

Contracts – what are you really signing for?

Buying property is one of the biggest financial commitments that you will make in your lifetime, and the Office of Fair Trading has warned buyers to do their homework before signing anything.

Fair Trading Minister Margaret Keech said buyers put themselves in long-term financial risk by signing a contract without fully understanding its implications.

“A contract is a legal document and you are bound by its terms and conditions,” Mrs Keech said.

Mrs Keech offered the following advice to home and property buyers before signing

a contract:

- ensure all items in the sale are included in the contract;
- be aware that real estate agents and developers often prepare their own contracts;
- always take a copy of the contract to discuss with your solicitor before signing, as once signed it is binding;
- all residential sales contracts must have a Warning Statement (PAMD Form 30c) – read this thoroughly;
- shop around for a solicitor – fees are negotiable;

- ensure your solicitor provides you with a completed Lawyers Certification PAMD Form 32a – it will disclose relationships, benefits and people involved in the sale;
- appoint independent service providers such as solicitors, valuers, finance agents and building and pest inspectors for independence in the transaction; and
- don’t feel pressured to sign a contract

For more advice and information on buying real estate, contact your solicitor.

New food tampering laws

Restaurants, takeaway stores and other food and drink outlets face fines of up to \$15,000 for not reporting suspected or confirmed food tampering, under new laws introduced into State Parliament.

Health Minister Stephen Robertson said the Food Amendment Bill 2006 would better protect the public from food poisoning by compelling all food businesses to report instances of intentionally contaminated food to Queensland Health immediately.

The new laws follow the case of food contamination in Sizzler restaurants earlier this year, which raised concerns about the public safeguards against food tampering.

“Immediately after the incident became known, the Premier and I met with food industry leaders and government authorities to discuss quick and appropriate solutions.

“Like food legislation in other Australian jurisdictions, no mandatory reporting requirements exist, but that is something the State Government is now fixing in Queensland.

“We are doing this with minimal red tape because we are careful not to overburden businesses with compliance.”

Mr Robertson said the amendment would make it clear that reporting of food contamination was mandatory only if there was reasonable suspicion that it was done intentionally.

“The Bill takes into account that incidental and accidental contamination of food is commonplace and procedures are already in place to deal with these occurrences,” he said. “Mandatory reporting will apply if foul play is suspected.”

To support businesses in meeting their reporting obligations, Queensland Health will provide information and guidance to help prevent and identify food tampering.

Mr Robertson also announced a 24-hour hotline would be established for food businesses to report food tampering as soon as it became known.

“Queensland Health’s investigation into the Sizzler incidents was hampered because our public health officers did not have any contaminated food to test,” he said. “To ensure there is no delay in carrying out independent food analysis, businesses will be required to retain all of the suspected contaminated food.”

Mr Robertson said businesses would also need to comply with other Queensland Health directions covering matters such as, the isolation and handling of food and other equipment that may have been contaminated, the possible evacuation of premises and health advice to consumers.

For more advice on your obligations under these new laws, contact your local solicitor.

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A recent court decision has found that childcare provider, ABC Learning can be held criminally liable for the escape of a child from one of its centres.

Holden offers refund to customers

The Australian Competition and Consumer Commission has accepted court-enforceable undertakings from GM Holden after an investigation found hundreds of consumers were overcharged during an employee pricing offer.

Cadbury and Darrell Lea face off over purple

Cadbury has been told it does not own the colour purple, after the company lost its legal bid to stop competitor Darrell Lea from using purple in its product packaging and signage.

Evade police laws to be introduced in Queensland

Motorists who try to evade police and cause high-speed car chases will face confiscation of their car and a fine of up to \$15,000 or three years jail under new laws.

Former insurance broker sentenced on fraud charges

A Brisbane insurance broker has been convicted on 14 counts of fraud as a result of an investigation by the Australian Securities and Investment Commission.

Foster carers need blue cards under new laws

All foster carers must have a Blue Card from 31 May this year under new laws introduced by the Queensland Government.

Marriage counsellor sued over affair

A man is suing his therapist for having an affair with his wife, which he claims caused the couple’s divorce.

Four-year-old on jury duty

A four-year-old girl has been called up for jury service in England due to a mix-up by civil servants.

National picture of crime and justice

A report reveals there has been a reduction in the incidence of all major crimes in Australia over the past three years.

a case in point . . . Childcare giant liable for child escape

Australia's largest private childcare provider, ABC Developmental Learning Centres Pty Ltd (ABC Learning), has been found liable for the escape of a child from one of its centres.

In *ABC Developmental Learning Centres Pty Ltd v Wallace*, before the Supreme Court of Victoria, ABC Learning lost its appeal against a \$200 fine handed down by the Sunshine Magistrates Court.

The court rejected ABC Learning's argument that it should not be held responsible for the child's escape, because its staff were entirely to blame for the incident rather than any failure by management.

Background

In 2003, a two-year-old child escaped from an ABC Learning childcare centre in suburban Melbourne when staff were not looking. The child pushed a 90cm square foam cube over to the playground fence and then used it to scale the fence and escape.

Facts

The boy was found in the surrounding streets and he was returned unharmed by a neighbour shortly after his escape. He was one of 12 children being cared for at the centre by three staff. One of the staff members went to the toilet and, upon returning, a head count revealed the child's absence.

ABC Learning was prosecuted by the Victorian Department of Human Services, who alleged ABC Learning was in breach of

sections 26 and 27 of the *Children's Services Act* 1996.

Section 26 requires that a proprietor of a children's service and its staff ensure that every reasonable precaution is taken to protect the children in their care from any hazard likely to cause injury. Section 27 requires that the company and its staff ensure children in their care are adequately supervised.

In the initial case before the Magistrates Court, the acting magistrate found the child escaped because the staff failed to observe or prevent him from doing so.

He ruled that ABC Learning was ultimately responsible for the failures of its staff and charged the company with two offences under the *Children's Services Act*. ABC Learning was fined \$200 without conviction for inadequate supervision. A charge of failing to ensure every reasonable precaution was taken to protect the child from any hazard likely to cause injury was dismissed.

ABC Learning appealed the decision on the grounds that the failures of its staff and any subsequent criminal blame should not have been attributed to the company.

Decision

Judge Kevin Bell dismissed the appeal, ruling that ABC Learning could and would be held criminally accountable for the incident.

"The obligation to protect and supervise children may be criminally enforced against both a proprietor company and its staff," he said. "Where such a company operates a childcare centre with staff who fail to perform these obligations, the company can be held accountable and the staff do not bear the potential liability alone."

Justice Bell also said the *Children's Services Act* was about the protection of children and this was the main concern.

"Young children in the absence of their parents or guardians for potentially long periods during the day are an extremely vulnerable group in our community," he said.

This case raises the issue of duty of care at childcare centres and suggests the obligation to protect and supervise children may be criminally enforced against both a proprietor company and its staff.

If you have any concerns about duty of care, seek legal advice.

Holden offers refunds to consumers

GM Holden has agreed to offer refunds to hundreds of consumers who were overcharged during the "You Pay What We Pay" employee pricing offer.

The GM Holden promotion offered all customers who purchased a car between October and December 2005 the same prices as Holden employees.

However, an Australian Competition and Consumer Commission (ACCC) investigation revealed GM Holden employees received discounts that were not available to the general public, including discounts on factory-fitted options and accessories as well as a discounted dealer delivery fee.

At the start of the advertising campaign Holden employees were offered a further special discount of between 25 percent and 29 percent on select Holden vehicles, which was not available to the general

public. The additional employee discounts meant some customers were overcharged by up to \$5,000.

GM Holden believed that the inclusion of fine print qualifications regarding options, accessories and dealer delivery fee limited the offer to the baseline price of the vehicle.

ACCC chairman Graeme Samuel said the ACCC believed the headline statement, "You Pay What We Pay", was so powerful that no qualification in fine print could undo the message it conveyed to consumers.

The ACCC has accepted GM Holden's court-enforceable undertakings to:

- provide written notice to the consumers who purchased vehicles during the promotion and were subject to the special discount, offering the opportunity to return the

vehicle for a full refund of the purchase price including additional charges;

- improve its trade practices compliance and have this reviewed by an independent third party;
- use its best endeavours to comply with any industry standards developed by the ACCC aimed at improving the quality, accuracy and availability of information to customers.

"The undertaking given by GM Holden provides a mechanism for redress for between 250 and 300 consumers who did not receive the special discount," Mr Samuel said.

"It also ensures that GM Holden is aware of its obligations under the *Trade Practices Act* and has in place policies, procedures and systems to ensure it delivers on promises made in its future promotions."

Cadbury and Darrell Lea face off over purple

The Federal Court of Australia has ruled chocolate manufacturing giant Cadbury does not own the colour purple or have an exclusive reputation over the colour's use in connection with chocolate.

Cadbury took legal action against Australian-based rival Darrell Lea in 2003 for using a similar shade of purple in the company's store signage, uniforms and product packaging during its Christmas promotions between 2000 and 2004.

Cadbury argued that it had a "substantial, exclusive and valuable reputation" in the use of the colour purple in connection with chocolate and Darrell Lea's use of similar colours had misled

consumers into believing that Darrell Lea's products were Cadbury's or that Darrell Lea had an association with Cadbury.

The main focus of Cadbury's case was that the shade of purple it uses in the packaging and marketing of its products distinguishes Cadbury from other competitors.

However, Federal Court judge Peter Heerey noted Cadbury had not consistently enforced its claim over the colour purple.

"Other traders have, with Cadbury's knowledge, for many years used a similar shade of purple.

"Cadbury has not consistently enforced its alleged exclusive reputation," he said.

Justice Heerey also cited Cadbury's 'co-existence agreement' with rival Nestlé, which permitted Nestlé to use purple in its products, such as the Violet Crumble bar.

Justice Heerey concluded that whilst Cadbury and Darrell Lea were both competitors in the retail chocolate market, they each had distinct products and identities, which were sold from different premises under distinctive trade names.

"Darrell Lea is entitled to use purple, or any other colour, as long as it does not convey to the reasonable consumer the idea that it or its products have some connection with Cadbury," he said.

Evade police laws to be introduced in Queensland

Queensland motorists who attempt to evade police and cause high-speed car pursuits will soon face permanent confiscation of their vehicle, a fine of up to \$15,000 and/or three years' jail.

The Queensland Government recently announced the new laws as part of changes to the Criminal Code under the Police Powers and Responsibilities and Other Acts Amendment Bill 2006.

Premier Peter Beattie said the changes to the Criminal Code would make Queensland the first state or territory to introduce evading police as an offence.

"These laws are about safeguarding law-abiding motorists and giving police the power to deal with this minority of drivers who flout the laws and risk others' lives on the road," he said. "The average high-

speed chase lasts less than three minutes and most of the people injured or killed are not the fleeing drivers."

The most common reasons for high-speed pursuits are offenders attempting to avoid police after a traffic or driving infringement, and offenders driving a stolen vehicle.

"That's why our legal changes don't just include confiscation of vehicles, but possible jail sentences and substantial fines," Mr Beattie said.

Research by the Crime and Misconduct Commission shows pursuits are most likely to be committed by males under 30 years of age, who are unlicensed and under the influence of alcohol or drugs.

Last year there were 562 police pursuits, including at least one fatality.

Former insurance broker sentenced on fraud charges

A Brisbane insurance broker has been convicted on 14 counts of fraud in the Brisbane District Court. Peter John Mason, of suburban Morningside, pleaded guilty and was sentenced to 18 months' imprisonment to be wholly suspended for an operational period of two years on all charges.

The charges were a result of an investigation by the Australian Securities and Investment Commission (ASIC) into Mr Mason's conduct when he was director of Allstate Insurance Pty Ltd (Allstate), a registered insurance broking company.

ASIC alleged that between May and October 2001, Allstate received funds from clients by way of premium payments. While the funds should have been forwarded to insurance underwriters, it was proven that Mr Mason failed to do so.

Some underwriters subsequently terminated some of the insurance policies of Mr Mason's clients. These clients were unaware that their policies had ceased. As a result they were potentially left uninsured and at risk. The insurance policies covered motor vehicles, homes and businesses.

In January 2002, ASIC alerted about 740 clients of the situation in writing. At this time, Allstate also went into voluntary administration and subsequently, in February 2002, the company went into liquidation.

Four-year-old on jury duty

A four-year-old girl has been called up for jury service in England.

Officials sent a letter to Beatrice Ball ordering her to attend a trial at Bristol Crown Court on 5 June, *The Sun* reported.

Beatrice's mum, Sam, said: "She found it hilarious. Beatrice is bright for her age but this is ridiculous.

"She knows what jury service is because her grandad was recently sent a summons and explained to her what he had to do."

Sam, 33, of Bedminster, Bristol, contacted officials to explain and Beatrice has now been excused from jury duty.

Civil servants responsible for issuing jury summonses blamed Bristol City Council for the mix-up.

The Court Service said it was sent an old electoral list mistakenly containing Beatrice's name.

Foster carers need blue cards under new laws

Queensland Parliament has passed legislation requiring all foster carers to have Blue Cards. The new laws will apply to all new carers, including kinship carers, from 31 May this year.

The Minister for Child Safety, Mike Reynolds, said that under the *Child Safety (Carers) Amendment Act*, existing carers would have six months from 31 May to apply for a Blue Card.

“Up until now, carers have been subject to stringent personal and criminal history checks conducted by the Department of Child Safety,” he said. “Under the new arrangements, the responsibility for criminal history checks will be transferred to the Commission for Children and Young People

and Child Guardian, and carers will be required to hold a blue card.”

Mr Reynolds said the Blue Card was a recognised and respected community standard for ensuring that people working with children did not have criminal histories, which could affect the safety of children.

“It is logical that people caring for some of the most vulnerable children and young people in this state, those in need of care and protection, actually hold a Blue Card,” he said.

The requirement to hold a Blue Card will be one of the preconditions for approval as a carer and will also apply to all adult members of the carer’s household

and people involved in licensed child protection residential facilities.

The screening process for Blue Cards involves a check on a person’s criminal history, including any charges, convictions, disciplinary information held by certain professional bodies and information or investigations into child-related sexual offences.

There is no fee for a Blue Card for carers, however, a \$40 fee does apply for cards required as a condition of a person’s paid work and for people running licensed child protection residential facilities.

For more information on your obligations as a foster or kinship carer, contact your solicitor.

National picture of crime and justice

The Australian Institute of Criminology’s latest report on Australian crime reveals there has been a reduction in the number of almost all major crimes nationally over the past three years.

Australian Crime: Facts and Figures 2005 is produced annually and provides a national picture of crime and justice throughout Australia for the period 1996 to 2004.

Crimes such as homicide, robbery, burglary and motor vehicle theft have all been in decline over the past three years.

The homicide rate was 1.9 in 1996 and was at its highest in 1999 at 2 per 100,000 persons. In 2004 it dropped to 1.5 per 100,000 persons.

The rate for robbery peaked at 137 per 100,000 of the population in 2001, the highest recorded since 1996. Since 2001

rates have declined by 40 percent to 82 per 100,000 of the population in 2004.

The rate of motor vehicle theft declined by 35 percent between 1996 and 2004, from 671 to 437 per 100,000 population. In 2004 there were 87,916 recorded victims of motor vehicle theft.

Between 1984 and 2004, the overall imprisonment rate increased from 88 to 158 per 100,000 adult population. The overall incarceration rate for juveniles declined 60 percent from 65 to 26 per 100,000 between 1981 and 2004.

Since 1998-99 expenditure on criminal justice has increased by an average of 4 percent each year. Police services account for about 72 percent of the total criminal justice-related expenditure.

The full report can be found at: www.aic.gov.au/publications/facts/2005/

Landmark spam decision

The Australian Communications and Media Authority (ACMA) has secured its first successful prosecution under the *Spam Act 2003*, after the Federal Court found a West Australian based company and its managing director had contravened the Act.

Wayne Mansfield, and his company Clarity1, were found to have illegally sent more than 56 million commercial emails in the 12 months after the *Spam Act 2003* was introduced in April 2004. Most of the messages were found to be unsolicited and in breach of the *Spam Act*.

Justice Nicholson rejected the company’s defence that the recipients of emails had consented to receive them. He further rejected the defence that the company could use harvested lists acquired before the *Spam Act* commenced to send spam emails at any time.

“The fact that address-harvesting may have occurred at a time when no such prohibition was in the law, does not prevent the application of the provision in its term from the date it came into force,” Justice Nicholson said.

ACMA chairman Chris Chapman said the case should give Australians confidence in the effectiveness of the legislation.

“The receipt of spam imposes significant cost and inconvenience on individuals and businesses by disrupting email delivery, clogging up computer systems, reducing productivity, wasting time, irritating users and raising the cost of internet access fees.”

The Federal Court has advised that the determination of penalties will be made at a later date.

Marriage counsellor sued over affair

A man is suing his marriage counsellor for having an affair with his wife.

The *Chicago Sun-Times* reported that Scott Buetow, 35, of McHenry County, Illinois, filed a breach-of-contract suit and was seeking more than US\$200,000 in punitive damages from his therapist and the counselling centre where he worked.

Mr Buetow and his wife began seeing marriage counsellor Dan Blair in April 2004 to ‘strengthen and stabilise’ their 10-year marriage.

However, Mr Buetow claimed that Mr Blair abused his position and had an affair with his wife that resulted in the couple’s divorce.

“He [Blair] had an obligation to provide services, and he wilfully abused that for his own benefit,” Mr Buetow’s attorney, Hans Mast, said.

While providing both joint counselling and individual therapy sessions, Blair allegedly started a secret romantic relationship with Buetow’s wife.

Mr Buetow and his 36-year-old wife were granted a divorce earlier this year.

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