

Client Newsletter

Biddulph & Salenger **Lawyers**

Issue 8, February 2004

THE TEAM

Throughout 2003, Warwick Dunn, Senior Partner, maintained his unflagging enthusiasm and interest in his clients, some spanning four generations.

Maryanne Ofner, Partner, continued to expand her family law practice supplemented by other areas of litigation.

Sally Klem took leave to have baby William on Melbourne Cup Day. She remains online to the office and will return to her conveyancing practice during 2004.

Anita Emery, Maryanne's assistant, has competently assumed an invaluable role as Office Manager easing the upheaval of various comings and goings.

Jacqueline Roberts, Solicitor, joined our team specialising in conveyancing but is fast developing expertise in other areas of the firm's practice.

Sandi Delaney is now our receptionist/paralegal assisted on a casual basis by Edyta Zurawski, Law Student.

With Warwick ensuring that clients' Wills make proper provision for the next generation, (*and also enjoying his first grandchild*), with Maryanne advocating that parents have the opportunity to develop proper relationships with their children irrespective of family breakdown, and at the staff level, with the advent of baby William, we thought a brief overview of the law as it affects children might be of interest.



THANK YOU

Thanks to those of you who have made referrals. These are always appreciated.

As a small firm what distinguishes us is a commitment to a high level of personalised and efficient service.

Please let us know if we have fallen short or if you wish to make any suggestions for improvement.

Don't hesitate to call us if you have a small legal query. We do not charge for isolated telephone advice.

CHILDREN & THE LAW

The *United Nations Convention on the Rights of the Child* specifies that a 'child' is a person under the age of 18 years, unless the relevant national laws state otherwise. In Australia the age of majority is 18 and therefore anyone under this age is seen to be a child in the eyes of the law.

The Convention is based on four fundamental principles: -

1. non-discrimination against children;
2. acting in the best interests of the child;
3. the right to life, survival and development;
4. the right to respect for the views that children express.



The Convention is not an Australian domestic law but is an international law ratified in 1990 by Australia and is a reference point for judging whether Australia's relevant laws meet the standards expressed by the Convention.

Children are at an inherent disadvantage in the legal and political processes. Parents have certain legal responsibilities to ensure the well-being of children. Children ought to have access to appropriate avenues of legal redress when parents fail in their responsibilities.

CHILDREN & CRIME

Children under 10 years old cannot be charged with a crime and children between the ages of 10-14 years can only be charged if it can be shown that they understood the nature of the offence that they committed and not merely that they knew that it was wrong.

Generally, children who commit crimes are dealt with by the Children's Court. The Children's Court imposes penalties that are different to those imposed upon adults. Also, this Court cannot record convictions against a child under the age of 16 despite the seriousness of the offence.

It is an offence for a person under the age of 18 to possess or consume alcohol in public unless they are with a responsible adult. It is illegal to supply cigarettes and alcohol to a person under the age of 18.

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CHILDREN & THEIR PARENTS

The Department of Community Services has the power to intervene in family situations where it believes the child is at risk and is in need of care and protection. This State intervention can range from family support to the more serious act of police intervention to prosecute abusers. DOCS' powers are governed by the *Children & Young Persons (Care & Protection) Act*

The Family Court has jurisdiction to make decisions concerning all children regardless of their parent's status (i.e. married/un-married, nuptial/ex-nuptial). Children are able to initiate proceedings under the Act but are unable to give evidence or file an affidavit without the leave of the Court. Children cannot sue in any other Court until they attain the age of 18, except by a tutor or next friend.

CHILDREN & SCHOOL

Children between 6-15 years must attend school and in theory (but rarely in practice), too many unexplained absences are known as 'truancy' and can result in a fine for the child's parents.

The *Education Act* gives the Minister for Education the power to regulate discipline within schools. There are provisions under this Act which allow for suspension and expulsion in certain circumstances. These procedures vary with departmental policy but should comply with the rules of procedural fairness including giving the student an opportunity to respond and give parents information about the decision. Corporal punishment is outlawed in schools.

CHILDREN & EMPLOYMENT

It is against the law to employ or consent to the employment of a child under the age of 15 in entertainment, exhibition or offering anything for sale unless this employment is authorised by DOCS. Children under 14 years may not be employed in factories.

CHILDREN & INCOME

Government welfare services provide various avenues for children and young persons to obtain financial assistance eg. Youth Allowance is available for students aged between 15-24 years and unemployed persons under the age of 21. Abstudy is available for Aboriginal and Torres Strait Islander children. The criteria for obtaining such benefits are complex and variable and therefore it is best to check with Centrelink as to the exact requirements.

CHILDREN & DISCRIMINATION

Children are protected against discrimination by the *Anti-Discrimination Act*. Children who experience discrimination, harassment or bullying at school, work etc. are able to take their case to the Human Rights & Equal Opportunities Board or the Anti-Discrimination Board.

CHILDREN AS VICTIMS

Children who are victims of crime are entitled to compensation under the *Victims Compensation Act*, but need to use a tutor or next friend to bring the action on their behalf. Any money awarded in damages will generally be held in trust until the child's 18th birthday. Similarly, a child obtaining compensation for a car accident will have funds held in trust until the child attains the age of 18.

CHILDREN & CONTRACTS

As a general rule, children are not bound by contracts, however, they are bound by contracts to which they are a party if the contract is one for necessities, that is, for their benefit and the child is capable of understanding the terms and conditions. Onerous contracts to which a child is a party will not be enforced. These regulations are governed by the *Minors (Property & Contracts) Act*. Businesses usually require an adult to guarantee (and thereby become liable for) the child's fulfilment of their part of the contract.

GENERALLY

The marriageable age for children is 18 years but between 16-18 years, marriage with parental consent is permitted. The age of consent to sexual intercourse is 16 for both hetero and homosexual children.

At 14 years children are legally entitled to make their own medical decisions and can obtain medical treatment without the permission of a parent. In a genuine medical emergency, procedures may be carried out without either parental or the patient's permission. Special treatment (such as sterilisation) can only be carried out on a child under the age of 16 with the consent of the Supreme Court.

Children are able to obtain a Learner's driver licence at 16 and at a minimum of 17 they are able to progress to a P1 (red) licence. This licence must be held for a minimum of one year after which the individual is able to obtain a P2 (green) licence which must be held for a minimum of two years. Once this graduating scheme has been completed a full licence can be obtained.

Children under 18 must have parental consent to change their names. At 18 they are required to vote.

CHILDREN & IMMIGRATION

A recent family law decision found that the detention of children for extended periods contravenes provisions of the *United Nations Convention on the Rights of the Child* and hence may be unlawful. There is no Commonwealth legislation that provides a minimum standard of treatment of children while in detention.....being food for thought, given the extent of protection available to children generally.

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.