

# Viewpoint

Autumn/Winter 2009

The newsletter for Australian Executor Trustees Limited clients



## The global economic crisis could affect your Will

The global economic crisis has affected many people's wealth, but have you thought about what this means in estate planning terms?

If your financial situation has changed, particularly if your overall wealth has decreased in value, it's imperative that you review your Will as your beneficiaries may not receive their inheritances in the way you intended when you first set up your Will.

If your Will leaves your estate to several beneficiaries and your overall wealth has decreased, then the amount each will receive will also decrease. Say, for example, you have left your superannuation benefit to one beneficiary (via a binding death benefit nomination) and your house to another. If the value of your super has decreased as a result of the global economic crisis and you were to die, the amount that your beneficiaries would receive would also be lower. With this in mind, it may be worthwhile reviewing your Will to ensure you are happy with the proportion of your estate allocated to your beneficiaries.

Tax is another important issue. Making sure your estate will be passed on in the most tax-effective way is even more vital in tough economic times.

Something else to consider is whether any of the beneficiaries you've nominated in your Will are likely to be at financial risk. You can put strategies in place to minimise the chances of the inheritance passing to the creditors of any vulnerable beneficiary.

**If you would like to review your Will, please call us on 1800 882 218 or talk to your financial adviser.**

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## My view

As most of us feel the effect of the global economic crisis, it's important to consider the effect it could have on your estate planning strategies. Our article on page 1 looks at why these turbulent times should trigger you to review your Will and other estate planning instruments you have in place to ensure your estate is distributed among your beneficiaries in the way you intend.

There have recently been a number of changes to key legislation and our article on this page looks at changes for non-traditional families in relation to estate planning.

Do you have someone with special needs who you would like to provide for in your Will? Our article on page 3 focuses on disability trusts and how you can use these to make sure someone with special needs will be looked after in the event of your death.

The recent horrific Victorian bushfires and Queensland floods serve a timely reminder of the need to keep important valuables in a safe and secure location. AET's Safe Deposit service can help you make sure your valuables are kept safe and secure (see page 5).

I hope you find this edition of Viewpoint interesting and informative. If there are any estate planning questions you would like answered in a future edition of Viewpoint or you would like to consult one of our Estate Planning Specialists, please call us on 1800 882 218.

Andrew McLachlan  
CEO, Private Client

## Estate planning for non-traditional families

In the past few months, there have been some important changes in legislation which can affect non-traditional families.

A new definition of 'de facto relationship' has been introduced to cover relationships between two persons of different sex and between two persons of the same sex. The definition also states that a de facto relationship can exist even if one of the persons is legally married to someone else or in another de facto relationship (s. 4AA (5) Family Law Act 1975).

With respect to superannuation, the definition of 'spouse' has been amended to incorporate same-sex relationships and, in some States, relationships which are registered under legislation.

### How does this affect your estate planning needs?

Intestacy rules across the country have tended to favour traditional family circumstances (not de facto couples, same sex relationships or re-partnering situations). In the absence of a marriage certificate, it is imperative that a properly drafted Will is in place at all times to ensure your assets are distributed according to your wishes.

There are considerable differences in each State about who is able to make a claim against an estate and what assets are available to meet such a claim. The fact that some States now include 'non-traditional' claimants has generated further complexity.

In terms of superannuation, the rules which govern the payment of superannuation death benefits are different to those which dictate the distribution of assets owned in personal names. Under the new laws, payments of death benefits to same-sex partners will be easier as they will no longer have to rely on fitting the category of a 'person in an interdependency relationship' in order to be considered a 'dependant'. Children of one of the partners in a same-sex relationship can also be dependants of the other partner.

(Please note that this article predominantly focuses on the laws in Victoria and New South Wales. At the time of writing this article, SA had yet to refer its powers to the Commonwealth with respect to the Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008.)

**An AET Estate Planning Specialist will be able to explain how the laws in your State operate in this area. For more information, please call us on 1800 882 218.**

# How to look after a family member with an intellectual disability

## Does a family member or one of the beneficiaries in your Will have an intellectual disability?

When you leave an inheritance to someone in your Will, after your death any funds or assets that the beneficiary inherits directly from you will become part of their assets and under their control. However, this might not be the ideal situation for someone with an intellectual disability, who may not be as able to handle their inheritance or their inheritance may need protecting.

One way you can provide protection for a beneficiary whose inheritance may be vulnerable is to set up a protected trust (a type of testamentary trust) designed to meet the beneficiary's specific needs.

Like most trusts, the assets of the trust are held by the trustee(s) but are held for the benefit of another person or people (the beneficiaries). However, unlike a family trust which you would create by deed and commence during your lifetime, a testamentary trust is created within and by your Will but does not take effect until your death.

You have a few options. You can choose the testamentary trust to allocate specific assets, a designated portion of your estate or the entire remaining balance of your estate. You can also include several of these types of trusts in your Will.

## Power of Attorney

Our Enduring Power of Attorney case study on page 2 of the Spring/Summer edition of Viewpoint contained an error for which we apologise. In the third paragraph, the last sentence should have referenced Phillip rather than Tom and should read 'If that was the case Lisa would receive all the estate and Phillip nothing.' We have amended the website version accordingly.

## How does a trust for an intellectually disabled person operate?

Typically, a proportion of your estate is held in trust by the trustee during the life of the beneficiary with an intellectual disability. The trustee has the power to use the income and capital of the trust for the ongoing benefit of the beneficiary for a variety of purposes that are specified in your Will.

It is quite common for people to appoint more than one trustee for these types of trusts. In fact, many people choose a trustee company such as AET to act as a co-trustee along with one or more nominated family member trustees.

This is often a good mix – AET as the corporate trustee keeps records and provides protective oversight of the trust, in particular the trust investments. At the same time, the family member trustees make sure the personal needs of the intellectually disabled beneficiary are being looked after. The combination of a professional trustee (that will be there for the life of the beneficiary) working with trusted family trustees provides maximum protection but at the same time enables a more personalised service to the beneficiary.

When the intellectually disabled beneficiary dies, any capital remaining in the trust is transferred to other beneficiaries nominated in your Will.

If you choose to, you can specify that the intellectually disabled beneficiary can become entitled to the capital of the trust on reaching a certain age or upon meeting another condition specified in your Will. When this happens, control of the trust is transferred to that beneficiary.

**If you are interested in establishing a trust in your Will for someone with an intellectual disability, please call us on 1800 882 218.**

# Ask AET

## Q: How will my family know where to find my Will?

A: You've spent the time making sure you have a Will and that it's up-to-date so that your estate is distributed according to your wishes. It's just as important, therefore, to make sure your family, or the person you've nominated as your Executor, knows where it is stored. This will not only save your beneficiaries time but will also help ensure your wishes are carried out effectively and in a timely manner.

## Q: Who arranges my funeral?

A: In strict legal terms, your Executor is responsible for your funeral. In practical terms, funerals are nearly always arranged by family members.

We always encourage clients to discuss their wishes with their family. While talking about such matters with your family is not a pleasant subject, it could alleviate any concerns they may have about doing the 'right thing' and it helps to make sure your wishes are carried out.

It is also common these days for people to make arrangements during their lifetime by either prepaying or prearranging a funeral with a funeral director of their choice. If you do this, it's important your family and/or Executor are aware of these arrangements so that when the time comes they can be promptly carried out.

Alternatively, you can set out arrangements in your Will or leave a note with your Will (but not attached to it) that sets out your wishes. Either way, it's important your family or Executor are aware of what you want.

**Carrie Brown is an Estate Planning Specialist with AET, based in Adelaide SA. You can submit your questions for consideration in future newsletters by calling us on 1800 882 218 or emailing [webmaster@aetlimited.com.au](mailto:webmaster@aetlimited.com.au)**



Carrie Brown, Estate Planning Specialist

## Q: Is there a reading of the Will?

A: Nowadays, unlike the movies there is no formal reading of the Will. Often family will gather at a time that's comfortable to discuss the Will and in particular how to deal with the distribution of the deceased's personal items. Sometimes the family will all meet with the Executor as a group, or as individuals, depending on their own personal needs and circumstances. It is also common for the family to appoint one or two people to act as the key access points for the Executor throughout the administration of the estate.

So, there is no set process; it's really a matter of what suits the family and the individuals involved.

## Q: I want AET to deal with the legal side of things to save my family from that burden, but can my family still sort out my personal things?

A: Absolutely; if AET is your Executor, we will deal with all the legal and technical issues relating to the administration of your estate and your family can deal with your personal belongings. It is very common for people to appoint one or two trusted family members to look after the distribution of personal effects, as they know how to be in accordance with your wishes. For legal reasons, we always encourage these arrangements to be set out in the Will.

# Keep your valuables safe and secure with AET's Safe Deposit

The recent tragic bushfires in Victoria and the Queensland floods highlight the need to have your valuables, like your Will, stored in a safe and secure place.

Although you don't like to think about what would happen to all your important paperwork and valuables if you lost your home, the massive losses experienced in the recent Victorian fires and floods in Queensland show just how vital it is to have important personal documents, like your Will, stored in a safe and secure place, away from your home.

While losing your passport may be irritating as it can take some time to replace, you may have items that are irreplaceable – like war medals or artwork that are of sentimental value.

Don't risk losing all your valuables – take advantage of AET's Safe Deposit service to store them safely and securely. By the way, AET's Safe Deposit service has been providing security for families since 26 April 1910 – that's nearly 100 years!

You can use AET's Safe Deposit service to store items such as:

- original photos
- family photos and film stored on CD
- passports
- artworks
- family history documents
- jewellery
- war medals
- sporting memorabilia
- certificates and other important paperwork.

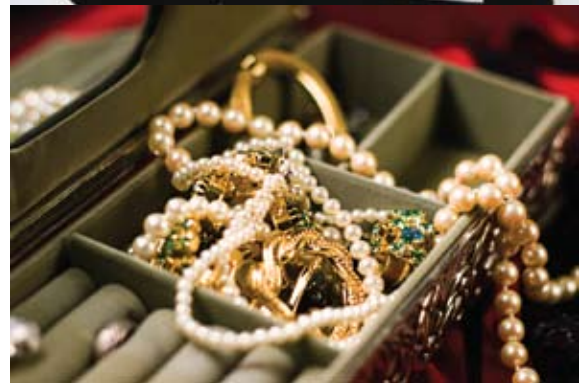
The cost of this service is as little as \$40 per year, depending on how much storage space you require.

The benefits of storing your valuables in AET's Safe Deposit include:

- protection of your cherished valuables
- peace of mind knowing your valuables are safe
- flexibility – it's easy to access your valuables (during business hours)
- inexpensive.

Although AET's main Safe Deposit service is based in Adelaide, if you live outside Adelaide, or interstate, AET can provide the names of suppliers who are closer to you.

To find out more about AET's Safe Deposit service, please call us on **08 8127 1600**.



# Answers to your questions

Do you have an estate planning question you'd like answered? If so, please call us on **1800 882 218** or email **webmaster@aetlimited.com.au**

Your question, answered by one of our Estate Planning Specialists, could be printed in the next edition of Viewpoint.

**Australian Executor Trustees** has one of Australia's largest and most experienced teams of estate planning professionals. For further information, **talk to your financial adviser or contact your local Estate Planning Specialist.**

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