

## ESTATE PLANNING AN OVERVIEW

### ESTATE PLANNING

Whilst a Will is an important part of any good Estate Plan, the practice of Estate Planning involves much more. Estate Planning is a holistic approach to preparing a succession plan. It is the process of making sure you have suitable arrangements in place to ensure that all your testamentary wishes are captured and a transition plan is in place for all of your assets (however they may be owned). Estate planning involves planning not only for death but also for the possibility of legal incapacity before death.

### MAKING YOUR WILL

A Will is legal document by which you record a number of important decisions. Anyone over the age of 18 (or in some circumstances under 18) who is of sound mind is able to make a Will. Without a valid Will, the law in your State will determine who is responsible for administering your Estate and how your assets will be distributed.

By making a Will you decide who should be your Executor. This is the person who is responsible for administering your Estate and ensuring that the terms of your Will are carried out. The role of Executor can be complex and demanding. As such, you should give careful thought to who you appoint to this role.

Your Will also enables you to decide who should be the beneficiaries of the assets which you own personally in your own name, such as your house, bank accounts, investments, car and personal items. Assets such as your superannuation, life insurance, property owned by a trust or held as joint tenants with another person cannot be gifted by your Will. However, as part of the Estate Planning process, you are generally able to direct where these assets should pass or decide who will take control of them. Nominating a Guardian for young children is another important decision made by making your Will.

### ENDURING POWERS OF ATTORNEY

An Enduring Power of Attorney is a legal document that gives another person the authority to make personal (including health) and/or financial decisions for you. It is an important part of any Estate Plan, which allows you to decide who should step in to make decisions for you and manage your affairs, should the need arise in the future.

### ADVANCE HEALTH DIRECTIVES

Under an Advance Health Directive you can provide instructions for your future healthcare. It will come into effect if you become unable to make decisions for yourself due to age, illness or incapacity. Depending on your wishes and circumstances, it is not always necessary to make an Advance Health Directive.



# Cornford-Scott

LAWYERS

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## ESTATE PLANNING AN OVERVIEW CONTINUED

### DISCRETIONARY TRUSTS

If you have a Family, Discretionary or Unit Trust, as part of the Estate Planning process it will be necessary to review the governing documents for the Trust (such as the Trust Deed, Deeds of Variation and Financial Statements) to determine who has current control of the Trust, how control passes on the death of the current controller and how this control can be assigned to someone else.

Depending on your situation and wishes, the Estate Planning steps to deal with Trusts can be simple and straightforward. Or in some cases, more complex arrangements may need to be implemented to secure, as far as may be possible, your wishes and intentions.

### TESTAMENTARY TRUSTS

A testamentary trust is a way of providing for beneficiaries in your Will. It is a tax effective structure that can also provide your beneficiaries with asset protection for their inheritance. As a testamentary trust is created by your Will, it does not come into existence you pass away.

### SUPERANNUATION

Superannuation cannot be dealt with solely by the terms of your Will. The terms of the trust deed will determine how your super entitlements are dealt with. There are some limitations on who can be nominated as a beneficiary of your superannuation entitlements. There are also some important 'inheritance' type tax implications to be aware of. We will review your Superannuation documents and assist you to nominate beneficiaries for your entitlements. The process will be different depending on whether you have a Self-Managed Superannuation Fund or superannuation held in an industry, retail or public sector Superannuation Fund.

### COMPANIES

If you have any companies, we will review the governing documents (such as the constitution and latest ASIC annual return) and assist you to ensure control of the company (and the assets it may own) will pass to the persons you intend.

### REVIEW

Once you have an Estate Plan in place, it is important to keep it under review. Changes in your personal circumstances may affect your arrangements, resulting in financial, circumstantial or asset structures not being carried into effect.

**For more information do not hesitate to contact the office.**