

newsletter

Biddulph & Salenger has been a family practice since its commencement in 1905, providing a wide range of services to a broad client base.

Our firm, spans a vast age demographic from the very knowledgeable **Warwick Dunn**, with almost 60 years of legal practice behind him, to third year law student **Ellen O'Brien**.

Maryanne Ofner (Principal and Family Law specialist) **Edyta Zurawski** (Solicitor, Associate) **Julie Koerner** (Conveyancer) and **Matthew Paull** (paralegal) also provide their service with the confidence and professionalism that can only come from years of experience.

Our involvement with clients often spans generations with many clients returning regularly for transactional matters.

As legislation evolves to mirror a changing society, our challenge is to keep up with new developments and adapt our tools and our interaction with you so as to efficiently look after your matters.

Legal information is freely available on websites. We scrutinise what is available, identify errors and guide you through the legal maze, whilst adhering to stringent professional standards. With technology we are more efficient and we pass those costs savings onto you. Another part of cost saving is to also engage in out of court options. Our firm is committed to negotiation, mediation and collaboration.

When considering "your family" whatever form it takes and its requirements, consider our list of essential documents on page 4. Some of them may be relevant to your personal situation. They are simple measures which can reduce or eliminate the stress, acrimony and the expense legal of proceedings. Unfortunately, in some cases litigation is inevitable. Act promptly! Ignorance of the law is no excuse. There are strict legal time limits for taking action if you are aggrieved.

In this issue we bring to clients attention, as usual, some legislative and practical changes.

thank you

Thank you to those who have sought our services, helped provide them, and to those who have referred others. We appreciate all your various forms of support.



DO YOU NEED A TESTAMENTARY TRUST?

A carefully drafted Will providing for all to whom you owe a moral obligation should secure your estate against litigation after your death. A Will is essential.

A binding nomination with your superannuation fund must be made in favour of your dependents or your legal representative and may be an opportunity for protecting a portion of your assets from claims. It also provides a speedy means for dependent beneficiaries to access the superannuation benefits. If you have no dependents then your binding nomination needs to be in favour of your legal representative and provision made in the Will as to how the superannuation is to be paid either specifically or generally with the rest of the estate. You may however, want to direct how your estate is to be administered over a long period of time. Typically most Wills contain basic testamentary trusts in favour of minor children or grandchildren. A more expansive trust is a protective trust for the benefit of a beneficiary with a disability. Usually the term "testamentary trust" refers to a discretionary trust, that is, the trustee has discretion as to how to distribute income and capital amongst a range of beneficiaries. This may control the

distribution of income across a range of beneficiaries. It may protect assets that might otherwise end up with the trustee in bankruptcy or be dissipated or be available for distribution in a family law dispute.

It places control of the assets in the trustee and removes it from the beneficiary.

Usually, there is discretion in the trustee to make the gift outright or to hold in a trust. Not surprisingly, beneficiaries usually prefer to take outright. Trustees often do not want the burden of record keeping and furnishing annual trust income tax returns. Trustees need to be carefully selected so that they carry out their duties responsibly.

In our experience testamentary trusts benefit only a small number of people.

PROPERTY

The new national Personal Property Security Register (PPSR) commenced operation in January 2012. The Register replaces a variety of State based registers for securities including the NSW Register of Encumbered Vehicles (REVS NSW) and Security Interest of Goods Register as well as the Commonwealth Fisheries Register and ASIC Register of Company Charges to name but a few.

The new national system is streamlined and is aimed at improving the ability of individuals and businesses to use more of their property to secure finance as well as providing a more coherent system for

checking whether an item of property is encumbered.

Businesses and individuals will be able to offer cars, paintings and shares, machinery and accounts receivable as security. Crops and livestock can also be used to secure finance. Buyers of property will be able to utilise the more streamlined system to check if there is existing finance, for example, still secured against a car or boat that they are considering purchasing. Only personal property falls within the jurisdiction of the PPSR and it is important to note that real property (i.e. land and homes) is not affected by the PPSR.

The Register will be easily searchable, available at all times as well as available for the registration of securities. Anyone will be able to register personal property on the PPSR although normally this would be the person or business securing its interest. Upon registration, a verification statement will be sent to the registrant showing details of the registration.

HOLIDAY overseas with your child? How to choose your child's school?

Not easy matters for separated parents to resolve. Read how the court deals with it in the following case - *Fink & Abernathy* [2011] FMCAfam 1467 (16 Dec 2011 (all names have been changed)). **Edyta Zurawski** was the advocate in this case. Go to www.austlii.edu.au.



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We want to meet your needs and welcome any suggestions or feedback. Just send a quick email at any time to lawyers@biddsal.com.au

L to R: Julie Koerner, Warwick Dunn, Maryanne Ofner, Ellen O'Brien, Edyta Zurawski, and Matthew Paull.

STAMP DUTIES

The First Home Owners Plus scheme which provided a complete stamp duty exemption to first home owners purchasing properties up to \$500,000 and a partial exemption for first home owners purchasing properties up to \$600,000 has now been abolished. All contracts exchanged from 1st January 2012 onwards are now liable for stamp duties.

In addition, the Office of State Revenue, the office responsible for collecting stamp duties, has introduced requirements for client identification documents

when stamp duty is being paid. Individual purchasers will now need to provide us with an identification document such as a drivers licence, birth certificate or passport and company purchasers will need to provide identification such as a certificate of incorporation or ASIC national names index search at the time of stamping. These changes have resulted in lengthy delays at settlements and we recommend that wherever possible, stamp duty should be paid prior to settlement.

There are also new requirements for witnessing property dealings under the Real

Property Act. Witnesses to documents such as property transfers and mortgages will now need to ensure that they have known the person signing the document for more than 12 months. Where this is not the case, the witness will be required to sight original identification such as a drivers licence (preferably photographic). Certified copies of identification documents will need to be kept on our file for verification of compliance with this new requirement.

Likewise, the requirements for witnessing affidavits and statutory declarations have been amended in a similar vein.

PRO BONO INVOLVEMENT

Our solicitors involve themselves in a range of unpaid committee and advisory work not only for the benefit of the community but to broaden legal skills and maintain our enthusiasm and commitment to the rule of law.

Maryanne Ofner is the Vice president of NSW Collaborative Professionals (www.collabprofessionalsnsw.org.au) a group committed to assisting clients resolve their disputes in a dignified manner. She is a committee member of a local small business network and on the Board of Kirribilli Neighbourhood Centre (www.knc.org.au).

Edyta Zurawski, is current chair of the Young Lawyers Animal Law Committee. Some of the publications produced by the committee are available for downloading from the Law Society web site (www.lawsociety.com.au)

They are:-

- The animal law guide
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FAMILY LAW - De Facto Agreements Still Valid!

There was consternation amongst lawyers who recently discovered that a procedural step had not been taken by the Federal Government to confirm the amendments made to the Family Law Act in 2009 which brought de facto relationships under the jurisdiction of the Family courts. The amendments allowed the Family Court to decide property matters involving de facto couples, who had separated after 1st March 2009. Did we have to redo 2 years of decision making and rewrite the agreements ?

Fortunately the federal government has recently introduced legislation that retrospectively confirms that all agreements and decisions relating to de facto matters in the Family court will be valid and binding.



ANNUAL PILGRIMAGE Outside our immediate surrounding area, by far our greatest concentration of clients must be located in the small island community on Lord Howe Island thanks to the fact that Warwick Dunn and his wife Rosemary have made their annual Christmas pilgrimage to the island for the last 40 years. Warwick's involvement with the islanders provides him and the firm with endless unusual legal brain teasers and with an uplifting photo for this newsletter.



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