

Real Estate Markets Quarterly

June 2025



Foreword

Welcome to the latest edition of our **Real Estate Quarterly**.

As we move through a period of shifting interest rates, the real estate landscape is facing significant changes. Whether you're a developer, a landlord, or someone deeply embedded in the real estate market, staying informed about the legal issues shaping this sector has never been more critical.

In this edition, we're putting critical topics under the microscope:

- **Work health and safety compliance for property owners:** Think hiring a property manager is enough to meet your obligations? Think again. We break down what you need to do to stay compliant.
- **Sustainability reporting guidance from ASIC:** With sustainability firmly on the agenda, we unpack ASIC's latest guidance and what it means for businesses operating in the real estate sector.
- **Privacy and personal information management:** As privacy issues increasingly impact real estate, we share practical tips to ensure you're managing personal information responsibly and in compliance with the law.

Our Real Estate Quarterly is your go-to resource for staying ahead of legal developments in this dynamic sector.

So, whether you're navigating commercial property regulations, keeping pace with sustainability reporting, or managing privacy obligations, we've got you covered.

As always, don't hesitate to reach out to our legal experts for tailored advice and support.

Happy reading!



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Commercial property owners: are you complying with work health and safety laws?

Authors: Michael Tooma, Melissa Doran and Natalie Gillies



Commercial property owners who are unaware of their obligations under work health and safety (WHS) laws in Australia risk potential liability and prosecution.

Some owners may assume that hiring a property manager removes their responsibilities under WHS laws, but this isn't the case. While property managers have their own obligations under WHS laws, owners still retain legal duties for their properties that cannot be transferred. Recent case law demonstrates that fatal risks may arise from commercial and industrial property and that WHS duties apply to owners corporations in respect of common areas used as commercial or a mix of residential and commercial purposes.

It is important that owners are aware of the duties they owe under WHS laws, ensuring that proactive risk management frameworks are in place to eliminate or minimise any risks to health or safety arising from their property.

Need to know:

- Commercial property owners must ensure they are across all of their WHS obligations for each property.
- By way of an example, an owners corporation responsible for common areas in commercial or a mix of commercial and residential properties has specific duties under WHS laws, whether they are aware of those duties or not.
- It is the responsibility of owners to ensure they're implementing the correct health and safety systems and procedures.

Owners and their duties under WHS laws

Using the *Work Health and Safety Act 2011* (NSW) (**NSW WHS Act**) as an example, the NSW WHS Act establishes duties owed by a person conducting a business or undertaking (**PCBU**).

Relevantly, a PCBU who has management or control of a workplace is responsible for ensuring, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace, and anything arising from the workplace, are without risks to the health and safety of any person. Multiple PCBUs may have management or control of a workplace, in which case each PCBU will owe the same duty at the same time. Duties under the NSW WHS Act cannot be transferred or delegated, despite multiple parties carrying the responsibility.

Owners are PCBUs and are likely to be considered to have management or control of a workplace, therefore owing duties in respect of their properties under WHS laws.

For completeness, we note that, if an owners' corporation is only responsible for common areas used only for residential purposes, it will generally not be a PCBU in relation to those premises. However, this changes if the body corporate employs any worker as an employee. Additionally, if common areas are used as a mix of residential and commercial purposes, WHS laws will apply.

Owners Corporation found guilty of breaching WHS law in NSW

On 11 July 2024, in one of the first prosecutions of its kind, an owners corporation of an industrial complex was charged and ultimately convicted and fined \$225,000 plus costs for breaching its obligations under the NSW WHS Act. Although the appropriate fine was assessed at \$300,000, this was reduced to reflect an early guilty plea.

Strata Plan No 93800 (**Owners Corporation**) had a work health and safety duty pursuant to s 20(2) of the NSW WHS Act (the duty of a PCBU involving management or control of workplaces), but had failed to comply with that duty, exposing persons to a risk of death or serious injury, contrary to s 32 of the NSW WHS Act.

The incident occurred in 2020 and involved common property, being property owned by the Owners Corporation. The perimeter fence and gate

at the industrial complex were damaged when they were crashed into by a van, rendering the gate inoperable. Makeshift repairs were undertaken the following day to facilitate the manual operation of the gate, although the stopper on the gate remained displaced, allowing the gate to travel past its intended resting place and become unsupported. On 12 June 2020, a worker arrived at the site and attempted to open the gate manually, as he had done in days previous. Tragically, the gate became unstable and fell on the worker, resulting in fatal injuries (**Incident**).

The Owners Corporation, a strata manager, and the worker's employer were all separately prosecuted, convicted and fined for breaching their obligations under the NSW WHS Act.

Although the Court found the worker's employer guilty for failing to alert the Owners Corporation or strata manager to the dangers posed by the damaged gate, or anything to do with its manual operation, the Court also found the Owners Corporation and its strata manager failed to take steps to guard against the risk that arose from the gate not being repaired. Despite the Owners Corporation's prompt notification to the strata manager of the damage to the gate and follow up regarding its repair, this was insufficient to discharge their independently owed safety duty under the NSW WHS Act, given that both the Owners Corporation and the strata manager had the power and obligation to make the site safe.

The strata manager's initial fine was assessed at \$200,000 but reduced to \$150,000 plus costs, and the employer's initial fine was \$500,000 but reduced to \$375,000 plus costs, each reduction being to reflect an early guilty plea.

Takeaways for owners

Owners owe duties under WHS laws, whether they are aware of them or not. This will include owners corporations in respect of common areas used as commercial or a mix of residential and commercial purposes.

Prior to the Incident, the Owners Corporation relied heavily upon the strata manager and were unaware they had any obligations under the NSW WHS Act. Consequently, no risk assessment was conducted, nor was there a Safe Work Method Statement or safe work procedure in place for the manual operation of the gate. The Court observed that the likelihood of the risk was not only foreseeable, but that there were simple no-cost steps available to eliminate the risks, which contributed to the Owners Corporation's sentence.

Following the Incident, the Owners Corporation implemented proactive measures to identify and manage risk. However, these measures were

only put in place after the Owners Corporation became aware of their duties under the NSW WHS Act, highlighting the importance for all duty holders to understand the extent of their duties.

What can owners do when considering these duties?

More broadly, it is important for owners to be aware of their duties under WHS laws. To effectively meet their obligations, owners should implement health and safety systems and procedures to identify, address and report on risks to health and safety.

This may include, among other things:

- Undertaking risk assessments and building safety inspections.
- Encouraging the prompt reporting of incidents and hazards to minimise any risks to health and safety.
- Acting promptly once hazards are identified to eliminate them so far as is reasonably practicable.
- Ensuring safety training is delivered and adhered to.
- Including safety as an agenda item for meetings.
- Implementing effective contractor management systems.

It is the responsibility of owners to ensure they are across their WHS obligations in respect of each property, noting that the above measures are only examples and achieving compliance in practice will involve considering the type of property, type of management and any leasing arrangements.

Contact our experienced WHS team for further guidance on owners' duties under WHS law.



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New rules for foreign investors clear a path for build-to-rent projects

Author: Clementyne Rawlyk

Despite recent bans on foreign investment, exceptions for build-to-rent (BTR) developments send a strong signal to foreign investors and could even boost Australia’s housing supply.

Australia’s housing affordability and availability crisis has dominated political discourse, particularly in the lead-up to the recent Federal election. With rising property prices and limited rental options, housing emerged as a central issue for voters, prompting the government to introduce a suite of reforms aimed at increasing supply and improving affordability.

One such reform is the announcement of a [two-year ban](#) on foreign investors purchasing established residential dwellings, effective from 1 April 2025 to 31 March 2027. The measure is designed to reduce competition from foreign buyers in the established housing market and prioritise access for Australians.

However, the ban is not absolute. Subject to foreign investment approval, several key exceptions apply, including where:

- a foreign person seeks to purchase an established dwelling for redevelopment that will significantly boost housing stock (i.e. by creating at least 20 additional dwellings)
- the acquisition supports housing availability on a commercial scale, such as within multi-unit developments like retirement villages, aged care facilities, or student accommodation
- a foreign person seeks to purchase qualifying **Build to Rent (BTR)** developments.

These exceptions reflect the government’s current foreign investment policy focus, openly stated as attracting capital to sectors that increase Australia’s housing supply, particularly through new housing stock aligned with its national housing agenda.

Below, we take a closer look at the BTR exception, including eligibility criteria, reduced FIRB fees, and what this means for foreign investors.

Eligible BTR developments

To benefit from the exception to the residential land ban and access reduced foreign investment application fees (discussed below), a BTR development must meet specific eligibility criteria designed to ensure it delivers long-term rental housing and aligns with national housing objectives.

In summary, to qualify as an eligible BTR development:

- The development must contain (or will contain) at least 50 dwellings;
- Each dwelling must be available for rent to the general public, excluding student accommodation, land lease communities, and retirement villages;
- Dwellings must be offered on lease terms of at least five years, although tenants may request shorter terms;
- All dwellings must be owned by a single entity at all times; and
- At least 10% of the dwellings must be, or will be, affordable dwellings, as defined in the Income Tax Assessment Act 1997.

These requirements ensure that BTR developments are stable, institutionally managed, and contribute meaningfully to Australia’s long-term rental supply.

Additional use and hold-period conditions also apply:

- For land acquired to develop a BTR project, the BTR use must continue for the earlier of the investor’s ownership period or 15 years from the issue of an occupancy certificate.
- For investments in existing BTR developments, the project must continue as a BTR development for as long as the investor holds an interest in it.



Reduced FIRB fees for BTR investments

A key change supporting the BTR pathway is the reduction in FIRB application fees for land acquisitions intended for BTR developments. Traditionally, residential land attracts significantly higher application fees than commercial land, which has created a substantial cost barrier for foreign investors seeking to pursue BTR investments in Australia.

In late 2023, the Treasurer announced that FIRB applications for BTR developments would be subject to commercial land fee tiers, rather than residential tiers. This position was clarified in FIRB’s updated guidance released earlier this year. Under this concessional treatment, the application fee is generally reduced to what fee would apply if the land were commercial, rather than residential.

While each application is assessed on its individual merits, the updated guidance provides illustrative examples. For instance, a A\$10 million acquisition of residential land for a BTR development would ordinarily incur a fee of A\$796,500, but will now attract a commercial land fee of only A\$14,700.

This reform eliminates a significant cost hurdle and is expected to enhance the commercial viability of BTR projects for foreign investors. Importantly, applicants must expressly request the concessional fee treatment in their FIRB application for it to be considered.

What’s next for foreign investors?

The BTR sector continues to gain momentum in Australia, attracting strong interest from institutional investors both domestically and abroad. By exempting qualifying BTR developments from the general ban on foreign investment in residential land and aligning application fees with commercial land thresholds, the government has established a targeted and strategic pathway for foreign capital to engage with Australia’s housing market.

For foreign investors, these changes create a clearer, more commercially viable framework for participation in a stable and policy-supported asset class, and send a strong signal that well-structured foreign investment remains welcome in areas aligned with national priorities.

If you’re considering build-to-rent developments as part of your investment strategy, the team at Hamilton Locke can assist you in navigating the legal and regulatory landscape. For more information, please contact Clementyne Rawlyk, Sarah Roettgers and Madeleine Kulakauskas.



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Environmental offsets: what developers need to know

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In Australia, environmental offsets play a central role in balancing development with preserving biodiversity values. As development pressure increases across urban, regional and resource-rich areas, regulators require developers to compensate for unavoidable environmental impacts through legally enforceable offset arrangements. However, establishing an environmental offset under Australian law involves a complex and highly regulated process that demands a clear understanding of both Federal and State/Territory legal frameworks.

Below, we explore the Australian environmental offsets regime and detail key legal and commercial considerations to be made when formalising and putting offset arrangements into practice.

Environmental offsets

An environmental offset is a means of ‘offsetting’ or compensating for any residual adverse impact on the environment that cannot be avoided or mitigated during development.

When a development project (like a mine, highway or housing estate) causes harm to biodiversity, the developer might be required to offset this impact by protecting, restoring or improving biodiversity elsewhere.

Where a development adversely affects a protected environmental matter and the adverse effect is unable to be adequately avoided or mitigated, an environmental offset may be required so long as it is deemed suitable.

Offsets must be legally binding and registered on the title of the land where applicable. Legal mechanisms vary by jurisdiction but typically include:

- 1. Conservation covenants** under relevant State land acts
 - 2. Biodiversity stewardship agreements** (for example, in New South Wales)
 - 3. Management plans and monitoring obligations**
 - 4. Financial assurance** such as trust funds, bonds, or ongoing financial contributions to offset providers

These instruments are enforceable and can carry significant long-term responsibilities and liabilities for developers.

Legal framework

The Australian environmental offsets regime is governed at both the Federal level and at the State/Territory level.

EPBC Act

At the Federal level, the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) is the primary piece of legislation governing environmental protection. When a proposed development is likely to have a significant impact on a matter of national environmental significance – such as a listed threatened species, ecological community, or World Heritage site – the project must be referred to the Federal Minister for the Environment for assessment.

If the impact cannot be avoided or mitigated, the Minister may approve the project subject to offset conditions in accordance with the Environment Offsets Policy (2012). Key principles under the policy include:

- 1. Like-for-like:** Offsets must protect the same or similar ecological values as those being impacted.
 - 2. Additionality:** The offset must deliver a conservation gain that would not have occurred without it.
 - 3. Permanence:** The environmental gain must be maintained over the long term (often in perpetuity).
 - 4. Transparency and accountability:** Offsets must be measurable, monitored and subject to public reporting.

Offsets must be legally secured, typically through conservation covenants or agreements, and financially supported through binding management arrangements.

State/Territory legislation

Environmental offsets are also regulated at the State/Territory level, and these frameworks often apply independently of, or in parallel with, the EPBC Act. The table below summarises the legal frameworks in key Australian jurisdictions.

Jurisdiction	Comments
New South Wales	Under the <i>Biodiversity Conservation Act 2016</i> (NSW), developers triggering biodiversity impacts must use the Biodiversity Offset Scheme administered by the Biodiversity Conservation Trust. Developers can purchase credits from the market or establish their own offset site through a biodiversity stewardship agreement.
Queensland	The <i>Environmental Offsets Act 2014</i> (Qld) provides a structured offsets framework applicable to significant residual impacts on both state and Commonwealth protected matters. Developers may meet obligations through proponent-driven offsets or by paying into a financial settlement offset scheme.
Victoria	Victoria uses a native vegetation offset system under the <i>Planning and Environment Act 1987</i> (Vic), with offsets required for clearing native vegetation. These are managed through the Native Vegetation Credit Register and obligations are typically discharged by purchasing native vegetation credits.
Western Australia	Western Australia often requires offsets through Ministerial Conditions under the <i>Environmental Protection Act 1986</i> (WA). The WA Environmental Offsets Policy (2011) outlines principles for offsetting significant impacts on biodiversity, with a focus on transparency, science-based outcomes and long-term effectiveness.

Each jurisdiction has distinct rules for calculating offsets, determining equivalency and enforcing compliance, so it is critical that developers engage with local regulatory agencies early in the planning process.

Key legal and commercial considerations when negotiating offset documentation

Once an environmental offset is required and agreed in principle with regulators, formalising the arrangement through legally binding documentation is essential. This documentation – whether in the form of a conservation covenant, biodiversity stewardship agreement, or offset credit purchase agreement – must clearly define the rights, obligations, and risk allocations of all parties involved. The negotiation and drafting phase is critical to ensuring legal enforceability, regulatory compliance and practical workability over the long term. Below are the key factors developers and landowners should consider.

1. Nature and scope of offset obligations

The nature and scope of the offset obligations must be clearly defined. This includes identifying the ecological values to be protected, the specific outcomes required under regulatory guidelines, and the geographical boundaries of the offset site. The documentation should be consistent with the approved offset strategy and specify what conservation gains must be achieved.

2. Legal mechanism and security of tenure

The legal mechanism used to secure the offset – whether a conservation covenant, biodiversity stewardship agreement, or credit purchase contract – must provide enforceable rights and responsibilities. Particular care must be taken when the developer does not own the offset land, as tenure arrangements, land use restrictions, and the binding nature of the agreement on future landowners must be addressed. Where appropriate, the agreement should be registered on title to ensure it binds successors.

3. Financial and funding arrangements

The agreement must outline how the offset will be funded, covering initial establishment costs as well as long-term maintenance, monitoring and compliance. Developers may be required to provide financial assurances, such as trust funds or bank guarantees, and payment terms should account for inflation and future liabilities.

4. Performance standards and adaptive management

Ecological performance standards must be incorporated into the agreement, along with monitoring and adaptive management provisions. These ensure the offset remains effective over time and allow for responsive measures if conditions change or targets are not met. The agreement should specify how performance will be measured, who will conduct assessments, and what steps will be taken if standards are not achieved.

5. Roles, responsibilities and risk allocation

Clearly defined roles and responsibilities are essential. The agreement must set out who is responsible for on-ground management, reporting to regulators, and addressing any breaches. Risk allocation – such as liability for underperformance or environmental damage – should be negotiated carefully, along with indemnities and protections against unforeseen events like natural disasters.

6. Duration and exit strategy

The duration of the offset must also be addressed. While many offset obligations are intended to be permanent, the agreement should clarify how long the obligations last, whether they can be transferred and under what conditions, if any, substitution or modification might be permitted. This is particularly important where land ownership changes or where offset arrangements are commercially traded.

7. Regulatory compliance and enforcement

The agreement must be compliant with relevant federal or state legislation and formally recognised by the appropriate authority. Regulatory approval is often a prerequisite for enforceability, and in many cases, the documentation must be lodged with a statutory body such as the Biodiversity Conservation Trust. Provisions for monitoring, reporting, and audit by regulators must also be included to ensure the offset is legally accountable over its lifetime.

Negotiating offset documentation is not a procedural formality – it is a critical legal and commercial step in delivering an enforceable and enduring environmental outcome. Developers must take a strategic approach to ensure that the documentation reflects the full scope of the regulatory approval, secures the offset site effectively and balances ecological goals with commercial risk. Engaging experienced legal, ecological and financial advisers early in the negotiation process is essential for success.

Get in touch

For more information on how to effectively navigate environmental offsets, or to discuss your specific needs, please do not hesitate to contact Amelia Prokuda and Sarah Roettgers.



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Legal rights in retirement villages – everything you need to know

Authors: John Frangi, Tina Kameas and Sophie Hanrahan

As Australia’s population ages, an increasing number of older Australians are entering retirement villages and forming new relationships. While these arrangements can bring comfort and companionship, they also raise important legal and financial considerations. Decisions made at this stage of life can have lasting implications, particularly where property interests and estate planning are involved.

Need to know:

- NSW retirement villages are governed by specific laws, involving different entry and exit entitlements.
- Joint tenancy may have unintended consequences, especially for estate planning.
- Legal advice is crucial before entering into a contract to understand the implications and ensure consistency with one’s financial and estate planning.
- Retirement Village contracts are more detailed than standard residential leases, requiring independent legal advice and a thorough understanding before committing.

Retirement villages in New South Wales are regulated under the *Retirement Villages Act 1999* (NSW) and the accompanying Regulation, administered by NSW Fair Trading. These laws govern how villages operate, including entry arrangements, ongoing contributions, and exit entitlements.

With Australians living longer and forming new partnerships later in life, issues around shared residency, decision-making, and asset ownership are becoming more common. It is therefore essential for residents to understand the legal structure of their living arrangements and how those arrangements interact with their broader financial and estate plans.

Resident categories

There are two main categories of residents in retirement villages:

- **Registered interest holders**, who hold a registered long-term lease or freehold title (typically 50 years or more).
- **Non-registered interest holders**, who occupy under a licence or an unregistered lease, often structured through a loan-lease arrangement.

Registered interest holders generally have stronger legal protections, including a recognised proprietary interest and a greater say in village governance. Non-registered interest holders have fewer legal rights and may be more vulnerable to changes in circumstances or disputes.

The legal effect of joint tenancy

Operators often encourage couples to enter into village leases as registered interest holders, and for couples as ‘joint tenants’. While this is not a legal requirement, it is typically preferred by operators as it simplifies administration and avoids complications if one resident passes away.

Under joint tenancy, the surviving resident automatically inherits the full interest in the property. This occurs outside the terms of the deceased’s will, meaning any testamentary intentions may be overridden. For some residents, this may be appropriate. For others, particularly those with children from a previous relationship or specific estate planning goals, it may have unintended consequences.



Why legal advice matters

Obtaining legal advice before entering into a retirement village contract is critical. These agreements are legally binding and often complex. A lawyer can:

- explain the differences between joint tenancy, tenancy in common, and licence-based occupancy;
- help structure arrangements that reflect your estate planning goals;
- identify financial implications, including deferred management fees, exit entitlements, and refund restrictions;
- ensure your contract terms are consistent with your will, powers of attorney, and any binding nominations;
- negotiate specific provisions with the operator where required.

Without legal advice, residents may unknowingly commit to arrangements that affect their financial autonomy and compromise the future interests of their loved ones.

Know the terms before you sign

Retirement village contracts are not standard residential leases. They are detailed legal documents with lasting effects on residents’ rights, finances, and succession planning. While operators may prefer streamlined arrangements, residents should ensure their personal circumstances and legal intentions are properly protected.

Before committing to a contract or joint arrangement, take the time to seek independent legal advice. In doing so, you can avoid unnecessary risk and ensure your financial and legal affairs remain firmly under your control.

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Foreign resident capital gains tax changes back on the table

Author: Mark Payne

With the Labor Government securing another term, previously announced changes to Australia’s foreign resident capital gains tax (CGT) regime are again in focus.

Need to know:

- Reforms aim to clarify and broaden the types of assets subject to CGT for foreign residents – include assets that have a “close economic connection” to Australian land. The “principal asset test” to be amended to include a 365 day testing period, rather than the existing point-in-time test, which only applies at the time of disposal.
- Changes to require foreign residents disposing of shares and other membership interests exceeding A\$20 million in value to notify the Australian Taxation Office (**ATO**), prior to the transaction being executed.
- While draft legislation has not yet been introduced, foreign investors with Australian assets should prepare for potential impacts on future disposals and exit strategies.

The Albanese Government is back, and so are their proposed changes to Australia’s foreign resident CGT regime.

Originally proposed in the 2024-25 Budget, the measures aim to clarify and broaden the types of assets subject to CGT for foreign investors. They were expected to come into effect from 1 July 2025, however no draft legislation has yet been tabled.

A key focus of the consultation process that led up to the announcement of the proposed new measures was the concept of “fixtures” and whether or not they are included in the concept of real property.

The term “real property” isn’t defined in tax law, as such it takes on its everyday ordinary meaning. In contrast, the legal meaning of the term Real Property is dependant on the legislative context and the legal meaning comes from both common law and State and Territory legislation which expands on and adds to that common law concept.

Under common law, “real property” includes land and anything permanently attached to it (called “fixtures”). But in recent years, State and Territory laws have expanded this concept to also include items that are simply fixed to the land, even if they aren’t fixtures in the traditional legal sense.

During consultations, Treasury noted that it’s unclear whether the ordinary meaning of “real property” is the same as the legal definition. This uncertainty has made it harder to know which assets count as part of the land, especially since different States and Territories use different definitions in their laws.

This uncertainty is the rationale for the introduction of a new “close economic connection to Australian land” test.

Subject to the draft legislation, which is yet to be released, the intention behind the proposed measures would result in:

- the clarifying and broadening of the types of assets on which foreign residents will be subject to CGT to include assets that have a “close economic connection” to Australian land;
- the amendment of the “principal asset test” (which operates to test whether an entity’s value is principally derived from Australian real property) to include a 365-day testing period, rather than the existing point-in-time test, which only applies at the time of the disposal; and
- the introduction of a notification requirement for foreign residents disposing of shares and other membership interests exceeding A\$20 million in value to notify the ATO prior to the transaction being executed.

Relevantly, the concept of a “close economic connection ” to Australian land will apply to infrastructure and machinery installed on land situated in Australia, including land subject to mining, quarrying or prospecting rights, for example:

- energy and telecommunications infrastructure, such as wind turbines, solar panels, battery energy storage systems (**BESS**), transmission towers, transmission lines and substations;
- transport infrastructure, such as rail networks, ports and airports; and
- heavy machinery installed on land for use in mining operations, such as mining drills and ore crushers.

Foreign residents investing in Australia should consider the detail of these proposed changes as further information is released and the tax impact of those changes on disposals of Australian assets or their eventual exit from Australia.

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Practical privacy for the real estate sector

Author: Nicole Stephensen

The collection and management of personal information is becoming more important in all areas of real estate, including buying and selling, funds management, finance and construction.

The [Privacy Act 1988](#) ('Privacy Act'), which is currently under review and may introduce stricter rules in 2025, presently applies to organisations with over \$3 million in annual turnover, as well as [some other organisations](#). If this applies, real estate agencies, commercial and residential property platforms, developers and building contractors are required to comply with the Privacy Act and the Australian Privacy Principles ('APPs').

Need to know:

- Property businesses with an annual turnover of more than \$3M must adhere to the Privacy Act when it comes to the collection and management of personal information.
- Privacy governance is crucial – upholding APPs and maintaining an updated Privacy Policy are integral in preserving privacy rights.
- Particular attention should be paid to the collection of personal information, and correctly communicating how it will be used.
- Tenant privacy is a core aspect of privacy management in the real estate sector. Guidelines restrict the collection and utilisation of government-issued identifiers such as tax file numbers, Medicare numbers, or driver's license numbers by organisations.

Lead lists and privacy

[Commissioner Initiated Investigation into Property Lovers Pty Ltd \(Privacy\) \[2024\] AICmr 249 \(22 November 2024\)](#) considers matters that are relevant to real estate lead generation, property related transactions, property development and other verticals in the sector. In this specific case, the Privacy Commissioner highlighted how the APPs work – in a practical sense – to preserve the privacy rights of individuals and inform good decision making by organisations in the sector. Some key considerations include:

- 1. Good privacy governance is good for business:** An organisation should implement practices, procedures and systems that enable compliance with the APPs (APP 1.2) and have a clearly expressed and up-to-date Privacy Policy (APP 1.3) that contains specific information about the organisation's information practices (APP 1.4). Internal privacy accountability structures, policies, procedures and privacy training all speak to good governance. Likewise, a published Privacy Policy that reflects the actual personal information handling practices of the organisation – rather than being a purely 'aspirational' document or, worse, being subsumed by commercial Terms and Conditions that demand a person's consent to all information handling – helps individuals to make informed decisions about their dealings with the organisation going forward.
- 2. If it's not fair, forget it:** When collecting personal information from third-party websites, databases or other sources for the purpose of creating a lead list, ensure the collection is made using both lawful and fair means (APP 3.5). A lead list is generally understood to be a collation of potential customers (or 'leads') that may be interested in an organisation's product or service – or otherwise fit an 'ideal customer profile' – and may be created in-house, purchased from a vendor or compiled and managed within organisation's CRM. Key factors in determining whether a collection for a lead list is made *fairly* include whether the organisation has engaged in intimidation, coercion or deception to obtain the information, and whether the individual would consider the means of collection to be unreasonably intrusive (or, conversely, whether the individual would reasonably expect such a collection to occur in the circumstance).
- 3. Notify:** When collecting personal information, steps should be taken – at the time of collection, or as soon as reasonably practicable – to notify a person of the collection (APP 5) including what personal information is being collected, why, what will be done with it and other prescribed matters (APP 5.2). This is a critical step in organisational transparency and helps to establish a reasonable expectation of the individual about what will happen to their personal information. Good notification practices also help organisations to demonstrate – in the event of a complaint or regulatory scrutiny – that their collections of personal information have been made fairly. Notification is often made using a written 'collection notice' contained on a hard copy or electronic form; however, organisations are not limited in the manner of notification. An icon or graphic, QR code, pop-up box, banner or short video could also be used to provide notification, as long as the specific matters set out in APP 5.2 are addressed.
- 4. Quality control is key:** In the context of lead lists, and considering the purposes for which these may be used or disclosed by an organisation, reasonable steps should be taken to ensure that personal information contained on the lists is accurate, complete, up to date and relevant before the lists are used or disclosed (APP 10.2). Factors that heighten the importance of quality control include whether individuals are likely to be contacted or targeted directly, whether the personal information at hand includes sensitive information (as defined in the Privacy Act) or would likely be viewed by the individual as sensitive in the context, and the extent to which there may be adverse consequences for the individual if an organisation relies on inaccurate or out of date information. Organisations that purchase lead lists from vendors should beware: through their own Terms and Conditions, vendors often disclaim responsibility for the accuracy and completeness of their lists, which places the organisation at risk of being unable to assert or verify data quality.

Tenancy and privacy

The Office of the Australian Information Commissioner provides resources on key privacy concepts and [application of the APPs](#), which are generally sector agnostic.

It also offers more specific [guidance](#) associated with the privacy rights of tenants and commensurate obligations of real estate agents, which highlights practical challenges such as the potential for over-collection of personal information, unauthorised uses and disclosures of personal information and managing such information in accordance with the Privacy Act throughout its lifecycle. The guidance notes, for example, that organisations must capture, use and disclose government issued identifiers such as tax file, Medicare or driver's license numbers only for authorised purposes.

Appropriately managing such identifiers can be a pitfall for many organisations, noting that strict rules (collectively, the '[TFN Rule](#)') govern the collection, handling, security and destruction of tax file numbers of individuals, and real estate agents (even those not otherwise covered by the Privacy Act) must comply with these.

Questions?

Helios Salinger works together with Hamilton Locke to bring timely and practical legal and operational advice to our real estate sector clients. For more information, please visit the [Helios Salinger website](#) or reach out to Nicole Stephensen, Partner – Privacy.



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Mandatory climate-related disclosure requirements: what ASIC clarifications mean for real estate sector

Author: Amelia Prokuda, Linda Romanovska, Anupama Nair and Amelia Caldwell



In March ASIC has released important guidance to assist entities on their sustainability reporting obligations. For the real estate sector — where climate change poses considerable risk to assets, and where demand for sustainable buildings is rising — clear, transparent climate-related reporting is now a governance priority.

The real estate sector historically has been one of the leaders in sustainability reporting, however, the mandatory climate-related disclosures set a new bar for the industry. We unpack the key requirements, liabilities and practicalities required for confident compliance.

Australia’s corporate sustainability reporting regime is entering a new chapter. With the release of ASIC Regulatory Guide 280 (**RG 280**),¹ the corporate regulator has outlined how it expects companies to comply with their evolving obligations under Australia’s climate-related financial disclosure framework and the pragmatic approach it will be taking as regulator.

As the demand for sustainable building stock grows, transparency and honesty on sustainability performance becomes crucial for the real estate sector. For directors, legal advisors, and sustainability professionals alike, the message is clear: sustainability reporting is no longer a “nice to have”, it is a core governance issue, and directors must engage with it now.

The following distils four practical implications from RG 280 for companies and boards:

1. The reaffirmation of directors’ duties.
2. The implications of ASIC’s modified liability settings.
3. The importance of understanding when your entity becomes in-scope for mandatory disclosure.
4. The need to have processes in place so that you are ready to report on time.

1. Directors’ duties and climate governance are converging

While ASIC does not create any new duties under RG280, it makes plain that *existing duties* under the *Corporations Act 2001* (Cth) (**Corporations Act**), including the duty to act with care and diligence,² apply when preparing sustainability reporting.

ASIC explicitly references the expectation that directors oversee and ensure the integrity of disclosures made under the Australian Sustainability Reporting Standards (**ASRS**), particularly AASB S2 – *Climate-related disclosures* (**AASB S2**). This means that directors must understand the climate-related financial risks and opportunities that materially affect their business and ensure that appropriate systems, internal controls, and oversight mechanisms are in place.

Further, while directors may rely on the special knowledge of their own staff or external consultants, they should exercise this care and due diligence, including applying a critical lens, to the content of the sustainability report.

Importantly, ASIC’s guidance aligns with the trend seen in cases like *McVeigh v REST* which reiterated that directors may be exposed to liability if they fail to consider foreseeable climate risks.³

Boards should now be asking the following questions:

- Do we as a board have an adequate understanding of the requirements or do we need to be briefed by internal and external experts on AASB S2 disclosure requirements and liabilities?
- Are we confident in our organisational capability, systems, and data to support reliable disclosure?
- Are all the required processes planned and underway in our company to give us confidence in on-time and compliant reporting?

Recap: What is the sustainability report?

Per the *Corporations Act 2001*, the **sustainability report** is the fourth report as part of the annual reporting suite and sits alongside the directors’ report, financial report and auditor’s report.

The sustainability report comprises:

- A climate statement
- Notes to the climate statement
- Any statements and notes prescribed by the Regulations; and
- A directors’ declaration.

More information can be found in our previous article: [Mandatory corporate ESG financial reporting: is your business ready?](#)

Need to know:

- RG 280 provides important guidance to entities about complying with their sustainability reporting obligations.
- Directors may rely on the special knowledge of their own staff or external consultants, however they should exercise care and due diligence, particularly to the substance of the disclosures and need to do their own independent assessments.
- All reporting entities should be aware of when they need to prepare a sustainability report, especially if the business is subject to restructures or acquisition activity.
- Information shared beyond what is required by the disclosure standards and information that is cross referenced in the sustainability report should be carefully considered – they are not covered by the modified liability settings.
- It is now high time organisations (in particular, Group 1 and 2 entities) make sure they are on track to complete the key technical processes necessary for the compliance: climate related governance set-up or review, conducting a climate related risk and opportunity assessment, carbon accounting and embedding climate into enterprise risk management and business decision making so that they are ready for reporting on time.
- Preparing for accurate mandatory climate reporting can be a transformative opportunity for real estate companies, creating an imperative for better data and insights that can ultimately improve operational performance and strategic decision making.

2. Modified liability settings:
Safe harbour, not a free pass

RG 280 also outlines ASIC’s approach to the modified liability settings introduced to support the implementation of the ASRS regime. These provisions, designed to encourage high-quality disclosure during the transition period, mean that certain climate-related statements will attract civil penalty protection for the first three years of the regime.

However, ASIC is explicit that this protection does not apply to all disclosures, and it should not be misunderstood as blanket immunity. The safe harbour will not cover statements that are:

- Outside the sustainability report (e.g. in the directors’ report or operating and financial review or cross-referenced);
- Disclosures included in the sustainability report beyond the requirements of the *Corporations Actg. AASB S1- General Requirements for Disclosure of Sustainability-related Financial Information (AASB S1)* data points which can be reported on voluntarily;
- Misleading or deceptive per the definition in the Corporations Act; or
- Deliberately false or reckless.

In short, while the modified liability settings provide welcome breathing space, they should not be relied on as a shield for poor preparation or lax oversight. Companies should be using this window to build robust internal controls, audit trails, and assurance processes. Notably, ASIC expects directors to act now in lifting their company’s capability, particularly around scenario analysis, emissions data (including scope 3) and transition planning.

Boards should also consider:

- Which disclosures fall outside the safe harbour and are exposed to liability under the usual settings i.e. statements made outside the sustainability report or voluntary disclosures made within the sustainability report beyond the requirements of the Corporations Actg.: AASB S1 disclosures.
- Whether the entity’s disclosures could be perceived as misleading or unsubstantiated.
- If appropriate legal review and assurance processes have been applied to sustainability statements.

3. Scoping: you might be closer than you think

RG 280 offers reminders on which entities will be required to report, and when. Reporting under ASRS is mandatory for Group 1 entities as of 2025, including those meeting the consolidated revenue, gross assets, and employee thresholds. However, ASIC cautions that entities not currently in scope may become subject to reporting due to changes in corporate structure, acquisitions, or changes in size.

This is a critical point for:

- Private companies considering IPOs’;
- Groups undergoing restructuring or consolidation;
- Subsidiaries of in-scope entities that may need to provide information to parent companies for consolidated disclosures; or
- Entities on the cusp of meeting the NGER registration or publication thresholds.⁴

Directors should not adopt a “wait and see” approach. Instead, they should proactively assess the company’s likely trajectory over the next 12-24 months and prepare accordingly.

Companies should be reviewing:

- Whether they meet any of the scope thresholds or are likely to in the near future; and
- If they have adequate controls in place to monitor thresholds and identify changes in reporting obligations.



Recap: Who needs to report and when

	Group 1	Group 2	Group 3
	Companies that meet at least 2/3 of the following: Employees: 500+ Gross Assets: \$1bn+ Annual Revenue: \$500m+	Companies that meet at least 2/3 of the following: Employees: [250 or more] Gross Assets: [\$500m-\$1bn] Annual Revenue: [\$200m-\$500m]	Companies that meet at least 2/3 of the following: Employees: [100 or more] Gross Assets: [\$25m-\$500m] Annual Revenue: [\$50m-\$200m]
Key Dates	Entities above NGER's publication threshold	NGER registered entities Asset Owners: \$5bn+	NGER registered entities Asset owners: <5bn that meet the above thresholds
1.1.25-30.6.26	LA: Governance, Strategy (Risk and Opportunities ^a) and Scop 1 & 2 NA: Scenario Analysis, Transition Plans, Risk management, Metrics and Targets	Prepare	Prepare
1.7.26-30.6.27	RA: Scope 1 & 2 LA: Governance, Strategy (Risk and Opportunities), Scenario Analysis, Transition Plans, Risk management, Scope 3, Metrics and Targets	LA: Governance, Strategy (Risk and Opportunities) and Scope 1 & 2 NA: Scenario Analysis, Transition Plans, Risk management, Metrics and Targets	
1.7.27-30.6.28		RA: Scope 1 & 2 LA: Governance, Strategy (Risk and Opportunities), Scenario Analysis, Transition Plans, Risk management, Scope 3, Metrics and Targets	
1.7.28-30.6.29		RA: All reporting areas	RA: Scope 1 & 2 LA: Governance, Strategy (Risks and Opportunities, Scenario Analysis, Transition Plans, Risk management, Scope 3, Metrics and Targets
1.7.29-30.6.30			RA: All reporting areas
1.7.30-onwards			
^a Only subparagraphs 9(a), 10(a) and 10 (b) of AASB S2. *The phasing for assurance on statements that there are no material climate-related risks and opportunities would be the same as for 'Strategy - Risks and Opportunities'. LA = Limited Assurance RA = Reasonable Assurance NA = No Assurance			

More information can be found in our previous article:
[Mandatory corporate ESG financial reporting: is your business ready?](#)

4. The practicalities: first things first

RG280 reiterates the importance of establishing sustainability reporting processes that enable meeting reporting deadlines under the *Corporations Act*.⁵ This includes ensuring sufficient time for external audits.

Depending on organisational maturity and complexity, setting up in a reliable manner for reporting can take between six to 24 months.

In practical terms, organisations need to work on four technical processes that will ultimately provide the reporting basis for the majority of the qualitative and quantitative reporting data points. These are:

- a) **Auditable governance over climate:**
Establishing clear accountability and responsibilities for climate-related matters. It is important to ensure board oversight and management responsibilities can be clearly evidenced. The current governance arrangements may need to be revised, or new ones set up.
- b) **Climate-related risks and opportunities assessment:** Understanding and documenting the organisation's physical and transition climate risk exposure, vulnerabilities, adaptive capacity, business resilience and climate related opportunities. To avoid misrepresentation risk, reliable assessments based on trustworthy data sources and high-quality climate scenarios and modelling outputs, covering a sufficient range of climate hazards at a suitable granularity for own operations and supply chains are essential.

Examples of risks and opportunities for real estate entities include:

i. Physical risks like extreme weather events which can impact property value and insurability.

ii. Transition risks like changes in regulations, and consumer preferences related to energy efficiency can influence project designs, operations, and ultimately financial performance.
- c) **Carbon accounting:** Measuring your Scope 1 and 2 emissions and preparing for Scope 3 measurement across your property portfolio. Transition relief in AASB S2 provides an exemption from disclosing scope 3 emissions for the first year. Depending on value chain complexity and the number of running projects, identifying material emissions and gathering data for Scope 3 reporting can take several months.

- d) **Integrating climate considerations into business decision-making:** The term “integration” appears in the AASB S2 standard and is a key focus area of the disclosures. Demonstrable integration of climate into business decision making, operations and risk management requires documented policies, processes and procedures.

When preparing for disclosures, it is important to use a continuous improvement approach. As market maturity improves year on year, regulator and auditor expectations around quantification, documentation and what a “good-enough” disclosure looks like will evolve.

To complete these modules, companies should be assessing:

- Whether they have robust climate data management systems.
- If they need to upskill staff including their internal audit functions.
- Whether operational policies, procedures, calendars and controls need to change.
- Whether climate is being discussed with every lens in mind – projects, portfolio, fund operations and corporate.

Final thoughts: the real estate imperative
ASIC’s message through RG 280 is clear: boards and executives must now treat climate and sustainability reporting with the same level of rigour they apply to financial disclosures. This is not just about interpreting guidelines; it signals ASIC’s enforcement stance and firmly establishes the regulator’s view that climate-related risks, such as the physical risks of extreme weather on property values or the transition risks associated with energy efficiency standards, are material financial risks for the sector.

Directors who are not across this space risk personal liability for inadequate disclosures and reputational damage among sustainability-conscious tenants and investors.

The most pragmatic steps boards of real estate entities can take today is to approach this like a financial reporting transformation. This means starting early on technical processes and ensuring the right support systems are in place. Support systems can be game changers in how the organisation is able to use climate data beyond compliance. Decisions on tools and technologies used for data collection and reporting can simplify compliance and improve

real estate sustainability and value. Energy monitoring systems that can offer operational oversight for better decisions, tracking climate-related metrics and building analytics can cut costs, enhance comfort, and increase asset value by identifying inefficiencies. Preparing for climate reporting can hence be a transformative opportunity.

For real estate entities not yet directly in scope for mandatory reporting, now is the opportune time to build capability in these areas. Not just because future regulations may extend to them, but because it is increasingly commercially expected by tenants demanding sustainable buildings, investors prioritising greener portfolios, and insurers assessing climate-related risks to property values.

A note for asset owners: One area where RG 280 falls short is in providing clarity for fund managers on how disclosures apply at the fund entity level. While ASIC has acknowledged that further guidance is needed, for now, many property funds remain uncertain whether sustainability disclosures are required at the fund or asset level. Until ASIC or Treasury resolves this, fund entities should engage legal and sustainability advisors early to assess obligations under the ASRS and anticipate investor and regulator expectations.



Next steps
Group 1 real estate Entities with a financial year ending in December 2025 will likely begin publishing their first reports in March or April 2026, with ASIC, shareholders, investor advocacy groups and other community stakeholders waiting to see the results of companies’ efforts to comply under the new regime.

If you require specialist technical support with your climate-related risks and opportunities assessment, carbon accounting, preparing internal governance, systems and processes, or embedding climate into risk management and decision making, Mattered can help. Mattered is a sustainability consultancy that helps organisations navigate the shifting sustainability landscape, from mandatory sustainability reporting and compliance to voluntary ambition and performance, no matter what stage they are at in their journey. *For more information, please contact Linda Romanovska.*

If you require mandatory sustainability reporting legal advice, Hamilton Locke can help. The Hamilton Locke team advises across environment and planning, directors’ duties, and other ESG-related obligations. For more information, please contact Amelia Prokuda.

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¹ [ASIC. \(2025\). Regulatory Guide 280: Sustainability reporting](#)
² *Corporations Act 2001* (Cth).
³ *McVeigh v REST* (Federal Court of Australia, NSD1333/2018, unreported).
⁴ *The Corporations Act* references section 13(1)(a) of the NGER Act to define the publication threshold. Under this section, an entity surpasses the threshold if its operations emit 50,000 tonnes or more of CO2 equivalent in a reporting year. Entities exceeding this threshold fall into Group 1 for reporting.
⁵ Sustainability reports must be lodged with ASIC within three months after the financial year ends for disclosing entities, RSEs, and registered schemes, and within four months for all other reporting entities.

Using the “bank of mum and dad” to enter the property market: key considerations in structuring gifts and loans

Author: Brett Heading, Fran Becker, Jamie Blair and Jack Conway



In the current environment of high house and land values, and the ever-increasing difficulty for younger generations to enter the property market, more and more families are opting to provide **financial support** in the form of gifts and loans for children and other family members to help make the dream of home ownership a reality.

On many occasions, these gifts or loans are made informally and are undocumented, and the thought of introducing formal documentation between family members may be seen as unnecessary and uncomfortable. However, **before making a transfer of wealth**, families ought to be asking some important questions:

- Is the support intended as a gift or a loan?
- Are the terms and obligations clear to everyone involved (including third parties such as spouses or other family members)?
- What happens if the parent/lender passes away? How is the financial support taken into account under their will and estate plan? Is the loan to be forgiven on death or should it be repaid?
- What happens if a parent loses mental capacity to manage their own finances? Who will make decisions for them, and does a conflict of interest arise if that person is a child who has benefitted from financial support?

- What happens if the child/borrower passes away? Do the parents expect repayment from the child’s estate, or are they comfortable for the benefit to pass to a spouse or grandchild?
- What happens if a child divorces from their spouse, loses their ability to work or suffers a disability, or becomes bankrupt or subject to debts?
- What if the child wants to sell?
- Will security be taken to best protect the child from potential issues of mental incapacity, financial difficulties or relationship breakdowns?

These matters should be considered when entering into a transaction, and in most cases a documented loan agreement (or statement of gift) is prudent practice to provide clarity and certainty to parties now and in the future.

Gift or loan – what’s the difference?

A gift is a transfer of money or property from one person to another for ‘no consideration’ – that is, unconditionally and with the ‘giver’ not receiving anything in return.

A loan is a legal arrangement where a person borrows money from another person, subject to an obligation to repay the loan, and any other terms that are agreed to.

Importantly, a loan is a contract which creates ongoing obligations between the borrower and the lender, and can be enforced in the event of a breach by either party. On the other hand, a gift is entirely gratuitous. A broken promise to make a gift does not usually give rise to any legal rights for the disappointed party. Further, once a gift has been carried out, it cannot be revoked.

Can disputes arise?

Disputes can arise where there is a lack of clarity around whether the transaction was intended to be a gift or loan. A miscommunication between a parent and a child about this could cause family disharmony, particularly if a request for repayment is made unexpectedly during a time of financial hardship.

However, disputes often arise in circumstances outside the family members’ control. Whether or not a transaction is a ‘gift’ or ‘loan’ may become significant where:

- a family member goes through a relationship breakdown;
- a family member faces debts, is pursued by creditors or becomes bankrupt; or
- a family member dies.

When a dispute arises, courts look at the substance of the transaction to determine the rights of the parties. It is not enough that a transaction is called a ‘loan’ by one or all parties if it does not have any of the actual features of a loan (e.g. interest and repayment obligations) and, in fact, functions as a gift.

How can loans protect the parties’ interests?

Loans are often preferable to gifts for asset protection reasons.

For example, if a parent makes a gift of \$1 million to a child to purchase a house, and that child later separates from their spouse or partner, the house may form part of the asset pool in a family property settlement. If the parent instead loaned \$1 million, the outstanding loan amount would have to be repaid to the parent (for example, from the sale proceeds of the house) and would not form part of the spousal asset pool.

Because of the stakes involved, it is common for the appropriate construction of an arrangement (as a gift or a loan) to arise in family law proceedings.

Secured loans provide greater protection. For example, a registered mortgage ensures the property acquired by the borrower cannot be transferred or dealt with unless the lender’s permission is obtained, and provides a public notice of the existing security. A secured loan also provides an advantage if the borrower goes bankrupt, as secured assets must first be used to repay the secured loans in priority to any unsecured loans. Including security as part of a loan arrangement can also strengthen the likelihood it will, in substance, be classified as a true loan by a court (see further below).

Considerations and risks when making loans

- **Proof:** If a loan is intended, you should be mindful that it will, in the event of a dispute, death or bankruptcy, need to be proved, potentially in court proceedings.
- **Terms:** The terms of a loan should be clearly documented and contained in a signed agreement. It is preferable that all terms are in writing. Purely oral arrangements are likely to be treated with suspicion by a court.
- **Interest and repayments:** A loan should usually require payments of interest and principal to be made. An interest-free loan may suggest the transaction is actually intended to be a gift.
- **Security:** Where the loan is for a significant amount, or the lender has concerns about the borrower’s capacity to repay, a secured loan provides much greater protection. A registered security, such as a mortgage, is best practice. The grant of security also supports the character of a transaction as an actual loan as opposed to a gift.
- **Compliance:** In many family loan situations, it is common that the terms of loan agreements are not enforced, and compliance with the loan terms falls away. While it may be awkward to raise a late payment or default with a family member, lack of compliance can suggest that the loan is not intended to be repaid or has been treated by the parties as forgiven. It can also raise legal issues, such as statutory limitation periods.
- **Evidence:** It is important that records are kept of advances, repayments and interest. It is preferable that regular statements are kept and provided to the parties to the loan.
- **Income:** Interest earned on money loaned to a family member is taxable income, and will need to be reported.

Wills and estate planning

It is important to consider the effect of a gift or a loan on your estate planning, particularly where the gift or loan is made to someone who may benefit from your estate (such as a child or grandchild).

Where you have made a gift to a family member during your life, ordinarily that gift is not taken into account in the distribution of your estate, and is regarded as having been removed as an estate asset (subject to ‘notional estate’ laws in New South Wales, under which a transaction made prior to death may form part of a family provision claim in certain circumstances). If you intend for a gift to be taken into account as part of an inheritance, your will must clearly state this.

On your death, any loan you have made becomes an asset of your estate. The executor of your will may be able to enforce the loan, or transfer the loan to a beneficiary of your estate.

You may choose to forgive a loan in your will. However, if that is desired, specific instructions and powers should be outlined in detail in the will. Otherwise, your executor may have a legal obligation to recover any outstanding loan as part of the administration of your estate.

Planning to provide financial assistance to a family member?

For advice tailored to your specific situation, don’t hesitate to reach out to our team at Hamilton Locke Private.



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