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## **Estate Planning Tasmania News**

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### **The Law Society of Tasmania's Young Lawyers Award for 2016**

This award is made by The Law Society of Tasmania to a nominee who has made an outstanding contribution to the Tasmanian legal profession during the first five years of practice and / or is an outstanding example to the legal profession.

The awardee for 2016 is Kimberley Martin, who joined Worrall Lawyers in May 2012.

We are pleased to see that the recognition that Kimberley has gained as a lawyer across Australia and within Tasmania, is being recognised by The Law Society of Tasmania with this prestigious award. Kimberley is relatively rare as a young lawyer, in that she has worked exclusively for all of her career, within estate planning, and the allied areas of trusts, superannuation, and elder care law.



Part of Kimberley's nomination had this to say about her:

*"Kimberley has excelled in her contribution to the Tasmanian legal profession. Her contribution includes preparing and presenting a number of seminars and lectures, including presenting by invitation to the Tax Institute of Australia and at two Legalwise Seminars. Her work has been published in the international journal of the Society of Trust & Estate Practitioners (STEP), and in the Leo Cussen Wills and Probate Bulletin in 2015.*

*Kimberley has been a strong voice representing the legal profession at a State and National level through her published work, professional presentations, and media exposure. In addition to preparing and presenting technical papers to fellow members of the profession, Kimberley has prepared an extensive paper for the Australian Medical Association (AMA), as well as presenting several seminars to various industry groups and community organisations on Estate Planning. Notably, in 2015, Kimberley was interviewed on the Nationally broadcast ABC 7:30 program, and by Mike Jeffreys on radio 2UE about digital assets, an area in which she has developed a strong national reputation. As a result of this reputation, Kimberley has been asked to comment and has been quoted in national print media about digital assets and related Estate Planning considerations, including in the Age, the Sydney Morning Herald, and in a two page article printed in the Mercury in 2015."*

Kimberley is also the Deputy Chair of a significant charity, she acts as a mentor to law students and people intending to become lawyers. She is currently completing a Masters of Law in wills and estates, and her experience has been recognised internationally by her appointment to as Secretary of the STEP Digital Asset Working Group, a global group with members from Australia, the United Kingdom, the United States of America and Canada.

All of us at Worrall Lawyers congratulate Kimberley on being awarded the Tasmania's Young Lawyer 2016.

### **Changes to Category of Claimants under the *Testator's Family Maintenance Act 1912* (Tas)**

**The law on who can make a Family Provision Claim in Tasmania has recently changed.** With a third of Australian marriages ending in divorce, blended families are becoming increasingly common. An issue that faces stepchildren on the death of their stepparent is whether they have statutory right to make a Family Provision claim. Under the *Testator's Family Maintenance Act 1912* (Tas) a stepchild falls under the definition of "child" within the Act and therefore, as a general rule, is eligible to make a Family Provision claim in Tasmania where it can be shown for that child, that inadequate provision has been made from their stepparent's estate for the proper maintenance and support of that child.

Historically, the difficulty facing a potential claimant stepchild who is a step child has always been the limited definition of what constitutes an eligible "stepchild" within the Act. Until **13 October 2015** the definition of stepchild was limited to "a child of that person's spouse by a former marriage or significant relationship within the meaning of the *Relationships Act*." The effect of this definition was prior to 13 October 2015, that stepchildren were excluded from claiming against their stepparent's estate if their biological parent died before their stepparent. As a result, many otherwise deserving applicants were excluded from making a claim for Family Provision from their stepparent's estate prior to this date.

**A recent amendment to the Act provided a much-needed extension to the definition of “stepchild”.** This amendment, which came in to effect on 13 October 2015, extends the definition of “stepchild” to include “(a) a child of that person’s spouse; and (b) a child whose natural parent was the spouse of that person at the time of the natural parent’s death.” The effect of the newly extended definition is that a step child whose biological parent died before their stepparent is now included as an eligible claimant for the purpose of a Family Provision claim.

Whilst the latest amendment is good news for the children of blended families generally, it remains the case that stepchildren are not eligible to make a claim against their stepparent’s estate if the relationship between their biological parent and the stepparent had ceased prior to the death of either party. This is the case even when the stepchild was dependent on the stepparent for financial support.

**The important thing for blended families is that it is crucial that blended families get their estate planning right, to avoid these types of complications. By doing this, they can properly construct what they want to happen.** Clients or advisors seeking assistance in this area should call 6223 8899 or email:

- Sam McCullough (email: [sam.mccullough@pwl.com.au](mailto:sam.mccullough@pwl.com.au));
- Kate Hanslow (email: [kate.hanslow@pwl.com.au](mailto:kate.hanslow@pwl.com.au)); or
- Brittany Clark (email: [brittany.clark@pwl.com.au](mailto:brittany.clark@pwl.com.au)).



**Brittany Clark**  
Lawyer

### **Executor’s Duties: Funerals, Memorials, Headstones and Plaques**

One of the first tasks an Executor is likely to be faced with, following the death of a Willmaker, is making the necessary funeral arrangements. While this is often attended to by the family, arranging for the funeral and disposal of the body is a duty of the Executor at law.

The Executor should ensure that any special funeral arrangements set out in the Will are followed. For example, a decision about the disposal of the Willmaker’s ashes, as well as any other reasonable and legal directions.

It is well settled that the expense of the Willmaker’s funeral is properly payable from the funds of the estate. Where there are insufficient assets of an estate to pay for all debts and liabilities arising from the death of the Willmaker, the cost of the Willmaker’s funeral is to be paid before payment of any other liabilities of the estate.

As a guide, the law provides that the funeral expenses incurred by an Executor must be “reasonable”, taking into account the circumstances of the Willmaker during their life, and the value of the estate. This is a question of fact that will differ in the circumstances of each particular case. There is no fixed sum that is considered “reasonable” or “extravagant”. For this reason, Executors often seek legal advice about the payment of funeral and associated costs from estate funds.

But what about memorials, headstones and plaques? Is this a task that falls within the duties of an Executor? And are the costs of such memorials properly payable from the estate? The extent of an Executor’s role and power relating to memorials, headstones and plaques is unclear. Some authority suggests that ‘reasonable costs’ of a funeral includes (as well as flowers, mourning expenses and transport) a tombstone over a grave, but not a monument.

Where an Executor wishes to spend estate funds on a memorial, the uncertainty of the current state of law makes it sensible for an Executor to discuss the proposed arrangements with the residuary beneficiaries of the estate, as it is their interest in the estate that will bear the costs of any memorial. If an agreement is reached between the Executor and the residuary beneficiaries, it is prudent for the Executor to seek legal advice to ensure that the agreement is properly recorded.

Worrall Lawyers has extensive experience in providing advice to Executors about their role and duties, as well as advising on, drafting and documenting agreements between Executors and Residuary Beneficiaries of estates.

If you need advice about any of the issues discussed above, or for further information, please contact our Trust and Estate Administration team on 03 6223 8899.



**Kate Moss**  
Senior Associate

**Jacquie Goodwin**  
Lawyer

### Senior Associate Appointments at Worrall Lawyers

Worrall Lawyers is pleased to announce the appointment of four of our Associate level lawyers to Senior Associate Lawyers at Worrall Lawyers. These appointments are significant milestones in their careers. The appointments reflect the importance and seniority of the work they undertake on behalf of our clients.

We congratulate them on their impressive performance to date, and wish them the best for their future at Worrall Lawyers.



**Kimberley Martin**  
Senior Associate



**Trevor McKenna**  
Senior Associate



**Kate Moss**  
Senior Associate



**Maggie Keeling**  
Senior Associate

### Welcome Jencie Harrington and Brittany Clark

Worrall Lawyers has also appointed two new lawyers.

**Jencie Harrington** will be working in the Commercial & Property Law practice area. Jencie has returned to Hobart recently, after working with a Launceston firm for a number of years. As well as having a law degree from the University of Tasmania, she has qualifications in agriculture and accounting.



**Jencie Harrington**  
Lawyer



**Brittany Clark**  
Lawyer

**Brittany Clark** will be working with Sam McCullough and Kate Hanslow on Estates Disputes & Trust Disputes, which is a significant growth area in our practice. Brittany previously worked as a Judge's Associate, prior to commencing work at Worrall Lawyers.

We wish them both the best for their future at Worrall Lawyers.

**Further Information**

- Our Website:** A wealth of information in relation to estate and commercial matters can be found at our website [www.pwl.com.au](http://www.pwl.com.au)
- Contributions:** Contributions and suggestions from Estate Planning News readers are always appreciated. Email us at [jacqueline.goodwin@pwl.com.au](mailto:jacqueline.goodwin@pwl.com.au)
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