

Estate planning, structuring and business succession planning

The private client team at McMahon Clarke acts for private clients and small to medium business enterprises (SMEs) in the following areas:

- Estate planning.
- Charitable trusts.
- Structuring and asset protection.
- Business succession planning.
- Estate administration.
- Estate litigation.

Working with professional advisers

Our focus is on understanding the personal circumstances of the client and then developing strategies to ensure the distribution and protection of family wealth in a practical and tax efficient manner. For this reason where appropriate we prefer to work with the client's professional adviser (i.e. accountant, financial adviser, etc).

Estate planning

Our work in this area includes:

- Review of existing Wills—we do not believe in re-writing a client's Will if their current Will is adequate having regard to their circumstances.
- Preparation of Wills—including Wills with a variety of testamentary trust options, for example—
 - (a) trusts which protect against bankruptcy or loss of capacity, and
 - (b) superannuation proceeds trusts which preserve tax benefits associated with superannuation.
- Preparation of enduring powers of attorney in all States/Territories including instructions for their release.
- Preparation of binding and non-binding death benefit nominations in respect of superannuation funds.
- Review of existing trust deeds and company constitutions to ensure they are suitable having regard to the client's estate planning strategy and where necessary, preparation of appropriate amending documents.
- Preparation of loan agreements.
- Providing advice on all aspects of estate planning including asset protection, taxation advice and superannuation (as it relates to estate planning).
- Establishment of child maintenance trusts.
- Establishment of post death testamentary trusts.

Charitable trusts

We have experience in establishing charitable trusts (including private ancillary funds) and where appropriate, applying to the Australian Tax Office for tax exempt status (where appropriate).

Business succession planning and structuring advice

We provide advice on the establishment of appropriate structures and review of existing structures. As well as advice work, our work in this area includes the following:

- Establishing family discretionary trusts, unit trusts and hybrid trusts including variation of existing trust deeds and change of trustee.
- Trust splitting and trust cloning.
- Incorporating private companies and public companies (including drafting constitutions, preparing company registers and registering the entity with ASIC) and updating of existing constitutions.
- Superannuation and borrowing—advising on and establishing structures to enable your self-managed super fund to borrow.
- Preparing service agreements for example, between service companies and trusts
- Preparing business succession agreements and buy-sell agreements
- Preparing shareholders agreements, unitholders agreements, and partnership agreements.
- Sale of business agreements and transactions.
- Advising on business succession planning including family business succession planning and farming succession planning.
- Advising on asset protection strategies.

Estate administration

Estate administration can be a complex task. We are able to assist executors in all aspects of estate administration including:

- Advising executors and trustees of their duties.
- Reviewing the validity of the deceased's Will and advising whether a grant of representation is necessary.
- Meeting with family members to explain the estate administration process and the distribution of assets under the Will.
- Obtaining appropriate grant of representation (including grant of probate).
- Notifying relevant organisations (including banks and shares registries) and arranging for the distribution of assets.
- Preparing appropriate estate accounts documenting distributions to beneficiaries.

Estate and commercial disputes

Our litigation team has experience in acting for both beneficiaries and executors in claims against deceased estates including providing advice on the prospects of a successful claim being made against the estate. The litigation team also has extensive expertise in advising clients on commercial disputes.



Sean McMahon
Partner

07 3831 8999

sean.mcmahon@mcmahonclarke.com

This factsheet is current as at May 2010. It is produced for your information only and should not be relied on as providing legal advice. Before making any decision, you should seek legal advice specific to your circumstances and we invite you to contact McMahon Clarke if you do require assistance. © McMahon Clarke 2010.