

ADVISOR DAY 2021

BASIC LEGAL STRUCTURES & CONCEPTS | HOW TO QUICKLY & EASILY EXPLAIN THESE TO YOUR CLIENTS

Presenter:

Amanda Tolson, Director

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Outline

As advisors you will understand the difficulty in the educational process involved in ensuring your client understands what is happening, and why, so the client can make an informed decision.

Legal concepts are often abstract and appear shrouded in confusing terminology to a layperson, and professional advisors are under time pressures to provide services at a reasonable cost.

Amanda will share her experience on how legal structures and concepts can be efficiently explained by using diagrams, avoiding 'legalese' and summarising the common sense aspects and effects of the structures, and will outline some of her proven techniques to do this.

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Why are lawyers/the law hard to understand?



16th century painting of a civil law notary

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Why are lawyers hard to understand?



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To be covered today

- Structures
 - Separate legal identity – what does that mean?
 - Sole traders
 - Partnerships
 - Companies
 - Trusts
- Other legal concepts/issues
 - Guarantees
 - Indemnities
 - Bank guarantees
 - "Time is of the essence"
 - Initial documents
 - Giving notices under legal documents
 - Witnessing

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Strategies to assist

1. Diagrams
2. Eliminate jargon
3. Reference common concept
4. Put yourself in the shoes of the client

Structures – separate legal identity

- Some business structures provide a separate legal
- identity – some do not

Non-separate identity	Separate legal identity
Sole trader	Company
Partnership	Trust (if trustee is a company)

- But - what does this actually mean?

Structures – sole trader

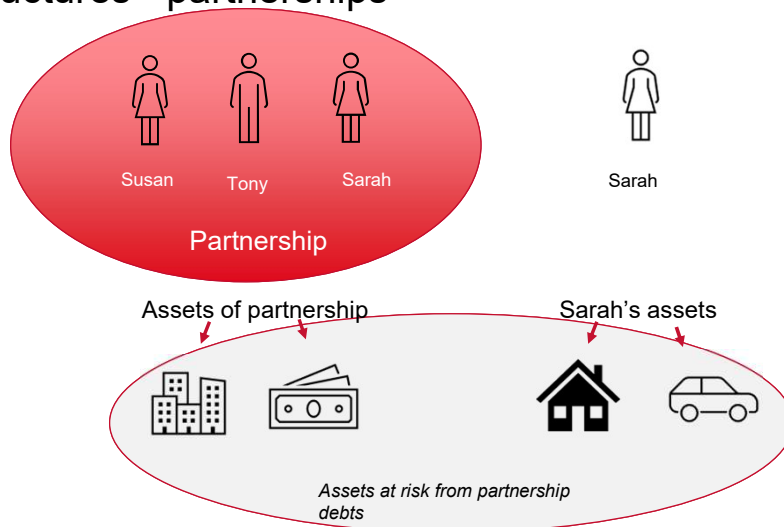
- Not a separate legal identity – but it is a way of carrying on a business
- ABN & trading names cause confusion



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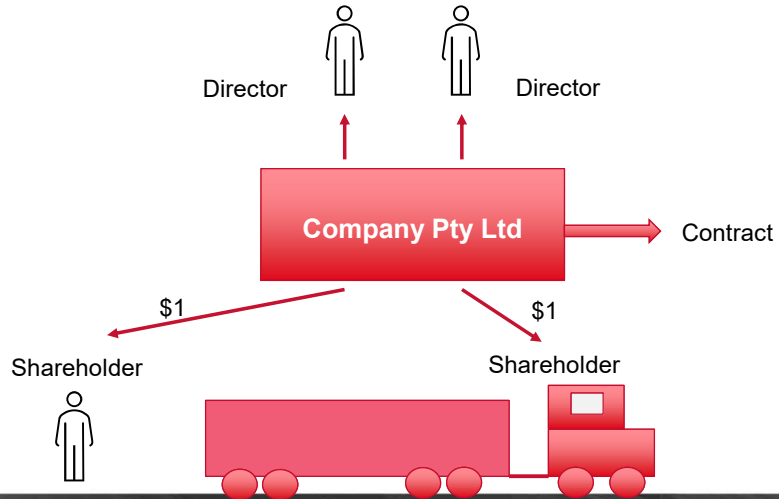
Structures - partnerships



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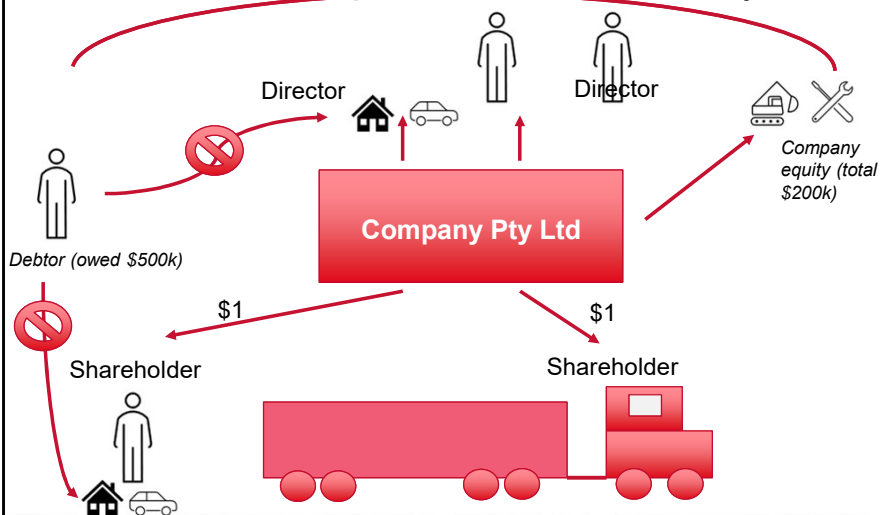
Structures - companies



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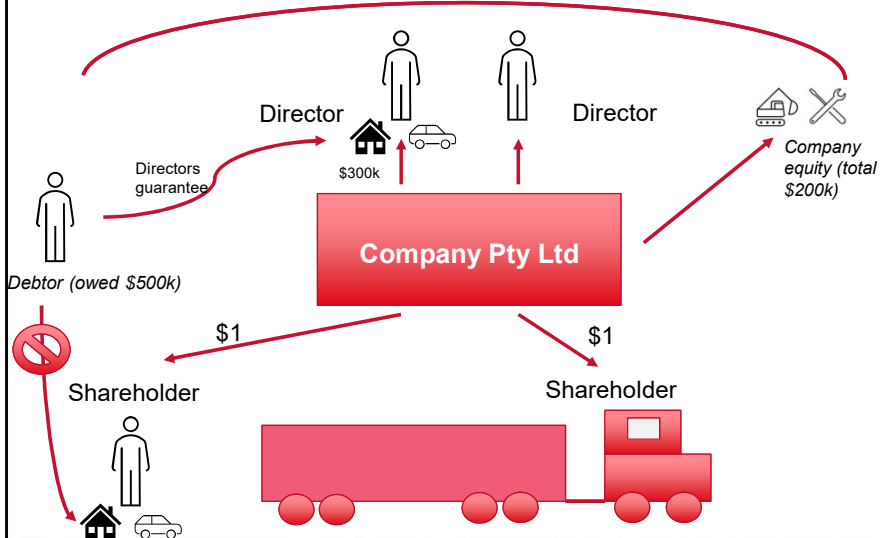
Structures – companies – limited liability



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Structures – companies – directors guarantees

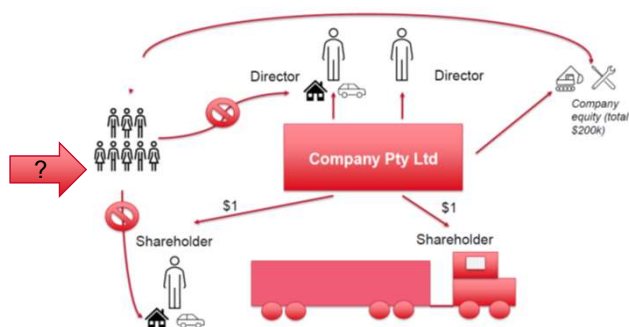


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Structures – companies - risk

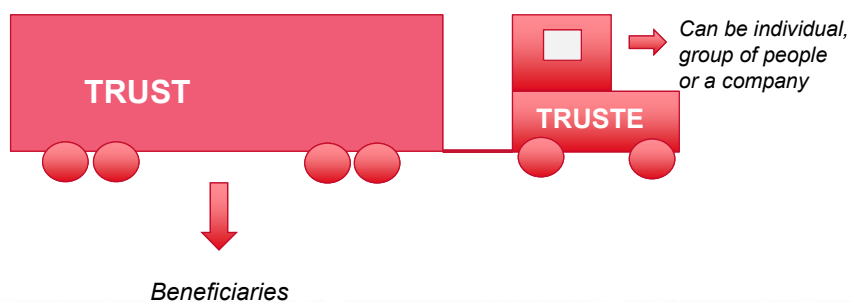
- Major & minor suppliers
- Lenders
- Landlords
- Employees
- Customers
- Other businesses
- Government agencies
- Third parties ('trip and fall')



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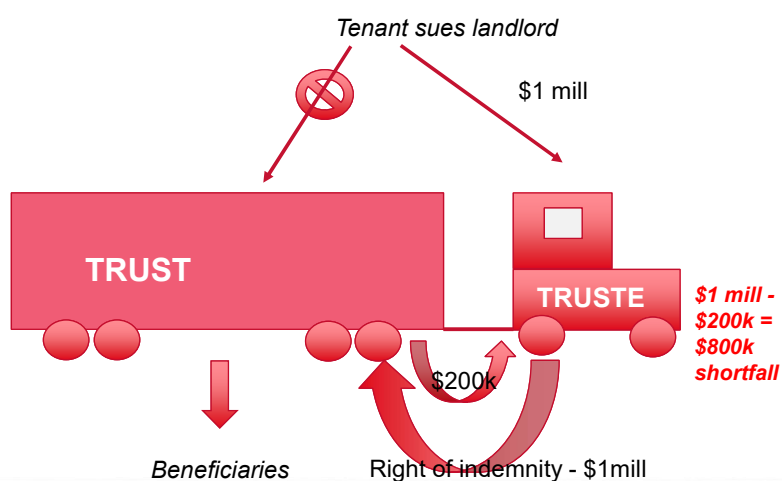
Structures – trust



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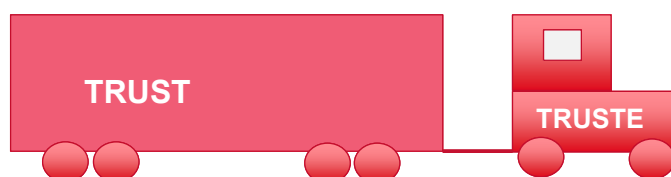
Structures – trusts - risk



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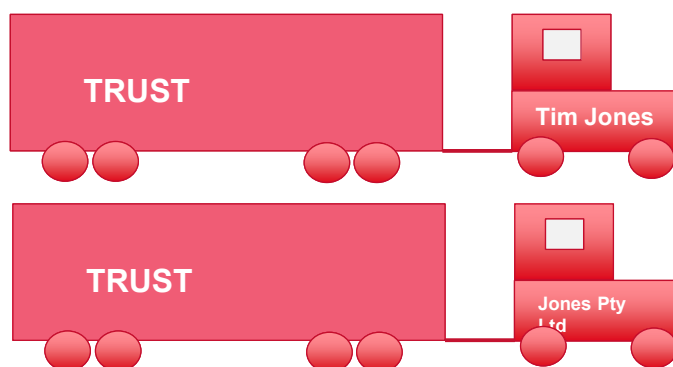
Structures – trusts – trustee's role



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Structures – trusts – changing trustee

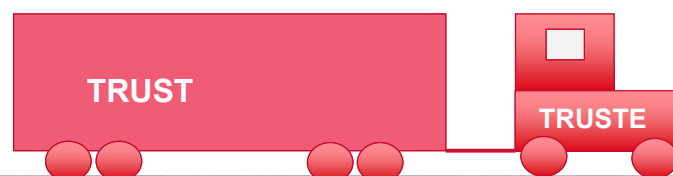


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Structures – trusts – how are they created?

- Fixed, discretionary, bare and testamentary trusts – all created by trust deed.
- Fixed, discretionary and bare trusts – separate trust deed.
- Testamentary trusts – the 'deed' and terms of the trust exist within the Will.

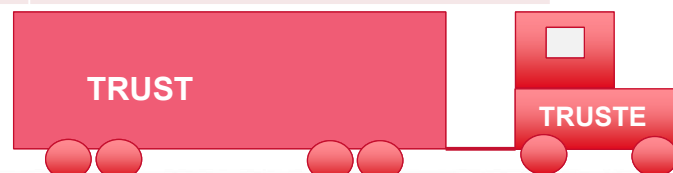


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Structures – trusts – express trusts

	Also known as...	Distinguishing factors
Discretionary trust	Family trust	<ul style="list-style-type: none"> ▪ Trustee has discretion to distribute income and capital ▪ Beneficiaries (often a 'pool' described by generational blood lines) have no fixed entitlement to income or capital
Fixed trust	Unit trust	<ul style="list-style-type: none"> ▪ Beneficiary has fixed entitlement to income & capital ▪ Trustee has no discretion
Bare trust		<ul style="list-style-type: none"> ▪ Trustee has no discretion – nominal legal control over the trust property for a specific purpose (e.g until borrowings are repaid then land must be transferred to SMSF)
Testamentary trust	Trust under a Will	<ul style="list-style-type: none"> ▪ A discretionary trust which comes into existence by death (not by signing of a trust deed) – once created, it is effectively a discretionary trust but has stronger protection in family law circumstances & better tax outcomes

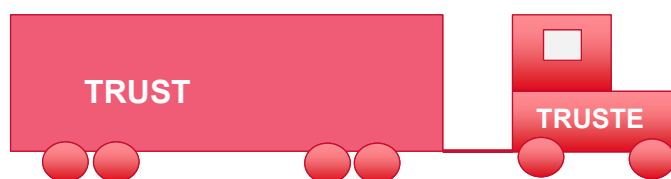


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Structures – trusts – who is in ‘control’?

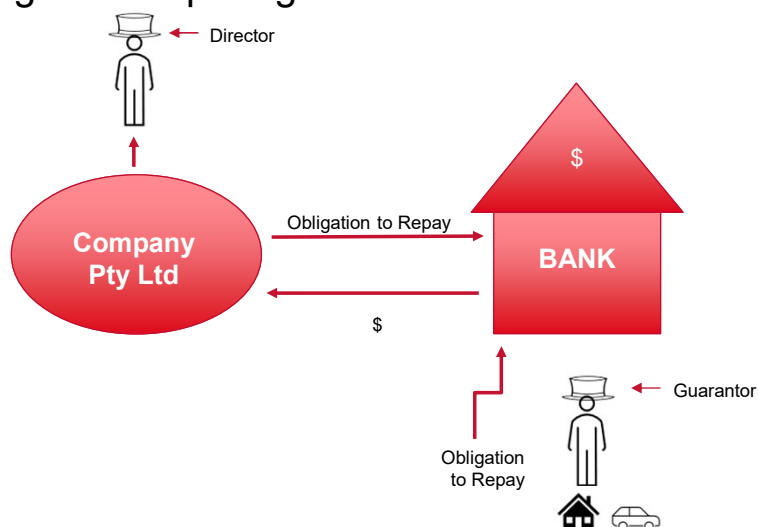
- The trustee?
- The beneficiaries?



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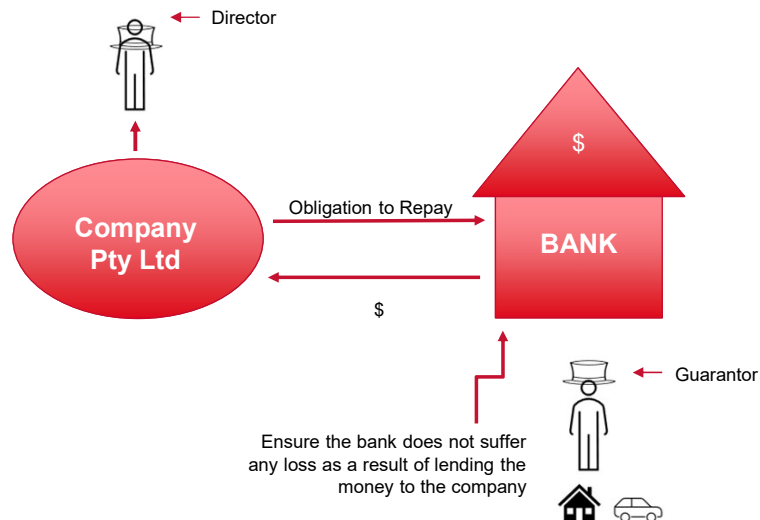
Legal concepts - guarantees



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Legal concepts - indemnities



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Legal concepts

- Bank guarantees
 - Read the terms
 - Don't lose it!

Bank Guarantee

www.westpac.com.au

Details

Bank ("we")	Name	Westpac Banking Corporation
	ABN	33 007 457 141
	Address	1 King Street, Concord West NSW 2138
All claims, notices and other communications in connection with this guarantee need to be sent to any of our branches or to our contact details above.		
Bank reference details	Liability no:	
Beneficiary ("you")	Name	
	ACN/ABN	
	ABN	
	Address	
Customer ("customer")	Email	
	Name	
	ACN/ABN	
	ABN	
	Email	
Sum guaranteed ("sum guaranteed")	\$6322.25	
Purpose	Lease / Rental Bond Bond for Tenancy [redacted] ark, 3 months rent plus GST	
Expiry date ("expiry date")	Not Applicable	
Issue date of guarantee	12/08/2021	

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Legal concepts

Provisions

- 1. Purpose**
The customer has asked us to give you this guarantee.
- 2. Guarantee**
We irrevocably agree to pay on demand from you an amount up to the *sum guaranteed*.
We agree to make payment under this guarantee without set-off or counterclaim, and without referring to or obtaining the authority of the customer. This applies even if the customer or any other person has asked us not to pay you.
You can ask for payment of all or part of the *sum guaranteed*. If you ask for payment of only part of the *sum guaranteed* we'll pay you the balance of the *sum guaranteed* on the same terms as this guarantee. However, we can only ever be required to pay out, in total, the *sum guaranteed*.
- 3. How to make a claim**
To make a claim you have to do so in writing (signed by you or on your behalf) and attach the original of this guarantee.
Any claim needs to be received by us at:
 - any of our branches, or
 - our contact details set out in the Details, before this guarantee is cancelled or expires.
- 4. Expiry**
If there's an expiry date set out in the Details, our obligations under this guarantee expire at 5.00 pm (Sydney time) on the expiry date.
- 5. Cancellation**
This guarantee can be cancelled before it expires. You can cancel it at any time by:
 - returning it to us for cancellation, or
 - telling us in writing (and in the form we require) that you no longer need it.We can cancel it at any time by paying you:
 - the *sum guaranteed* less the sum of any amount we've previously paid under this guarantee, or
 - any lesser amount you require.We'll give you reasonable notice before doing so.
- 6. If there's more than one beneficiary**
If there's more than one beneficiary named in this guarantee, "you" means every 2 or more of you jointly.
If any of you make a claim under this guarantee, we can consider it to be a claim from all of you jointly.
Any payment we make under this guarantee to any one or more of you satisfies our obligations to all of you to the extent of that payment.
- 7. No transfer or other dealings**
You can't transfer or otherwise deal with your rights under this guarantee without our prior written consent.
- 8. Applicable law**
The law in force in the State or Territory of our contact details in the Details applies to this guarantee.

- Bank guarantees

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Legal concepts

- Time is of the essence



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Legal concepts

- Initial agreed documents:
 - Heads of Agreement
 - Memorandum of Understanding
 - Letters of offer

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Legal concepts

- Giving notices under legal documents

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- Witnessing:

- You must witness the person sign
- The signatures must be dated on that date



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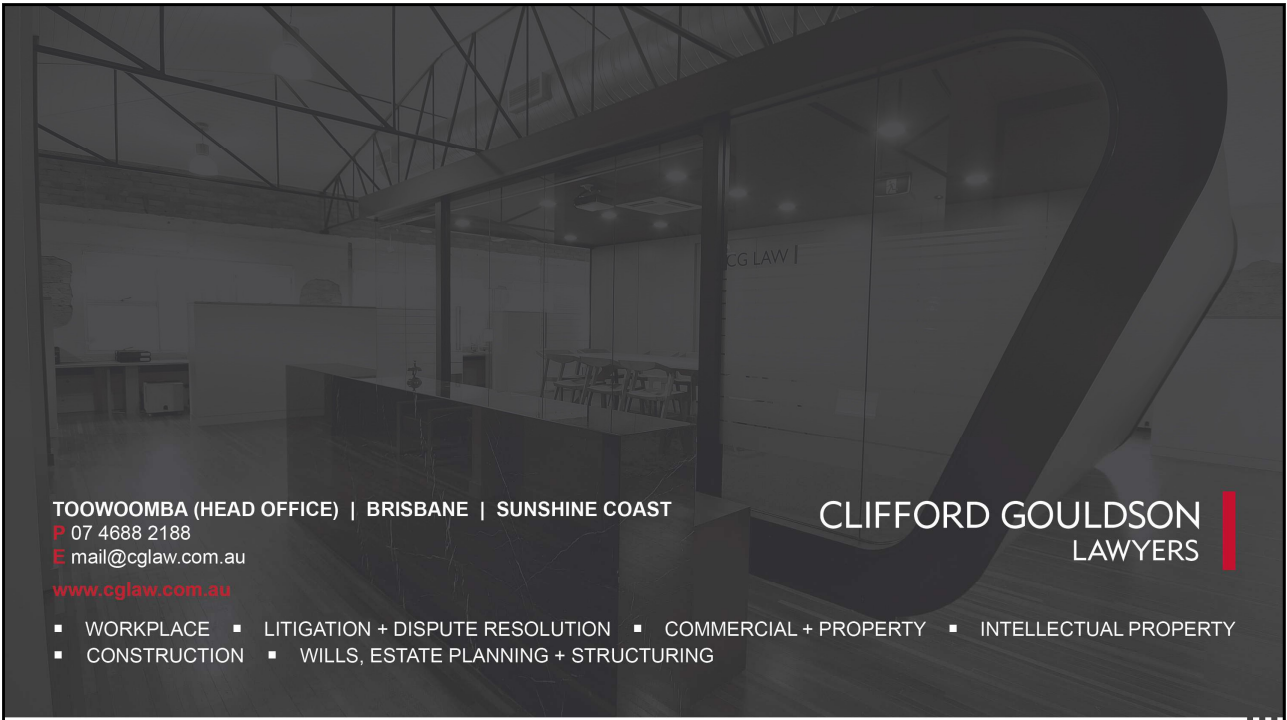
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