

WHO DO YOU THINK THEY ARE?


Caroline Harley, Executive Manager – Strategic Advice Specialist, Commonwealth Private Office, CBA

Commonwealth Private

SMSF ASSOCIATION

#NC2020

Caroline Harley
Executive Manager – Strategic Advice Specialist, Commonwealth Private Office, CBA



Caroline is the Practice Manager of the Commonwealth Private Office at CBA, providing strategic and technical advice to Ultra High Net Worth individuals and families (with investible assets of \$10 million or more). With experience including SMSFs and other trusts, superannuation, estate and family law litigation, family governance and succession planning; Caroline's diverse background has yielded many practical lessons for clients and their professional advisers. Caroline holds a Bachelor of Arts, a Bachelor's and Master's degree in Law, the Graduate Diploma in Legal Practice, and was admitted to legal practice in 2008. Caroline was recognised in 2017 as a Finalist for Legal Counsel of the Year at the Women in Finance Awards. She is an SMSF Specialist Advisor and a member of the Regulatory Panel with the SMSF Association. Caroline is also recognised as a trusts and estate specialist by the London membership committee of STEP (the International Society of Trust and Estate Practitioners). Caroline has contributed articles to legal and financial journals, and presented technical papers at conferences for a number of years.

Commonwealth Private

SMSF ASSOCIATION

Important information

The information in this presentation is general information only and cannot be relied upon as a substitute for professional advice

You should seek specific advice relevant to your own circumstances from appropriately qualified persons

Information is current as at 31 January 2020

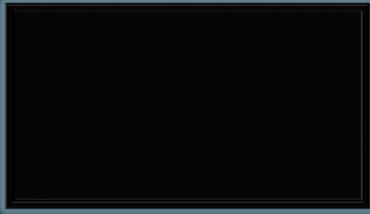
© Caroline Harley 2020

This presentation was accompanied by an oral presentation, and is not a complete record of the discussion held. No part of this presentation should be used elsewhere without prior consent from the author.


Commonwealth Private

SMSF ASSOCIATION

The importance of clarity



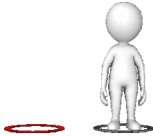


#NC2020



What are you talking about?

- definitions may vary based on context
- the law can also interpret things differently
- the person you intended to capture might not be included in the definition
- importance of getting legal advice



Why does this matter



- BDBN's
- wills/intestacy & contested estates
- family trusts
- family law matters (parenting)



Which definitions may be a problem



- child
- spouse
- step-child
- de facto
- parent
- domestic partner



CHILD



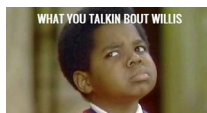
© Harley Family 2015



Non-traditional families



- IVF
- surrogacy
- non-biological parents
- informal parenting arrangements



CHILD

Love v Williams [2019] NSWSC 555

- Harold died without children
- Harold had a plan in his Will
- 7 siblings, 6 had children
- who is in and who is out



CHILD

Love v Williams [2019] NSWSC 555

- construction is decided on evidence
- no evidence = likely different outcome



child – what did the case tell us?



CHILD

Aldridge v Keaton [2009] FamCAFC 229

- same sex relationship
- artificial insemination
- defining who is a child by who is a parent



CHILD

Aldridge v Keaton [2009] FamCAFC 229

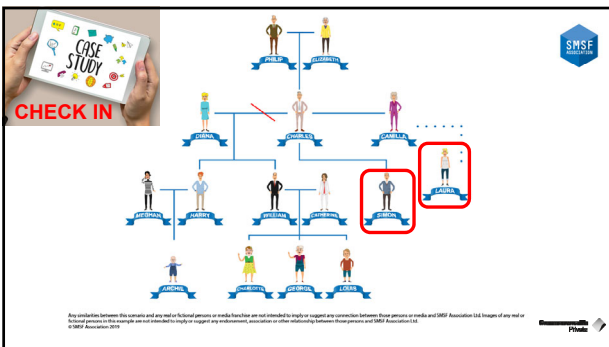
- custody
- crucial factor before child was born
- what was most important to the Court



STEP CHILD


- ATO ID 2011/77 – super death benefits
- *Bail v Scott-Mackenzie* [2016] VSC
- *Graziani v Graziani* 1987 NSWSC, unreported





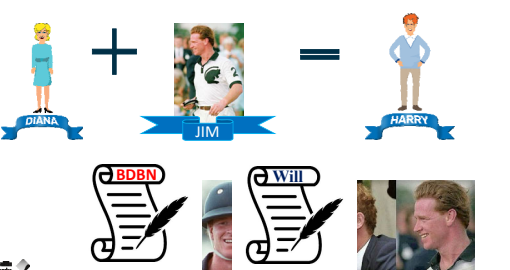
CHILD

- Simon is a step child to Camilla



- Laura is a step child to Charles

WHAT IF...



DE FACTO

adj. in fact or in practice; in actual use or existence, regardless of official or legal status.

De facto

Quijarro v Robson [2008] NSWSC 818

Robson v Quijarro [2009] NSWCA 365



De facto

Quijarro v Robson [2008] NSWSC 818

Robson v Quijarro [2009] NSWCA 365



- 2 x adopted children
 - 1 alleged de facto
- no will
- if proven de facto = greatest interest in estate



"deceased was something of a philanderer"



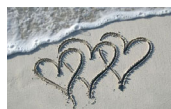
De facto

Quijarro v Robson [2008] NSWSC 818

Robson v Quijarro [2009] NSWCA 365



- consistent infidelity including intent to marry another
- overturned on appeal
- adopted kids v's alleged de facto



De facto

Frisoli v Kaurea [2013] NSWSC 1166



- murder 6 May 2009
- developer - financial affairs set up so estate was only 40k
→ SMSF/Disc Trust outside estate
- 2 biological children + de facto



de facto – what did the case tell us?



De facto

Westwood v Quilty [2013] NSWSC 109



- a tale of two families
- 2 x biological
- 4 x non-biological step-children
- ex-wife
- fiancé/de facto relationship



de facto – what did the case tell us?

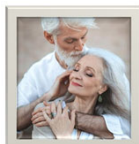


Domestic Partner

Jasarevic v Nesovanovic [2017] VSC 267



- no children, separated but not divorced from first partner
- second partner = domestic partner?
- moved in 2 weeks prior to death
- nephew v's alleged de facto



de facto – what were critical factors?



(Ex)Husband?

Cabban v Cabban [2010] NSWSC 1433

- 30 year old mother died intestate
- children aged 5 and 3
- retail super in question
- estranged husband re-partnered



WHAT IF...



Multiple Spouses



what happens if there are multiple partners at time of death?



What can you do to help clients



1. expand your offering
2. legal adviser
3. don't assume
4. ask



Questions?



Disclaimer



This presentation is for general information only. Every effort has been made to ensure that it is accurate, however it is not intended to be a complete description of the matters described. The presentation has been prepared without taking into account any personal objectives, financial situation or needs. It does not contain and is not to be taken as containing any securities advice or securities recommendation. Furthermore, it is not intended that it be relied on by recipients for the purpose of making investment decisions and is not a replacement of the requirement for individual research or professional advice. Actions, reactions and interpretations cannot be relied upon.

The presentation is purely the opinion of the presenter on the day and this presentation is record of that opinion.

This presentation was accompanied by an oral presentation, and is not a complete record of the discussion held.

No part of this presentation should be used elsewhere without prior consent from the author.

© 2020 SMSF Association Ltd

#NC2020
