

MACLARENS

LAWYERS

NEWSLETTER

protecting your interests

Edition: June 2011

Established in 1945, Maclarens has serviced the legal needs of western Sydney for over 65 years. Maclarens has developed a strong reputation for excellence in legal practice and the firm is widely recognized in this region. The team at Maclarens are professional, approachable and accessible.



More money for care

If you are injured and have received 'gratuitous care' for six hours a week for at least six consecutive months, you may be entitled to recover more damages in a court case.

Gratuitous care involves receiving unpaid attendant care services (or personal care assistance) from your loved ones because you are unable to care for yourself.

In the recent case of *Hill v Forrester* [2010] NSWCA 170 the plaintiff was attacked by the defendant's dog and the plaintiff satisfied the six month duration requirement contained in s 15(3)(b) of the *Civil Liability Act* 2000 (NSW). The plaintiff was awarded more damages for gratuitous care provided during earlier periods, even though they were for less than six months, because the six month duration requirement only needed to be satisfied once. However, such damages can only be awarded for gratuitous services if services have been provided in the past, or will be provided in the future, for at least six hours per week.

The Modern Family: Why a Will is so important

Significant changes have occurred to legislation in the area of 'intestacy law' (the situation where a person dies without having a valid Will in place).

The spouse of a person dying without a Will, where there are children of that relationship and only that relationship, is entitled to the whole estate. This is presumably on the basis that he or she will then make provision for the children of the relationship in his/her own Will in due course.

However, if the deceased person has a child or children from another relationship, then the estate is to be shared. The intestacy provisions vary greatly and will depend on whether the deceased is survived by a spouse, (including a de-facto spouse), and whether there are children of that relationship, or of another relationship, living at the time of death.

In a blended family, where each partner may have their own children from previous relationships, the distribution of the estate on intestacy is not likely to satisfy the wishes of most people involved! Therefore it is essential that people leave a Will that makes proper and adequate provision for those closest to them.

Challenging or Disputing a Will

Legislation has recently reduced the amount of time people have to make a claim against a Will to twelve (12) months from the date of death. If you feel that you have been unfairly treated by a parent or a spouse in a Will, you need to obtain legal advice promptly, put the estate on notice of your claim and ensure that your proceedings, if they are to be commenced, are commenced within the 12 month time limit. Good legal advice is essential in this area because cost penalties can apply and legal costs may be capped in small estates even if your claim is successful. For more information on challenging a Will, and advice as to whether your case is viable, contact our experienced Wills & Estate lawyer, Michael Witts, on ph 02 9682 3777.

STOP PRESS...

Keeping it in the family

Changes to legislation are making progress towards a nationally uniform Wills and Estate system.

One area of recent significant change relates to what happens to a gift that is made in a Will to a child who dies before their parent.

Under the old provisions, the gift would not lapse but would pass on to the estate of the child. Generally, this resulted in the spouse of the child receiving a benefit that was originally directed to the child.

Section 41 of the *Succession Act* now provides, in general terms, that a gift made by a parent to a child who dies before the parent, will now pass to the children of the deceased child (ie the grandchildren). The wording of the legislation is convoluted but it means that the grandchildren will take the share that the parent otherwise would have taken.

In most cases this will mean that the surviving son or daughter-in-law is excluded from receiving the gift, however, express provisions in the Will can displace the operation of this section if desired.

When does this take effect?

Section 41 of the *Succession Act* operates in respect of:

- Wills made after 2008
- Persons dying after 2008
- Pre 2008 Wills where the child in question dies after 2008 (and before the person making the Will).

If a beneficiary died before 2008, and the Will was made before 2008, then the old provisions under Section 29 of the *Wills Probate and Administration Act* would apply.

HEARING LOSS AT WORK – WHEN CAN YOU MAKE A CLAIM?

Industrial deafness is deafness caused by exposure to loud industrial noise in the workplace, or even prolonged exposure to moderate levels of noise in the course of employment.

This type of hearing loss is known as sensorineural hearing loss and it makes it very difficult for people to distinguish sounds when there is a background noise – for example communicating in a social setting, talking on the telephone, listening to the radio or television. Some people who suffer from industrial deafness may also experience symptoms of tinnitus, which occurs when a person experiences 'ringing' in the ears, particularly when trying to sleep or in quiet conditions.

Unfortunately, there is no medical procedure that can rectify the symptoms of industrial deafness or tinnitus. Quality of life may be improved by the provision of appropriate hearing aids but there is no 'cure'.

Compensation for hearing loss is available

Under the New South Wales *Workers Compensation Act*, a person who has experienced at least 6% hearing loss (as a whole) due to industrial deafness is able to claim a lump sum of compensation under a Table of Impairment. The more severe the level of hearing loss, the higher the monetary amount that is recoverable.

Many workers who have industrial deafness have sustained a gradual loss of hearing over the course of their working life. When making a claim, a person only needs to make a claim against their last 'noisy' employer. That is, the last workplace in which there was regular exposure to sound of over 85 decibels which can cause such permanent damage to hearing. Where appropriate, a further claim can also be made for the cost of hearing aids.

What should you do?

A workers compensation claim should be made by the person affected as soon as possible as the *Workers Compensation Act* may not allow a person to make a claim if the claim is delayed for a period of more than 6 months after they become aware of their hearing loss caused by work.

The cost of making an industrial deafness claim is met by the relevant workers compensation insurer and the costs of obtaining any medical reports are reimbursed by the insurer in any successful claim. If you have recently discovered you have hearing loss that could have been caused by your employment, contact Maclarens on ph 02 9682 3777 to find out whether you can make a claim for workers compensation.

THE STING OF A GOOD DEED

Take care when lending money to others, even if you are lending to your own flesh and blood (and their spouse), because if the repayment terms are uncertain, a court is unlikely to enforce your claim for repayment.

In the High Court case of *Young v Queensland Trustees Limited* (1956) 99 CLR 560, it was held that a loan that is "repayable upon demand" is an immediate debt and becomes statute barred 6 years later (in NSW). If a loan is made "repayable on demand", the terms of the loan must be drafted in such a way as to circumvent the time limits outlined under the *Limitation Act 1969* (NSW). An important lesson: You must ensure that you document your loan correctly to minimize any future problems!

CONTACT US:

Maclarens Lawyers

Maclarens House
232 Merrylands Road
Merrylands NSW 2160
DX 25406 Merrylands
Phone: 02 9682 3777
Fax: 02 9637 1010
Email: mail@maclarens.com.au
Website: www.maclarens.com.au

OUR SERVICES

Personal Services

Family Law
Wills and Estates
Property
Conveyancing
Court Work (Criminal, Traffic, Civil)
Public Notary
Migration Law

Business Services

Buying and Selling Businesses
Commercial and Retail Leasing
Companies and Trusts
Commercial Disputes
Local Govt/Land & Environment
Intellectual Property

MACLARENS
LAWYERS

Partners

Robert Bruce Tilley B.Juris. LL.B
Christopher Paul Maley OAM. LL.B
Jessica Su Ling Ngoy B.Sc. LL.B, LLM

Consultants

Louis Joseph Andreatta LL.B

Associates

M. Wits B.A. LL.B
Les Feher BA. LLB, LLM

protecting your interests