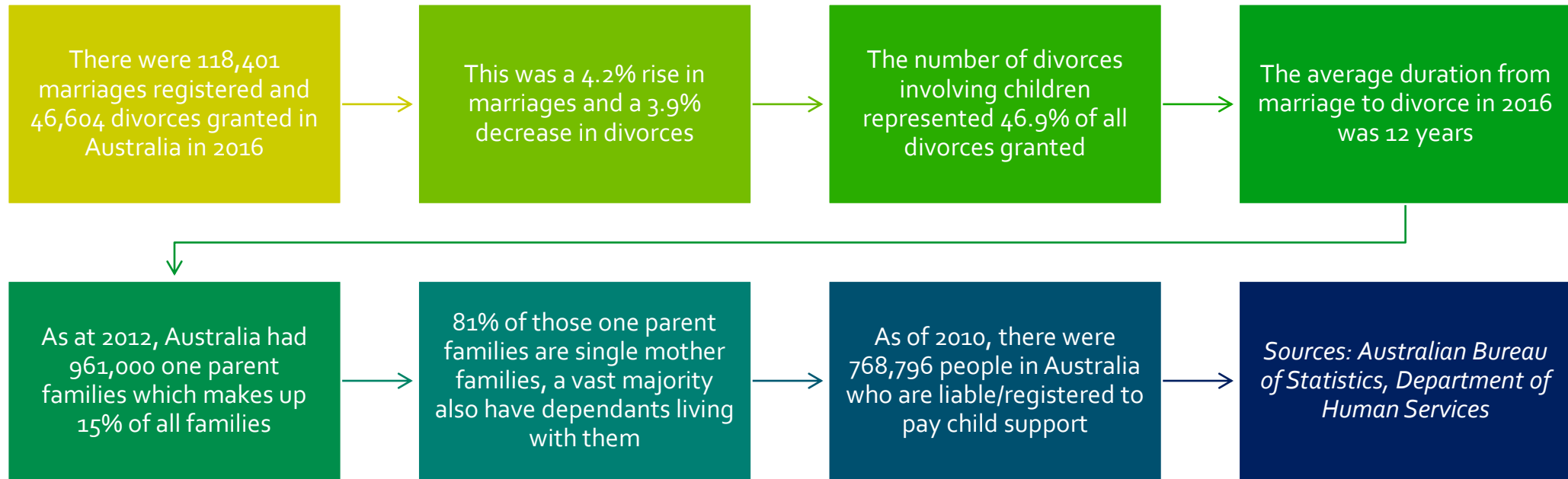




FAMILY LAW

FUNDAMENTALS AND INTERSECTIONS WITH COMMERCIAL LAW

Presented by Paul Fildes, Principal
Carolyn Cheng, Senior Associate & Antony Kahn, Senior Associate



WHY FAMILY LAW MATTERS

DIVORCE

- No fault
- Twelve months separation
- Time frame for issuing proceedings



CHILDREN'S ISSUES

- Child's best interests are paramount
- Parental responsibility
- Consideration of equal time
- Consideration of substantial and significant time
- Best interest considerations
- Family Dispute Resolution



FINANCIAL SUPPORT FOR CHILDREN

Child support assessments

Child Support Agreements

Child maintenance orders



DE FACTO RELATIONSHIPS

- Heterosexual and same sex couples
- What constitutes a de facto relationship?
- Couple living together on a genuine domestic basis
- FLA 1975 sets out circumstances to be considered
- None required; none determinative

WHEN COURT CAN MAKE ORDERS REGARDING DE FACTO COUPLES



Gateway requirements



Relationship has broken down



Two year time limit to make a claim



Geographical requirements



At least one of the following:

Two year duration

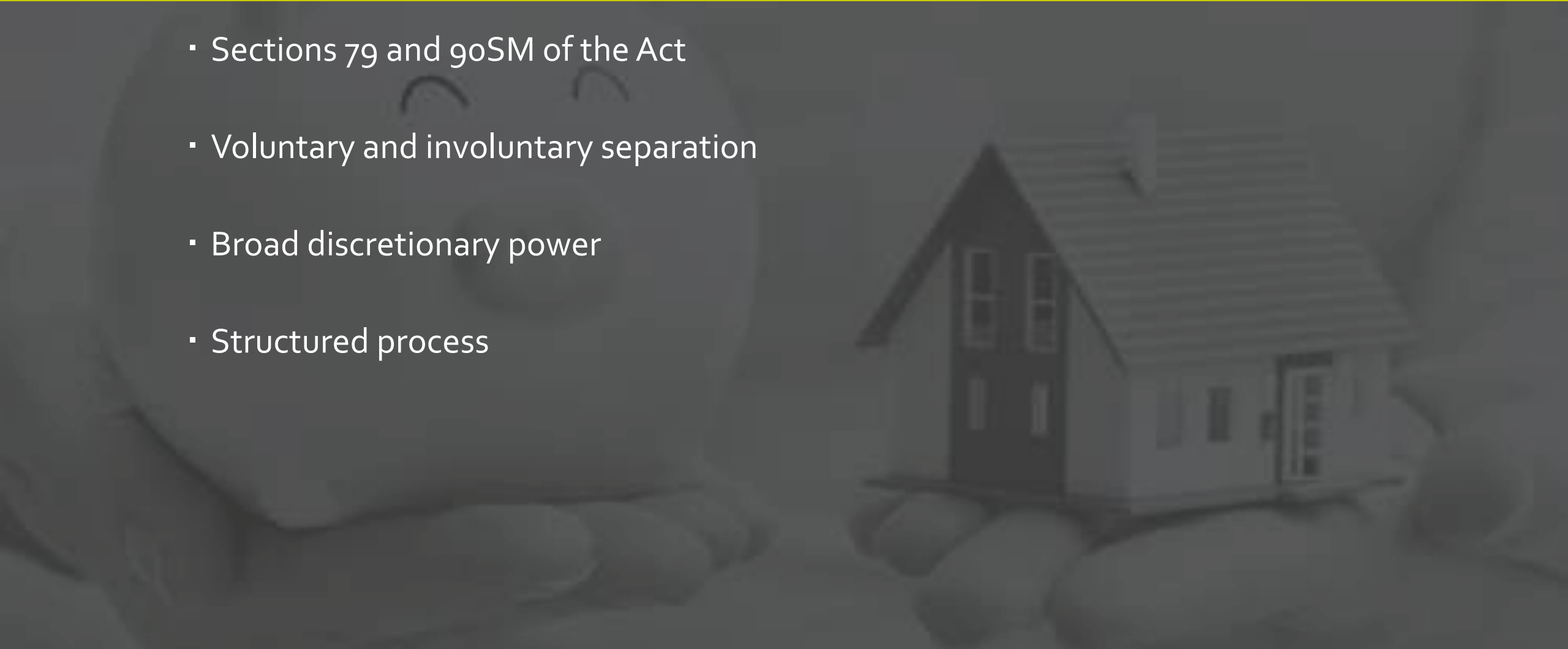
Child of relationship

Substantial contribution and injustice

Registered relationship

PROPERTY SETTLEMENT

- Sections 79 and 90SM of the Act
- Voluntary and involuntary separation
- Broad discretionary power
- Structured process



JUST AND EQUITABLE



- *Stanford (2012)*
- Is it just and equitable to make an order adjusting property?
- Threshold is met in almost all cases
- First need to know what there is - legal title and what is worth

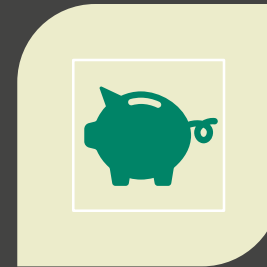
WHAT IS “PROPERTY” UNDER THE FLA?



DEFINED IN s 4(1) OF
THE ACT –
RECURSIVE



COMPREHENSIVE –
REAL, PERSONAL,
INTANGIBLE TANGIBLE
PROPERTY, CHOSE-
IN-ACTION



SUPERANNUATION
IS UNIQUE AND
TREATED
SEPARATELY



POWER OF COURT
IS LIMITED TO
AVAILABLE
PROPERTY

TRUST INTERESTS

- Relevance of trusts to family law
- Question of control:
 - Appointor?
 - Trustee?
 - Beneficiary?
 - History of distributions?
- If party controls, trust interest usually treated as property
- In absence of control, trust interest usually treated as financial resource
- Obtaining trust information



Bequests that
have been
received



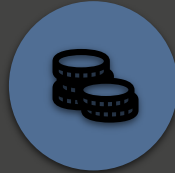
Potential
beneficiary under
a will



Ultimately about
degree of certainty



Question of
testamentary
capacity



Expectation of an
inheritance not
property

INHERITANCE



VALUATION

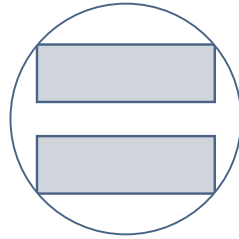
- Value at date of settlement or trial
- Expert evidence where value in dispute
- Procedure depends on Court
- Family Court of Australia
 - Expert evidence by single expert
 - Leave to adduce adversarial expert evidence
- Federal Circuit Court of Australia
 - Parties may engage separate experts
 - Parties may agree upon a joint expert



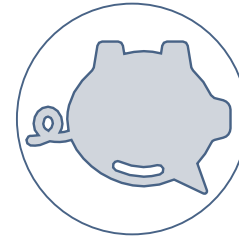
Three types:
financial, non-
financial and
contributions to the
welfare of family



No one type of
contribution is
inherently better



No assumption of
equality



Pre-relationship
contributions
diminish over time



Third parties can
make financial and
non-financial
contributions for a
party

CONTRIBUTIONS

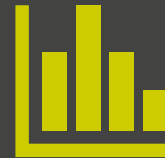
CURRENT AND FUTURE CIRCUMSTANCES



Adjustment based on factors
set out in section
75(2)/90SM(3) of the Act



Broad and prospective;
the list is not exhaustive



Some examples:

- age and health
- income and earning capacity
- care of children / duty to maintain
or responsibility to support others
- length of relationship and impact
on earning capacity
- standard of living

MAINTENANCE

- Urgent, Interim or Final
- Usually for a limited duration
- Recipient – reasonable needs
- Paying party – capacity to pay



Financial
Agreements



Before, during or after a
relationship/marriage



Can deal with property,
maintenance* and
ancillary matters



Requirements in
90G/90UG of the Act
(but there are saving
provisions)



Can be set aside
under 90K/90UK

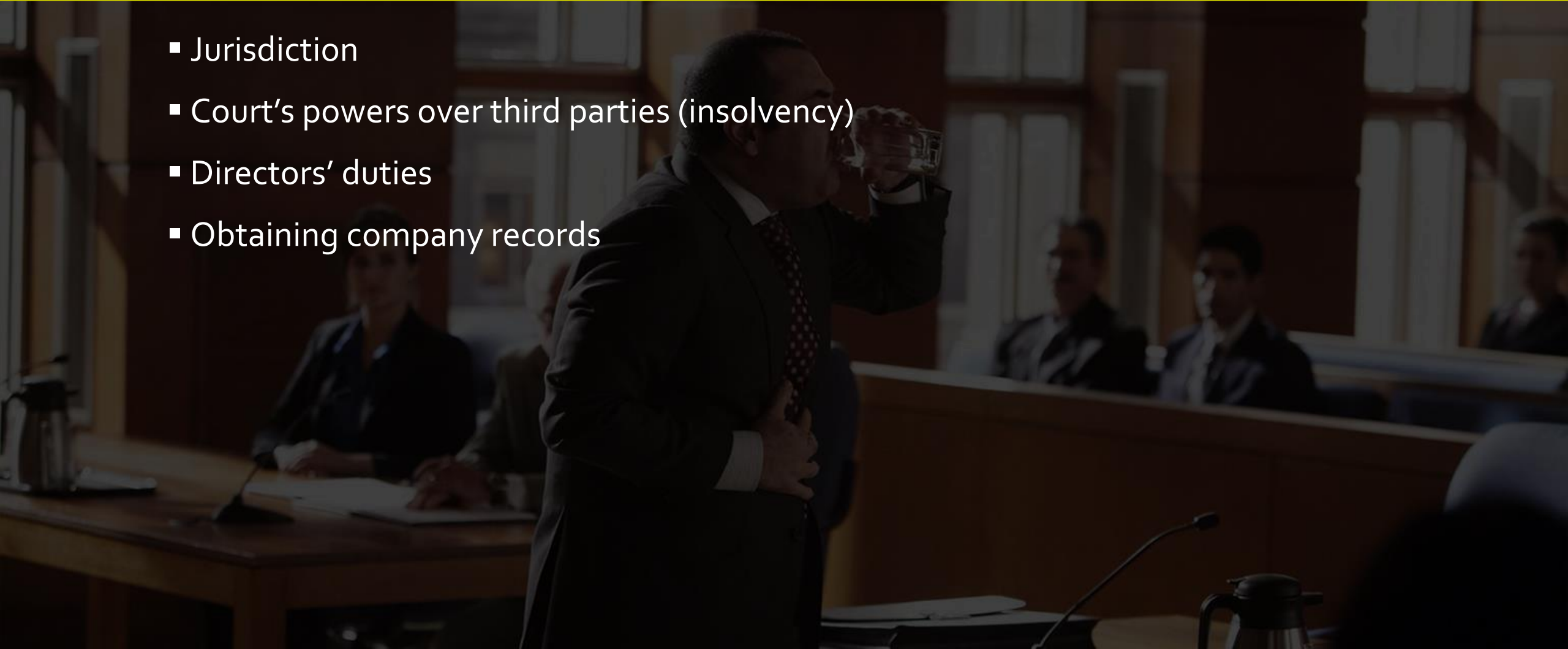
OUSTING JURISDICTION

TAXATION AND DUTY

- CGT
- Division 7A of Part III of *ITAA* 1936
- Duties and charges
- GST

CORPORATE ISSUES

- Jurisdiction
- Court's powers over third parties (insolvency)
- Directors' duties
- Obtaining company records



WHERE TO FROM HERE?

On 23 August 2018 the Federal Government introduced into the House of Representatives two bills for the proposed restructure of the federal courts - the *Federal Circuit and Family Court of Australia Bill 2018* and the *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018*.

What are the proposed changes likely to mean for lawyers and laypersons?



QUESTIONS?

