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| |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | --- | --- | | |  |  | | --- | --- | | |  | | --- | | **March 2015 Newsletter**  We are delighted to send you our first newsletter for 2015, which covers new staff members joining our firm together with  various topics and recent developments in the law. We hope you will find this of interest.   http://gallery.mailchimp.com/653153ae841fd11de66ad181a/images/transparent.gif  **Firm Updates!**  **Our New Team!**  We now welcome ***Jacqui Minors*** and ***Daniel Willcockson*** to Clive Mills & Associates.   ***Jacqui Minors***   https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/3b4d1b24-52fb-403c-a8c4-f393c0c5e6dd.jpg  Jacqui was admitted as a Solicitor in 2007 and holds a Master of Laws and Legal Practice. Jacqui joined our team in January of this year, and is a family law solicitor and family law mediator. Jacqui has over 7 years of experience as a Solicitor working in the area of Family Law. Jacqui previously worked as a Solicitor at Clinch Long Letherbarrow in the areas of divorce, child support, parenting and children's issues, where she worked for a period of 4 years.   Jacqui works part-time at our office on Tuesdays, Thursdays and Fridays of each week.    ***Daniel Willcockson***  https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/b343ffcc-166f-4a7a-91c2-6f5a89189d03.jpg  Daniel was admitted as a Solicitor of the Supreme Court of New South Wales on 23 February 2015 and has commenced work as a Solicitor with Clive Mills & Associates. He assists in all areas of law offered by our firm, including Family Law, Wills and Estates, Conveyancing, Commercial Law and Civil Litigation matters.   Daniel previously worked in IT as a Support Team Leader for the Asia Pacific area for Kronos.  Daniel is assisting us to ensure that our IT systems are up-to-date and enable us to continue to provide a high standard of service to  our clients.  Daniel studied law full-time with the Legal Profession Admission Board at Sydney University while employed with Kronos. | | | |  | | --- | | **Updates in the Law**  **Family Provision Claims**   ***What is a family provision claim?***   A family provision claim can be made when an *“eligible person”*– often a spouse or a child of a deceased person – considers that adequate provision was not made for them when the deceased made his or her Will.   Such applications in New South Wales are made to the Supreme Court of New South Wales.   ***Succession Act 2006* (NSW)**   [Section 57 of the *Succession Act 2006* (NSW)](http://www.austlii.edu.au/au/legis/nsw/consol_act/sa2006138/s57.html) (“the Act”) sets out the eligible persons who may apply for a family provision order.   There are *2 groups* of persons eligible to apply for a family provision order:   1. the *first* group comprises *spouses* or a *child*of the deceased; and      1. the *second* group includes:      * a *former wife* or *husband* of the deceased person      * a *grandchild* of the deceased who was, at any particular time, *wholly* or *partly dependent* on the deceased;      * a *person* who was, at any particular time, *wholly* or *partly* *dependent* on the deceased ***and***was, at that particular time or any other time, a *member* of the*household* of which the deceased was a member;      * a person with whom the deceased person was living in a *close personal relationship*at the time the deceased person died.   [Sub-section 3(3) of the Act](http://www.austlii.edu.au/au/legis/nsw/consol_act/sa2006138/s3.html#close_personal_relationship) *(the definition section)* defines *“a close personal relationship”*as *a close personal relationship (other than a marriage or a de facto relationship) between two adult persons, whether or not related by family, who are living together, one or each of whom provides the other with domestic support and personal care.*     It is open to a court to make a family provision order if:   -the applicant is an *eligible person*; and   -at the time when the court is considering the application, *adequate provision* for the proper *maintenance*, *education* or *advancement in life* of the applicant has not been made by the will of the deceased, or by the operation of the intestacy rules in relation to the estate of the deceased, or both.        ***Chapple v Wilcox*[2014] NSWCA 392**   A recent case of interest is the case of [*Chapple v Wilcox [2014] NSWCA 392*](http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWCA/2014/392.html?stem=0&synonyms=0&query=title%28chapple%20and%20Wilcox%20%29). In this case, a decision of the Court of Appeal set aside a Supreme Court decision to make provision for a grandchild in circumstances where the deceased had by his will left his whole estate to his only child, his daughter (the grandson’s mother). The estate comprised principally a pastoral business.   The grandson had had little contact with his grandfather for some time and he had not visited his grandfather since 2004.   In contrast, the deceased’s daughter (who had inherited the whole estate under the Will) had enjoyed a close relationship with her father for most of his life.   The Court found that she had been “a dutiful and caring daughter” and that, according to community standards and expectations, there was little to support the grandson’s claim that provision should have been made for him out of his grandfather’s estate to justify interfering with the wishes expressed in the grandfather’s Will.   http://gallery.mailchimp.com/653153ae841fd11de66ad181a/images/transparent.gif  **THINKING OF SELLING/BUYING/RENTING A HOME? – SWIMMING POOLS AMENDMENT ACT 2012**  From 29 April 2015, new disclosure requirements will apply in New South Wales when selling or leasing a property with a swimming pool.   You will need to provide a valid ***certificate of compliance*** issued by either the council or an accredited certifier under the *Building Professional Act 2005* (NSW) *('the Act')*. A swimming pool subject to an occupation certificate may be exempt from an inspection program for three years from the date of issue of the occupation certificate. You also need to provide evidence that the swimming pool is registered under the Act.   If you are planning to:   * rent or sell a property with a swimming pool and would like advice to ensure that you are complying with these changes to the law; and/or * buying a property with a swimming pool prior to 29 April 2015 and would like to arrange for an inspection to be carried out,           please do not hesitate to contact us. | | | |  | | --- | | **How do we support our children financially after separation?**  After separation it can be difficult to figure out how you both support the children financially.  If it is the case that you and your ex-partner are able to agree on the amount of child support that should be paid you can enter into a Binding Child Support Agreement that will detail the entirety of your Agreement. That Agreement is then registered with the Department of Human Services.  If you are unable to agree, you can make an application to the Department of Human Services for an assessment to be completed. That assessment will consider the personal circumstances of each parents and will largely focus on the following:-   * The taxable income of both parents; * The number of nights the child spends with each parent; * Your cost of living; and * The obligation to financially support any other person.   Once that assessment is made, the Department of Human Services will advise both parents of the assessment that has been made and will request a payment that is made on either a monthly, weekly or fortnightly basis. That payment can be made either to the other parent directly or through the Department.  If either party does not agree with the child support assessment, an application can be made to the Department of Human Services for a change of the assessment.  There are ten grounds upon which an assessment can be reviewed, (*section 117 of the Child Support Assessment Act 1989*) as follows:        a)      The costs of maintaining a child are significantly affected by high costs of                enabling a parent to spend time with, or communicate with, the child.        b)      The costs of maintaining a child are significantly affected by high costs                associated with the child's  special needs.        c)      The costs of maintaining a child are significantly affected by high costs of                 caring for, educating or training the child in the way both parents intended.        d)      The child support assessment is unfair because of the child's income,                 earning capacity, property or financial resources.        e)      The child support assessment is unfair because the payer has paid or                 transferred money, goods or property to the child, the payee, or a third party                 for the benefit of the child.        f)       The costs of maintaining a child are significantly affected by the high child                care costs for the child (and the child is under 12 years of age).         g)      The parent's necessary expenses significantly affect their capacity to support                 the child.        h)      The child support assessment is unfair because of the income, earning                 capacity, property or financial resources of one or both parents.        i)      The parent's capacity to support the child is significantly affected by:                        -    their legal duty to maintain another child or person,                        -    their necessary expenses in supporting another child or person they                            have a legal duty to maintain,                        -    their high costs of enabling them to spend time with, or communicate                            with, another child or person they have a legal duty to maintain.        j)      The parent’s responsibility to maintain a resident child significantly reduces                their capacity to support the child support child.  Following an application to change the assessment, the Department of Human Services can then alter the child support assessment by increasing or decreasing the amount payable or not changing the assessment at all, it is in their discretion.  When the Department of Human Services makes such a decision that affects you, and you do not agree with the Agency’s decision, it is open to you to lodge an objection within 28 days of receiving the decision made by the Department of Human Services.  There are further steps that can be taken should you be unhappy with the decision made by the Department of Human Services following the lodgment of your objection.  If you are having difficulties determining how to arrange the financial support of your children or issues dealing with the assessment process, we invite you to contact us on (02) 9906 8188.  http://gallery.mailchimp.com/653153ae841fd11de66ad181a/images/transparent.gif  **Website Update**  Our website has received a major update and will be going live within the next week: http://www.cmalegal.com.au/ | | | |  | | --- | | http://gallery.mailchimp.com/653153ae841fd11de66ad181a/images/transparent.gif  **Our Team**    https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/fc64ab90-a1ab-4ccc-84cd-d8a44fba571c.jpg   In addition to Jacqui and Daniel our team comprises:  ***Clive Mills***  https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/34e2c76c-1c65-4c7f-96d4-bc1ad3b0869b.jpg  Solicitor, Notary & Family Law Dispute Resolution Practitioner    ***Esther Kim*** https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/02ecf5b7-05a8-4394-9797-553fe5625aef.jpg  Solicitor     ***Ben Hur***  https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/0aae93e9-0bc9-4df5-829e-ab88c273033f.jpg  Solicitor  **Clive Mills Family Law Meditations  Our Family Law  Mediators include:**  ***Jodie Romer  https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/cec3beb4-98b5-4c1a-919f-ef508b1d3400.jpg***  Jodie is a registered Family Dispute Resolution Practitioner with the Attorney Generals Office and a Practitioner member with LEADR.  Jodie's qualifications include a Bachelor of Arts majoring in Psychology from Macquarie University, and a Graduate Diploma in Family Dispute Resolution from Australian Institute of Relationship Studies.  Jodie has experience in separation, divorce and parenting and children's issues and has a keen interest in family dynamics particularly relating to blended and step families.   ***Lisa Cappe   https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/bc0ce3fd-9677-42cc-afc5-d266ac9c8c26.jpg*   Our other mediators include:**   * **Liz Wong;** * **Sheridan Costa; and** * **Michelle Forbes.** | | | |