the Conduit

23
AUTUMN

COUTTS
LAWYERS & CONVEYANCERS

CALENDAR DATES	
MARCH	
Thursday 2nd	Wollongong Wills Express Night
Monday 6th	Narellan Wills Express Night
Wednesday 8th	International Women's Day
APRIL	
Monday 3rd	Narellan Wills Express Night
Thursday 6th	Wollongong Wills Express Night
Friday 7th	Good Friday
Saturday 8th	Easter Saturday
Sunday 9th	Easter Sunday
Monday 10th	Easter Monday
Tuesday 25th	ANZAC Day
MAY	
Monday 1st	Narellan Wills Express Night
Thursday 4th	Wollongong Wills Express Night
Sunday 14th	Mother's Day

A MESSAGE FROM Adriana

Welcome to the Autumn edition of the Coutts Conduit! As we move further into the year, time seems to be flying by, and we are excited to be back with our team feeling fresh and energised after a well-deserved break. We're looking forward to getting back to work, reconnecting with our clients and colleagues, and reviving our networking activities.

Have you ever been driving down the street and suddenly been blinded by a vibrant purple? Well, fear not, it's just Coutts' new signage! We've updated our branding to be even more vibrant and eye-catching, so you'll see us not only on buses, social media, and online but also in all our purple glory as you pass by our offices.

Over the break, we have been busy with renovations and expansions, including the opening of our new Wollongong office. Located right in the heart of the Wollongong CBD, our new office provides a convenient and accessible location for our clients in the region. We are excited to share this new space with you, and our team looks forward to welcoming you there for your next visit.

At Coutts, we believe in giving back to the community and supporting important causes. This year, we are proud to continue our community support through our partnerships with Turning Point, various local sports team sponsorships, and other charity events throughout the year. We are committed to making a positive impact in the communities where we operate, and we look forward to sharing more updates on our community initiatives and events as the year progresses.

On a related note, we would like to remind everyone that all of our offices have Escabags available. If you or someone you know is fleeing a domestic violence situation, these bags are filled with essential items and can be requested with no questions asked. We believe that there is no excuse for abuse, and we encourage you to share this information with your family, friends, and colleagues. Let's work together to help those who need it most!

In this edition of the Coutts Conduit, we have some exciting updates and insights to share with you. We hope you enjoy reading it and find it informative and engaging. As always, we appreciate your continued support and look forward to hearing from you soon!

thank you

How is Superannuation Dealt with in Family Law Property Settlements?

KEY TAKE OUTS

- Under the Family Law Act 1975 (Cth) superannuation is categorised as a type of property and therefore, must be considered when splitting the property pool.
- When split, superannuation will not become a cash asset but will usually be retained by the super fund until you reach the retirement age.
- A superannuation spilt can be dealt with as a part of the property settlement or as a standalone agreement.

When parties to a de-facto relationship or marriage split, the property that was acquired during the relationship must be divided between the parties. The percentage of the property pool that each party will receive is dependent on numerous factors including their financial and non-financial contributions to the relationship.

Superannuation that is accrued throughout employment will be considered property when splitting these assets between the parties. However, the Family Law Act 1975 treats superannuation as a different kind of property that is still subject to superannuation regulations and laws.

Superannuation Splitting

Generally, superannuation will be divided between the two parties on a percentage basis. As abovementioned, the percentage split will take into account financial and non-financial contributions. Therefore, if one party is the homemaker and is unemployed, their contribution to the maintenance of the home, parenting of the children etc. will be considered in the split.

However, in certain circumstances such as where the value of superannuation is so low that splitting it would not be cost-effective, a splitting order will not be available.

How is Superannuation Split?

The superannuation split can be made by a formal written agreement, consent, or court orders.

A formal written agreement requires both parties and their lawyer to sign a certificate stating that independent legal advice has been received. The agreement is not registered with the Court and thus, it is important that copies of the agreement are retained.

An Application for Consent Orders can be filed with the Federal Circuit and Family Court of Australia, where both parties have reached an agreement as to the percentage split. The application is to be filed with draft Consent Orders that will outline the agreement the parties have reached. Orders will then be made in chambers.

Before a superannuation can be split, a valuation must be obtained from the superannuation fund. The value of a superannuation interest can be ascertained by an eligible person making an application to the trustee. An eligible person includes:

- The superannuation fund member,
- A member's spouse; or
- Any person who intends to enter into a superannuation agreement with the member.

The fund's trustee must be informed of the Orders being sought. As the fund is a third party, they must be given the opportunity to object to the Orders.

Once the splitting Orders have been finalised, the trustee of the super fund should be provided with a sealed copy. Generally, the party receiving the benefit is responsible for providing the trustee with proposed and sealed Orders.

After an Order has been made, the amount split will typically be transferred into the other party's existing superannuation fund as a lump sum or paid to a superannuation fund of their choice.

Superannuation Flagging

Superannuation flagging differs from superannuation splitting in that flagging restricts the trustee of the super fund from dealing with the interest until the Orders are lifted.

A flagging Order is commonly used when the value of superannuation is being assessed or is unknown. Generally, flagging Orders are sought when one party is nearing retirement age and will become eligible to access their superannuation prior to a formal agreement regarding superannuation being reached.

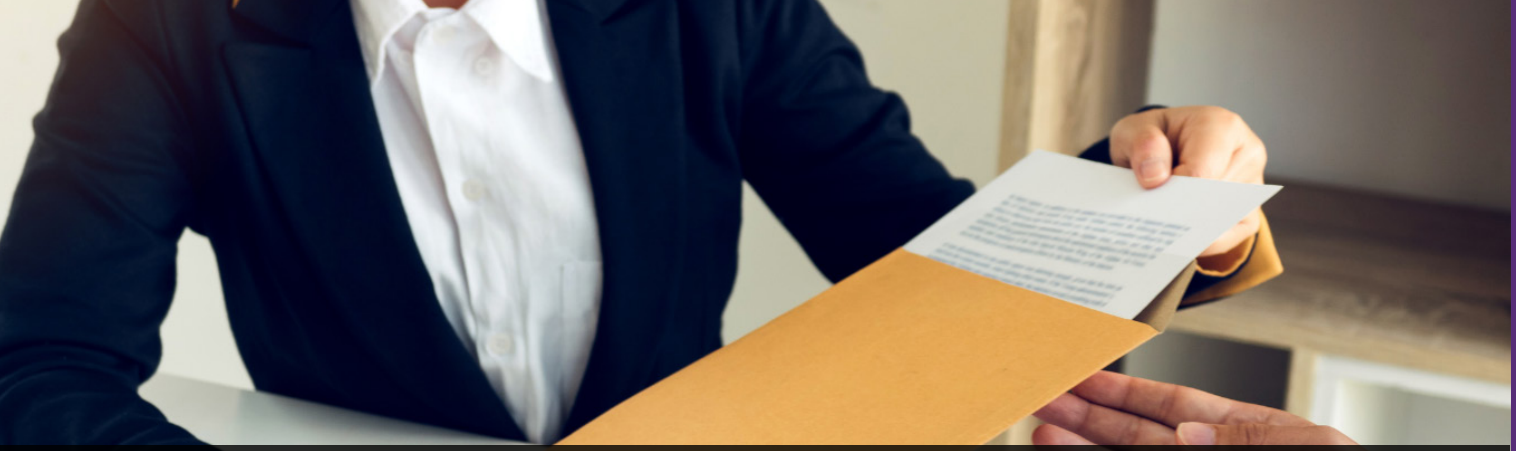
If the Court makes Orders, a sealed copy of these orders must be served to the trustee. Prior to the Orders being made, the trustee should be made aware of the Orders being sought.

A flagging Order requires the trustee to inform the Court when the interest becomes payable which then allows the Court to lift the flagging Order and the interest to be split in accordance with the Orders.

If the superannuation is being paid at the time of the property settlement, a party may wish to seek an injunction to suspend those payments until a settlement agreement has been reached.

The division of superannuation in a property settlement can be extremely complex regarding the options available and the percentage entitlements of each party. If you and your partner have recently split, are parties to a marriage or de-facto relationship, and wish to seek legal advice, the Coutts Family Law team is happy to assist you.

Luisa Gaetani
Partner



Litigation Offers and Cost Orders

KEY TAKE OUTS

- It is important to understand offers in dispute matters to attempt to swiftly resolve disputes.
- Making an offer may entitle you to a higher award for costs if you are successful.
- If a matter is capable of being resolved by the parties, the parties should attempt to resolve the issue before proceeding to court.

In civil litigation matters it is often the case that a number of offers are passed throughout the course of the matter. Passing offers is a good way for the parties to attempt to resolve the dispute and avoid costly and time-consuming litigation. It is in the best interests of all parties that only matters which are incapable of being resolved by the parties should proceed to litigation.

There are a number of different offers which can be made in a civil litigation matter, and they are important to consider as in most cases "costs follow the event". This means that the unsuccessful party will usually be ordered to pay the successful parties' costs of litigation (with a successful party generally recovering 60-70% of their incurred costs). By making an offer early on in proceedings, a party can improve their chance of recovering a higher percentage of their costs incurred if a party unreasonably rejects a genuine offer and gets a less favourable outcome at court.

Run down of litigation costs

It is important to understand the purpose of cost orders and their effects before delving into the different types. The reason offers are passed throughout litigation are to firstly; attempt to resolve the dispute early and secondly; evoke cost provisions.

Cost orders in litigation are not made to punish a losing party, however, they exist to compensate the party who is successful, particularly if they were required to commence or defend proceedings for reasons outside of their control. Further, costs orders aim to weed out frivolous and vexatious claims brought by parties by imposing a consequence on that party for bringing a claim that has no merit. The general rule is that costs follow the event, which means that costs will be awarded following final orders being made in proceedings.

Costs are generally ordered on an ordinary basis (usually 60-70% of the actual costs incurred by a successful party) or indemnity basis (usually 70-80% of the actual costs incurred).

Why make an offer in litigation?

It is important for parties involved in disputes or litigation to consider making offers for a number of reasons.

One of the most significant objectives to resolve the dispute as swifty as possible is to avoid the intervention of the Courts. Resolving a matter before going to Court is preferred, as it saves all involved parties time and may also incur less legal fees.

Another reason to consider offers throughout a dispute matter is that the parties have more control over the settlement terms. Offers involve negotiations about a resolution that can involve creative measures that are outside of the purview of the Court's jurisdiction.

Further, offers are important to make throughout a dispute matter as they may have a bearing on your entitlement to costs on an ordinary or indemnity basis. For example, if a successful party has made a genuine, reasonable offer to resolve a matter, and that offer has been rejected and the unsuccessful party receive an outcome less favourable than the offer, then the successful party is entitled to costs on an ordinary basis up until the date of the offer and on an indemnity basis thereafter (generally).

What is a Calderbank Offer?

A Calderbank offer is a type of offer that can be passed throughout civil litigation matters. The offer is named after the case of *Calderbank v Calderbank* [1975] All ER 333 where the principles of the offer were established.

A Calderbank offer is made on a "without prejudice, save as to costs basis" which means that the offer cannot be used as evidence but can be used to assess the appropriateness of costs awarded to a successful party.

Generally speaking, a Calderbank offer should:

1. Establish the terms of the offer;
2. Explain why the offer is a reasonable compromise. This can include details of the legal position of the parties;
3. Allow a reasonable period to consider an offer. What is reasonable is dependent upon the terms of the offer and surrounding circumstances such as impending court dates;
4. Specify that the offer is made in accordance with the principles of *Calderbank v Calderbank* [1975] All ER 333 and that if the offer is not accepted and the offeree achieves a less favourable result, then the offeror is able to claim indemnity costs using the letter.

Calderbank offers are the most common offer type used in litigation/dispute matters as they offer the most amount of flexibility i.e. they do not need to be open for a set amount of time, only time that is reasonable.

What is an Offer of Compromise?

An offer of compromise is regulated by the Uniform Civil Procedure Rules 2005 (NSW) (reg 20.6) and must:

5. Be in writing;
6. Identify the claim to which it relates;

7. Specify the orders for the proceedings to be resolved;
8. State that it is made pursuant to the Uniform Civil Procedure Rules 2005 (NSW) (reg 20.6);
9. Generally have to be open for at least 28 days.

It is important that offers made are genuine in nature. For example, if there is a claim for $50,000.00 and the offeror makes an offer to accept $49,999.00 in respect to its claim, it is very unlikely that a Court would consider this offer genuine in the circumstances. In these instances, offers which are not considered to be genuine, will not trigger the ability to claim indemnity costs.

Coutts Litigation Team

Navigating a commercial/civil dispute can be difficult from a legal and strategic point of view. We encourage plaintiffs and defendants to seek legal guidance from our Commercial Litigation and Civil Disputes team at Coutts. Our team has a broad range of experience in matters of a commercial and civil nature and can assist clients in litigation and in determining what is a genuine offer and when an offer should be made.

Elyse Strahan
Senior Lawyer

11 Steps to Buying Your Dream Home

KEY TAKE OUTS

- 11 steps setting out each stage of the buying process
- What you need to know during the buying process
- What you need to do during the buying process

If you're wondering how to find your dream home, we've got you covered. We'll walk you through the eleven steps to buying a house including finding your property, obtaining loan approval and more…

1. Obtain pre-approval

An important first step when looking to buy your dream house is to obtain pre-approval (also known as an approval in principle) from a lender. The process of obtaining pre-approval involves providing your broker or banker with information about your financial position. The pre-approval letter gives you an indication of your borrowing capacity which is essential to know before looking for a property to purchase and certainly before making any offers on properties.

2. Find your property

Now that you have your pre-approval, you can start looking for a property to purchase that is within your price range. You may begin your search online. If you find something that interests you, you can contact the Agent to organise a viewing or attend the property during the next open home. Open home dates and times are usually available on the online property advertisement.

3. Make an offer

Once you have found your dream home, you should submit an offer via the Agent. The Agent will take that offer to Vendor and come back to you to advise whether it has been accepted or rejected. If the offer is rejected, you can make counteroffers. If your offer is accepted the Agent may ask you to sign a Contract and pay a holding deposit.

4. Exchange Contracts – 0.25% may be payable by you to the agent

Once your offer has been accepted, the Agent may ask you to pay a 'holding deposit' and sign a Contract. The holding deposit is calculated by determining 0.25% of the agreed purchase price and is payable to the Agent's trust account. Where the Agent does not hold a trust account, it's paid to the

Vendors Licensed Conveyancer or Solicitors trust account. Once you have paid the deposit and both you and the Vendor have signed the Contract, the Agent can perform an 'exchange of Contracts'. This is where they are compared and then dated. Once dated, the Contract becomes binding on the Vendor and they cannot accept any other offers. You, however, have the benefit of a cooling-off period and during that time you can rescind (cancel and get out of) the Contract. If you rescind the Contract, you forfeit the 0.25% deposit i.e. this is non-refundable.

5. Review the Contract and obtain inspection reports

The cooling-off period is the time when the Purchaser conducts their due diligence. This includes obtaining inspection reports such as pest and building reports or a strata report. It is also the time to obtain legal advice on the Contract terms and if necessary, negotiate those terms.

6. Receive unconditional loan approval

Prior to the expiration of the cooling-off period, it is important that you hold an unconditional loan approval (also known as formal loan approval). The process of progressing from pre-approval to unconditional approval may include the bank obtaining a valuation of the property. Once you hold an unconditional approval, it means the bank has no more conditions that need to be met in order to secure the finance, it's secured and safe to proceed to lock into the purchase of the property.

7. Pay the balance of the agreed deposit to the agent

Prior to the expiration of the cooling-off period, it is a condition of the Contract that you pay the balance of the deposit to the deposit holder. This amount would usually be 10% of the price less any holding deposit you have already paid. There are exceptions to this which included instances where you have negotiated a lessor deposit in which case that amount must be paid prior to the expiration of the cooling-off period. The deposit holder is usually the Real Estate Agent. If there is no Real Estate Agent, the deposit holder is usually the Vendor's legal representative.

8. Your Contract becomes unconditional and binding

Once the cooling-off period ends, the Contracts become 'unconditional'. This is when you become locked into the purchase of the property and bound by the Contract terms.

9. Mortgage documents are issued by your bank for you to sign and return

After you receive unconditional loan approval, the bank will issue your loan documents for your to review, sign and return. Sometimes they will be electronically issued for you to e-sign and in other instances, they will be printed and posted to you for you to sign and post back. Your broker or banker may meet with you to review and sign the loan documents. In some instances, you may be required by the bank to obtain legal advice on the mortgage documents

10. Pay Stamp Duty (if applicable)

Transfer duty (formerly called Stamp Duty) is payable on the earlier of settlement and 3 months after the Contract date. As such, if you have entered into a Contract to purchase a property with say a standard 42-day completion period, duty will be paid on settlement. If you have entered into a Contract to purchase say a block of unregistered land which doesn't register for 12 months, transfer duty is payable within 3 months of the Contract date. If duty is not paid within 3 months of the Contract date, Revenue NSW will charge you interest on the amount due until it is paid.

The amount of duty payable depends on the value of the property you are purchasing.

If you are a First Home Buyer who is exempt from duty or who has opted in for the Property Tax, payment of duty does not apply.

If you are an owner occupier who has purchased an off-the-plan property and meets the eligibility criteria, you may be entitled to a 12-month deferral of the payment of duty i.e. duty is not due until the earlier of settlement and 15 months after the Contract date.

11. Settlement! The balance of the purchase price is paid to the vendor and the property is yours!

The majority of settlements now take place electronically. You may have heard the term 'PEXA' used. This is one of the electronic platforms where settlements take place. A time and date are set for settlement. On settlement, you pay the balance of the purchase price to the Vendor. Once settlement has taken place, the title is transferred to you, and you become the registered owner. Put simply, the property is yours. You can then collect the keys and start moving in!

Melina Costantino
Senior Licensed Conveyancer & JP

Can I Receive Compensation if my Injury is my Fault?

KEY TAKE OUTS

- Contributory Negligence is where a person's actions, omissions or carelessness made their injury or injuries worse.
- A person who is found to be contributorily negligent can still receive compensation for their injury in some cases.
- If a person is injured while intoxicated or while committing a crime, their level of contributory negligence, if any, will be affected.

What is Contributory Negligence?

If you are injured in an accident and make a claim for compensation against another party, the other party may claim you were 'contributorily negligent' to sustaining your injuries. This means that your actions, whether it be by way of carelessness, an act or omission, contributed to your injury. If you are contributorily negligent, this means that you were partially, or mostly, at fault for your injury and that the other party, to which the claim is being brought against, cannot be 100% liable for your injury or any claimed compensation.

How is Contributory Negligence Proven?

The Civil Liability Act 2002 (NSW) ('CLA') stipulates that to prove contributory negligence, it must be shown that the injured person failed to take precautions that a reasonable person would have taken to avoid their injury.

The test of whether a person has been contributorily negligent is whether a reasonable person, in the plaintiff's position, would have taken precautions against the risk of harm to himself or herself.

In determining whether a person has been contributorily negligent, the following factors (amongst others) are relevant:

1. The probability that harm would occur if care was not taken;
2. The likely seriousness of the harm;

3. The burden of taking precautions to avoid harm; and
4. The social utility of the risk-creating activity in which the injured person was engaged.

Further to the above, whether an injured person has been contributorily negligent according to the above criteria listed at 1 to 3 must be determined based on what the injured person knew or *ought* to have known at the date on which the injury occurred.

The court will be satisfied as to whether a person was contributorily negligent on the balance of probabilities i.e. more likely than not.

How Does Contributory Negligence Affect a Claim for Compensation?

If a defendant is successful in proving the injured person contributed to their injuries, liability for the injury will be reduced according to the degree of contributory negligence. This means that any compensation payable to the injured person will also be reduced.

Generally, this is provided for as a percentage. For example, if an injured person is found to be 10% contributorily negligent to the cause of their injuries, the defendant will be found to be 90% liable for the cause of the injury.

Monetary compensation is then ordinarily reduced in proportion to the percentages of liability and contributory negligence. Continuing the above example, if the injured person made a claim for $100,000.00 and was found to be 10% contributorily negligent, the damages awarded would be reduced by 10%, that being by $10,00.00.

If it is found that the injured person's contributory negligence is 100%, the defendant will not be held liable and no compensation will be paid to the injured person.

In some areas of injury compensation, however, a claim is unable to be brought if the injured person was more than 61% contributorily negligent, such as a common law damages claim for a motor vehicle accident.

Can a Child be Contributorily Negligent?

Children above the age of five years can be found contributorily negligent.

The standard of care for a child alleged to have been contributorily negligent is what another reasonable child of the same age as the injured child would have been expected to do. This applies the same 'reasonable test' principle as detailed above.

The case of McHale v Watson [1966] HCA 13; (1966) 115 CLR 199 (7 March 1966) demonstrates this principle. In this case, three young children were playing together when one of the children threw a sharp metal rod at another child causing permanent blindness. The children were all 12 years old at the time of the incident. The High Court of Australia found that the child who threw the rod could not be held contributorily negligent, as a child of the same age would not have foreseen the consequences of their actions, nor did the child intend to cause harm.

Intoxication, Criminal Activity and Contributory Negligence

In NSW the CLA states where an injured person is intoxicated at the time of their injury, unless intoxication was not self-induced, they are at least 25% contributorily negligent. This also applies to underage drinkers. But no damages are to be awarded where damage or injury to the person is unlikely to have

occurred if the injured party had not been intoxicated. In regard to criminal activity that caused the plaintiff's injury, it will be up to the court to determine the amount of compensation a plaintiff will receive.

An Example of Contributory Negligence

James leaves a bar after celebrating the end of the football season with his friends. He is intoxicated but gets in his car to drive home. He crashes his car into Joshua's car which is parked illegally on the side of the road. Joshua is injured in the crash and sues James.

The matter proceeds to Court where it is found that, as his car was parked illegally, Joshua contributed to his injury. The Judge found Joshua 20% contributory negligent, and Joshua's claim for compensation was reduced to 80% of the initially claimed amount.

For More Info

If you have been injured, the personal injury team at Coutts can help you. We deal with a variety of cases, including those where injured persons are partially at fault. For assistance with your compensation matter, please reach out to our experienced team to receive high-quality legal advice tailored to your situation.

The names and examples used in this blog are fictional and do not relate to actual or real-life persons. This blog is merely general and non-specific information on the subject matter and is not and should not be considered or relied on as legal advice. Coutts is not responsible for any cost, expense, loss or liability whatsoever to this blog, including all or any reliance on this blog or use or application of this blog by you.

Elly Manoe
Senior Lawyer

Annaleise Forbes
Paralegal & JP

NSW Government announces major overhaul for domestic violence

KEY TAKE OUTS

- New South Wales Premier Dominic Perrottet has announced his intentions to crack down on domestic violence if he is re-elected in the upcoming State election.
- The changes he proposes would see harsher penalties for offenders and a shorter wait time for domestic violence matters to be heard in NSW Courts.
- The Perrottet government aims to review domestic violence sentencing, make enquiries in relation to a specialised Court for domestic violence offences which would improve the Court processes and appoint five new Magistrates.

As the upcoming State election approaches, the current New South Wales Premier Dominic Perrottet has revealed his plan to target the rapid growth of domestic violence cases.

In hopes of being re-elected, his government has put forward a proposal to combat the pitfalls of our justice system when dealing with the victims and perpetrators of domestic violence and furthermore, help reimagine an alternative process to ensure that harsher penalties are imposed.

Mr Perrottet has made his intentions for these changes very clear as he has stated; *"we want to do everything we can to keep women and children right across NSW safe. We want to stamp out domestic violence across NSW. Enough is enough and it has to end."*

This article will break down each aspect of the proposal and its' potential impact on the justice system for the victims and perpetrators of domestic violence.

What does domestic violence offences currently look like in New South Wales?

In New South Wales, there is no specific standalone offence that equates to 'domestic violence' however where an offence has been committed by someone who has (or has had) a domestic relationship with the victim, it is considered domestic violence.

What constitutes a 'domestic relationship' is found to include the following instances where people are, or have previously been;

- Married,
- De facto,

- In an intimate relationship,
- Living in the same household,
- In a relationship of dependence (for example, a carer), or
- A relative.

Therefore, if someone is in a domestic relationship with another and commits an offence, it will be categorised as a 'domestic violence offence' and they will be charged accordingly.

Some offences commonly charged in domestic violence situations are found in the *Crimes Act 1900* (NSW) and *Crimes (Personal and Domestic Violence Act 2007* (NSW), and include the following:

1. Assault;
2. Assault occasioning actual bodily harm;
3. Assault occasioning grievous bodily harm;
4. Intentionally choke/strangle;
5. Stalk/intimidation; or
6. Contravening an AVO.

Apprehended Domestic Violence Orders

In instances where the Police suspect that domestic violence has occurred, they may make an application for an Apprehended Domestic Violence Order (ADVO) to be made. The conditions of an ADVO varies however, may include the following:

- Prohibit the person from approaching, or attempting to approach the other, within a specified distance;
- Prohibit the person from contacting, attempting to contact or asking someone else to contact the other;
- Prohibit the person from locating, or attempting to locate the other;
- Prohibits the person from committing any domestic violence offence.

If you require more information regarding your options in relation to an ADVO, or what this means for your future, the Criminal Law team at Coutts is happy to guide you through the process.

The Perrottet Changes

Given the nature and prominence of domestic violence in New South Wales, the need for moving domestic violence offences through the Court system quickly has always been recognised as priority.

Despite this, due to the influx of cases post Covid-19 lockdown, the Court has experienced a substantial delay. These delays are unacceptable in ensuring of the safety of victims and ultimately, hinders the Court from achieving justice in a timely manner.

Mr Perrottet has recognised that the delay poses real consequences to the safety of the community and has proposed to appoint five new magistrates, study the suitability of a specified domestic violence Court and court list, and extensively review domestic violence sentencing to see if the current system adequately addresses the seriousness of the associated risks.

1. Appointing Five New Magistrates

In an effort to combat the backflow of domestic violences cases, Mr Perrottet intends on appointing five new and permanent Magistrates.

The Attorney General Mark Speakman hopes that by appointing five new Magistrates that the system backlog from Covid lockdowns will be cleared by the end of 2024.

This will ensure that matters are heard swiftly and pushed through the system quickly.

2. A Study of Creating a Specified Court and Funding a Separate Court List

If re-elected, the Perrottet government also hopes to assess the suitability and feasibility of electing a specified Court and funding a separate court list to deal with domestic violence matters.

BOCSAR has revealed that on average, it takes over 270 days for a domestic violence matter to be finalised at Court in comparison to the previous 160 days pre-Covid lockdown. During this time, the victims are in an extremely vulnerable position in relation to the risk of reoffending, the psychological harm of ongoing domestic violence and the trauma of the investigation.

The potential creation of a new Court and court list would intend to significantly decrease this wait time.

3. A Review of Domestic Violence Sentences

Mr Perrottet also promises to review domestic violence sentencing which could possibly mean that there will be an increase in the penalties that are imposed by the Courts.

Conclusion

BOCSAR estimates that in New South Wales over 40,000 people who are aged 15 and over have experienced at least one instance of domestic violence within a 12 month period. This means that domestic violence effects 1 in every 155 Australians.

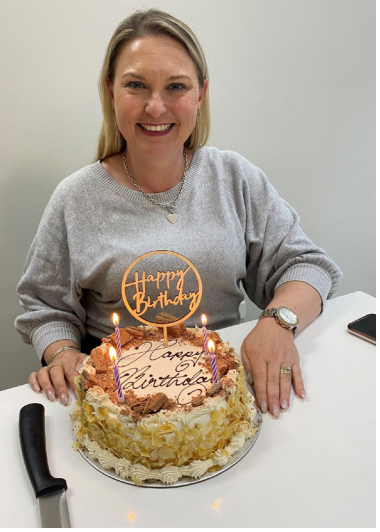
Because of Court closures and the heightened pressures of Covid-19 lockdowns, the Courts have been inundated with domestic violence matters which has caused a delay that ultimately, influences the time it takes for protection to be awarded.

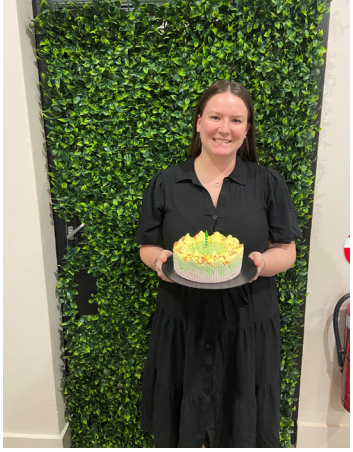
If re-elected, Dominic Perrottet intends to crack down on domestic violence related offences by reviewing the penalties that are imposed by the Court, allocating several permanent Magistrates, and studying whether the current system is working.

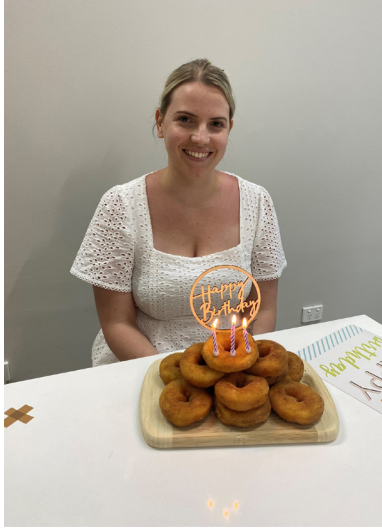
Should you require advice relating to domestic violence, the Criminal Law team at Coutts have the experience and expertise to help guide you through the Court process.

Lara Menon
Senior Associate

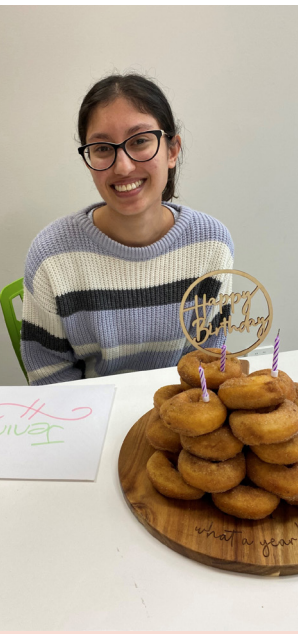
Isabel Strahan
Paralegal

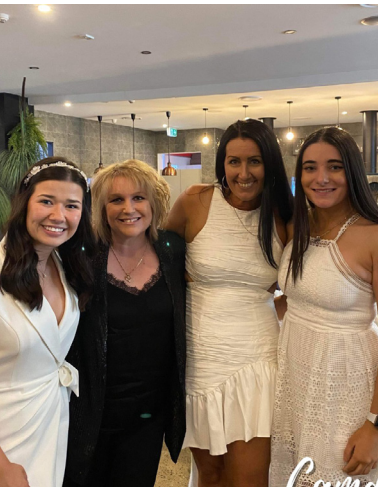


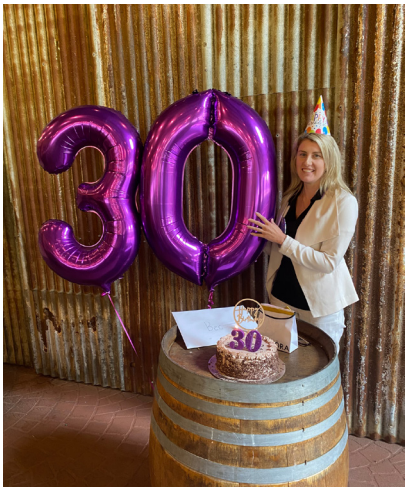


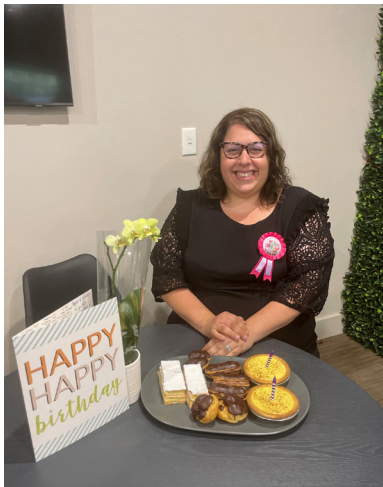


Out and About with COUTTS









A Wine with... Taylor

PROFILE

Position: Licensed Conveyancer

Location: Narellan

Area of Practice: Wills & Estates

Q: How would you describe yourself in two words?

A: Bubbly & Genuine

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

A: My kindness & loyalty

Q: My favourite motto / mantra is:

A: Don't stress over things that haven't happened, because if it does happen, you have stressed twice for the same reason.

Q: My pet peeve is:

A: When someone says they'll do something and then doesn't follow through with it.

Q: On the weekends you can find me:

A: Seeing friends and family and having a wine (or two).

Q: The last book I read was:

A: The Vampire Academy Series.

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

A: 😂 😭 🥂

Q: My favourite move of all time is

A: My all-time favourite movie is Lilo & Stitch.

Your Questions Answered

DO WE NEED TO DO ANYTHING TO BECOME OFFICIALLY SEPARATED?

There are no formal requirements to make separation occur. All that has to happen for separation to take place is that there is communication between the parties that the relationship has ended on a final basis. Once separation occurs, the jurisdiction of the Family Law Act is activated. Since 2009, this also includes de facto and same sex couples.

HOW DO YOU MAKE A CONTRACT LEGALLY BINDING?

Sometimes contracts need to be written. In general, though, a legally binding contract can be:

- ✓ Oral
- ✓ In writing
- ✓ Partly oral and partly in writing
- ✓ Made by people's actions
- ✓ A contract may be made up of several different documents, emails and conversations.

WHAT IS UNFAIR DISMISSAL?

Unfair dismissal has occurred if your dismissal is found to have been unreasonable harsh or unjust. In order to be covered by unfair dismissal laws, an employee must have worked for the employer for a minimum period of time (one year for a small business and six months for businesses that employ 15 or more employees). An employee must also earn less than $129,300 per year (adjusted each year) and not be working as a contractor in order to be protected. Unfair dismissal applications must be lodged with the Fair Work Commission within 21 days of the dismissal occurring. It is recommended that you seek legal advice as soon as possible if you intend to make a claim.

WHY IS IT NOT RECOMMENDED TO REPRESENT YOURSELF IN COURT?

It is important to obtain legal advice for any criminal offence. Criminal law is a complex area of the law that should be handled by a Lawyer with experience in the area. Criminal Lawyers understand the elements of each offence (what the Police will need to prove to secure a conviction) and can provide advice as to your options. Even if you plead guilty to the offence, Criminal Lawyers are also experienced in determining whether there are mitigating factors that should be brought to the Court's attention and present your matter to the Court so that all relevant factors are taken into consideration.

HOW DO YOU ENTER INTO A CONTRACT FOR SALE?

Once you have found a property you would like to purchase, you will be asked by the real estate agent to sign the contract for sale and pay an initial deposit of 0.25% of the contract price. This will remove the property from the market and stop the vendor from selling to another party.

WHAT ARE THE LEGAL REQUIREMENTS FOR A VALID WILL?

For a Will to be considered valid in New South Wales, it must be:

- ✓ In writing;
- ✓ Signed by the will-maker (or by a person the will-maker has directed to sign on their behalf if they are physically unable to sign it themselves); and
- ✓ Witnessed by at least two independent people who are present at the same time the will-maker signs the document. The witnesses must also sign the will to confirm that they were present and witnessed it.

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Adriana Care
Managing Partner

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