



## AUGUST 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. 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 on 8525 2700 or email us at [law@solariandstock.com.au](mailto:law@solariandstock.com.au).

Articles in this edition:

1. Do I have to share my workers compensation or redundancy with my ex-spouse?
2. Brief Principles of Family Provision Claims under the Succession Act 2006 (NSW)
3. What do I need to do to put my home on Airbnb?

## MEET THE TEAM - MICHAEL SOLARI

Michael was admitted as a solicitor in 1980 and has been working in private practice continuously since then.

He has had extensive experience in relation to large litigation matters in various Courts including several matters in the High Court of Australia and numerous matters in the Supreme and District Courts, Family Court and most other courts and tribunals in New South Wales.

Michael has acted for numerous large organisations including Australian subsidiaries of large multi-national corporations, Australia wide public corporations, a Local Government Council, a franchisor for a large growing franchise network, numerous small business operators and many individuals.



Michael has assisted many people in structuring their personal affairs and guiding them in relation to the preparation of their Wills, Powers of Attorney and Guardianships, including co-ordinating and implementing detailed and complicated estate planning.

Due to Michael's unique and broad range of experience he is able to assist clients in a wide range of matters and is able to impart this experience to other lawyers in the firm in the conduct of their matters. Michael enjoys sharing with clients in achieving their goals, whether they be buying or selling businesses, business documentation, making appropriate provisions in Wills for family members to resolving complex commercial or family law issues.

Michael's main areas of practice today are:

- Business & Commercial Law Franchising (for franchisors and franchisees)
- Business structures (trusts, companies, etc) and business documentation
- Wills, Estate Planning & Deceased Estates Commercial Litigation
- Property – Residential, Industrial & Commercial Commercial & Industrial Leasing

Fun Fact – outside of work Michael spends time on the golf course at New South Wales Golf Club, La Perouse and has organised many a holiday around golf course destinations around the world. He is a dedicated Cronulla Sharks supporter although it doesn't do his health any favours suffering plenty of stressful moments-particularly in the last minute or so of the 2016 grand final when the porch light was finally turned off!

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

## DO I HAVE TO SHARE MY WORKERS COMPENSATION OR REDUNDANCY WITH MY EX SPOUSE?

Separation can be a complex and emotionally charged process, particularly when it comes to the division of assets. One question that often arises is whether a workers compensation or redundancy payout must be shared with a spouse after separation.

Unfortunately, the answer to this question is not clear cut and it depends on several factors, including the nature of the payout and the circumstances of the relationship.

The Family Law Act 1975 governs the division of property following a separation. The court aims to achieve a fair and equitable distribution of assets, considering the contributions of both parties and their future needs. The term “property” is broadly defined and can include various types of assets, such as real estate, superannuation, savings, and compensation payouts.

### Workers Compensation Payouts

Workers compensation is a form of insurance providing wage replacement and medical benefits to employees injured in the course of employment. These payouts are intended to cover lost wages, medical expenses, and rehabilitation costs. The nature of the payout can vary, including lump-sum payments for permanent impairment or ongoing payments for temporary incapacity.

### What is a Redundancy Payout?

A redundancy payout is a sum of money paid to an employee when their position is made redundant. This payout typically includes severance pay, accrued leave entitlements, and other benefits. The purpose of the redundancy payout is to provide financial support to the employee while they seek new employment.

### Lump Sum Payouts as Property

The treatment of a worker’s compensation or redundancy payout in property settlements can be complex and depends on the specific circumstances of each case.

Generally, compensation for lost wages and medical expenses is not considered property, as it is intended to replace income and cover costs directly related to the injury. However, lump-sum payments for permanent impairment may be treated as property, as they represent a form of compensation for the loss of future earning capacity.

Redundancy payouts can be considered part of the asset pool if they are received during the marriage or shortly after separation. In the case of *the Marriage of Zorbas* (1990) FLC 92-107, the court held that a redundancy payout received shortly after

separation was part of the asset pool. The court reasoned that the payout was a financial resource accumulated during the marriage and should be considered in the division of property.

### Factors Considered by the Court

When determining whether a workers compensation payout should be included in the property settlement, the court will consider several factors, including:

1. **Nature of the Payout:** The court will examine whether the payout is for lost wages, medical expenses, or permanent impairment.
2. **Timing of the Payout:** The court may consider whether the payout was received before or after the separation.
3. **Purpose of the Payout:** The court will assess whether the payout is intended to cover specific expenses or provide long-term financial support.
4. **Contributions of Both Parties:** The court will evaluate the financial and non-financial contributions of both parties to the marriage, including homemaking and caregiving roles.
5. **Future Needs:** The court will consider the future needs of both parties, including their earning capacity, health, and financial resources.

If you are going through a divorce and have received a lump sum payout, it is essential to seek legal advice. A family lawyer can help you understand how the payout may be treated in the property settlement and advocate for a fair distribution of assets. Additionally, it is important to keep detailed records of the payout, including the amount received and the purpose of the payment.



Article written by Nikita Ward | Photo by Marek Studzinski on Unsplash

## BRIEF PRINCIPLES OF FAMILY PROVISION CLAIMS UNDER THE SUCCESSION ACT 2006 (NSW)

Family provision claims in New South Wales are governed by the Succession Act 2006 (NSW). These claims allow eligible persons to seek a share or a larger share of a deceased person’s estate if they believe they have not been adequately provided for in the deceased’s will or under the rules of intestacy. The primary objective of these provisions is to ensure

that the deceased's family and dependents are adequately maintained and supported.

### Eligibility

Under the Succession Act 2006 (NSW), only certain individuals are eligible to make a family provision claim. These include:

1. The spouse of the deceased: This includes a de facto partner.
2. A child of the deceased: This includes adopted children and, in some cases, stepchildren.
3. A former spouse of the deceased: This includes spouses who have separated but have not gone through any property settlement.
4. A person who was, at any particular time, wholly or partly dependent on the deceased and who is a grandchild of the deceased or was, at any particular time, a member of the household of which the deceased was a member.
5. A person with whom the deceased was living in a close personal relationship at the time of the deceased's death.

### Time Limits

A family provision claim must be made within 12 months from the date of the deceased's death. However, the court has the discretion to extend this period if it considers there are sufficient reasons to do so.

### Factors Considered by the Court

When determining a family provision claim, the court considers several factors to decide whether the applicant has been left without adequate provision and, if so, what provision should be made.

These factors include:

1. The nature and duration of the relationship between the applicant and the deceased.
2. The obligations or responsibilities owed by the deceased to the applicant.
3. The size and nature of the deceased's estate.
4. The financial resources and needs of the applicant, including their earning capacity.
5. The financial circumstances of any other person who has a legitimate claim on the estate.
6. Any physical, intellectual, or mental disability of the applicant.
7. The age of the applicant.
8. Any contribution made by the applicant to the acquisition, conservation, and improvement of the estate or the welfare of the deceased or the deceased's family.
9. Any provision made for the applicant by the deceased, either during the deceased's lifetime or from the estate.

10. Any evidence of the testamentary intentions of the deceased, including statements made by the deceased.
11. Whether the applicant was being maintained, either wholly or partly, by the deceased before their death.
12. The character and conduct of the applicant before and after the death of the deceased.
13. Any other matter the court considers relevant.

### Court Orders

If the court finds that the applicant has not been adequately provided for, it can make orders for provision out of the estate. The provision can be in the form of a lump sum or periodic payments and can be made from the estate's income or capital.

Family provision claims under the Succession Act 2006 (NSW) are designed to ensure that the deceased's dependents and family members are adequately provided for. The court takes a holistic approach, considering various factors to determine the appropriate provision. Eligible persons who believe they have not been adequately provided for should seek legal advice promptly to ensure their claim is made within the prescribed time limits.



Article by Rebecca Exley | Photo by Nathan Dumlao on Unsplash

## HOW DO I LIST MY HOME ON AIRBNB?

Are you thinking about leasing your home for short term stays? You are not alone, due to the continued rising cost of living and interest rates, it is becoming more common for Australians to rent out their properties, with many using Airbnb and similar platforms. As a platform for short-term rental accommodation, Airbnb has specific laws and regulations in NSW that you must comply with to list your property. If you are thinking about listing your home on a short term property rental site, there are several important steps and considerations to take into account:

### Check Local Regulations:

Verify the short-term rental regulations in your area. The NSW Department of Planning and environment requires all properties being used for short term rental to be registered via their short term accommodation register. Registration is essential to

*(continued on back page)*

confirm compliance with the short term rental fire safety standards click here for more information. Additionally, some councils have specific laws, licensing requirements, or restrictions on short-term rentals. These laws vary by location and can affect your ability to use your property for short-term rentals.

### Permits and Approvals:

Depending on your location, you may need to obtain certain permits, licenses, or approvals before you can start renting out your home on Air BnB.

### Strata By-Laws:

If your apartment is in a Strata building, you may find some Owners Corporations may pass by-laws which would prohibit short term rentals. Some by-laws are restricted by Section 137A of the Strata Schemes Management Act 2015 (NSW).

### Insurance:

Ensure you have appropriate insurance coverage. Standard homeowner policies may not cover home business activities, including short-term rentals like Air BnB. It's crucial to ensure you have the correct level of insurance for damage to property and public liability for injuries to persons.

### Tax Implications:

Obtain accounting advice regarding the tax implications of earning income through Airbnb. This may include reporting rental income and potentially collecting occupancy taxes. It may also have Capital Gains Tax (CGT) consequences converting your residence from a CGT exempt asset to an asset liable to CGT on its sale.

### Preparation:

Clean and prepare your home for guests. This includes ensuring safety features like smoke detectors and providing amenities such as clean linens and toiletries.

### Guest Management:

- Be prepared to communicate promptly with potential guests.
- Establish house rules and communicate them clearly to guests.

### Maintenance and Upkeep:

Regularly maintain your property to ensure it meets guests' expectations and remains in good condition.

NSW Fair Trading released a Code of Conduct for the short term rental accommodation industry in December 2020. The Code establishes rights and obligations that all parties involved in short-term rentals must follow. It also introduces a complaints and enforcement process.

Once you have thoroughly researched listing your property for short-term rental and feel ready to proceed, you are ready to sign up with Airbnb (or your chosen platform), create your listing, and publish your property!



Photo by Logan Nolin 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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