

# estate planning masterclass Queensland

12–13 July 2007

Conrad Treasury

Brisbane

Analysing recent succession law developments,  
demonstrating risk management strategies and  
featuring practical tutorials

#### Day One

Complex estate planning topics for  
experienced practitioners

#### Day Two

Practical tutorials addressing key areas  
of succession law practice

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Day 1 Thursday 12 July 2007

# succession law principles and practice

8:30  
**Conference Registration**

8:50  
**Welcome and Opening from the Chair**

MEET YOUR CHAIR

**Paul Gleeson**, Principal, **Gleeson Lawyers** has been in practice for the last 16 years. Paul's practice areas focus on estate planning, will drafting and estate administration. He is an accredited succession law specialist.

9:00  
**Home Made Wills and Suicide Notes – Considering Case Law Developments Post Succession Act Amendments**

This session focuses on recent case law developments involving section 18 of the Succession Act which was amended in 2006. In this developing area of law the following topics will be examined:

- Assessing the operation of the *Succession Act* in relation to home made wills and suicide notes, in particular section 18
- Providing a practical guide for making an application to the court under section 18
- Drafting tips and examples for affidavit material to be filed in support of the application
- Updating recent case law developments including the case of *Hodge*

**Mark Ostwald**, Partner, **Cartwrights Tebbett & Ostwald**

9:50  
**Evaluating the Introduction of Statutory Wills**

With the *Succession Act* now allowing for the Court to authorise a *will to be made, altered or revoked for a person without testamentary capacity* it is essential for succession law practitioners to be familiar with the provisions of the Act and the process for making the necessary application to the Court.

- Determining the scope of section 21 of the *Succession Act* – assessing whether the person is without testamentary capacity
- Highlighting the circumstances when section 21 applies by way of examples
- Outlining the steps necessary to make an application to the court seeking an order for a Will to be made, altered or revoked for a person without testamentary capacity.
- Summarising recent Queensland decisions interpreting the operation of section 21

**Michael Klatt**, Partner, **Mullins Lawyers**

10:40  
**Morning Tea**

11:00  
**Including Superannuation as Part of Your Will and Estate Planning Advice**

Superannuation changes taking effect on 1 July 2007 has the potential to affect the structuring of your client's affairs. These changes will be addressed in the session which also focuses on:

- Demystifying superannuation within the context of will drafting and estate planning
- Contemplating the provisions of the superannuation fund trust deed:
  - making binding nominations
  - considering the scope of the Trustees discretion
- Providing for self managed superannuation funds within an estate plan
- Evaluating the impact of the superannuation amendments taking effect on 1 July 2007
- Advising your client post 1 July 2007 – strategies to maximise your client's superannuation and wealth options

**Craig Spink**, Solicitor, **Hillhouse Burrough McKeown Lawyers**

11:50

## CASE STUDY

**Are Trusts Still Effective? – Australian and Securities Investments Commission, Re Richstar Enterprises Pty Ltd v Carey (Richstar)**

Learn more about the decision in *Richstar* the effect of this decision on the use of trusts in practice.

- Outlining the facts and history of *Richstar*
- Scrutinising the decision, including:
  - the impact on drafting trust documents
  - key considerations when appointing appointers and considering personal trusteeships
  - the role of beneficiaries
- Reviewing practice and case developments post *Richstar*

**Jeff Otto**, Barrister, **Queensland Bar**

12:40  
**Networking Lunch for Speakers and Delegates**

1:40  
**Planning and Providing for People with Disabilities**

Ensuring the protection of vulnerable people within the framework of will drafting and estate planning is one of the challenging aspects of practice in this area. Providing a refresher of general principles together with reviewing the introduction of disability trusts this session includes:

- Demonstrating and evaluating the use of protective trusts
- Introducing the new provisions for special disability trusts and outlining the characteristics of these trusts
- Comparing the benefits of protective trusts and special disability trusts, including the impact on Centrelink entitlements
- Establishing protective trusts and special disability trusts – practical advice for effective and precise drafting of trust documents

**Sharon Winn**, Consultant, **Flower and Hart Lawyers**

2:20  
**Claiming Remuneration or Commission by Personal Representatives and Trustees**

This session provides a practical guide for the claiming of remuneration by personal representatives and looks at:

- Highlighting the relevant sections of the *Succession Act*, the *Trusts Act* and the *Uniform Civil Procedure Rules 1999*
- Establishing entitlement and determining quantum of remuneration
- Considering the interaction between the examination and passing of accounts and making an application to the Court - the process, forms and case law on point
- Reviewing recent Supreme Court of Queensland decisions and considerations of claims for remuneration

**Michael Liddy**, Barrister, **Queensland Bar**

3:10  
**Afternoon Tea**

3:20  
**Exploring the Interaction Between Family Law, Bankruptcy and Estate Planning**

Designed to provide a 'big picture' understanding of the interaction between the family law, bankruptcy and estate planning this session outlines practical steps to take when providing advice to clients regarding sensitive issues such as relationship breakdown and debt.

- Establishing effective strategies to protect property in times of debt, relationship breakdown, divorce and re-partnering of a surviving spouse
- Assessing the impact of cohabitation agreements and binding financial agreements in relation to family provision applications
- Providing an overview of the Family Court's jurisdiction in relation to bankruptcy matters
- Identifying possible bankruptcy issues as part of your client's estate plan, including:
  - disposal of assets
  - superannuation contributions post 27 July 2006
  - bankruptcy claw back provisions

**Jane McMahon**, Associate, **McMahon Clarke Legal**

4:10  
**Risk Management Strategies for Succession Law Practitioners**

This 'not to be missed' session offers delegates the opportunity to develop strategies which may be employed in practice to avoid or negate allegations and claims of professional negligence.

- Minimising risk when drafting wills:
  - obtaining clear instructions from the testator
  - ensuring clauses of the will are precisely drafted and appreciating the dangers of using precedent documents
  - executing the will in a timely manner
- Stressing the importance of a solicitor's duty of care
- Considering relevant case law including the decision of *Dore (as executor of the will of W H B Chenhall dec'd)*
- Developing strategies to avoid claims of professional negligence

**Scott Whittle**, Senior Associate, **McCullough Robertson**

5:00  
**Closing Remarks from Chair**

5:10  
**Close of Day 1**

Day 2 Friday 13 July 2007

# practical approaches to will drafting, trusts and estate administration

8:30  
**Conference Registration**

8:50  
**Welcome and Opening from the Chair**

MEET YOUR  
CHAIR

**Judy Smith**, Partner, **Smith & Stanton** holds a Bachelor of Laws degree and a Master of Laws and has been a solicitor of the Supreme Court of Queensland since 1973. Judy was responsible for establishing the firm's litigation and family law divisions and now specialises in wills, estates and estate planning. Aside from private practice, Judy has lectured in Law at universities and institutions in Australia, Hong Kong and the United Kingdom.

9:00

## TUTORIAL ONE

### Will Drafting and Other Matters

Under the guidance of Darren Hayes, an experienced practitioner and accredited succession law specialist, tutorial one provides you with the opportunity to develop your will drafting skills and your expertise in answering difficult questions posed by grieving loved ones. The topics addressed within this practical forum include:

#### *A Practical Guide to Will Drafting*

- Taking effective instructions and making certain your client has capacity
- Defining assets and liabilities
- Providing for custody and guardianship of minors
- Appreciating the importance of an effective residual clause
- Guarding against intestacy - ensuring the legal requirements of a valid will are satisfied including proper will execution

#### *Solving Issues Arising Post Mortem*

- Detecting issues or problems arising from the death certificate
- Dealing with the body and stored genetic material
- Solving dilemmas when the body of the deceased cannot be found
- Navigating the process for the post mortem removal of body parts for DNA testing, reproduction and other purposes
- Making arrangements for the funeral or cremation

**Darren Hayes**, Principal Legal Officer, **Public Trustee of Queensland**

10:40

### Morning Tea

11:00

## TUTORIAL TWO

### Wills and Trusts Refresher

Addressing fundamental trust principles and providing an opportunity for delegates to develop knowledge and skills in this area, this interactive presentation will benefit junior practitioners and more senior practitioners seeking a refresher. Tutorial two considers the following areas:

#### *A Refresher on Trust Types*

- Overview of the classification of the trust insofar as expressed or declared; resulting or implied; or constructive
- Explaining the characteristics of certain trusts, including:
  - discretionary trusts
  - family trusts
  - testamentary trusts
  - unit trusts
  - hybrid trusts
  - trading trusts
- Overview of testamentary trusts and relevant provisions of the *Trusts Act* and *Succession Act*

#### *Trustees and Beneficiaries*

A practical overview of principal issues surrounding:

- Trustees
- Appointing a trustee and the retirement or removal of trustees
- Summarising the Duties of the Trustee and their Powers
- Trustee liability
- Beneficiaries
- Identifying beneficiaries
- Rights of beneficiaries

#### *Testamentary Trusts in Practice*

- Creating a trust – avoiding ambiguity of the existence of the trust
- How to clearly identify the subject matter and object of the trust
- Protecting vulnerable beneficiaries
- Providing for the vesting of the trust
- Determining whether a secret trust has been made

**John Cowen**, State Director, **Lifewealth Financial Strategies**

1:20

### Networking Lunch for Speakers and Delegates

2:20

## TUTORIAL THREE

### Solving Estate Administration Dilemmas

Providing an essential guide for all practitioners, this afternoon session outlines the steps to take when applying to the Court for probate or letters of administration and features a case study encompassing common (and not so common!) problems which may arise in the administration of an estate.

#### *Applying for Probate and Letters of Administration*

- Probate
  - reviewing the forms to be used when applying to the court for probate
  - ensuring the content supporting affidavits contain the necessary facts
- Letters of Administration
  - determining who should be the applicant to the court seeking letters of administration
  - drafting supporting material where an application for letters of administration is challenged
- Requisitions - troubleshooting common issues which arise
- Demonstrating the process of applying for probate and letters of administration by way of case examples

#### *Interactive Case Study of an Estate Administration*

This case study considers a factual scenario highlighting common issues which arise in estate administration matters, such as:

- Explaining the effect of lapsing of gifts in circumstances where beneficiaries predecease the testator
- Family Provision Applications and determining eligible applicants
- The preparation of estate administration accounts to provide beneficiaries with assets, liabilities, distribution schedule and balance sheet
- Determining paternity and guardianship of infant children

**Betty Leung**, Solicitor, **McCullough Robertson**

3:10

### Afternoon Tea

3:30

### Recommencement of Tutorial Three

4:20

### Closing Remarks from Chair

4:30

### Close of Conference

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## ABOUT THE PRESENTERS

**John Cowen**, State Director, **Lifewealth Financial Strategies** is also the Chairman and Treasurer of the STEP in Queensland, member of the QLS Corporations Law Committee and member of the Law Council of Australia Business Law Section. Prior to joining Lifewealth Financial Strategies John's previous experience included private and corporate legal practice specialising in estates and trusts, financial planning, investment management. John is a Lawyer and prior to joining the boutique advisory firm Lifewealth was a Director and State Head Qld of the ANZ Private Bank.

**Darren Hayes**, Principal Legal Officer, **Public Trustee of Queensland** is an accredited succession law specialist. Darren advises on a wide range of operational issues in respect to the conduct of estate and trust administration by the Public Trustee and also conducts complex litigation matters involving trusts and estates.

**Michael Klatt**, Partner, **Mullins Lawyers** is an accredited specialist in succession law and provides advice on estate planning, wills, powers of attorney, administering estates, estate litigation, family law, de facto law and general litigation. Michael acts for individuals and small businesses in the commercial areas of practice including residential and commercial business conveyancing and business structuring.

**Betty Leung**, Solicitor, **McCullough Robertson** specialises in the areas of estate planning, estate administration and estate litigation. A large part of her practice focuses on estate administration for complex estates including high net worth, international and rural clients.

**Michael Liddy**, Barrister, **Queensland Bar** is in private practice in Brisbane. He was called to the Bar in 1995 after working as a solicitor in Brisbane and London. His practice includes acting in disputes following deaths.

**Jane McMahon**, Associate, **McMahon Clarke Legal** specialises in succession law including all aspects of estate planning, estate administration, taxation, trusts and business structuring and/or succession issues. Jane has a particular interest in advising clients on complex estate planning issues.

**Mark Ostwald**, Partner, **Cartwrights Tebbett & Ostwald Lawyers** of Noosa Heads has practised in succession law since 1981, obtaining his specialist accreditation in October 2002. He is the only accredited specialist in succession law on the Sunshine Coast and now practises almost exclusively in that area.

**Jeff Otto**, Barrister, **Queensland Bar** practices predominantly area of commercial law with a developing practice in trusts and estates. Prior to his admission to the bar Jeff practised as a solicitor with Hoggood Ganim. The highlight of Jeff's time with Hoggood Ganim was his involvement in the Michael Hutchence estate litigation.

**Craig Spink**, Solicitor, **Hillhouse Burrough McKeown Lawyers** has established a practice specialising in all forms of succession including personal estate planning, business succession, estate administration and estate litigation. He has developed a specific interest in trusts and succession issues including the generational transfer of wealth from a taxation perspective and on a practical level.

**Scott Whitla**, Senior Associate, **McCullough Robertson** previously worked for many years in the financial services industry with financial planners and business bankers. He now specialises in succession law and his practice areas include applications to the Guardianship and Administration Tribunal, succession planning, estate litigation and contesting wills, estate administration, trusts and rural partnerships and property.

**Sharon Winn**, Consultant, **Flower and Hart Lawyers**, has over 16 years experience acting in a wide variety of commercial disputes. Over the last few years her practice focus has been on areas of professional indemnity, wills and estates administration, estate litigation and estate planning. Sharon has a particular interest in assisting people in planning for incapacity and preparing estate plans involving beneficiaries with vulnerabilities.

## WHO SHOULD ATTEND?

### Day One

- Practitioners who practice in succession law
- Lawyers engages in complex estate planning
- Accredited succession law specialists
- Trustee officers

### Day Two

- General practitioners
- Junior and Trainee solicitors
- Lawyers seeking a refresher on trusts will drafting and estates
- Solicitors returning to practice after an absence

## CONFERENCE DATE AND VENUE

12 – 13 July 2007

Conrad Treasury Brisbane

130 William Street

Brisbane QLD 4000

Tel. (07) 3306 8888

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## PROGRAM CHANGES

Details regarding this conference were confirmed and correct at the time of printing. LexisNexis reserves the right to cancel or amend the conference details at any time if required.

## CANCELLATION

Your registration will be confirmed in writing when full payment is received. We will refund your registration in full less a \$165 administration fee if notification is received in writing by 14 June 2007. If we receive written notification between 15 June 2007 and 28 June 2007 you will receive a 50% refund and conference documents. No cancellation requests will be accepted after 28 June 2007. You may nominate a replacement, however no refund will be issued.

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**Mail** Conference Co-ordinator, LexisNexis  
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Chatswood Delivery Centre, Chatswood NSW 2067

Please complete sections A, B and C

Conference code: QPD207 CPD reference no: CPD532

ABN: 70 001 002 537

### A I would like to register for the estate planning masterclass

#### EARLY BIRD PRICE\* (expires on 17 May 2007)

- Two-Day Conference \$1300 + GST = \$1430  
 Day 1 only - Succession Law Principles and Practice \$850 + GST = \$935  
 Day 2 only - Practical Approaches to Will Drafting, Trusts and Estate Administration \$650 + GST = \$715

#### STANDARD PRICE

- Two-Day Conference \$1500 + GST = \$1650  
 Day 1 only - Succession Law Principles and Practice \$950 + GST = \$1045  
 Day 2 only - Practical Approached to Will Drafting, Trusts and Estate Administration \$750 + GST = \$825

#### CONFERENCE RESOURCES

- I am unable to attend but would like to purchase a set of conference papers for the Estate Planning Masterclass \$270 + GST = \$297

#### TEAM DISCOUNTS\*

1. Register a team of 3 for the Estate Planning Masterclass at the same time, from the same organisation and receive a free pass for the 4th delegate.

\* Early Bird, team discounts and any other discount cannot be taken concurrently

### B Payment Details Payment is due upon registration

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### C Delegate details (for additional delegates please photocopy form)

Mr/Ms/Dr \_\_\_\_\_  
first name surname

Position \_\_\_\_\_

Organisation \_\_\_\_\_

Postal Address \_\_\_\_\_

Suburb \_\_\_\_\_ Postcode \_\_\_\_\_ State \_\_\_\_\_

Telephone \_\_\_\_\_

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