

MARKET UPDATE

2021 has certainly taken an unexpected turn with the highly contagious, COVID19 Delta strain racing through most Australian states and placed them in varying states of lockdown. As a result, this has seen most businesses take another hit as the job keeper program has not been reinstated (at the time of writing). Many businesses that made it through the first lockdown fear their successful return, especially given the brief lockdown of the construction industry and the complete lockdown of multiple suburbs across Greater Sydney. In previous lockdowns the construction industry, which was the backbone of the Australian workforce had remained relatively untouched.

As at July 2021 the unemployment rate had fallen to 4.6% -according to data released by the Australian Bureau of Statistics. This is a decrease from June 2021 when the unemployment rate was 4.9%. Mr Jarvis said a falling unemployment rate should not be heralded as a sign of a booming jobs market as people are falling out of the market due to inability to look for work.

We have selected a number of articles produced by our Solari and Stock lawyers relating to a variety of topics and we hope that these articles provide you some assistance in this current environment. Articles include: COVID19- 2021 Rent Relief Package, Mother Imprisoned for not Complying with Parenting Orders, Powers of Attorney-Be Careful Who You Appoint, Why Collaborative Practice?

If you require an appointment with one of our Team or would like to discuss any of these articles further please contact us on 8525 2700 to discuss the options available or send an email to law@solariandstock.com.au.

COVID-19 2021 RENT RELIEF PACKAGE

There have been some rent relief packages released by the NSW Government due to the current lockdown in Greater Sydney and New South Wales.

In relation to Residential Tenancies if a Residential Tenant has suffered a loss of income of 25% due

to COVID-19 and meets other criteria then the Tenant cannot be evicted during the period from 14 July and at this stage ending on 13 January 2022.

The criteria are that a Tenant needs to show that the rent paying members of the household have lost employment or work hours or had to stop work because members of their household in their care are ill with COVID-19, the take home weekly income is reduced by 25% or more compared to the weekly income received in the 4 weeks prior to 26 June 2021 and they continue to pay at least 25% of the rent payable. The Landlords can obtain a Grant of up to \$1,500.00 from the Government based on the amount of any rent reduction passed on to the Tenant.

There are other circumstances in which a Landlord may continue to seek a termination of the Lease including the sale of the premises, illegal use of the premises, damage to property, hardship on behalf of the Landlord or the end of the fixed term of the Lease.

In relation to commercial, industrial and retail tenants a Landlord is entitled to claim a reduction in their Land Tax for the 2021 year, up to 100% of that Land Tax provided the landlord passes on a rental reduction for that amount to a tenant who is experiencing financial distress as a result of COVID-19.

Commercial and retail Landlords are not able to undertake any steps to evict the tenant for non-payment of rent in the event that the tenant has had a decline in turnover of at least 30% during the lockdown and is classified as an "impacted lessee" under the Regulation unless the Landlord and tenant have attempted Mediation in the first instance.

The Landlord is also not able to call upon the Bond or Bank Guarantee for non-payment of rent during the period of the moratorium. The Lessee has to establish that they are an impacted Lessee and in order to do so have to establish to the Landlord that they have qualified for: -

- a. Micro Business COVID-19 Support Grant;
- b. COVID-19 NSW Business Grant;
- c. Job Saver Grant, and
- d. Their turnover (is less than \$250,000,000.00).

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Our team of experienced lawyers can provide you with expert legal advice for all your legal needs including

- Business & Commercial Law
- Leases – Commercial, Industrial
- Sale & Purchase of Businesses
- Litigation
- Franchising
- Environmental & Local Government Law
- Family Law
- Property & Parenting Settlements
- Divorce
- De Facto Relationships
- Spouse Maintenance
- Child Support
- Estate Planning
- Wills, Powers of Attorney & Enduring Guardianships
- Deceased Estates
- Property Law & Conveyancing

On 13 August, 2021 the NSW Government brought in a further rent relief package which is based to a large extent on the Code of Conduct which applied in 2020. An impacted Lessee can request a rent re-negotiation and the principles of the Code of Conduct are to apply. It is up to the lessee to request a rent re-negotiation and if they don't then there is no basis for claiming rent relief. If the parties don't reach agreement then Mediation is available.

The moratorium does not apply in relation to any action by a Lessor for non COVID-19 pandemic related reasons (for example where a Lessee has breached the Lease by damaging the premises).

If you require further advice or assistance in relation to these issues please call the Solari & Stock commercial team.



Article written by Michael Solari | Image by Sharon McCutcheon on Unsplash

MOTHER IMPRISONED FOR 14 DAYS NOT COMPLYING WITH PARENTING ORDERS

We have many clients who report concerns that their ex-partner has failed to comply with parenting Orders and have considered bringing the matter back before the Court to ensure that there has been compliance with a Parenting order.

Once Court Orders are made, parties have an obligation to comply with them. The Family Court and Federal Circuit Court Judges take a party's responsibility to comply with an Order very seriously. There are significant consequences and penalties to a party if they fail to comply with a Court order.

A recent case of *Kalant & Jordain (No3) 2021* involved a case where a mother aged 36 was imprisoned for a period of 14 days because of her failure to comply with court orders.

The case was heard in the Family Court of Australia at Canberra before His Honour Justice Gill and the decision was made on 9 April 2021. The proceedings related to a mother who failed to comply with Orders relating to her 8 year old child. She had a significant history of failing to comply with previous Court orders.

At the time the matter was before the Court, the mother was already on a bond, in relation to contravention of

previous orders pertaining to the child. The effect of the bond was to suspend a 14-day prison sentence that was imposed at the same time.

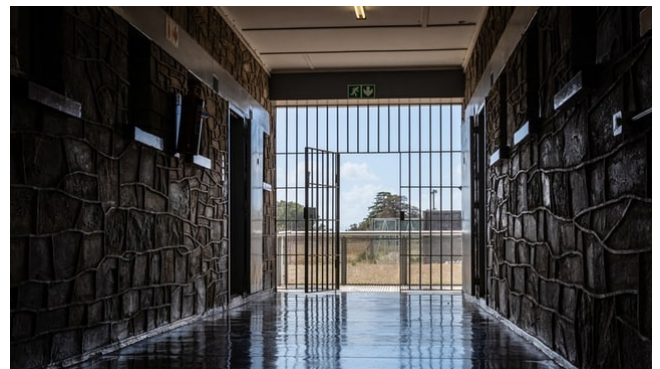
The new proceedings related to 3 alleged contraventions. On 12 March 2021, Justice Gill found that the mother had failed to provide the child to the father on 20 February 2021 in contravention of orders made 8 December 2020. His Honour also found that the mother was in contravention of orders of 22 October 2020 where she on 25 January 2021, first failed to attend upon a single expert for the purpose of a family report and, secondly, by failing to provide the child for assessment for the single expert. The mother had admitted that she had not done this but she failed to establish that she had a reasonable excuse for not complying with the orders.

Whilst at first glance and looking at those three individual contraventions, they do not of themselves, appear to seem significant enough to warrant 'jail time' however when considering the background of the matter and the whole history of the mother's serious disregard for Court Orders, the Judge really had no other option but to impose a prison sentence.

The context of the situation is that the breaches occurred within a situation where the mother had been previously involved in seven previous contravention applications against her. She was on a bond for a period of six months from 25 September 2020 that ended on 25 March 2021 and for three of those contravention she was on a bond for a period of two years from 25 September 2020.

His Honour found that a 14-day term was the only appropriate sanction. His Honour also indicated that it is contrary to the child's best interests for the mother to be non-compliant with orders of the court.

This is a case that helps reinforce the serious consequences for parents who fail to comply with Court Orders. If you are struggling with your ex-partner repeatedly breaking Court Orders, speak to one of our Family Law Solicitors for advice.



Article written by Riccarda Stock | Photo by on Unsplash Grant Durr

POWERS OF ATTORNEY – BE CAREFUL WHO YOU APPOINT

Power of Attorneys and Enduring Guardianships are important tools in managing your financial and lifestyle

Power of Attorneys and Enduring Guardianships are important tools in managing your financial and lifestyle affairs. When you create the documents, you will be known as the Principal, and you will have an Attorney who manages your financial affairs, and a Guardian who manages your lifestyle affairs.

You are able to appoint a least one Attorney and Guardian and depending on how the documents are worded, the appointment of an Attorney will either cease in the event that you lose capacity, or continue. The Guardian only has a power to decide in the event you do not have capacity to make that decision yourself. It is preferable to ensure that your Attorneys can continue acting if you lose capacity as this is when it is most valuable and cost effective.

What can my Attorney and Guardian do for me?

On a low level, an Attorney can do everything with your financial and legal that you can do, but they must do it for your benefit unless the document specifically provides otherwise. This might include paying utility bills, accessing your super fund, speaking with anyone who you have financial dealings with, paying rent or mortgage, managing debts. Your Guardian is a little different because they can only make decisions related to your well being once you lose capacity, and the decisions they can make are guided by the contents of the Enduring Guardianship document. For example, you may want them to be able to turn off life support in certain situations, you may want religious or spiritual services at the end of your life, or you may have particular wishes around medication, treatment or where you receive it.

Who determines capacity and what does it mean?

Capacity is a fluid concept and is determined based on the decision required to be made at the time. For example, the level of capacity required to decide to get a haircut is much lower than that required to consent to undertaking a risky surgical procedure. Just because you have lost capacity so you cannot make a decision in one respect, does not mean that you cannot make a decision on another question or that all future decision making is removed from you.

How am I protected?

The actions and duties of Attorneys and Guardians are governed by the relevant laws, and they impose high standards of conduct on them. All actions taken and decisions made pursuant to the Power of Attorney or Enduring Guardianship must be in the interests of the principal. The Attorney should also keep reasonable accounts and records of your money and property. If an Attorney is paying your bills they should keep a record of what they are paying as they can be called upon to demonstrate what they have done with the money, as they have a duty to protect and preserve your assets.

What are the risks of abuse?

There is a risk of an Attorney committing financial abuse because they have access to your assets. One of the most common and significant forms of financial abuse is using the principal's money for the Attorney's personal use or gain. The biggest risk of abuse in relation to Guardians is the relocation of the principal from their own home to a

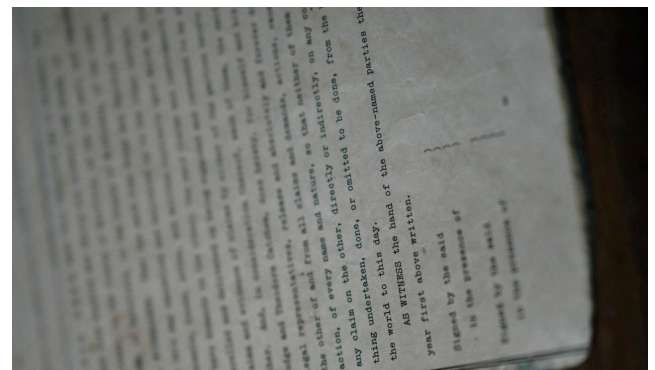
care facility unnecessarily with the intention of accessing proceeds of sale of real estate.

What happens if my Attorney or Guardian does something wrong?

The law provides a very clear baseline in relation to the rights and obligations of Attorneys and Guardians. If an Attorney makes a transaction that is unauthorised, is in excess of their power, or creates a conflict of interest, either the principal or an interested third party should seek legal advice and/or speak to the NSW Civil and Administrative Tribunal (NCAT). If an Attorney has been found to have acted improperly, it may be the case that they are removed from office. This is the same if the Guardian has been found to have acted improperly.

What happens if my Attorney or Guardian dies, retires or is removed from their role?

When you prepare the Power of Attorney or Enduring Guardianship, you will be asked to nominate at least one person to be your Attorney and/or Guardian. However, thought should be had in the event that that person dies, becomes incapacitated, retires or is removed from office. Therefore, it is always going to be preferable to appoint substitute Attorneys and Guardians who will replace the original Attorney or Guardian should the need arise. If you do not have substitutes, and you have capacity, you can simply prepare a new document. But the situation is



Article written by Rebecca Exley | Photo by Annie Spratt on Unsplash

WHY COLLABORATIVE PRACTICE?

What we learn from years of experience in Family Law is that most clients don't want to go Court and most clients don't want an ugly bitter separation with their ex-partner. They want to be more amicable, with a view to keep their relationship with their ex-partner as peaceful and cooperative as possible, especially when children are involved.

Collaborative Practice is a much nicer process. It is completely different way of lawyering, where the whole purpose of it is, to assist parties, in a team environment, to resolve their matter, with the intention of preserving relationships and avoiding the need to commence proceedings.

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How does Collaborative Practice do that?

1. *Parties enter into a Participation Agreement committing that they do not intend to go to court*
2. *There is a high settlement in resolving matters through Collaborative Practice*
3. *The process is less confrontational than a Court room setting:*

Discussions take place through a number of Meetings, where Agendas are set as to what the parties will discuss. This is different from the parties being against each other in a Court room environment. It occurs in a more relaxed setting. The parties will each need to find lawyers that are both Collaboratively trained, both parties are then represented by lawyers.
4. *You work with your ex-partner collaboratively as if you are part of 'a Team' rather than against each other in a traditional legal setting:*

The difference with collaborative practice is that the parties, each of their lawyers, the Coach/ Facilitator and any professionals that the parties jointly engage are all working together with a common goal; to resolve the parties' family law matter, in a way that meets each of the parties' interests.

5. *The Discussions are Open, Honest and Transparent:*

One of the benefits of Collaborative practice is that there is a real transparency in the process that you do not get from an Adversarial process. There is a requirement that the parties receive advice about their matter, in the presence of the other party. This takes away from concerns about distrust, lack

of transparency, concerns about hidden agendas that often arise in a normal traditional setting. It is commonly, the lack of trust and transparency that will often lead to difficulties resolving disputes.

6. *Collaborative practice is interest based, Traditional Family Law Practice is Court Outcome based:*

The Benefits of Collaborative practice is that, as a team, the parties work on considering each of the parties' interests in their family law matter. Each party can have varying interests and needs. Many clients focus on wanting an outcome that is fair, that is quick, that avoids court and that leaves their relationship with the other spouse intact. These are goals that are difficult to achieve through a Court room.

7. *The parties can jointly employ Independent/ Neutral professionals to assist with providing both parties advice to assist the resolution:*

There are different types of neutral experts including psychologists, financial planners and accountants.

Hear from the Experts:

These are the main advantages of collaborative practice in a summary in a nutshell. If you like to learn more information in regards to the webinar please feel free to watch the video link on our website which shows four of our members in our Sutherland Shire Collaborative Practice Group, where we discuss the advantages of collaborative practice and how it works in a family law setting.

The link to the SSCP video can be found here - <https://fb.watch/692vBYAt4P/>

Article written by Nicole Quirk



These articles are for the benefit of our clients and business associates. The document is not intended to be a definitive analysis of legislation or professional advice. You should take advice before any course of action is pursued.

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