

HOCW's Family Law Team - introducing...

Introducing Simone Wunderlich - Law Institute of Victoria, Accredited Specialist - Family Law

We welcome Simone Wunderlich to HOCW's growing Family Law practice.



Simone has worked exclusively in the area of family law for over 30 years.

Simone is a highly experienced practitioner who can

assist clients to resolve issues concerning property division, spousal maintenance, parenting and children's arrangements, recovery of children, divorce, relocation, and intervention orders.

Chimène Vaughan - Family Lawyer

We are very pleased to introduce you to Chimène Vaughan.



Chimène has significant experience in the private sector with a special interest in family law.

She is also an experienced advocate, regularly appearing

for her clients in the Family Court of Australia and the Federal Circuit Court of Australia.

Informal Wills - what's the risk?

While Victorian Courts may be showing an increasing willingness to accept informal Wills, preparing your own Will without legal advice remains fraught with danger. If your Will doesn't conform to the strict requirements to be considered valid, it may be considered an 'informal Will'.

In order for an informal Will to be accepted, the Court must be satisfied that the Will-maker intended the document to be their last Will and testament. This can be difficult to prove and these proceedings can be lengthy, acrimonious and expensive.

Victorian Courts have traditionally been reluctant to accept informal Wills in most circumstances. However, two recent decisions appear to indicate a change in that trend.

In *Willis v McKenzie*¹, the Supreme Court accepted an informal Will made by a person suffering from chronic schizophrenic disorder. The Will was in the form of a 'Will kit' and had only one witness; a technician who had been at the deceased's home at the time. The evidence of the deceased's treating doctor was paramount in assessing her capacity.

In *Re White*², the Court accepted an informal computer Will, found on the deceased's computer. In assessing the informal Will, the Court considered how the document was labelled and references in the document to 'my final wishes' and that the document was thorough, methodical and precise in relation to share and figures.

In addition, a recent Queensland case has highlighted the form Wills might take in 2018; in *Re Nichol*³, an informal Will that consisted of an unsent text message was accepted by the Court. The message was composed shortly before the Will-maker took his own life, did not appoint an executor and was not signed.

Whilst the Courts may be open to considering informal Wills, ensuring your Will is valid and conforms to the requirements will afford you peace of mind and save thousands of dollars in potential legal costs.

If you are concerned about the validity of your Will, please contact our Wills and Estates team to have it reviewed.

Alternatively, if a loved one passes without a formal Will and you are not sure how to proceed to administer their estate, seeking legal advice about your options at an early stage is essential. With proper advice and careful application, you may be able to ensure that the wishes of your loved one, in whatever form they take, can be upheld.

Hayley Hunter - Senior Associate

¹ *Willis v McKenzie* [2018] VSC 325

² *Re White; Montgomery & Anor v Taylor* [2018] VSC 16

³ *Re Nichol; Nichol v Nichol* [2017] QSC 220

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What Happens to Digital Assets after Death?

A recent German Court victory for the parents of a deceased teenage girl who had been battling Facebook to access her account for five and a half years highlights the need for consideration to be given to the fate of social media accounts and other digital assets after death.

While most of us plan for the disposal of assets such as houses, bank accounts, artwork and jewellery after we die, we may not have given as much thought to what will happen to our digital property such as social media accounts, photos, videos, subscriptions and online gaming and bank accounts.

In the German case, Facebook had "memorialised" the girl's account in the wake of her death, which meant her parents could not access any messages she had sent via Facebook. The girl's parents had asked the social media giant to allow them access to her account in order to determine if her death had been an accident or suicide, but it had refused.

The Federal Constitutional Court ultimately held that the girl's Facebook account should be treated the same way as her diaries, letters and other possessions and form part of her estate, and granted access to her parents.

Unlike Germany and other nations such as the USA, Australia has no legal framework relating to the disposal of social media accounts and other digital assets after death. However, NSW has recently launched an investigation into the issue.

In Australia the fate of a social media account after a user's death is in the hands of the organisation providing the service.

Facebook, for example, allows a user to nominate a "legacy contact" who has the authority to request the account be deleted. A legacy contact can also write posts and update photographs after a user's death, but cannot log into the account. If no legacy contact has been nominated, an account can be "memorialised" if Facebook is provided with the appropriate paperwork.

Keeping a digital register, which contains clear instructions on how you wish your social media accounts and other digital assets to be treated after you die, could help ensure your digital property is dealt with after your death according to your wishes. For example your digital register may state that after you die your photographs should be retained, but your Facebook account *deleted*.

A digital register could also assist your executor, who has an obligation to administer your estate, to more easily access your digital assets after your death.

For a sample of a digital register form please contact Lachlan Vallance – Principal, LIV Accredited Specialist - Wills and Estates.

Kate Williams - Lawyer

Cyber Security - important client information

How to protect yourself

Our firm has proactive steps in place to protect you and your information from cyber-attack. We also need you to take some precautionary steps to ensure the security of your information.



What we will do

- If we ask you for a payment by email we will state the amount and reason for the transfer, we will not include our bank details within the body of the email.
- If we have dealt with you before, we will ask you to “please transfer to our account, details of which you have.”
- If you have not made a transfer before and we email you with a PDF attachment, i.e. a letter, invoice or statement containing our bank details, we will ask you to “please call our office to confirm the attached banking details in order to protect against cyber-attack”.
- Always authenticate and verify email instructions from you that direct where money should be sent by speaking to you in person or by phone.

What we recommend you do

- Never respond to an email that could be from us requesting you to deposit money into a bank account that is different from the account we gave you. You should immediately contact our office either in person or by telephone and speak to the person handling your file if you receive an email of this nature. You should not respond to the email.
- If you are at all concerned or suspicious about the validity of any correspondence or request you receive from us by email do not action the request. You should immediately contact our office either in person or by telephone and speak to the person handling your file.
- Follow some basic cyber-crime prevention steps including:
 - ◇ keep all software on your computers up to date with all updates and security patches installed
 - ◇ change your passwords at least every 12 months and using passwords that are at least eight characters long, and contain capital letters and numbers
 - ◇ use different passwords for each of your devices
 - ◇ keep an eye out for phony or fraudulent emails
 - ◇ don't respond to emails that ask for personal information as legitimate companies will not use email to ask for your personal information
 - ◇ don't click on links embedded in emails from people you don't know.