

CLIENT NEWS

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GROWTH CORRIDOR ATTRACTS NEW CHARGE

Own any land in Melbourne's outer fringes? If your property falls into one of the Victorian government's new housing zones, you could face a hefty land charge bill if you decide to sell.

The new charge was revealed when the government unveiled its blueprint to deal with Melbourne's swelling population.

In December, the government announced the city's urban growth boundaries were being pushed out and more than 41,000 hectares of land would be rezoned for development in the new fringe suburbs.

This will result in a spike in land values and rising rates bills for land owners in those areas.

Details of the urban growth boundary expansion were released in June for public comment. As many as 300 properties will be compulsorily acquired to make way for new roads, including an outer ring road, a rail link and a 15,000-hectare grassland reserve.

Landowners in the new housing zones will be hit with a charge of up to \$95,000 per hectare when they sell, with the money used to fund infrastructure.

The charge – called the growth areas infrastructure contribution (GAIC) – will apply to land brought into the urban growth boundary (UGB) after 2005.

It will apply to any land which is zoned for urban development. It will not apply to land that cannot be developed for urban development or to land that is within an existing urban area such as land already zoned Residential 1, Township or Comprehensive Development.

The government has provided information about the GAIC in the Growth Areas Authority Growth Areas Infrastructure Contribution Information Sheet (GAA Information Sheet).

According to the GAA Information Sheet the GAIC will apply at a rate charge of:

- \$80,000 per hectare to land zoned for development and above 0.41 hectares which was brought into the UGB in 2005; and
- \$95,000 per hectare to land zoned for development and above 0.41 hectares within Investigation Areas which is subsequently brought into the UGB in 2009.



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Legislation regulating the operation of the GAIC is yet to be introduced but the government has indicated transitional arrangements will apply to the sale or subdivision of UGB land between 2 December 2008 and the date GAIC legislation comes into effect.

For transactions during this period, the land owner at the time the legislation comes into effect will be liable to pay the GAIC.

Once the GAIC legislation is introduced, the GAIC is expected to apply to either the first sale of the land or its subdivision, or the building permit for major works, whichever occurs first. It is proposed that the land owner at the time of sale or subdivision or the building approval process for major building works will be liable to pay the GAIC.

The Law Institute of Victoria (LIV) has warned vendors, purchasers, mortgagees and even lawyers involved in UGB land transactions to make sure they are aware of the issues surrounding the GAIC and its operation.

"The LIV considers the lack of information about the operation of the GAIC substantially undermines the certainty of both existing and potential UGB land transactions," stated the LIV in a May submission.

The LIV has asked for more information on how the GAIC will be calculated, who will be liable to pay it and how and when the charge will be collected.

Vendors and purchasers who have not factored the GAIC into the price of the land and are unsure of how to address the issue of liability will be adversely affected, claims the LIV.

LIV CEO Mike Brett Young said the lack of specific information could also affect potential vendors and purchasers who were trying to determine a price for the land but want to make sure the significant GAIC liability is factored into the price.

"Similarly, any valuer appointed by a mortgagee would need to ensure that any GAIC liability is considered in determining the fair market value of land," he warned. ●

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BRING THE WORLD TO YOU



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If you run a small business, you are probably already aware of how to use the Internet to steer potential customers to your doorstep. But are you aware how relevant geography – or “geolocation” – is to your business?

IT consultant and lawyer Adam Reynolds says more than 90 per cent of transactions that are researched online for hard-to-deliver items involve a physical transaction at the endpoint.

“The actual fulfillment end of the transaction is carried out in person – it is all to do with the ‘last mile,’” he said.

Since April, Google’s search engine has delivered local results with map suggestions ahead of more generic results where no geographic modifier, such as the “.au” in a search string, has been used.

This is why it is important to include

geolocation information on your website and provide a link to an online mapping service.

Geolocation uses a web visitor’s Internet protocol address to identify their rough physical location. It allows you to match your web content to your potential customers’ needs, including quoting local prices.

“Research has also revealed people are willing to pay a premium when the service to be provided can be sourced locally,” Mr Reynolds said.

Small business owners should start by reviewing their customer base and determining what percentage of business was sourced within a two, five and 10 kilometre radius.

“Through client feedback, you can determine the extent to which web-based geolocation has been a factor in the initial selection of your services,” Mr Reynolds explained.

He said geolocation services complemented marketing efforts aimed at raising the visibility of a small business or service provider in their local community.

“Small businesses are really seeing a good return on working with their company’s webmaster on this issue.” ●

CLEAR AND CONCISE

Has someone close to you made a will lately? Perhaps it was a DIY will, or they are an elderly relative and you are concerned about their capacity to make the correct decisions?

While we all free to leave our estate to anyone we want, under Victorian law the courts can intervene on certain grounds. Wills must make adequate provision for those the will maker is responsible for.

A number of safeguards also exist to ensure that people – especially those with a disability or who rely on others for assistance – can make wills that reflect their true wishes.

In addition to complying with the necessary formalities of a will, the person making the will must be of a sound mind, memory and understanding when the will is made.

Secondly, the will-maker must not be subjected to the undue influence of other people (particularly potential beneficiaries), and thirdly, they must be able to properly approve, and understand the contents of, the will that is made.

If any of these safeguards are absent, the will can be declared invalid on the grounds that it doesn’t reflect the true wishes of the person making it.



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In a recent case before the Supreme Court of Victoria, *Nicholson & Ors v Knaggs & Ors* [2009] VSC 64, the Court dealt with the issues of whether an 84-year-old woman had the required capacity to make her will (with sound mind) and whether or not there was undue influence by her carers, who were her neighbours.

The Court determined that the woman knew what she was doing when making the wills and they were therefore valid. In examining the issue of undue influence and after examining the evidence, the Court held that all the gifts

to the three neighbourly couples, except the one made to the partner of the woman’s main carer, were valid.

The Court heard that the main carer may have exerted influence on the woman’s lawyer to have her husband included in the will. It determined that, because of this possible undue influence, the gift to the husband failed.

A will is an important document that enables you to make valuable decisions about your property upon death. Do not treat will making lightly. If in doubt, contact your lawyer for advice. ●

VCAT UNDERGOING REVIEW

The Victorian Civil and Administrative Tribunal (VCAT) is looking at ways to better provide Victorians with accessible, low-cost and speedy justice.

In March 2008, Victorian Attorney-General Rob Hulls asked VCAT president Justice Kevin Bell to undertake a review of his organisation.

Earlier this year the former Supreme Court of Victoria justice released a consultation paper, *“The role of VCAT in a changing world”*.

The terms of reference focus on whether

VCAT has succeeded in improving access to justice, delivering equitable outcomes, whether it has been cost-effective and if further administrative efficiencies are needed.

VCAT president Justice Kevin Bell was also asked to investigate whether the additional jurisdiction assigned to VCAT since 1998 has been appropriate and if the exercise of concurrent jurisdiction with Victoria’s courts has enhanced the administration of justice.

In 1998, a total of 15 Boards and Tribunals in Victoria were consolidated jurisdictionally into

VCAT to offer a one-stop-shop dealing with a range of civil and administrative disputes.

VCAT is made up of the civil, administrative and human rights divisions and 14 Lists dealing with issues including credit, domestic building works, legal practice matters, land valuation, tax and discrimination.

During 2007-2008 VCAT finalised 86,911 cases and its workload has increased steadily over the past 10 years.

The review report is due to be delivered by 30 November this year. ●

SOLVING INSOLVENCY ISSUES

Many people have found themselves caught on the wrong side of a company’s slide into receivership. Others have been directors of insolvent company and have found themselves at risk of legal action from creditors or shareholders.

If you are concerned about being exposed to insolvency, it could be time to see a lawyer.

The Australian Securities & Investments Commission (ASIC) advises people to seek their own professional advice to find out how the *Corporations Act* and other laws apply to their situation.

“When a company experiences financial distress or becomes insolvent, there are likely to be a wide range of people affected, including directors, creditors, employees, and often, shareholders and investors,” ASIC Commissioner Michael Dwyer said.

Late payment of invoices, dishonoured payments or the issuing of post-dated cheques should trigger alarm bells that a company you are dealing with is in financial trouble.

What can you do about it?

You should first try and raise your concerns with the company. If this fails, other options include reviewing your trading arrangements, seeking legal advice or making a complaint to ASIC.

If you are the director of a company, signs to be aware of include ongoing losses, tight cashflow, unpaid creditors and problems getting finance.

If you receive a s222AOE penalty notice from the Commissioner of Taxation for your company’s unpaid tax, you should immediately seek professional advice, warns ASIC.

Failure to take action within 14 days could see the commissioner take recovery action against you personally for the unpaid tax amount.



Signs that may indicate your employer is in financial trouble include late payment of your wages or unpaid wages and unpaid superannuation to your nominated superannuation fund.

Seek legal advice if raising your concerns with your employer fails to resolve the issue.

Employees can get further information from the Workplace Infoline 1300 363 264 or

via the Australian Workplace website, and can lodge a complaint with the ATO regarding unpaid superannuation.

Other options include contacting your local union member and making a complaint with ASIC. ●

For more information see www.asic.gov.au/insolvency, www.workplace.gov.au or www.ato.gov.au/individuals.

FAIR WORK ACT OVERHAULS UNFAIR DISMISSAL LAWS



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Small business owners planning any hiring or firing, changes to staff hours or rates of pay will need to tread carefully following major changes to workplace laws which came into effect in July.

The federal government has introduced new industrial relations legislation titled the *Fair Work Act 2009*, which has replaced the 1996 WorkChoices legislation.

One of the major immediate changes under the new legislation is to the unfair dismissal laws. Lawyers expect to see a surge in the number of unfair dismissal claims under the new Act.

Under WorkChoices, small businesses – those with 100 employees or fewer – were exempt from unfair dismissal claims.

Under the new legislation, a small business is now defined as fewer than 15 full-time employees until January 2011. This enables employees who have worked for a small company for more than 12 months to make an unfair dismissal claim.

Those who have worked for a bigger company for more than six months can also make a claim. Despite the fact that the new

unfair dismissal laws apply to all federal award covered employees, workers who earn more than \$108,300 a year or are not covered by an award won't be able to make unfair dismissal claims.

Other employees who cannot lodge an unfair dismissal claim include those:

- employed for a specified task or period of time, on a casual basis or seasonal workers;
- subject to a training agreement with limited duration;
- dismissed as a "genuine redundancy"; and
- working in a small business (fewer than 15 employees) dismissed in accordance with the Small Business Fair Dismissal Code of Practice.

The distinction between small and large businesses will be in place until January 2011. After this time, the 15-employee headcount will include all employees – permanent and casual.

To assist small businesses to navigate the new rules, the government has published the Small Business Fair Dismissal Code which sets out how a business owner can legally dismiss a staff member.

An independent statutory body, Fair Work Australia (FWA), replaces the Australian Industrial Relations Commission.

It has the power to facilitate collective bargaining, approve enterprise agreements and adjust minimum wage and award conditions. It will also deal with unfair dismissal claims, industrial action and settling workplace disputes.

Claims must be lodged within 14 days of the unfair dismissal notification. This can be extended under "exceptional circumstances" at FWA's discretion.

FWA also has the discretion to allow either party to be legally represented at a conciliation

conference or a hearing.

The Council of Small Business of Australia (COSBOA) has warned most of Australia's small businesses remain unaware of their rights and responsibilities and are not ready for the changes.

"Unfortunately, most small businesses are not aware of the significant impact this legislation will have on staffing matters," COSBOA chief executive Jaye Radisich said.

"Unlike large businesses, small firms do not have in-house lawyers or human resources departments to help them navigate major workplace relations changes. Nor can they afford to hire expensive consultants to prepare their internal business systems for change."

Ms Radisich urged small business owners who fall under the federal workplace relations system to seek advice before taking any action on hiring or firing staff.

Other changes under the new Act include individual, non-union bargaining shifting to "enterprise level collective bargaining underpinned by simple, good faith, bargaining obligations" and unions having right of entry even if they are not a party to an applicable enterprise agreement.

Australian workplace agreements (AWAs) and individual transitional employment agreements – the temporary replacements for the abolished AWAs – can no longer be made but will continue to operate until their normal expiry date.

From January 2010 new national employment standards and modernised awards will replace the Australian Fair Pay and Conditions Standard. ●

For more information, see www.workplace.com.au.

For more information, please contact:

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