HIGH COURT OF AUSTRALIA

Public Information Officer

7 March, 2003

KATHRYN FAY BARNS v MALCOLM PHILLIP BARNS (first respondent), ALICE ELIZABETH BARNS (second respondent), and MICHELLE LOUISE FISHER and RHIANNA KATE FISHER by their next friend PETER CHARLES SYMES (third respondents)

The High Court of Australia today allowed an appeal from Kathryn Barns against a decision by the Full Court of the South Australian Supreme Court that a deed entered into by her parents effectively excluded her from making a claim under the *Inheritance (Family Provision) Act* in respect of the estate of her late father, Lyle Phillip Barns.

Kathryn Barns is the adopted daughter of Lyle and Alice Barns. Malcolm Barns is the Barneses' natural son who took over the running of their farm near Wudinna in SA and is also the executor of his father's will. The Barnses made some financial provision for their daughter but wished their son to inherit the farm.

To try to protect the property from any claim by Kathryn Barns, the parents entered into a deed in 1996 under which they agreed to make mutual wills under which their son would inherit the whole estate from the surviving parent. Lyle Barns died in 1998.

The Full Court of the Supreme Court held that the deed and accompanying wills did preclude Kathryn Barns and her children though this was not contrary to public policy. Her claim was dismissed and she appealed to the High Court. The merits of her claim have yet to be litigated. The point of law involved was upon which there were conflicting decisions of the Privy Council but no decision of the High Court.

The High Court, by a 4-1 majority, overturned the Full Court's orders and held that the deed did not prevent Kathryn Barns and her children from seeking access to her father's estate.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*