

Client Newsletter

Biddulph & Salenger Lawyers

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OFFICE UPDATE

The millennium year ushered in its challenges, the most significant being GST and by now, regrettably, you will have noticed a change in your accounts. Like everyone else, we need to become more assiduous in the prompt recovery of costs.

Our skeleton staff in the Olympics was busier than expected. The rest of us re-charged batteries and generally were inspired by the application of the Olympic slogan of personal best to a whole range of endeavours, from athletes and entertainers to the transport workers and the volunteers. We strived, too, in our small team to achieve personal best so as to satisfy objectives on your behalf. If we fall short, please let us know.

A few changes at the staff level but implemented fairly seamlessly. Sue Barry Cotter had a break to have her first baby, Aidan, (and to all of our clients newly enjoying the delights of parenthood, congratulations, and check your will to ensure it reflects the changed circumstances). Sally Skene is assisting Warwick as a full time conveyancer and Emma Price, a law graduate doing her College of Law course on-line, is assisting Maryanne in Family law and Litigation. Irene continues to serve as the courteous front line by phone and in reception. After some negative experience with an unscrupulous operator, we have managed to launch our web site – please tell us what you think. Warwick remains an ever positive and wise influence steering us through the various upheavals. Nothing is so constant as change. It is best to flow with it.

LAWFUND

We have formed an association with Law Fund. This initiative offers a service to you by assisting you in obtaining the most suitable finance for the purchase of Real Estate. It also reduces the legal costs on any transaction in which Law Fund arranges the funds. Law Fund deals with most major banks and financial institutions. We are able to reduce our costs because the bank involved provides a commission to us based on the size of the loan. We can send you a detailed brochure if the concept interests you.

FAMILY LAW

Filing fees for a divorce have decreased. As a result of the establishment of the Federal Magistrates Court, divorces can be dealt with in that jurisdiction for a filing fee of \$250.00 rather than \$505.00. Please remember that family law settlement proceedings must be commenced within 12 months of a divorce or else you will be out of time and an application can then only be made on grounds of hardship. Please seek legal advice on any informal arrangements you have reached with your ex-spouse to ensure you are adequately protected by proper documentation. It can be a sobering experience to receive your superannuation or other post separation windfall and then be confronted with a property claim. Child Support provisions have changed somewhat. They are a little less onerous for the payer with a second family or who exercises substantial contact. They are still a nightmare for the payee pursuing the self-employed former spouse. Unplanned pregnancies arising from one-night stands attract the full might of the Child Support regime – no discounts for extenuating circumstances.

Changes flagged for years as to the distribution of superannuation and including it as property on marriage breakdown are now well on the horizon. For those of you avoiding conjugal ties because your agreement under the *Property Relationships Act* affords you more certainty and protection if the relationship breaks down, you should soon be able to consider a nuptial agreement that will be binding on the Family Court.



“The Team”

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WILLS

A casual glance at our database and we note that many of our clients do not have Wills at all. Others are quite old. Upon a change of circumstances, review your Will. It's an inexpensive service. Get a Power of Attorney at the same time in the event that you lose capacity.

These are cautionary steps that can save untold delay, expense and complications. Discover who you should make provision for and the consequences if you don't.

Obtain timely advice to ensure Wills are not set aside for lack of capacity. Order your affairs so that your Will is not complicated inadvertently by other subsequent written evidence of testamentary intent.

OWNER BUILDERS – CONTRACTS

Owner builders who sell their property within seven years of completion of domestic works valued at over \$5,000 require warranty insurance for the benefit of the purchaser. Failure to do so leaves the owner builder open to a \$10,000 fine and they may lose the sale of their property. A contract of insurance will cover the work from the date of the Contract of Sale and expire at the conclusion of the seven year warranty period (which commences from the date of completion). These conditions apply to all works (new homes, additions, verandahs, swimming pools) over \$5,000 in value and an owner builder permit was obtained after the 1st May, 1997. A solicitor can organise the insurance if necessary to ensure your contract for sale complies.

The purchase of your dream rural property attracts its own set of particular enquiries. Properties that are seriously infested with noxious weed require huge expense to eradicate the problem, a certificate from the local council can put you on notice of any weed control notices or expenses. Purchasers of property where sheep have been run or are to be run should check for Ovine Johne's Disease an infection of the sheep's gut which causes the animal to waste away and die. Enquiries can be made through the Local Rural Lands protection Board.

OTHER TOPICS

The new CTP scheme (see LSJ, August 2000).

More business in the *Trade Practices Act* (see publication).

Domestic Violence (see In Touch With the Law)

ENDURING GUARDIANSHIP

An enduring guardian is someone you appoint to make personal or lifestyle decisions on your behalf. It is quite different to making an enduring Power of Attorney which relates to financial matters.

If you are unable to make decisions in relation to medical treatment, services or accommodation, no one can do that for you without authority.

Amendments to the Guardianship Act mean you can now appoint an enduring guardian. Next of kin can play a role informally as "persons responsible" under the Act at least in relation to medical treatment. You need a guardian, however, to make decisions about accommodation for you if you do not have the capacity to do so yourself and there is some contention about that decision. If you have not appointed a guardian then an application needs to be made to the Guardianship Tribunal. Informal mechanisms work well for those with close supportive family, but if you do not have family or are estranged, then we would recommend that you consider the procedure.

INJURIES FOLLOWING CAR ACCIDENTS

For accidents after 4 October 1999 there is a new compensation scheme which significantly restricts the entitlement for pain and suffering. You have no claim unless the injuries amount to greater than 10 per cent permanent impairment of your whole body. This assessment is made by a doctor appointed by the Motor Accidents Authority and the guidelines ignore disabilities, changes to lifestyle, depression, anxiety and future complications such as osteoarthritis. If the threshold is achieved then those factors are taken into account.

The scheme is still in its infancy. It is clear that only claimants with severe injuries will qualify for non economic loss and most claims will be settled or assessed without litigation. The courts will only be involved in cases which have been exempted or excluded from the Claims

DISCLAIMER

This newsletter is for the benefit of clients. The information is of a general nature only. You should not act solely on the basis of material contained in this newsletter.