

## Cheap Wills a costly option



Increasing numbers of people are asking Queensland law firms to help solve disputes resulting from ambiguous wills. More people are coming into solicitors' offices with will kits, asking for help to complete them. While solicitors do not object to the business, they would rather see people getting a high-quality and cost-effective service from the outset. A common mistake made by people writing their own wills is the use of language they believe is self-explanatory and 'legal'. For example, 'all my furniture and effects' may not apply to the piano, the fur coat, or art works. Phrases like 'the contents of my house' cause disputes over whether the intention was to include the car under the house, or the share certificates in the desk drawer. The description 'all my lands' causes problems if some of the land is leased, or is part of a family partnership. A direction such as 'my sons and daughters in equal shares' is another typical error in a homemade will. In the case of three sons and two daughters, does it mean that they should receive one-fifth each, or one-half to the three sons and the other half to the two daughters?

One problem executors of homemade wills face is clauses stipulating inheritance in specific circumstances, such as if the beneficiary performs a particular deed. Such conditions place a burden on the beneficiary to prove their right to greater benefit from the deceased's estate, and trauma for the executor in judging whether the beneficiary has met those conditions. Instead of saving money and leaving a welcome inheritance for their loved ones, a person writing their own will can cause their beneficiaries greater expense and trauma than if they'd had their will legally drawn up by a solicitor. All Australians from 18 years, or younger if married, should have a will.

You should not remove your own teeth, or do surgery on your sore knee. So please leave professional work to the professionals. Porta Lawyers has developed a simple and cost effective process for you to make a will. Please call us to commence the process.

## Queensland First Nations Lawyer of the Year

The partners are proud to announce that Charlie Broadwater, criminal lawyer at Porta Lawyers, was recently a shortlisted nominee for the **Queensland First Nations Lawyer of the Year**.

Charlie's Indigenous heritage is from Far North Queensland where he grew up as one of eight. Finishing school at the end of year 10, he started his career as a plumbing and drainage apprentice. During his trade, Charlie had the opportunity to work for an Aboriginal and Torres Strait Islander housing organisation, heading up the property maintenance program. For Charlie, this sparked something within him where he realised he wanted to further his education. While at University, he was encouraged to study law and after a long journey, believes that he has found his purpose in life, representing the vulnerable in our society.

Please feel free to contact Charlie if he can be of assistance to you at [charlie@portalawyers.com.au](mailto:charlie@portalawyers.com.au)



A solution to the common problem of people losing their Wills and other important documents has been found with *The Will Registry*.

The Will Registry is an online service which allows individual persons or businesses to register the location (but not the content) of their Wills and other important documents at a very reasonable cost.

You are invited to visit the website of The Will Registry at [www.thewillregistry.com.au](http://www.thewillregistry.com.au) to explore the range of services offered and the benefits of registration.

## What's the Goss...

Congratulations to:

- Giovanni & Trish Porta on the arrival of their second grandchild, Oliver.
- Fabio & Nadia Orlando on the arrival of Federico. A baby brother for Caterina.
- Fabrizio Fiorino on his registration as a MARA Migration Agent.

The firm welcomes Danielle Coco, Registered Migration Agent (to assist in our ever growing Migration Department) and Shanae Munro (Secretary) assisting Fabrizio Fiorino in our Queen Street office.

Allyson Steele, our Accounts Manager, will be on maternity leave from May 2018 as she is expecting her second child, due in June 2018. We wish her all the best and await news of the new arrival.

## You have just received a statement of claim ...

### *What should you do?*

First, don't throw it in the recycling bin as it will be recycled in a way that you do not expect. If you have received a claim and statement of claim, you have 28 days from the date you received it (otherwise known as service) to consider your options and, if necessary, file a defence.

### *If you choose to ignore or throw the claim into the recycle bin, the following may occur:*

Deciding to ignore a claim and statement of claim can have unintended consequences. If after 28 days, you have done nothing, the party (plaintiff) who issued the statement of claim against you may apply to the Court to have default judgment entered against you. They may then seek to enforce the judgment to recover the debt by, for example:

1. Requesting an enforcement hearing from the Court where you will be required to submit a financial statement, then be cross-examined about your finances; or
2. You may be issued with a garnishee order to deduct payments from your wages or any rental income you usually receive to pay the debt; or
3. A writ may be issued allowing a bailiff to seize your personal property to pay the debt; or
4. Bankruptcy proceedings may be commenced against you; or
5. If you are a company, a statutory notice of demand may be filed against your company to wind it up; or
6. A combination of the above.

If a judgment is entered against you (or your company) this can affect your credit rating and may make it difficult for you to obtain credit in the future.

### *What should you do if you receive a claim and statement of claim?*

First and foremost, seek legal advice about your options with regard to the facts and circumstances of the claim against you. Being proactive will allow you to take better control of the dispute. A recycle bin approach will not help.

### *There are several options which may be available to you, for example:*

1. You may have a valid defence to the claim and should file a defence and defend yourself in Court proceedings; or
2. You may be able to negotiate with the party that issued the statement of claim to reach a settlement without having to resort to protracted and costly Court proceedings; or
3. You may admit that you owe the amount claimed in the statement of claim. You may be able to negotiate an agreement with the other party to pay the amount claimed by way of instalment payments; or
4. You may be able to include a third party who should be a party to the Claim.

If you have been served with a claim and statement of claim, be proactive and contact Porta Lawyers as soon as possible. We act for both plaintiffs and defendants (not at the same time). Please email Warren – [warren@portalawyers.com.au](mailto:warren@portalawyers.com.au) for assistance.

## Goodbye 457 – Hello ... Confusion



In April 2017 the Federal Government started fear mongering about the future of the 457 visa. We were going to have to say goodbye to one of the nation's strongest visa Subclasses to date. To be replaced by what though? A new Temporary Skill Shortage (TSS) visa was the answer. When news broke of this new visa, it came with little detail. We knew nothing other than it was going to help "Border Protection" and somehow had something to do with people smugglers. Many questioned its authenticity and felt it was similar to tactics used in the Trump campaign as a vote grabber!

However, as of 18 March 2018 we now have a Subclass 482 (TSS) Visa. So what has changed? So much, yet ultimately very little.

The major change, and one which has the ability to hurt some Visa Applicants and Business Owners, is the introduction of two visa application streams. The first stream is the Short-Term stream which allows foreigners to work in Australia for up to two years (with the possibility to renew for a further 2 years). The other is the Medium-Term stream allowing foreigners to work for up to four years in Australia.

Both streams have separate Skilled Occupation Lists (MLTSSL and STSOL) which indicate which type of stream an applicant may be suitable for. In regional areas, additional skilled occupations are available to employers and applicants. Here lies the pain for some. If an occupation is listed on the STSOL, applicants will no longer have the ability to apply for permanent residency through ENS on the Transitional or even the Direct Entry stream as once was the case before the introductions of the two lists.

Other minor changes include the employer needing to show evidence that an Australian worker cannot be sourced for that position and, that the applicant must now also have solid previous work experience, a high level of English and no criminal history.

The \$53,900 salary minimum for applicants under the new TSS visa does however bring a positive light to Australia, ensuring that employers cannot recruit overseas workers on a low salary.

As the reigns are pulled tighter for immigrants seeking entry to Australia for work, migration agents are needed more than ever to advocate a pathway towards success for people wishing to obtain a working visa in Australia. If you need assistance in seeking a visa or any migration matters, please do not hesitate to contact Fabio Orlando by email on [fabio@portalawyers.com.au](mailto:fabio@portalawyers.com.au)