



## MAY NEWSLETTER 2024

Welcome to our latest client newsletter with a selection of articles written by our team of Solicitors. We hope you find them useful and informative.

Articles in this edition:

1. Introducing Suna Ozcan
2. Coercive Control Laws Likely to be in effect from July 2024
3. I want to lend of gift money to my child, what do I need to be aware of?
4. What Assets Can You Give Away on Death Under Your Will?

If you would like to discuss any of these articles further or schedule an appointment with one of our experienced team members, please contact us at 8525 2700 or email us at [law@solariandstock.com.au](mailto:law@solariandstock.com.au).

## INTRODUCING SUNA OZCAN

Suna graduated from Macquarie University with a Bachelor of Arts (majoring in International Law)/ Bachelor of Laws (Honours). She joins Solari and Stock with a wide range of legal experience, particularly in commercial law, banking and finance, litigation, dispute resolution and estate planning.



Joining Solari and Stock's Commercial Team at the end of 2023, Suna will focus on Commercial Law for individuals, corporations, and small business owners.

Her goal is to achieve the best possible outcomes for her clients by tackling complex legal matters and thrives on solving uncommon or unusual issues to protect her clients' interests and exceed their expectations.

We trust you will continue to welcome Suna to the Solari and Stock Team.

## COERCIVE CONTROL LAWS LIKELY TO BE IN EFFECT FROM JULY 2024

Coercive control is a form of domestic abuse. It occurs when someone repeatedly hurts, scares, or isolates another person to control them.

The NSW Government have been working towards enacting legislation to criminalise coercive control since the introduction of The Crimes Legislation Amendment (Coercive Control) Bill 2022 into parliament in October of 2022, and has since said that the new legislation is likely to commence in July 2024.

The new offence of coercive control will carry a maximum sentence of seven years in jail and will criminalise 'abusive behaviour towards current or former intimate partners'. It won't apply retrospectively, meaning that it cannot apply to offences that have occurred prior to its enactment.

To be found guilty of the offence, the following 5 elements must be proven beyond a reasonable doubt:

1. "An adult engages in a course of conduct repeatedly and continuously,
2. The course of conduct is 'abusive behaviour' that involves violence, threats or intimidation; and/or coercion or control of the person against whom the behaviour is directed,
3. The accused intends the course of conduct to coerce or control the other person,
4. A reasonable person would consider that the course of conduct would be likely to cause:
  - the other person fear that violence will be used against them: or
  - a serious adverse impact on their capacity to engage in some or all of the other person's ordinary day to day activities

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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

1. The course of conduct is directed at a current or former intimate partner.”

### Importance of Legislating Coercive Control

NSW will become the first State to legislate against coercive control. The new legislation recognizes the experiences of victim-survivors of family violence and forces perpetrator accountability. It recognises that violence and abuse can be a pattern and aims to reduce violence against women and domestic homicide.

The new legislation is supported by \$5.6 million in initial funding for coercive control training for police, in multiple awareness campaigns and in educational resources to ensure that the law is effectively applied by police.

In addition, the NSW Government has announced further support to women and children experiencing domestic, family and sexual violence with the following investments announced in the 2023-24 Budget:

- \$52.7 million for new Sexual Assault Nurse Examiners and medical and forensic officers,
- \$39.1 million in new funding to prevent domestic, family and sexual violence and support victim safety,
- \$13 million to expand access to the Shared Equity Home Buyer Helper trial to include domestic and family violence victim-survivors.

If you or someone you know is experiencing family violence, there are a number of areas of support available.

Contact:

- National Sexual Assault, Domestic Violence Counselling Service 24-hour helpline 1800 RESPECT on 1800 737 732, text 0458 737 732 or join an online chat at <https://www.1800respect.org.au/online-chat-1800respect>
- 24-hour Emergency Accommodation helpline on 1800 152 152
- Full Stop Australia: NSW Sexual Violence Helpline 1800 424 017
- NSW Victims Services 1800 633 063
- Bravehearts – Sexual Assault Support for Children free call on 1800 272 831
- Kids Helpline is for young people aged 5 to 25 on 1800 551 800
- Lifeline Australia 13 11 44



Article by Mia Doncevski | Image by Oscar Keys on Unsplash

## I WANT TO LEND OR GIFT MONEY TO MY CHILD, WHAT DO I NEED TO BE AWARE OF?

Lending within family members, especially parents lending to their children, is on the rise due to escalating housing costs and economic constraints in Australia. Although there might be a tendency to rely on informal arrangements, our experienced lawyers at Solari and Stock know that a well-constructed, written loan agreement endures over time and overcomes some potential issues which might otherwise arise at law.

While families may feel compelled to assist their children with property purchases or business ventures without formalities or professional advice, there are considerable risks for both the lending parents and borrowing children if legal advice isn't sought and agreements aren't properly documented beforehand.

Typically, parent-to-child loans involve parents financing the purchase of a home for their children. At Solari and Stock, we have vast experience in drafting intergenerational loan agreements and putting in place security measures so that both parties can benefit from enhanced protections against potential future changes in circumstances.

### Gift or Loan?

Determining whether the funds provided by the parents constitute a gift or a loan is essential prior to finalizing the transaction, as each option carries significant consequences. A gift entails an unconditional transfer of funds, while a loan involves a conditional transfer with an obligation for repayment, typically with added terms such as interest payments.

Parents may indeed intend to gift the funds to their children, but it's important to recognize that such gifts can have some unintended consequences. The most significant for most parents is usually that if their child marries, their gift to their child will become part of the marriage asset pool to be divided in any future divorce proceedings.

Documenting the loan arrangement offers various benefits, primarily enhancing enforceability. *In Australia, loans between a parent and child that are not formalised in a written loan agreement will be presumed to be a gift.* The law presumes that when family

members provide financial assistance, they do so with the intention to benefit the recipient rather than to create a legally binding obligation for repayment. As such, proper documentation is essential to mitigate potential legal challenges and ensure clarity regarding the nature of the transaction.

### Consequences of not having a loan agreement

Although there are many consequences that can result from the absence of a formal, well-drafted loan agreement, perhaps one of the most significant is that which is captured in the case of *Maddock & Anor (No.2) [2011] FMCAfam 1340*. In this case a father loaned his child and the child's spouse an amount of \$240,000.00 so that they could buy a new home. There was no loan agreement written or signed. When the child and their spouse decided to divorce, the court would not recognise the advanced money as a loan. The court determined it was given to the child as a gift as there was no formality, no loan term or terms or repayment and there had never been any demand for repayment of the loan until the relationship breakdown.

If you are thinking of lending or gifting money to a family member, considering seeking professional legal advice from Solari and Stock before doing so.



Article written by Suna Ozcan | Photo by Andrew Mead on Unsplash

## WHAT ASSETS CAN YOU GIVE AWAY ON DEATH UNDER YOUR WILL?

Drafting a Will is a crucial aspect of an effective estate plan as it ensures your assets are distributed according to your wishes on your death. However, there are some rules on what assets can be, and cannot be, disposed of under your Will.

### So, what assets can you give away on death under your Will?

Your Will can only dispose of assets called "Estate Assets". Typically, this term encompasses all the possessions, properties, and financial holdings that you own in your own name at the time of your death. These assets form your estate and are subject to distribution in accordance with your Will or the Laws of Intestacy if you do not have a valid Will at the date of your death. Examining some of these Estate Assets in greater detail:

### Real Estate:

This includes any land, houses, apartments, or commercial buildings you own, including jointly owned property, which is held as "tenants in common".

### Financial Accounts:

This includes bank accounts, savings, term deposits, and shares in, generally, listed companies.

### Personal Assets:

These are called "tangible personal possessions" meaning items that can be touched which are not real estate, such as jewellery, artwork, furniture, vehicles, electronics, and family heirlooms.

### Digital Assets:

Don't overlook your online accounts, including email, social media profiles, digital photos, and cryptocurrency holdings. Provide instructions on how to access, manage, or close these accounts in your Will. Some social media platforms now operate a legacy feature, allowing a nominated person to access your account on death.

### Debts and Obligations:

You also need to address any debts in your estate at the date of your death. Things such as mortgages, credit cards, and other debts are treated differently depending on whether they are secured or unsecured. Not all assets can be used to pay debt of an estate, so take legal advice on how best to discharge debts, and what assets can be, and should be, used.

Now that we have dealt with what Estate Assets are, what about everything else? Well, the answer is, it depends. And it depends on the nature of the asset.

### Life Insurance Policies:

These are initially a Non-Estate Asset meaning that they pass in accordance with other documents or law. It will also depend on who the owner of the policy is, and who the life insured is.

The Life Insurance Act 1995 (Cth), provides for how death benefit payments can be paid, and to who. It is common for insurance providers to allow the policy owner to nominate a beneficiary using a nomination. These nominations will either nominate a specific eligible beneficiary, or the Legal Personal Representative. If the latter, and providing the nomination is valid, the benefit payable will be an Estate Asset and disposed of under your Will.

Life Insurance is also one of those assets where strict rules exist under legislation relating to the payment of debts.

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## Superannuation:

Superannuation is a very similar asset to life insurance; and there can be retail, industry or self-managed superannuation funds. This is a general overview of the general rules that can apply to all three, but specific advice will need to be taken depending on your own fund.

The Superannuation Industry (Supervision) Act 1993 (Cth) and the Superannuation Industry (Supervision) Regulations 1994 both set out the rules for the payment of death benefit to eligible beneficiaries under legislation.

However, again it is common for funds to allow members to nominate beneficiaries. The SIS Act sets out eligible beneficiaries as being either "SIS Dependants" or Tax Dependants", and the tax treatment for both is different. If a valid nomination exists, it can either direct the trustees of the fund to pay the death benefits to an eligible beneficiary, or your Legal Personal Representative.

If your "Legal Personal Representative" is the nominated beneficiary, the proceeds of any superannuation become part of your estate and is subject to distribution in accordance with your Will.

Just like life insurance, strict rules exist in relation to the payment of debt using death benefits.

## Business & Trust Interests:

How interests in companies and trusts can be disposed of will depend on the terms of the Constitution (or Corporations Act 2000 if no constitution) or the Trust Deed.

## Jointly Owned Property as Joint Tenants:

Assets held jointly as joint tenants with another pass to the other owner on your death through an operation of law called "Rights of Survivorship". You can own different assets jointly with another, such as joint bank accounts or real estate. These will never form part of your estate unless the joint ownership is severed.

## Conclusion:

Drafting a comprehensive Will requires careful consideration of all your assets and their respective beneficiaries. By identifying and including your estate assets in your Will, you can ensure that your beneficiaries receive the inheritance you intend for them without unnecessary delays or disputes. Regularly review and update your Will to reflect any changes in your assets or personal circumstances, ensuring that your final wishes are always accurately documented and legally binding.



Article by Valentina Abouzeid | Photo by Helena Lopes on Unsplash

# Thank you

The following members of the Solari and Stock Team are celebrating their work anniversaries.

Thank you for your continued enthusiasm and for being such valuable members of our team!

Nikita Ward - 6 years in April

Dianne Auld - 11 years in April

Mia Doncevski - 1 year in May

*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.*

**SOLARI & STOCK**  
LAWYERS

### CONTACT

Level 2, 12 Central Road  
Miranda NSW  
T: +61 2 8525 2700  
E: law@solariandstock.com.au  
www.solariandstock.com.au

### FAMILY LAW

Riccarda Stock  
Nicole Quirk  
Nikita Ward  
Kirstin Attard  
Shweta Kumar

### COMMERCIAL PROPERTY AND WILLS & ESTATES

Michael Solari  
Valentina Abouzeid  
Rebecca Exley  
Suna Ozcan  
Vicki De Bonis - Licenced Conveyancer

