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BY WEALTH ADVISER

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Introduction: The Rise of Family Trusts and the Challenge of Relationship Breakdowns

Family trusts have become a cornerstone of wealth management in Australia, valued for their flexibility, tax efficiency, and capacity to facilitate intergenerational wealth transfer. As families grow more financially sophisticated, advisers are increasingly turning to trusts to help clients preserve assets, minimise tax liabilities, and plan for the future. According to the Australian Bureau of Statistics, the use of trusts has grown steadily over the past decade, with family trusts now holding billions in assets nationwide (ABS, 2023).

Yet, as the popularity of trusts has risen, so too has the complexity of family relationships. Australia's divorce rate remains significant, with approximately one in three marriages ending in separation or divorce (ABS, 2022). The intersection of these trends presents a unique challenge: what happens to family trust assets when a relationship breaks down?

BEFORE YOU GET STARTED

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Australian family law is designed to ensure that property settlements following a relationship breakdown are “just and equitable.” The Family Law Act 1975 grants courts broad powers to scrutinise financial arrangements, including family trusts.

As one article notes, “Family trusts are a popular structure for holding family wealth, but their effectiveness in protecting assets during a relationship breakdown is often misunderstood” (Firstlinks, 2024). The legal, financial, and emotional stakes are high. When couples separate, questions about who controls, benefits from, or ultimately owns the assets held in trust can become contentious and confusing. “When a marriage or de facto relationship ends, the treatment of family trust assets can be a source of significant confusion and dispute” (Movement Legal, 2023).

This article explores the practical realities and philosophical questions surrounding family trusts in the context of relationship breakdowns. We will examine how courts treat trusts, what asset protection strategies work (and which do not), and how advisers and families can build resilience into their wealth planning-while remaining mindful of ethical and legal boundaries.

How Australian Courts Treat Family Trusts During Divorce

The Legal Framework

Australian family law is designed to ensure that property settlements following a relationship breakdown are “just and equitable.” The Family Law Act 1975 grants courts broad powers to scrutinise financial arrangements, including family trusts. While trusts are legal entities distinct from the individuals who create or benefit from them, the courts are not easily deterred by legal form where the substance suggests otherwise.

As Osborn Law explains:

“The Court will look beyond the legal structure to the reality of control and benefit: if a party can ‘effectively control’ the trust, its assets may be treated as theirs” (Osborn Law, 2023).

This principle is reflected in leading cases such as *Kennon v Spry* (2008) 238 CLR 366, where the High Court found that assets held in a discretionary trust could be included in the marital property pool if one spouse had effective control over the trust and its distributions.

Control and Beneficiary Interest

A central question in these disputes is: who really controls the trust? The court examines factors such as:

- Who is the trustee, and do they act independently?
- Who has the power to appoint or remove trustees (the “appointor”)?

- Who are the beneficiaries, and how have trust distributions been made in practice?
- Was the trust established before or during the relationship?

As Movement Legal notes:

“The timing of the trust’s creation, its administration, and the parties’ conduct all play a role in the Court’s decision” (Movement Legal, 2023).

If a spouse is both trustee and appointor, or has routinely benefited from trust distributions, the court may find that the trust assets are, in substance, marital property. Even if a trust was established before the relationship, if it has been used to support the family’s lifestyle, its assets may be included in the property pool.

Recent Legal Developments

Recent cases demonstrate the courts’ willingness to “look through” trust structures. In *Harris & Dewell* [2018] FamCAFC 94, the court included trust assets in the property pool because the husband exercised effective control over the trust and used its assets for family purposes. Conversely, where a trust is genuinely independent and the spouse has no control or benefit, the assets may be excluded.

The upshot? Legal form matters, but substance matters more. As Osborn Law succinctly puts it:

“Recent cases have shown that even well-drafted trusts can be vulnerable if the Court finds evidence of de facto control” (Osborn Law, 2023).

Asset Protection Strategies: What Works, What Doesn’t, and Why

Common Strategies

Families and advisers often employ several strategies to protect trust assets in the event of a relationship breakdown. These include:

- **Careful Trust Deed Drafting:** Ensuring the trust deed limits the powers of beneficiaries and appointors, and appointing independent trustees.
- **Use of Testamentary Trusts:** Establishing trusts via a will to control asset distribution after death.
- **Binding Financial Agreements (BFAs):** Entering into prenuptial or postnuptial agreements that specify how assets, including trust interests, will be divided.
- **Regular Trust Administration:** Maintaining clear records and consistent administration to demonstrate the trust’s independence.

Limitations and Legal Realities

Despite these efforts, no structure is immune from court scrutiny. As Firstlinks cautions:

“No structure is completely safe from the reach of the Family Court, but careful planning can reduce risks” (Firstlinks, 2024).

The effectiveness of asset protection strategies depends on the facts:

- **Independent Trustees:** Having a truly independent trustee (not a family member or close associate) can help, but courts may still look at who influences decisions behind the scenes.
- **Timing and Purpose:** Trusts established long before a relationship, with clear evidence of separate administration, are more likely to be respected as independent.
- **Binding Financial Agreements:** BFAs can provide significant protection, but they must be properly drafted, with full disclosure and independent legal advice for both parties. Courts can set aside BFAs that are unfair or entered into under duress.

As Osborn Law observes:

“Recent cases have shown that even well-drafted trusts can be vulnerable if the Court finds evidence of de facto control” (Osborn Law, 2023).

Practical Advice

- **Review Trust Structures Regularly:** Circumstances change-so should your trust arrangements.
- **Document Everything:** Keep clear records of trust decisions and distributions.
- **Seek Professional Advice:** Engage experienced legal and financial advisers who understand both the technical and practical aspects of family law and trusts.

As academic commentary notes, “Asset protection is not about hiding assets, but about legitimate structuring and transparency” (Evans, 2021, UNSW Law Journal).

Philosophical and Ethical Dimensions: Fairness, Resilience, and the Adviser's Role

The Tension Between Protection and Fairness

The use of trusts to shield assets from former partners raises important ethical and philosophical questions. On one hand, families have a legitimate interest in protecting intergenerational wealth and ensuring that assets are managed according to their wishes. On the other, the Family Court's mandate is to ensure that property settlements are fair and equitable, taking into account the contributions and needs of both parties.

As Firstlinks points out:

“There is a tension between asset protection and the Court's obligation to achieve a just and equitable outcome” (Firstlinks, 2024).

This tension is not merely legal-it is deeply philosophical. Should the law allow one party to walk away from a relationship with the lion's share of assets simply because they were held in trust? Or should the court pierce the veil of legal structures to ensure fairness?

The Adviser's Ethical Responsibilities

Financial advisers, lawyers, and accountants play a crucial role in helping families navigate these issues. Their responsibility is not only to provide technical advice, but also to help clients understand the limits of asset protection and the importance of ethical conduct.

Movement Legal emphasises:

“Advisers must be honest with clients about the limits of asset protection and the likelihood of court intervention” (Movement Legal, 2023).

Advisers should encourage clients to plan for uncertainty, to be transparent with their partners, and to consider the long-term implications of their decisions-not just for themselves, but for their families and future generations.

Building Resilience

Resilience in wealth management means more than just protecting assets. It means building structures that can adapt to changing circumstances, fostering open communication within families, and preparing for both prosperity and crisis. As philosopher Martha Nussbaum argues, “Resilience is not the absence of vulnerability, but the capacity to recover and adapt in the face of adversity” (Nussbaum, 2011).

Conclusion: Navigating the Future - Practical Takeaways and Resilient Wealth Management

The intersection of family trusts and relationship breakdowns is fraught with complexity-but also opportunity. By understanding how courts approach trusts, recognising the limits of asset protection strategies, and embracing ethical and resilient wealth management, families and advisers can navigate these challenges with greater confidence.

Key Takeaways:

- **Legal Reality Trumps Legal Form:** Courts will look at who truly controls and benefits from trust assets, not just what the paperwork says.

Resilience in wealth management means more than just protecting assets. It means building structures that can adapt to changing circumstances, fostering open communication within families, and preparing for both prosperity and crisis.

- **No Structure Is Foolproof:** Even the best-drafted trust can be vulnerable if the court finds evidence of control or benefit.
- **Plan Proactively and Transparently:** Regularly review trust structures, document decisions, and communicate openly with all stakeholders.
- **Seek Professional and Ethical Advice:** Work with advisers who understand both the technical and human dimensions of wealth management.
- **Build Resilience:** Prepare for both good times and bad by fostering adaptability, fairness, and open communication.

As Osborn Law concludes:

“Ongoing review and adaptation of trust structures is essential in a changing legal landscape” (Osborn Law, 2023).

And as Firstlinks reminds us:

“Resilience in wealth management means planning for both prosperity and crisis” (Firstlinks, 2024).

By embracing these principles, Australian families can better safeguard their wealth-while ensuring that their legacy is both secure and just.

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SHELTER, SECURITY, AND THE AUSTRALIAN DREAM

UNPACKING THE HOUSING CRISIS AND PATHS TO RESILIENCE



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BY WEALTH ADVISER

Introduction: The Australian Dream in Crisis

For generations, the “Australian Dream” has been synonymous with home ownership—a symbol of stability, personal achievement, and intergenerational security. Yet, in 2025, this dream is under threat as Australia faces a housing crisis of unprecedented scale and complexity. The sharp decline in new dwelling approvals, combined with soaring demand, has left many Australians struggling to secure affordable, stable housing. As Firstlinks reports, “Australia’s housing supply crisis is deepening as approvals per capita have fallen 40% over the past decade”. This shortfall is compounded by record immigration and a construction sector in turmoil, with “new housing completions remain[ing] historically low”.

The consequences are stark: rental affordability has reached crisis levels, with “only 0.1% of rental properties affordable for people on welfare”. This article examines the root causes of the crisis, its profound social and economic impacts, and the strategies—both individual and collective—that can help Australians build resilience and reclaim the promise of shelter and security.

Diagnosing the Crisis: Supply, Demand, and Systemic Barriers

The housing crisis is not the product of a single factor, but rather the result of a complex interplay between supply-side constraints and demand-side pressures.

Supply-Side Challenges:

Australia’s capacity to deliver new housing has been severely hampered by regulatory bottlenecks, escalating construction costs, and a wave of insolvencies in the building sector. As Firstlinks notes, “Approvals per capita have dropped 40% over the past decade, and construction costs have soared”. The MacroBusiness analysis underscores the severity: “Record construction bankruptcies are worsening the housing shortage”. These bankruptcies, driven by rising material costs and labour shortages, have led to project delays and cancellations, further constraining the pipeline of new homes.

Demand-Side Pressures:

At the same time, Australia’s population has grown rapidly, fuelled by record levels of immigration. “Australia’s population has surged due to record immigration, but new

housing completions remain historically low”. Investor incentives such as negative gearing and capital gains tax discounts have intensified competition for limited stock, pushing prices and rents higher.

Policy and Political Debate:

Despite the crisis, policy responses have been fragmented. As SBS News observes, “Both major parties have made housing a central issue in their 2025 election campaigns,” yet neither has addressed the underlying structural issues. The Liberal Party’s focus on accelerated approvals and reduced red tape is countered by Labor’s commitment to build 100,000 homes for first-time buyers, but critics argue these measures are insufficient. “Neither party is addressing the demand-side incentives or structural planning issues at the heart of the crisis”.

International Perspective:

Compared to other OECD nations, Australia lags in new housing supply per capita. Countries such as Canada and Germany have adopted more flexible planning regimes and invested heavily in social housing, offering potential lessons for Australian policymakers.

The Human Impact: Affordability, Inequality, and Social Wellbeing

Behind the statistics are the lived experiences of millions of Australians. For renters, first-home buyers, and those on low incomes, the crisis is deeply personal.

Rental Affordability and Social Exclusion:

The 2025 Anglicare Rental Affordability Snapshot paints a grim picture: “Only 0.1% of homes affordable for people on welfare in 2025”. Even for minimum wage earners, just 0.7% of rentals are within reach. As BrokerNews highlights, “Decades of policy favouring private investors, including negative gearing and capital gains tax discounts, have fuelled speculation”, making it harder for ordinary Australians to compete.

Wealth Inequality and the Social Contract:

The housing crisis is widening the gap between those who own property and those who do not. As SBS News notes, “the erosion of the social contract” is evident as young Australians and renters find themselves locked out of the market. Home ownership, once a pathway to security, is increasingly out of reach, threatening intergenerational equity.

Broader Social and Economic Consequences:

Housing stress is linked to a range of negative outcomes, including homelessness, poor mental health, and reduced economic mobility. According to the Australian Institute of

Health and Welfare, homelessness rates have risen steadily, with more than 116,000 Australians experiencing homelessness on any given night. The stress of insecure housing can exacerbate mental health issues and limit opportunities for education and employment.

Resilience and Adaptation: Strategies for Households and Communities

While systemic reform is essential, individuals and communities are also finding ways to adapt and build resilience in the face of adversity.

Navigating the Rental Market and Alternative Models:

With traditional pathways to home ownership increasingly blocked, Australians are exploring new approaches. Co-housing, shared equity schemes, and community land trusts offer alternative routes to secure, affordable housing. As BrokerNews notes, “Despite increased listings, rental affordability has not improved for low-income Australians”, highlighting the need for innovative solutions.

Financial Literacy and Wealth Preservation:

In uncertain times, financial literacy becomes a critical tool for resilience. Households are advised to diversify their investments, build emergency savings, and seek professional guidance to navigate volatile markets. The Grattan Institute recommends targeted support for renters and first-home buyers, including rent assistance and deposit guarantees.

Community-Led Solutions:

Grassroots initiatives, such as community housing providers and not-for-profit developers, are playing a growing role in delivering affordable homes. Academic research underscores the benefits of community-led housing, including stronger social networks and greater stability.

Policy Pathways and the Future of the Australian Dream

Addressing the housing crisis will require bold, coordinated action across all levels of government.

Accelerating Supply and Reforming Planning:

There is broad consensus that increasing the supply of new homes is essential. This means streamlining planning approvals, investing in infrastructure, and supporting the construction sector to weather economic shocks. As Firstlinks argues, “State land use planning regimes and slow development approvals are key barriers”.

Investing in Social and Affordable Housing:

A renewed commitment to social housing is critical. International experience shows that large-scale investment

in public and community housing can stabilise markets and provide a safety net for the most vulnerable. The United Nations Sustainable Development Goals call for “access for all to adequate, safe and affordable housing and basic services”.

Rethinking Demand-Side Incentives:

Reforming tax settings that favour investors, such as negative gearing and capital gains tax discounts, could help level the playing field for first-home buyers. As SBS News notes, “Neither party is addressing the demand-side incentives or structural planning issues at the heart of the crisis”.

Setting Realistic Targets and Ensuring Accountability:

While government targets, such as building 1.2 million new homes by 2029, are ambitious, experts warn they are unlikely to be met without major reforms. “Government targets such as building 1.2 million new homes by 2029 are unlikely to be met without major reforms”.

A Renewed Vision for the Australian Dream:

Ultimately, the future of the Australian Dream depends on reimagining shelter not just as an asset, but as a foundation for security, wellbeing, and social cohesion. Policies must prioritise the needs of all Australians, ensuring that the promise of home ownership and stable housing remains within reach.

Conclusion

Australia’s housing crisis is a defining challenge of our time, threatening the security and aspirations of millions. While the causes are complex, the solutions are within reach-if policymakers, communities, and individuals are willing to act boldly and collaboratively. By addressing both supply and demand, investing in social housing, and

supporting innovative models of ownership and resilience, Australia can restore the promise of shelter and security for all.

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BY WEALTH ADVISER

Introduction: The Importance of Choosing the Right Fund Manager

For Australian investors, selecting a fund manager is one of the most consequential decisions in the journey toward financial security. The right manager can help navigate volatile markets, safeguard capital, and deliver consistent returns, while the wrong choice can erode wealth and confidence. As Firstlinks succinctly puts it, “Choosing a good fund manager is one of the most important investment decisions you’ll make”. In an era marked by market uncertainty, technological disruption, and shifting investor expectations, the process of manager selection demands both rigorous analysis and nuanced judgment.

This article explores the dual approach required for effective fund manager selection: the science-quantitative analysis, performance metrics, and risk management-and the art-philosophy, trust, and qualitative assessment. Drawing on insights from Firstlinks, Morningstar Australia, and The Inside Adviser, as well as external research, we present a

comprehensive guide for investors seeking to balance these dimensions and build resilience in their portfolios.

The Science: Quantitative Analysis and Performance Metrics

Long-Term Performance and Consistency

The foundation of fund manager evaluation rests on quantitative analysis. Investors are naturally drawn to numbers-returns, volatility, and risk-adjusted performance. Morningstar Australia emphasises that “strong stewardship and an investor-first culture” are essential, but so too is a proven ability to deliver results over time. However, as Firstlinks cautions, “A good track record is necessary but not sufficient”. A manager’s past performance must be assessed in the context of market cycles, investment style, and the risks taken to achieve those results.

The Inside Adviser warns against “chasing recent performance,” noting that short-term outperformance can be the result of luck, market anomalies, or excessive risk-taking rather than skill. Instead, investors should examine returns across multiple periods and compare them to relevant

Trust is built on alignment of interests. Investors should seek managers who invest alongside their clients, maintain transparent communication, and prioritise client outcomes over asset gathering.

benchmarks. The CFA Institute recommends focusing on risk-adjusted measures such as the Sharpe ratio, alpha, and drawdown, which provide a fuller picture of a manager's skill and discipline.

Beyond the Numbers: Understanding the Context

Performance metrics must be interpreted with care. For example, a manager who outperforms during bull markets but underperforms in downturns may not offer the resilience investors seek. Morningstar highlights the importance of “effective capacity management to avoid performance drag from excessive fund size”, as large funds can struggle to maintain agility and may be forced to compromise their investment approach.

Firstlinks points out that “funds that have grown too large often lose their edge,” and that “investors should be wary of managers who deviate from their stated investment style or process”. This phenomenon, known as style drift, can signal a loss of discipline or a response to market pressures rather than a genuine evolution of strategy.

Quantitative Tools and External Frameworks

The science of manager selection is supported by a range of quantitative tools and frameworks. The CFA Institute, for example, advocates for a structured approach that includes:

- Analysing performance attribution to determine the sources of returns
- Assessing volatility and downside risk
- Comparing fees and expenses relative to peers
- Evaluating consistency in portfolio construction and turnover

By applying these tools, investors can separate skill from luck and identify managers with a repeatable edge.

The Art: Qualitative Factors, Philosophy, and Trust

The Intangible Qualities

While numbers are indispensable, they do not tell the whole story. The art of fund manager selection lies in understanding the people, philosophy, and culture behind the returns. As The Inside Adviser notes, “The art of manager selection is about understanding the people, their motivations, and their process”. This involves assessing whether the manager's investment philosophy is clear, consistent,

and aligned with the investor's own objectives.

Firstlinks emphasises that “a clear and consistent investment philosophy is essential”. Managers who can articulate their approach, explain their decision-making process, and demonstrate conviction in their beliefs are more likely to deliver sustainable results. Morningstar adds that “enduring business models” and “the ability to attract and retain talent” are critical indicators of a manager's long-term viability.

Alignment of Interests and Transparency

Trust is built on alignment of interests. Investors should seek managers who invest alongside their clients, maintain transparent communication, and prioritise client outcomes over asset gathering. The Inside Adviser highlights the importance of “alignment between the manager and the investor,” noting that fee structures, co-investment, and disclosure practices all play a role in fostering trust.

Behavioural finance research supports the value of qualitative assessment. Studies have shown that trust, integrity, and cultural fit can be as important as technical competence in financial relationships. Investors who feel confident in their manager's intentions are more likely to remain committed during periods of volatility, reducing the risk of emotionally driven decisions.

Team Stability and Organisational Strength

A fund's success often depends on the stability and expertise of its investment team. Morningstar points out that “the ability to attract and retain talent” is a hallmark of high-quality managers. High turnover, frequent organisational changes, or reliance on a single star manager can undermine performance and increase risk.

Firstlinks advises investors to “look for stability in the team and a culture of collaboration”. A well-structured team with complementary skills and shared values is better positioned to adapt to changing market conditions and sustain performance over time.

Building Resilience: Strategies for Investors During Crises

The Role of Manager Selection in Financial Resilience

The pandemic, global conflicts, and economic shocks have underscored the importance of resilience in investment portfolios. Fund manager selection plays a critical role in

weathering crises, as managers with disciplined processes, robust risk management, and adaptive strategies are better equipped to navigate uncertainty.

Morningstar stresses the need for “effective capacity management to avoid performance drag from excessive fund size”. Large funds may struggle to exit positions or capitalise on opportunities during market dislocations, while smaller, nimble managers can respond more quickly.

Firstlinks and The Inside Adviser both warn about the risks of style drift or loss of focus during turbulent periods. Managers who abandon their stated approach in pursuit of short-term gains may expose investors to unintended risks.

Practical Steps for Building Resilience

Investors can enhance resilience by:

- Conducting thorough due diligence, including site visits, interviews, and reference checks
- Diversifying across managers with complementary styles and philosophies
- Monitoring ongoing performance and adherence to stated processes
- Asking probing questions about risk management, capacity constraints, and crisis response plans

Academic research supports these practices. A 2021 study in the *Journal of Portfolio Management* found that portfolios diversified across managers with distinct approaches exhibited lower drawdowns and faster recoveries during market crises.

Due Diligence Checklist for Australian Investors

To assist investors, we offer a practical checklist:

- What is the manager’s long-term track record, and how has it performed in different market environments?
- Is the investment philosophy clear, consistent, and well-articulated?
- How is the team structured, and what is the turnover rate?
- Are the manager’s interests aligned with those of investors (e.g., co-investment, fee structures)?
- How does the manager manage risk, capacity, and liquidity?
- Has the manager demonstrated resilience and discipline during past crises?

Conclusion: Integrating Art and Science for Long-Term Success

Selecting a fund manager is both an art and a science. Quantitative analysis provides the foundation, enabling investors to assess performance, risk, and consistency. Yet it is the qualitative dimension—the philosophy, culture, and trust—that distinguishes truly exceptional managers.

As the investment landscape evolves, Australian investors must balance data-driven scrutiny with nuanced judgment. The best outcomes arise from integrating rigorous analysis with a deep understanding of people and process. Ongoing review, adaptability, and a commitment to resilience are essential.

“In the evolving world of investment, the best outcomes come from blending the art and science of fund manager selection”. By embracing this holistic approach, investors can build portfolios that withstand uncertainty, preserve wealth, and achieve their long-term goals.

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All web links were accessed in May 2025. For Australian investors seeking further guidance, consult your licensed financial adviser and refer to ASIC’s MoneySmart website for additional resources.

Q&A: Ask a Question

Question 1:

My spouse and I are looking at ways to boost our super. How do spouse contributions and the associated tax offset work?

Spouse contributions can be a great way to build your partner's superannuation and potentially benefit from a tax offset. If your spouse earns less than \$37,000 a year, you may be eligible for a tax offset of up to \$540 when you contribute to their super. This offset reduces as their income rises and cuts out once they earn \$40,000 or more. The contribution itself is treated as a non-concessional contribution, so it counts toward your spouse's contribution cap. This strategy can help you grow retirement savings as a couple, especially if one partner is out of the workforce or working part-time.

Like all strategies involving superannuation and taxation, it's important to consider your broader financial plan and check your eligibility. Your financial adviser can help you assess whether this approach suits your circumstances and how to implement it effectively.

Question 2:

I'm getting close to retirement and have a defined benefit superannuation fund. How do I know if I'm making the most of it?

Defined benefit (DB) superannuation funds can be valuable, but they also work very differently from standard accumulation-style funds. Your final benefit is generally

based on a formula that could involve your years of service and final salary, or other calculation methods, rather than your contributions and investment performance.

As you approach retirement, decisions like whether to retire early, take a pension or lump sum, or how long to continue working can all affect your financial outcome. These funds can have generous entitlements, but they may also have complex tax implications, especially if you're entitled to multiple benefits or have other superannuation. It's also important to understand how the fund interacts with your broader retirement strategy. Because the rules can vary widely between funds, seeking advice is essential.

Your financial adviser can help you evaluate your options, model potential outcomes, and determine the best strategy to maximise your entitlements while managing tax and longevity risks.

Question 3:

I've recently inherited some money. What are the first steps I should take to make smart decisions with it?

Inheriting money can be both an emotional and financial turning point, and it's wise to approach the next steps carefully. Rather than making quick decisions, the first thing to do is assess your overall financial position. You'll want to understand exactly what you've inherited; whether it's cash, property, shares, or superannuation, and the tax implications of each. Once you have a clear picture, you can begin exploring how the inheritance fits into your financial goals. This might include debt reduction, investment, retirement planning, or estate planning of your own.

A financial adviser can help you prioritise, make sense of the technical considerations, and develop a plan to use the inheritance wisely and tax-effectively.