

# Beyond the Farm Gate – Farm Newsletter



BROWN GLASSFORD AND CO LTD

Your Focus : Your Business...

Our Focus : Your Business...

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## CONSIDERATIONS WHEN UPDATING MEMORANDA OF WISHES

It is common practice when settling new trusts for the settlor to execute a memorandum or letter of wishes setting out guidance for the trustees as to how the settlor would like the trust's capital and assets to be dealt with in future (especially after the settlor has died). The issue that has come before the courts on occasion has been that of how strictly should trustees follow the settlor's wishes? Following recent cases, the attitude of the courts has been that while trustees might give consideration to the settlor's wishes, these must always be secondary to the trust deed.

A further issue concerns updating of memoranda of wishes while a settlor remains alive. It is often said that wills should be regularly reviewed and updated as someone moves through different stages of life and circumstances, whether owing to financial, family, health or other considerations, all of which may change accordingly. Should memoranda of wishes also be updated in a similar manner?

In practice they often are. Moreover, it is not uncommon for the wishes expressed by settlors to vary markedly from previous versions. This can create more, not less, uncertainty if the time comes when the wishes are considered by a court, which is looking at a memorandum of wishes as an indicator of how the terms of a trust deed might be interpreted.

For example, in a recent case, *Goldie v Campbell*, an original memorandum of guidance (i.e. of wishes) referred to the needs of two daughters as "paramount" and having priority over all other beneficiaries. Subsequently, after Mr Campbell and Ms Goldie had separated and Mr Campbell entered a new relationship, he exercised his powers as appointer to add the new partner and her children as beneficiaries and signed a new memorandum of wishes requesting that the new partner and her children be given similar weight in trustee consideration. The High Court upheld an earlier finding that Mr Campbell did not have the power to remove the daughters as beneficiaries, citing the original memorandum of wishes as one factor in interpreting the trust deed.

In *Clement v Lucas* the High Court also considered the effect of an evolution of memoranda of wishes over a period of time, changing circumstances and feuding family members.

When the trustees subsequently chose to ignore a more recent memorandum of wishes and to sell land when this was clearly not as wished. The High Court held that when they made a decision, they were advised at the time that they had "a duty to consider the purposes for which [a] Trust was established and the intentions of the Settlers ...". Their failure to do so this amounted to a breach of duty and was set aside by the Court. While it is still understood that the terms of the trust deed must outweigh any expression of wishes that are inconsistent with it, the importance of memoranda of wishes is not to be underestimated.

## STAFF NEWS

### Emily Eddy

Our receptionist Emily Eddy recently said farewell to Brown Glassford. We would like to thank Emily for her contributions to Brown Glassford over the years and wish her well in her new endeavors.

### Chathu Wattage

Chathu joined Brown Glassford in April as an accountant. She has over 10 years of experience in both accounting and IT industry and held various roles. Before joining Brown Glassford Chathu has about six years of experience as an accountant in rural accounting at two CA practices in Christchurch.

When not at work, Chathu enjoys reading non-fiction, learning programming languages, and getting out in the great outdoors with her husband & helping him with his photography.

### Kate Ward-Smith

Kate joined Brown Glassford & Co Ltd in June 2019 as receptionist and personal assistant to Peter & Paul. Kate is born and bred in Lincoln, Christchurch on a sheep and beef farm. She attended boarding school at Waitaki Girls High School. Before joining Brown Glassford, Kate worked in a variety of reception and administration environments including transport, law, university, and construction.

In her spare time, Kate enjoys spending time with her young daughter and her partner, maintaining her vegetable garden, spending time with friends and family, and visiting her family farm.

## AUDIT SHIELD

We had noted in our Autumn 2018 newsletter that we were no longer using Audit Shield for IRD/Audit insurance cover as our clients were covered under Brown Glassford and Co Limited's participation in an insurance programme under our membership with NZCA. The terms of this policy have been changed and this policy now only provides cover for work, which has been prepared by Brown Glassford and will not cover any work prepared by clients themselves, i.e. GST returns. All clients will still be covered by the Brown Glassford policy until 1 August 2019.

With this in mind, we will once again be returning to Audit Shield to provide IRD/Audit insurance cover and a letter inviting you to consider joining this scheme will be sent to you soon.

We remind you that this service is optional, and also that if you choose not to adopt the insurance cover please let us know so that we can record that with the insurer otherwise they will send a follow up notice shortly. If you have any questions related to this, please contact us.

## CASUAL EMPLOYEES

Casual employees do not work fixed or regular hours and don't have an ongoing obligation to work for the employer. They work "on call" when you need them. A casual employee can also be working for fixed hours for a short-term contract. This contract must be for less than one year to fall into the criteria of "casual". Casual employees can be paid 8% on top of their wages as holiday pay each time they receive their wages if agreed in writing. Or they can accrue the value the same as a part-timer and be paid out their 8% on termination.

### Casual workers are entitled to:

- Sick leave (if still working for the company after 6 months, subject to certain criteria)
- Bereavement leave (if still working for the company after 6 months, subject to certain criteria)
- Statutory holidays (immediately).

A word of caution, if you hire an employee as a casual employee and pay them 8% of their income as holiday pay it doesn't let you off your obligations as an employer for annual leave. If that employee stays longer than a year, the employee was really part-time and is then entitled to 4 weeks paid holiday. You may have paid the employee their 8% all year, and then still end up paying them for 4 weeks holidays as well if they challenge it! We suggest you err on the side of caution and if there's any doubt as to the length of the employment, make them part time.

## SOFTWARE

As mentioned in our previous newsletter Brown Glassford has transitioned to Xero for our practice management operations. This allows us to directly send Tax Notices and Invoices via email, which we are now doing, using the email addresses we have on file. If you are expecting an Invoice or Tax Notice and have not received one please check your junk emails and if it is not here please contact us to check we have your current email address on file.

## IRD

You will have all have now had time to experience the new IRD website. We have found that while it still has some shortcomings the transition from the old website went better than expected.

Please note when you log into your MyIR, or receive correspondence from the IRD, the balance showing as owing is for the total year, not just the next provisional or terminal tax payments due. Please check with us if you have any concerns around the amount due.

For those with student loans please note that this information will not be available on the new IRD website for us as your tax agents until 2020. You can still access your loan balances through your MyIR and if you have any queries, you will need to send us copies of any balance statements as we only have access to transactions over a two year period.

Please also be aware that we have received notification of a scam doing the rounds which claims to be from IRD as per below, again please check with us if you have any queries regarding any correspondence from IRD that you are unsure of.

Hi,

You are eligible to receive a refund of up to \$135.10 NZD for (**OVERPAYMENT IR3 income tax return 25 June 2018 to 31 July 2018**).

We tried to send it to you automatically but were unable to do so as we don't have your Credit/Debit Card details on file.

- have your credit/debit card ready
- open the application in your browser
- follow the instructions on your screen

<https://www.ird.govt.nz/yourname@hotmail.com/overpayments-refunds>

Thanks,  
The Customer Services Team

### Tax related

For more information about protecting your identity visit Inland Revenue's website and keyword search 'SPAM', alternatively you could visit either the ID Care or Netsafe websites for further guidance.

This email has been sent to this email address as it has been registered with Inland Revenue.

Please do not reply to this email as this inbox is not monitored.

Inland Revenue, 55 Featherston Street,  
Wellington, New Zealand.