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newsletterofthelaw

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The information in this newsletter is merely a guide and is not a full explanation of the law. This firm cannot take responsibility for any action readers take based on this information. When making decisions that could affect your legal rights, please contact us for professional advice.

New mortgagee obligations under the *Property Law Act*

The Queensland Government has introduced a new law with the aim of "protecting homeowners from mortgagee fire sales". The *Property Law (Mortgagor Protection) Amendment Act 2008* commenced on December 12.

The Act amends the *Property Law Act 1974* and introduces the following changes:

- the mortgagee's duty under the *Property Law Act* to take reasonable care to sell mortgaged property at market value will now expressly apply to receivers and to mortgagees selling under power of attorney, and
- there are specific steps which must be taken by a mortgagee or receiver when selling property

under a "prescribed mortgage" and failure to take such steps may be punishable by fines of up to \$20,000. The explanatory notes accompanying the Act provide that the type of mortgages intended to be captured are mortgages over land of a consumer credit nature.

Parliament has also passed the Residential Tenancies and Rooming Accommodation Bill 2008. Among other changes, this law will increase the notice period that must be given by a mortgagee to terminate a residential tenancy granted without the mortgagee's consent from one to two months.

To learn more about your obligations under the new *Property Law Act*, contact your local solicitor.

Fair Work Bill moves 'Forward with Fairness'

The Federal Government has introduced in Parliament legislation to implement its election commitments made in Forward with Fairness.

The Fair Work Bill 2008 is an entirely new Bill and, at 575 pages, it is substantially shorter than the current *Workplace Relations Act 1996* (Cth). The Bill was published with an extensive explanatory memorandum and the Government has already issued fact sheets on a number of key areas.

In particular, the Bill introduces a new safety net, comprised of the National Employment Standards (NES) and modern awards; sets out a new system of good faith bargaining for collective agreements in which Fair Work Australia will have a pivotal and potentially more interventionist role; brings back unfair dismissal protection for most employees (and limits, but does not entirely remove the operational requirements exclusion for redundancy), and maintains many of the existing rules in the areas of industrial action, freedom of association and right of entry – with subtle, but significant additional powers to unions.

Tribunal approves Anti-discrimination exemption for Boeing

Boeing has won a landmark decision before the Queensland Anti-Discrimination Tribunal allowing it to refuse to employ people born in countries, mostly in the Middle East, that are proscribed as terrorist by the US, when working on US military aircraft.

US security regulations prevent people born in such countries from working on defence projects so Boeing needed the ruling to enable it to continue its operations in Queensland.

Aerospace companies such as Boeing have sought exemptions from anti-discrimination legislation all over the world to enable them to secure military contracts.

In his decision, tribunal president Doug Savage SC was critical of the US law, questioning the validity of determining the security risk of a person based on their place of birth.

However, while he rejected the application for a renewed exemption, Mr Savage said Boeing was allowed under another part of the act – covering "genuine occupational qualifications" – to ban certain nationalities from projects because of the very real threat of criminal prosecution in the US if their laws were breached.

What's inside ...

Case in point: Bratz v Barbie

Mattel wins its copyright infringement lawsuit against MGA, resulting in a cease of production of the popular Bratz dolls.

Beware of clicking your rights away

Internet users are warned to read online contracts before clicking "I agree".

Illegal downloading

The Australian Government is looking at ways to address the problems of illegal downloading and file-sharing.

Cosmetic company faces \$500,000 lawsuit for 'making woman work more'

A cosmetics company executive is facing off against her employer in a \$500,000 lawsuit over claims she had to work harder than male colleagues.

Helping hand for teen sisters

A "helping hand" from the federal Workplace Ombudsman has ensured two teenage sisters won't be ripped off by a fish and chip shop which underpaid them.

Cabinet seeks human rights consultation

Federal Parliament is asking all Australians what they think a human rights Bill should include in a national consultation process.

Illegal boat arrivals not linked to policy changes

The University of Queensland's Dr Andreas Schloenhardt doubts that the Government's abolishment of the "Pacific Solution" is inviting migrant smugglers to bring asylum seekers to Australia.

First prosecution over sham contracting

The federal Workplace Ombudsman has launched its first prosecution for alleged sham contracting against Sydney-based Centennial Finance Services.

Drunk driver too obese to get out of car

An obese motorist arrested after a drunken rampage denied resisting police, claiming he was too fat to get out of his car.

'My Lord, the next suspect is a goat'

Nigerian police held a goat in custody on suspicion of attempted armed robbery after a vigilante group claimed to have caught it trying to steal a car.

Man fired for 'un-Australian' toilet habits

A man who uses water instead of toilet paper says he was sacked for his "un-Australian" toilet habits.

Facebook scammers seek money in London

Australian Facebook user accounts have been hacked, opening them up to scammers who then use the account to send live chat messages to their friends asking for financial assistance.

Rent price rises at 20-year high

Rents have recorded their highest increase since 1988 amid fears the rental crisis will only get worse as the impact of the global recession takes hold.



Case in point: Bratz v Barbie

Popular Bratz brand to cease production of the dolls after Mattel sues over breach of employment contract

Mattel, maker of the popular Barbie fashion doll, has won a major legal battle against its chief competitor, Bratz, after a jury ruled the rival doll had been designed by a Mattel employee in breach of contract with the toy giant.

"A ten-person jury has rendered a unanimous decision that the majority of Bratz design drawings, prototypes and sculptures were created by doll designer Carter Bryant while he was employed by Mattel," a press statement sent out by Mattel said.

Mr Bryant had an agreement with Mattel under which he assigned to the toy-maker all ownership rights of anything he created during his employment there.

However, while he was still at Mattel, Mr Bryant entered into a contract with California-based MGA company, licensing Bratz to them. That was in September 2000; Mr Bryant left Mattel in October of the same year.

A month later, MGA showed Bratz prototypes for the first time and in January 2001 exhibited Bratz at the Hong

Kong Toy Fair. Bratz dolls hit shop shelves in June 2001.

"This is a victory for all the hard-working people at Mattel who come together to create many of the most beloved toys for children," said chief executive officer Bob Eckert, who also called the jury's decision a victory "for all those who believe in fair play".

"While the case has been very complicated, the underlying principle has been a simple one – you shouldn't take what isn't yours."

The decision affected MGA but not Mr Bryant, who reached an out-of-court settlement with Mattel in May, less than two weeks before the trial began.

The trial opened at the end of May, but the case has its roots in 1999, when Mr Bryant worked for Mattel as a designer.

The jury was then asked in the next phase to determine the amount of damages to be awarded to Mattel.

MGA is being forced not only to pay Mattel \$100 million for copyright

infringement and breach of contract but also withdraw its dolls from sale in 2009.

It has been argued that Mattel's sales have been hit hard by MGA's Bratz dolls and their popularity. Mattel was founded in 1945 and manufactures and markets toys, games, dolls and other consumer products. Barbie is its most famous brand. MGA Entertainment is also a toy manufacturer. It has been around since 1979, and its best-known line is Bratz.

Mattel's Barbie sales dropped over the past few years. In 2007, Barbie sales dropped by 15 per cent while those of the Bratz reached more than \$4.8 billion in the US alone.

As expected, MGA said it intended to appeal the judge's order and Mattel said it remained open to "all viable options" as the matter moves through the courts.

If you have concerns about intellectual property laws in Australia and want to learn more about your rights and obligations to employers, contact your local solicitor.

Beware of clicking your rights away

Bond University is urging people to be vigilant when using the internet.

Associate Professor Dan Svantesson of Bond University said that people often "agree" to terms and conditions without understanding the implications.

"When using the internet, we are often asked to click 'I agree' to lengthy statements of terms and conditions," Dr Svantesson said.

"In doing so, we may be agreeing to things we did not expect.

"For example, to view downloadable TV programs from one of Australia's TV channels, you have to install a special player. And in installing that player you have to agree that the law of Israel applies to any dispute that may arise. You also agree that you cannot take legal action in Australia, but only in Israel.

"The people who draft these contracts are aware that people in general do not read them.

"They are also aware that if a person was to read them, that person is unlikely to understand the legal implications."

And in the end, even if a person understands the legal implications, they cannot negotiate the terms anyhow.

"Terms and conditions in these so-called click-wrap agreements are presented on a take it or leave it basis," Dr Svantesson said. "That is one reason why people do not read them. People choose to take a calculated risk in clicking 'I agree' rather than reading the contract."

Illegal downloading

Landmark Federal Court legal action by movie producers against Australia's third-largest internet service provider, iiNET, has highlighted the problems of unlawful downloads and unauthorised file-sharing.

RMIT University general counsel John Lambrick says unlawful file-sharing raises complex issues for rights holders, lawyers and regulators.

"The Rudd Government is considering a 'three strikes and you're out' policy against internet users who download unlawfully," Mr Lambrick said.

"But market research has found 63

percent of young Australians feel there's no point paying for music that's otherwise freely available so there's a strong need for education to change these attitudes and promote the protection of copyright.

"The government may also oblige internet service providers (ISPs) to monitor people's use and filter infringing content but this would fail to recognise the technical and legal issues involved.

"While filtering technology does exist for particular types of content, it's not technically possible for ISPs to reliably detect and block unauthorised file-sharing so any such legislation would be futile.

"Additionally, the 'safe harbour' provisions of the *Copyright Act*, which limit the

liability of ISPs for unauthorised file-sharing by their account holders, offer no incentive for ISPs to help resolve the problem by other means.

"The only workable solution currently available is for the Government to help develop a cooperative agreement between ISPs and rights holders, similar to what has happened in the UK and France. This may well be the ultimate objective of the plaintiffs in the iiNet litigation.

"Telling illegal downloaders 'three strikes and you're out' may sound good, but such a plan can only succeed if there is cooperation between rights holders and ISPs and the appropriate legal architecture to ensure integrity and fairness."

Cosmetic company faces \$500,000 lawsuit for 'making woman work harder'

A cosmetics company executive is facing off against her employer in a \$500,000 lawsuit over claims she had to work harder than male colleagues.

Sales manager Jo-Anne Finch is suing The Heat Group, a distributor of brands including Max Factor and CoverGirl, for alleged discrimination and harassment.

Efforts to kiss and make up have so far failed and the matter was listed for a directions hearing in the Victorian Civil and Administrative Tribunal.

In a hotly contested claim lodged with VCAT, Ms Finch said she worked 60-hour weeks and that her male counterparts put in only 40 hours on average.

The Fairfield woman also claimed that, while she was on annual leave and sick leave, her male managers regularly and persistently contacted her by phone and email.

She has also alleged a male manager made unwelcome sexual advances, including commenting on another woman's breasts and telling Ms Finch she was "hot" and "sexy".

Ms Finch, who is on leave, said she was so stressed by the situation she suffered cramping and bleeding and almost miscarried before her daughter was born in 2007.

In court documents, she accused The Heat Group founder and managing director Gillian Franklin, a former Global Entrepreneur of the Year award winner and Australian Grand Prix board member, of ignoring her complaints.

The Heat Group and Ms Franklin have indicated they will strongly defend all of the claims.

The cosmetics distributor promotes itself as one of Australia's most family-friendly employers, with innovative employment policies aimed at women.

Some of Ms Finch's allegations, which are yet to be contested before VCAT, have previously been rejected by the Equal Opportunity Commission. She has since revised her complaint and hired a new lawyer. Ms Finch is seeking a written apology, compensation for lost income, 12 weeks' maternity pay and \$500,000 for damages and costs.

Illegal boat arrivals not linked to policy changes

The University of Queensland's Dr Andreas Schloenhardt doubts that the Government's abolishment of the "Pacific Solution" is inviting migrant smugglers to bring asylum seekers to Australia.

Dr Schloenhardt, a senior lecturer at the TC Beirne School of Law, said that despite Opposition claims, there was no link between the abolishment of off-shore detention and the seven boats with asylum seekers intercepted in Australian Waters since August 2008.

"The deteriorating situation in Afghanistan, instability in Pakistan, and the conflict between Tamils and government forces in Sri Lanka are more likely to be the contributing factors to the greater number of refugees in our region," he said.

"Most major refugee flows are these days accompanied by a surge in migrant smuggling activities. Migrant smugglers take advantage of refugees in desperate situations, a pattern which can be observed since the time of the Vietnamese refugee exodus."

Cabinet seeks human rights consultation

Federal Cabinet on December 1, 2008 agreed to a national consultation process on what a human rights Bill should contain. The Bill, likely to be based on those in Victoria, Queensland and Britain, would outline a set of rights and require Parliament to ensure legislation complies with the rights.

The Public Interest Law Clearing House (PILCH) has welcomed the Federal Government's launch of a national consultation on the protection and promotion of human rights and responsibilities, calling the process profoundly democratic and long past due.

The National Human Rights Consultation provides the opportunity for the Australian public to share its views on human rights. The consultation is run by an independent committee supported by a secretariat in the Attorney-General's Department.

People are encouraged to share their opinions online at www.humanrightsconsultation.gov.au, by post or via community roundtable discussion groups. A community discussion has already taken place in Queanbeyan, New South Wales, on February 11, which included debate around the following key issues: children's rights, direct incorporation of international conventions into Australian laws, streamlined federal anti-discrimination laws, Charter of Rights, human rights education, harmonisation of state and territory laws, preventative detention and the erosion of the innocent until proven guilty principle.

Helping hand for teen sisters

A "helping hand" from the Federal Workplace Ombudsman has ensured two teenage sisters weren't ripped off by a fish-and-chip shop which underpaid them.

Their former female boss belatedly agreed to reimburse the 17 and 18-year-olds \$2000, after initially refusing to do so.

The Workplace Ombudsman assisted the girls to take their case to the Small Claims Tribunal to try to recover underpayments totalling \$2600.

When they were just 14 and 15, the pair worked for a Croydon fish and chip shop in Melbourne and were paid just \$5 an hour for the first month and \$7.50 an hour thereafter.

They should have received up to \$12.51.

But when a workplace inspector identified the issue, the former employer said she couldn't afford to rectify the problem.

Workplace Ombudsman Nicholas Wilson said his agency helped the sisters prepare a case to take to the Small Claims Tribunal.

After rejecting the former employer's offer of a \$20 per month repayment plan, the Melbourne Magistrates Court asked the Workplace Ombudsman to mediate an outcome.

The court told the employer her financial position was no defence for underpaying the girls and did not absolve her from her legal responsibilities.

Mr Wilson says that after more negotiations, the two sisters accepted an offer of \$2000.

First prosecution over sham contracting

The national workplace watchdog has launched its first prosecution for alleged sham contracting against Sydney-based Centennial Finance Services.

The federal Workplace Ombudsman will allege in the Federal Magistrates Court that the company breached the sham contracting provisions in the *Workplace Relations Act* when it "converted" eight employees to contractors, but continued to have them perform the same duties under the employer's direction.

The workers were told to get their own Australian business number (ABN), sign a "sales consultant agreement" and to invoice the company when they made sales. They were also told that they would no longer receive annual leave, sick leave or superannuation.

If you have concerns about your workplace rights, contact your local solicitor.

Drunk driver too obese to get out of car

An obese motorist arrested after a drunken rampage denied resisting police, claiming he was too fat to get out of his car, the Brisbane District Court heard.

Damian Gerard Hannigan, 42, pleaded guilty to a raft of traffic violations including dangerous driving while under the influence, failing to stop, failing to give a breath test and obstructing police.

The Stanthorpe man led police on a high-speed pursuit along Beaudesert Road at Coopers Plains, in Brisbane's south, in April this year after officers attempted to pull him over, the court was told.

Prosecutor Shelley Francis said Hannigan reached speeds of more than 100kph on the 60kph road, driving into oncoming traffic and narrowly avoiding crashes.

He was finally stopped after hitting a traffic sign, she said.

It was alleged Hannigan told police officers attempting to forcibly remove him from the vehicle to "f... off" and began struggling violently.

The officers ultimately needed capsicum spray to subdue the man, the court was told.

Ms Francis said a highly-intoxicated Hannigan was so drunk and obese it took three officers to place him in a paddy wagon.

But Hannigan's lawyer denied his client had resisted police, arguing the man was so overweight he had difficulty getting out of his car.

Although claiming to have lost 30kg since the incident, Mr Hannigan struggled to reach his feet for sentencing.

Senior Judge Gilbert Trafford-Walker told Hannigan he had no choice but to sentence him to a term in prison.

He sentenced him to 18 months in prison and disqualified him from holding a drivers licence for three years.

Man fired for 'un-Australian' toilet habits

A man who uses water instead of toilet paper says he was sacked for his "un-Australian" toilet habits.

Amador Bernabe, 43, is a machine operator in Townsville on a working visa from the Philippines, and was employed by Townsville Engineering Industries.

He claims his foreman followed him into the bathrooms questioning his toilet hygiene.

"I went to go to the toilet and I took a bottle of water when my foreman saw me and he said, 'you can't bring the water in there'," Mr Bernabe said.

The foreman followed Mr Bernabe into the toilet despite his protests.

"I said it's my personal hygiene. I didn't break any law, I didn't break any rules of the company, why can't I do this, and he said he would report me to the manager. The next day, Mr Bernabe says he was called into the manager's office.

"He asked me what had happened and I explained to him and he said if I didn't follow the Australian way I would be immediately terminated and I said 'sir, then you better terminate me'."

"I think it is atrocious, an invasion of a person's rights and cultural beliefs," said Australian Manufacturing Worker's Union state organiser Rick Finch.

For more information on your rights in the workplace, contact your solicitor.

Facebook scammers seek money in London

Australian Facebook user accounts have been hacked, opening them up to scammers who then use the account to send live chat messages to their friends asking for help.

"Several of my friends received a message through Facebook Chat from their online Facebook friends," one user, Nick, said.

The messages claimed the person was "on a trip to London, but had been mugged, and was now marooned without passport or cash somewhere in North London," he said.

The ploy usually culminates in a request for a Western Union money transfer.

Digital strategist Mark Neely found out his account had been hacked when a friend called to ask if he was alright.

"I immediately attempted to log into Facebook, but the password had been changed," he said.

"I tried to reset the password, but the email address linked to my Facebook account had also been changed. I could not access my account."

Facebook's security team has begun work on the account data to try to pinpoint the perpetrators and, depending on the relevant jurisdiction, will be working with law enforcement to track them down.

To learn more about the legal implications of identity theft, contact your local solicitor.

'My Lord, the next suspect is a goat'

Police in Nigeria held a goat on suspicion of attempted armed robbery.

Vigilantes took the black and white beast to the police saying it was an armed robber who had used black magic to transform himself into a goat to escape arrest after trying to steal a Mazda 323.

"The group of vigilante men came to report that while they were on patrol they saw some hoodlums attempting to rob a car. They pursued them. However one of them escaped while the other turned into a goat," Kwara state police spokesman Tunde Mohammed said.

"We cannot confirm the story, but the goat is in our custody. We cannot base our information on something mystical. It is something that has to be proved scientifically, that a human being turned into a goat."

Belief in witchcraft is widespread in parts of Nigeria, Africa's most populous nation.

Residents came to the police station to see the goat, photographed in one national newspaper on its knees next to a pile of straw. The BBC's Andrew Walker in Abuja says communities often rely on ill-educated and badly prepared vigilante squads to fill the gaps where the police will not patrol at night.

Innocent Chukwuma of the justice reform group the Cleen Foundation, told the BBC that many Nigerian police officers were poorly educated.

"There are officers who don't even have a secondary school education, and the police have a big job to do in finding these people and getting rid of them."

He said in the past political leaders had allowed the police to be filled with incompetent and, in some cases, criminal officers so they could be easily bought to protect their own criminal activities.

Rent price rises at 20-year high

Rents have recorded their highest increase since 1988 amid fears the rental crisis will only get worse as the impact of the global recession takes hold.

Latest figures from the Australian Bureau of Statistics show the annual rate of growth in rents across the country has jumped to 8.4 percent in the year to last month, up 2 percent from 2007, The Australian reported.

The statistics also reveal the increase in rents has jumped from 5.4 percent to 8 percent in Sydney, 11.2 percent to 12.2 percent in Perth and 8.6 percent to 10.1 percent in Brisbane.

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