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## Shall I text you my Will?

In a recent unprecedented case,<sup>1</sup> the Queensland Supreme Court accepted an unsent text message in the phone of a deceased man who committed suicide, as a valid Will.

Each state has its own legislation which sets out a range of formal requirements for a valid Will. In most states, including Victoria, the legislation includes a remedial provision which allows the Court to accept an informal document as a valid Will, despite the fact that it does not comply with formal legislative requirements. In such cases, the crucial question for the Court is, whether the deceased intended the informal document to operate as his or her Will.

It was argued in the Queensland case, that the deceased did not have the requisite testamentary intention, because he had not sent the text message (it was found as a draft message). The Court however, did not consider this to be evidence that the deceased did not wish the text message to operate as his Will.



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Instead, the Court was satisfied that on the balance of probabilities, the deceased had the necessary testamentary intention, because the deceased's mobile phone was

<sup>1</sup> *Re Nichol; Nichol v Nichol & Anor* [2017] QSC 220

### Words to the Wise

**Then the Grinch thought of  
something he hadn't before!  
"Maybe Christmas," he thought,  
"doesn't come from a store.  
Maybe Christmas... perhaps...  
means a little bit more!"**

— Dr. Seuss, *How the  
Grinch Stole Christmas!*

with him at the time of his death, and his text message:

- named the beneficiaries of his assets;
- stated where he wanted his ashes buried;
- detailed where he had held some cash;
- provided information to access his bank account; and
- had the words "my Will" at the end of the message.

The Court found that the text message not being sent to his brother or nephew (who were the beneficiaries of his "Will") could be explained by the fact that the deceased did not want to be found, before he committed the act of suicide.

Even though the Court has the power to accept an informal document, it is a remedial power, meaning that the Court will use it cautiously and will not lightly dispense with the formal requirements of a valid Will. In fact, many recent decisions of the Victorian Supreme Court demonstrate the Court's reluctance to allow informal Wills to receive a Grant of Representation.

In these circumstances, it is always best to prepare and execute a Will whilst you have the testamentary capacity to do so, instead of relying on any informal document.

If you require any assistance in preparing a Will, please contact our Estate Planning team on (03) 9870 9870.

### Did you know...

If you work in the city, our Melbourne office is ideally positioned to meet your legal needs. For a convenient lunch time appointment or consultation, give us a call.

If you would like to receive an electronic version of Legal Insight, please:

- send an email to [office@hutchinsonlegal.com.au](mailto:office@hutchinsonlegal.com.au)
- call Tristan Tottenham of our office on **9870 9870**
- write to us at PO Box 450, Ringwood 3134

## Yours or mine?

### The division of wedding gifts after a short marriage

In Australian family law, there is no presumption that property is to be divided equally when a marriage dissolves. Instead, the ownership rights of each party are determined by their respective direct and indirect, financial and non-financial contributions.

In marriages of a short duration where there are no children involved, the Courts have given more weight to the financial contributions, especially the initial capital of each party, and less to indirect contributions. This is because the significance is not as great as when parties maintain a household and raise a family over a long period of time. In marriages of short duration, property is generally divided on an 'asset by asset' basis which involves a determination of the parties' interests in individual items of property.

Wedding gifts are regarded as contributions to a marriage. In the case of *DH & RM*<sup>2</sup>, the Court regarded the gift as a contribution by the person whose family provided it. Therefore, the husband was entitled to the gifts given to them by his family and friends, and the wife was entitled to those from her side.

As the source of wedding cash could not be identified in this case, the Court could only infer that they contributed to it equally, even though the husband had control over the wedding cash. A portion of the wedding cash had been spent on living expenses and the remainder was divided equally. The Court in *Daniels & Daniels*<sup>3</sup> treated the wedding cash in the same way, by dividing it equally.

If you would like more information about division of property, please contact our Family Law Team on 9870 9870.

<sup>2</sup> [2004] FMCA FAM 74  
<sup>3</sup> [2009] FAMCA 1152



## Can your employer comment on your appearance?

Recently, an employee made an application to the Fair Work Commission to order his employer to stop bullying him, after his supervisor had asked him what happened to his face.<sup>4</sup>

Although the Fair Work Commission found that raising the issue of the employee's appearance was inappropriate and insensitive, it did not amount to workplace bullying, even though the employee found the question to be deeply disrespectful and hurtful and genuinely believed that he had been bullied.

The Fair Work Commission found that the supervisor's comment was not made in a malicious way or with the intent to cause harm or distress. More significantly, the

comment was a 'one-off' and did not form any part of a pattern of repeated unreasonable behaviour.

To read more about workplace bullying, visit <http://www.hutchinsonlegal.com.au/can-your-employer-comment-on-your-appearance>

If you have any concerns about workplace bullying, please contact our Employment Law team on 9870 9870.

## 2018 Calendar

If you have not yet received your fridge magnet calendar, please give Tristan a call on 9870 9870 and he'll set one aside for you to collect from our office!

## Christmas message

Christmas sometimes seems to come upon us earlier as each year passes. Perhaps it is due to the busyness with which we approach each day, or because decorations are hung and carols are sung before December has begun! Whether Christmas sneaks up on you, or you've been eagerly anticipating its arrival, please take the time to step back and savour the celebrations and deeper meaning with those you love. From all the team at Hutchinson Legal, we hope you have a relaxing and blessed Christmas.



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## FastFACTS

118,962

**Average number of marriages in Australia each year**

1 in 2

**Australians have experienced workplace bullying at some point in their career (approximately)**

1937

**The year radio announcer Norman Banks started the tradition of an Australian Christmas Eve carol service lit by candles**

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