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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

### Would you trust these people with your legal work!

**Partners Peter Flanagan, Vaughan Lamb, Tom White and Kevin Roache.**

On 19 May the firm celebrated its Staff Mid Year function at Truffle Duck. With a "Celebrity" fancy dress theme, the Partners appeared as Elvis with appearances also from Dusty Springfield, Steve Irwin, Gilligan, The Mummy, Cinderella, Cleopatra, Kath & Kim, Nicole Kidman, Jessica Simpson, Britney Spears, McLeods Daughters, and the Tasmanian Miners! To name a few. A fun time was had by all.

## New Litigation Lawyer

We are pleased to welcome Simone Welsh to our Commercial Litigation Team. Having worked locally for two years Simone has also worked for the Telecommunications Industry Ombudsman in Melbourne. With experience in Magistrates, County and Supreme Courts and tribunals including VCAT. Simone will handle contract and partnership disputes, debt recovery, estate disputes, leasing, insolvency, property, franchising, civil and building disputes.



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## Unfair Termination

As you may be aware, the recently enacted WorkChoices amendments have created the opportunity for employers with less than 100 employees to avoid unfair termination claims.

Although this is one of the simplest changes to the *Workplace Relations Act 1996*, it will have a profound affect on the rights and obligations of both employees and employers.

For employers, it is important to be familiar with the new laws and its operation to determine whether or not your business falls into the category that is now exempted from the unfair termination regime.

Establishing a business's employee numbers is not as straight forward as a simple head count. The new Act specifies that number is to be worked out in accordance with the following requirements:

- The number of employees is to be assessed at the time the employee is given notice of the termination. Not at the time at which the termination takes effect.
- The dismissed employee is included in the number of employees.
- Casual employees are excluded from the calculation unless they have been employed for more than 12 months on a regular and systematic basis.

Importantly, employers are not able to split their business to take advantage of the new laws. The new Act specifically refers to the grouping provision of the *Corporations Act 2001* that deems related Companies to be a single entity where they have what is referred to as a "holding" or "subsidiary" relationship.

*For further information about the new WorkChoices Bill or other Workplace Relations issues call our full time expert Martin Reid, on 5273 5236.*



**Privacy Law** - if you wish to be removed from this mailing list please email advice to info@coulterroache.com.au Thank you.

## Planning & Environment

Last month the Minister for planning Rod Hulls introduced the *Planning and Environment (Growth Areas Authority) Bill*. This Bill builds on the work previously done by Melbourne 2030 which set up the policy framework behind Melbourne's development over the first 30 years of this century.

The Bill is intended to facilitate the implementation of that plan. It creates a new statutory authority which will be known as the Growth Areas Authority and will be established under Part 3 AAB of the *Planning and Environment Act 1987*.

The authority will operate in areas of land declared in the Government Gazette by the Minister for Planning to be 'growth areas' for the purposes of the legislation. At least initially, these growth areas will be Casey, Cardinia, Hume, Melton, Whittlesea and Wyndian.

The authority has been established to improve the planning, use development and protection of land. These specific functions of the authority relate to coordination of development with the timely provision infrastructure, services and facilities in growth areas.

It is intended that the authority will work closely with growth area councils and developers in those areas so as to be affective. Growth area councils, will however retain their powers. In his second reading speech the Minister made it clear that there may be occasions on which it is appropriate for the authority to take over the task of planning from a growth area council.

For instance, where it is necessary that a common approach be taken across all growth areas then it is envisaged that the authority may take over the task from each of the growth area councils.

The initial priority work for the authority during its first period of operation will be to work with councils on an assessment of structure plans in growth areas, ensuring that these plans are put in place and that they deal with community size, ensuring that communities are planned to develop to a size that supports the provision of public transport and other services.

In addition to these tasks the authority will also take responsibility for collecting levies. The authority will be able to accept work in lieu of payment in respect of such levies.

The Minister is also indicated that the State will introduce the initial development contribution plans for growth areas in July 2006. Thereafter it is envisage that the plans will be developed and built upon by the authority and the councils working together.

*For further information please call Planning, Environment & Regulatory Senior Lawyer Simon French on 5273 52246.*



## Changes to Small Business CGT Regime

The 2006/07 Federal Budget has introduced a raft of changes to the Small Business CGT Regime. In particular:

- The net asset value test will increase from \$5million to \$6million.
- The 'controlling individual test' (based on 50% direct ownership) will be replaced with a 'significant individual test' which is based on ownership. This test can be met either directly or indirectly through one or more interposed entities.
- The 15-year exemption test will be modified such that a company or trust will need a significant individual for a period of 15 years.
- Amendments to the active asset test to provide that a 12 month period will be allowed in which to dispose of an asset after cessation of its use in a business.
- Currently, there is no provision concerning the sale of assets by a deceased's legal personal representative or beneficiary. The changes will enable a deceased's legal personal representative or beneficiary to a CGT concession if the asset is disposed of within 2 years of death and the asset would satisfy the small business concessions if the deceased had disposed of the asset immediately before death.
- Amendments to provisions relating to family trust elections to provide for the elections to be revokable or variable in certain circumstances.

The changes will apply to CGT events which occur in the 2006/07 and subsequent income years.

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



## GST on Forfeited Deposits

A deposit paid under a Contract of Sale for land, and then forfeited to the Vendor, has been held by the Administrative Appeals Tribunal to be subject to GST, with the result that the Vendor must issue a tax invoice and account for GST on the deposit.

The Tribunal used the analysis that when the parties entered into the Contract and the deposit was paid, the Vendor assumed a number of obligations towards the Purchaser. The ultimate obligation was to transfer title to the Purchaser upon payment of the balance of the purchase price. But the Tribunal also acknowledged other obligations, such as maintaining the property in its present condition, to pay all rates, taxes, assessment, fire insurance premiums and other outgoings in relation to the property and to hold the existing policy of fire insurance for itself and in trust for the Purchaser to the extent of their respective interests. It was these obligations which constitute a supply within the meaning of the GST legislation and payment of the deposit by the Purchaser was consideration for that supply.

If the Contract had proceeded to settlement as contemplated, the deposit would have been applied as part of the purchase price and GST would have been payable on the total consideration. But that did not happen in this case. Forfeiture of the deposit meant that the Vendor was no longer obligated to bring the deposit to account as part of the purchase price or to have it available to refund to the purchaser in the event that it was the Purchaser who rescinded the Contract.

Consequently, a forfeited deposit will be subject to GST as consideration for a supply and will be attributed to the appropriate tax period in which the forfeiture occurs.

*For further information call Vaughan Lamb, Property Partner on 5273 5243.*



## For further information

**Kevin Roache** - Partner. Ph 5273 5211

**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