

Heir tight.

de GROOTS
wills and estate lawyers

The television series, "Modern Family" is a humorous yet serious look at some of the issues encountered by families today. It has put 'out there' dilemmas, dramas and issues that have been ignored or little spoken of in the media. The challenge in much of the world is for legislation to be enacted that keeps pace with changing family situations. In this edition we review relevant Queensland legislation impacting on this area.

We also look at tax changes that have led to testamentary trusts being more advantageous than ever. Many people opt for a simple will rather than incorporating a testamentary trust(s) into their wills – it is important to take account of the tax benefits that could flow to your family by your investment in more sophisticated and appropriate estate planning.

We are now in the first quarter of the financial year 2012-2013. We hope that this is a good year for all our clients after what has been challenging times for most of us. We again thank you for your support during the past financial year and we look forward to continuing to enhance our services to you.

Margot de Groot

Director

Is your will 'relatively' sound?

With the evolving face of the 'Modern Family' the law has had to adapt to recognise the many forms of the family unit.

Of increasing relevance, particularly in succession planning and deceased estate disputes, is the court's approach to the concept of family and parental rights of same sex and heterosexual couples of children conceived by in vitro fertilisation ("IVF") or carried by surrogates.

The 2002 decision of *Re Patrick* [2002] 28 Fam LR 579 ("**Re Patrick**") recognised the diversity of family units, including same sex couples and the use of technology in the conception of children. The decision considered the concept of 'family' as well as 'parent' under the *Family Law Act 1975* (Cth) ("**FLA**").

Major reforms which were passed by federal parliament in 2008 increased the recognition of same sex relationships, including extending the definition of de facto relationships to same

sex couples in federal laws. There was also an extension of the definition of 'parent' and 'child' in certain federal laws to include lesbian parents who have a child through the use of assisted reproduction, and in more limited cases, through surrogacy.

The rights of same sex couples to enter into registered relationships was recognised in Queensland through the implementation of the *Relationships Act 2011* (Qld). This recognition has strengthened the position of same sex couples who may become involved in a dispute regarding the estate of their deceased partner.

Such changes have significant ramifications from a succession planning as well as estate litigation perspective.

Clients who may be leaving assets to children in same sex relationships should consider implementing similar protective measures when undertaking succession planning as they would for children in heterosexual relationships.

Another key issue to be addressed in succession planning is the provision for future children

where the child is to be carried by a surrogate, given the particular rules governing the ability to transfer parentage of the child and sever the legal relationship of the gestational mother.

In Queensland, an application for a parentage order in respect of a child carried by a surrogate, can not be made prior to birth and there are strict guidelines surrounding the time in which an application can be made. Any succession planning undertaken in contemplation of a child carried by a surrogate should carefully consider the particular parentage issues distinct to surrogacy.

At the time of writing, we are aware that the Queensland government is contemplating amending the current surrogacy laws relating to the ability of single parents, same sex couples and de facto partners to enter into surrogacy arrangements.

This area of law is continuing to evolve. If you would like more current information on these topics please let us know.

Emma Nisbet, Lawyer, Member of our Estate Planning Team

Cyber Security

Few people consider what will happen to their emails, facebook account and other online accounts when they die.

As the policies of online companies vary wildly, important information or records, including precious photos, can be lost and potentially embarrassing content revealed.

We recommend that you record details of all online accounts, including updated passwords and login details, and your wishes as to what should happen with these accounts on your death. This information should be stored safely or provided to someone trusted by you.

Cathy Piccolo, Senior Lawyer, Member of our Estate Administration Team.



The new Relationships Act 2011

In our previous bulletin, we brought to your attention the passing of the *Civil Partnerships Act 2011*. This legislation introduced changes into Queensland whereby same sex couples were provided with certain recognition. It provided a means of registering such relationships and had consequential impact on various areas of law.

The new State government has now introduced amendments to this Act.

On 22 June 2012 Parliament passed the Civil Partnerships & Other Legislation Amendment Bill of 2010 which amended the earlier *Civil Partnerships Act 2011*.

Significantly, this amended legislation changes the name of the relevant legislation to the *Relationships Act 2011*.

This legislation now provides the ability for couples, regardless of their sex, to have their relationship legally recognised in Queensland.

It omits the establishment of civil partnership notaries and changes the terminology of "civil unions" to "registered relationships" and "civil partners" to "registered partners." Couples can no longer choose between holding a ceremony or making a declaration of the registered relationship, only registration of the relationship is provided for.

A registered relationship cannot be terminated by court order; couples are now required to apply to the Registrar of Births, Deaths & Marriages for the relationship to be terminated which occurs after the expiration of 90 days.

The legislation significantly impacts on succession law.

There are now three categories of relationships; married spouses, de facto spouses and persons in registered relationships. This impacts on wills and enduring powers of attorney under relevant legislation.

With respect to the *Succession Act*, there are amendments to section 14A of that Act outlining the effect a registered relationship shall have on a will. A will is revoked by a testator entering into a registered relationship save for certain clauses outlined in section 14A(2) *Succession Act*.

Correspondingly, a new section 15A has been included in the *Succession Act* which provides that the termination of a registered relationship will affect certain provisions of a will.

The definition of "spouse" is now extended to include persons in registered relationships thus widening potential applicants for family provision applications.

The *Relationships Act* also amends the *Powers of Attorney Act 1998* through the insertion of section 53A which states that if a principal terminates a registered relationship after making an enduring

power of attorney, that document is revoked to the extent that it gives power to the previous registered partner.

Similarly, a new section 52A states that, unless a contrary intention is expressed in the enduring power of attorney, if a principal enters into a registered relationship after making an enduring document, that document is revoked to the extent that it gives power to someone other than the registered partner.

In summary, the *Relationships Act* makes appropriate extensions to the *Succession Act* and the *Powers of Attorney Act* concerning the effect registered relationships have on these areas of law.

Prudence Poole, Associate, Member of our Estate Administration Team and Sarah Doble, Lawyer, Member of our Estate Litigation Team

Testamentary Trusts – even more effective since 1 July 2012

Since the tax free threshold increased from \$6,000 to \$18,200 effective 1 July 2012, people with children or grandchildren, now have even more reasons to consider using testamentary trusts as a part of their estate planning.

The following example illustrates the advantages of establishing a testamentary trust compared with a traditional will provision.

Assume a husband dies leaving a dependant wife and three infant children. His estate is valued at \$1,000,000.00. If this were invested at (say) 8%, it would generate an income of \$80,000.00.

Example 1: The husband's will leaves everything to his wife. Her tax position is therefore:

Beneficiary	Income	Tax
Wife	\$80,000	\$17,547

Example 2: The husband's will establishes a testamentary trust controlled by the wife and providing for the wife and three children to be beneficiaries. The family's tax position might be:

Beneficiary	Income	Tax
Wife	\$20,000	\$ Nil
Child 1	\$20,000	\$ Nil
Child 2	\$20,000	\$ Nil
Child 3	\$20,000	\$ Nil
Total		\$ Nil

In example 2, there is a tax saving of \$17,547 when compared to example 1 which shows what happens if no trusts are used. It is important to remember that this level of saving is annual and may be possible for many years.

(Note: Tax calculations based on rates effective as at 1 July 2012. Medicare levy is not considered for these purposes. Although the income amounts in example 2 are above the tax free threshold of \$18,200, no tax would apply as a result of the low income tax offset.)

Donal Griffin, Director

Congratulations



Carla Parsons



Vicky Martin

On 1 August 2012 Carla Parsons was appointed an Associate of the firm and Vicky Martin became our first Legal Executive. We congratulate them both on their achievements to date. We wish them well in the ongoing studies both are undertaking to enhance their skills and legal knowledge – Carla is studying for her Masters in Estate Law and Vicky has returned to her Bachelor of Law Studies.