

# *the* Conduit

22  
WINTER



**COUTTS**  
LAWYERS & CONVEYANCERS

**02** Coutts Winter Diary

**03** A Message from Adriana Care

**04** Can I get a divorced if I can't find my spouse?

**06** Assault Charges in NSW

**09** Going, Going, Gone. Applications for the NSW bushfire duty relief scheme have now closed

**10** What happens to my shares when I pass away?

**13** High Court Considers "Dangerous Recreational Activity"

**16** Out and about with Coutts

**17** A wine with Tiarnne Taseski

**18** Your Questions Answered

## CALENDAR DATES

### June

Wednesday 1st	Winter starts
Wednesday 1st	Wollongong Wills Express Night
Monday 6th	Narellan Wills Express Night
Monday 6th	Facebook Live with Adriana & Carina
Monday 13th	Queens Birthday
Monday 20th	Facebook Live (Pre-Recorded)

### July

Monday 4th	Narellan Wills Express Night
Monday 4th	Facebook Live with Adriana & Carina
Wednesday 6th	Wollongong Wills Express Night
Monday 18th	Facebook Live (Pre-Recorded)

### August

Monday 1st	NSW Bank Holiday
Monday 1st	Facebook Live with Adriana & Carina
Monday 1st	Narellan Wills Express Night
Wednesday 3rd	Wollongong Wills Express Night
Monday 15th	Facebook Live (Pre-Recorded)
Monday 29th	Facebook Live with Adriana & Carina



## A MESSAGE FROM

# Adriana

Welcome to the Winter edition of our quarterly newsletter. Not sure about you guys, but I have loved lighting the fire and getting those flannelette sheets outs! It has been so nice to see everyone getting back into their Winter Sport (when it hasn't been rained out or had fields closed). We are really looking forward to watching all of our sporting teams have successful seasons and wish them all the best this year.

It's been an exciting few months here at Coutts with the expansion of our Campbelltown office, offering a beautifully renovated multi-level full service office. We currently have over 50 staff but with this expansion, we will have much more space to continue recruiting and growing the firm. If you are interested in joining the Coutts team; check out our Careers Page: <https://couttslegal.com.au/careers/>

We have also welcomed on board a new Senior Associate, Melissa Care, who is based in our Campbelltown office. Melissa brings with her extensive experience of Civil Disputes & Litigation, Building and Construction Disputes, Commercial Litigation & Employment Law and we are so excited to have her on the team!

We pride ourselves on offering a personal approach to the law and to really understand each situation on an individual basis. Our commitment to client services in the Macarthur and Illawarra Community has recently been recognised and we are so proud to win the Best Business 2022 in the Illawarra Women in Business Awards. Also a special mention to Elly Manoe, Lawyer in our Wollongong office – who was also recognised as Young Business Woman of the Year.

We also recently hosted an in-house Biggest Morning Tea for our staff members, where all proceeds go to Cancer Council Australia. We had a little "Coutts Greatest Baker" competition where Meagan's Caramilk Caramel Slice came out on top. As usual, competition was fierce amongst the staff providing plenty of morning tea for everyone.

We were also very proud to sponsor Club Menangle's "Pacing for Pink High Tea" event which aims to raise funds for the McGrath Foundation. It was a fantastic day networking and watching the horse's race, and we can't wait to do it again! Thank you for having us!

We are looking forward to many more events and watching the start of many charitable functions take off.

Finally, remember Coutts are always here to help you, your family and friends with any legal matter. With specialist lawyers in Property, Conveyancing, Family, Wills & Estates, Injury Compensation, Employment, Commercial, Local Government & Criminal law, there is a Coutts lawyer right for you. Call us on 1300 268 887, we're always happy to help!

*thank you*





# Can I Get Divorced if I Can't Find My Spouse?

## KEY TAKE OUTS

- ✓ It is not uncommon for people to make an application for divorce after the 12-month separation period has lapsed when they are unaware of the whereabouts of their former spouse.
- ✓ It may be a more complicated, costly and lengthy process, however, you can still get divorced if you can't find your ex!
- ✓ If you have taken all reasonable steps to locate your former spouse and are still unable to serve the application on them, you may be eligible to apply for substituted service or an order to dispense with service.

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The short answer is YES. It is not uncommon for people who can't find their spouse to make an application for divorce after the 12-month separation period has lapsed.

## How to get a divorce if you can't find your Spouse

This can be achieved by making a sole application for divorce, which means that your former spouse will not be required to sign the application before it is filed in the Court. However, you will be required to serve the application on your former spouse 28 days prior to the Divorce Hearing. Service can be affected by post or in person.

If you have taken all reasonable steps to locate your former spouse and are still unable to serve the application on them, you may be eligible to apply for substituted service or an order to dispense with service.

This will involve making an Application in a Proceeding with an affidavit addressing how you have made all reasonable steps to serve the application on your former spouse, such as:

- ✓ What attempts, efforts and enquiries you made to find your ex.
- ✓ When you last saw, spoke to or communicated in any way with your ex, and the circumstances of that sighting or communication.
- ✓ The last known address of your ex.
- ✓ Who your ex's closest relatives and friends are, what enquiries you have made with these people about the location of your ex and any replies received.
- ✓ Your ex's last known place of employment (if any).
- ✓ What enquiries you have made with your ex's last known employer and any replies received (if applicable).

- ✓ Details of any property, bank accounts or businesses jointly owned with your ex.
- ✓ If your spouse is living overseas, provide details about the country they reside in, how long they have lived there for and if they plan to travel or move back to Australia.
- ✓ Any reasons why your ex may not be contactable.
- ✓ The costs of trying to locate your ex and whether such costs are creating financial difficulties for you.
- ✓ Any other relevant information that may help the court.

## What options do I have if personal service is not possible?

‘Substituted service’ is when the Court allows the application for divorce to be served on your former spouse via email, post, social media or through a third party that affiliates with your former spouse and has the capacity to bring the application to your former spouse’s attention.

## What is Dispensation of Service?

‘Dispensation of Service’ is when the court makes an order waiving the requirement of you needing to serve the application for divorce on your former spouse provided that the court is satisfied that you have exercised all reasonable steps to locate and serve the documents on your former spouse.

So rest assured – it may be a more complicated, costly and lengthy process, however, you can still get divorced if you can’t find your spouse!



**Tiarnne Taseski**

Lawyer

# Assault Charges in NSW

## KEY TAKE OUTS

- ✓ It is a criminal offence to assault someone
- ✓ You can be found guilty of assault if you use force against another person or threaten force against another person
- ✓ Depending on what form of assault you have been charged with, you may face a fine, imprisonment, or both
- ✓ There are very limited circumstances where assault is lawful

In New South Wales, an act of assault is considered a criminal offence. There are various forms of assault that a person can be charged with, all of which are set out in the Crimes Act 1900 (NSW). The various offences of assaults committed against a person and the associated maximum penalties are set out below:

What type of Assault?	Where is it in the Crimes Act?	Which Court?	What is the Maximum Penalty?
Common Assault	Section 61	Local Court	Imprisonment for 2 years and/or a fine of 50 penalty units
Common Assault	Section 61	District Court (upon election by the prosecution)	Imprisonment for 2 years
Assault Occasioning Actual Bodily Harm	Section 59	Local Court	Imprisonment for 2 years and/or a fine of 50 penalty units
Assault Occasioning Actual Bodily Harm	Section 59	District Court (upon election by the prosecution)	Imprisonment for 5 years
Assault Occasioning Grievous Bodily Harm	Sections 33 and 35	District Court or Supreme Court	Depending on the circumstances and the offence, imprisonment for between 10 years and 25 years

The Crimes Act 1900 (NSW) also includes particular offences for assaults committed against a specific type of person, for example against the police, and for assaults committed with a particular intention.

## What is Considered an Assault?

In New South Wales, an assault can be:

- ✓ A striking, touching or application of force against another person (Use of Force)
- ✓ Any act which causes another person to fear immediate and unlawful violence (Threaten of Force)

## What is Common Assault?

An act of common assault generally involves no injury to the victim, or injuries that are not serious or lasting in nature. Examples of common assault include, but are not limited to:

- ✓ Oral or physical threats of violence e.g. raising your fist and threatening to punch someone
- ✓ Spitting on someone
- ✓ Poking someone with a stick
- ✓ Throwing an item at another person, regardless of whether it hits them or not
- ✓ Physically restraining someone against their will

## What is Actual Bodily Harm?

Actual bodily harm includes such harm that interferes with the health or comfort of the victim. Examples of actual bodily harm include, but are not limited to:

- ✓ Scratches
- ✓ Bruises
- ✓ Psychological injury

## What is Grievous Bodily Harm?

Grievous bodily harm requires a serious or permanent injury to the victim. Examples of grievous bodily harm include, but are not limited to:

- ✓ Fractures or significant injuries requiring surgery
- ✓ Loss of sight
- ✓ Scarring
- ✓ Any permanent or serious disfiguring
- ✓ The destruction of a foetus in a pregnant woman
- ✓ Any grievous bodily disease

## What does the Prosecution Need to Prove?

For a person to be found guilty of common assault, the prosecution needs to prove:

1. That the defendant used, or threatened to use, physical force against another person that was, or would be, unlawful; and

2. That the physical force was either intentional or reckless.

For a person to be found guilty of assault occasioning actual bodily harm, the prosecution needs to prove the elements of common assault and that the victim has sustained actual bodily harm.

For an act of assault occasioning grievous bodily harm, the prosecution needs to prove the elements of common assault and that the victim has sustained grievous bodily harm. Under the Crimes Act 1900 (NSW), grievous bodily harm may be caused by any unlawful act, or omission.

## What are the Defences?


There are some limited lawful defences to an act of assault. The 3 main defences are:

3. Lawful excuse/consent à actions that may ordinarily constitute an assault will not be unlawful if there is an agreement to the physical contact. Examples of such circumstances include when a doctor or surgeon treats a patient, or during the playing of a sport
4. Lawful chastisement à in New South Wales, parents are entitled to use reasonable and moderate force to physically discipline their children. Section 61AA of the Crimes Act 1900 (NSW) sets out what is lawful when physically punishing a child.
5. Self Defence à A person is not criminally responsible for an assault if the act was made in self-defence. Section 418 of the Crimes Act 1900 (NSW) sets out that for a self-defence to be available, the person must believe that their actions were necessary to defend themselves or another person, to prevent or terminate the unlawful deprivation of their liberty or the liberty of another person, to protect property from unlawful taking, destruction, damage or interference, or, to prevent criminal trespass to any land or premises or to remove a person committing any such criminal trespass. The conduct which constitutes self-defence must also be a reasonable response in the circumstances as he or she perceives them.



**Elly Manoe**  
Lawyer





# Going, Going, Gone. Applications For The NSW Bushfire Duty Relief Scheme Have Now Closed

## KEY TAKE OUTS

- ✓ Applications for the NSW Bushfire Duty Relief Scheme have now closed
- ✓ The Scheme offered an exemption, reduction or refund from/of duty for property owners purchasing alternative properties after their homes were destroyed in the 2019/2020 NSW bushfires

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Going, going, gone. Applications for the NSW Bushfire Duty Relief Scheme have closed.

In March 2020 the NSW Government announced relief for home buyers who lost their homes in the then recent bushfires.

The Bushfire Duty Relief Scheme offered an exemption, reduction or refund from/of duty for NSW residents whose homes were deemed no longer habitable as a result of the 2019/2020 NSW bushfires and who chose to purchase an alternative property instead of rebuilding.

The application period was effective for 2 years, from 3 March 2022. Applications for the Scheme closed on 3 March 2022.

For further information about the Scheme, [please see here](#).



**Melina Costantino**

Licensed Conveyancer & JP



# What Happens To My Shares When I Pass Away?

## KEY TAKE OUTS

- ✓ Who do you want to receive your shares?
- ✓ Generally you need to ensure you have a valid Will to allow for your shares to pass to the person(s) you wish.
- ✓ Can my husband/wife transfer or sell my shares into their name straight away? Not necessarily, it depends on the share registry. Each registry has different requirements to allow a transfer or sale of a deceased persons shares. This depends on how you own the shares (jointly or in your sole name), the amount and the value of the shares as at date of death.
- ✓ Do I need Probate or Letters of Administration to sell/transfer a deceased persons shares? Similarly to the above question, it depends on the requirements of the share registry as to whether it will be necessary for you to obtain a Grant of Probate or Letters of Administration, to finalise a sale or transfer.

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The financial market “being in the red” has been one of the hot topics of February 2022. With this fresh on the mind and with the ‘new year’ feeling slowly running away from us, many will now take the time to think “what next?”

When canvassing out your new year financial goals you may have bought shares in companies on the ASX while they are on the low. Perhaps you’ve sold in an almighty hurry. Well, if you have held shares for a lifetime or you are fresh to the land of ASX, then you may wonder what actually happens to your shares should you pass away? Do the big corporates absorb them back in to be sold to someone new? Will my grandchildren sell or transfer them into their name straight away? Can they even do that?

Read on to learn more about the requirements for sale or transfer of shares in a deceased estate.

## Who can I give my shares to?

In general, if you own shares in any publicly listed company, solely in your name, then you can give these to whoever you wish in your will.

Example:

Joe Blogs is 99 years old. He has 8 Grandchildren, 12 Great Grandchildren and 1 Great Grandchild on the way!

He has made an inventory of all of the major assets he owns. From his car to his bank accounts and of course his shares! Once he looked back at his snapshot of what he owns he got to thinking about where he wanted it to go. This is where his Will became of paramount importance.

Let's think about his shares in particular, Joe Blogs has 5,400 shares in Telstra Corporation Limited. He has held them for what feels like a lifetime now. He wants to give his Telstra shares to Sally Blogs, his first-born Great Grandchild. Joe didn't realise the value of making a valid Will until now. After reading "**I Don't Need a Will. I'm Too Young!**", Joe realised that his wish for his shares to go to Sally wouldn't come into fruition if he didn't seek some advice to write a valid Will including a specific gift for Sally.

## **Can my husband/wife transfer or sell my shares into their name straight away?**

Joe Blogs and his wife, Jenny Blogs, came into our office to instruct me to draft their Wills. I know what you're thinking, "Good on you Joe!". With his snapshot of assets in hand, it made it easier for Joe and Jenny to know exactly what they wanted to do.

Example:

Joe and Jenny own most of their assets jointly.

Joe owns his Telstra shares (above) in his sole name. This means, that if Joe passes away first, then Jenny (as Joe's Executor) will need to look at the requirements for Telstra's share registry.

I advised Jenny that as the Executor it would be her job to organise what Joe owns and realise whether a Grant of Probate will be necessary. I explained to Jenny that Link Market Services is presently the share registry for Telstra. Each asset holder has different requirements to finalise the assets managed by that organisation. Link Market Services has a handy checklist to consider.

If the parcel of shares is valued at over \$15,000.00 then this will ignite the moment a Grant of Probate will be necessary to finalise the shares. Yes, you will need Probate whether you intend to sell or transfer the shares.

As an example, the share price today is \$3.94AUD and Joe has 5,400 shares. Therefore, the value of the parcel of shares would be \$21,276.00 which is over the abovementioned threshold. If something happened to Joe today, a Grant of Probate would be needed before a transfer or sale of the shares may occur.

However, everything else, including a parcel of Origin Energy shares are owned jointly.

Joe and Jenny quickly had a sigh of relief as they realised the Origin Energy shares automatically go to each other. By virtue of being joint, this means that they do not need to go through Probate to finalise the transfer or sale of shares. They can sell or transfer them into the survivors name when they feel ready.

## Do I need Probate or Letters of Administration to sell/transfer a deceased person's shares?

In our example of Joe and Jenny, we can see that it depends on whether you own the shares jointly or if they are in one person's name. In this way, Joe and Jenny's family may need a Grant of Probate someday when they both are no longer here. Then everything passes down to the next beneficiaries in their wills. This is because if Joe passed away then the shares are now in Jenny's sole name. If Jenny then passed away it depends on the value of the shares on that day.



Charlotte O'Connor

Lawyer



# High Court Considers “Dangerous Recreational Activity”

In the recent case of Tapp v Australian Bushmen's Campdraft & Rodeo Association Limited [2022] HCA 11.

On 6 April 2022 the High Court held that the Respondent had breached its duty of care, that breach caused Ms Tapp's injuries, and Ms Tapp's injuries **were not the result of the materialization of an obvious risk of dangerous recreational activity**. This is a turning point for all personal injury claims that fall under dangerous recreational activity.

## Background

Ms Tapp was an experienced and very able horse rider and campdraft contestant. On 8 January 2011 during an event organized by the Respondent Australian Bushmen's Campdraft & Rodeo Association Ltd, four contestants had fallen whilst competing. After the first three falls, another contestant approached one of the event organisers and said that the competition should cease as the ground was becoming slippery. The organisers continued the competition.

After the fourth fall, it was again stated by a contestant to the organisers that the ground was “unsafe”. The organisers delayed the competition to discuss the conditions but decided to continue. This is a turning point in the case.

Ms Tapp competed and fell when her horse slipped on the ground of the arena. She suffered a serious spinal injury. The case went to trial in the Supreme Court whereby it held that the respondent **did not breach its duty as the injuries were a result of the materialization of an obvious risk**.

The High Court allowed the Appeal and stated that a reasonable person in the Respondent's position would have foreseen a probability of harm would occur if the competition was not stopped. While camp drafting was a dangerous recreational activity, the harm was not the materialisation of an obvious risk of that activity. The risk was an elevated risk of physical injury by falling from a horse that slipped due to the deterioration of the area surface. The risk would not have been obvious to a reasonable person in Ms Tapp's position, so the respondent was liable for negligence.

This case will assist many in the obvious risk that arises from dangerous recreational activities. See the case at Tapp v Australian Bushmen's Campdraft & Rodeo Association Limited [2022] HCA 11.



**Karena Nicholls**  
Partner





# Out and About with COUTTS





# A Wine with... Tiarne

## PROFILE

**Position:** Lawyer

**Location:** Campbelltown

**Area of Practice:**  
Criminal & Family Law



**Q: How would you describe yourself in two words?**

A: Honest and Loyal

**Q: What would your best friend say is your best quality?**

A: Ability to show kindness, empathy and strength in a complicated situation

**Q: My favourite motto / mantra is:**

A: She believed she could, so she did

**Q: My pet peeve is:**

A: Flakiness

**Q: On the weekends you can find me:**

A: Playing with my puppy, hanging out with my friends and family, visiting new places and trying different outdoor activities

**Q: The last book I read was:**

A: The Tattooist of Auschwitz series

**Q: The top 3 most used emoji's on my phone are:**

A: ❤️😂🙌

# Your Questions Answered



**WE SEPARATED 15 MONTHS AGO, BUT THERE WERE A FEW WEEKS WHEN WE GOT BACK TOGETHER TO TRY AND SORT THINGS OUT. CAN WE STILL GET DIVORCED?**



It is very common for people to get back together for short periods of time after a separation. If this has happened to you, the separation is 'paused', but continues again if you separate once more.

For example, Sarah and John have been separated for two months. They decide to try and work things out. They get back together for six weeks. At the end of the six weeks, they decide to separate once more. At the end of that six weeks, John and Sarah have only been separated for two months. The period of separation continues from there.



**WHAT IS THE DIFFERENCE BETWEEN A POWER OF ATTORNEY AND ENDURING GUARDIANSHIP?**



A power of attorney is a legal document which allows an individual (known as the principal) to appoint another person (known as the attorney) to make decisions about your financial property and manage your financial affairs. An enduring guardianship is a legal document that allows you to appoint another person to make decisions on your behalf regarding your medical, health and lifestyle decisions when you lose mental capacity.



**THERE IS A DEVELOPMENT POPPING UP NEXT TO ME WHAT CAN I DO?"**



We have prepared submissions to Council on behalf of a client in relation to a proposed development on the neighbouring property which was an overdevelopment of the site and also not a lawful use of the site. The development proposed to turn a small block of units into a multi-dwelling site that was not in keeping with the heritage and landscaping and tourist attractions for the picturesque location.

We await an outcome but hope that the development will be rejected by Council.



**WHAT SHOULD I DO WHEN SIGNING A CONTRACT?**



Be sure you have read and understood the entire contract. If you do not understand it, don't sign it until you do understand it.

Be sure everyone signs & dates the final page.

Be sure everyone initials & dates each page of contract.

Contract pages should have numbering "1 of xx pages".

Be sure all warranties etc that are incorporated by reference are attached to basic contract.

If the contract is a form contract, \*all\* entries must be filled out (if the space does not apply use "NA" etc).



**WHAT CAN I DO IF SOMEONE BREACHES A CONTRACT?**



Most contracts are enforced in court. If the other party breaches the contract, you can go to court to try to collect damages or obtain 'specific performance'. However, some contracts have an arbitration clause which requires any disputes to be arbitrated by a neutral party.



**WHAT INSURANCE WILL I NEED IF I AM BUYING A HOUSE?**



If you are buying a home unit, a certificate of currency should be obtained from the body corporate's insurer to make sure the property is adequately insured. Your lender requires details and proof of this on or before settlement. If you are moving into the property before settlement, the seller would probably want to make a special arrangement whereby you are responsible for insurance from the time you take possession.

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**“Coutts is a powerful female founded law firm with a core value system that puts people first. Our reputation as the legal business of choice is recognised by our achievements and awards.”**

**Adriana Care**  
**Managing Partner**



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