

Wills for Aboriginal Clients

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What is this talk about?

- Ashurst Australia's experience acting in estate planning for Aboriginal communities since 2002. Not legal planning generally
- Why estate planning?
- Taking instructions, drafting and general communication
- The local clinic model



ashurst

Why Ashurst Australia became involved

Problems when people can't make decisions for themselves any more during life:

- fights over what the person would have wanted
- fights over who should make the decisions
- problems with banks and Centrelink

Problems when people have died:

- disagreements over where person will be buried
- disagreements over who gets sentimental items
- disagreement over who gets money from the person's estate

Expensive and time consuming to fix....

"Very few Indigenous people have wills. It is an issue which is perhaps not prioritised for individuals but which can result in considerable family and community tension. There was a perception among focus group participants that wills are only useful where there is a significant amount of money or property to be distributed. The usefulness of a will for clarifying posthumous wishes such as burial place or guardianship of children was generally not understood."

Civil and Family Law Needs of Indigenous People in NSW: The Priority Areas
Chris Cunneen and Melanie Schwartz, UNSW, 2011

Wills – barriers to making a Will

- Mistrust of institutions
- Not something done 'as a matter of course'
- Access to lawyers
- Feeling that there is no need
- Fear of discussing death





Wills – why clients become interested

- During life:
 - Having control over who makes decisions if they lose capacity and how those decisions are made
- After death:
 - Burial/cremation and funeral arrangements
 - Avoiding disputes
 - Giving away sentimental items
 - Appointing a guardian for their children

Wills – specific issues

- Burial, cremation and funeral arrangements
- Funeral Insurance
- Superannuation
- Life Insurance
- Executors



Wills – specific issues

- Specific gifts
- Kinship relationships
- Previous relationships
- Dependents with disabilities
- Guardianship of minor children



Wills – specific issues

- Burial, cremation and funeral arrangements
 - Burial or cremation?
 - If burial, where?
 - The Funeral service
- Funeral Insurance
 - Does the client have funeral insurance?



Wills – specific issues

- Superannuation
 - Does the client have superannuation?
 - Is yes, how much?
 - Have they nominated a beneficiary?
 - Is the nomination binding or non-binding?
- Life Insurance
 - Does the client have life insurance?
 - What will the policy pay on death?
 - Who is the nominated beneficiary?



Wills – specific issues

- Other financial matters

- Debts?
- Joint bank accounts?
- Land owner?
- Artist royalties?

- Executors

- How many?
- Joint or several?



Wills – specific issues

- Specific gifts
 - Assets and things of value? Eg house, car, household items
 - Sentimental items? Eg photos, wedding ring, CDs and DVDs, musical instruments etc.



Wills – specific issues

- Kinship

- Does the client have any children including adopted children, children born outside of marriage, step-children?
- Has the client raised someone who is not their biological child? Have any other children eg step-children, grandchildren, nieces or nephews lived as part of their household or been financially dependent?
- Has the client provided financial support to anyone else?
- Do any of these people have significant financial or health problems?

- Guardianship of minor children



Powers of Attorney and Appointments of Enduring Guardian – specific issues

- Safeguards
 - Capacity report
 - More than one attorney or guardian
- Directions
 - How money can be spent and on whom
 - Accommodation
 - Medical treatment

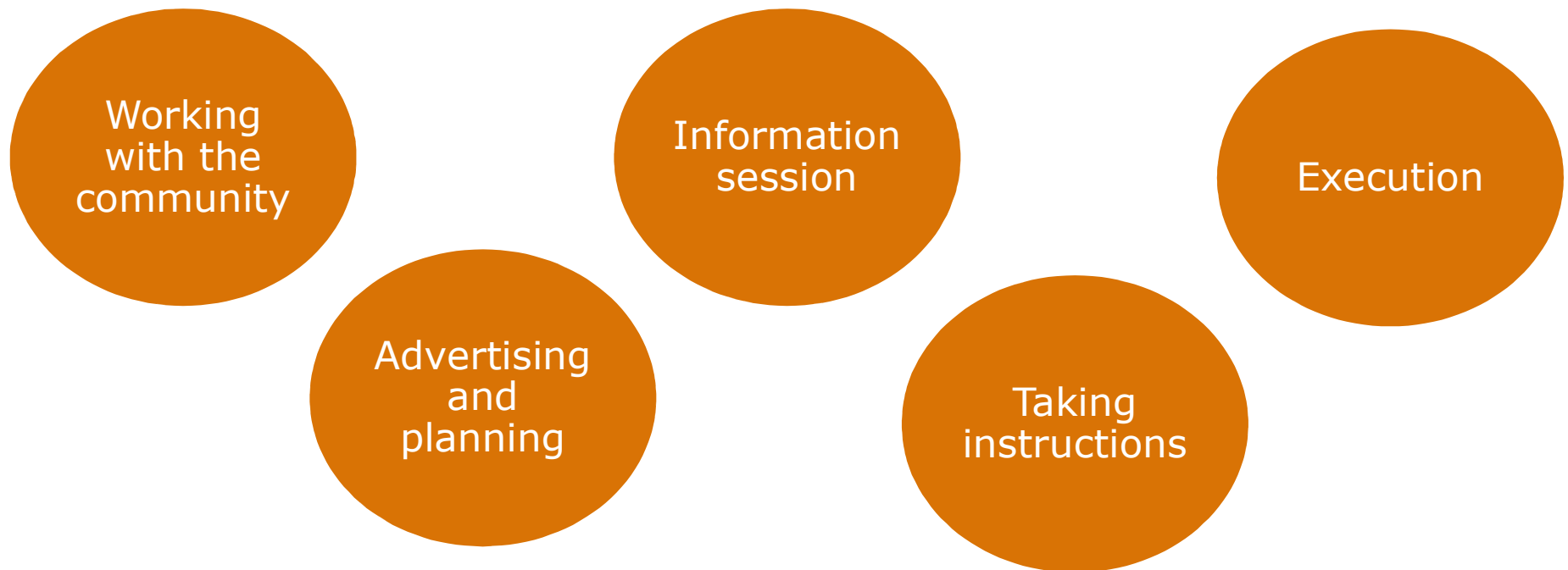


Communication

- No client is the same!
- Things to be aware of:
 - Naming deceased family members
 - Allow silence
 - Gratuitous concurrence – ask open questions
 - Literacy
 - Competing demands on time



The clinic model



Questions?

This presentation material is intended to provide a summary of the subject matter covered for training purposes only. It does not purport to be comprehensive or to render legal advice. No reader should act on the basis of any matter contained in this presentation without first obtaining specific professional advice.

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