

Firm News

CR Workplace

This month the firm is launching a new website section called CR Workplace. Go to www.coulterroache.com.au. This section provides a full range of **workplace policies that all businesses should have in place to protect themselves and to clearly identify issues for employees.** Policies can be purchased individually for \$25 or as a full set (44 policies) for \$500.

Obviously every business is different therefore policies should be reviewed and modified to suit your particular business environment. In addition all businesses should have job descriptions for each employee as well as employment contracts, AWAs or Certified Agreements.

CR Workplace will also provide a range of articles including an overview of the new Federal WorkChoices Act. As well as information on our monthly Workplace Relations seminars. If you have Workplace Relations issues you wish to discuss or have an audit conducted on your business to ensure you are compliant please call Martin Reid on 5273 5236.

Workplace Relations Seminars

Our first monthly Workplace Relations breakfast seminar is on Thursday 23 February. Our new Workplace Relations lawyer Martin Reid will speak on "*WorkChoices - the new Federal Workplace Reforms*". This topic is likely to be very popular and one with which all business owners, managers, CEO's, Company Secretaries, Financial Controllers and HR Managers should be fully conversant. Call 5273 5236 now to reserve a place. Cost: \$20 p/p.

Building & Construction

On 8 and 15 February we hosted very successful lunch seminars with our Building & Construction expert Graham Morrow speaking on "Building Disputes - Getting paid quicker and easier!" to industry guests. If you are interested in future seminars on Building & Construction issues call 5273 5276.



Kevin Roache
Chairman of Partners

Workplace Laws

The WorkChoices Bill 2005 has been introduced into the Federal Parliament. It introduces significant change into the Australian workplace relations system with its impact on the employment relationship likely to be felt at workplace levels. The main features are:

- a national industrial relations system to cover 85% of employees;
- establishment of the Australian Fair Pay and Conditions Standard of 5 minimum conditions for employees:
 - Maximum ordinary hours per week (38) averaged over 12 months;
 - Annual leave of 4 weeks per year, plus an additional weeks leave for shift workers - 2 weeks may be cashed out at the employee's choice;
 - Parental leave of 52 weeks (unpaid); and
 - Personal leave of 10 days a year of which all 10 days can be used for carer's leave, 2 additional days for unpaid carer's leave and 2 days compassionate leave per occasion.
- determination of wages by a new body, the Australian Fair Pay Commission;
- a simplified process of making workplace agreements that excludes the operation of awards and removes the no disadvantage test which applied under the old system;
- a decreasing relevance of the Award system;
- employers with up to 100 employees are to be exempt from unfair dismissal laws. Employees will continue to have access to Federal unlawful dismissal remedies for discrimination or other prohibited grounds. They will also continue to have access to State and Federal anti-discrimination laws;
- changes to dispute resolution processes and increased options for employers in relation to dealing with industrial actions.

For further information please call Martin Reid, Workplace Relations Lawyer on 5273 5236.



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Disclaimer

The information contained in this newsletter is for general information only and should not be construed as legal advice. Formal legal advice relating to the particular circumstances should be sought in all situations.

Tax Update

Bush Fire Arrangement

Taxpayers in bush fire affected areas can call the ATO on 13 11 42 during business hours if they have difficulties meeting tax obligations. The ATO may:

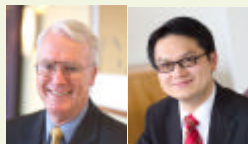
- fast track refunds for people impacted by the fires
- allow extra time to pay debts - without interest charges
- allow more time to meet activity statement and other lodgement obligations
- help reconstruct tax records where documents have been destroyed
- offer personal visits from field officers to help reconcile lost records.

Super Fund Contribution Splitting

Under the new legislation that came into effect from November 2005, a super fund member can request that contributions made in the previous financial year be split with their spouse following the end of each financial year.

Their existing self-managed super fund deed may need to be updated to ensure that it contains the specific provisions required to take advantage of this new option.

Please call
Kevin
Roache on
5273 5221
or Jasper
Kwok on
5273 5255



Doctors Beware!

In the case of **Joseph v Health Insurance Commission (2005) FCA 1040**, disciplinary action was taken against a medical practitioner who was found to have engaged in inappropriate practices including:

- failing to take adequate patient histories;
- failing to make adequate examinations of patients;
- failing to make adequate clinical input into services;
- lacking knowledge of the proper management of a range of conditions;
- engaging in a prescription of inappropriate medication;
- rendering home visits that were not medically necessary;

- keeping medical records that were deficient in essential clinical information.

The Health insurance Regulations 1999 set out standards to be met by doctors records which must be **both** adequate and contemporaneous.

The Court stated the **standard** required for record keeping in a medical practice to be "**adequate**" is:

- the record **must** clearly identify the name of the patient; **and**
- the records **must** contain a separate entry for each attendance by the patient for a service and the date on which the service was rendered or initiated; **and**
- each entry **should** provide clinical information adequate to explain the type of service rendered or initiated; **and**
- each entry **should** be sufficiently comprehensible so that another practitioner, relying on the record, can effectively undertake the patient's ongoing care.

The Court stated the **standard** for record keeping to be "**contemporaneous**" is that the record must be completed:

- at the time the practitioner rendered or initiated the service; **or**
- as soon as practicable after the service was rendered or initiated by the practitioner.

The record keeping requirements apply equally to home visits and to surgery consultations. The Court found the general practitioner had failed to maintain proper standards in that: he kept no records of many home visits; his records did not help him recall particular consultations and were inadequate for the continuing management of some patients; the records were not sufficiently clear and detailed to allow another practitioner safely and effectively to undertake patient care; even where he kept progress notes of home visits they were generally deficient in essential clinical information such as recording any physical examination, any plan of management and noting the type of medication prescribed, its dosage or frequency.

As a consequence the practitioner was disqualified for three years and required to repay Medicare benefits of \$267,899.47

For further information please call Bernie Cummins, Litigation Partner on 5273 5221.



Mailing List

If you do not wish to receive our online newsletters, please advise us on info@coulterroache.com.au. Thanks.

Defining a Franchise

You may wish to franchise or licence your business or purchase a franchise or business opportunity.

One issue that is often considered is whether the relationship is that of a franchise or not. Simply calling an arrangement a distribution or licence agreement or stating that the agreement is a commercial arrangement and not a franchise will be of no effect. The ACCC and courts look at the substance not the form of the agreement in determining whether it is a franchise and therefore governed by the Franchising Code of Conduct.

Specifically they consider the level of control either in the marketing plan or system and business activities. The more control that the "franchisor" has the more likely it is that it is in fact a franchise. A similar distinction is between that of an employer and independent contractor.

The Franchise Agreement generally has:

- A fixed term with further terms
- Minimum requirements ie gross receipts
- An initial fee, royalties and marketing fee
- An operations manual
- Assignment provisions

If the relationship is a franchise, the franchisor must provide a disclosure document providing details about the franchisor's business. The franchisor must provide a disclosure document to the franchisee and the franchisor is not entitled to receive any non-refundable money until 14 days after providing the disclosure document. The franchisee also has a 7 day cooling off period after signing the agreement.

For further information call Tom White, Commercial Partner on 5273 5271.



Further information

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