



news letter of the law

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Issue 16

December 2006

Welcome to the new Management Committee

On 15 November 2006, the Centre held its AGM. The usual business took place, in particular the voting in of a new committee for the upcoming year. The new management committee of the Centre is:

- President: Sean Brennan
Tenancy Advocacy Worker at Tenancy Advocacy and Advice Service (QLD) FNQ
- Vice President: Kylee Miller
Solicitor at Wettenhall Silva Solicitors
- Treasurer : Peter Lennon
Financial Planner at TFS Financial Planning
- Secretary: Katherine Power
Solicitor at Director of Public Prosecutions
- Ordinary Member: Craig Blackman
Employment Advisor at Disability Employment Services
- Ordinary Member: Peter Coumbis
General Manager and Corporate Counsel at Koppens
- Ordinary Member: Naomi de Costa
Solicitor at Williams Graham and Carman Solicitors
- Ordinary Member: Amy McCudden
Senior Associate Solicitor at Miller Harris Solicitors
- Ordinary Member: Joanne Parisi
Solicitor at MacDonnells Solicitors
- Ordinary Member: Kirsti Shaw
Solicitor at Director of Public Prosecutions



The members of the management committee bring with them a variety of experiences which contribute in different ways to the Centre. Many thanks to everyone who came to the AGM. It was much appreciated. We look forward to working with the new and familiar faces again in the upcoming year and look forward to another exciting year ahead!

**MERRY CHRISTMAS
AND A
HAPPY NEW YEAR**

**Our office is closed
from the 21st
December 2006 and
will reopen 8th
January 2007
BEST WISHES for the
Festive Season**

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Don't like your Christmas presents?

After the excitement of Christmas, many people may find they have received or bought goods that are faulty or don't live up to their expectations.

So are consumers always entitled to a refund? And what are a consumer's responsibilities on lay-by products?

Many consumers make the mistake of believing they can get refunds for goods that they do not want, this is not always the case.

A consumer is entitled to a refund if the goods:

- have a fault that the purchaser could not have known about at the time of purchase
- are not the same as the description provided by the salesperson or advertisement
- do not match the sample shown at the time of purchase
- do not do the job as the purchaser was led to believe.

A consumer is *not* entitled to a refund:

- if there is a simple change of mind or they no longer want the goods.
- they realise they can't afford the goods
- they have found the same item at a cheaper price elsewhere.
- they knew about the fault before the purchase
- they were responsible for causing the fault.

Some stores will refund an item regardless of whether the consumer is entitled to one as a gesture of goodwill. Other stores will give refunds only if they are legally bound to do so. It's important for consumers to find out what a store's policy is before purchasing goods.

Stores that display signs stating 'No refund' or 'No refund on sale item' do so illegally. If a faulty product is bought and the consumer was not aware of the fault at the time, it can usually be returned to the store for a repair, replacement or refund. If a consumer does not want a replacement or repair, in this case, a full refund can be

sought.

A cash refund cannot be asked for if the item purchased was not paid for by cash.

Lay-bys are also governed by specific laws. When taking out a lay-by, a consumer is entering into a contract that requires them to abide by certain conditions set by the retailer. The retailer agrees to keep the price the same until the item is fully paid and the consumer agrees to make regular payments when entering into a lay-by.

If a lay-by agreement is broken, a consumer may lose the money already paid, as well as the goods. If the business breaks the lay-by agreement, however, the consumer is entitled to a refund. A retailer can only cancel a lay-by if payments are not made.



Beware the office Christmas party

The office Christmas party is often a great way to socialise with workmates and top off the working year, but there is also the potential for a harmless celebration to become a legal battleground.

Health and safety experts warn that office parties ruin more careers than any other workplace event, and not just due to opportunities for romantic misconduct.

Claims of harassment or even violence may arise through the use of drugs and alcohol at parties.

Alcohol is credited as the main catalyst for undesirable behaviour, such as offensive comments, sexual harassment and bullying, all of which have the potential to lead to legal claims against employers or other employees.

Even the usually harmless 'Secret Santa' can leave employers open to claims of harassment if gifts received by employees are sexually offensive or humiliating. Offensive gifts have the potential to breach anti-discrimination laws and leave employers liable.

Companies should strive to explain to staff that they need to be sensitive when giving gifts and that acceptable behaviour at parties will avoid any potential for legal action.

Workers' compensation claims can also arise from these events. Employers need to be aware of the kind of circumstances in which they would be liable if an employee attending the annual Christmas function was injured.

For example, if an employer and some employees arrange a separate party after work and the employer buys drinks for the employees on his or her expense account, an injury resulting from this party could leave the employer liable.

High Court rules in favour of WorkChoices legislation

The Federal Government's industrial relations legislation changes are here to stay after a High Court ruling on 14 November 2006.

The High Court dismissed a challenge mounted by various states and two union groups in response to legislation changes to the *Workplace Relations Act* that came into effect in March this year.

The High Court ruled that the Federal Government could invoke s51(xx) of the *Constitution* to use corporations power as a basis to include as many employers as possible under the new WorkChoices legislation.

The WorkChoices legislation incorporates a single, national set of rules for minimum terms, wages, conditions, awards and agreements, covering thousands of Queensland workers.

The legislation introduced by the Federal Government scrapped unfair dismissal protection for workers and

there are now provisions for workers to be able to cash out unused personal leave

Under the legislation changes employers are also allowed to stand down workers if there is no work due to natural disasters or other factors out of the employer's control.

The decision by the High Court to dismiss the challenge from states and union groups was supported by the Prime Minister, John Howard.

'This removes the one potential cloud over the legislation and it means that Australia at long last, in 2006, has a national system of industrial relations laws,' Mr Howard said.

If you have an employment problem, consult your solicitor.

For more information on the WorkChoices legislation visit www.workchoices.gov.au.



QLD LAW HANDBOOK FOR SALE

Caxton Legal Centre Inc. has for sale the 8th edition of the Qld Law Handbook. For 20 years now Caxton has produced the handbook to help unlock the law. The 8th edition has been completely revised to reflect recent changes in the law. Each chapter gives details about legislation, major cases and where to go to get further help.

The handbook is now available for order at a price of \$77.00 per book (plus GST and delivery). Bulk purchases attract a discount. If you would like to place an order, call the Caxton Legal Centre on 3254 1811 for a copy of the order form or go to <http://www.caxton.org.au/publications.html> All funds from the sale of the Queensland Law Handbook go directly to the Caxton Legal Centre to assist them to provide free legal services to the community.

New drink spiking laws for Queensland

Laws were passed in early November to create a new offence in Queensland of 'unlawful drink spiking.'

Under the new laws offenders can be sentenced to a maximum of five years jail.

Attorney-General and Justice Minister Kerry Shine said, 'drink spiking is a serious issue. The Government took the view that it's irrelevant whether a spiked drink is

consumed or not.'

The new laws apply to a person who administers or attempts to administer, in a drink, a substance to another person without their knowledge with the intent to cause the other person to become 'stupefied or overpowered'.

For comprehensive advice regarding the new drink spiking laws contact your local solicitor.

Man sentenced over workers' compensation fraud

WorkCover New South Wales announced that a Sydney man has been convicted of fraudulently obtaining \$26,587 of workers' compensation payments.

The man was sentenced to eight months imprisonment, wholly suspended, and required to enter into an eight month good behaviour bond.

In addition to the sentence the Sydney man was ordered to repay the amount of \$26,587 within 28 days.

Christmas buyer beware

The gift-giving season is almost here and Queensland's Office of Fair Trading has issued a timely warning for consumers of poorly constructed and designed toys on the market that are unsuitable for children.

Fair Trading Minister Margaret Keech offers some important points to consider when buying Christmas gifts for children:

- inspect toys or gifts for hazardous materials, or poor construction
- be aware of smaller parts on toys and ensure that they will not come loose if bitten, chewed, or thrown
- be especially alert if purchasing second-hand goods as these are not subject to the same mandatory safety standards or labelling requirements as new products
- if you do not know the child well, consult the parents for gift ideas – every child is different and parents will be more aware of the risks
- be sure that plastic items will not be mistaken for lollies
- carefully read labels for toy age

restrictions

- if in doubt, ask to see the gift out of the box – the store should have a demonstration model available for you to see
- be aware of all children in the household – it can be difficult to keep older children's toys away from their younger brothers and sisters
- understand which parts of a toy may be dangerous – sharp edges, long cords, missiles (such as flying toys or prop guns) can all become dangerous in the wrong hands.

For more information on toy safety, contact the Product Safety Branch of the Office of Fair Trading on 07 3305 9614 or visit www.fairtrading.qld.gov.au.

Budgeting Christmas spending

Consumers are again being encouraged this year to budget their Christmas spending to avoid starting the New Year in debt.

There are many different options to budget Christmas spending.

For more information visit www.consumersonline.gov.au.



‘Vishing’ scam

Consumers are being warned of a ‘vishing’ scam that is being played out in the United States and could possibly hit Queensland.

‘Vishing’ is a new scam that is short for ‘voice phishing’. Instead of asking for bank details to be provided in an email over the internet, vishing victims receive an email requesting them to call a phone number and provide confidential bank details.

Report scams to the Office of Fair Trading on 13 13 04.

Changes to Child Support legislation

The Federal Government has overhauled the calculation of child support payments in response to widespread dissatisfaction with the existing child support payment scheme.

The new legislation treats the income of both custodial and non-custodial parents more equally and is not based on a fixed percentage of income.

Minister for Families Mal Brough said that the new legislation 'aims to reduce conflict between separated parents and encourage shared parenting by introducing a system that is fairer and puts the needs of children first.'

The first stage of amendments to the child support legislation was introduced in January this year and the next stage is scheduled to come into operation in January 2007.

The second stage involves the introduction of independent reviews of decisions made by the Child Support Agency and improving the relationship between the child support scheme and the courts.

The new legislation aims to address the changing structure of families in Australian society, particularly through treating children from first and second

families more equitably.

For information on the legislation changes, visit www.facs.gov.au and for more comprehensive advice, contact your local solicitor.

Did you know?

According to Federal Minister for Human Services, Joe Hockey, a Departure Prohibition Order gives the Australian Federal Police authority to stop parents at the airport from leaving the country if they have child support owing to their child(ren).

TV thief caught by remote

A thief in south-western France has been arrested after stealing a TV and returning to the same house to steal the remote control. While the owner of the house was calling the police to report the initial robbery, the thief was caught red-handed by neighbours who spotted him returning for the television remote control. A police spokesperson said: 'He came back to take the remote control, I guess there is daring and there's stupid.'

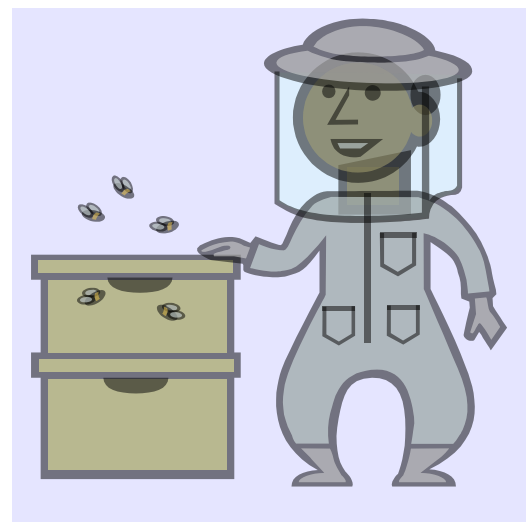


Bee thieves stage sting

In a strange robbery in western Germany, thieves broke into a garden and stole £900 worth of bees in what police described as a professional sting.

Six entire hives were removed – with thousands of bees still inside.

Police say they do not know how many people were involved in the theft or how they managed to transport the bees away from the garden, but it is likely that the thieves were bee experts.



Is a pre-nup necessary?

There has been a constant media barrage recently of celebrity marriage break-ups and ensuing debate surrounding the existence of a prenuptial agreement between the couple concerned.

According to the Australian Bureau of Statistics, 32 percent of all marriages in Australia will end in divorce.

Statistics such as these and significant changes in society's attitude towards marriage have provoked greater interest in forming a prenuptial agreement before entering a marriage to protect personal assets.

Under Part VIII of the *Family Law Act 1975* couples may enter into agreements before marriage (s90b).

This section of the legislation permits couples to put together a prenuptial agreement before marriage covering:

- how property and financial resources are to be dealt with in the event of marriage breakdown
- maintenance of either partner and/or their children during the marriage and/or on its

termination

- the effect of such an agreement is to oust the jurisdiction of the court in relation to the matters covered in the agreement.

For more information regarding prenuptial agreements, seek legal advice.

The changing face of Australian families

- In 2003, 22 percent of all children aged 0-17 years had a parent living elsewhere.
- Average weekly hours worked for full-time and part-time workers have increased over the last two decades.
- Of all marriages in 1997, 33 percent involved a person who had previously been married.
- Between 1986 and 2001, the number of one-parent families in Australia increased by 53 percent. In contrast, the number of couple families with children increased by three percent.



Is that offer really 'too good to be true'?

The festive season is fast approaching and consumers are being warned to be wary of scammers.

At this time of year many consumers are in 'spending mode' and may come across offers that are seemingly 'too good to be true'.

In most cases they probably are.

A new website launched by the Australian Competition and Consumer Commission, SCAMwatch, is designed to aid consumers in deciding if they are in fact being taken in by a scam.

The website lists 39 different types of scams and actions that consumers can take to protect themselves.

ACCC chairman Graeme Samuel said: 'While most consumers are aware of widespread scams like 'Nigerian emails', they may not appreciate just how many different types of scams are out there.'

SCAMwatch features stories from Australians who have been taken in by a scam, illustrating just how easy it can be to become the unknowing victim of various scams.

Find out how scams work and how to protect yourself by visiting www.scamwatch.gov.au.

If you think you have spotted a scam or have been caught out, call the ACCC Infocentre on 1300 302 502 or use the electronic form on the SCAMwatch website.

Tough young driver laws proposed for Queensland

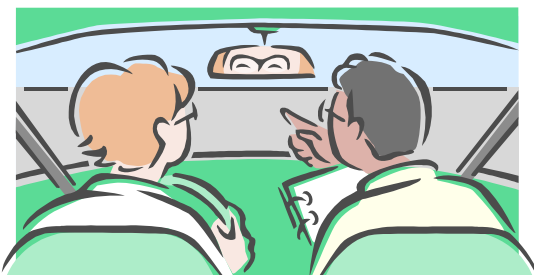
Tough laws for young drivers have been proposed in Queensland and are expected to be passed by State Cabinet.

Queensland Premier Peter Beattie said, 'When these laws are passed Queensland will have the toughest young driver laws in Australia.'

A spate of tragic accidents in the state has prompted the government to propose the laws.

The legislation will:

- prohibit young drivers from driving high powered vehicles for the full three years of their provisional licenses
- restrict the number of passengers under the age of 21 they can carry late at night
- crack down on mobile phone usage by young drivers
- introduce mandatory 100 hours practice prior to going for a license.



Beware of bogus charity collectors

The Queensland office of Fair Trading has been alerted to bogus charity collectors operating in Brisbane.

National Breastcancer Foundation general manager Sue Murray confirmed the operation of fake charity collectors and has advised consumers to be alert for suspicious donation collectors.

Fair Trading Minister Margaret Keech has outlined some key characteristics for consumers to look for

to authenticate genuine charity collectors.

Charity collectors should:

- be wearing a prominent collection armband or badge
- have a current written authority from the association for which they claim to be collecting
- supply an authentic numbered ticket or receipt

- if they are under 15, be accompanied by an adult.

Members of the public posing as bogus charity collectors can face fines of up to \$1500 and/or three months' jail under the *Collections Act 1966*.

To check if an organisation is authorised to fundraise in Queensland, call the Office of Fair Trading on 13 13 04.

Are you getting what you paid for?

At supermarkets all over Australia consumers are bombarded with products labelled as *organic*, *free-range*, *fresh* and *natural*.

These labels can be misleading for consumers and are often used purely as a marketing tool to differentiate products in the market place.

Scientists conducting a survey for the New South Wales Food Authority have found that even when allowing for a 20 percent margin of error, as many as 84 percent of labels incorrectly state the quantity of at least one component of a product.

Commissioner for the Australian Competition and Consumer Commission (ACCC) John Martin said some manufacturers are clearly 'pushing the envelope' when it comes down to food labelling.

The ACCC has just released new food description guidelines to ensure that food and beverage manufacturers are complying with consumer protection laws.

Mr Martin said, 'The ACCC is particularly concerned by the apparent upswing in terms like *organic* and *free-range* where business seeks to take advantage of strong consumer demand and where the absence of regulation may provide opportunity for some business to engage in unlawful conduct.'

'The ACCC believes that consumers would have a reasonable expectation that a food describing itself as *natural* or *pure* should not contain food additives or artificial preservatives. Unfortunately in the past this has not always been the case. Foods that claim to be *fresh* should not have been processed and then reconstituted.'

The guidelines have been introduced to promote clear and honest descriptions of a product's quality, quantity, composition and origin for consumers.

For comprehensive advice detailing the consumer protection laws, consult your local solicitor.

Café staff foil robbery

A potential thief has been thrown out of a Melbourne café after staff didn't believe him when he said he was armed.

A Victoria Police spokesman said the man, wearing a plastic bag over his head with eye holes cut out, entered an internet café in inner-suburban Richmond demanding money and claiming he had a gun.

'The café operator doubted the man's credibility and after a brief struggle threw him out of the café,' the police spokesman said.

THANKS

Our thanks goes out to our dedicated and committed volunteers who kindly give their time to the Centre to assist with the running of our activities. Without them the Centre wouldn't be able to provide many of the services that it does.