



Client News

\$1.5 Million Keeps War Fiancé's Memory Alive

In the news recently was a story of a \$1,500,000 gift to Wellington College.

Violet Dunn, 92 and a Cairns Slane client, donated the money to the college in memory of her fiancé Tom Paul, more than 60 years after he was killed.

Tom attended Wellington College from 1931 to 1935, not long before the couple met, fell in love and planned to marry. Following the outbreak of the Second World War, he enlisted in the Air Force and within a year went to England, flying bombers in night raids over Europe.

He was killed in 1944, aged 26, when his plane crashed not far from London. Miss

Dunn was deeply affected by Tom's death and never married.

Of the total gift, \$1 million will be applied towards rebuilding the college's memorial hall, demolished in 1968 after being declared an earthquake risk. The rest will be used to help boys from struggling families who would otherwise find it difficult to go on school trips or engage in other school activities.

Cairns Slane consultant, John Phillips, who acts for Violet Dunn, played a major part in finalising the arrangements with the college.

Client Care

You may notice the next time you contact us for legal assistance that, shortly after your instruction, we send you two things – a letter confirming your instructions and our terms of engagement.

Lawyers are now under new rules that govern what information they need to provide their clients. Upon each new instruction, lawyers must now provide to clients the name and status of the person(s) who will have overall responsibility for the work, certain client care obligations that each law firm owes to its clients, as well as other information such as how fees are determined and that lawyer's professional indemnity arrangements.

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Asset Insurance

We are all tired of hearing of finance company and other business collapses.

To rub salt into an investor's wound – what often emerges from these cases is the news that the directors are not personally financially affected to any large degree. There are reasons for this. These people have taken the time and trouble to consult lawyers and put in place asset and estate plans, usually involving trusts, that among other things insulate them personally from the impact of their own business failing. By transferring assets into a trust, an individual can protect his/her assets from potential claims by creditors. There is nothing illegal in this if done properly, in a timely way, and not done to defraud one's creditors.

Think of it as insurance. We think it prudent to insure our cars and homes – even our incomes and health and lives. While there are always ongoing costs in establishing and maintaining such insurance, we are very grateful to have the benefit of it if misfortune strikes.

Prudent estate and asset planning can be viewed as insuring your personal assets against business risk. There are additional benefits to such planning including insuring your family and family assets against the risks posed by spendthrift children, or the risk of their partners claiming a share of your hard-earned inheritance assets, the maintenance of children or grandchildren suffering disabilities and protection against user pay charges.

So next time you are wondering how the latest "name" can retain his million dollar house and Ferrari despite the collapse of his business, remember he just took the trouble to reorganise ownership of his assets.



Enduring Power Of Attorney

New Rules

New rules now apply to the granting, execution and witnessing of enduring powers of attorney. Essentially the legislation changes have been designed to increase the protection of donors.

Ruth Dyson as Minister for Senior Citizens notes that the thrust of the new legislation is to ensure "that the interests of the donor are paramount in all aspects of powers of attorney; and even where a donor loses capacity and the decision making role has passed to the attorney, the donor still has the right to be consulted.

Briefly the changes mean:

- The new forms are much longer and require more information from a donor and a thorough examination of the donor's personal and financial situation.
- More detailed advice as to the effects and implications of granting the enduring power of attorney will be required to be given to a donor.
- In addition in some cases a donor will need to be advised by another solicitor.
- Only solicitors and registered legal executives can witness enduring powers of attorney.

- New certification procedures apply for witnesses and health practitioners certifying as to the loss of mental capacity.
- Consequently legal costs on completing enduring powers of attorney will increase.

There is no doubt that cases of misuse of enduring powers of attorney do occur. Unfortunately such misuse is more to do with the calibre of the person chosen by the donor to be their attorney than the content of the form appointing the attorney!

It remains to be seen whether the changes to the legislation will provide the protection to donors as intended.

Nothing Succeeds Like Succession Planning

Like insurance and a will, succession is not something you put in place at the point in time when you 'need' it - succession is something a good business has in place all along. Establishing a sound business succession plan is beneficial for most business owners. For business owners that are at or near retirement, the issue of succession cannot be ignored.

Succession is the process of passing on the active management of a business in such a way that the business continues with minimal or no disruption when the change in management (and possibly, but not necessarily, ownership) takes place. The process should include not only a plan, but the actions necessary to make it happen. The day succession is needed is not the day to put it in place. It should be in place now. An established succession plan means that:

- the business is not dependent on the day-to-day physical presence of the owner/manager for its continued profitable growth. In practical terms, it means that the owner/manager has time to spend with family and friends, time for well-earned vacations or perhaps even time to start another business. It means that the business employs knowledgeable, motivated people.
- if the owner/manager dies or becomes disabled his or her family and employees are not left unprotected. The business will continue in an orderly fashion.
- the necessary financial and legal elements have been secured with the assistance of qualified professionals: accountants, lawyers and financial planners. These elements will include some or all of the following:
 - insurance
 - a will
 - shareholders' agreement
 - tax and retirement planning.

Contingencies should include not only the certainty of death and the possibility of disability, but steps taken now can help in the financing of a future sale to a third party, existing management or the next generation.

- if the owner/manager chooses to sell the business at some point, the pool of prospective purchasers can include investors who do not immediately have the skills necessary to manage the business or who perhaps have no intention of ever managing it. A larger pool of potential purchasers means a higher price.
- at the point the owner/manager wants to retire, the business does not have to be sold. The 'owner/manager' can simply transition to being the 'owner' - because management is in place.

Remember, it is never too early to begin planning succession issues.



Client Care Continued

We at Cairns Slane will be complying with these new rules by sending to each client on an instruction a letter and our terms of engagement. The letter will confirm in writing what we have been instructed to do and, together with the terms of engagement, will provide clients with the information they are entitled to receive and the basis of our relationship with that client.

If you have any questions when you receive our letter or terms of engagement, please do not hesitate to contact us and we will be happy to discuss.

Give Credit Only When It Is Due!

This is a message to our trader, retailer and supplier clients. Start thinking more like a bank when giving credit to your customers. Many suppliers give large amounts of credit to customers – often on the basis of having a lengthy business relationship. Your bank does not think so generously – and neither should you.

Banks are very careful about examining your history and financial position before giving you credit and take as much security as possible for advancing funds. This places banks in an enviable position when things go wrong with their customers.

Suppliers often take a much more lenient approach relying on previous business relationship history or at best terms of trade to protect them. Having terms of trade is only the start. Business owners must follow through on the protection their terms of trade offer them. Business is tough out there at the moment – so give yourself the best chance of getting paid.

Review your terms of trade:

- What security does it allow you to take?
- Take the security - don't just rely on the right to take it. Often it is too late to protect your position once the customer is in financial difficulty. To register a security charge against your customer on the PPSR (Personal Properties Securities Register) only costs \$1 but can greatly increase your rights to your goods taken but not yet paid for.
- Guarantees – they can seem possible – but look at the substance of the guarantor. Banks require statements of financial position before lending, so make sure you know the financial viability of not only your customer but the persons you are taking guarantees from.
- Have a policy for credit over a certain limit and stick to it.
- Make sure all your documentation has been fully and correctly signed and keep copies.



Areas of Law

Business Law

- Leases
- Franchises
- Commercial agreements (distribution, supply agreements, terms of trade)
- Fair Trading
- Compliance
- Intellectual Property
- Shareholder and joint venture agreements and disputes
- Business and personal finance
- Banking
- Business and asset structures
- Consumer Guarantees Act
- Employment Law
- Insolvency
- Mortgagee sales
- Corporate governance (director and shareholder issues)
- Succession planning
- Sale and purchase of businesses
- Personal Properties Securities Act
- Construction Contracts

Property Law

- Sale and purchase of residential, commercial and rural property
- Arrangement and documentation of mortgages, and business and property financing
- Residential subdivisions
- Residential tenancies
- Cross-leasing
- Unit titles
- Residential and commercial leasing
- Relationship property advice and agreements
- Resource management

Trusts and Estate Planning

- Trusts
- Asset planning and management
- Relationship property
- Wills
- Estate administration
- Powers of attorney

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Disclaimer

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