Supreme Court

New South Wales

Case Name:	Stokes v Stokes
Medium Neutral Citation:	[2023] NSWSC 1223
Hearing Date(s):	28 September 2023
Date of Orders:	16 October 2023
Decision Date:	16 October 2023
Jurisdiction:	Equity - Succession & Probate List - Family Provision
Before:	Nixon J
Decision:	The Court:

(1) Orders, pursuant to section 91(2) of the Succession Act 2006 (NSW) that administration in respect of the estate of the deceased, Gavin Stokes, late of 181 Pacific Palms Circuit, Hoxton Park in the State of New South Wales, be granted to the Defendant, Kayla Lee Stokes, for the purpose only of permitting the Plaintiff's application for a family provision order to be dealt with.

(2) Orders, pursuant to Uniform Civil Procedure Rules 2005 (NSW), rule 7.10(2)(b), that the Defendant be appointed to represent the estate of the deceased, for the purposes of these proceedings.

(3) Orders, pursuant to s 59 of the Succession Act 2006 (NSW), that in lieu of the amount payable to the Plaintiff on an intestacy of the deceased out of the deceased's estate in New South Wales, the Plaintiff receive, by way of provision out of the deceased's estate, a lump sum of $100,000.

(4) Grants to the Plaintiff, in the event that the lump sum in order (3) is not paid by 13 November 2023,

liberty to apply on 7 days' notice in respect of the implementation of order (3).
(5) Directs that:

(a) in the event that the parties are able to agree on the form of costs order, the parties provide a copy of any proposed consent orders to my Associate by 4pm on 23 October 2023; and

(b) in the event that the parties are unable to agree on the form of the costs order, the parties exchange submissions, together with any supporting material, and provide a copy to my Associate by 4pm on 23 October 2023.

Catchwords: SUCCESSION – FAMILY PROVISION – Claim for family provision order by adult child of the deceased – Adequate provision not made for the Plaintiff by operation of intestacy rules – Defendant conceded the Court should exercise discretion to make family provision order in lieu of Plaintiff's entitlement on intestacy – Dispute concerning the quantum of the provision to be made – Provision ordered to be paid out of the deceased's estate in the sum of $100,000

Legislation Cited: Succession Act 2006 (NSW) Ch 3
Uniform Civil Procedure Rules 2005 (NSW) r 7.10

Cases Cited: Chan v Chan [2016] NSWCA 222
Ciric v Ciric [2015] NSWSC 313
Estate Raineri [2016] NSWSC 489
Golosky v Golosky [1993] NSWCA 111
Luciano v Rosenblum (1985) 2 NSWLR 65
Maria Oliveira by her tutor Ivo De Oliveira v John Antonio Oliveira [2023] NSWSC 1130
Page v Hull-Moody [2020] NSWSC 411
Steinmetz v Shannon (2019) 99 NSWLR 687; [2019] NSWCA 114
Stone v Stone [2016] NSWSC 605
Torok v Becker [2020] NSWSC 1570
Towson v Francis [2017] NSWSC 1034
Vella v Vella; Vella v Vella [2020] NSWSC 849
Wheat v Wisbey [2013] NSWSC 537
Wild v Meduri & Ors; Meduri & Anor v Neal & Anor; Meduri v Meduri & Ors [2023] NSWSC 113

	Xiang bht Cao v Tong [2021] NSWSC 44
Category:	Principal judgment
Parties:	Chloe Stokes (Plaintiff) Kayla Lee Stokes (Defendant)
Representation:	Counsel: K Morrissey (Plaintiff) P Muscat (Defendant) Solicitors: Williams Law (Plaintiff) Marsdens Law Group (Defendant)
File Number(s):	2023/43961
Publication Restriction:	Nil

JUDGMENT

Introduction

1 Gavin Stokes (**the deceased**) died on 25 February 2021, aged 38 years, in New South Wales.

2 The Plaintiff, Chloe Stokes, is the daughter of the deceased and his former partner, Denise Tammekand. She was born in 2002 and is aged 21. She has brought a claim for a family provision order out of the deceased's estate or notional estate pursuant to s 59 of the *Succession Act 2006* (NSW) (**the Act**).

3 The Defendant, Kayla Lee Stokes, is the widow of the deceased. She was born in 1987 and is aged 35. She and the deceased began living together in 2007, and were married in February 2013. She has a son with the deceased, Jack Stokes, who was born in 2020, only several months before his father's death.

4 The deceased's estate is wholly comprised of a property located at 181 Pacific Palms Circuit, Hoxton Park NSW (**the Hoxton Park Property**).

5 The deceased did not leave a will. As at the date of the hearing, Letters of Administration on intestacy have not yet been granted.

6 The Plaintiff's claim was commenced by Summons filed on 9 February 2023, nearly two years after the date of the deceased's death. However, the Defendant consented to the Plaintiff's application being made out of time.

7 It was common ground between the parties that:

(a) the Plaintiff is an eligible person to make a family provision claim;

(b) having regard to the net distributable amount of the estate, the Plaintiff would likely not receive any amount by way of her entitlement under the rules of intestacy;

(c) in those circumstances, adequate provision has not been made by the operation of the intestacy rules for the proper maintenance, education or advancement in life of the Plaintiff;

(d) accordingly, the jurisdictional requirements for the making of a family provision order under s 59 of the Act are met; and

(e) the Court should exercise its discretion to make such an order in favour of the Plaintiff in lieu of any entitlement that she has on intestacy.

8 Having regard to those matters, the only issue of substance between the parties was concerning the quantum of the family provision order that should be made in the Plaintiff's favour.

9 For convenience, and without intending any disrespect, in this judgment I will use first names to refer to the Plaintiff, Chloe, to the Defendant, Kayla, and to her son, Jack.

The nature and value of the deceased's estate

10 The evidence before the Court was as follows:

(1) the deceased's actual estate is wholly comprised of the Hoxton Park Property, which as of 12 September 2023, is estimated to be worth $750,000;

(2) as at the date of the deceased's death, the estate had liabilities of around $120,000, comprising the amount owing on a mortgage with the ANZ bank over the Hoxton Park Property. Since then, the balance of the ANZ mortgage has reduced to around $67,000, as a result of payments made by Kayla. Although the Hoxton Park Property was registered in the deceased's name only, the ANZ mortgage is in the names of both Kayla and the deceased, such that she remains personally liable to make the payments on that mortgage;

(3) Kayla incurred funeral expenses in the amount of $8,995;

(4) additional liabilities have been incurred since the deceased's date of death, being:

(a) the costs of the applications for probate and for administration, in the amount of $15,755.27 to date (including GST and disbursements), with future costs estimated at $3,500 (including administration); and

(b) the costs of defending these proceedings, incurred to date in the sum of $31,509.96 (including GST and disbursements), with future costs to the end of these proceedings estimated at $115,500 (including GST).

11 The estimate for Kayla's costs of defending these proceedings was based on a two-day estimate for the hearing. As matters transpired, the hearing was able to be concluded within one day, having regard to the extent of common ground between the parties.

12 The parties agreed that, based on the Hoxton Park Property having an estimated value of $750,000, and taking into account the future costs of the proceedings (on the estimates given above), Kayla would not receive the whole of her entitlement under the rules of intestacy, with the result that each of Chloe and Jack would likely not receive any amount at all.

13 Given that the hearing concluded within a day, Kayla's costs of defending these proceedings are likely to be less than the estimate set out above. Further, Chloe tendered some evidence to suggest that the value of the Hoxton Park Property might be higher than estimated. If those amounts were adjusted, then it might be the case that Chloe would receive some amount by way of her entitlement under the intestacy rules.

14 However, I do not need to resolve this issue for two reasons. First, it was common ground between the parties that Chloe's application should be determined on the basis that she will likely not receive any amount in respect of her entitlement under the intestacy rules, and that, in those circumstances, an order for provision should be made in lieu of any such entitlement. Secondly, Chloe made it clear that she did not want to disturb the use and enjoyment by Kayla and Jack of the Hoxton Park Property. It is their home, and there is no suggestion that this asset should be realised in order to resolve Chloe's claim. Given those matters, the precise current value of the Hoxton Park Property is not of any particular significance for the determination of Chloe's claim.

Orders for purpose of dealing with family provision claim

15 The parties agreed that an order should be made pursuant to s 91 of the Act, granting administration in respect of the deceased's estate to Kayla for the purpose only of permitting Chloe's application for a family provision order to be dealt with.

16 Section 91 of the Act provides as follows:

> "(1) This section applies if an application is made by a person for a family provision order, or notional estate order, in respect of the estate of a deceased person, or deceased transferee, respectively, in relation to which administration has not been granted.
>
> (2) The Court may, if it is satisfied that it is proper to do so, grant administration in respect of the estate of the deceased person or deceased transferee to any person the Court considers appropriate for the purposes only of permitting the application concerned to be dealt with, whether or not the deceased person or deceased transferee left property in New South Wales.
>
> (3) The granting of administration under the *Probate and Administration Act 1898* does not –
>
> (a) prevent the Court from granting administration under this section, or
>
> (b) unless the Court otherwise orders, affect any previous grant of administration under this section.
>
> (4) The provisions of the *Probate and Administration Act 1898* apply to a grant of administration under this section, and to the legal representative of the estate, in the same way as they apply to a grant of administration under that Act and the legal representative of any estate for which such a grant has been made."

17 In *Wheat* v Wisbey [2013] NSWSC 537 at [57], Hallen J observed that: "Where there is real and personal estate of which the deceased person dies seised, or possessed of, or entitled to, in New South Wales, at the date of death, a grant of administration is required before an application for a family provision order can be dealt with and it would be proper to make an order under s 91." Accordingly, I will make such an order.

18 The parties also agreed that a representative order should be made under r 7.10 of the Uniform Civil Procedure Rules 2005 (NSW), which provides as follows:

> "(1) This rule applies to any proceedings in which it appears to the court –
>
> (a) that a deceased person's estate has an interest in the proceedings, but is not represented in the proceedings, or

> (b) that the executors or administrators of a deceased person's estate have an interest in the proceedings that is adverse to the interests of the estate.
>
> (2) The Court –
>
> (a) may order that the proceedings continue in the absence of a representative of the deceased person's estate, or
>
> (b) may appoint a representative of the deceased person's estate for the purposes of the proceedings, but only with the consent of the person to be appointed.
>
> (3) Any order under this rule, and any judgment or order subsequently entered or made in the proceedings, binds the deceased person's estate to the same extent as the estate would have been bound had a personal representative of the deceased person been a party to the proceedings.
>
> (4) Before making an order under this rule, the court may order that notice of the application be given to such of the persons having an interest in the estate as it thinks fit."

19 The persons having an interest in the estate, being Kayla, Jack and Chloe, have notice of the application, and consent to a representative order being made under r 7.10. The parties agreed that because Kayla is the named Defendant in these proceedings, is the person to whom a grant of Letters of Administration is likely to be made, and is the person who will likely receive the whole of the estate on intestacy, she is the proper contradictor in the proceedings. For those reasons, I will make an order under rule 7.10(2)(b), that Kayla be appointed to represent the deceased's estate for the purposes of these proceedings.

Timing of application

20 Section 58(2) of the Act provides as follows:

> "An application for a family provision order must be made not later than 12 months after the date of the death of the deceased person, unless the Court otherwise orders on sufficient cause being shown or the parties to the proceedings consent to the application being made out of time."

21 An application is taken to be made on the day it is filed in the Court's registry: s 58(3). Chloe commenced her proceedings by a Summons filed on 9 February 2023, nearly two years after the deceased's death on 25 February 2021.

22 The effect of s 58(2) is that an application may be pursued after the specified period of time only in the event that either of two conditions is satisfied: namely, either the parties to the proceedings consent, or the Court so orders on sufficient cause being shown. Since Kayla has consented to Chloe's

application being made out of time, the question of whether sufficient cause has been shown does not arise.

Notional estate

23 A family provision order may be made in relation to property that is not part of the deceased's estate, but which is designated as "notional estate" of the deceased by an order under Pt 3.3 of the Act: s 63(5). The Court may only make a notional estate order for the purposes of a family provision order to be made under Part 3.2 of the Act, or for the purposes of an order that the whole or part of the costs be paid from the notional estate: s 78(1).

24 Kayla acknowledged that there were assets as at the deceased's death which were theoretically capable of being designated as notional estate. In particular, there was a superannuation death benefit from BT Super ($427,941.59) and the proceeds of a life insurance policy with ANZ Life Insurance ($702,045.01). In accordance with nominations made by the deceased, each of those amounts has been paid to Kayla.

25 However, Kayla submitted, and Chloe agreed, that the value of the actual estate is sufficient to allow for the making of any family provision order and any costs order in Chloe's favour. Section 88(b) of the Act provides that in those circumstances, a notional estate order must not be made. Accordingly, I do not need to consider whether or not the requirements of sections 87 and 90 of the Act would be satisfied in the circumstances of this case.

Chloe's family provision claim

26 Section 59(1) of the Act relevantly provides as follows:

> "(1) The Court may, on application under Division 1, make a family provision order in relation to the estate of a deceased person, if the Court is satisfied that:
>
> (a) the person in whose favour the order is to be made is an eligible person, and
>
> …
>
> (c) at the time when the Court is considering the application, adequate provision for the proper maintenance, education or advancement in life of the person in whose favour the order is to be made has not been made by the will of the deceased person, or by the operation of the intestacy rules in relation to the estate of the deceased person, or both."

27 The conditions in s 59(1) are met. As regards s 59(1)(a), Chloe is a child of the deceased, and is therefore an eligible person by reason of s 57(1)(c) of the Act. Further, Kayla conceded that the requirements of s 59(1)(c) are satisfied, since Chloe will likely not receive any amount out of the deceased's estate by way of her entitlement under the intestacy rules.

28 Accordingly, the power to make a family provision order under s 59(2) of the Act is enlivened. That subsection provides as follows:

"The Court may make such order for provision out of the estate of the deceased person as the Court thinks ought to be made for the maintenance, education or advancement in life of the eligible person, having regard to the facts known to the Court at the time the order is made."

29 It was common ground that the Court should, in the exercise of the discretion under s 59(2), make an order for provision out of the deceased's estate for the maintenance, education or advancement in life of Chloe, in lieu of any entitlement that Chloe has on intestacy. There was, however, a dispute regarding the quantum of the order for provision that should be made.

30 In *Wild v Meduri & Ors; Meduri & Anor v Neal & Anor; Meduri v Meduri & Ors* [2023] NSWSC 113 at [1004], Hallen J noted that the Act does not stipulate any automatic entitlement to provision when the jurisdictional requirements of s 59 are satisfied and, accordingly, it is clear that the Court has a discretion whether to make an order and as to the amount of any order that is made: "the Court is empowered to order such provision from the deceased's estate as the Court thinks fit, but the Court is not empowered to award more than what is 'adequate' provision for the applicant's 'proper' maintenance, education or advancement in life".

31 The relevant factors that the Court may take into account when exercising its discretion whether to make an order include those set out in s 60(2) of the Act.

32 Section 60 of the Act relevantly provides as follows:

> "**60 Matters to be considered by Court (cf FPA 7–9)**
>
> (1) The Court may have regard to the matters set out in subsection (2) for the purpose of determining—
>
> …

(b) whether to make a family provision order and the nature of any such order.

(2) The following matters may be considered by the Court:

(a) any family or other relationship between the applicant and the deceased person, including the nature and duration of the relationship,

(b) the nature and extent of any obligations or responsibilities owed by the deceased person to the applicant, to any other person in respect of whom an application has been made for a family provision order or to any beneficiary of the deceased person's estate,

(c) the nature and extent of the deceased person's estate (including any property that is, or could be, designated as notional estate of the deceased person) and of any liabilities or charges to which the estate is subject, as in existence when the application is being considered,

(d) the financial resources (including earning capacity) and financial needs, both present and future, of the applicant, of any other person in respect of whom an application has been made for a family provision order or of any beneficiary of the deceased person's estate,

(e) if the applicant is cohabiting with another person—the financial circumstances of the other person,

(f) any physical, intellectual or mental disability of the applicant, any other person in respect of whom an application has been made for a family provision order or any beneficiary of the deceased person's estate that is in existence when the application is being considered or that may reasonably be anticipated,

(g) the age of the applicant when the application is being considered,

(h) any contribution (whether financial or otherwise) by the applicant to the acquisition, conservation and improvement of the estate of the deceased person or to the welfare of the deceased person or the deceased person's family, whether made before or after the deceased person's death, for which adequate consideration (not including any pension or other benefit) was not received, by the applicant,

(i) any provision made for the applicant by the deceased person, either during the deceased person's lifetime or made from the deceased person's estate,

(j) any evidence of the testamentary intentions of the deceased person, including evidence of statements made by the deceased person,

(k) whether the applicant was being maintained, either wholly or partly, by the deceased person before the deceased person's death and, if the Court considers it relevant, the extent to which and the basis on which the deceased person did so,

(l) whether any other person is liable to support the applicant,

(m) the character and conduct of the applicant before and after the date of the death of the deceased person,

> (n) the conduct of any other person before and after the date of the death of the deceased person,
>
> (o) any relevant Aboriginal or Torres Strait Islander customary law,
>
> (p) any other matter the Court considers relevant, including matters in existence at the time of the deceased person's death or at the time the application is being considered."

33 As is clear from the text of the provision, the matters set out in s 60(2)(a)-(p) are matters to which the Court "may" have regard. None is a prerequisite to the making of an order; none is given any precedence over any other; and there is no relative weighting as between them.

34 The words "adequate" and "proper" are not defined in the Act. The determination of what is adequate and proper will ultimately depend on all the circumstances of the particular case. The exercise of the Court's discretion is often described to be intuitive, impressionistic and evaluative.

35 In *Estate Raineri* [2016] NSWSC 489, Lindsay J wrote, at [10]:

> "The words 'adequate' and 'proper' require assessment of 'adequacy of provision' relative to the facts of the particular case. What is 'proper' maintenance, etc is relative to the age, mode of life and personal circumstances of the particular applicant. What is 'adequate' is relative, not only to the applicant's needs, but also to his or her own capacity and resources for meeting them. What is 'adequate' and 'proper' is also relative to the size and composition of the deceased estate in question, other demands on the estate and the deceased's expressed, testamentary intentions: *Pontifical Society for the Propagation of the Faith v Scales* [1962] HCA 19; (1962) 107 CLR 9 at 11."

36 The Court's exercise of its discretion is principled and limited by the purposes of the Act. In *Steinmetz v Shannon* (2019) 99 NSWLR 687; [2019] NSWCA 114, White JA, said at [59]:

> "Section 59 confers on the Court power to interfere with testamentary dispositions or entitlements on intestacy only to the extent that it considers that adequate provision has not been made for the proper maintenance, education or advancement in life of the applicant."

37 In *Vella v Vella; Vella v Vella* [2020] NSWSC 849 at [20], Williams J observed that:

> "…The inquiry into adequacy is not limited to considering whether the plaintiff has enough to survive or to live comfortably without provision (or further provision, as the case may be) from the deceased's estate. Adequacy is a broader concept that requires consideration of matters necessary to guard against unforeseen contingencies. In deciding whether adequate provision has been [provided] for the plaintiff's proper maintenance, education or

> advancement in life, attention may be given to how the parties lived and might reasonably have expected to live in the future. The concepts of adequate and proper are not assessed in a vacuum, but in the context of all of the circumstances of the case, including the plaintiff's financial position, the size and nature of the deceased's estate, the totality of the relationship between the plaintiff and the deceased and the relationship between the deceased and other persons who have legitimate claims on the deceased's estate: Harris v Carter (supra) at [114]–[122] and [149]–[154] and the authorities there cited."

38 Section 61(1) of the Act provides that the Court may disregard the interests of any other person by or in respect of whom an application for a family provision order may be, but has not been, made. No person other than Chloe has made an application for provision out of the deceased's estate. There was evidence that a notice of claim was served on each of Denise Tammekand, who is Chloe's mother, and Bailey Stokes, who is Chloe's half-brother. I have disregarded any interest of theirs in determining Chloe's application.

39 Before considering the issue of what order for provision should be made in favour of Chloe, I address below the circumstances of each of Chloe, Kayla and Jack, and the deceased's testamentary intentions.

Circumstances of Chloe

40 Chloe is 21 years old. She has no children.

41 Chloe trained as a hairdresser, but is currently employed as a Dental Assistant in Narellan.

42 Her net weekly income is $900.00, and her weekly expenses were estimated as being $290.00.

43 Since October 2022, Chloe has lived with her boyfriend, Mark Bondin, at his parents' house. Mr Bondin works as a fork lift driver and has a net weekly income of $900.00.

44 Chloe and Mr Bondin are each putting $500.00 per fortnight into an account to save a deposit for a future house.

45 Chloe has assets totalling $55,700 and has no liabilities. She has a bank account in her own name with a current balance of $1,700, and she has the joint savings account with Mr Bondin, which is being accumulated towards a home deposit, with a current balance of $44,000. In addition, Chloe has a 2015

model car that is worth around $10,000. Her superannuation is in the amount of $8,250.

46 Mr Bondin has a car, some savings, superannuation and other personal property. It was not clear whether his only savings are the moneys in the joint account with Chloe, but in any case there was nothing to indicate, and no submission, that his assets are substantial.

47 Chloe deposed that her future needs include: a replacement motor vehicle in the amount of $30,000; a house deposit of at least $80,000 (representing 10% of an anticipated purchase price of $800,000); the cost of a wedding, in the event that she is married, which she estimated as being in the order of $10,000; and an amount of around $80,000 to assist her in the future in meeting the costs of having children, which would include a reduction in income and an increase in expenses.

Circumstances of Kayla and Jack

48 Kayla was born in 1987 and is now 35 years old. She and the deceased were in a relationship for some 14 years prior to his death, and were married for 8 years.

49 Kayla has sole parental responsibility for Jack, who is nearly 3 years old.

50 Kayla is currently employed full time as a service coordinator at BUSCH. She previously worked in a higher paid position with the same company as a sales representative, but that role had significant travel commitments. She explained that, given her need to look after Jack, she is no longer able to work in that role.

51 Kayla earns approximately $87,000 per annum before tax, plus superannuation. This equates to around $1,250 per week after tax (or around $5,400 per month). Her monthly expenses were estimated to be $6,570. Those expenses include the child care costs for Jack that are necessary for her to be able to work.

52 As matters currently stand, Kayla's monthly expenses exceed her monthly income. Those expenses include monthly mortgage payments of $2,000. Because Kayla has a substantial balance in an offset account, which exceeds

the balance of her mortgage, those monthly mortgage payments are being wholly applied to reduce the amount of the outstanding capital, rather than to meet any interest component. If the balance of the mortgage were paid off, there would be no need to make those payments going forward. The effect would be that her monthly expenses would be reduced to below the level of her monthly income.

53 Kayla has assets totalling $1,012,367 and has liabilities totalling $67,800.

54 Her major assets comprise superannuation with AMP (around $139,367), and two accounts with ANZ bank (around $783,000). The accounts with ANZ comprise an account which remains in the joint names of Kayla and the deceased, with a current balance around $121,700, and an account in the name of Kayla as trustee for Jack, with a current balance of $661,300.

55 Her liabilities comprise the mortgage over the Hoxton Park Property (around $67,000) and a small debt on an ANZ Platinum Credit Card (around $800).

56 The amounts held in the two ANZ accounts represent the remaining balance of the sums that Kayla received on the deceased's death from his superannuation fund ($427,941.59) and from his life insurance policy ($702,045.01). Since receiving those sums in 2021, she has spent significant amounts on household repairs, including a new roof; holidays; items for Jack, solicitors' fees (in these proceedings, and in the probate and administration proceedings); and general living expenses.

57 Jack is delayed in his speech development and requires speech therapy at a cost of approximately $200 per hour. It is Kayla's desire, as it was the deceased's intention, to send Jack to private school for both primary school and high school. She estimates the cost of the school fees to be around $100,000.

58 Kayla wants Jack to have the opportunity to travel, as Chloe has done. In addition, as Jack's sole parent, she will need to meet the usual sporting, orthodontic and general entertainment costs for Jack as he grows up.

59 Kayla deposed that her future needs include: repaying the mortgage over the Hoxton Park Property ($67,000); making further repairs, as well as undertaking

renovations to and maintenance of the Hoxton Park Property ($90,000); updating her car ($60,000); Jack's school fees ($100,000); and funds to support herself and Jack in the future. In addition, she is considering purchasing an investment property and using the rental income as a substitute for the loss of the deceased's wage.

60 Since early July 2022, Kayla has been in a relationship with Ian Livingston. She described him as her boyfriend. They do not live together, nor have they ever lived together. Their finances are separate. Kayla does not know the details of his income or earning capacity.

Testamentary intentions of the deceased

61 The deceased was diagnosed with terminal cancer in November 2020, just two weeks after Jack was born. At that time, the deceased said to Kayla that he wanted to make a will, stating: "I think everything goes to you anyway because the house is ours but I think I should do one. I want to make sure you get everything."

62 The deceased was informed that the Cancer Council would cover the costs of preparing a will. He spoke to a representative of the Cancer Council on 8 February 2021 and gave instructions that he wanted his entire estate to be left to Kayla. These instructions were passed on to Marsdens Law Group, in order to enable his will to be prepared.

63 The deceased then spoke directly to Marsdens Law Group and confirmed his instructions. After this discussion, he also updated the binding death nomination on his superannuation so that Kayla was the sole beneficiary.

64 On 18 February 2021, Marsdens Law Group sent a draft will to the deceased. In accordance with the deceased's instructions, this left his entire estate to Kayla. The deceased confirmed to Kayla that he had reviewed the will and intended to sign it. However, he died just days later, without having done so.

Consideration

65 In considering the exercise of the power under s 59(2), and in particular, the appropriate quantum of provision that would be adequate for the proper maintenance, education or advancement in life of Chloe, I have considered the

matters set out in s 60(2) of the Act, insofar as they are relevant to her application.

Para 60(2)(a) – nature and duration of relationship with the deceased

66 Chloe maintained a good relationship with the deceased.

67 The deceased had separated from Chloe's mother, when she was about two years of age, but he saw Chloe regularly during contact periods. The deceased paid child support payments for Chloe while she lived with her mother, albeit relatively small fortnightly amounts.

68 In August 2018, Chloe left her mother's home, and moved into the Hoxton Park Property to live with the deceased and Kayla. At this time she was 15 years old. She remained living with the deceased until the time of his death in February 2021.

Para 60(2)(b) – the nature and extent of any obligations or responsibilities owed to the applicant or to any other person

69 Chloe is an adult child of the deceased. She turned 18 shortly before he died.

70 In *Xiang bht Cao v Tong* [2021] NSWSC 44 at [361], Hallen J observed that there are no special rules or principles applicable to the claims of an adult child; nor is there any presumption in favour of, or against, there being an obligation to make provision for an adult child: citing *Towson v Francis* [2017] NSWSC 1034 at [108] per Hallen J; *Torok v Becker* [2020] NSWSC 1570 at [320] per Ward CJ in Eq; and *Page v Hull-Moody* [2020] NSWSC 411 at [176]-[177] per Hallen J.

71 In *Georgopoulos v Tsiokanis & Anor* [2022] NSWSC 563 at [309]-[310], Hallen J identified the following principles relevant to a family provision claim by an adult child:

> "(a) The relationship between parent and child changes when the child attains adulthood. However, a child does not cease to be a natural recipient of parental ties, affection or support, as the bonds of childhood are relaxed.
>
> (b) It is impossible to describe, in terms of universal application, the moral obligation, or community expectation, of a parent in respect of an adult child. It can be said that, 'ordinarily the community expects parents to raise and educate their children to the very best of their ability while they remain children; probably to assist them with a tertiary education, and where that is feasible; where funds allow, to provide them with a start in life – such as a

deposit on a home, although it might well take a different form. The community does not expect a parent, in ordinary circumstances, to provide an unencumbered house, or to set their children up in a position where they can acquire a house unencumbered, although in a particular case, where assets permit and the relationship between the parties is such as to justify it, there might be such an obligation': Taylor v Farrugia [2009] NSWSC 801 at [57] (Brereton J); McGrath v Eves [2005] NSWSC 1006; Kohari v Snow [2013] NSWSC 452 at [121]; Salmon v Osmond (2015) 14 ASTLR 442; [2015] NSWCA 42 at [109] (Beazley P, McColl and Gleeson JJA agreeing).

(c) Generally, also, 'the community does not expect a parent to look after his or her children for the rest of [the child's life] and into retirement, especially when there is someone else, such as a spouse, who has a prime obligation to do so. Plainly, if an adult child remains a dependent of a parent, the community usually expects the parent to make provision to fulfil that ongoing dependency after death. But where a child, even an adult child, falls on hard times and where there are assets available, then the community may expect parents to provide a buffer against contingencies; and where a child has been unable to accumulate superannuation or make other provision for their retirement, something to assist in retirement where otherwise they would be left destitute': Taylor v Farrugia at [58] (Brereton J).

(d) There is no need for an applicant adult child to show some special need or some special claim: McCosker v McCosker; Kleinig v Neal (No 2) [1981] 2 NSWLR 532 at 545-546 (Holland J); Bondelmonte v Blanckensee [1989] WAR 305; Hawkins v Prestage (1989) 1 WAR 37 at 45 (Nicholson J); Taylor v Farrugia at [58] (Brereton J).

(e) The adult child's lack of reserves to meet demands, particularly of ill health, which become more likely with advancing years, is a relevant consideration: MacGregor v MacGregor [2003] WASC 169 at [179]-[182] (Templeman J); Crossman v Riedel [2004] ACTSC 127 at [49] (Gray J). Likewise, the need for financial security and a fund to protect against the ordinary vicissitudes of life are relevant: Marks v Marks [2003] WASCA 297 at [43] (Wheeler J). In addition, if the applicant is unable to earn, or has a limited means of earning, an income, this could give rise to an increased call on the estate of the deceased: Christie v Manera [2006] WASC 287.

(f) The applicant has the onus of satisfying the Court, on the balance of probabilities, of the justification for the claim: Hughes v National Trustees, Executors and Agency Co of Australasia Ltd at 149 (Gibbs J)."

72 Kayla is a surviving spouse with an infant son. The obligations owed by the deceased to her are much stronger than those owed to Chloe. This was acknowledged by Chloe in her submissions, agreeing that the deceased's "primary obligation" was to Kayla and Jack.

73 In *Steinmetz v Shannon* at [102], Brereton JA referred to the often quoted statement of Powell J in *Luciano v Rosenblum* (1985) 2 NSWLR 65 at 69-70 regarding the "broad general rule" in respect of the obligations owed to a widow:

> "It seems to me that, as a broad general rule, and in the absence of special circumstances, the duty of a testator to his widow is, to the extent to which his assets permit him to do so, to ensure that she is secure in her home, to ensure that she has an income sufficient to permit her to live in the style to which she is accustomed, and to provide her with a fund to enable her to meet any unforeseen contingencies."

74 His Honour noted (at [104]) that this "broad general rule" was echoed by the Court of Appeal in Golosky v Golosky [1993] NSWCA 111, in which Kirby P, with whom Cripps JA agreed, said that in the absence of special circumstances, it will normally be the duty of a testator to ensure that a spouse is provided with accommodation appropriate to that which she or he has been accustomed, and to the extent that the assets available permit, a fund to meet unforeseen contingencies. However, it is in "the inescapable detail of the factual circumstances of each case" that "the answer to the proper application of the Act is to be discovered" and that "no hard and fast rules can be adopted". Brereton JA continued as follows (at [105]-[108]):

> "In O'Loughlin v O'Loughlin [2003] NSWCA 99, Davies AJA, with whom Mason P and Meagher JA agreed, said:
>
> > 20 It is undoubtedly true to say that there is no such thing as a 'standard widow' and that every case must be determined on its own particular circumstances. However, it has long been recognized that, arising out of the marriage relationship, a testator has a duty to provide support for his widow after his death if she has need of it and if his estate has funds so to provide. Courts give more attention to the needs of a widow than they do to the needs of the children, if the children are adult and well able to support themselves. This point was made clear by the remarks of Lord Romer in Bosch v Perpetual Trustee Company Ltd which I have cited above. There are many dicta to the same effect. In Worladge v Doddridge (1957) 97 CLR 1, Williams and Fullagar JJ said at 11:
> >
> > > It is clear that the claim of a widow, where the estate is of considerable value, and there are no competing claims of children, should not be disposed of in any niggardly manner. She is entitled to such a provision for her maintenance and support as the court or judge thinks proper and 'proper' is a word which, as the Privy Council pointed out in Bosch's Case lets in all the considerations there adverted to.
> >
> > 21 In Gregory v Hudson [1999] NSWCA 221, Handley JA, with whom Cole AJA agreed, cited with approval the remarks of Powell J in Luciano v Rosenblum which I have mentioned. In Sayer v Sayer, Sheller JA referred to the fourth principle as stated by Stout CJ in In re Allardice, Allardice v Allardice which was referred to by Lord Romer in Bosch v Perpetual Trustee Company Ltd. At paragraph 9, Sheller JA also referred to the remarks of Powell J in Luciano v Rosenblum and expressed the view that, in the case before him, the widow's claim was

> 'paramount'. These are examples of cases where judges have referred to a need on the part of a widow for maintenance and support and a moral obligation on the part of the testator to provide it.

As this Court pointed out in Burke v Burke [2015] NSWCA 195, such observations are not rules of law, but guidelines that may give assistance and provide guidance that are not to be elevated to rules of law. That does not mean that they are without importance and significance, because, as Basten JA explained in Chapple v Wilcox [2014] NSWCA 392:

> [19] …the real provenance of the 'principles' is that they constitute a reflection of community values, being a factual matter, but one as to which reasoned findings of judges with experience in these matters may well provide valuable guidance.

Similarly, Barrett JA explained:

> [67] … [they] provide a useful touchstone that may be applied with circumspection by judges called upon to ascertain and apply 'the feeling and judgment of fair and reasonable members of the community' in cases of the present kind.

Such guidelines also provide the additional benefit of affording a certain amount of consistency in decision-making, and indication of expectations and advice to litigants. Without such guidelines, decision-making and advising in this field becomes a morass of idiosyncratic decisions devoid of any consistency."

75 In *Steinmetz v Shannon* at [37], White JA agreed with Brereton JA's review of the authorities in relation to widows' claims, subject to some matters, "in part by way of emphasis and in part by way of qualification". The matter of emphasis was that guidelines such as those expressed by Powell J in *Luciano v Rosenblum* cannot be elevated to inflexible rules "and are subject always to the consideration of the particular circumstances of each case, including the size of the estate, any competing claims, the applicant's conduct and the applicant's relationship with the deceased". The matter of qualification concerned recourse to "community standards or community expectations" (at [40]), noting that these are not among the specifically identified matters in s 60(2) of the Act (at [46]).

76 In *Stone v Stone* [2016] NSWSC 605 at [64], Brereton J observed that, even in the context of a powerful widow's claim, the obligations of the deceased to the adult children of earlier relationships can, without affording a reason not to make what would otherwise be proper provision for his widow, affect the form or structure of that provision, "so as to avoid setting asunder the testator's intentions in other respects". His Honour continued (at [65]):

> "Thus, while acknowledging the primacy of the widow's claim, the Court may – at least where the assets are sufficient – shape and structure the provision for her to avoid effects such as subverting the testator's intentions beyond the extent necessary to make proper provision for the eligible person."

77 The present case does not simply involve a surviving spouse, but a surviving spouse with a very young child who was born only two weeks before his father's diagnosis with terminal cancer. As the deceased himself plainly recognised by the steps that he took in the final weeks of his life in an attempt to get a will in place before he died, he owed a very substantial obligation to his wife and infant son to ensure that they had sufficient funds for their maintenance, education and advancement in life, including all the costs of raising Jack to adulthood.

Para 60(2)(c) – nature and extent of the deceased's estate

78 I have already addressed the nature and extent of the deceased's estate at paragraph 10 above. It is a relatively modest estate, consisting only of the deceased's home.

Para 60(2)(d) - financial resources and financial needs, both present and future, of the applicant or any beneficiary

79 I have addressed the personal circumstances, including the financial resources and financial needs, of each of Chloe and Kayla at paragraphs 40 to 60 above.

80 In submissions, Chloe sought a fund to allow her "to cope with the vicissitudes of life", as well as potentially to meet the costs of undertaking retraining or vocational enhancement at some stage.

81 In response, Kayla pointed out that Chloe is young, in good health, has no debts and is at the start of her working life; that she is not the type of person who needs a lump sum for vicissitudes; and that Chloe herself did not give evidence that she is in need of, or has any desire to undertake, any retraining or vocational enhancement.

82 In *Ciric v Ciric* [2015] NSWSC 313 at [246], Hallen J observed that:

> "…'need' in the context of the Act is not determined by reference only to minimum standards of subsistence. Nor is it limited to whether the applicant has, at the date of hearing, an immediate need for financial assistance with respect to his maintenance. It is a broader concept, which requires consideration of matters necessary to guard against unforeseen contingencies."

83 In *Maria Oliveira by her tutor Ivo De Oliveira v John Antonio Oliveira* [2023] NSWSC 1130 at [12], Kunc J made the following observations regarding the basis for making some allowance for vicissitudes:

> "There must be a demonstrable basis both as a matter of reason and evidence for making an allowance for contingencies. In my respectful view, in most cases that is provided by an inference that the Court draws by accepting as not reasonably open to question and common knowledge (see *Evidence Act 1995* (NSW), s 144) that the unexpected does happen in the course of life which may require expenditure. Putting it colloquially, it is analogous to 'rainy day' savings that a prudent person tries to maintain if they can. So understood, this also explains why, in the absence of specific potentialities being established by proper evidence, such allowances are generally not large and rarely in six figures (although the size of the available estate will always be a matter to be taken into account in making any such award)."

84 I discuss the claim for a contingency fund further below.

Para 60(2)(e) – financial circumstances of any person with whom the applicant is cohabiting

85 I have addressed the financial circumstances of Mr Bondin, with whom Chloe is cohabiting. He has a modest income, and modest assets, and lives with his parents.

86 Kayla does not cohabit with Ian Livingston, and I do not consider his financial circumstances to be relevant to the determination of the issues in these proceedings, having regard to the nature of their relationship.

Para 60(2)(f) – any physical, intellectual or mental disability

87 Chloe and Kayla are in good health.

88 Kayla has an appointment to see an Ear, Nose and Throat specialist in relation to Jack's speech issues. However, as matters stand, there is no evidence that he has any underlying problem or will require any intervention beyond the existing speech therapy sessions.

Para 60(2)(g) – the age of the applicant

89 Chloe is an adult child of the deceased, aged 21. I have addressed above the principles relating to claims by adult children.

Para 60(2)(h) – any contribution by the applicant to the deceased's estate or welfare

90 As a teenage child of the deceased, Chloe did not make any contribution to the acquisition or improvement of the Hoxton Park Property while she lived there.

She paid a minimal amount of $50 per week by way of board to the deceased when she started work.

91 In contrast, Kayla has made a substantial contribution to the acquisition of the Hoxton Park Property. The deceased purchased this property in late 2006, only several weeks before he and Kayla met. In around 2010, the mortgage over the Hoxton Park Property was refinanced so as to fund the cost of renovations and the purchase of a new car. At this time, the mortgage was put in the names of both Kayla and the deceased, even though the property remained solely in the deceased's name. Kayla gave unchallenged evidence that she made contributions to the payment of the mortgage from 2010 onwards, as well as other financial contributions to the relationship and household. Since the deceased's death in early 2021, she has made all the payments on the mortgage.

92 Kayla also made significant non-financial contributions to the welfare of the deceased, including her substantial care of the deceased after his cancer diagnosis, which required her to reduce her work hours in order to attend to him.

Para 60(2)(i) – any provision made by the deceased for the applicant

93 The deceased provided accommodation to Chloe, in return for payment of a nominal amount of board. He made child support payments before she moved in with him, albeit in relatively small amounts. She has not received anything from his estate.

Para 60(2)(j) – any evidence of testamentary intentions

94 I have already addressed the evidence of the deceased's testamentary intentions at paragraphs 61-64 above. There can be no doubt that he intended the whole of his estate should be left to Kayla.

Para 60(2)(k) – whether applicant was being maintained by the deceased

95 Chloe was a member of the deceased's household for several years prior to his death, and was being maintained by him in this period, when she was in her latter teenage years.

Para 60(2)(l) – whether any other person is liable to support the applicant

96 There is no other person who is liable to support Chloe. I have described the nature of her relationship with Mr Bondin.

Para 60(2)(m), (n) – character and conduct of applicant or any other person

97 Each of Chloe and Kayla was in a close and loving relationship with the deceased. There was no basis for any negative finding about the character or conduct of either of them.

Quantum

98 The parties agree that an order for provision should be made in favour of Chloe, with the only dispute being as to quantum.

99 Chloe submitted that the quantum of the provision should be $220,000, which was put on the following basis:

> "Her claim for provision, in terms of its need, is constituted by the cost of a car, $30,000; contribution to, down the track, a deposit for a residence, $80,000. She seeks a sum towards the cost of a wedding, and she seeks an order for contingencies [citing *Maria Oliveira by her tutor Ivo De Oliveira v John Antonio Oliveira* [2023] NSWSC 1130, which is quoted above] ... She's seeking around about 90,000 for that; and she's seeking a buffer, in case the estimate is wrong, of 10,000. That should add up, mathematically, to around about $220,000."

100 Kayla submitted that the amount of the provision made in favour of Chloe ought to be in the vicinity of $75,000. She contended that this would meet the needs itemised, being the cost of a car, a wedding, and the difference between her current joint savings of $44,000 and the target home deposit of $80,000 (being around $36,000).

101 Kayla submitted that the other amounts sought to cover contingencies such as the costs of having children or the costs of retraining at some stage in the future were "speculative". I accept that Chloe did not give any evidence of an intention to retrain; and her estimate of the financial impact of having two years or more off work in order to have children was made in circumstances where it is not known whether, or when, she will have children, what employment she or

her partner will have at that time, or what entitlements she or her partner might receive from their respective employers.

102 In *Maria Oliveira by her tutor Ivo De Oliveira v John Antonio Oliveira*, upon which Chloe relied in support of her claim for a contingency fund, Kunc J (at [11]) acknowledged that specific proof of the likelihood and nature of vicissitudes is rarely required, and the process of assessment is quasi-discretionary or intuitive, but added: "Nevertheless, as the product of the exercise of judicial power, it must be determined rationally and for a proper purpose". His Honour continued (at [12]) that while it may be accepted as common knowledge the unexpected does happen in the course of life which may require expenditure, such allowances, in the absence of specific potentialities being established by proper evidence, are generally not large and rarely in six figures, adding that the size of the available estate will always be a matter to be taken into account in making any such award.

103 I do not consider that the appropriate provision can be determined simply by a calculation of financial resources and needs. The determination of the provision must take account of the size of the estate, and the claims of others on the estate. In *Chan v Chan* [2016] NSWCA 222 at [22], Basten JA (with Simpson and Payne JJA agreeing) observed that:

> "A significant set of factors in many cases is that identified as 'the financial resources (including earning capacity) and financial needs, both present and future, of the applicant…'. However, it is important not to elide the distinction between needs and adequate provision; the former is but one indicator of the latter. The adequacy of provision is not to be determined by a calculation of financial needs. The background to any consideration of the appellant's needs required determination of the size of the estate and the claims of others on the beneficence of the testator (footnotes removed)."

104 Further, in considering an amount by way of provision, it is appropriate also to have regard to the diminution of the estate on account of legal costs: *Chan v Chan* at [54] per Basten JA.

105 In this case, the estate is wholly comprised of the Hoxton Park Property, which has a current estimated value of $750,000. Taking into account the mortgage ($67,000), the funeral expenses ($8,995), the costs of the probate and administration proceedings ($19,255), and Kayla's costs of defending these proceedings ($115,500), the net value of the estate would reduce to $539,250.

Making those assumptions, the amount of provision sought by Chloe ($220,000) would represent over 40% of the net value of the estate (without taking account of any costs award that might be made out of the estate in Chloe's favour).

106 I recognise the practical reality that, although any order for provision or costs in favour of Chloe will be made in respect of the deceased's estate, those amounts will likely be paid out of the cash resources of Kayla and Jack, in order to ensure that their use and enjoyment of the Hoxton Park Property is not disturbed. Kayla currently has two main sources of cash: the joint account in the names of Kayla and the deceased, which is the offset account for the mortgage over the property, with a balance of around $121,700; and the account in the name of Kayla as trustee for Jack, with a balance of around $661,300. Assuming that Kayla's future legal costs of the proceedings of $115,500 including GST (noting this estimate was based on a two-day hearing) are paid from those accounts, the total cash left for Kayla and Jack would be $667,500. In that context, a family provision order in the amount sought by Chloe would have the practical effect of reducing the cash available to Kayla and Jack by around one third, before taking account of any costs order that might be made in Chloe's favour.

107 In the circumstances of this case, I do not consider that an order for provision in the amount sought by Chloe should be made. While it may be accepted that a wise and just testator would be willing to assist an adult child, at the start of their working life, with expenses such as a replacement car or a home deposit, or the costs of a wedding or having children at some point in the future, or providing a buffer for contingencies, that would always be subject to the testator's ability to meet other pressing obligations, and in particular his obligations to a widow with an infant son.

108 After taking account of the matters identified in s 60(2) of the Act, the evidence before the Court, including the matters summarised above, the relevant principles I have summarised, and the parties' submissions, I have concluded that the amount of the provision that should be made for Chloe from the deceased's estate is $100,000. In reaching this figure, I have taken into

account the evidence regarding her immediate financial needs, and also allowed a modest amount for contingencies, while recognising that there is insufficient evidence to justify the provision of a larger contingency fund, particularly given the size of the estate and the needs and circumstances of Kayla and Jack.

Form of orders

109 Section 65 of the Act provides as follows:

> **"65 Nature of orders** (cf FPA 11 (1) (a) and (d))
>
> (1) A family provision order must specify—
>
> (a) the person or persons for whom provision is to be made, and
>
> (b) the amount and nature of the provision, and
>
> (c) the manner in which the provision is to be provided and the part or parts of the estate out of which it is to be provided, and
>
> (d) any conditions, restrictions or limitations imposed by the Court.
>
> (2) A family provision order may require the provision to be made in one or more of the following ways—
>
> (a) by payment of a lump sum of money,
>
> (b) by periodic payments of money,
>
> (c) by application of specified existing or future property,
>
> (d) by way of an absolute interest, or a limited interest only, in property,
>
> (e) by way of property set aside as a class fund for the benefit of 2 or more persons,
>
> (f) in any other manner the Court thinks fit.
>
> (3) If provision is to be made by payment of an amount of money, the family provision order may specify whether interest is payable on the whole or any part of the amount payable for the period, and, if so, the period during which interest is payable and the rate of the interest."

110 As for s 65(1), I have determined that provision should be made for Chloe in the sum of $100,000. It was common ground between the parties that the order for provision should be made in lieu of Chloe's entitlement on intestacy. As for s 65(2), I consider that provision should be made by payment of a lump sum of money. This is what was sought by Chloe, and nothing was said against that proposal. As for s 65(3), Chloe did not, in her Summons or in submissions, seek any order for payment of interest on the whole or any amount of provision in her favour, and accordingly, I do not propose to make any such award.

111 Chloe submitted that any order for provision should be coupled with a registrable charge over the Hoxton Park Property for the amount of the provision and any costs order. In response, Kayla's counsel noted that there is cash available for Kayla to meet the amount of an order for provision, and proposed that, in those circumstances, the Court should grant liberty to apply in the event that the lump sum is not paid within a certain period of time after the provision order is made.

112 I consider there is merit in this proposal, which avoids the need to create a charge or to take any other step in respect of the Hoxton Park Property unless it is required. Chloe repeatedly made clear in submissions that she has no intention to disturb the use and enjoyment by Kayla and Jack of their family home. I will accordingly grant liberty to Chloe to make an application on 7 days' notice regarding the implementation of the order for payment of provision to her in the event that the amount of provision is not paid within a period of 28 days after the order for provision is made.

113 Kayla requested that I do not deal with costs in this judgment. I will give the parties an opportunity to agree the terms of the costs orders that should be made in light of these reasons, and otherwise to make written submissions on the appropriate form of those orders, with the intention that any disputed issue of costs be dealt with on the papers.

Orders

114 For those reasons, I make the following orders. The Court:

(1) Orders, pursuant to section 91(2) of the *Succession Act* 2006 (NSW) that administration in respect of the estate of the deceased, Gavin Stokes, late of 181 Pacific Palms Circuit, Hoxton Park in the State of New South Wales, be granted to the Defendant, Kayla Lee Stokes, for the purpose only of permitting the Plaintiff's application for a family provision order to be dealt with.

(2) Orders, pursuant to Uniform Civil Procedure Rules 2005 (NSW), rule 7.10(2)(b), that the Defendant be appointed to represent the estate of the deceased, for the purposes of these proceedings.

(3) Orders, pursuant to s 59 of the Succession Act 2006 (NSW), that in lieu of the amount payable to the Plaintiff on an intestacy of the deceased out of the deceased's estate in New South Wales, the Plaintiff receive, by way of provision out of the deceased's estate, a lump sum of $100,000.

(4) Grants to the Plaintiff, in the event that the lump sum in order (3) is not paid by 13 November 2023, liberty to apply on 7 days' notice in respect of the implementation of order (3).

(5) Directs that:

(a) in the event that the parties are able to agree on the form of costs order, the parties provide a copy of any proposed consent orders to my Associate by 4pm on 23 October 2023; and

(b) in the event that the parties are unable to agree on the form of the costs order, the parties exchange submissions, together with any supporting material, and provide a copy to my Associate by 4pm on 23 October 2023.

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