

Worrall Moss Martin News

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Expert advice
and solutions



WORRALL
MOSS MARTIN
LAWYERS

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- The dangers of 'home made Wills'

Kimberley Martin awarded Young Practitioner of the Year at International STEP Awards

Kimberley Martin, one of the Directors of Worrall Moss Martin Lawyers, has been awarded Young Practitioner of the Year at the STEP (worldwide) Private Client Awards held in London on 7 November 2018.

The Society of Trust and Estate Practitioners (STEP) is a worldwide professional association for practitioners specialising in family inheritance and succession planning. The STEP Private Client Awards highlight excellence among both STEP members and non-STEP members.

All categories are open internationally and assessed by an independent panel of expert judges. The judges are supported by a Panel of Experts who are internationally renowned solicitors, lawyers, accountants, financial advisors, barristers and trust companies.

The Judges said of Kimberley's nomination: '*[Kimberley's] creativity, energy and intellect shine through... Many practitioners would aspire to achieve as much in their whole career as she has achieved in just five years.*'

A clip of Kimberley receiving the Award at the Awards Ceremony can be found here:
<https://www.youtube.com/watch?feature=youtu.be&v=zGQCydZfVoc&fbclid=IwAR0H9406POd8-JBxfHRMKOc-ZVWSieqXeonJoDxYLMevohDb18GHLgaNifl&app=desktop>

An article about Kimberley's achievements featured in the Saturday edition of *The Mercury* newspaper.

The Directors and staff of Worrall Moss Martin Lawyers congratulate Kimberley on this extraordinary achievement. Whilst it is remarkable for a Hobart lawyer to have been recognised on the international

stage in this way, the award is most definitely well-deserved and is due recognition for Kimberley's hard work, drive, passion and commitment to the profession and to her clients.



Thomas v Pearman [2017] WASC 209 and the Dangers of Home Made Wills

A disagreement arose in *Thomas v Pearman* about what particular words in a “home made” Will actually meant, in circumstances where certain words that might reasonably have been expected to have been included (to help understand what the Willmaker intended) had not been included in the Will.

The question for the Court was: did the words in the home made Will mean that the Willmaker intended to give a direct gift, or to create a trust. And if a trust was intended: what were the terms of that trust.

The Judge described the Will as an “*egregious example of the folly of home made wills*”.

Importantly the judgment contains this reference to what is called the “Armchair Principle of Construction” which is that “[t]he court is entitled to consider the context or surrounding circumstances in which the will was made to construe the words for the purpose of ascertaining the testator's intention.”

The end result, after a no doubt very expensive trial (there were 7 parties in the case), was that the Court held that a trust had been created, albeit it was a particular type of trust where the beneficiaries could call for the gift at any time.

What should we learn from this case?

Preparing a Will at home, or using a “Will kit”, incurs little to no cost to a Willmaker. The real cost is a cost to the estate (and thus to the beneficiaries) where the Will is unclear, leading to lengthy and expensive litigation. All of this can be avoided by having a clearly drawn Will prepared by well qualified Estate Planning lawyers. When you need our assistance, we are here to help you.

To arrange a confidential discussion with **Peter Worrall**, **Kimberley Martin** or **Adrian Hutchinson**, contact them **here**.



Peter Worrall
Director
Notary Public

Orange Sky - Christmas Donation

Each year, Worrall Moss Martin Lawyers organises a Christmas charity drive. This year, we are collecting donations for Orange Sky. Orange Sky provides a platform for every day Australians to connect through a regular laundry and shower service. The focus is on creating a safe, positive and supportive environment for people who are too often ignored or who feel disconnected from the community. Their volunteers are not social workers or experts on homelessness - they are empathetic listeners and great conversationalists.

You can find out more about Orange Sky, including how to donate, at <https://orangesky.org.au>.

Our Lawyers



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Director



Kate Moss
Director



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Director



Kate Hanslow
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Casey Goodman
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Adrian Hutchinson
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Hannah Boxall
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Further Information

Our Website:

A wealth of information in relation to estate and commercial matters can be found at our website www.pwl.com.au

Contributions:

Contributions and suggestions from Worrall Moss Martin News readers are always appreciated. Email us at info@pwl.com.au

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