WILLS & ESTATES

Testamentary Trust Wills

Why they're not just for the wealthy. A plain-English guide for everyday Australian families.

CAMERON ROGERS & CO. SOLICITORS

Relationships Built on Value · Updated November 2026

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PART 1 · AT A GLANCE

The short version

- A testamentary trust is a trust created by your Will. It only starts after you pass away.
- It can protect what you leave your family from relationship breakdowns, creditors and bankruptcy.
- Income paid to children under 18 from the trust is generally taxed at adult rates, not penalty rates.
- On 18 June 2026 the Government announced that genuine testamentary trusts would be exempt from the proposed 30% minimum trust tax. It's still a proposal, so the detail may change.
- It isn't right for every family. A short conversation with us will tell you whether it suits yours.

PART 2 · THE GOOD NEWS FOR YOUR FAMILY

Trusts are in the news, and the news is good

You may have seen headlines this year about a proposed new tax on family trusts. It understandably caused some worry. Then the good news arrived.

ANNOUNCED ON 18 JUNE 2026

The Federal Government has announced that income from discretionary testamentary trusts would be exempt from the proposed 30% minimum trust tax, provided the trust is set up for genuine estate-planning purposes.

Under draft laws released in September 2026, a testamentary trust that starts on or after 1 July 2028 may only be exempt if it can benefit only individuals and tax-exempt entities, such as charities. Your lawyer will draft your will with this in mind.

In other words, one of the most powerful tools in estate planning has kept its place, and has arguably become even more valuable. This guide explains in plain English what a testamentary trust Will is, and why it deserves a look from everyday families, not just the wealthy.

What the announcement means for you

- **An exemption has been announced.** On 18 June 2026 the Government announced that genuine discretionary testamentary trusts would be exempt from the proposed 30% minimum trust tax.
- **"Genuine testamentary purposes" matters.** This is exactly why a testamentary trust should be properly drafted by a lawyer as part of your Will. A generic online will kit or a contrived arrangement may not qualify. Getting it right is what secures the benefit.

> The trust tax is a proposed measure, due to commence on 1 July 2028, and is still progressing through Parliament, so the detail may change. This guide is general information only and is not legal or tax advice. Every family's situation is different and should be reviewed individually.

PART 3 · THE BASICS

What is a testamentary trust Will?

A testamentary trust is simply a trust created by your Will. It doesn't exist while you're alive. It only comes into being when you pass away, to hold some or all of what you leave behind.

Instead of your loved ones receiving their inheritance directly in their own names, it can be held in a trust and looked after for their benefit by someone you choose (the trustee). You set the rules.

It sounds technical, but in practice it's a Will that gives your family more protection and more flexibility than a standard Will.

THE MYTH

“Trusts are only for the wealthy”

It's the most common misconception we hear. The benefits of a testamentary trust have far less to do with how much you own, and much more to do with who you love and what you'd like to protect them from. A young family, a tradie, a small-business owner, a blended family, or the parent of a child who needs extra support can all benefit, often more than someone with a large but straightforward estate.

Seven reasons to consider a testamentary trust

1. A genuine tax break for your children

Normally, investment income paid to a child under 18 is taxed at penalty rates of up to 66%. Income paid to a child from a testamentary trust is generally taxed at ordinary adult rates, with the full tax-free threshold (currently $18,200). For a family with two or three children, that can mean thousands of dollars of income each year taxed at little or nothing.

> FOR EXAMPLE
>
> A parent leaves $400,000, including life insurance, in a testamentary trust for two young children. The income it earns can be shared between the children at adult rates, often with little or no tax, instead of being taxed at the top child penalty rate.

2. Protection if a child's relationship breaks down

If you leave an inheritance to your child in their own name and their marriage or de facto relationship later ends, that inheritance can be drawn into a property settlement and shared with a former partner. Assets held in a well-structured testamentary trust can offer a layer of protection. It isn't an absolute guarantee, as the Family Court has wide powers, but it can make a real difference.

3. Protection from business and financial risk

If your child runs a business, works as a contractor, is a company director, or works in a profession that carries personal liability, their assets can be exposed if something goes wrong. Because assets in a discretionary testamentary trust aren't owned personally by your child, they're generally beyond the reach of creditors and protected if your child later faces bankruptcy.

> FOR EXAMPLE
>
> You leave an inheritance to a son who runs his own trade business. Years later the business strikes trouble. Because his inheritance sits in a testamentary trust rather than in his own name, it is far better shielded from those claims.

4. Looking after a loved one who needs extra support

Not everyone can safely manage a lump sum. A beneficiary living with disability, illness or an addiction, or who simply struggles with money, can be cared for through a trust, where a responsible trustee provides for them over time. For a child with disability, a specially structured arrangement can also help protect access to means-tested support.

5. Providing for your partner and protecting your children

If you've remarried or have children from a previous relationship, you may want to provide for your current partner while making sure your children ultimately receive what you intend. A testamentary trust lets you balance both, reducing the risk of children being unintentionally left out. This is a common concern for blended families.

6. Flexibility and ongoing tax efficiency

Each year, the trustee can decide which family members receive trust income, directing it to those on lower tax rates. This means your family can keep managing the inheritance tax-effectively for years, adapting as circumstances change.

7. A protected structure under the new rules

With the proposed 30% minimum trust tax due in 2028, many ordinary family trusts will become less attractive. Testamentary trusts, by contrast, are set to be exempt under the Government's announcement, provided they're set up for genuine estate-planning purposes. That makes a properly drafted testamentary trust Will one of the few structures to keep its advantages.

PART 5 · LET'S TALK IT THROUGH

Is a testamentary trust right for everyone?

Honestly, no. A testamentary trust adds some cost and a little ongoing administration, and not every estate needs one. For some families, a simple, well-drafted Will is exactly right.

The only way to know is a proper conversation about your family, your assets, and what you'd most like to protect.

PART 6 · YOUR NEXT STEP

How we can help

Our testamentary trust Will offer

Until 31 December 2026, testamentary trust Wills are $2,000 including GST for a couple, or $1,200 for one person, including your Enduring Powers of Attorney, super nominations and Letters of Wishes. If your situation needs more care, your lawyer will confirm your price.

Book your appointment

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