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Victoria: 7th Annual Wills, Succession & Estate Planning Conference

Mastering the complex legal
and financial aspects of wills,
succession and estates

4 – 6 March 2009
Stamford Plaza,
Melbourne



International Expert:
Dawn Goodman, Partner, Contentious Trusts & Succession, Withers LLP (UK) (winner of STEP 2007/08 Contentious Trust & Estates Team of the Year)

Keynote speaker: His Honour Judge P.G. Misso

- Master the intricacies of **taxation for multi-jurisdictional and overseas assets** and the latest changes to **tax and superannuation rules** in a new regime
- Discover the impact of the latest statute developments in **de facto and same sex laws**
- Analyse recent case law on **testator's family maintenance, estate litigation and probate** - a judge's and a barrister's perspective
- Gain expert advice on **testamentary trusts, family trusts, business succession, binding death nominations, superannuation** and more

Hear from over 17 leading experts

Anthony Southall QC, Victorian Bar

Paul Hockridge, Partner, Deloitte

Leonie Englefield, Barrister, Victorian Bar

Chris Beeny, Partner, Maddocks

Including expert authors:

David Haines QC

Carolyn Sparke, Barrister, Victorian Bar

Richard Phillips, Barrister, Victorian Bar

Allan Swan, Principal, Moores Legal

PLUS: Don't miss the workshops on:

Grasping Tax Essentials for estate planning

Richard Bridgart, Tax Manager, Deloitte

**Mastering superannuation strategies
in estate planning**

Jennifer Dixon, Principal, Moores Legal, Estate Planning,
Superannuation and Structuring

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Victoria: 7th Annual Wills, Succession & Estate Planning Conference

Mastering the complex legal and financial aspects of wills, succession and estate planning

Day One: Wednesday, 4 March 2009

Trends, scenarios and practical considerations in modern wills and estate planning

8:30 **Conference registration**

9:00 **Welcome from the Chair**

Daniel Kelliher, Senior Associate, Russell Kennedy

Daniel heads Russell Kennedy's Estates and Estate Planning Department. Daniel's practice encompasses all aspects of Estate Planning, Probate and Estate Administration, Estate Litigation and Superannuation Complaints. Daniel is a Committee member of the Melbourne Branch of the Society of Trust and Estate Practitioners (STEP) and is an active member of an LIV Specialist Wills & Estates Study Group. In 2005, Daniel graduated from Macquarie University with a Masters of Law in Financial Services. He has been an LIV Accredited Wills & Estates Specialist since 1996.

- Offshore structures including offshore asset protection trusts
- Navigating the complexities of civil law entities, Islamic trusts etc
- Special considerations for foreign nationals, non-residents
- Case Law: interstate and international estates

Robert Gordon, Barrister, Victorian Bar

Robert was first admitted to legal practice in 1979, and initially worked as an accountant with Big Four firms in Sydney and Melbourne, then as a solicitor in Sydney and Melbourne, becoming a tax partner at Corrs Chambers Westgarth. From 1992 he was a member of the NSW Bar specialising in tax, with a special interest in international tax, including offshore trusts and estates. He holds an LLM from Monash University and in 2006 he had a one year sabbatical in London where he studied UK and international tax. He took out a Victorian practicing certificate in 2008.

9:10 **A judge's viewpoint – Perspectives from the County Court of Victoria on preparation, presentation, recent developments and case law on Testator's Family Maintenance**

Hon Judge PG Misso, County Court of Victoria

Hon Judge PG Misso, County Court of Victoria

9:55 **Blended families, second marriages, family breakdown, de facto and same sex relationships: non-traditional advice for non-traditional families**

In Australia, an average of 40% of current marriages end in divorce. On the other end of the spectrum, de facto spouses and same sex partners are most vulnerable after the death of partner, especially when children are involved. Amendments to legislation have been proposed to guard against discrimination. This session will analyse case studies and scenarios covering aspects of:

- Drafting wills for non-traditional families
- Investigating the Same-Sex Relationships (*Equal Treatment in Commonwealth Laws - General Law Reform*) Bill 2008 - emerging legislation on de facto and same sex relationships and implications for wills and estate planning, taxation and superannuation
- Providing for orderly and enforceable succession in cases of family breakdown – before and after death
- Analysing the effects of divorce and remarriage on a will, claims of second or subsequent wives
- Ownership of assets and joint tenancy, the impact of binding financial agreements
- Gauging the potential of family provision applications

Jenny McMillan, Head of Estate Planning, Trust Company

11:55 **Deceased estate litigation, probate and contesting wills – recent developments and case law**

- Caveats – grounds for lodging caveat against grant of probate / administration, forms, duration and procedure
- Contesting the validity or interpretation of a will
- Breach of duty by executor
- Procedures and rules
- Intestate estates under the *Administration and Probate Act 1958*
- Cross-jurisdictional issues

Leonie Englefield, Barrister, Victorian Bar

12:40 **Networking lunch for speakers and delegates**

1:40 **Analysing complex scenarios in wills and estates**

Facilitated by an expert panel, this session will explore various scenarios in wills and estate planning involving blended families, same sex relationships, adoption, bankruptcy, intestacy and other complicated issues. Analysing different estate structures and strategies, delegates will be provided with a hypothetical to discuss in roundtable groups and put forward to the panel. Strategies and frameworks will be assessed to ensure assets are protected and optimised, family members are provided for and litigation is avoided.

Panellists:

Leonie Englefield, Barrister, Victorian Bar

Anthony Southall QC, Barrister, Victorian Bar

Jenny McMillan, Head of Estate Planning, Trust Company

Allan Swan, Principal, Moores Legal

2:35 **Examining the ambit of testator's family maintenance claims: No panacea for prevention – a barrister's perspective**

- Balancing the statutory mandate to provide adequate provision with the right to testamentary freedom
- Exercising discretion in taking instructions – TFM requirements, moral duty and the propriety of testator's wishes
- Preparing TFM claims, determining eligibility for application and time limits
- Powers of the court
- Recent TFM cases / judgments under *Part IV, Administration and Probate Act 1958* and future implications: *Ansett v Moss & Ors [2008]*, *Boyd v State Trustees Limited. [2008]*, *Bowyer V Wood [2007]* and others

Anthony Southall QC, Barrister, Victorian Bar

Anthony was admitted to the Victorian Bar in 1976 and appointed Queens Counsel in 1997. During that time his practice has been focused in the field of commercial, property and equity litigation, including Trusts, Wills and Probate related litigation and mediation. In his career at the Bar, he has been involved in many high profile and reported probate cases, particularly in the fields of Family Provision and Testamentary Capacity.

10:40 **Morning tea**

11:10 **Cross-border estate planning: Overseas assets and other international issues – a question of jurisdiction?**

It is inevitable to encounter the existence of foreign assets in client's estates, with Australia being a vastly multicultural country and as a function of the globalisation of businesses. Legal practitioners must exert caution in the preparation of wills, as overseas assets may be in a jurisdiction with a statutory distribution as to the whole or part of the estate (as in the case of civil law forced heirship). This session will assess the pros and cons of various approaches to:

- Residency, domicile and citizenship (dual citizenship and other factors)
- Overseas assets and foreign inheritance taxes – avoiding snags, traps and pitfalls
- Answers to the recurrent questions: drafting foreign wills or separate wills for each jurisdiction? To which jurisdictions does domestic law apply?



Keynote Speech



Case Study



Interactive Hypothetical

Wills & Estate Planning Conference

Aspects of wills, succession and estates

3:20 **Afternoon tea**

3:40 **Diminishing the risk of future litigation of testator capacity and intention and; defending vulnerable testators and beneficiaries**

Alongside longer life expectancy is a trajectory of incidences of Alzheimer's disease, dementia and other cognitive disorders. With the complexity of will drafting and estate planning, promptly recognising, planning for and responding to changes in capacity and cognition is vital to avoid litigation.

- Exerting caution and discretion when interpreting testator's intentions – assessing capacity and what to do when capacity is in doubt
- Distinguishing the role of agents, fiduciaries, carers, representatives and other substitute decision-makers
- Guarding against undue influence in preparation of will, unconscionable conduct / fraud – precautions against the challenge to testator capacity and intention
- Failure to appoint enduring power of attorney or enduring guardianship
- Providing evidence of intention and the burden of proof for undue influence
- Powers of the Court and court's approach to lack of testamentary capacity

- Developments in case law: *Tasmanian Perpetual Trustees Limited v Colbeck* [2007]

Richard Phillips, Barrister, Victorian Bar

Richard was called to the English Bar by the Honourable Society of Lincoln's Inn in 1979. In 1982 Richard was admitted as a Barrister and Solicitor of the Supreme Court of Victoria and signed the Victorian Bar Roll in May 1983. He is also admitted as a Barrister in New South Wales. Richard is an Accredited Advanced Mediator by the Victorian Bar, a Nationally Accredited Mediator by the Victorian Bar and a member of the Society of Trust and Estate Practitioners. Richard's practice specialises in wills, estates, probate, testator's family maintenance, trusts, equity and property law. He has significant trial experience in contested wills and TFM cases as well as property matters and has conducted many successful mediations as mediator. He is a co-author of *Wills, Probate and Administration Service - Victoria* (Lexis Nexis).

4:25 **Harnessing practical insights into protective trusts for vulnerable beneficiaries**

- Strategies to protect vulnerable beneficiaries
 - Establishing protective and discretionary trusts for vulnerable beneficiaries
 - Choice of trustee
 - Problems and pitfalls for Trustees
 - Disabled adult children and the role of the Guardianship tribunal
- Mary Amerena, Senior Lawyer and Manager, Executor Services, State Trustees**

5:10 **Close of day one**

Day Two: Thursday, 5 March 2009

Financial considerations: superannuation, inheritance, investments and trusts

8:30 **Conference registration**

9:00 **Welcome from the Chair**
Chris Beeny, Partner, Maddocks



Editorial Panel Member

Chris is a senior partner, and has particular expertise in superannuation and has been involved in related tax, trust, Corporations Act and regulatory advice for more than 20 years and is recognised as one of Australia's leading legal practitioners in this area. Prior to joining Maddocks, Chris was a partner in the Melbourne office of Mallesons Stephen Jaques for 23 years and head of their private client practice area. He is a fellow of the Taxation Institute of Australia, chairman and founding member of the Law Institute of Victoria. Chris has been a member of the editorial panel of Butterworth's Australian Superannuation Law Bulletin.

9:10 **Tackling trusts amid family trauma – an international perspective**



International Keynote

- Deliberating on the most common causes of family dissension with *inter vivos* trusts – family silver assets, family companies and exercise of discretionary powers
 - Failed testamentary trusts – the US/Anglo-saxon divide and the dismal consequences
 - Testamentary trusts and conflict with entrenched inheritance rights
 - The collision between trusts and divorce
 - Precautions for trustees / executors caught up in family strife
- Dawn Goodman, Partner, Withers LLP (UK)**

Dawn heads the Withers Contentious Trust and Succession team, which is the largest in Europe and has recently won the STEP Contentious Team of the Year award 2007/08. Dawn is consistently top-rated in directories, and has a wealth of experience advising on domestic and international trust and succession litigation from the consensual to the fraudulent. She represents lay and professional trustees and personal representatives, non-trustee fiduciaries, settlors, beneficiaries, heirs and adverse claimants. She is a member of the Society of Trust & Estate Practitioners, the Association of Contentious Trust & Probate Specialists, the Charity Law Association and the Financial Services Lawyers Association.

9:40 **Controlled and uncontrolled business succession: Maximising asset protection and minimising tax liabilities**

Business succession falls into two categories: Controlled and uncontrolled. Controlled succession, the selling or passing to the next generation, invariably comes with tension; when's the right time? Uncontrolled succession - death, divorce, disability - leaves varying degrees of disaster. To make matters worse, the existing structure may not dovetail in nicely with the most desirable plan or outcome; asset protection may unravel and tax liabilities may be triggered. This session explores:

- Understanding the true tax profile of the family and business assets
- Managing generational change of control or ownership
- Getting in shape: reorganising a trust, company or partnership
- Making use of the CGT small business concessions
- Appropriate buy/sell arrangements and funding options
- Maintaining asset protection – implications of *Richstar Enterprises Pty Ltd v Carey* [2007]

Andrew O'Bryan, Partner, Hall & Wilcox

10:25 **Morning tea**

10:45 **Conquering the intricacies of death and taxes in a new tax regime: Taxation, deceased estates and CGT**



Tax Update

- Navigating 08/09 tax changes: The ATO compliance regime and the shift in tax focus to wealthy Australians
- Primary tax considerations for estate planning and succession – avoiding pitfalls whilst assessing the most tax effective options for intended beneficiaries
- Assaying tax obligations of executors
- CGT and deceased estates: Pre and post CGT assets, accessing CGT concessions
- Stamp duty, property and land tax issues

- Taxation of overseas deceased estates
- Testamentary discretionary trusts, life interests and annuities
- Exemptions – main residence exemption

Paul Hockridge, Tax Partner, Deloitte

Paul has over 30 years' experience, specialising in tax, asset protection, estates-succession planning, advising high wealth families and closely held businesses, as well as many accounting and law firms. With undergraduate degrees in accounting and law, and a master at laws, he is a Fellow of CPA Australia, the Institute of Chartered Accountants in Australia and the Taxation Institute of Australia and is admitted to practice in Victoria as a Barrister and Solicitor. He has been involved in consultation with both Federal and State Governments on a variety of tax matters. For a number of years, Paul has been a regular author and speaker on taxation matters and is often quoted in the media, particularly in relation to tax aspects of business and investment structuring.

11:30 **Superannuation, pensions and death benefits: Estate planning and the treatment of superannuation after death**



- Overview of super death benefits – who can and can't be a super beneficiary, how are super death benefits taxed
- Pitfalls with binding and non-binding nominations, how to determine when a binding nomination should be made (or revoked)
- When a self managed superannuation fund should be used in order to ensure that the death benefits go to the right beneficiaries, and how to make sure that control of the fund ends up in the right hands
- Why it may be disastrous to pay the super into the estate
- Challenging the payment of a super death benefit

Heather Gray, Partner, Holding Redlich

12:15 **Mastering Testamentary Trusts in estate planning – pathways towards greater asset protection and the taxation advantage**

- Estate planning using testamentary trusts – when to and not to use?
- Scrutinising federal taxation issues in deceased estates and testamentary trusts
- Investigating practical and tax benefits
- Fiduciary, financial and administrative duties of trustees – empowering and restricting the executor and trustee
- Testamentary trusts as an asset protection strategy
- Indemnity clauses
- Terminating the testamentary trust
- Discretionary trusts

Ria Sotiropoulos, Barrister, Victorian Bar

1:00 **Networking lunch for speakers and delegates**

2:00 **Risk management for practitioners: Delineating duties, obligations and accountabilities, eluding negligence**

- Defining solicitors duties – considerations in giving effect to client's instructions, ensuring that a will is validly executed and attested, and advising against accidental revocation
- Breach of duties which amount to negligence – examining liability of practitioners
- Minimising risks associated with duty to beneficiaries, civil liability risks to prevent undue influence and fraud
- Developments in case law

David Haines, QC, South Australian Bar

David has extensive experience in all aspects of succession law, family law and equity. He was initially admitted to the SA Bar as a barrister and solicitor and later to the Supreme Courts of NSW, VIC, ACT and NT. He was appointed as Queens Counsel in November 1999. David is the author of several publications including the recently published book Lexis Nexis' Construction of Wills in Australia (2007).

2:45 **Avoiding traps and pitfalls: Preventing abuse of Power of Attorney**

- Revoking misused power of attorney
- Protecting vulnerable clients – recognising victims of financial abuse and steps to prevent further abuse
- Legal protection for elderly Australians
- Issues in guardianship, enduring medical guardianship and the role of the tribunal
- Recovering defrauded assets
- Case Law

Carolyn Sparke, Barrister, Victorian Bar

3:30 **Afternoon tea**

3:50 **Investigating succession planning issues and challenges in Family Trusts**

- Trust deeds for family trusts
- Control of family trusts
- Discussing options for succession
- Passing trusts onto 2nd or 3rd generations – cloning and splitting trusts
- Income tax advantages and other tax considerations – comparisons with testamentary trusts and avoiding de facto inheritance tax
- Administrative issues: Making of a family trust election or interposed entity for taxation purposes
- Other issues: Debts, beneficiary loan accounts, overseas beneficiaries etc

Tony Riordan, Partner, Riordans Lawyers

4:35 **Clarifying the opaque area of Philanthropy and Charitable Giving – defining the fine line of altruism**



- Philanthropy in an estate plan – moulding to the client's interests and philanthropic agenda
- Considering options for charitable giving through wills – weighing the merits
- Regulatory, legislative and taxation considerations
- Strategies, tools, mechanisms
- Clauses for making a charitable bequest
- Charitable trusts and private funds
- Cy pres applications – what are the options for gifts under wills?
- Tax deductions and exemptions

Tanya Costello, Senior Lawyer, Philanthropy, ANZ Trustees

5:15 **Close of conference**

Who Should Attend?

- Wills & probate lawyers
- Estate planning lawyers
- Succession law practitioners
- Barristers
- Trustee companies
- Financial planners
- Taxation advisers working in the area of estate planning

Post-Conference Workshops: Friday, 6 March 2009

9:00 **Workshop A Registration**

Workshop A: 9:30 – 12:30

Grasping Tax Essentials for estate planning

To ensure the effective transfer of wealth, estate planning must address the entirety of superannuation, life insurance, family trusts, geared investments, asset protection strategies and the tax considerations for each. This intensive session will cover the income tax treatment of deceased estates, excepted income and Capital Gains Tax (CGT):

- Forms of ownership / Types of assets: Superannuation, Family/hybrid trust assets, Joint tenancies, Personally owned assets
- Superannuation death benefits and tax
- Income tax concessions
- Capital Gains Tax (CGT) – transfer of asset from deceased to executor, executor to 3rd party, from executor to beneficiary, who pays tax, when does an asset pass, testamentary trusts, assets owned by companies and trusts, principal residence, jointly owned properties, life interests, capital losses
- State duty and land tax
- Testamentary trusts and tax – tax treatment, estate proceeds trust, direct gift to infant, constraints, trust losses, superannuation
- Charitable trusts
- Vulnerable beneficiaries
- Debt, bankruptcy and insolvency - superannuation and insolvent estates

About your facilitator:

Richard Bridgart, Tax Manager, Deloitte

Richard has over 10 years experience and specialises in superannuation, structuring for asset protection and tax efficiencies, estate and succession planning. Richard's major clients include high wealth families and closely held businesses. He is a member of CPA Australia and a regular presenter at forums.

12:30 **Networking lunch for full-day delegates and speakers**

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1:00 **Workshop B Registration**

Workshop B: 1:30 – 4:30

Mastering superannuation strategies in estate planning – Superannuation Death Benefits and Pensions

The Parameters

- What is the superannuation death benefit?
- Impact of life insurance and reversionary pensions
- Who can receive superannuation on death?
- How can they receive it (pension or lump sum)?
- Taxation implications and implications for ongoing control

Documentation Issues – Binding nominations, Self managed superannuation fund deed and others

- What should you look for in a self managed superannuation fund deed?
- When and how do you use binding nominations?
- Dealing with control in the self managed superannuation fund
- Relevant clauses within the will
- Superannuation death benefit trusts

Strategic Issues – Comparison of pension options versus Testamentary Trusts

- Taxation issues
- Challenge issues
- Control issues
- Government pension and asset protection issues for recipients
- Use of superannuation death benefit trusts
- Practical case studies

About your facilitator:

Jennifer Dixon, Principal, Moores Legal, Estate Planning, Superannuation and Structuring

Jennifer is an accredited Wills & Estates specialist and an accredited Self Managed Super Fund (SMSF) specialist advisor with the SMSF Professionals' Association of Australia. She practices in a wide range of complex estate and business succession planning matters including superannuation, trusts, asset protection, administration of estate and taxation.

4:30 **Close of workshops**

Upcoming events:

9th Annual Contract Law Masterclass
17-19 February 2009, Melbourne

3rd Annual Property & Conveyancing Conference
19 March 2009, Melbourne

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Victoria: 7th Annual Wills, Succession & Estate Planning Conference

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B CONFERENCE RESOURCES

- I am unable to attend but would like to purchase a set of conference papers for Victoria: 7th Annual Wills, Succession & Estate Planning Conference
 \$360.00 + GST = \$396.00

TEAM DISCOUNTS*

- Register a team of 2 for Victoria: 7th Annual Wills, Succession & Estate Planning Conference at the same time, from the same organisation and receive a free pass for the 3rd delegate.

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

- Please send me information on the VIC Wills Probate Service
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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 4 February 2009. If we receive written notification between 5 February 2009 and 18 February 2009 you will receive a 50% refund and conference documents. No cancellation requests will be accepted after 18 February 2009. You may nominate a replacement, however no refund will be issued.

C **Event Pricing** (please tick your selection)

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<input type="checkbox"/> Two day conference + 2 workshops	\$2600.00 + GST = \$2860.00
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I would like to attend: Day one Day two

I would like to attend: Workshop A Workshop B

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