



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: ELCSC:JvdPsh050422

5 April 2022

Ms Margery Nicoll
Acting Chief Executive Officer
Law Council of Australia
DX 5719 Canberra

By email: matthew.wood@lawcouncil.asn.au

Dear Ms Nicoll,

Banking processes and deceased estates

Thank you for the opportunity to contribute to a Law Council response to the Banking Code Compliance Committee (**BCCC**) Deceased Estates Inquiry. The Law Society's Elder Law, Capacity & Succession Committee contributed to this submission.

We provide below our comments on the topics included in the BCCC's Consultation Questions, with examples where relevant.

Several of the issues discussed below have been raised previously with the Law Council, and we thank the Law Council for including these issues in its submission to the Independent Review of the Banking Code of Practice 2021 (**Independent Review**). We note the Final Report of the Independent Review recommends that Chapter 45 of the Banking Code of Practice (**Code**) be amended to incorporate the Law Council's proposals to clarify the provisions dealing with deceased estates.

General – background

The comments and examples below are informed by NSW Law Society members who are either acting as the legal personal representative (**LPR**) of an estate, or acting as the LPR's legal representative. The LPR or their legal representative will commonly notify a bank of the death of an account holder and provide evidence in the form of a certified copy of a death certificate.

Acting on instructions

Our members report there are continuing instances of banks failing to respond to LPRs' requests relating to the management of the estate before a grant of probate or letters of administration are obtained.

We refer to our comments, included in the Law Council submission to the Independent Review (at para 43), regarding banks declining to open a discrete account in the name of the estate, to enable the estate to receive income prior to a grant being obtained. Our members report this is a continuing issue.

A further continuing issue, also incorporated in the Law Council's submission (at para 45), is the practice of some banks to require that the LPR provide the full names, dates of birth and residential addresses of all beneficiaries as a prerequisite to opening an estate account. Our members report additionally that some banks also require this information before complying with requests concerning the distribution of the estate after a grant has been obtained. In our view, there is no basis for a bank requiring this information at any point of the estate administration process.

Members have also reported examples of non-compliance with the obligation under section 190(d) of the Code to act within 14 days of receiving an LPR's instructions regarding a deceased's account after a grant has been obtained. Anecdotally, delays in acting on instructions have become more prevalent since the COVID-19 pandemic and may be associated with resourcing issues. We are aware of examples where the bank, after being presented with the necessary grant and supporting documents, took 43 days to process payment of funds in one case and 55 days in another.

Provision of information and payment of debts

Our members report that LPRs can experience delays in obtaining information from the deceased's bank about the deceased's accounts – information which is routinely required for the purpose of preparing an application for grant of probate or letters of administration.

For example, in one matter the bank took 32 days to respond to an initial letter, and in another matter, 67 days. Members have also reported being advised by the bank that "Currently, requests related to correspondence or closures are being completed in 6-8 weeks". We note the commitment in section 191(a) of the Code to providing access to information within 14 days.

There are also reports of banks responding obstructively to requests for information. These include the bank declining to provide the LPR with account information until the LPR has provided the account balance – information which the LPR would be unlikely to have.

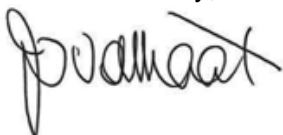
Joint accounts

An application for probate or letters of administration must be supported by an inventory of the deceased's property which includes particulars of property owned by the deceased as a joint tenant. Members have reported difficulties in obtaining information about joint bank accounts for this purpose. We understand it is the practice of some deceased estates teams in banks not to disclose the existence of a joint bank account, and that some banks do not allow their deceased estates teams to access the records in relation to joint accounts.

There can also be a lack of understanding on the part of bank staff about the management of joint accounts where one account holder is deceased. We are aware of one matter where a customer had given his second wife electronic access to an account held solely in his name. After his death, when the account was frozen, the widow arranged with the bank to have the account treated as a joint account, and the bank then facilitated a transfer to her of several hundred thousand dollars.

If you have any further questions in relation to this letter, please contact Sue Hunt, Principal Policy Lawyer on (02) 9926 0218 or by email: sue.hunt@lawsociety.com.au.

Yours sincerely,



Joanne van der Plaats
President