

# UPDATE – ESTATE PLANNING & WILLS

November 2006

## Family Provisions Act – Importance of Documenting Intentions

- In general terms this Act provides a remedy for people who have not received adequate benefit from a person's estate.
- Generally it applies if a spouse or parent omits a dependant as a beneficiary of an estate.
- **Comment** – If a Testator wishes to omit a spouse or some other dependant, it is important to document those intentions taking into account that a dependant may challenge their exclusion. The correct drafting of those intentions is extremely important.

## Prenuptial Agreements in Australia – Estate Planning

- Prenuptial agreements can be legally binding in Australia. This was confirmed by the High Court in the decision of *Singer v Berghouse* (1994) 68 ALJR 653.
- In *Singer's* case, the deceased's will was linked to a prenuptial agreement.
- An important point in this case was that the wife, at the time when the prenuptial agreement was signed, did not expect a higher life style in later life.
- The High Court inferred that the effect of the prenuptial agreement may decline over a longer period but its importance should not be overlooked.
- **Comment** – A prenuptial agreement is certainly worth considering.
- This is sometimes done by referring to the reason for the exclusion of the "affected" person.
- The question is how should that exclusion be done to avoid a challenge allowed by the Family Provisions Act?
- The reason can be communicated in the will or in an independent written statement. Extreme care needs to be taken.
- Challenges to such exclusions are becoming more and more common.

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