



newsletterofthelaw

February 2008

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.

Solariums a growing legal issue

Repeated scientific studies are linking solariums to the risk of developing skin cancer and other skin conditions. This link is creating a complicated legal web for both lawyers and consumers. Already several Gold Coast women are taking legal action against solariums after developing adverse skin reactions from tanning beds. New research has revealed the use of tanning beds by people under the age of 35 raised the risk of developing melanoma skin cancer by 98 percent. Current cases include young female clients suing solariums after developing skin conditions, including rashes and scarring, after using tanning beds. The adverse reactions are believed to be as a result of a chemical reaction between the tanning beds and perfumes and cosmetics worn by clients. There is also a fear that chemicals used in body waxing may contribute to adverse conditions when

using a tanning bed. An Australian Radiation Protection and Nuclear Safety Agency study found a person's chance of developing a melanoma skin cancer increased by 22 percent if they had used a solarium just once. Further, Queensland Institute of Medical Research (QIMR) statistics show that Australians are diagnosed with more than 9500 melanomas each year, ending in more than 1100 deaths. QIMR estimates that up to 62 of those cases each year are directly attributable to indoor tanning devices. And it's not just skin cancers being caused by the use of solariums, a whole range of medical conditions have been attributed to them. Most importantly, the long-term effects of over use have not been calculated. A tan from a tanning bed may look great for a couple of days, but is it really worth the risk?

Modern technology increases trade mark disputes

New business owners are being encouraged to carry out thorough checks before selecting a company name and logo, as resources such as the internet are increasingly being used to catch out copycat businesses. The internet has made it much easier for businesses to know when their name or logo is being infringed and consequently take action.

It has become much easier for people setting up a business to inadvertently infringe an overseas trade mark registration, given that the content of an Australian website can be accessed overseas and in some circumstances that can be considered a trade mark infringement. If businesses have a registered trade mark and you are using their name or logo or something similar, various consequences can apply including damages, providing an account of profits, the cost of destroying all goods containing the infringing name, payment for corrective advertising and legal costs.

For a business to have a proprietary form of intellectual property, which allows action to be taken against someone who uses the same or a similar name, the company must have a registered trade mark. There is a common misconception that the registration of a business name or company name in Australia confers exclusive rights to that name. If a business name is registered as a trade mark in Australia then the trade mark owner can prevent others from using a name that is 'substantially identical' or 'deceptively similar' anywhere in Australia for renewable periods of 10 years. Brand protection is an essential part of a business as it can take many years and a lot of hard work to establish a good reputation. New business owners should seek advice prior to starting a business under a particular name or logo to avoid nasty surprises. For comprehensive information about trade mark laws and infringements, please contact your local solicitor.

What's inside...

Immigration Law focus . . .

Hoax emails: Be aware

Consumers are warned of hoax emails circulated on the internet

Reverse Mortgages:

Don't drive yourself into debt

Make sure that you fully investigate the long-term effects before signing on for a reverse mortgage

Remember refund rights and wrongs

Consumers taking back unwanted gifts from the Christmas season need to know their rights about refund entitlements

Family Relationships Online

Access information about family issues, ranging from building better relationships to dispute resolution

Chasing bad debts

There are some restrictions on what can and can't be done when chasing bad debts

Holiday-makers should know their rights after wild weather

Know your rights when booking or cancelling holiday accommodation

Taxman offers to help farmers

Struggling farmers and others in rural and regional communities will be allowed more time to meet their tax obligations by the Australian Taxation Office (ATO). Many farmers and regional communities are under increased pressure due to drought, floods, bushfires and storms. As a result they are unable to focus on their tax obligations at this time. Farmers, businesses and tax agents who are experiencing difficulty need to get in contact with the ATO. The ATO will help by allowing more time to lodge activity statements or tax returns without incurring a penalty. It will also allow additional time to pay tax debts, without interest charges, and arrange for tax debts to be paid in instalments. Additionally it will remit penalties or interest that may have been imposed and fast-track refunds.



Immigration law focus:

Parents who wish to join their children as citizens in Australia

Parents of Australian citizens or Australian permanent residents often expect to be able to join their children in Australia as permanent residents and eventually as Australian citizens.

Australian migration laws, however, do not allow parents of every Australian permanent resident or every foreign-born Australian citizen to migrate to Australia as a permanent resident. There are a number of conditions that the parents have to fulfil to migrate to Australia.

There are two visa categories for parents wishing to migrate to Australia:

1. the parent category
2. the contributory parent category.

The differences between the two categories are that:

- the contributory parent category has more visa places available each migration program year
- visa applications in the contributory parent category are recorded with a higher priority than applications in the parent category
- applicants for a contributory parent visa pay a substantially higher second visa application charge and Assurance of Support (AoS) bond (with a longer AoS period).

The following information outlines and discusses the legal requirements for parents wishing to apply for a visa in the contributory parent category.

Requirements

To apply for a visa in the contributory category, you must be the parent of a child who is a settled Australian citizen, Australian permanent resident or eligible New Zealand citizen. 'Settled' means the person must have been residing in Australia for a reasonable period, usually two years. Parents of any age, and who are outside of Australia, may apply for a Contributory Parent (Migrant) or a Contributory Parent (Temporary) visa. Applicants must be outside Australia to be granted a visa.

Temporary contributory parent visas

A parent can apply for either a permanent

or temporary contributory parent visa. The temporary visa is valid for two years and provides access to Medicare and full work rights. A temporary contributory parent visa cannot be extended or renewed.

Once granted, a temporary contributory parent visa holder can apply for the corresponding permanent contributory parent visa at any time during the two years. Holders of a temporary contributory parent visa who apply for the corresponding permanent visa during the two years obtain certain concessions, such as:

- completing a shorter application form
- paying a substantially reduced first visa application charge on lodgement of the permanent visa application
- not being re-assessed against the balance of family (BoF) test
- generally not being required to undergo further health checks.

If a person does not apply for the permanent visa before the expiry of their temporary contributory parent visa, they do not get the benefit of these concessions.

Balance of family test

All applicants for a visa in the contributory parent category must meet the BoF test. The BoF test is defined in the Australian Migration Regulations. This means the applicants must have either:

- at least half of their children living lawfully and permanently in Australia
- more children living lawfully and permanently in Australia than in any other single country overseas.

Children of both parents are counted in the test, including any children of previous relationships or de facto relationships of either parent. Children to be considered for the purpose of the BoF test include, natural, adopted and stepchildren. This is

irrespective of whether they are dependent, self-supporting, married, single or divorced. The quality of the parent's relationship with such children is not a relevant factor in this test. The purpose of the test is to establish the nature of a parent's ties to Australia and the support likely to be available from their children in Australia.

Sponsorship

All applicants for parent migration must be sponsored. The sponsor must either be an Australian citizen, Australian permanent resident or eligible New Zealand citizen who is settled. If the child of the parent is 18 years or older, then the parent can be sponsored by that child or by that child's cohabiting spouse.

If the child has not turned 18, applicants may be sponsored by the cohabiting spouse of their child if the spouse has turned 18, a close relative or guardian of their child, or a community organisation. Generally, an applicant cannot change their sponsor after they have lodged their contributory parent category visa application.

Public interest criteria

Each parent and all dependent family members included in the application, must satisfy certain public interest requirements that include meeting strict health standards and demonstrating that they are of good character.

Capping and queuing

All parent visa categories are subject to capping. This means that once the number of visas set by the minister for a visa class for the migration program year has been reached, no further visas can be granted in that program year.

For more information visit, www.immi.gov.au or contact your local solicitor for more information about Australia's immigration laws.

Hoax emails: Be aware

The Australian Federal Police (AFP) regularly receive inquiries from the public about hoax emails which circulate on the internet. Many of these emails are harmless nuisances or spam, but some are scams designed to trap the unwary. Some of the emails may contain malicious software such as viruses.

Please be aware of some of the common hoax email inquiries received by the AFP:

1. The reverse PIN number email: This hoax email claims that police will automatically be notified if you enter your PIN number backwards into a bank's Automatic Teller Machine (ATM), in the event that you are held up at an ATM.
2. The Osama Bin Laden capture email: This hoax email purports to be a warning message about a destructive virus that causes computer systems to crash if users open an email containing pictures of Osama Bin Laden.

These email messages, and others like them, are hoaxes. They should be ignored, deleted and not forwarded to others. Internet and email users should take steps to safeguard their personal information and computer systems from these potential threats. For more information about internet hoaxes, scams and security threats, please visit the Australian High Tech Crime Centre website at www.ahfcc.gov.au. If you have concerns that you have been a victim of a hoax email, please contact your local solicitor.

Reverse mortgages: Don't lock yourself into debt

For consumers thinking about signing up for a reverse mortgage, make sure that you fully investigate the long-term effects before taking this step. The Australian Securities and Investment Commission (ASIC) recently produced a report that found retirees lacked an understanding of reverse mortgages. The report surveyed 29 borrowers and found that almost half did not know how much the loan would eventually cost. Consumers are encouraged to fully investigate the terms and conditions of the loan and make sure they are aware of the overall cost.

Reverse mortgages are loans borrowed against a home, which do not need to be repaid until the house is sold. Nearly a quarter of respondents also did not receive financial advice or information about the risks involved before finalising their reverse mortgage.

Reverse mortgages are a growth area for the finance industry, but the glossy

advertising can hide big pitfalls. A number of the survey respondents admitted to spending the borrowed money too quickly, saying it was difficult to resist the constant availability of money.

Retirees should check that loans have a negative equity guarantee ensuring debt cannot exceed the home's value. If not, you may have to meet the shortfall if your debt amounts to more than the value of your property. Increasing interest rates could result in the loan amount doubling within 10 years. Before signing up, speak to an independent financial advisor to determine if a reverse mortgage is the best available option.

To resolve any issues or problems with reverse mortgages, please contact your local solicitor.

For more information on credit management, grab a copy of How to be Moneywise at www.fairtrading.qld.gov.au or phone 13 13 04.

Remember refund rights and wrongs

Consumers taking back unwanted gifts after the festive season need to know their rights about refund entitlements before going back to the shops. The Office of Fair Trading receives hundreds of complaints about purchases each holiday season.

Common reasons for wanting a refund include poor quality or service, unsatisfactory warranties or misleading advertising by the trader. Consumers are legally entitled to a refund, exchange or repair if a product is faulty, does not do the job it is supposed to do, does not match the description or sample shown at the point of sale, or does not last for a reasonable time.

Some stores offer a refund or exchange for reasons other than these to generate goodwill and return business. However they do not legally have to do this. Most stores require proof of purchase before offering to refund or exchange on products, so make sure you have any receipts or paperwork when returning an item.

Signs saying 'no refunds' or 'no refunds on sale items' are illegal and if consumers see these signs on display they should report it to the Office of Fair Trading. If you experience problems with a purchase, speak to the trader in the first instance and if you are unsatisfied with the response, seek advice from your local solicitor.

Over-payment scams

Queenslanders selling goods over the internet or through the classifieds need to be on the look out for over-payment scams. An over-payment scam is simply when someone overpays you for a product or service (usually by cheque) and then asks you to refund the over amount in cash or to transfer the money to an account. This type of scam usually targets accommodation providers and people selling products or services on the internet.

For example: The seller receives a generous offer from a potential buyer, which they accept. The buyer sends a cheque for more than the agreed value. The buyer invents an excuse for this overpayment.

The buyer asks the seller to refund the excess amount. The buyer is hoping that you will do this before you discover that their cheque has bounced.

If the seller does pay the money, then often they lose the money refunded into a specified account, and if the item has been sent or the service utilised, then you will lose this too.

If you do receive overpayment for a product or service by cheque, be suspicious. However sometimes errors do occur and the mistake could be genuine.

To protect yourself:

- be suspicious of people offering inflated prices
- do not give money back to a buyer until their funds have cleared
- never send money to anyone that you are not totally sure about.

Website review: Family Relationships Online

Family Relationships Online provides families (whether together or separated) with access to information about family relationship issues, ranging from building better relationships to dispute resolution. It also allows families to find out about a range of services that can assist them to manage relationship issues, including agreeing on appropriate arrangements for children after parents separate.

This site is updated from time to time with new information. Visit www.familyrelationships.gov.au to access the information.

There is also a Family Relationship Advice Line which is a freecall: 1800 050 321.

The Family Relationship Advice Line is a national telephone service established to assist families affected by relationship or separation issues.

Residents urged to report illegal housing schemes

The Brisbane City Council is encouraging residents to report illegal boarding houses. The council is cracking down on shonky operators amid concerns that some people are converting suburban homes into multi-bedroom residences and cramming in as many as 12 people, often university students in need of affordable accommodation.

The council is putting more resources into running regular fire safety inspections and looking at changes to council regulation to better deal with and administer the issue.

If anyone suspects that a shonky boarding house is operating in their area, they should contact the council. Some people see cramming as many people as possible into these dwellings as a huge money-making venture.

But if there are more than 10 people crammed into a suburban house that does not meet fire safety requirements, it will be in breach of town planning legal requirements.

Chasing bad debts

There are some restrictions placed on what can and can't be done when chasing bad debts. Section 60 of the *Trade Practices Act* "prohibits the use of physical force, undue harassment or coercion in connection with the supply or payment for goods and services by a consumer".

The following would be considered to be "undue harassment":

- contacting the debtor at their place of residence between 7.30pm and 9pm, without the debtor's consent
- exceeding a limit of three unsolicited telephone calls per week
- visiting the debtor at any usual time or place
- failing to leave the debtor's home when requested by the debtor or another person
- calling or visiting the debtor's workplace if the debtor has requested that no contact be made.

Contravention of Section 60 of the *Trade Practices Act* could lead to the Federal Court imposing fines of up to \$200,000 for a corporation or up to \$40,000 for an individual. When chasing a bad debt, participants should generally be ready to negotiate. If the debt-collection process is not easy, professional help should be sought. If seeking professional help, make sure that you have clear and accurate records of the circumstances surrounding the bad debt.

When involved in chasing a bad debt, ensure you don't go overboard or get too personal, otherwise this may further complicate the situation. Try not to let emotions get in the way and if recovering the debt becomes very difficult, don't forget evidence such as paperwork to back up your claim.

Few businesses will be able to avoid some bad debts. Remember the tips above and if you have difficulties, or for professional advice, please contact your local solicitor.

Parents warned not to let magnetic toys attract danger

The Office of Fair Trading has warned parents to be aware of the dangers associated with magnetic toys, or toys containing small magnetic parts that can be swallowed accidentally. Parents are warned to closely supervise their children when using toys that contain small magnets, to help reduce the risk of injury. If two or more magnets are accidentally swallowed they can move together in the stomach or bowel and cause serious internal damage.

The Queensland Injury Surveillance Unit reported that 63 children were admitted to hospitals in Queensland for magnet-related injuries from 1998 to 2006. Tragically, the death of a child in America after swallowing multiple tiny magnets from a toy building set in 2006 further highlights the issue. Reports also show that magnet-related injuries occur in all age brackets, with children as old as nine requiring treatment.

When used properly, these toys can be very educational, however parents must supervise their children during playtime and follow any age recommendations on the label.

Many of these toys contain small parts which are not suitable for children under six years. For more information on toy safety, visit www.fairtrading.qld.gov.au.

Holiday-makers should know their rights after wild weather

Acting Attorney-General and Minister for Justice John Mickel has reminded consumers of their rights should something go wrong while away on holidays.

The recent wild weather has washed out the holidays of many Queenslanders, who may now be wondering what their rights are when booking or cancelling holiday accommodation.

If cancelling holiday accommodation because of bad weather, or leaving early, consumers may not be entitled to a refund. When renting holiday accommodation, make sure you read and sign a written agreement that clearly sets out your rights and responsibilities, as well as those of the property agent or owner.

The holiday booking agreement should include your rights when cancelling

accommodation, and when you are entitled to a refund. Be sure to check agreements before leaving home, and take a copy on holiday with you. Some accommodation providers or travel agents might refund for reasons not included in the booking terms and conditions to build goodwill, however they do not have to do this.

Consumers are strongly urged to confirm all the details in writing before leaving on holiday, to avoid problems later on. If accommodation does not match what was advertised, let the agent know you would like to sort it out.

For more information about holiday accommodation agreements, please contact your local solicitor.

For more information on trouble-free travel, contact the Office of Fair Trading on 13 13 04.

Internet boosts organised crime

Internet technology has given organised criminals unprecedented powers to operate 'at arm's length' from their victims and across national borders, the Australian Crime Commission (ACC) says. Crime syndicates can more easily link to terrorist groups to exchange information and skills, and professional agents and organisations are increasingly being implicated in crime.

A recently launched declassified publication, 'Organised Crime in Australia' highlights key issues and trends for the general public and business community. Drug trafficking and money laundering are common activities among organised crime groups, but cyber crime including identity theft and fraud are on the rise, according to the publication.

ACC chief Alastair Milroy said the Australian community was largely unaware of how widespread organised crime was and how far it reached into legitimate business activities.

Organised crime is estimated to cost the Australian economy a staggering \$10 billion a year. The ACC warns businesses and the wider community that substantial planning at a very sophisticated level is behind organised crime. These groups are looking for areas of high profit and low risk of detection by enforcement agencies. The private security, pharmaceutical and motor vehicle industries have been among those typically targeted by crime gangs, with financial and insurance institutions now more vulnerable thanks to the internet. These groups prey on those who are vulnerable, and the business community in particular needs to identify areas of risk and develop appropriate risk management strategies.

Drunk driving lawnmower

A 52-year-old New Zealand man has been charged with driving a lawnmower while drunk. The driver was stopped and asked to get the mower off the road. The police officer breathalysed the man on the mower after realising he appeared to have been drinking. The man appeared in court on charges of careless driving, driving while disqualified and driving with excess breath alcohol. The mower was impounded for 28 days.

This newsletter is a free service from your solicitor. If there is any issue you would like us to cover in a future newsletter please call us. Also, if there is anyone you know who would like to receive this newsletter please let us know and we'll add their name to our distribution list.

However, if you do not wish to continue receiving it please let this firm know and we will not send it to you again.