

**Geelong Office**

Bendigo Bank Building  
Level 1, 235 Rynie Street  
Geelong 3220  
Tel: 5273 5273  
Fax: 5273 5274  
PO Box 700 Geelong  
DX 22032  
Email: [info@coulterroache.com.au](mailto:info@coulterroache.com.au)

**Anglesea Office**

(open Tuesdays and Fridays)  
1/Shop 20  
Anglesea Village  
87-89 Great Ocean Rd  
Anglesea VIC 3230  
Tel 52631431  
Fax 5263 1088  
Email: [info@coulterroache.com.au](mailto:info@coulterroache.com.au)

**Bannockburn Office**

(open Tuesdays)  
Bannockburn Business Centre  
19 High Street  
Bannockburn 3331  
Tel 5281 1188  
Fax 5281 1188  
Email: [info@coulterroache.com.au](mailto:info@coulterroache.com.au)

**Barwon Heads Office**

(open Thursdays)  
Shop 4/50 Hitchcock Ave  
Barwon Heads 32  
Tel 5254 1877  
Fax 5273 5274  
Email: [info@coulterroache.com.au](mailto:info@coulterroache.com.au)

**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.

**Firm News****Another New Lawyer!**

We are very pleased to welcome Simon French to the firm as a Senior Lawyer in our Commercial Group. He previously worked at Blake Dawson Waldron in Melbourne advising on major projects, energy law, construction law, and assisting Government Departments with regulatory and statutory interpretation issues. Prior to that Simon worked in London with Bates Wells and Braithwaite where he acted for various Government, charitable and commercial entities, designing and administering regulatory protocols. Simon plans to develop a practice in planning and environmental law, regulatory law and major projects.



Simon can be contacted on 5273 5246.

**2006 Articled Clerks**

Cherie Ford has worked with the firm for many years as a paralegal and has now completed her Law Commerce degree at Deakin University. She joins Vaughan Lamb in the Property Group to provide advice and assistance in commercial and residential purchases and sales, auctions, subdivisions, off the plan, and associated issues.



Bill Doody joins us from Melbourne after completing his Law Commerce degree at Monash University and is currently doing a rotation in our Commercial and Business Succession area assisting on leasing, sales and acquisitions, franchising, business structuring and contracts matters.



Edition #3, 2006

**Planning & Environment**

The recent case of *Thiess Services Pty Ltd v Mirvac Queensland Pty Ltd* [2005] QSC 364 (9 December 2005) has highlighted how important it is that contracts for the remediation of contaminated sites clearly set out the extent to which the contractor is expected to bear the risk that contamination may be more extensive than was suspected at the time of contracting.

In that case the contractor had entered into a lump sum contract based upon the *Australian Standard Form of Formal Instrument of Agreement 2003*, pursuant to which it was to remediate a site in preparation for a large residential and commercial development. Once the extent of the contamination become more clearly known the contractor sought to avoid the contract, arguing that it was no longer economic for it to do so. The principal maintained that the contractor's obligation was absolute so that whether or not it was economic was irrelevant.

Ultimately the Queensland Supreme Court found in favour of the principal but the decision was by no means a formality. These sorts of disputes can be avoided by ensuring that details of the scope of responsibility and the allocation of risks are exhaustively detailed in the contractual documents

For further information call  
Simon French, Senior  
Commercial Lawyer, on  
5273 5246.



Please note that our Barwon Heads office operated by Partner Tom White, is now open every Thursday from 9am—5.00pm or by appointment, instead of every Tuesday. Call 5254 1877.

## Workplace Relations Seminars

Our next monthly seminar is to be held on 18 May at 7.15 - 9.00am. Speaker Martin Reid, Employment Lawyer, will speak on "How to Avoid Unfair Dismissal Claims". Bookings are essential so call Jacinta on

## Background Checks on New Employees

A new system has been introduced to background check some people who work or volunteer with children. The Working with Children (WWC) Check is intended to protect children from sexual or physical harm. The checks will relate to a person's criminal history for serious sexual, violence or drug offences and findings from professional disciplinary bodies. If you undertake child-related work you may need a WWC Check. It does not matter that you may already be employed. If you fail the WWC Check you will not be eligible to work in child-related work unless one of the exemptions applies. Employers, agencies and volunteer organisations that employ or place people in child-related work are responsible for ensuring that anybody who is required to pass a WWC Check does so. WWC Checks are being phased in over the next five years, commencing in April 2006. Precisely when the obligation will apply will depend upon the category of child-related work that a person is engaged in. It is important that everybody who may be affected by these requirements checks when the obligations will be imposed upon them.

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



## Tax Update

### Redefining "Residential Premises"

The Full Federal Court decision in *Marana Holdings Pty Ltd v FC of T* has created some potential difficulties in distinguishing supplies of premises that are residential premises and therefore input taxed, and supplies that are taxable. To rectify these problems, the Commonwealth Government proposes to amend the definition of "residential premises" in the GST legislation in order to ensure that a sale of residential premises other than "new residential premises" comprising a strata-titled unit in commercial residential premises, such as a hotel or motel, will be input taxed.

The amended definition seeks to:

- Confirm that the period of occupation or intended occupation of land or a building is not relevant in determining whether premises are considered to be residential premises;
- Qualifying "residential accommodation" to ensure that it does not solely refer to long-term accommodation and therefore may apply regardless of the term of occupation.

The proposed amendments also include a consequential change to the definition of "new residential premises" to ensure that premises will not be precluded from being new residential premises merely because they have previously been sold as commercial residential premises.

### Superannuation Law - Death Benefit Nomination

A member of a Self-Managed Super Fund may make a binding nomination as to who will receive the amount payable under the Fund when the member dies. Without a binding nomination, the other trustees (or directors of the company trustee) can distribute the amount in any way that is allowed under the

fund's deed and superannuation law and not necessarily in accord with the deceased member's wish. Potentially the surviving trustees may be able to distribute the deceased member's entitlements to themselves!

If you are a member of the SMSF and have never created such binding Death Benefit Nomination, we recommend you do so now. If you have made a binding nomination before, you should replace or confirm those nominations every 3 years.

If you have made a non-binding nomination before, please note that the trustees (or directors of the company trustee) still have discretion as to how the death benefit is to be paid and are not bound to follow the deceased member's wishes.

For further information call Jasper Kwok or Kevin Roache on 5273 5273.



## Business Forum

The firm is again hosting a Business Forum at the Four Points Sheraton Hotel on **Tuesday 9 May from 8.30am - 4.00pm**. Topics include: directors duties, succession planning, Intellectual Property, Workplace Relations, Tax Minimisation, Business Development and Growth. A hot lunch and guest speaker are also included. Co-sponsored by SED Consulting, Wheeler Investment Advisors, Bendigo Bank and COGG. Cost \$125. Places are limited so call 5273 5277 to register.

## For further information

Kevin Roache , Partner, 5273 5211

Vaughan Lamb , Partner, 5273 5251

Bernie Cummins, Partner, 5273 5221

Peter Flanagan , Partner, 5273 5231

Tom White , Partner, 5273 5271

Michael Meagher Consultant 52735241