

# news

## INSIDE THIS EDITION

- Where there's a will
- Notaries
- Property Laws change for De Facto Couples
- Growth areas infrastructure contribution

**Lawyers for Families**  
Expertise for the individual,  
family & business

## Our areas of expertise

- Business Law
- Family Law
- Dispute Resolution
- Private Clients

Wills & Estates  
Conveyancing  
Migration

The information in this newsletter is not intended to be a complete statement of the law relating to the issues raised.

Accordingly no person should rely on this information without obtaining specific advice from lawyers.

## Where there's a will

You may be keeping a daily watch on the stock prices or regularly checking your local housing market, but when was the last time you thought about your will? Or considered whether you need to make a power of attorney?

At a time when our attention is gripped by the daily surges in our investment portfolios, it can be easy for other considerations, such as updating a will or making a power of attorney, to get pushed into the background.

Yet planning for future contingencies is just as important.

A will should be reviewed every five years or when a significant life event occurs – such as marriage, separation or divorce.

Other circumstances that can affect wills include the death of the executor or beneficiary under the will, a change in relationship, the birth or death of children, a financial failure of an intended beneficiary, and the acquisition or sale of assets bequeathed in a will.

We can help make or update your will, ensuring beneficiaries are provided for (for example, through the creation of a trust), ensuring your wishes are clearly expressed and advising on circumstances where your will could be contested.

Similarly, we can provide advice on preparing a power of attorney, which authorises a trusted person to act for you when you are overseas, hospitalised or no longer capable of looking after your own affairs.

There are three main types of power of attorney – a general power of attorney, enduring power of attorney (financial) and an enduring power of attorney for medical treatment.

The Victorian Parliament's Law Reform Committee will be conducting an inquiry into powers of attorney aimed at streamlining and simplifying the process to enable more people to plan for their financial, lifestyle and healthcare needs.

Our lawyers can advise you on making or updating your will and whether a power of attorney can assist in your current circumstances and, if necessary, draft the appropriate legal documentation.

Please contact John Henry of our office for further information on (03) 9670 0700.

# Notaries

If you find that you need to sign a legal document from a country outside Australia, or a legal document that is to be sent overseas, you may need the services of a notary.

A notary is a person holding a lawyer's practising certificate who has completed a course of further study and been appointed under the *Public Notaries Act 1997* to practise also as a notary.

You may be aware that some legal documents for use within Australia that require a qualified witness, such as powers of attorney or statutory declarations, can be witnessed by a justice of the peace or lawyer, or people in certain occupations such as policemen, medical practitioners or pharmacists. The qualification of those people to witness documents does not extend to documents for use outside Australia.

However, a notary is recognised worldwide as qualified to witness documents of all kinds. In fact, even documents that would not normally require a witness to be qualified in any way, such as commercial contracts or land transfers, but which are to be sent overseas, are commonly required in the destination country to have been witnessed by a notary.

This provides certainty in the country of destination that the signatures are genuine and that the person who signed the documents has been independently identified. A notary before witnessing a signature calls for proof of identity to be produced, usually a passport or driving licence. The notary then attaches or endorses a certificate, which includes an impressed seal.

There is a further procedure, used in appropriate cases, where the notary's signature and seal may in turn be certified by the Department of Foreign Affairs and Trade, or by the local consulate or embassy in Australia of the country of destination.

The fee charged by a notary is prescribed under a scale published by the Society of Notaries of Victoria, based on the number of documents involved and what needs to be done to them. For the witnessing of signature of a single document the cost is from \$50 to \$80 depending on the format of the document.

There are approximately 100 notaries practising in Victoria, most combining their notarial services in their practice as a lawyer. Of that number, 25 practise in the central business district of Melbourne. John Henry of our office is a notary, for assistance with your notarial requirements, please contact John on (03) 9670 0700.

## Property Laws Change For De Facto Couples

The legal landscape has changed for de facto couples who separate and face the often difficult task of dividing up their assets.

Under new Federal laws which came into effect on 1 March this year, property settlements for separating de facto couples will be in line with those for married couples.

The Family Court can order division of any property that a de facto couple owns either separately or together.

The superannuation of each partner can now be split, and spouse maintenance ordered.

The Family Court can make these orders if satisfied of one of the following:

- the de facto relationship is at least two years' duration;
- there is a child of the de facto relationship;
- one of the partners made substantial financial or non-financial contributions to their property or as a homemaker or parent and serious injustice to that partner would result if the order was not made; or
- the de facto relationship has been registered in a State or Territory with laws for the registration of relationships.

A de facto relationship is where two people – either of the opposite or same sex – are not married or related by family but live together on a "genuine domestic basis".

The new laws apply to de facto relationships that break down on or after 1 March 2009. Applications for a property settlement must be made within two years of the relationship ending.

However, couples whose relationship has broken down before this date can choose to have the new laws apply to them if they opt in to the new legislation and each obtains independent legal advice.

People who are about to enter – or are already involved in – a de facto relationship may want to consider a binding financial agreement which outlines property distribution and maintenance if the relationship breaks down.

Binding financial agreements can only be entered into after both parties have obtained independent legal advice.

For further information please contact our Family Law department on (03) 9670 0700.

# Growth Areas Infrastructure Contribution

With the faster than expected growth in Melbourne's population, more land for housing will be needed in growth areas such as Casey, Melton-Caroline Springs, Hume-Mitchell-Whittlesea and Wyndham over the next 20 years.

To accommodate the need for more land for housing the government has proposed an expansion of the existing Urban Growth Boundary. To meet the cost to government of building new infrastructure there will be a Growth Areas Infrastructure Contribution imposed on the sale or subdivision of land in recently announced "Investigation Areas" which is subsequently brought into the Urban Growth Boundary in 2009. Owners of such land will be liable for the contribution when the first sale or subdivision of their land takes place. It will be a one off contribution.

Not all land in the Investigation Areas will be included in the new Urban Growth Boundary. Some land in the Investigation Areas may be unsuitable for development because it may consist of land in floodways, quarries, or streams and wetlands which need protection.

The investigation into new growth areas will address matters of land supply, so as to ensure well planned communities with local employment, and the protection of environmental assets.

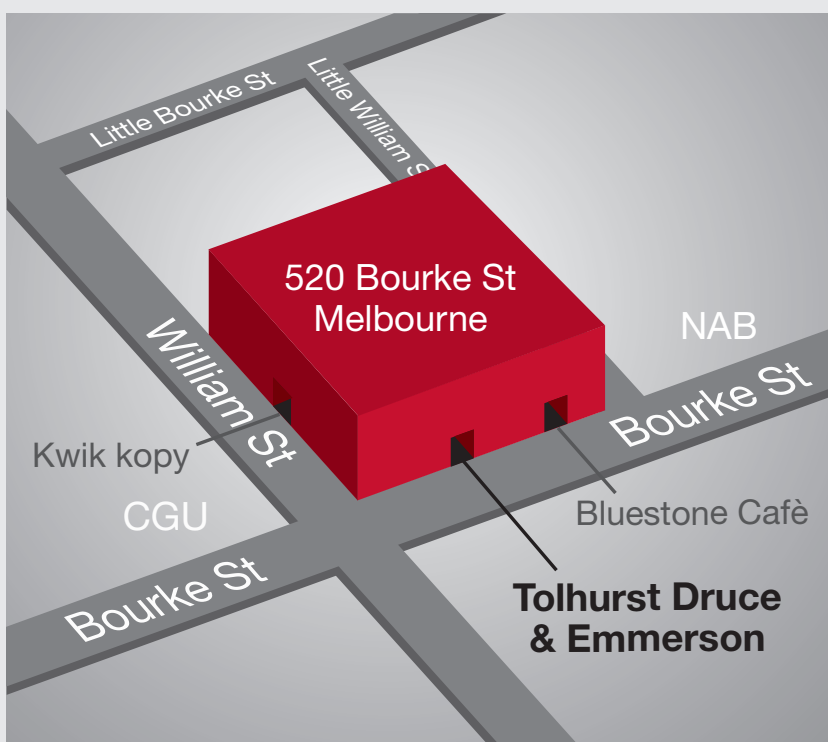
It is anticipated the maps showing the proposed new Urban Growth Boundary will be produced in the coming months. There will then be an opportunity for submissions by people affected by the proposed changes to the Urban Growth Boundary. Late in the year the new Urban Growth Boundary will be finalised and given the force of law by legislation. This will have an effect on the value of land included within the Urban Growth Area for the first time.

Once the new Urban Growth Boundary is finalised the Growth Areas Infrastructure Contribution will apply to all land included in the new boundary that has been or is sold or subdivided after 2 December 2008, at the rate of \$95,000.00 per hectare, and to land which was brought into Melbourne's Urban Growth Boundary in 2005, at the rate of \$80,000.00 per hectare.

Accordingly, it would be unwise if you have land in the recently announced Investigation Areas to sell or subdivide the land before the expanded Urban Growth Boundary has been finalised. Until then you cannot be certain whether a Growth Areas Infrastructure Contribution will be payable or whether the value of your land will change.

An information sheet from the Growth Areas Authority with contact details of the relevant authority and current maps are available at our office.

If you own land which may be affected by the proposed changes to the Urban Growth Boundary, and the subsequent Growth Areas Infrastructure Contribution and wish to obtain more detailed advice, please contact John Henry of our office on (03) 9670 0700.



## Our location

This map shows that our building is the bluestone building on the corner of Bourke and William Streets.

Some helpful information when you are coming in to see us:

- the nearest car park - RACV Club at 501 Bourke Street also accessible from Little Collins Street
- by tram - number 86, 95 and 96 trams in Bourke Street - number 55 trams in William Street
- by train - we are only two blocks from Southern Cross Station and two blocks from Flagstaff Station



#### Partner Profile:

## John Henry

John Henry is a Partner in our Private Clients Department. With over 39 years practising law, John's particular areas of expertise include wills, private and charitable trusts, estates, conveyancing and property.

John is an Accredited Specialist in Wills and Estates and practises as a Notary Public.

#### Why did you decide to become a lawyer?

I enjoy working with words - finding the exact words to explain something clearly to a client or to express the client's wishes in a document.

#### What have been your greatest challenges as a lawyer?

Keeping up with technological change, and keeping ahead of the ever increasing volume of traffic over my desk that is a fact of life in a busy legal practice.

#### What advice would you offer to junior lawyers?

Despite the budgetary and other pressures they will encounter, not to lose sight of the fact that they are a member of the profession.

#### What book are you currently reading?

A history of London.

#### Do you have a life outside the law?

I certainly do. I garden, cox a veteran rowing eight, do family history, keep fit and have maintained my contact with the friends I have made during over 20 years' service in the Army Reserve.

## By the way...

■ Our firm markets itself as "Lawyers for Families" and is proud to be the lawyers of choice for generations of families. Most of our clients are families, and the services we offer are those that members of a family would need such as:

- Wills
- Powers of attorney
- Family law
- Business law
- Migration
- Litigation
- Estates
- Conveyancing
- Mediation
- Tax returns

We pride ourselves in having acted for families of clients for three or more generations. If you are one of those families, please mention it when you next telephone our office.

■ Did you know that during our history of over 110 years, we have merged and absorbed a number of legal practices including:

- Charles Coy (1951)
- Louis S Lazarus (1985)
- D Condon & Co (1993)
- Gavan Duffy & King (1998)
- Doyle & Kerr (2001)
- Puglisi Heffey & Pavlidis (2006)

We still hold the records of those practices and have support staff and practitioners from all but one of those practices (the practice of Charles Coy). However, we still act for Charles Coy's daughter.

■ If you have not heard from us for many years and now find yourself receiving our newsletter, this is due to client database upgrades to our mailing list. If you are unsure how your name has been placed on our client list, please contact our office to ask.

■ If you would rather receive our newsletter by email, please contact our office to let us know your change of preference.

■ If you change your address please include us when sending out notifications of your new contact details - particularly if we are holding documents in safe custody for you. If this newsletter was incorrectly addressed to you, please contact our office.

### Saving Tax through Superannuation - Two Ideas

If you own a commercial property in your own name or in the name of a company, and it is earning income, that income will be taxed, and so will any capital gain unless the property was acquired before 19 September 1985. If there is a superannuation fund that you are able to contribute to, you may be able to move that property into a tax free environment.

If there is a possibility that you may still have undrawn superannuation when you die, you are in your second marriage and you have adult children by your first marriage, there is a strategy you should consider that could save tax otherwise payable on your death and possible other costs.

To explore either of these ideas, please contact John Henry of our office on (03) 9670 0700.