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DECEMBER				
Friday 1st	Summer Starts			
Monday 4th	Narellan Wills Express Night			
Sunday 24th	Christmas Eve			
Monday 25th	Christmas Day			
Tuesday 26th	Boxing Day			
Sunday 31st	New Year's Eve			
JANUARY				
Monday 1st	New Year's Day			
Monday 8th	Narellan Office Opens			
Monday 15th	All offices re-open			
Friday 26th	Australia Day			
FEBRUARY				
Monday 5th	Narellan Wills Express Night			
Saturday 10th	Chinese New Year			
Wednesday 14th	Valentines Day			

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A MESSAGE FROM

Adriana

We are proud to share our story, one of continued investment, growth and development. Our Coutts Values have remained a constant as we strive to deliver better outcomes for our staff, clients and the communities we service. The Coutts Values reflect who we are and what we stand for - **CARE, COMMUNICATION, CLARITY!**

CARE

This year we have had many highlights. Supporting Legal Aid and delivering access to justice for those most vulnerable and in need is one that particularly stands out. Also, we have streamlined essential legal processes by introducing cost-effective online services, notably, Wills & Estates related services, all with the view to making legal documents more accessible and cost effective. Pleasingly, we have further enhanced our whole-of-service offering including more comprehensive Commercial Litigation services, and otherwise leveraging our growing and broader professional expertise. These are but a few examples of the initiatives we have undertaken in recent times. We CARE and we take action.

COMMUNICATION

As a business, we seek out opportunities to listen actively and we respond. Our newly introduced VIP Program is designed to show our appreciation for loyalty, rewarding clients with exclusive benefits, discounts, and special invitations as a token of gratitude and a means to deepen and broaden client relationships. These initiatives reflect our commitment to providing comprehensive and widely available legal solutions for all in the communities we service. Our commitment to clients has led to external recognition through local business awards, legal industry awards and client feedback including via testimonials. Our external recognition over the years has extended to categories including customer service, innovation, diversity & employer of choice – all of which we have worked hard to achieve, and we welcome such as a reflection of our combined efforts.

CLARITY

We are pro-actively encouraged to strive to go the extra mile.....and keep our clients informed by having a highly enabled and empowered team supported by evolving technology and practice management tools. Challenging times for many Australians require reliable and cost-effective legal representation for businesses and individuals alike, and we have responded to the needs of our current and prospective clients by providing certainty and reassurance. Proactive investment in our core business capabilities will remain a key focus as we endeavour to stay one step ahead of our competitors. We will continue to enhance and leverage systems and practices that support effective decision making, efficiencies and strong leadership.

A sincere thank you goes out to all that have contributed to Coutts' success this year – in essence being recognition of our staff, clients and the wider communities we service. Your continued commitment to the delivery of Coutts' Values will ensure our ongoing mutual growth and success.

Unwavering and energetic leadership, team resilience and a commitment to delivering superior outcomes, has ensured we will finish the year with momentum moving into 2024. Let's continue to build our collaborative approach and enter the coming year with positivity, and once again stay true to our cherished Coutts Values!

Thank you for your efforts, in what at times has been a challenging, but rewarding year. The teams contribution to date is acknowledged and appreciated noting there is still much to do in exceeding our goals, delivering for our clients and supporting our communities, so let me close by saying that whilst we have come a long way over the years, our best years are definitely ahead of us, and we should all look forward to celebrating our future efforts and successes.

thank you



KEY TAKE OUTS

- ✓ From April 2024, New South Wales drivers will be able to lose one demerit point from their record if they do not obtain any driving offences for a year.
- ✓ This applies to unrestricted motorists who have incurred points from previous offences, however, remain offence free from January 17, 2023.
- ✓ The aim of this initiative is to reward safe drivers sooner.

The <u>NSW Government</u> has fast tracked a new trial initiative to reward safe drivers sooner. This program was announced as part of their 2023 election campaign and has been accelerated to apply to drivers with good behaviour from January 17, 2023. NSW Premier Chris Minns, the appointed leader of the NSW State Government, commented on this initiative, stating "It's time we put safety back at the centre of our road rules, not revenue raising."

The initiative intends on "reducing the road toll and rewarding safe driving across the state is the aim of this trial and we hope it gives drivers that little bit of extra incentive to achieve a spotless record."

The Minister for Roads, John Graham said "Drivers in NSW are very much used to the stick approach, so this demerit trial is an important carrot for them to maintain a clean record over a 12-month period to the benefit of all motorists, pedestrians, and communities."

To be eligible, drivers must remain offence free for a period of one year from January 17, 2023, to January 17, 2024. If they succeed and do not retain any new driving offences, then from April 2024 drivers will be able to see the removal of one demerit point from their licence.

However, this program only applies to drivers with an unrestricted or professional licence. It does not apply to those with a provisional P1 or P2 licence, or a learner licence, as they are subject to strict rules under the Graduated Licencing Scheme.

This new program differs from the current rules regarding demerit points, where they are deemed invalid after 3 years from the date they were applied to a motorist's licence.

This is a trial initiative that encourages motorists to make NSW roads a safer place and thus reduce the road toll. If it succeeds, it will benefit motorists, pedestrians, and the wider community.

"We need everyone to work together to create a safer driving environment and ultimately push road trauma to zero."

Need Assistance with Driving Offences?

At <u>Coutts</u>, we understand the importance of maintaining a clean driving record and the implications of demerit points. With the introduction of this new trial initiative to reward safe drivers, it's essential to be informed and understand your rights.

If you find yourself facing driving offences or require guidance on how this new system may impact you, <u>our team is here to help</u>. Navigate the ever-evolving road rules and regulations with confidence alongside Coutts. Reach out to our expert legal team today at <u>1300 268 887</u>. Your safety and legal standing on the road are our top priority.



Lara Menon Senior Associate



Isabel Strahan Paralegal



KEY TAKE OUTS

- ✓ What are the rights of beneficiaries
- ✓ What am I entitled to a beneficiary of a Will
- Can a beneficiary make a claim against the estate?

Losing a loved one can be an extremely difficult time and the last thing you need is to also experience problems with the administration of the estate.

When someone makes a <u>Will</u>, they are required to nominate an executor to administer the estate and to ensure that the directions contained in the Will are followed.

It is recommended that the executor is someone who is trustworthy and administratively savvy. The executor also usually engages a solicitor to act on their behalf to deal with the legal side of administration of the estate.

One of the main roles of an executor is to protect the interests of the beneficiaries in the estate and in doing so, to keep the beneficiaries informed about developments regarding the estate.

However, on occasions, beneficiaries can be left out of the loop, particularly if a beneficiary does not have a good relationship with the executor. The beneficiary can then be left unsure about how the estate is being administered.

What are the Rights of Beneficiaries?

Once a person dies, a beneficiary to a will has certain rights which include the right to:

- ✓ Be advised that the deceased left a valid Will and receive a copy of the will from the executor or lawyer holding the Will.
- ✓ Be made aware that the person is a beneficiary.
- ✓ Be provided with details as to their expected share and when they can expect to receive it.
- ✓ Be notified of any liabilities attached to their entitlement.
- ✓ Be informed of any expected delay in distribution of the estate.

- ✓ Be informed of any challenges to the will which may affect their share.
- ✓ Know of any legal proceedings against the deceased.
- ✓ Receive their share within 12 months of the date of death, unless the will says otherwise.
- Receive a statement setting out how their share of the estate was calculated (unless it was a specific gift).

What am I unable to do as a Beneficiary to a Will?

While beneficiaries have the above rights, there are certain things that a beneficiary is not entitled to do. These include:

- Making funeral arrangements this is the role of the executor and therefore the executor's permission is required.
- ✓ Remove an executor from their duties other than in certain circumstances on application to the Court for an Order to remove the executor.
- ✓ Access, remove, dispose of, or sell any assets without permission of the executor.

Can a beneficiary make a claim against the estate?

Just because a person is a beneficiary, this does not mean they are eligible to make a claim for a larger share of the deceased's estate.

The <u>Succession Act 2006</u> is the law which sets out who is eligible to make a claim under the will, namely:

- ✓ Spouses
- ✓ Ex-spouses
- ✓ Children
- Grandchildren, who were dependent on the deceased during their life time
- Any person, who was a member of the deceased household during their lifetime and was dependent on the deceased
- ✓ A person who the deceased was living in a close personal relationship with.

If a beneficiary falls into one of these categories, the beneficiary may be eligible to make a family provision claim against the estate, if they have been left with inadequate provision in the will and they have a need for further provision as a result of their financial and personal circumstances.

Common Mistakes to Avoid as a Beneficiary

Navigating the intricate landscape of wills and estates can be daunting. As a beneficiary, it's essential to be aware not only of your rights but also of common pitfalls that can cause unnecessary distress or complications:

Rushing the Process

The distribution of assets might take longer than anticipated. While it's understandable to want a swift resolution, the legal process can be intricate and requires due diligence to ensure everything is done correctly.

Misunderstanding Entitlements

Remember, the executor has the responsibility to pay the deceased's debts and taxes before distributing assets.

Neglecting Expert Consultation

Seeking guidance from professionals, be it legal or financial, is always a wise move. They can provide clarity on the nuances of the will.

Ignoring Communication

Open communication with the executor and other beneficiaries can ease many concerns. It can also prevent misunderstandings and conflicts in the future.

Failing to Update Personal Documents

If you inherit significant assets or properties, it's crucial to update your personal records, including wills or insurance policies, to reflect the changes in your financial status.

How we at Coutts Lawyers and Conveyancers can help

If you are a beneficiary in a will and you feel the executor is not acting in your best interest or your rights are not being protected, please <u>contact</u> one of our experienced <u>Wills and Estates lawyers</u> who can assist you with your matter and determine your best course of action.



Alexander Cumerlato

Lawyer



KEY TAKE OUTS

- ✓ NSW will continue to see changes to employment laws and awards from June 2023 till the end
 of the year.
- Workplace legislation will be placing limits on fixed term contracts, with a limit of a period of 2 years, and will require employers to issue employees the new Fixed Term Contract Information Statement.
- Casual employees have new rights to improve job security.
- ✓ To learn about these employment changes and more, join us for an upcoming information session at our Employment Law and HR Changes Workshop on 18 October 2023.

Between June to December 2023, NSW will see some key workplace changes to the relevant legislation and awards.

It's important to stay up to date with these changes, to ensure that as an employer you are managing your employees correctly and as an employee, you are receiving the benefits and entitlements owed to you.

In this blog, we discuss two of those key changes relating to Fixed Term Contracts and Casual Employees.

Fixed Term Contracts

Recently, The Australian Government has recognised that Fixed Term Contracts can create a sense of job insecurity for employees. Especially when contractors cover an extended period of time or when employment would otherwise be ongoing.

From 6 December 2023, amendments to the Fair Work Act 2009 (Cth) will come into effect to include new obligations regarding fixed term employment contracts. The changes to the Fair Work Act 2009 (Cth) will limit the period of a fixed term contract to two years. Employers will also be required to provide employees on fixed term contracts with a 'Fixed Term Contract Information Statement'. Failure to comply with these changes will expose employers to General Protection claims in the Fair Work Commission.

What constitutes a fixed term contract?

Fixed term employment contracts consist of true fixed term contracts and maximum term contracts. True fixed term contracts contain a term that states employment will be completed after a certain period and the employment cannot be terminated any earlier. Maximum term contracts are contracts that may be terminated, but on notice prior to the expiry of the term.

Who does the Fixed term contract limitations apply to?

The new changes will apply when:

- ✓ An employer enters a contract of employment with an employee; and
- ✓ The contract states a termination date; and
- ✓ The employee is not a casual employee; and
- ✓ Any of the following apply:
 - · The contract is for more than two years; or
 - The contract is renewable for a period greater than two years or can be extended or renewed more than once; or the
 - Prescribed "consecutive contracts" criteria is satisfied.

What are the exceptions to the fixed term limits:

Fixed term and maximum term employment contracts exceeding 2 years will be permitted were the employee:

- ✓ Relates to a trainee agreement such as an apprenticeship or traineeship.
- ✓ Is only for the performance of an identifiable or distinct task which involves the use of specialist skills for a specific period.
- ✓ The employee is earning more than the high-income threshold, which is currently \$167,500.
- ✓ Undertaking temporary work by replacing an employee on long leave.
- Performing a government position for a limited time under a company's governing rules.
- ✓ A prescribed government funding exception applies.
- ✓ Employed to undertake essential work during a peak demand period.
- Employed under an applicable modern award.
- The employer will have the onus of proving the exceptions apply.

Fixed Term Contract Information Statement

Employers will be required to provide a Fixed Term Contract Information Statement (FTCIS) to all employees entering a fixed term contract. After employment has commenced, employers will need to provide this document as soon as reasonably possible. The FTCIS is not currently available, however it will be developed by the Fair Work Ombudsman. The Fair Work Ombudsman will set out details on the fixed term contract limitations, any exceptions that may apply and an outline of the dispute resolution process.

What does this mean for you?

Employers will be required to amend the fixed term contract to a period of two years if it does not meet one of the outlined exceptions. Prior to doing so, they will be required to provide employees with the Fixed Term Contract Information Statement (FTCIS). Employers will also need to consider any previous contracts and count them towards the 2-year limitation.

For any breach of the proposed changes, employers will be liable for monetary penalties. Further, if employers actively take steps to avoid enforcing the fixed term restrictions, then they can be held accountable under anti avoidance rules.

If you are an employee on a fixed term contract, you should ensure that when the changes come into effect that your employer makes those changes. If your employer is not willing to make those changes or doesn't take action to make those changes, then Coutts can assist you to ensure that your rights and entitlements are being met.

New rights for Casual employees

The Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021 made changes to the National Employment Standards (NES) in the Fair Work Act 2009 (Cth). Some of these changes have created amendments to casual employment laws.

Pursuant to the changes under the NES, casual employees will receive:

- ✓ Access to a pathway to become a permanent employee
- ✓ 2 days unpaid carer's leave per occasion
- 2 days compassionate leave per occasion
- ✓ Paid family and domestic violence leave
- ✓ Unpaid community service leave

A casual employee will only be able to request flexible working arrangements and take unpaid parental leave if:

- ✓ They have been employed as a casual employee on a regular and systematic basis for at least 12 months.
- ✓ It is reasonably expected that the casual employee will continue to be an employee on a regular and systematic basis.

What is a casual employee?

In 2021, the former Coalition Government stated that the definition of a casual employee is to be determined through the offer of employment. Recently, it was decided that new laws would replace this definition with a definition based on 'the real substance, practical reality and true nature of the employment relationships.'

The proposed changes will also introduce an 'employee choice' process where a casual employee could notify their employee that they no longer meet the definition of a casual employee. Employers will be restricted in their ability to reject an employee choice notification, as the employer would have to provide a detailed explanation of why the employee notification was denied.

Any disputes regarding the employee choice provision and casual conversion process can be arbitrated

by the Fair Work Commission. New offences will also be introduced to hold employers accountable for any misrepresentation of employment.

Pathway to permanent employment

It is said that the amendments will aim to address a legal 'loophole' in employment law. Claiming that some employers treat their casual workers as permanent employees, but without access to job security and leave benefits. Casual employees will now be able to transition from a casual employee to full time or part time employment. Employees can access this process if they have worked for their employer for more than 12 months and if it is agreed upon by both the employer and employee.

Other Possible Changes

At present in NSW, casual employees are not entitled to receive paid sick or annual leave outside the changes set out above to the NES. Whilst this is currently the position in NSW, other states such as Victoria are leading the path to change by introducing paid sick pay for Victorian casual employees. Casual and self-employed workers in Victoria now have the financial safety net to take time off work when they are sick or need to care for a loved one through the <u>Victorian Sick Pay Guarantee</u>.

Eligible Victorian workers who sign up can access up to 38 hours a year of sick and carer's pay. The program is an Australian-first and is fully funded by the Victorian Government at no cost to businesses. At this stage, there is no word as to whether other states such as NSW will adopt the same changes, however, if the initiative is successful in Victoria, we may slowly see other states such as NSW consider such schemes.

How Coutts can help Employers

If you are an employer and you wish to prepare or need any assistance implementing the new employment changes, feel free to reach out to our employment team at Coutts Lawyers and Conveyancers.

How Coutts can help Employees

If you are an employee and are seeking more information about the employment amendments and what this means for your rights, please <u>contact</u> our employment team at <u>Coutts Lawyers and Conveyancers</u>.



Melissa Care
Senior Associate



Agent Echange vs Solicitor Exchange

KEY TAKE OUTS

- ✓ What is an Agent exchange?
- ✓ What is a Solicitor exchange?
- ✓ What is the difference between Contracts exchange with or without a cooling off period?
- ✓ What is required before Contracts can be exchanged?

Agent exchange vs solicitor exchange. What is the difference?

Contracts for the sale of residential property can be exchanged via a Real Estate Agent or via a Solicitor/Conveyancer. You may have heard the terms 'Agent exchange' or 'Solicitor exchange' before. Let's explore each of these types of exchange.

Agent exchange

Generally, an exchange of Contracts with a cooling off period is completed by the Real Estate Agent and referred to as an 'Agent exchange'. In saying this, Contracts can be exchanged by a solicitor/conveyancer subject to a cooling off period if no certificate waiving the Purchaser's cooling off rights has been provided.

When Contracts are exchanged with a cooling off period, the Purchaser pays a 0.25% deposit (often called a 'holding deposit') to the Vendors Real Estate Agent's trust account. If the Vendor doesn't have an Agent or their Agent doesn't operate a trust account, the holding deposit is paid to the Vendors Solicitor/Conveyancer's trust account. Exchange in a cooling off period secures the property i.e. takes it off the market, for the duration of that cooling off period. During this time, the purchaser can finalise their loan approval and obtain pre-purchase inspections (such as pest and building or strata inspection reports). The Purchaser can rescind (cancel and get out of the Contract) for any reason during the cooling off period. The Vendor does not have a reciprocal right. If the Purchaser elects to rescind the Contract during the cooling off period, the 0.25% deposit is forfeited to the vendor as compensation for having the property off the market.

The cooling off period is required to be a minimum of 5 business days. In our experience, in the majority of cases, the Purchaser will ask for a 10 business day cooling off period to allow them additional time to complete their due diligence and obtain unconditional loan approval.

The cooling off period forms part of the completion period i.e. the completion period is calculated from the exchange date and not the date the cooling off period expires. This is a common misunderstanding.

For example, if the Contracts were exchanged on 21 August 2023 with a 5 day cooling off period and a 42 day completion period, the key dates would be as follows:

Exchange Date: 21 August 2023

Cooling off period expiry date: 28 August 2023

Completion Date: 2 October 2023

The completion date is not 42 days after the cooling off period has expired, it's 42 days after the exchange date.

The cooling off period can be extended by mutual agreement. If the cooling off period is extended, the completion date is not automatically extended and remains the same. In the example above, if the Purchaser requested an extension to the cooling off period until 30 August 2023 and the Vendor agreed, the cooling off period expiry date would be extended to 30 August 2023 and the completion date would remain 2 October 2023.

A cooling off period does not apply to all properties. A cooling off period does not apply to properties with a land area size over 2.5 hectares, to commercial properties or to properties sold at auction.

Solicitor exchange

Generally, a 'solicitor exchange' (which can be completed by a Solicitor or Conveyancer) involves Contracts being exchanged without a cooling off period. In order for Contracts to be exchanged unconditionally (without a cooling off period), the Purchaser's Solicitor/Conveyancer must provide the Vendors Solicitor/Conveyancer with a certificate waiving the Purchaser's cooling off rights. This certificate is called a 66W Certificate.

Where Contracts are required to be exchanged without a cooling off period (i.e. unconditionally), the purchaser will be required to complete their due diligence and ensure their finance is unconditionally approved prior to the Contracts being exchanged because once exchanged, they are locked in with no option to rescind (cancel). Prior to exchange, the Purchaser must pay the full deposit (usually 10% of the price) to the Vendors Real Estate Agent's Trust Account. If there is no Agent, the full deposit is paid the Vendors Solicitor/Conveyancers Trust Account.

For the duration of time the Purchaser takes to complete their due diligence and obtain unconditional loan approval, the property remains on the market and the Vendor can accept offers from other prospective Purchasers.

Coutts is here to help

Navigating property contract exchanges can be complex, whether you're considering a cooling-off period or an unconditional exchange. At Coutts, we're here to provide you with tailored insights, ensuring your property journey is seamless and well-informed. Reach out to us today to navigate property exchanges with confidence and clarity, backed by our expertise. Contact us today!



Melina Costantino
Senior Licensed Conveyancer & JP





























a Wine with... Torre

PROFILE

Position: Lawyer

Location: Narellan

Area of Practice: Family Law & Personal Injury



Q: How would you describe yourself in two words?

A: Bubbly and hard-working.

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

A: I'm a good listener.

Q: My favourite motto / mantra is:

A: "Happy wife, happy life"



Q: My pet peeve is:

A: Things being left on the floor by my children - the pain when you stand on a Lego block accidentally is awful!

Q: On the weekends you can find me:

A: Spending time with my family.

Q: The last book I read was:

A: I have not read a non-law text book in a very long time, so the last book I read for fun was the Harry Potter series.

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







Q: My favourite move of all time is

A: A feel good Christmas movie. One of my all-time favourites is Love Actually.

Your Questions Answered



CAN I MARRY SOMEONE ELSE?



A client was seeking a Divorce as she had since found a new partner and wanted to re-marry. The parties were married in Australia and lived in Australia during their marriage, however, our client was not an Australian citizen and was currently residing in South Africa.

To apply for an Australian Divorce, the court must first be satisfied that the Court has jurisdiction. Jurisdiction requires that the party applying to the Court be either an Australian citizen or ordinarily reside in Australia for the previous 12 months.

Our advice initially was to seek a joint application with the client's partner – as the other party was an Australian citizen and resides in Australia, this party would satisfy the jurisdiction requirement. After our attempts to obtain the other party's signature on a joint application failed, we needed to find another way. Our advice was to file a sole Application, serve on the other side and hope that the other party would attend court to satisfy the jurisdictional issue. When the other party did not attend court, our only option was to attempt to obtain a copy of the Citizenship certificate of the other party. We were able to obtain this certificate, file with the court and the divorce was granted.

The client was officially divorced and free to re-marry.



WHAT IS THE ROLE OF A GENERAL CONTRACTOR IN A CONSTRUCTION PROJECT, AND HOW DO I CHOOSE THE RIGHT ONE?



A general contractor is responsible for overseeing and coordinating all aspects of a construction project. Choosing the right one involves considering their experience, reputation, qualifications, and ensuring they are licensed and insured. Requesting references and obtaining multiple quotes is also advisable.



I HAD AN INJURY MANY YEARS AGO, CAN I STILL MAKE A CLAIM?



There are time frames when it comes to making a claim. Seeing a lawyer will help you navigate if you're still eligible to make a claim. Exceptions can be granted if you have a reasonable explanation as to the delay, remember to check before you decide to forget about it.



WHAT IS A PROHIBITED WEAPON PERMIT?



A prohibited weapon permit will be issued by the Firearms Registry if it can be proven that the possession or use of the weapon is for a genuine reason under section 11 of the Weapons Prohibition Act 1998.



HOW DO YOU PERFECT A SECURITY INTEREST UNDER PPSA?



Once you have determined what security interests may apply to your business, you should establish a system to register the security interests and retain all relevant records. For example, the financing and verification statements generated in the registration process on the PPSR are valuable records and should be kept on file.

It is also likely that you will need to amend your terms and conditions of trade and other related paperwork.



HOW DO I CLOSE THE BANK ACCOUNTS OF A PERSON WHO HAS PASSED AWAY?



The bank account of a deceased family member will be automatically frozen from the time that the bank is notified of their death.

If the bank account of a deceased family member was held in their sole name, then the process to close the account will depend on how much money remains in the account and the terms and conditions of the particular bank or credit union.

Some banks and credit unions will be satisfied to release the money held in the bank account to the Executor of the estate upon being provided with a copy of the will, death certificate and suitable identification from the Executor. However, this is normally only the case where the amount of money held in the account is less than \$50,000.00 or some other threshold set by the bank or credit union.

Where the amount of money remaining in the bank account is over the bank's threshold, the bank will require the Executor or next of kin to provide a copy of the Grant of Probate or Letters of Administration from the Supreme Court of New South Wales before the funds are released and the account is closed.

If the deceased person held the bank account jointly with another person who is still living, then the bank account will not automatically freeze and will transfer into the sole name of the surviving account holder. Normally the bank will require the surviving account holder to provide a copy of the death certificate to change the name on the account.

CALL US ON 1300 268 887

"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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