceased left no valid Will
 - The executor of a Will where Probate is not otherwise required
 - the only person practically able to deal with the deceased's affairs.
2. These clients are often managing estates where:
 - no interest in property exists
 - assets are limited or non-existent

- the only asset is modest amounts held by the ATO.
3. Under state and territory succession laws, it is legal and appropriate for an estate to be administered informally. Informal administration means that no formal grant of Probate or Letters of Administration is required to allow assets to be transferred to beneficiaries. For example, banks will usually release funds of up to \$15,000 without requiring a grant of Probate or Letters of Administration, by accepting certified copies of the Death Certificate, Will (where one exists), identity documents for the applicant and a signed statutory declaration as to the facts in existence. Superannuation funds operate in a similar manner, as does Service NSW which allows transfer of ownership of vehicles in a similar manner. Rightly, if concerns are raised about the authenticity of any claim, an institution may instead require a grant of Probate or Letters of Administration to be obtained.
 4. By contrast, the ATO's requirements mean that *regardless of the amount of money held or the information being sought*, a grant of Probate or Letters of Administration must *always* be obtained. This means many vulnerable clients must apply for a Supreme Court grant solely for the purpose of accessing ATO-held funds or information.
-

Why This Is Problematic

Legal costs exceed the value of ATO-held funds

1. Applying for Probate or Letters of Administration involves:
 - Navigating an online portal for the Supreme Court;
 - filing fees (if the estate is over a threshold amount);
 - preparation of multiple documents;
 - legal complexity, especially for Letters of Administration;
 - lengthy processing times.
2. Many vulnerable clients are unable to access online services so must engage a solicitor to apply for Probate or Letters of Administration and the cost of this would frequently exceed the amount held by the ATO, sometimes by a significant margin. Worse than this is that the ATO will not even tell the client how much money is held, or anything else about the deceased's affairs, which means if the client engages a solicitor, they are at significant risk of being out of pocket if the amount held by the ATO turns out to be insignificant.

3. The requirement is irrational and financially punitive on family of deceased people who are not wealthy. It effectively denies clients access to funds that legally belong to the deceased estate. We have often found clients who do not have the funds to engage a lawyer to find out how much is held by the ATO for the deceased estate, so they simply never claim the deceased's money.
-

Vulnerable clients cannot access legal assistance

1. Community legal centres generally do **not** apply for Probate or Letters of Administration services due to:
 - funding constraints
 - time-intensive nature of estate work
 - competing demand for urgent legal assistance.
 2. Legal Aid NSW does not ordinarily fund probate or estate administration work.
 3. Aside from very limited specialist services — such as those provided by the University of Newcastle Legal Centre for extremely vulnerable clients — there is a significant service gap.
 4. As a result, vulnerable clients are left without any realistic pathway to comply with the ATO's requirements.
-

Disproportionate impact on vulnerable cohorts

1. The clients most affected include:
 - people experiencing financial hardship
 - survivors of domestic or family violence
 - people with disability or chronic illness
 - older people and carers
 - people with limited education, literacy or English
 - culturally and linguistically diverse communities.
 2. These clients often lack the resources, capacity and support networks required to navigate Supreme Court processes.
-

Case Study 1: De-Facto Spouse Accessing ATO-Held Refund

A client sought assistance to access lost superannuation held by the ATO following the unexpected death of her de facto partner. The deceased estate had no assets other than the lost superannuation.

The deceased had no will, and the client had no capacity to apply for Letters of Administration due to cost and personal circumstances. The amount held by the ATO was approximately \$5,000, significantly less than it would have cost to pay a solicitor to apply for Letters of Administration due to some of the complexities of the matter.

As a result, the client was permanently unable to access the funds. Though the amount held by the ATO was relatively small, it made a significant difference to the client who was raising 2 small children alone after the death of her partner. Without pro bono assistance of our Legal Centre, this money would never have been released.

Broader Systemic Consequences

1. Funds held by the ATO remain unclaimed indefinitely, despite clear evidence of entitlement.
2. Vulnerable people lose trust in government systems that appear inflexible and inaccessible.
3. Administrative rigidity undermines the ATO's stated objectives of fairness, accessibility and community confidence. The ATO requirement applies **regardless of estate size, risk level, or vulnerability**, even when:
 - there is no dispute
 - there are no competing claimants
 - no one outside the ATO even knows the value of what is held by the ATO
 - the ATO holds the only asset of the estate

Principles Supporting Reform

Proportionality

1. The regulatory response should reflect the size of the estate and the amount of funds held.
2. Requiring Supreme Court intervention to access small ATO-held amounts is disproportionate and unjust.

Administrative fairness

1. Government systems should allow people to resolve unavoidable life events — such as the death of a family member — without procedural traps.
 2. A rigid insistence on obtaining Probate or Letters of Administration in all cases, regardless of context, fails to account for human reality and vulnerability.
-

Access to justice

1. A system that requires unaffordable legal steps, with no funded legal assistance available, effectively denies vulnerable people access to their legitimate legal entitlements.
-

Recommended Reforms

Introduce alternative authority pathways

1. We submit that this problem can be addressed **without legislative change** by exercising and formalising existing ATO administrative discretions.
 2. The ATO should permit access to information and low-value funds based on:
 - statutory declarations
 - certified copies of death certificates
 - evidence of relationship or dependency
 - indemnities where appropriate.
-

Low-value estate threshold

1. The ATO should adopt a clear administrative policy allowing release of ATO-held funds **below a defined monetary threshold** (for example, \$10,000) without requiring Probate or Letters of Administration, where:
 - a certified copy of a death certificate is produced
 - entitlement is supported by a statutory declaration
 - there is no evidence of dispute or competing claim.
 2. This aligns with low-risk compliance models already used across government.
-

Expanded Recognition of Informal Estate Representatives

1. The ATO should formally recognise informal representatives (such as spouses, children, or other next of kin) for limited purposes, including:
 - accessing information
 - resolving final tax affairs
 - applying for refunds or credits.
 2. This can be supported through:
 - statutory declarations
 - indemnities in favour of the Commonwealth
 - capped authority limited to specific funds or matters.
-

Greater discretion and clearer guidance for use of vulnerability-based discretion

1. The ATO should publish clear, plain-language guidance explaining
 - when Probate or Letters of Administration is genuinely required
 - when alternative evidence can be accepted
 - what options exist for vulnerable claimants.
 2. This would reduce repeated, distressing engagement for clients and frontline staff alike.
 3. ATO officers should be clearly empowered — and directed — to apply discretion where:
 - the claimant is vulnerable
 - Probate or Letters of Administration is not reasonably accessible
 - the amount held is modest
 - legal assistance is unavailable.
 4. Explicit guidance would promote **consistent decision-making** and prevent arbitrary refusals.
-

Recognition of service system limits

1. Reform must recognise that community legal centres and Legal Aid NSW are generally unable to undertake Probate and Letters of Administration work, leaving vulnerable clients without any pathway under the current system.
-

Conclusion

1. The ATO's current framework for dealing with deceased estates unintentionally penalises vulnerable people and denies access to funds through procedural rigidity.
 2. The impact is greatest where:
 - estates are small
 - vulnerability is high
 - legal assistance is unavailable.
 3. By using existing administrative discretions, to introduce flexible, proportionate pathways the ATO can:
 - prevent financial harm
 - reduce inequity
 - improve efficiency
 - and ensure its systems remain fair, proportionate and accessible.
-