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11TH ANNUAL MELBOURNE WILLS & ESTATES CONFERENCE

Appointing Administrators in Deceased Estates

Documenting Settlement Agreements Reached at Mediation

Lawyers As Executors: If You're Going To Do It, Do It Right

Managing Super Following the Death of the Member

What Happens Next When a Trustee is Improperly Appointed

Trouble-shooting Errors in the Succession Plan

The Future of Discretionary Family Trusts Post-Owies

Beneficiary Rights and Entitlements to Information

Mitigating the Risks in the Digital Succession Plan

PROFESSIONAL SKILLS: Estate Administration Litigation:

Sharpening Your Skillset

PRACTICE MANAGEMENT: Strengthening Your Defences Against Scams,

Phishing and Cyber Security Attacks

ETHICS: Ethical Considerations in Client Representation:

Knowing When to Proceed and When to Refrain

A Two-day Conference

Thursday 8 & Friday 9 February 2024

Crown Promenade Hotel, Melbourne

Feedback from last year's conference:

- 👉 The range of speakers and topics was great and covered a lot of thought provoking content for review in the firms current practices.
- 👉 Knowledgeable, engaging and approachable speakers great mix of delegates willing to participate in sessions and networking.
- 👉 I thoroughly enjoyed all the topics and speakers. It was a very well run conference.



Leaders in online CPD for Lawyers & Accountants

DAY 1: THURSDAY 8 FEBRUARY 2024

**CHAIR DAY 1: MARK MAIER,
DIRECTOR, MCNAB MCNAB &
STARKE, MELBOURNE**

**MORNING THEME: ADMINISTRATION
ISSUES AND CHALLENGING THE WILL**

9.00 - 9.10am

Introduction and welcome

9.10 - 9.55am

Session 1: Appointing Administrators in Deceased Estates: When, How and Doing it Right

In some circumstances, it might be appropriate and indeed preferable for an administrator to be appointed to deal with the administration of the deceased estate. But what circumstances are these? What type of administrator is required? What factors should lawyers consider? This session explores the key issues, including:

- The different types of administrators that can be appointed and the circumstances in which each type would be appropriate to appoint
- The different approaches by courts around Australia to managing such appointments in wills and estate matters
- The practical considerations lawyers should bear in mind when they advise clients in relation to their options
- Recent judicial commentary regarding the proper exercise of discretion to appoint interim administrators, including NSW Court of Appeal decision in *Ritossa*, Victorian Supreme Court decision in *Re Kordos* and Queensland Supreme Court in *Re Franks*] and the key lessons lawyers in all jurisdictions should take away from such decisions

Speaker: Angela Cornford-Scott, Director, Cornford-Scott Lawyers, Brisbane

9.55 - 10.05am Panel Comments and Questions

10.05 - 10.50am

Session 2: Documenting Settlement Agreements Reached At Mediation

It is often the case that a settlement is reached after a protracted and exhausting mediation. While it can be tempting once agreement is reached to delay recording the agreement until another day, this runs the risk of a party changing their mind and undoing all the good will created by the settlement and further entrenching the dispute. There are steps lawyers can, and should take, well in advance to ensure that, at the end of the mediation, the settlement agreement is able to be properly documented and immediately signed by the parties. This session will examine:

- Settlement agreements - when they will be held by the Court to be binding
- In what circumstances can estoppel arise?
- Disputes which may still arise even when settlement agreements are held to be binding (i.e., interpretation issues for contract terms e.g. NSW Supreme Court decision of *Fatseas 2022*)
- Drafting tips lawyers can employ to prepare draft settlement documentation ahead of the finalised agreement:
- How to word clauses when details may not yet be known and practical tips

Speaker: Christian Teese, Special Counsel, Rigby Cooke Lawyers, Melbourne

10.50 - 11.00am Panel Comments and Questions

11.00 - 11.25am Networking Break and Morning Tea

DAY 1: THURSDAY 8 FEBRUARY 2024

11.25am - 12.10pm

Session 3: Lawyers as Executors: If You're Going To Do It, Do It Right

Lawyers, particularly those in suburban or rural practices, are often approached by friends and clients for advice and assistance with tasks that are legal or even quasi-legal in nature. For those clients who have outlived or, for various reasons, can't rely on support from friends or family, their lawyer is sometimes the only person left to administer their estate on their passing. Whether or not a lawyer chooses to take on the role of executor for a friend/family member or client can be a challenging decision to make. This session examines whether lawyers should take on the role of executor and explore steps practitioners should consider taking if they decide to be nominated as executor. It covers:

- The tasks required to discharge your duty as executor, including domestic vs legal vs administrative tasks, what is appropriate for a lawyer to do, when to outsource and dealing with costs for same
- Dealing with conflicts of interests, including the role of disclosure letters
- Charging for services - what may be appropriate, what disclosure is required, tips for drafting charging clauses
- Management of the file within your legal practice and what to do if further or specialist advice is required
- Specific considerations when there is a trust or SMSF
- Does it matter if you drew up the will?
- Recent cases, including *Makripoulis v Arhontovasilis* [2022] VSC 53

Speaker: Stephen Lynch, Director, Somerville Legal, Sydney

12.10 - 12.20pm Panel Comments and Questions

12.20 - 1.05pm

Session 4: Managing Super Following The Death Of The Member

It can be common for lawyers to want to treat superannuation as yet another financial asset of a client to be dealt with in accordance with their overall succession planning instructions. However, the treatment of superannuation on the death of a member is very strictly regulated and one which can be misunderstood without a comprehensive understanding of the SIS Act. This session will dispel some of the myths held about superannuation by providing an overview of the relevant SIS provisions concerning treatment of superannuation on the death of a member and will cover:

- Who can (and who can't) receive superannuation from the fund on the death of the member
- The definition of spouse, domestic partners and dependents for the purpose of SIS compared to tax law and other areas of practice
- The obligations of the executor or administrator vs the trustee of the fund
- What tax needs to be considered, including discussion of ATO Ruling 2011/77 in relation to step-children
- The requirements for valid binding death benefit nominations, who may constitute a valid nominee, how to check and drafting tips
- Practical case studies

Speaker: Nathan Yii, Principal Lawyer, Nathan Yii Lawyers, Melbourne

1.05 - 1.15pm Panel Comments and Questions

1.15 - 2.15pm Luncheon

DAY 1: THURSDAY 8 FEBRUARY 2024

AFTERNOON THEME: RESOLVING PROBLEMS IN THE SUCCESSION PLAN

2.15 - 3.00pm

Session 5: Breaking the Chain: What Happens Next When A Trustee Is Improperly Appointed

Even with the best of intentions, situations arise when it is discovered that a trustee was incorrectly appointed. While forensic analysis can usually determine whose fault that may be, a harder question for lawyers is working out exactly what happens next in terms of the trust and assessing the legal effect and current status of all the decisions made by the trustee ultra vires. This practical session will examine:

- What options might be available to rectify the problem
- Determining the legal effect of the trustee's decisions made were during the period they operated ultra vires
- What happens to the person or entity that was meant to have been appointed as the proper trustee? What rights do they have? Should they be notified?
- The liability and other repercussion for the lawyers involved in the respective transactions
- The steps lawyers should take when reviewing trust documentation for long term clients

Speaker: Adrian Bailey, Principal, Cleary Hoare, Sydney

3.00 - 3.10pm Panel Comments and Questions

3.10 - 3.55pm

Session 6: Everyone Makes Mistakes: Troubleshooting Errors in the Succession Plan

No lawyer sets out to make mistakes when drafting wills and estate planning documents. However, everyone is human and it can be common to discover mistakes when reviewing wills and other documents. This session shall focus on 'what happens next' when a mistake has been identified and shall look at:

- The types of mistakes that arise in wills and estate planning documents and the options available to fix mistakes outside of court processes
- Court orders:
 - when is a court order required and how to seek this
 - what evidence is required and how to disclose the mistake in court documentation
- The role of consent when it comes to rectifying potentially invalid wills - how far can consent get you and whose consent is needed?
- The potential legal and ethical issues which may arise - in what circumstances may a lawyer breach their duty by failing to discover a mistake earlier? Who should be notified, and when, on discovery of the mistake? Who should wear the cost of rectification?
- How the courts across jurisdictions have dealt with mistakes in wills and estate matters in recent times including *Williams v Duerinckx Futures Family Trust* [2022] TASSC 32, *In the Matter of George Hardi Family Trust* [2021] NSWSC 1584 and *Application of Walker Corporation Pty Ltd* [2022] NSWSC 1609

Speaker: Asheetha Jelliffe, Partner, Bridges Lawyers, Sydney

3.55 - 4.05pm Panel Comments and Questions

DAY 2: FRIDAY 9 FEBRUARY 2024

CHAIR DAY 2: JENNIFER McMILLAN, MANAGER, PRACTICE SUPPORT SERVICES, LAWCOVER, SYDNEY

MORNING THEME: THE ROLE OF TRUSTS AND DIGITAL ASSETS IN THE SUCCESSION PLAN

9.00 - 9.05am

Introduction and welcome

9.05 - 9.50am

Session 7: Discretionary No More? The Future Of Discretionary Family Trusts Post-Owies

The recent decision of *Owies* has thrown the future of discretionary family trusts into doubt by challenging the idea that trustees of discretionary family trusts have absolute discretion to distribute income for the benefit of one or more of the beneficiaries of the trust in preference to others. Lawyers must now grapple with the potential ramifications of this decision and what it means for their clients. To help understand these issues and their potential ramifications in more depth, this session will examine:

- What does 'real and genuine consideration' mean when trustees are exercising their discretion? How far does this extend?
- The facts in *Owies*, what led to the decision and its outcome
- What does *Owies* mean for the future of discretionary family trusts in Australia
- When will the court remove a trustee?
- Best practice tips in relation to what advice should be provided to clients following this decision when acting for both trustees and beneficiaries
- What steps should lawyers be advising their clients to now take to evidence the rationale behind trust distributions in the event of a future challenge

Speaker: Andrew Verspaandonk, Barrister, Victorian Bar, Melbourne

9.50 - 10.00am Panel Comments and Questions

10.00 - 10.45am

Session 8: I Have A Right To Know? Don't I? Beneficiary Rights And Entitlements To Information

Traditionally, there have been two schools of thought when it comes to treatment of the rights of beneficiaries by the Courts: some consider beneficiaries to have quite expansive rights, while others considers a more narrow view. Over the past 12 months, a number of decisions have brought these issues to a head. This session will unpack the current legal arguments surrounding the rights and entitlements of beneficiaries to information and documents and seek to clarify how recent cases have impacted questions that arise in practice. It covers:

- What rights do beneficiaries have to information and/or documents about the trust?
- What documents may need to be disclosed to beneficiaries (e.g. summary of information about trust assets or complete financial statements for all entities within the trust structure?)
- Does this now include a right to know the reasoning of the trustee in relation to distributions of discretionary family trusts? How much detail is required?
- What steps might trustees now be expected to take to inform itself of the needs of beneficiaries?
- Is there any corresponding obligation now on beneficiaries to disclose information about their circumstances to the trustee
- Who pays for the access to the information or documents?
- Lessons from recent cases

Speaker: John Armfield, Barrister, Second Floor Wentworth Chambers, Sydney

10.45 - 10.55am Panel Comments and Questions

10.55 - 11.15am Networking Break and Morning Tea

DAY 2: FRIDAY 9 FEBRUARY 2024

11.15 - 12.00pm

Session 9: Digital Disruption: Mitigating the Risks in the Digital Succession Plan

One of the lasting effects on the commercial world arising from the pandemic has been the acceleration of digital transformation and use of technologies. As these changes have made their way to the 'new normal' of legal practice, how can succession lawyers ensure that the legal challenges associated with digital wills are mitigated? This session explores the legal challenges associated with digital wills and provides best practice guidance on ensuring the validity and enforceability of digital wills. It covers:

- The current status of legislation around Australia relevant to the use of technology in succession planning and anticipated legislative reform in this area
- Overview of other legal challenges associated with digital wills, such as questions around authenticity, identity and revocation - how does digital technology exacerbate these challenges?
- Spotlight on undue influence:
 - definition and examples of undue influence in the context of digital wills
 - how digital technology can increase the risks
 - legal remedies available to address undue influence
 - practical tips for succession lawyers to consider to manage the risks
- Best practices for ensuring the validity and enforceability of digital wills
- Recent judicial commentary on these issues across a range of jurisdictions including the case of *Re Curtis* [2022] VSC 621 and useful guidance for practitioners for dealing with such issues when they arise in practice

Speaker: Kimberley Martin, Director, WMM Law, Hobart

12.00am - 12.10pm Panel Comments and Questions

12.10 - 1.10pm Lunch

AFTERNOON THEME: 3 COMPULSORY CPD TOPICS

1.10 - 2.00pm

Session 10: Professional Skills - Estate Administration Litigation: Sharpening Your Skillset When the Gloves Come Off

While few succession lawyers want their matters to end up in court, it is unavoidable that certain matters will eventually result in litigation. This practical session delves into the potential issues that may emerge in succession law litigation and offers insights on how lawyers can effectively equip themselves with the necessary skill set to navigate such situations. Topic areas covered include:

- Probate caveats and the impact of the recent decision of *Re Estate Capelin, deceased* [2022] NSWSC 238 on their use in contested matters
- The ins and outs of ex parte applications:
 - when are they appropriate?
 - how to present your case in accordance with current best practice standards
 - who to notify of the outcome (and when)
- Notices and applications to bar claims:
 - when they ought to be considered
 - practical and strategic considerations if served with one
- The duty of legal representatives in succession law litigation, as discussed in *Limberger v Limberger* [2021] NSWSC 474]

Speaker: Carolyn Sparke KC, Barrister, Svenson Barristers, Melbourne, Vic

2.00 - 2.10pm Panel Comments and Questions

DAY 2: FRIDAY 9 FEBRUARY 2024

2.10 - 3.00pm

Session 11: Practice Management & Business Skills - Strengthening Your Defences Against Scams, Phishing and Cyber Security Attacks

Around 300,000 cyber-crimes are committed in Australia every year. Many of these incidents arise not from hacking but from the behaviour of people who fall prey to scams, phishing and other social engineering methods. As the recent headlines have shown us, lawyers are no exception. This session assists succession lawyers keep on top of their cyber-security risk by examining:

- The different methods currently employed for scams;
- Spotlight on the particular cyber security vulnerabilities experienced by succession lawyers
- Tips for how to identify scams and fraudulent communications
- Suggestions for systems, policies and steps lawyers can take to minimise their risk
- Potential consequences that can arise following a breach and what practitioners should do if they suspect a breach

Speaker: Jason Symons, Partner, Mills Oakley, Sydney

3.00 - 3.10pm Panel Comments and Questions

3.10 - 3.30pm Networking Break and Afternoon Tea

3.30 - 4.20pm

Session 12: Ethics - Ethical Considerations in Client Representation: Knowing When to Proceed and When to Refrain

In succession law matters it can be common to take instructions from a couple and provide advice to ensure their testamentary wishes align. As time passes, people and circumstances change, family dynamics evolve, and relationships can break down. Such events can create challenges and lawyers who fail to stop to consider the ramifications of changed circumstances run the risk of falling foul of legal, professional and ethical obligations. This session will examine:

- An overview of the ethical duties and obligations surrounding when lawyers can (and when they should not) act and the continuing obligations towards client following termination of client relationship
- Case examples to workshop through different scenarios which can create ethical conundrums, including acting for a former client or person connected with a former matter
- Ethical rules surrounding duties owed to former clients, including confidentiality
- Practical guidance about navigating the process when weighing up ethical considerations and how to create safeguards to prevent inadvertent breach of obligations

Speaker: Michele Davis, Consulting Principal, Keypoint Law, Brisbane

4.20 - 4.30pm Panel Comments and Questions

4.30pm Conference Close

GENERAL INFORMATION

Conference Registration Fee

The registration fee includes attendance at the conference and conference papers. Refreshment breaks and lunch on both conference days are included for delegates attending the face to face event.

Conference Papers

TEN will not provide printed copies of the conference papers or Powerpoints. Access to the papers & Powerpoints will be available online to all delegates in the lead-up to the conference (as they become available).

CPD

Lawyers (except WA): 10 CPD units for attending the conference including the 3 compulsory CPD units.

WA Lawyers: 6 CPD points (either all substantive law or 3 CPD compulsory units + 3 substantive law). WA practitioners can claim 6 CPD points for attending the conference (being the maximum allowable per event by the LPBWA).

CPD Certificate

All delegates attending the conference will receive a CPD Certificate confirming attendance.

The Conference Venue

Crown Promenade

8 Whiteman Street, Southbank

Travelling to the Conference Venue

Delegates are advised to make their own travel arrangements.

Conference Dress

Smart casual attire is suitable (note: the temperature in the conference rooms can vary depending on where you are sitting. Short sleeves/summer tops are generally OK, but it is advisable that you bring a jacket/long sleeved top just in case you need it).

TERMS AND CONDITIONS

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Registration is simple; complete the form below and fax or post your registration to us or register online.
Television Education Network Pty Ltd (ABN 19 052 319 365) trading as TEN The Education Network.
GPO Box 61, Melbourne, Victoria 3001
Phone (03) 8601 7700 Enquiries Hayley Williams-Cameron (03) 8601 7730
Register online: <http://www.tved.net.au> – go to CONFERENCES

Please register me for the **11th Annual Wills & Estates Conference** – a 2-day conference to be held in Melbourne on Thursday 8 & Friday 9 February 2024.

Delegates have 2 options for attending the 2024 conference – both cost the same.

- [] **Registration type 1:** Attend in person [code: MWEFEB24]
- [] **Registration type 2:** Attend online [code: MWEFEB24L0]
- [] **Early Bird Registration** – for registrations made on or before 8 December 2023 \$1903 (\$1730 + \$173 GST)
- [] **Discount Registration** – for registrations made on or before 19 January 2024 \$2013 (\$1830 + \$183 GST)
- [] **Full Price Registration** – **\$2178** (\$1980 + \$198 GST)

Discounts are available for multiple registrations: The more you send, the greater the discount. You can access the discount by contacting our Event Coordinator, Hayley Williams-Cameron, to organise your registrations – email hayley@tved.net.au or phone (03) 8601 7730.

- 3 registrations – **5% discount** for each delegate
- If you register 4 people at the same time you are entitled to a **10% discount** for each delegate
- If you register 5 people or more people at the same time you are entitled to a **15% discount** for each delegate.

One-part only? We do accept bookings for attending one day only (either day 1 or day 2). To organise a one-day booking, please contact Hayley: hayley@tved.net.au or phone (03) 8601 7730.

Conference Papers

The papers from this conference will be available in electronic format approximately 1 week after the conference has been held. You can pre-order the papers now online via our website at www.tved.net.au. The papers are **\$198** (\$180 + \$18 GST) (code: E/PMWEFEB24).

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