

# SOLARI & STOCK

LAWYERS



## NEWSLETTER MARCH 2023

Welcome to our March client newsletter. We have selected a number of articles written by our Solari and Stock lawyers that may be of interest. If you would like to discuss any of these articles further, or require an appointment with one of our Team, please contact us on 8525 2700.

## INTRODUCING SHWETA KUMAR

Shweta Kumar graduated with a Bachelor Degree in Law from the University of Queensland in 2005 and was admitted as a Legal Practitioner in 2006. She commenced her career practicing in both Family Law and Criminal Law and after moving to New South Wales in 2010 she has exclusively practiced in Family Law. Shweta went on to complete a Masters in Applied Law (Family Law) in 2018 and has completed the required training to practice as an Independent Children's Lawyer.



Shweta is experienced in all aspects of Family Law matters including divorce, complex financial disputes, parenting cases, spousal maintenance, child-support matters, de facto relationships and the preparation of Pre-nuptial Agreements and other Financial Agreements. Shweta is passionate about helping clients through their emotional and difficult times in the most pragmatic and cost effective manner. Shweta always looks out for what's best for her clients and whilst negotiating a resolution is always the preferred option, she is able to effectively represent her client's interests in Court if necessary. We are extremely pleased to have Shweta join our Family Law Team.

## CLIENT PORTAL NOW AVAILABLE



The Solari and Stock Client Portal will allow our clients to login to our system whenever they choose to access their own files and see, read, access, and save to their computer everything that we can see right here on our screens at Solari and Stock.

The Client Portal comes with its own mobile phone app so our clients can access their files on their computers, tablets or phones no matter where they are (subject to network access). Only the client or anyone else they expressly authorised will be able to access their files as they will be password protected - this comes at no cost to our clients.

For more information email [kate@solariandstock.com.au](mailto:kate@solariandstock.com.au) or call us on 8525 2700.

## INTRODUCTION OF PAID DOMESTIC AND FAMILY VIOLENCE LEAVE

From 1 February 2023, employees of non-small business employers (employers with 15 or more employees) can access 10 days of paid family domestic violence leave. Employees employed by small business employers (employers with less than 15 employees) can access paid leave from 1 August 2023. Until then, they can continue to take unpaid family and domestic violence leave.

This means, employees will be able to access 10 days of paid family and domestic violence leave within a 12-month period. The entitlement includes both casual and part time employees and is very welcome change to the National Employment Standards for victims of Family and Domestic Violence.

### Taking family and domestic violence leave:

Employees are able to take paid family and domestic violence leave if they need to do something related to the impact of family and domestic violence and is not available to them outside of working hours.

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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

For example:

- making arrangements for their safety, or the safety of a close relative (including relocation)
- attending court hearings
- accessing police services
- attending counselling
- attending appointments with medical, financial or legal professionals.

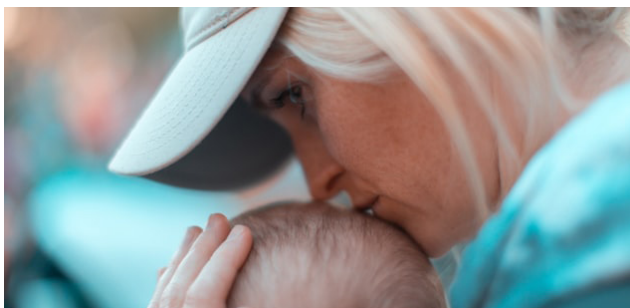
### Payment for leave

Full-time and part-time employees can take paid family and domestic violence leave at their full pay rate for the hours they would have worked if they weren't on leave.

Casual employees will be paid at their full pay rate for the hours they were rostered to work in the period they took leave.

### Support services

Confidential information, counselling and support for people impacted by family and domestic violence is available at the 1800 RESPECT website, the national sexual assault, domestic and family violence counselling service. Find out more information about the new paid family and domestic violence leave at <https://www.fairwork.gov.au/newsroom/news/new-paid-family-and-domestic-violence-leave>.



Article by Kate Allenby | Photo by Derek Thomson on Unsplash

## MEDIATION OR ARBITRATION - WHICH SHOE FITS?

Do you want to try to settle your matter but don't know what to choose - Mediation or Arbitration? Which of these is a good fit and appropriate for your matter? In this article we will inform you of the differences between these two approaches.

### Mediation

Mediation is a dispute resolution process where the parties are assisted by an independent third party to help them reach agreement. Parties may agree to attend mediation to resolve financial and/or

parenting issues. Mediation can be done prior to commencing proceedings or can be ordered by the Court.

In mediation, the mediator acts as an independent third party and facilitates the discussion between the disputing parties. The mediator will generally explain how the mediation will take place, ask the parties questions to identify the issues in dispute and then help develop options to resolve the dispute. You can have a Solicitor present with you if you wish.

Some of the key advantages of mediation are as follows:

- it is less formal and more cost effective than arbitration or litigation;
- everything that is said during mediation is confidential;
- it is relatively inexpensive when compared with litigation or arbitration; and
- it happens over a relatively short space of time

The disadvantage of mediation is that no party is obliged to reach an agreement and it is not guaranteed that the matter will be resolved. If a party is not being reasonable or providing input, the mediation may not proceed very far and be terminated. If an agreement is reached at mediation, it can be formalised by way of a Parenting Plan or Consent Orders.

### Arbitration

Arbitration is a process of dispute resolution where parties provide evidence to an independent adjudicator who then makes a binding decision on the issues in contention. Arbitration is quite similar to Court litigation except it takes place outside of Court.

The parties choose the Arbitrator. Arbitrators are experienced legal practitioners who are specially trained and accredited in arbitration. Each party is still required to file their documents including Affidavits.

The advantages of arbitration are as follows:

- it offers a more flexible approach compared to Court litigation;
- it is more efficient and can be finalised in a shorter time frame than Court litigation;
- it guarantees the resolution of the matter, and the decision can be registered with the Court; and
- it is also confidential

The disadvantage is that although arbitration is efficient, it can still be a little expensive as you are still required to pay legal fees and the arbitrator's fees. Another disadvantage is that parenting matters will not be dealt with by way of arbitration, only property matters.

Now that you know the differences, we hope you can make an informed decision as to which fit is better for you.



Article by Shweta Kumar | Photo by Tim Mossholder on Unsplash

## RESIDENTIAL AGED CARE FOR LOW AND MODERATE MEANS RESIDENTS

In the last newsletter we looked at the costs of care for those with high means (assets above \$178,839.20). What about those with a lower level of assets? How can they afford Aged Care? Residents with low or moderate means will have their Age Care Accommodation supplemented by the Government so what does this mean and who is classed as a low or moderate means resident.

Firstly, it's important to understand what assets are assessable by Centrelink for this purpose. Generally speaking, any financial assets (super, cash, shares etc) are assessable at market value. Gifts made above the Centrelink gifting limits are assessable as are personal assets such as cars, furniture, jewellery etc (albeit at fire sale values).

The resident's home, (unless occupied by a protected person) will be assessed at the lower of market value and \$178,839.20, for most people, automatically discounting them from Low or Moderate means classification. In the case of a couple, who owns what is irrelevant, all assets are simply added up and divided by 2.

Where the resident has assets below \$52,500, they will be considered to be of Low means. Where the resident's assets are between \$52,500 and \$178,839.20, they will be considered to be of Moderate means and once their assets exceed \$178,839.20, they are considered to be of High means and will need to fund their own accommodation.

Income above a certain threshold will also be taken into account and can cause the relevant asset thresholds to be lower in some cases but for the vast majority of people it is simply a matter of assets.

### When is the test applied?

A resident entering care is asked to complete a form to assist Centrelink in determining what their assets are. A resident not in receipt of a Means Tested

Pension will complete an S457 form, disclosing full details of their income and Assets. A Resident in receipt of a Means Tested Pension who owns a home will complete an S485 form disclosing details of their home. The form can be completed up to 120 days prior to entering care and should be completed based on the resident's situation at the time of completing the form (this can be subsequently updated if circumstances change prior to entry). If completed after entering care, the form should be completed based on the circumstances on the date of permanent entry. A Means Tested Non Home Owner Pensioner is not required to complete a form, they will be assessed at the time of entry based on what records Centrelink already holds.

### What if I don't complete a form?

If, following a number of requests, Centrelink does not receive a form from a resident, they will not only be responsible for their full cost of accommodation, but also care. This means that the facility will lose their Aged Care subsidy and on top of accommodation, the resident will pay up to \$320 per day for care.

### So what do these classifications mean?

**LOW MEANS Resident (under \$52,500)** A Low Means resident is not required to contribute anything to their care. Instead, the facility will receive an Accommodation Supplement of up to \$60.74 per day

**MODERATE MEANS Resident (\$52,500- \$178,839.20)** A moderate means Resident will pay a calculated Daily Accommodation Contribution (DAC) of between \$1 and \$60.74 per day. The provider will have an equivalent amount deducted from their Accommodation Subsidy

**HIGH MEANS Resident (over \$178,839.20)** will receive no assistance with their accommodation costs and will need to negotiate the cost with the facility.

### Can I pay a lump sum instead?

Yes. In our last article we explored how the accommodation cost published as a lump sum could be paid as a lump sum (RAD) or a daily fee (DAP), or a combination of the two. A supported resident does not pay the published amount, but rather a calculated Daily Accommodation Contribution (DAC). This daily fee can be converted to a Lump sum by multiplying by 365 and dividing by the Maximum Permissible Interest rate (MPIR) applicable at the time of entry.

So, a resident with a DAC of \$25 per day, could reduce that amount to \$0 by paying a Refundable Accommodation Contribution (RAC) of  $(25 \times 365) / 5\% = \$182,500$ . Of course, the fact that the resident is supported means they probably don't have

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that money at the time of entry. However, they could save 5% pa by using some of the money they do have to pay a partial RAC or, should their circumstances change in future, their partner vacates the house for example, they may be in a position then to pay a RAC.

### What if circumstances change?

The amount of DAC payable by the resident is recalculated each quarter based on the relative calculation at that time and the resident's assets. Sometimes following entry to care, a resident's financial circumstances will change significantly; this may come about due to a windfall (lottery, insurance payout, inheritance) but most usually because a protected person or spouse has now left the home, causing it to become assessable at \$178,839.20.

In this case, the resident DOES NOT LOSE THEIR SUPPORTED STATUS, however the DAC will be recalculated and will increase up to the maximum \$60.74 per day. A Means Tested Fee may also become payable.

This can create a couple of undesirable outcomes. Firstly, it is possible that a supported resident may find themselves paying more than an unsupported resident. This could happen where a supported resident occupies a bed with a published cost of for instance \$47.94 per day. As a fully supported resident (due to limited assets and a home occupied by their partner), they would be paying no cost for their accommodation. If their partner were to die, or move into care themselves, now the home is assessed against the resident at \$178,839.20 and they could be asked to pay a DAC of up to \$60.74 per day, \$16 per day more than the published cost!

Secondly, let's say the home is now to be sold for \$1.5M. The resident thinks well, if I'm going to pay more for my room, I would rather leave this (perhaps shared) room and move to the more expensive single room upstairs with views, at a cost of \$80 per day. After all, the home is sold and I can afford it. The resident however remains

a supported resident and so cannot be charged more than \$60.74 for their accommodation and the provider is unwilling to give them the single room for just \$60.74 per day. So, they are stuck in the shared room and no doubt also now paying a Means tested fee!

The moral of this story is to get advice prior to entering care so you know exactly where you sit in the system. Zenith Aged Care can be contacted on 02 9525 7977.

*Note: This information, whilst current at the time of writing is subject to change. It is intended as general information only and should not be relied on as advice.*



Article by Simon Boylan from Zenith Aged Care |  
Photo by micheile dot com on Unsplash



*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.  
Did you find this newsletter useful? If yes, please feel free to forward it onto a business colleague or friend.*

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