

# SOLARI & STOCK

LAWYERS



## FEBRUARY NEWSLETTER 2024

Welcome to our first newsletter for 2024! We have selected a number of articles by our team of Solicitors and we hope they prove helpful to you. Should you wish to discuss any of these articles, or would like to make an appointment one of our experienced team, please contact 8525 2700 or send us an email to [law@solariandstock.com.au](mailto:law@solariandstock.com.au). Articles in this edition:

1. New Year's Estate Planning resolutions
2. Check your child support assessment!
3. Can I prevent my child from travelling overseas after family separation?
4. Land tax exemption changes

## NEW YEAR'S ESTATE PLANNING RESOLUTIONS



Article by Rebecca Exley | Image created in Canva by Kate Allenby

So, you thought New Year's resolutions were for losing weight and giving up cake. Nope! The new year gives you the opportunity to organise your Estate Planning and take control of your affairs both during your lifetime and on death.

Proper Estate Planning means you have control over what happens as you get on in years, who would provide appropriate support and assistance, and what happens on death. It is not just limited to

preparing a quick Will online and hoping for the best. Estate planning should be as much planning for life: retirement, illness, disability, and children.

The phrase Estate Planning includes a wide suite of documents that may be appropriate to your personal circumstances, such as:

### Appointment of an Enduring Power of attorney:

This document operates during your life and allows you to appoint someone you trust to manage your legal, tax and financial matters in the event you are unable to manage them yourself.

### Appointment of an Enduring Guardian:

This document operates during your life and allows you to appoint someone you trust to make decisions regarding your health and welfare if you become unable to make the decisions yourself. The types of decisions they can make include where you receive it.

### Will:

This document operates only on death, and its main function is to distribute your assets to nominated beneficiaries or structures. However, Wills can do so much more than just distribute assets, so it is important to seek specialised advice when preparing one.

### Superannuation:

Superannuation's, whether self-managed or retail/industry, are useful tools when Estate Planning. We work with your financial advisors and/or accountants to ensure that any nominations are current and accurate and reflect your intention considering your retirement needs.

### Insurances:

Insurance can be tied up with your superannuation, or you can have a standalone policy in place. Regardless, these will form part of your Estate

*(continued on next page)*

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

Planning and should be frequently reviewed. We work with your financial advisors to ensure appropriate policies are in place for your circumstances.

#### Retirement planning:

Estate Planning also considers your retirement plans and what structures you have in place to support retirement. Again, we work with your financial advisor and/or accountant to ensure that appropriate structures are in place to make retirement seamless, no matter your stage of life.

#### Family Trusts and Companies:

If you have family trusts or interests in companies, these interests will not be disposed of by your Will. Careful consideration will be needed to ensure that assets pass down accurately, and positions of control such as trustee and appointor are protected as they pass to another either on your death or during periods of incapacity.

#### Make it Happen in 2024!

January 1, 2024, might be a little too ambitious depending on how you spend New Years Eve, but spend the start of 2024 collating details of your assets and interests, what you want to achieve during your life and on your death, and make an appointment to see our Estate Planning Team at Solari & Stock Lawyers.

Start the year as you mean to go on!

## YOUR CHILD SUPPORT ASSESSMENT MAY NOT ALWAYS BE ACCURATE



If you have your Child Support assessed through the Child Support Agency, you cannot always rely upon the actual assessment being correct.

We suggest that you carefully review and consider any correspondence that you received from the Child Support Agency/Services Australia in relation to your Child Support Assessment and make sure that the information in your assessment is correct.

#### Why do I need to check?

On 28 August 2023, the Commonwealth Ombudsman made a statement on their investigation in Services Australia in relation to the

poor IT systems that have led to inaccurate child support assessments.

Their investigation arose from an individual complaint made in 2018. While the individual complaint was resolved, the investigation identified it was a systemic issue, potentially affecting many customers.

As part of the investigation, Services Australia advised that the systems issue was rectified in June 2020 and is no longer affecting child support assessments. In July 2021, however, Services Australia advised the ombudsman that it now intended to remediate only cases which were either active or finalised with arrears (Error Correction Cases) and would not revisit any of the cases which were finalised without arrears (Remaining Cases). The ombudsman's office were not satisfied with this response and sought further information help them determine the extent of the issue and the action taken to remediate affected cases.

In July 2022, in response to a request from the Ombudsman to provide information, Services Australia advised that the issue affected 47,488 cases – 31,685 of which were Error Correction Cases and 15,803 which were Remaining Cases.

The ombudsman was concerned that customers in the 'Remaining Cases group' (15,803) would be unaware that they may have been affected, potentially significantly, and may have rights to seek review. Further to this they considered Services Australia's response to not deal with the remaining cases, was not fair to the parties affected.

Services Australia's response to the ombudsman advised that if a customer were to contact them regarding the assessment, it would then be reviewed.

As a result of their investigation, the Ombudsman suggested in November 2022 that Services Australia:

1. obtain sufficient data about the nature of the Remaining Cases to inform subsequent decisions made for the remediation of the Remaining Cases;
2. obtain external legal advice on the decision not to correct the error in the Remaining Cases;
3. consider whether alternative avenues of remediation are available to rectify the errors in the assessments without negatively impacting either party, and
4. write to all affected customers in the Remaining Cases cohort to advise them of the error and the agency's decision not to correct the assessment. This should explain that the error was due to a system error caused by Services Australia (not the fault of either party), and include details on review options available to affected customers.

#### Service Australia's response

Services Australia obtained more data to better understand the potential impact in individual

cases and also obtained external legal advice. Subsequently, Services Australia decided that it would take action on the Remaining Cases, despite their earlier position that they would not.

Remedial action (in writing) has now commenced to notify affected individuals (including those with closed cases) about the potential impact of the error and invite them to contact Services Australia

### How could this affect you?

You could be affected by the incorrect assessment error, through no fault of your own – in that it could result in one of the parties' seeking to review the assessment.

As a result, you could be a person affected. If you are contacted by Services Australia about the error, you should look into it and see how the error affects you.

How do you protect yourself to avoid those issues moving forward? The best way to protect yourself moving forward is to make sure that the letter you receive from the Child Support is accurate and it would be worthwhile, checking your assessment against the online child support estimator tool : <https://processing.csa.gov.au/estimator/about.aspx>

*Article by Nicole Quirk | Photo by Joshua Hoehne on Unsplash*  
Further information about this issue is available on Services Australia's website.

## CAN I PREVENT MY CHILD FROM TRAVELLING OVERSEAS AFTER FAMILY SEPARATION?

Some parents may worry that their former partner who wishes to travel overseas with their child will not return. In these circumstances, a parent may file an urgent application to the Federal Circuit and Family Court of Australia prohibiting the child from travelling overseas. This article will explore the orders that the Court can make to prevent a parent from traveling overseas with their child following separation. The Court has power to make orders which:

- prevents a passport being issued for a child,
- requires a person to deliver a child's or accompanying adult's passport to the Court, or
- prevents a child from leaving Australia

### Preventing a Child's Passport Being Issued

To prevent a child's Australian passport from being issued, a concerned parent may lodge a Child Alert Request at the Australian Passport Office or apply to the Court for a child order alert. A Child Alert Request to the passport office will warn the Department of Foreign Affairs and Trade (DFAT) that a person may apply for a child passport without proper legal consent. If a child alert is in force and a

child passport application is made, the parent who made the request will be notified by the DFAT.

A request to the passport office is valid for 12 months and a court ordered alert will stay in force until the child turns 18 or as otherwise directed by the Court.

It is important to note that a child alert will not stop a child departing Australia on a valid passport, including a foreign passport and will not cover passports of other countries. A parent who is concerned about a passport being issued by another country should contact the embassy of that country.

### Delivery of Passport to the Court

The Court may order that the person in possession of the child's passport deliver it to the Court. The order may specify that the Court keep the child's passport for a specific amount of time or until further ordered, to prevent the child from leaving the country.

### Preventing a Child from Leaving Australia

The Court can make orders which:

- restrain the removal of a child from Australia,
- request that the Australian Federal Police (AFP) place the child's name on an Family Law Watchlist, and
- request that the AFP assist in the implementation of the orders.

The AFP will not be automatically notified of the Court orders and must be provided with a copy of the order that places a child's name on the Family Law Watchlist. The AFP will be alerted if a parent has tried to remove a child who is on the Family Law Watchlist from Australia and intervene to prevent them from doing so. A child will remain on the Family Law watchlist until further ordered by the Court, or until they turn 18.

For more information on travelling with children after a separation, refer to the article 'Can I take my child overseas after family separation?' via our website.



*Article written by Mia Doncevski | Photo by KaLisa Veer on Unsplash*

## LAND TAX EXEMPTION CHANGES

On 1 February 2024 changes introduced to the Land Tax Management Act (LTMA) 1956 become effective, changing the eligibility for principal place of residence exemption for landowners (PPR exemption).

If you own less than a 25% interest in the land, and you currently receive a PPR exemption, these changes will apply to you. Refer to Revenue NSW for further information.

Previously, there was no restriction on the percentage of ownership required by a landowner to claim the principal place of residence. Where there were multiple landowners and only one of the owners occupies the property as their principal place of residence, the land tax exemption applied even if the occupier only held a 1% interest in the land.

The changes do not apply to home buyers who are participants in a shared equity scheme that is approved by the Chief Commissioner under section 281 of the Duties Act.

Please refer to the Revenue NSW website for more information <https://www.revenue.nsw.gov.au/taxes-duties-levies-royalties/land-tax/exemptions-and-concessions#principal>

If you believe you may be affected by this change, or wish to make an appointment with one of our Solicitors, please contact our Property Team.



Article written by Valentina Abouzeid.  
Infographic created in Canva by Kate Allenby

# Thank you



*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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