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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.

Firm News

Pregnancies hit Coulter Roache!

Yes it's a plague! Three of our male lawyers have recently become fathers, two Law Clerks are pregnant and Susan Mullavey, Head of our Family Law Group goes on maternity leave in June. We wish them all well with their busy years ahead.

As such Rebecca Leonard will move from our Litigation Group to Family Law to assist the Group while Susan Mullavey is on maternity leave.

Mortgage Group

Amanda Lee joined our Mortgage Group last month to replace Belinda Yockins whilst (you guessed it) on maternity leave. Amanda has many years experience in residential mortgage work and is developing an expertise in commercial mortgages under the expert supervision of senior Mortgage Clerk Margaret Hotchin.

Wills & Business Succession Planning

Tamie Adcock joined the firm as a Wills & Probate Clerk from a small law firm in Bendigo. Tamie will assist Vaughan Lamb and April Murphy in this area.

Workplace Relations Seminar

This month's seminar takes place on Thursday 18 May at 7.30am on "How to Avoid Unfair Dismissal Claims". Business owners and HR Managers or relevant personnel are highly recommended to attend this seminar. Cost: \$20 for breakfast and donation to United Way (over \$1,000 raised so far!). To register call Jacinta on 5273 5236.

Kathryn Egan, General Manager

Edition #4, 2006

Shareholder Disputes

The best preventative medicine for shareholder disputes is to start off the business from day one with a Shareholders Agreement.

These will be relevant irrespective of whether there are two or more families or business partners involved in the business or one or more generations of the same family.

A number of cases have come before the Courts in recent years where minority shareholders have made oppressive conduct claims under the Corporations Law.

Different principles will apply to shareholders under a company's constitution versus unit holders under a Trust Deed and without the benefit of a Shareholders/Unit Holders Agreement differing outcomes may apply to the detriment of the parties if they are relying solely on general legal principles to resolve disputes.

Parties also need to be aware of the fiduciary obligations that they hold in respect of each other.

A recent case of two brothers-in-law in an import business illustrates this.

A & B were the Directors of an importing Company which had a substantial turnover. B was a minority shareholder and passive partner. After an acrimonious dispute it was negotiated that A buy B out. A *on the side* was negotiating with C to buy the Company but did not *let on* to B. The price that A was to pay B for his shares, needless to say was far less than A was going to sell the total shares in the Company to C. A then bought B's shares and immediately after sold at a much higher figure to C, having not let on to B the negotiations that were taking place. The matter went to Court and the Court found that A had owed a fiduciary obligation to B, which meant that B should have been

advised of the negotiations A was conducting with C and A was required to pay compensation to B, together with substantial legal costs.

Any Shareholders Agreement should make provision for valuation of the business. There are a vast array of different mechanisms that are being used over time to value businesses, but in all but a minority of cases, it is preferable that the valuation not be given a strict formula which may become out of date or inappropriate and *rather* the matter be left for valuation by an independent Accountant.

For further information please call Peter Flanagan, Commercial Partner and Accredited Business Law Specialist.



Franchisors: Liable for faulty products?

Franchisors should be made aware that although they are not the product suppliers or manufacturers they may still be held liable for faulty products sold to the end consumers through their franchise networks. This product liability issue is of greater concern to those franchisors who supply goods to their Franchisees or require them to acquire goods from designated suppliers.

The Trade Practices Act provides that it is an offence if a company supplies goods to a consumer if such goods are subject to a notice that declaring the goods to be unsafe or banning the goods from sale or that such goods fail to meet a prescribed mandatory product standard. Such prescribed product standards may be about the product's safety, performance, composition, contents, methods or manufacture, design, construction, information, finish or packaging rules and the franchisors could be held liable if the goods supplied to the franchisees do not comply with any of these prescribed standards. Particular care should be taken in relation to marketing and promotions activities as the franchisors could be held liable for

any false or misleading statements concerning the products or services. Such liabilities shall not be underestimated as potential civil damages claims or fine can be hefty and in some circumstances company directors of the franchisors may face criminal prosecution.

To manage their legal risks, the franchisors can put in place a supply chain/trade practices compliance program and arrange for periodic assessment of their products in accordance with the prescribed standards. The franchisors may also distribute some of these legal risks to the suppliers and/or manufacturers by including the following clauses into supplier agreements to provide that the suppliers and/or manufacturers:

1. Warrant that the goods are safe and comply with all prescribed standards;
2. Indemnify the franchisors for their losses should the goods be found to be unsafe, prohibited or non-compliant;
3. Undertake to recall the products at their costs should the goods be found to be unsafe, prohibited or non-compliant;
4. Put in a place a compliance program and arrange for periodic independent assessments on their products in accordance with the prescribed standards.

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



Telemarketing

The Government has announced that it proposes setting up a Do Not Call Register for telemarketers starting from 2007. Telemarketers representing Australian companies will face penalties for calling people who are listed on the National Do Not Call Register.

The proposal is to commence the register from early 2007. The Register is proposed to be backed up by fines warnings and financial penalties for telemarketers who call those listed.

Minimum standards will apply for telemarketers including such items as when calls can be made what information must be supplied and termination of calls. Exemptions apply for example for charities and businesses with pre-existing relationships with those being called.

It is contemplated that the cost of the Register will be borne by Telemarketers who will have to pay for access and registration will be free for individuals and small businesses. The Register may have a web based component for registering. The expectation is that this is going to be a very popular service.

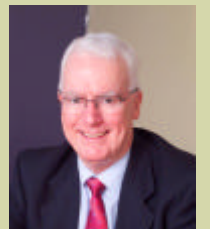
For further information call Julien Uyttenhove, Senior Lawyer, Intellectual Property & IT on 5273 5246.



Income Tax: Franking Credit Benefits

The Commonwealth Government is seeking to amend the income tax legislation to allow beneficiaries of testamentary trusts to benefit from greater access to franking credits on dividends received by the trust. Under the current franking credit holding period rules, franking credits and associated tax offsets are generally not available to income beneficiaries as they do not have beneficial ownership of the shares held by the testamentary trusts and therefore do not bear the risks of loss or opportunities for gain such shares.

For further information call Kevin Roache, Estate & Succession Planning Partner, on 5273 5211.



For further information

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Vaughan Lamb - Partner. Ph 5273 5251

Bernie Cummins - Partner. Ph 5273 5221

Peter Flanagan - Partner. Ph 5273 5231

Tom White - Partner. Ph 5273 5271

Michael Meagher - Consultant. Ph 52735241