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# 6th annual wills, succession and estate planning conference

26 - 28 February 2008 **Amora Jamison** Sydney

Drilling down on the issues impacting  
Estate Planning and Wills practitioners

**Official Publication**  
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## 8:20 Conference Registration

## 8:50 Welcome and Opening from the Chair

**MEET YOUR CHAIR**  
**Richard Neal**, Partner, **Teece Hodgson & Ward**, is an accredited specialist in Wills and Estates Law and is widely recognised as a leading practitioner in NSW in Family Provision Act claims and contested probate work. He is the Chair of the Wills and Estates Advisory Committee, Specialist Accreditation Board of NSW, a Fellow of the Taxation Institute of Australia and Academician of the International Academy of Estate and Trust Law.

### An Overview of Estate Planning

#### 9:00 At the Threshold - Assessing Your Client's Capacity

In this session, practitioners will learn how to manage situations where clients may become affected by age or ill health sensitively for the benefit of their client.

- The circumstances in which you are taking instructions
- Is your client's behaviour befitting the paradigm?
- Understanding your client's world - instructions in context
- Risk management for the practitioner

**Michael Willmott**, Senior Counsel

#### 9:50 Reviewing the Intestacy Bill 2007

As part of the joint Uniform Succession Laws project, the Law Reform Commission of NSW has drafted this Bill which is expected to be passed in 2008. Our speaker identifies key issues covered by the Bill:

- Invoking the provisions of the Intestacy Bill 2007
- Categories of beneficiaries
- Distribution priorities

**Richard Neal**, Partner, **Teece Hodgson & Ward**

10:50 Morning Tea

#### 11:00 International Aspects of Will Drafting and Estate Planning

Globalisation means that it is common for estates to straddle international boundaries. Issues addressed in this session include:

- Location and nature of testator's interests, assets and liabilities
- Jurisdiction in which assets and liabilities generated
- Possibility of inheritance or provision from overseas sources
- International superannuation interests held by the testator
- Foreign wills under the Succession Bill 2006

**Michael Perkins**, Special Counsel, **Cutler Hughes & Harris**

**Philip de Haan**, Partner, **Cutler Hughes & Harris**

#### 11:50 Altered Estates - Blended Families and Sliding Doors

When testator's circumstances change, practitioners need to be alert to how this will affect the estate and the future plan. These include:

- Statutory recognition of intimate and personal relationships
- The effect of demographic trends on the 'bequest impulse' – KIPPERS, SKINS and OWLS
- Capacity considerations in the context of estate planning

**Martin Gorrick**, Barrister

12:30 Networking Lunch for Speakers and Delegates

## 1:30 Family Provision Act (1982) NSW

Your client has the right to be unfair, unwise or harsh in bequeathing his property, so when does the Family Provision Act step in? Our speaker addresses:

- Family Provision Cases
- Testator's ability to assess propriety of his wishes
- Alerting clients to the Family Provision Act when taking instructions to draft a will
- Litigation and costs after *Alison Jayne Gill and 2 Ors v Carolyn Smith [2007] NSWSC 832*
- Preparing evidence in FPA proceedings

**John Armfield**, Barrister

### Utilising Trusts in Estate Planning

#### 2:15 Disability Trusts and the Vulnerable Person

For many testators finding a way to protect and look after vulnerable beneficiaries is a major issue. Practitioners can offer their clients peace of mind using strategies to protect vulnerable beneficiaries.

- Understanding protective trusts, discretionary trusts for vulnerable beneficiaries and the impact of Part 3.18 of the *Social Security Act (1991)*
- Advantages, disadvantages and limitations of Special Disability Trusts
- Strategies where a Special Disability Trust may only be part of the solution

**Jennifer McMillan**, Head of Estate Planning, **Trust Company Ltd**

3:00 Afternoon Tea

#### 3:30 Fundamentals of Testamentary Trust

- Establishing a testamentary trust – when is it necessary to create a trust?
- Is the testamentary trust sufficient to protect intended beneficiaries?
- Creating a balance between protection and flexibility
- Understanding the trustee's power, discretion and limitations
- Tax implications and benefits of the trust
- Terminating a testamentary trust

**Robert Monahan**, Estate Planning Specialist, **Australian Executor Trustees Limited** has over 30 years experience as a lawyer. Prior to 2004, Robert was a partner in private practice, specialising in wills and estate law. He has been an Accredited Specialist since 1998. Robert is also co-author of LexisNexis' Estate Planning with Michael Perkins and is a regular lecturer and speaker.

#### 4:15 Using a Practical Testamentary Discretionary Family Trust

In this session, our speakers demonstrate how to use a form of Testamentary Discretionary Family Trust which has been developed specifically to create separate trusts for spouse and children of the testator.

- Taking instructions for and drafting the Trust document
- Using this Trust document correctly

**Charles Rowland**, Lecturer, **ANU College of Law**

**Phillip Bailey**, Director General Manager – Estate Planning, **Dixon Advisory & Superannuation Services Pty Limited**

#### 5:00 Closing Remarks from the Chair

#### 5:10 Close of Day 1

## Post Conference Workshop A Thursday 28 February 2008 - Time 9:00am - 12.00pm

### Taking Instructions for Will Drafting

As important as drafting a Will is the practitioner's knowledge and understanding of his client's circumstances. This session will enhance your ability to identify relevant aspects affecting disposition of the client's estate.

**This workshop's learning outcomes include:**

- How to recognise and respond to potential capacity issues
- Reviewing the estate
- Strategies for preservation of estate
- Identifying all potential beneficiaries
- Understanding your client's relationship with classes of beneficiaries

**ABOUT YOUR FACILITATOR**

**Paul Evans**, Estate Planning Manager, **National Australia Trustees Limited** is an Accredited Specialist in Wills and Estates Law, an Associate Member of the London based Association of Contentious Trust and Probate Specialists and a member of the Society of Trust and Estate Practitioners. In 1992, Paul worked in London specialising in inheritance tax mitigation, estate planning, administration of estates and charity law. He then worked at Perpetual Trustee Company Ltd, Sydney, and was admitted to practice in NSW.

## 8:30 Conference Registration

## 8:50 Opening Remarks from the Chair

## 9:00 Factors Vitiating Knowledge and Approval of Bequests

In addition to ensuring that the formal requirements of a will are met, the will is also required to uphold the true intentions of the testator. This session will focus on undue influence which can affect bequests.

- The effect of fraud and undue influence
- Discussion of *Reginald Alfred Becker v Public Trustee of New South Wales and 2 Ors* [2007] NSWCA 136

**Lindsay Ellison**, Senior Counsel

## Clarifying the Complexities of Superannuation in Estate Planning

### 9:45 Superannuation Part One – Be the Expert

Although superannuation sits outside estate assets, it is now an almost universal element in both estate planning and estate administration. Our speaker explores the key aspects of superannuation planning:

- Reviewing the effect of the 1 July 2008 amendments
- When should binding death benefit nominations be avoided?
- How to amend Deeds to alter trustee's discretion
- Claims staking strategies to reduce the opportunity for a claim under the Family Provisions Act
- Discussion of *Katz v Grossman* [2005] NSWSC 934 – Advisors Beware!
- Reconsidering the rule in *Saunders v Vautier*

**Peter Bobbin**, Partner, *The Argyle Partnership*

10:40 Morning Tea

### 11:10 Superannuation The Sequel – Tax Attacks

Become familiar with the triggers and considerations which affect the majority of your personal clients.

- Should death benefits be paid as a lump sum or by way of income stream?
- Considering the impact on pension arrangements
- Entitlements and requirements for a tax offset
- Effect of contributions tax
- Sections 295-485 of the *Income Tax Assessment Act 1997 (ITAA)* - Anti-detriment provisions for death benefits
- Div 6AA and payments to children under 18

**Isabella Wong**, Senior Associate, *Cutler Hughes & Harris*

## Taxation, Accounting and Administration Issues for Consideration

### 12:00 Estate Accounting for Executors

Given the variety of experience and expertise of executors, use this session to guide the executor through the maze and out the other side to happy beneficiaries and authorities.

- Treating the estate like a business
- Producing profit and loss and balance sheets for estates
- Facilitating production of taxation returns
- Accounting for trusts operating over periods of time

**John Dymond**, Partner, *Dymond Foulds & Vaughan*

12:45 Lunch

### 1:45 Give the Tax Man Only What Belongs to Him – Taxation Implications of Estate Planning

As with almost every other area of law, taxation ramifications impact on estate planning and will administration. Assist your client to stay ahead of the game by planning in advance.

- Considering Capital Gains Tax (CGT) in will drafting and estate administration
- Transferring assets from trustees to beneficiaries and its tax implications
- Impact of duties on estate funds
- Gifts to non-residents and charities
- Surrender of life interests

**Andrew Frankland**, Executive Lawyer, *Bartier Perry*

## Safeguarding Assets for Future Generations

### 2:30 Asset Protection and Business Succession - Part I

A well planned succession strategy will avoid disruption to the business and third party relationships, as well as relieve stress on surviving family members. These two sessions will walk practitioners through the succession planning process.

- Determining a time frame and reviewing succession plan at regular intervals
- Are transitional arrangements required for continuity of operation?
- The ownership succession plan
- Taxation of transfers and income streams
- CGT concessions in retirement of key owners
- The management succession plan
- Protection of assets

**Tim Somerville**, Partner, *Somerville & Co*

3:10 Afternoon Tea

### 3:40 Asset Protection and Business Succession - Part II

- Choosing the business structure: partnerships, small firms, large and public corporations
- Shareholders restrictions, mandatory buy/sell agreements or Put and Call Options
- Creating an insurance trust
- How to plan for international aspects of the estate
- Planning for contingencies such as ill health or fatalities
- Planning with an eye on the Family Provisions Act
- Collaborative practice between the professions in estate planning

**Philip Clinton**, Financial Advisor, *Newell Palmer Securities Pty Ltd*

## Socially Responsible Bequeathing

### 4:30 Philanthropy and Charitable Giving

It is increasingly important to consider the charitable legacy and how best to give effect to your client's wishes, in the light of taxation and potential challenges.

- What is a charity and a charitable gift?
- Deductible Gift Recipients and Exempt Entities under the *Income Tax Assessment Regulations 1997*
- Considering the *NSW Charitable Trusts Amendment Act 2006* in relation to non-charitable Deductible Gift Recipients (DGRs)
- Cy-pres application – what are the options for gifts under wills and how to avoid invalid or impractical gifts

**Justice Ian Gzell**, NSW Supreme Court was admitted to the Qld Bar in 1965 and appointed Queen's Counsel in 1977. Prior to being appointed to the Equity Division in 2002, His Honour specialised in revenue law with particular emphasis on international taxation. Since 2005, he has been Vice President Western Pacific of the International Academy of Estate and Trust Law. In addition, His Honour is the present Chairman of STEP Sydney Branch.

### 5:15 Closing Remarks from the Chair

### 5:25 Closing of Conference

# Post Conference Workshop B

## The A-Z of Drafting Effective Wills

Thursday 28 February 2008 - Time 1:00pm - 4:00pm

Armed with comprehensive information about your client, the practitioner can now proceed to draft the will. This session will refine all levels of skill to ensure that formal requirements, commercial considerations and personal relationships are woven together in the most effective manner for your client.

### Your learning outcomes include:

- How to Draft Standard clauses
- Assessing and Setting up appropriate trusts
- Understanding precedents

ABOUT YOUR FACILITATORS

**Christine Page**, Lawyer, **David Landa Stewart**, was admitted in 1981 and specialises in wills, probate and estate planning, having worked with Trust (formerly Permanent Trustee Company) for many years and now an Accredited Specialist in Wills and Estates Law.

**Philip Bailey**, Director, General Manager – Estate Planning, **Dixon Advisory & Superannuation Services Pty Limited**, is a solicitor admitted in the ACT. He now works exclusively as an Estate Planner with Dixon Advisory, based in the ACT.

## ABOUT THE PRESENTERS

**John Armfield**, Barrister, LLB, LLM, was admitted to the Bar in 1983 and has practised extensively in the Supreme Court focussing on Family Provision Act applications, probate, will construction and conveyancing litigation.

**Peter Bobbin**, Partner, **The Argyle Partnership** was formerly a taxation accountant with Coopers & Lybrand and Peat Marwick Mitchell. An author and speaker on estate planning, superannuation and taxation, Peter's work has been published by Asset, BRW, Money Management and The SIA.

**Philip Clinton**, Financial Adviser, **Newell Palmer Securities Pty Ltd** has been a financial planner since 1975. In 1986, he graduated with a BBus from Ku-Ring-Gai College in 1986, and commenced with Newell Palmer Securities in 2000. He is a Certified Financial Planner.

**John Dymond**, Partner, **Dymond Foulds & Vaughan** is an accountant with more than 25 years experience in public accounting and several years involvement both working within and advising to a range of entrepreneurial and high technology companies.

**Lindsay Ellison**, Senior Counsel, BEc and LLB, was called to the Bar in 1985 and appointed Senior Counsel in 2005. Mr Ellison has practised across a wide range of jurisdictions and been involved in many reported cases, including the recent *Becker v Public Trustee of NSW*.

**Andrew Frankland**, Executive Lawyer, **Bartier Perry** has a practice which includes tax law, trusts, estate planning and business succession planning. He is a regular speaker and a Fellow of the Taxation Institute of Australia, as well as sitting on the Editorial Panel of LexisNexis' *Retirement and Estate Planning Bulletin*.

**Martin Gorrick**, Barrister, graduated from the University of London with a double Honours' degree in English Literature and Drama in 1981. He has been at the Sydney Bar since 1989. Martin lectures in Succession Law at UTS Law School.

**Philip de Haan**, Partner, **Cutler Hughes & Harris** has over 20 years experience in taxation and superannuation law, including nine years with the ATO. Philip is a Fellow of the Taxation Institute of Australia and a Fellow of the Association of Superannuation Funds of Australia and is also a lecturer in the University of New South Wales' Taxation Masters program.

**Jennifer McMillan**, Head of Estate Planning, **Trust Company Limited** was admitted to practice in 1989 and is an Accredited Specialist in Wills and Estates. Jennifer has extensive private practice legal experience in Perth and Sydney in the area of wills and estates as well as a broad range of experience in commercial law and property.

**Michael Perkins**, Special Counsel, **Cutler Hughes & Harris** has over 20 years experience specialising in trusts and estates. He lectures at the UTS. He is also the co-author of LexisNexis' *Estate Planning* with Robert Monahan.

**Charles Rowland**, Adjunct Professor, **James Cook University** has been a long time educator of the legal profession, specialising in the law of succession. Mr Rowland continues to contribute to chapters of *Halsbury's Laws of Australia*, *Hutley's Australian Wills Precedents* and other publications.

**Tim Somerville**, Partner, **Somerville & Co**, has been in practice since 1973. He oversees the business law and general law practices of Somerville & Co, as well as advising on tax aspects, regulatory issues within the telecommunications, transport and advertising industries.

**Michael Willmott SC**, was called to the English Bar by the Hon. Society of Inner Temple in 1972. He was then admitted to practice in NSW in 1973. He practices in the Equity Division of the Supreme Court (in General Equity, Probate and Commercial Lists), the Court of Appeal and the Federal Court of Australia. He was appointed Senior Counsel in 2003. He has published a number of publications including 'Contempt of Court: Forms, Precedents and Pleadings, Butterworths, 1998' and 'Estate Litigation: Contested Applications for Probate, Blackstone Press, 1994'. He was appointed a member of the Supreme Court Probate Committee as the Bar representative in 2000 to date.

**Isabella Wong**, Senior Associate, **Cutler Hughes & Harris**, specialises in income tax, transactional taxes, fringe benefits tax and superannuation. Ms Wong also engages in superannuation planning, designing and setting up appropriate types of pensions for professional clients, corporates, charities and high net worth individuals.

### WHO SHOULD ATTEND?

- Practitioners of all levels in a wills, probate or estate planning practice
- Financial planners
- Taxation advisors working in the area of estate planning

### CONFERENCE DATE AND VENUE

26-28 February 2008  
Amora Jamison  
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Fax: (02) 9696 2600  
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### 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 26 January 2008. If we receive written notification between 27 January 2008 and 12 February 2008 you will receive a 50% refund and conference documents. No cancellation requests will be accepted after 12 February 2008. You may nominate a replacement, however no refund will be issued.

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### A I would like to register for the 6th Annual Wills, Succession and Estate Planning

**Early Bird\*** (expires 21 December 2007)

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| <input type="checkbox"/> Two-day Conference + both workshops | \$2545.45 + GST = \$2800.00 | \$2727.27 + GST = \$3000.00 |
| <input type="checkbox"/> One-day conference#                 | \$854.55 + GST = \$940.00   | \$950.00 + GST = \$1045.00  |
| <input type="checkbox"/> One workshop only*                  | \$450.00 + GST = \$495.00   | \$500.00 + GST = \$550.00   |
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# If only attending one-day conference, please indicate which day  Day One  Day Two  
\*If only attending one workshop, please indicate which workshop  Workshop A  Workshop B

#### CONFERENCE RESOURCES

- I am unable to attend but would like to purchase a set of conference papers for 6th Annual Wills, Succession and Estate Planning Conference \$300 + GST = \$330

#### TEAM DISCOUNTS\*

Register a team of 3 for 6th Annual Wills, Succession and Estate Planning 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

#### I would like to purchase a copy of: (PDBOOKS07)

- Family Provision in Australia 3rd edition**, de Groot & Nickel- ISBN: 9780409323948 - published 08/07 - \$189
- Estate Planning: A Practical Guide for Estate and Financial Service Professionals**, Perkins & Monahan, ISBN: 9780409322125 - published 10/05 - \$133
- Elder Law in Australia**, Lewis - ISBN: 9780409318722 - published 12/04 - \$126
- Australian Wills Precedents**, Rowland, Hutley's - ISBN: 9780409317039 (hard cover) - published 12/03 - \$157.50

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### C Delegate details

(for additional delegates please photocopy form)

Mr/Ms/Dr \_\_\_\_\_  
First name \_\_\_\_\_ Last name \_\_\_\_\_

Position \_\_\_\_\_

Organisation \_\_\_\_\_

Postal address \_\_\_\_\_

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

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