



Exotic and unusual assets in Will drafting

CPD PRESENTATION

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Why exotic assets matter



33%

of Australians
own crypto



\$8.2B

Australian classic
car market



960K+

registered firearms
in Victoria

*The risk: exotic assets fall through the cracks because the solicitor did not ask,
the client did not mention, or neither appreciated the complications.*

For each category: What is it? How does it pass on death? What instructions to obtain? Tax & regulatory issues?

Agenda

Crypto-Assets

Digital Assets & IP

Motor Vehicles

Jewellery, Art & Bullion

Wine Collections

Superyachts

Firearms

Embryos & Reproductive
Tissue

Agricultural Assets

Carbon Credits

Racehorses & Syndicates

Loyalty Points

+ Checklist & 5 Key Takeaways



Crypto-Assets: legal character

- ***Re Blockchain Tech Pty Ltd* [2024] VSC 690 (Attwill J)**
 - Bitcoin is property — chose in action; *Ainsworth* criteria satisfied
 - *Wills Act 1997* (Vic) s 3: crypto falls within “property” definition
- ***Poulton v Conrad* [2025] TASFC 7 (Full Court, Tas)**
 - Bitcoin capable of possession — control of private keys sufficient for conversion and detinue
 - Third category: rivalrous digital assets capable of exclusive control
 - Special leave to High Court granted February 2026
- ***Yeates v The King* [2025] VSCA 288 (Vic Court of Appeal)**
 - Bitcoin capable of being stolen under *Crimes Act 1958* (Vic)
- *Corporations Amendment (Digital Assets Framework) Bill 2025* — dedicated regulatory framework proposed

Crypto-Assets: the access plan

- **The problem: if the private key dies with the client, the assets are permanently gone**
- *~20% of all Bitcoin permanently lost. Cases: Howells (7,500 BTC), Mellon (US\$500M), Cotten (~\$250M)*
- **WHAT — wallet type, exchange, platform**
 - Centralised exchange (Coinbase, CoinSpot): executor verifies like bank account
 - Self-custody wallet: no help desk, no court order unlocks a blockchain
- **WHO — technically competent helper to assist executor**
- **WHERE — access details stored securely (**not in the will**)**
- Tax: CGT assets; Division 128 ITAA 1997 rollover on death; DeFi positions may generate income during administration
- **Never include private keys, seed phrases or passwords in the will or on the solicitor's file**



Digital assets: an access gap

- **No Australian jurisdiction has legislation dealing with access to digital records on death**
- Most accounts are licences (platform terms), not property — terminate on death
- **Platform succession tools (configure during lifetime):**
 - **Google Inactive Account Manager | Apple Digital Legacy | Facebook Legacy Contact**
 - Without these: US court order at ~US\$12,000+ estimated initial cost
- Practical approach: digital asset register (accounts, credentials, wishes) referenced in will

Influencers, online businesses, and IP

- **Sole trader online business = the client IS the business**
- **Influencer platforms:** Kick, Twitch and YouTube
- Will must capture: goodwill, source code, domain, hosting, customer data, social media, IP
- IP duration: copyright (life + 70 yrs, s 33 *Copyright Act 1968*); patents (20 yrs); trade marks (10 yr renewals)
- *Review contracts for termination-on-death clauses*

The Influencer client: scenario

- ▶ **Your client is 28. They stream live on Kick four nights a week.**
 - 600 archived videos, 12,000 subscribers
 - Personal website selling branded merchandise and paid masterclass content
 - ~\$200,000/year across platform revenue, tips and own website
 - They walk into your office to make a will
- ▶ **The key questions:**
 - What are the assets? Who owns what? What happens when the platform learns of death?
 - **Australian influencer market estimated at \$600M+ (2024)**

Unbundling the 5 common revenue streams

- 1 **Platform subscription revenue** — Kick: 95/5 split (streamer keeps 95%); Twitch: 50/50 default; YouTube: ~70/30. Kick Creator Incentive Program: ~US\$16–\$32/hr live content. Contractual entitlements under partner/affiliate agreements.
- 2 **Tips and donations** — Kick “Kicks” currency: 100% to streamer. Twitch “Bits”: platform takes a share. Many also accept direct donations via third-party processors.
- 3 **Personal website** — Often the most legally straightforward: domain name (property), hosting, payment processors (Stripe/PayPal), merchandise, digital downloads, paid content.
- 4 **Brand deals and sponsorships** — Contractual; often with assignment restrictions or termination-on-death clauses. Review for change-of-control provisions.
- 5 **The video library** — 600 archived videos = copyright works. Copyright subsists life + 70 years (s 33 *Copyright Act 1968* (Cth)). Generates ongoing ad revenue, attracts subscribers, licensable to third parties.

Kick vs Twitch vs YouTube: What happens on death?

- ▶ **Kick** (Kick Streaming Pty Ltd — Australian company, registered Nov 2022)
 - TOS prohibit account transfer; no documented process for death; platform can terminate at discretion
 - **VOD archives auto-delete after 14 days unless manually archived** — content may vanish before executor acts
- ▶ **Twitch**
 - TOS: accounts may not be sold, rented, or transferred
 - In practice: death certificate + proof of authority → Twitch facilitates outstanding payouts; may permit takeover if specified in will — discretionary, not guaranteed
- ▶ **YouTube** (sits within Google account)
 - Inactive Account Manager: up to 10 trusted contacts; does NOT auto-transfer monetisation or YPP status
 - **Personal accounts inactive for 2 years eligible for permanent deletion** — including all YouTube content
- ***Re Estate of Vaughan [2024] VSC 7 (O'Meara J)***
 - Administrator destroyed IP valued at \$300,000 — wilful act, not mere error of judgment
 - Liable *in devastavit*

Drafting for the Influencer client

1. Identify the structure
2. Digital asset schedule — **outside the will**
3. Configure platform tools now
4. Address the video library separately
5. Address the website as a business
6. Review brand deal contracts
7. Consider an enduring power of attorney



Motor vehicles: *Re Estate of Stagliano*

- Transfer: Grant of Probate to VicRoads (*Road Safety Act 1986*); check PPSR (*PPS Act 2009* (Cth))
- ***Re Estate of Stagliano* [2025] VSC 39 (Harris J)**
 - Five luxury cars: Ferrari California T, Bentley Continental, Rolls Royce Ghost, 2x Mercedes
 - Collective value: \$600,000+
 - **Held: personal chattels under s 5 *Administration and Probate Act 1958* (Vic)**
 - **“Not used for business purposes” interpreted practically:**
 - Three cars rarely used, on trickle chargers in garage; no vehicle deductions in tax returns
 - Prior car trading (Cobra Motors, 1960s–70s) insufficient to characterise current vehicles
- **Drafting: specific gifts for high-value vehicles eliminate the classification argument**

Superyachts & International Vessels

- Typically held through single-purpose companies (Cayman Islands, BVI, Malta)
- **Testamentary transfer is of shares in the SPV, not the vessel itself**
- Annual operating costs: ~10% of vessel value
- Key issues: maritime mortgages, crew contracts, P&I insurance, charter agreements
- Customs: temporary importation status under *Customs Act 1901* (Cth)
- Multi-jurisdictional: flag state + SPV jurisdiction + Australian law
- **Specialist territory — identify it, flag it, refer appropriately**

Bullion & *Re Foord* [2019] VSC 444



- ***Re Foord* [2019] VSC 444 (McMillan J)**
 - **Gold bullion (\$146,371) and silver coins: NOT “personal chattels” under s 5 APA**
 - Purchased as investment, stored in Guardian Vaults — no personal connection
 - Test: “articles of household or personal use or ornament” (*Re Crispin’s Will Trusts*)
 - Bullion fell to residuary estate — not what the testator intended
- *NSW comparison: s 101 Succession Act 2006 expressly excludes gold bullion*
- Jewellery: *Re Cole* [1964] Ch 175 — gifts *inter vivos* require intention + delivery
- Fine art: export restrictions (*Protection of Movable Cultural Heritage Act 1986* (Cth))
- **Drafting: specific gift for bullion; distinguish physical / allocated / unallocated holdings**

Wine collections



- Penfolds Grange: strong vintages trade above \$1,000/bottle; vertical collections worth multiples
- **Three drafting challenges:**
 1. Identification
 2. Provenance
 3. Insurance
- CGT: collectibles rules s 108-10(2) ITAA 1997 (\$500 threshold); Division 128 rollover on death
- Valuation: Langton's, independent cellar appraisals
- **Drafting: specific gift as whole, or direction to sell through specialist auctioneer**
- **Risk of ademption if will maker is thirsty**



Firearms: regulated transfer

- **Firearms Act 1996 (Vic) — s 180:**
 - Six months from date of death for disposal
 - Executor exempt from licence requirement (s 82A) for disposal purposes
 - Transfer to beneficiary: must hold appropriate licence; through licensed dealer via permit to acquire
 - **Unlawful possession = criminal offence**
- **Drafting — three elements:**
 1. Specific bequest, conditional on licence at date of distribution
 2. Fallback: power to sell through licensed dealer or surrender to Victoria Police
 3. Information: storage location, licence details, safe combination in memorandum
- *Also applies: prohibited weapons (Control of Weapons Act 1990); heritage items (PMCH Act 1986 (Cth))*



Embryos & stored reproductive tissue

- ***Assisted Reproductive Treatment Act 2008 (Vic) ss 46–48:***
 - Written consent for posthumous use required
 - Patient Review Panel must approve
 - Recipient must receive counselling
- **No property rule but property status (developing):**
 - *Re Cresswell* [2018] QSC 142 —right to possession of retrieved sperm
 - *Chapman v South Eastern Local Heath District* [2018] NSWSC 1231 – entitlement to possession
- **Will should include:**
 - Letter of wishes re posthumous use; nomination of decision-maker; provision for posthumous children
- *Status of Children Act 1974 (Vic): interaction with family provision legislation*

Agricultural assets & Water Rights



- ***Water Act 1989 (Vic) s 33I: water shares are personal property***
 - May be held separately from land — will must deal with them expressly
 - Transfer: transmission application to Victorian Water Registrar
 - Goulburn-Murray entitlements can be worth hundreds of thousands of dollars
- **Livestock:**
 - NLIS records must be updated; *Livestock Disease Control Act 1994 (Vic)*
 - Studbook registrations, breeding contracts, PPSR registrations
- Other: biosecurity obligations, crop-sharing, agistment, farm management deposits
- **Distinguish land from farming enterprise as going concern**

Carbon Credits

- **Australian Carbon Credit Units (ACCUs):**
 - Issued under *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth)
 - Personal property; recorded in Australian National Registry of Emissions Units (ANREU)
 - Spot price: ~\$33–\$42/unit (early 2026); Safeguard Mechanism: \$82.68/ACCU (2025–26)
 - Transfer: executor applies to Clean Energy Regulator for transmission
- **Treat carbon credits like financial instruments: identify registry, provide for transfer**



Racehorses & syndicate interests

- Most held through syndicates: partnerships or managed investment schemes
- ASIC regulation: Chapter 5C *Corporations Act 2001* (Cth) where 20+ members
- *Interest is a share in the partnership/scheme, not a direct interest in the horse*
- **Ongoing costs: \$3,000–\$7,000/month for a horse in full training in Victoria**
- Syndicate agreements: check pre-emption rights, transfer restrictions, cost obligations
- **Breeding stock:**
 - Stallion shares (nomination rights) separate from ownership of stallion
 - Australian Stud Book rules on stored genetic material
- **Drafting: specific gift addressing participation AND costs, or express power to exit/sell**

Loyalty schemes

- Most programs: non-transferable, expire on death
- Qantas FF: permits transfer on death (death certificate + authority to executor)
- **1 million Qantas FF points $\approx$ \$14,000–\$20,000 redemption value**
- Planning point: use or convert during lifetime

Five takeaways

1

Ask the question.

Update your intake form to capture exotic assets.

2

Access plans matter as much as legal plans.

The grant of probate is necessary but not sufficient.

3

Know the regulatory framework.

Firearms, water rights, carbon credits — criminal liability risk.

4

Identify with particularity.

Specific descriptions. General residue may not suffice.

5

Know the limits of your expertise.

Identify the issue and refer appropriately.

Checklist & question time

✓	Crypto-assets	Crypto/NFTs? Access plan?	✓	Loyalty Points	Significant point balances?
✓	Vehicles	Classic cars, boats, aircraft?	✓	Firearms	Firearms or regulated items?
✓	Jewellery & Art	High-value items? Valuations?	✓	Agricultural	Water rights, livestock, carbon?
✓	Bullion	Physical, allocated, unallocated?	✓	Racehorses	Horses or syndicate interests?
✓	Online Business/IP	Income from online/content/IP?	✓	Reproductive Tissue	Stored gametes/embryos? Consent?
✓	Digital Accounts	Succession tools configured?	✓	Wine	Significant collection? Storage?

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