

CLIENT NEWS

A FREE QUARTERLY LEGAL UPDATE 1ST QUARTER 2009

SURVIVING A CREDIT CRISIS

A new year often brings with it a renewed resolve to exercise more self control and discipline in various areas of life.

Unfortunately, for some of us, the festivities over Christmas and the holiday period put us severely behind the eight ball. We have eaten too much, partied too hard and spent far too much money enjoying the festive season and now we need to take stock.

The current tough economic times may have persuaded us to take it a little easier, but few of us will have ushered in the New Year without an increase in spending and a larger credit card debt. But don't despair, help is at hand.

If you owe money, it is important to make a realistic plan to repay it. Prepare a budget and commit to regular payments until the amount can be repaid in full. If you are experiencing difficulty in paying back money owed, it is important to act quickly. Do not ignore repayments or overdue notices. If possible, contact your credit provider and negotiate directly with them to make more suitable arrangements to repay the amount owed.

You can negotiate with your lender to reduce your regular loan repayments for a period of time to make the amount more manageable to repay.

Alternatively, if circumstances have left you unable to make any repayments, you may be able to wholly suspend your loan repayments for a period of time. For example, if you have become ill and unable to work or have lost your job, you may be able to vary your loan on grounds of hardship.

The *Victorian Consumer Credit Code* (the Code) covers most private purpose (non-business) loans and outlines the requirements for hardship variations and the procedure to be followed. The Code also provides guidelines for the credit industry and offers protection for consumers dealing with credit providers.

If you are unsuccessful in negotiating directly with your lender, you can make an application to the Victorian Civil and Administrative Tribunal (VCAT) to have the terms of your loan agreement varied.

If you are unsure about dealing directly with your credit provider or need to make an application to VCAT, contact your lawyer. Your lawyer will be able to negotiate on your behalf and look over any variation documentation prepared by your lender.



Similarly, if you feel you are being treated unfairly or unduly harassed or pressured by a lender, there are various remedies available to you.

Complaint processes available through industry external dispute resolution schemes such as the Banking and Financial Services Ombudsman, Consumer Affairs Victoria and, at the national level, the Australian Securities and Investment Commission (ASIC) and the Australian Competition and Consumer Commission all offer protection and assistance for consumers.

Other agencies such as the Consumer Action Law Centre provide valuable information on a range of consumer credit issues including comprehensive factsheets on their website www.consumeraction.org.au.

Resolving to take control of your financial obligations will pay off in the long run. ●

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FAIRNESS AMID ECONOMIC FEAR

In the current economic climate where fear about job security looms, the new *Fair Work Bill 2008* offers some comfort to employed Australians.

On 25 November 2008, Minister for Employment and Workplace Relations Julia Gillard introduced the federal government's substantive workplace relations legislation.

The *Fair Work Bill* (the Bill) replaces the *Workplace Relations Act 1996* (Cth), finally laying to rest the unpopular and complex WorkChoice laws.

In its explanatory memorandum, the Minister claims "the Bill creates a national workplace relations system that is fair to working people, flexible for business and promotes productivity and economic growth".

One of the key elements of the system is a set of 10 legislated National Employment Standards (NES) for all employees.

The NES were created after extensive consultation resulting in 129 submissions received from a wide range of stakeholders from employer and employee representatives, state

governments, business and community groups, and individuals. The NES cover matters such as maximum weekly hours of work, a right to request flexible working arrangements, parental leave and related entitlements, procedures for termination and redundancy pay as well as the provision of a Fair Work Information Statement for all employees.

The Bill also creates a proposed "one stop shop" for advice and support on all workplace relations issues and the enforcement of legal entitlements. The role of this independent statutory body, Fair Work Australia (FWA), includes facilitating collective bargaining, approving enterprise agreements and dealing with claims of unfair dismissal, workplace disputes and industrial action. Within FWA is the office of the Fair Work Ombudsman whose primary role will be to promote "harmonious and cooperative workplace relations and compliance with the Bill through education, assistance and advice".

The Fair Work Ombudsman will also have powers to conduct investigations and, where



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appropriate, issue compliance notices and initiate court proceedings.

The Bill has been referred to the Senate *Education, Employment and Workplace Relations Committee* and a report is expected at the end of February this year.

Representing a major piece of legislative reform by the Labor federal government, the journey of the *Fair Work Bill 2008* will be watched with great interest. Remember, if you have a workplace issue, your lawyer will be able to help you. ●

JUSTICE REFORM ENTERS NEXT PHASE

Dispute resolution, reducing the cost of justice and the better use and sharing of court resources have been emphasised in the Victorian government's *Justice Statement 2*.

Justice Statement 2 contains 35 projects under five separate headings – Modernising justice, protecting rights, addressing disadvantage, reducing the cost of justice and creating an engaged and unified court system – which are aimed at updating and modernising Victoria's justice system.

The Statement, which was released late last year, continues the government's ongoing justice reform program which began with the release of *Justice Statement 1* in May 2004.

Projects include simplifying and modernising a number of outdated laws including property law and fences legislation, an overhaul of Victoria's equal opportunity laws to address systemic discrimination and a boost to services for victims of crime.

Victorian Deputy Premier and Attorney-

General Rob Hulls said a series of initiatives would focus on expanding alternative dispute resolution (ADR), which he has called appropriate dispute resolution.

"Mediation in the community will be encouraged and, if people do need to go to court, the courts will continue to seek out better ways to identify the core issues in dispute and resolve them using ADR," Mr Hulls said.

The Victorian government intends to further modernise the court system by introducing a single Act for the Supreme, County and Magistrates' Courts.

"Courts are more efficient when resources are shared. A single Act will help our courts work together across jurisdictions and help them manage change and improve performance," Mr Hulls said.

Youth justice and the development of a state-wide model for problem-solving courts to address the causes of crime and reduce reoffending are other aims of *Justice Statement 2*.

The government will examine the development of youth peer justice panels as a diversionary option for low-level youth offending.

The problem-solving courts will build on the success of the Drug Court, Family Violence Courts, the Neighbourhood Justice Centre and Koori Courts.

"We will focus in particular on developing new approaches to addressing the problems of people whose offending is associated with mental illness," Mr Hulls said.

"We need to be looking at new approaches to address mental illness in the criminal justice system."

Two reviews will inform a major overhaul of Victoria's equal opportunity laws and reinvigorate the role of the Victorian Equal Opportunity and Human Rights Commission.

For more information about *Justice Statement 2*, see www.justice.vic.gov.au/justicestatement. ●

LIV RECOGNISES LAWYER'S CONTRIBUTIONS

Lawyers from around Victoria were honoured at the LIV Legal Awards late last year.

Shepparton lawyer and former LIV president David Faram was made an honorary life member for his contribution to the LIV which included his involvement in the Family Law and Criminal Law Sections, with the Goulburn Valley Law Association and with the LIV Council from 1999 to 2007.

Mr Faram said lawyers had many opportunities to make a contribution to the community and they did so in many ways – whether it be through local sporting clubs, manning legal services, staffing court duty solicitor schemes or providing pro bono services to the community.

Melbourne University Professor Tim McCormack received the Paul Baker Award for Administrative Law and Human Rights.

Prof McCormack is the Foundation Australian Red Cross Professor of International Humanitarian Law at the Melbourne Law School. He was a national vice-president of Australian Red Cross from 1999-2002 and chaired the Australian Red Cross National Advisory Committee on International Humanitarian Law from 1994-2002.

Other awards included the Rogers Legal Writing Award, which went to TressCox Lawyers partner Jason Newman, for an outstanding contribution to the monthly *LIV* and the winners of the President's Awards.

The President's Awards categories are Access to Justice Award, Accredited Specialists Award, Community Lawyers' Award, General Award, Government Lawyers' Award, Legal Ethics Award, New Lawyers' Award, Pro Bono Award, Regional Lawyers' Award and from 2008, the Mentor Award.

LIV 2008 president Tony Burke said the President's Awards gave the LIV the opportunity to honour lawyers who have demonstrated professional excellence in legal practice and lawyers who have promoted or advanced the legal profession.

Other practitioners received certificates of service or were honoured for 50 years in legal practice.

Nominations for the 2009 LIV Legal Awards will open towards the middle of this year with a closing date in mid-July.

For more information on last year's LIV Legal Awards, see www.liv.asn.au/legalawards.



Honorary Life Member award recipient David Faram with LIV past-president Tony Burke

AWARDS RECIPIENTS

Honorary Life Member

Faram Ritchie Davies partner David Faram

Access to Justice

Access Law principal solicitor Gabriel Kuek

Community Lawyers

Loddon Campaspe Community Legal Centre principal solicitor Peter Noble

Pro Bono

Baker & McKenzie pro bono partner Kenneth Gray

Accredited Specialists

McKean Park consultant lawyer David Brett

Government Lawyers

Victorian Government Solicitor's Office Native Title managing principal solicitor Mary Scalzo

Regional Lawyers

Martin Irwin & Richards consultant John Irwin

Legal Ethics

Monash University associate professor in law Adrian Evans

General

Goddard Elliott partner Andrew Goddard

Mentor

Maddens Lawyers partner Grenville Skewes

New Lawyers

Western Suburbs Legal Service solicitor Marika Dias

Paul Baker Award

Melbourne University Law School Professor Tim McCormack

Rogers Legal Writing Award

TressCox Lawyers partner Jason Newman

Certificates of Service

Retired Ballarat lawyer Peter Jacobs; McNamara Lawyers principal Michael McNamara; Martin Irwin & Richards consultant Keith Richards; Stella Stuthridge & Associates principal Stella Stuthridge

50 Years in Legal Practice

William Blaire, Donald Cameron, Geoffrey Chambers, Marjory Coates, Imants Dizgalvis, Richard Hyett, Jane Jordan, Milan Kantor, Michael Kelly, Thomas Ryan and Bruce Wainwright

GOVERNMENT TARGETS FAMILY VIOLENCE

As the work year begins and families look back on the holiday season, not all of them had a happy relaxing time. Many families experience considerable stress as they deal with mounting credit card debt after Christmas, long hot summer school holidays and doomed New Year's resolutions.

Unfortunately, some of these pressures lead to family violence, particularly towards women and children.

The number of women and children who suffer significant risk, and even death, at the hands of other family members, remains a scourge on our society.

In Victoria during 2005-06, 43 per cent of homicides were related to family violence. While homicide rates in Australia have dropped by one third in the past seven years, the rate of family violence homicides has remained the same.

As Victorian Attorney-General Rob Hulls states, "Research indicates that these homicides are the escalation of a predictable pattern of behaviour and should be viewed as a connected group, not as isolated events".

Clearly, more targeted crime prevention measures in this area need to be considered.

The inaugural White Ribbon Day, held in November 2008, put the spotlight on family violence and the need to speak out about it.

Mr Hulls said at its launch, "It is important that as a community, and as a government, we condemn family violence in our words and in our actions, in our policies and in the way we approach and support family violence victims and perpetrators".



To address this issue, the Victorian government has announced an independent review into family violence deaths.

The review, which will be led by the State Coroner's Office, will investigate such deaths and gather information for future intervention and prevention strategies.

The new Coroner's Prevention Unit will conduct the review as part of its mandate to improve the health and safety of Victorians.

Also, new legislation aims to provide improvements in the way family violence is dealt with by the police and courts.

The *Family Violence Protection Act 2008* (Vic) came into operation on 8 December 2008.

Under this Act, police can intervene more quickly to deal with violence and threats within families by issuing family violence safety notices.

Similarly, new laws protecting vulnerable victims by making it easier for them to stay in the family home and requiring the perpetrator to leave, all combine to seek to minimise the effects and occurrence of family violence. ●

For more information, please contact:

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This newsletter is not intended to be the definitive analysis of legislation. Professional advice should be taken before any course of action is pursued.