



New mortgagee obligations under the *Property Law Act*

The Queensland Government has introduced a new law with the aim of "protecting homeowners from mortgagee fire sales". The *Property Law (Mortgagor Protection) Amendment Act 2008* commenced on December 12.

The Act amends the *Property Law Act 1974* and introduces the following changes:

- the mortgagee's duty under the *Property Law Act* to take reasonable care to sell mortgaged property at market value will now expressly apply to receivers and to mortgagees selling under power of attorney, and
- there are specific steps which must be taken by a mortgagee or receiver when selling property under a "prescribed mortgage" and

failure to take such steps may be punishable by fines of up to \$20,000. The explanatory notes accompanying the Act provide that the type of mortgages intended to be captured are mortgages over land of a consumer credit nature.

Parliament has also passed the Residential Tenancies and Rooming Accommodation Bill 2008. Among other changes, this law will increase the notice period that must be given by a mortgagee to terminate a residential tenancy granted without the mortgagee's consent from one to two months.

To learn more about your obligations under the new *Property Law Act*, contact your local solicitor.

Illegal Downloading

Landmark Federal Court legal action by movie producers against Australia's third-largest internet service provider, iiNET, has highlighted the problems of unlawful downloads and unauthorised file-sharing.

RMIT University general counsel John Lambrick says unlawful file-sharing raises complex issues for rights holders, lawyers and regulators.

"The Rudd Government is considering a 'three strikes and you're out' policy against internet users who download unlawfully," Mr Lambrick said.

"But market research has found 63 per percent of young Australians feel there's no point paying for music that's otherwise freely available so there's a strong need for education to change these attitudes and promote the protection of copyright.

"The government may also oblige internet service providers (ISPs) to monitor people's use and filter

infringing content but this would fail to recognise the technical and legal issues involved.

"While filtering technology does exist for particular types of content, it's not technically possible for ISPs to reliably detect and block unauthorised file-sharing so any such legislation would be futile.

"Additionally, the 'safe harbour' provisions of the Copyright Act, which limit the liability of ISPs for unauthorised file-sharing by their account holders, offer no incentive for ISPs to help resolve the problem by other means.

"The only workable solution currently available is for the Government to help develop a cooperative agreement between ISPs and rights holders, similar to what has happened in the UK and France. This may well be the ultimate objective of the plaintiffs in the iiNet litigation.

"Telling illegal downloaders 'three

Beware of clicking your rights away

Bond University is urging people to be vigilant when using the internet.

Associate Professor Dan Svantesson of Bond University said that people often "agree" to terms and conditions without understanding the implications.

"When using the internet, we are often asked to click 'I agree' to lengthy statements of terms and conditions," Dr Svantesson said. "In doing so, we may be agreeing to things we did not expect.

"For example, to view downloadable TV programs from one of Australia's TV channels, you have to install a special player. And in installing that player you have to agree that the law of Israel applies to any dispute that may arise. You also agree that you cannot take legal action in Australia, but only in Israel.

"The people who draft these contracts are aware that people in general do not read them.

"They are also aware that if a person was to read them, that person is unlikely to understand the legal implications."

And in the end, even if a person understands the legal implications, they cannot negotiate the terms anyhow.

"Terms and conditions in these so-called click-wrap agreements are presented on a take it or leave it basis," Dr Svantesson said. "That is one reason why people do not read them. People choose to take a calculated risk in clicking 'I agree' rather than reading the contract."

strikes and you're out' may sound good, but such a plan can only succeed if there is cooperation between rights holders and ISPs and the appropriate legal architecture to ensure integrity and fairness."

Helping hand for teen sisters

A "helping hand" from the Federal Workplace Ombudsman has ensured two teenage sisters weren't ripped off by a fish-and-chip shop which underpaid them.

Their former female boss belatedly agreed to reimburse the 17 and 18-year-olds \$2000, after initially refusing to do so.

The Workplace Ombudsman assisted the girls to take their case to the Small Claims Tribunal to try to recover underpayments totalling \$2600.

When they were just 14 and 15, the pair worked for a Croydon fish and chip shop in Melbourne and were paid just \$5 an hour for the first month and \$7.50 an hour thereafter.

They should have received up to \$12.51.

But when a workplace inspector identified the issue, the former employer said she couldn't afford to rectify the problem.

Workplace Ombudsman Nicholas Wilson said his agency helped the sisters prepare a case to take to the Small Claims Tribunal.

After rejecting the former employer's offer of a \$20 per month repayment plan, the Melbourne Magistrates Court asked the Workplace Ombudsman to mediate an outcome.

The court told the employer her financial position was no defence for underpaying the girls and did not absolve her from her legal responsibilities.

Mr Wilson says that after more negotiations, the two sisters accepted an offer of \$2000.

Facebook scammers seek money in London

Australian Facebook user accounts have been hacked, opening them up to scammers who then use the account to send live chat messages to their friends asking for help.

"Several of my friends received a message through Facebook Chat from their online Facebook friends," one user, Nick, said.

The messages claimed the person was "on a trip to London, but had been mugged, and was now marooned without passport or cash somewhere in North London," he said.

The ploy usually culminates in a request for a Western Union money transfer.

Digital strategist Mark Neely found out his account had been hacked when a friend called to ask if he was alright.

"I immediately attempted to log into Facebook, but the password had been changed," he said.

"I tried to reset the password, but the email address linked to my Facebook account had also been changed. I could not access my account."

Facebook's security team has begun work on the account data to try to pinpoint the perpetrators and, depending on the relevant jurisdiction, will be working with law enforcement to track them down.

To learn more about the legal implications of identity theft, contact your local solicitor.

Fair Work Bill moves 'Forward with Fairness'

The Federal Government has introduced in Parliament legislation to implement its election commitments made in Forward with Fairness.

The Fair Work Bill 2008 is an entirely new Bill and, at 575 pages, it is substantially shorter than the current *Workplace Relations Act 1996* (Cth). The Bill was published with an extensive explanatory memorandum and the Government has already issued fact sheets on a number of key areas.

In particular, the Bill introduces a new safety net, comprised of the National Employment Standards (NES) and modern awards; sets out a new system of good faith bargaining for collective agreements in which Fair Work Australia will have a pivotal and potentially more interventionist role; brings back unfair dismissal protection for most employees (and limits, but does not entirely remove the operational requirements exclusion for redundancy), and maintains many of the existing rules in the areas of industrial action, freedom of association and right of entry – with subtle, but significant additional powers to unions.

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**Conditions apply.

Tribunal approves Anti-discrimination exemption for Boeing

Boeing has won a landmark decision before the Queensland Anti-Discrimination Tribunal allowing it to refuse to employ people born in countries, mostly in the Middle East, that are proscribed as terrorist by the US, when working on US military aircraft.

US security regulations prevent people born in such countries from working on defence projects so Boeing needed the ruling to enable it to continue its operations in Queensland.

Aerospace companies such as Boeing have sought exemptions from anti-discrimination legislation all over the world to enable them to secure military contracts.

In his decision, tribunal president Doug Savage SC was critical of the US law, questioning the validity of determining the security risk of a person based on their place of birth.

However, while he rejected the application for a renewed exemption, Mr Savage said Boeing was allowed under another part of the act – covering "genuine occupational qualifications" – to ban certain nationalities from projects because of the very real threat of criminal prosecution in the US if their laws were breached.

Rent price rises at 20-year high

Rents have recorded their highest increase since 1988 amid fears the rental crisis will only get worse as the impact of the global recession takes hold.

Latest figures from the Australian Bureau of Statistics show the annual rate of growth in rents across the country has jumped to 8.4 percent in the year to last month, up 2 percent from 2007, The Australian reported.

The statistics also reveal the increase in rents has jumped from 8.6 percent to 10.1 percent in Brisbane.

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