LET'S CHAT TODAY

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With:
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Information provided is general in nature; precise application depends on specific circumstances.

BUT FIRST

Commissioner of Taxation v S.N.A Group Pty Ltd [2026] FCAFC 10

The importance of documentation

The arrangement: assets split from operations

In 2005, the Coronis real estate group restructured for asset protection — separating the operating companies from the trusts that owned the valuable assets.

Operating companies

SNA Group and ATPR — ran the real estate management and sales businesses day to day.

Asset-owning trusts

CLAARS (Henry Trust) held the 'Coronis' trademark and key staff; PAC Realty (Emily Trust) held the rent roll.

Common control

Andrew Coronis was a director of every entity on both sides of the arrangement — the taxpayers and the trustees.

2005–2015: written agreements required the operating companies to pay the trusts fees for using those assets. In 2015 the agreements expired — but the taxpayers kept using the assets and kept paying, now claiming the payments as deductible 'service fees' through to 2019.

Two arguments, one contract question

TAXPAYERS

An inferred contract

Andrew Coronis — as the common directing mind of every company involved — agreed each year to a service fee, 'fair and reasonable' and capped at an 8% return. Continued use of the assets, monthly payments, and the way fees were recorded in the accounts all pointed to a contract, even without a signed agreement.

COMMISSIONER

No objective contract

A contract needs an outward, objective manifestation of mutual assent — not the private, subjective beliefs of directors who happen to sit on both sides of the deal. Whatever Andrew Coronis privately thought the arrangement was, that thought was never communicated between the companies as separate legal persons.

Source: paras 39–40, 42, 52–53

Four gaps the evidence couldn't fill

- No direct evidence of communication — nobody could point to a meeting, a date, or words exchanged accepting a liability to pay a fair fee (para 82, 89–90)
- The '8% return' meant different things to different directors — interest costs to one, business value to the other, with no consistent benchmark (para 83, 124–125)
- The accountant wasn't advising on a 'reasonable fee' — he was just checking numbers against agreements everyone agreed had already expired (para 84, 156–157)
- The payments themselves didn't match any coherent fee — they were miscoded distributions, salary reimbursements and loan repayments, with no GST invoices ever raised (paras 172–180, 209–210)

The appeal succeeded — the deductions didn't

"The uncommunicated subjective thoughts or intentions of [the directors]… provide[] no foundation for inferring the existence of a contract between each of the taxpayers and trustees."

— Commissioner of Taxation v S.N.A Group Pty Ltd, para 212

- The Full Court allowed the Commissioner's appeal — the taxpayers' deductions were disallowed, and the assessments and penalties stood (paras 214–216)
- Being commonly controlled doesn't relax the test — each company is still a separate legal person requiring an outward, objective contract between them
- The lesson: renew the paperwork — a lapsed agreement plus informal conduct, however genuine, isn't enough to prove a deductible liability

AND NOW

TODAY'S TOPIC

The Second Most Important Estate Planning Document

(After your Will)

A scenario you'll recognise

- A loved one has passed away, and you've found their Will
- The Will appoints you as executor — alone, or with someone else
- It clearly sets out who gets what — including for minor children
- You've been asked to look after those assets until they come of age

So… what now?

A Will does a lot — but not everything

WHAT IT DOES

Confirms your executor, trustee, and any testamentary guardians. Sets out who's entitled to what, and gives those people formal legal powers — a document courts and institutions can rely on.

WHAT IT DOESN'T DO

Doesn't say where to find your documents, how to access them, or how you'd like minor children raised. Doesn't automatically deal with superannuation, jointly held assets, trusts, companies, or business interests.

Why not just put it all in the Will?

It's a snapshot in time

Asset values, relationships, and what you own all change — a Will doesn't move with you.

It's costly to update

Formal changes need formal drafting, even for something as simple as a change of mind on jewellery.

It has to be precise

A Will's legal nature means it can't flexibly capture wishes, preferences, or day-to-day guidance.

Enter: the memo of directions.

Not legal. Not binding. Still valuable.

IMPORTANT CAVEAT

A memo of directions is not a legal document and is not legally binding. No lawyer is required to draft it — and it must never be treated as if it were.

It's intended to provide guidance on:

- Where your personal assets and key documents are located
- How you'd like some assets — like household items — to pass
- Any investment tips or caring tips, followed entirely at the reader's discretion

What actually goes in the memo

Funeral wishes

Burial or cremation, specific locations, special arrangements, organ donation — things a Will rarely gets reviewed in time for.

Where things are

Wills, powers of attorney, bank and super documents, trust deeds, company constitutions, and key advisers to contact.

Personal items

Jewellery, pets, and 'personal items' — leave your thoughts and wishes here rather than locking them into the Will.

Picking the right guardian matters

A testamentary guardian holds all the powers, rights and responsibilities for a child's long-term care, welfare and development — including education and religious upbringing — ordinarily vested in a guardian.

Source: Succession Act (Qld)

- Choose carefully — not just the sibling who's 'over having kids'
- Consider one family member, or several sharing the role together
- Use the memo to give guidance on how you'd like the children raised
- Make sure appropriate funds are actually available to assist the guardian

Flexibility beyond the Will's fixed gifts

Who gets what asset

Where the Will splits things proportionately, the memo lets your executors — and beneficiaries — agree a sensible split themselves. Works best in close, smaller family groups; less so where there's a power imbalance.

Control over structures

For trusts and companies, we favour flexibility and trust over rigid legal lock-ins — standard discretionary trusts already give a controller enough power to look after a minor beneficiary properly.

Plus: outline your investment preferences — the trustee isn't bound to follow them, but it's a useful compass.

Not binding — but not ignored, either

“A trustee has an obligation to give real and genuine consideration to the interest of the beneficiaries prior to exercising its discretion… It has been accepted that a ‘memorandum of wishes’ may be taken into consideration in exercising discretion conferred under the trust deed.”

Although not binding, a memo of wishes will form part of what the trustee must genuinely consider when exercising their discretion.

See: ***Callus v KB Investments [2020] VCC 135; Monaghan v Monaghan [2016] NSW 1316***

It can be personal, too

Anything you want — including messages to family and friends. One father's written note to his family, ahead of a large family trust dispute:

"These are my last instructions to my children, grand-children and their descendants and it is my sincere wish that they will be faithfully carried out… It is my deepest and dearest wishes that my children and descendants will continue to love and help each other when I am gone. Take heed of the old saying 'Harmony within the Family promotes prosperity'. The way to achieve such harmony as taught by ancient sages is to cultivate the virtues of filial piety and brotherly love."

Think through every 'substantive' thing

- Cash, shares, property, cars — the obvious ones
- Life interests and time-shares
- Agreements for income entitlements or IP
- Business interests, joint ventures, and buy-sell deeds
- Overseas assets — the Malaysian golf course interest, the Canadian pension

Digital assets aren't a niche problem anymore

99%

of Australians are internet users

80%

use social media

600,000+

have invested in crypto tokens

Digital assets are more than account details: financial value (crypto, loyalty points, domains), business assets, sentimental value, private information, and real security risk.

Illustrative 2022 figures — check current data before relying on them.

What happens when no one can get in

Igal Lichtman

A domain investor's portfolio expired after his death. Vodka.net, Penis.net and Vegans.com were auctioned off by registrars for tens of thousands of dollars — to strangers, not his estate.

Stefan Thomas

Lost the paper holding his IronKey password — 10 guesses before it encrypts forever. It holds the private keys to 7,002 Bitcoin.

James Howells

Mined 7,500 Bitcoin, then accidentally threw away the hard drive holding it while cleaning his house.

Matthew Mellon

A prolific crypto investor who died unexpectedly at 54. His private keys were spread across various banks — he'd never told anyone which ones.

Getting access without giving up security

- Seed phrases, passwords — even for digital hardware wallets
- Multi-factor authentication, often linked to a phone you may not have
- Password managers and hardware wallets
- Facebook, Google and Apple all offer legacy/memorialisation options — set them up now

TIP

Don't put passwords in an electronic memo — keep only physical copies, and note where they can be found. (Yes, this creates a chicken-and-egg problem worth thinking through.)

Key takeaways

- A Will provides legal certainty — but it's rigid, costly to update, and silent on where things are or how you'd like them handled
- A memo of directions isn't binding, but courts have accepted it as something a trustee must genuinely consider
- Cover funeral wishes, document locations, personal items, guardianship guidance, and asset-by-asset detail
- Digital assets need special handling — access credentials, legacy contacts, and a clear (but secure) paper trail

Get the template

Everything we just covered — funeral wishes, document locations, personal items, guardianship guidance, and a digital asset inventory — in one ready-to-use template.

Memo of Directions Template

Includes a digital asset inventory

Scan the QR code to download — or visit the link below.

dariuschats.github.io/downloadables/other/Estate planning

SCAN TO DOWNLOAD

BONUS TOPIC

Is Bitcoin Property?

Poulton v Conrad (H1/2026), High Court of Australia

The issue: can Bitcoin be converted or detained?

- Jeff Conrad gave Adam Poulton $10,000 to invest in Bitcoin on his behalf
- Poulton withheld 1.5 Bitcoin, 4.5 Bitcoin Gold and 4.5 Bitcoin Cash
- Conrad sued successfully in the Tasmanian Magistrates Court for conversion and detinue
- Now before the High Court: is Bitcoin property at common law — and can it be the subject of those torts?

Conversion: dealing with someone's goods in a way inconsistent with their rights, depriving them of use. **Detinue:** wrongfully retaining goods after a proper demand for their return.

Comparing the two arguments

POULTON (APPELLANT)

Bitcoin is not property

Just information in a database — fails all four Ainsworth criteria: not definable, not identifiable, not assumable (a transfer is just a new ledger entry), and unstable given its volatility and ~20% permanently lost. Conversion and detinue apply only to tangible chattels capable of physical possession (OBG v Allan).

CONRAD (RESPONDENT)

Bitcoin is property

Property is a relationship, not a description of a thing — Bitcoin satisfies Ainsworth: definable by unique codes, identifiable via keys, actively traded, and permanent on the ledger. It's rivalrous, unlike shareable information. Private keys give the same practical control as a farmer's fences give over distant cattle.

Flagging a secondary issue: Ground 2

Did the Full Court majority wrongly refuse to decide the Bitcoin question at all — because Poulton had abandoned the property argument before the intermediate appeal judge, Brett J?

The majority

Shanahan CJ and Jago J held that deciding the point would offend finality and procedural fairness — the issue had been abandoned below.

The dissent

Estcourt J would have decided it anyway — a pure question of law, no further evidence needed, any unfairness curable in costs.

On appeal: **Poulton says the majority erred; Conrad says it was a legitimate discretion, only disturbable on the House v The King standard — and no such error is shown.**

Let's chat

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