

# Life matters

**de GROOTS**  
wills and estate lawyers

In Laura Nash and Howard Stevenson's book titled *Just Enough*, the authors pose the question 'What is success?' They conclude that success is about 'just enough' and that reaching this state requires our active engagement in four very different kinds of goals: Happiness, Achievement, Significance and Legacy.

Having spent many years developing a business, most owners want to see their life's work continue after their death as part of their legacy. In this issue we look at what needs to be put in place to promote the smooth transmission of a business. Similarly, many rural families become embroiled in arguments over ownership of the family farm. Ideally, good quality succession planning can minimise the prospect of a family becoming involved in litigation and relationships being fractured.

We also continue our profiling of innovative charities. *Street Swags* provides practical assistance to thousands of homeless. The GFC and natural disasters have meant that many more people are in need. Much has been written about philanthropy of late. In the *Courier Mail* of 4 September 2011, Professor Myles McGregor-Lowndes, Director of the Australian Centre for Philanthropy and Non-Profit Studies, commented that "Giving is acting on values: we show through compassion what we stand for in life."

We hope you enjoy this issue.

**Margot de Groot**  
Director

## Remembered for the company you keep

The last few years of economic uncertainty have not made life easy for business owners. It is understandable then that everyone's focus has been on dealing with the day to day issues and whatever decisions are necessary to keep the business running and profitable.

However, most business owners also understand the importance of spending time to develop long term strategic goals for their business. On the other hand, very few business owners stop to think about what would happen if they become seriously ill or pass away unexpectedly. This can be the most vital planning that a business owner can undertake – without it many businesses fail. Some of the questions which need to be addressed include:

- Who has the skills and ability to run this business if you aren't there to do what you are currently doing on a day to day basis?
- Is the business centred on you or could it continue if you weren't there?
- Are there separate components to the business which could be dealt with differently if you weren't there?
- Are there key people whom you need to consider as part of the succession plan of the business and what steps should you be taking now to ensure that they receive the necessary skills training to enable them to assume new roles.

If you have a business that has multiple owners, complications can arise if one of

those owners dies or loses capacity. Unless there is an appropriately thought out exit strategy, it is possible that the other owners of the business could be engaged in difficult and protracted negotiations with the deceased or disabled owner's family, often distracting them from the needs of the business.

Appropriately drafted agreements can:

- Detail how the business will continue to function
- Formulate the value to be attributed to the share of the deceased or disabled owner
- Regulate how and when that value will be paid
- Ensure funding with life insurance and total and permanent disablement cover

Succession planning needs to be a part of any strategic plan for a business. Without it, all the planning in the world will not make any difference in the event the owner cannot continue to be involved in the business. Putting in place an appropriate plan and clear guidelines for those left behind will give your business the best chance of survival.

Please telephone our estate planning team if you would like to discuss how these issues may be addressed and an appropriate plan put in place for the benefit of your business and consequently your family.

**Angela Cornford-Scott, Director and Accredited Specialist in Succession Law (QLD).**

## 25th Anniversary

In July 2011 we celebrated the 25th Anniversary of our firm. This has been a challenging year for us due to the floods, so it was great to reflect on our first 25 years over a celebratory luncheon with our staff.

Much has changed but several things remain constant such as the importance of values, the ethical behaviour required in practice and the imperative of being client focussed.

Thank you to everyone who has supported us since 1986. Twenty-five is a special milestone. We are excited about the opportunities that lie ahead and look forward to our next 25 years!



Brisbane Directors Margot de Groot and Angela Cornford-Scott and Sydney Director Phillip McGowan.

## Insure to be sure

Life insurance is an essential part of both estate planning and business succession planning. It can help reduce any financial burden that may fall upon your surviving spouse or family member, by providing additional cash funds to your estate. These additional funds can then be used towards repayment of debts such as medical, hospital or funeral expenses or in satisfaction of mortgage and/or credit card liabilities. As a result, life insurance promotes peace of mind – you know that if something happens to you, your family will not be left in a position of financial vulnerability.

Another role which life insurance can play in estate planning is to create equalisation in the distribution of estate assets. This could

be where there is only one major estate asset, such as the family home or the family farm property. The will maker may wish to leave the asset to a particular beneficiary (such as the family home to the spouse or the family farm to the son who has worked a lifetime on the farm) but does not want to treat other potential beneficiaries unfairly. In these types of circumstances the additional cash from a life insurance policy could be paid to the will-maker's other intended beneficiaries, thereby creating a fairer distribution. This in turn can reduce the risk of the estate being contested by disappointed beneficiaries.

In business succession planning, life insurance can also underpin a buy/sell or buy out agreement. This type of agreement is made between co-owners of a business to govern what will happen to the business if a co-

owner dies or is otherwise unable to continue in the business (for example through accident or illness). Often the proceeds of life insurance will fund the buy-out of the co-owner's interest in the business. The co-owner's estate would thereby receive payment of his or her interest in the business, whilst the other business owner is able to continue with the business, without having the co-owner's spouse, children or other beneficiaries becoming their new and unintended business partners.

It is important to consider insurance as part of an overall estate plan. Life insurance proceeds which fall into the hands of unintended creditors or cause additional tax to be paid, could easily undo the intended benefits.

**Carla Parsons, Lawyer, is a member of our Estate Planning Team.**

## Control of the family farm

Families often become involved in litigation after the death of a loved one where a son or daughter has worked on the family farm and contributed to the value of it. Typically, during succession planning, parents will leave the family farm to the eldest son or fail to recognise the contribution that one of their children may have made to the success of their farming enterprise. Either way this can lead to a high level of conflict within the family and result in costly litigation.

It is important when undertaking succession planning in the context of rural properties that parents consider how their children have contributed to their current wealth, who or what entity actually owns the asset, the need for any agreements, for example partnership agreements between husband and wife, or whether current agreements are still applicable, and the potential taxation implications of the succession plan.

Another critical question for farming families is often when to transfer the control of the farm to the next generation. Should a transfer or division of the property occur prior to a parent passing away or by way of an inheritance pursuant to a Will. Conflict within the family is often avoided by a family discussion of the proposed succession plan for the family farm. The best interests of the family and the profitability of the farm should be paramount. No family wants, on the death of a loved one, to be arguing in a court over the estate of a parent.

**Katie Worsnop, Lawyer, is a member of our Estate Litigation Team.**

## Street Swags

Six years ago Jean Madden began the Australian phenomenon *Street Swags*. Since then, her charity has given basic bed and shelter to over 16,000 homeless. Winning the largest design award in the world, the Street Swag, which is made by prisoners, is a basic bed and shelter purposefully designed for the homeless.

The majority of these go to women with children and whole family groups, who have been made homeless for a variety of reasons. Many of these families don't receive Centrelink because they don't have an address and don't register for fear of having their children taken from them and put into foster care. Hundreds of Street Swags have been distributed to flood and cyclone victims in Queensland this year.

With tremendous support from so many in the music industry, November 12 is the launch concert for *Street Swags'* fundraising album. The CD, 'A Season for Giving' is set to be an iconic Christmas album for Australian Music. Artists including Lee Kernaghan, Katie Noonan, Bill and Kasey Chambers, Troy Cassar-Daley, Tommy Emmanuel and Rick Price have all donated tracks.

To celebrate this unique collaboration, a number of artists from the album will come together on November 12 for a one day festival at the Brookfield Show Grounds.

Jean Madden's recent presentation to our firm was compelling and we thought you would also be interested in her work.

For further details about this charity and the concert, please visit [www.streetswags.org](http://www.streetswags.org).



Jean Madden of Street Swags.

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