



New laws for consumer credit providers

The National Consumer Credit Protection Bill 2009 aims to simplify and standardise the regulation of consumer credit, which until now has been regulated under a myriad of different state and territory laws to the detriment of consumers, according to banking and financial services specialist Jim Bulling.

"The proposed national licencing scheme will ensure consumers benefit through the introduction of a number of measures designed to improve and regulate the conduct of lenders and brokers throughout the industry," Mr Bulling said. "Both lending and broking institutions, including the banks, generally recognise that this new regime is designed to stop predatory lending practices by unscrupulous operators and will be of benefit to the industry and their customers."

The suggested registration and licencing requirements under the Bill will extend to any person who engages in credit activity. In order to become registered, a person will have to apply to ASIC for registration by December 31. Once registered, any person engaging in a credit activity will have to apply to ASIC for a licence by June 30, 2010.

For details on the new laws, visit www.treasury.gov.au/consumercredit/content/legislation.asp.

Visions for native title and reconciliation

A new vision for native title is needed to deliver on the hopes and expectations of indigenous and non-indigenous Australians following the High Court's decisions in *Mabo* and *Wik*.

That is the message emerging from the latest edition of the Australian Law Reform Commission's Reform journal, launched in Sydney by the Attorney-General of Australia, Robert McClelland – the Minister responsible for Native Title – Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, and ALRC president, Professor David Weisbrot.

"There now appears to be a real mood for change in the Australian Parliament, with the recent announcement by the Attorney-General of proposed significant amendments to the *Native Title Act*, so it is very timely to hear the voices of a range of leading experts in this field," Professor Weisbrot said.

"Indigenous Affairs Minister Jenny Macklin sets out her vision for better utilising native title agreements and royalty payments to help close the gap between indigenous and non-indigenous Australians."

Hoons defy police blitz

Melbourne's worst car hoons have vowed to continue illegal street races as police admit they are battling to control a huge spike in the madness.

The Herald Sun newspaper was given a back seat with police as they made an unprecedented blitz on hoons on a recent weekend.

More than 100 officers from three regions focused on drivers in the worst-affected suburbs including Campbellfield, Somerton, Thomastown and Tullamarine.

The most extreme cases police have seen included more than 600 people watching burnouts and stunts; culprits pouring 20 litres of oil on a road for a display; hoon clubs with members who wear identical hoodies with emblems; and an L-plate driver doing burnouts with his father in the passenger seat.

It takes just one text message and about 10 minutes to set up an illegal street race. The crackdown follows the death of a 22-year-old driver in Adelaide on May 14, when his car was hit by two allegedly drag-racing drivers.

Playground fight victims granted compensation

Victorian students hurt in fights, playing sport or simply falling over have been granted more than \$1 million in compensation in recent years.

A group of six students involved in a fight shared \$235,000 in compensation, according to figures released to the Herald Sun newspaper under freedom of information laws.

In other cases, a student who was hit while playing hockey received a \$165,000 payout, while a pupil was paid \$115,000 after being struck playing in the school ground. The smallest payout was \$80, for an injury during PE.

Lawyer Barrie Woollacott, from firm Slater and Gordon, said schools were often sued for failing to act properly when there was trouble brewing among students.

"They allow volatile situations to continue in circumstances where a quick response would have defused them," he said.

"But because they haven't responded appropriately, something's happened and one of the victims has been assaulted. And then he's said to the school, 'You didn't look after me properly'."

Mr Woollacott said the State Government had restricted compensation payouts for years. People who experience whole-body injury of five percent or less are not entitled to damages for pain and suffering.

Students have lodged 175 compensation claims since 2006, Education Department data shows.

About \$1.05 million has been paid out so far, but dozens of cases are yet to be finalised and more cash will be given out.

Most injuries were caused by falling, slipping or jumping – 47 cases over the last three years.

There were 31 cases of a student being struck by another person, while 27 were hit by a moving object.

Several students made claims over alleged bullying and harassment; 24 cases involved fights and assaults.

Strong IP growth for green innovations

A 250 percent jump in green trade marks in the energy sector over the past five years – compared to the previous five years – is one indicator showing strong growth in intellectual property applications for green technologies in Australia.

Innovation Minister Senator Kim Carr also pointed to an increase in patent applications as more evidence that industry is adapting to, and finding new ways to combat, the challenges of climate change.

“Patent registrations for solar and clean coal technology applications from Australian and overseas innovators have risen by 15 percent and 50 percent respectively over the past five years,” Senator Carr said.

“Combined with the huge jump in green trade marks in the energy sector, these figures clearly show that innovators are tackling climate change head-on.

“Innovators clearly recognise the importance of being green if they are to succeed in today’s marketplace.

“Registered IP rights, including patents, trade marks, designs and plant breeder’s rights are central to the innovation that drives economic growth.

“They offer exclusive rights for new ideas and create incentives for continued investment in green technologies. The IP system allows Australia to benefit from investment in green technologies by protecting that investment, and licensing the technology to other countries.”

For more information, visit IP Australia at www.ipaustralia.gov.au or contact your local solicitor.

Krispy Kreme v Arnott’s

The stakes were high when Arnott’s took on Krispy Kreme to protect its Iced Vo-Vo trademark – Arnott’s was defending big bikkies and Krispy was looking at a lot of dough.

The battle was set to play out in the homes and offices of Australia at morning coffee and afternoon tea time, but the war of the clones has ended without a shot being fired.

Arnott’s threatened legal action over Krispy Kreme’s Iced Dough-Vo doughnut, which is covered in pink icing and coconut flakes, just like the famous Iced Vo-Vo biscuit.

An Arnott’s spokeswoman said Krispy Kreme Australia must have been coconuts to think it could take advantage of the 103-year-old Vo-Vo trademark.

Krispy Kreme Australia had argued that imitation was the sincerest form of flattery and Arnott’s should be tickled pink at the homage to its iconic brand, which was to be part of a Fair Dinkum Doughnuts promotion, along with a Rocky Road doughnut.

Krispy Kreme Australia CEO John McGuigan said Krispy Kreme customers understood the difference between a doughnut and a biscuit.

“The word “iced” is pretty well used, and the word “dough” I don’t think has got anything to do with what Arnott’s do, and the word “Vo”, I’m not sure what it means, but it goes well with “dough”,” said Mr McGuigan.

Now the doughnut maker has backed down and agreed to rename the Iced Dough-Vo from May 11, Arnott’s and Krispy Kreme said in a joint statement on April 30.

Workplace cowboy fined for treating workers with contempt

A Gold Coast food processing company has been fined \$80,000 and labelled a “workplace cowboy” for treating its employees with “contempt”.

The Federal Workplace Ombudsman initiated legal action against the company for underpaying the workers, some of whom had disabilities.

In Brisbane’s Federal Magistrates Court, Fresho Foods Pty Ltd was fined a total of \$80,200 and ordered to back-pay 11 vegetable peelers \$13,500.

The court found that the company had unlawfully changed their classification from “employees” to “independent contractors” and deliberately breached the law.

Federal Magistrate Keith Wilson said Fresho Foods and its director, Tony Pirrottina, had “treated workers with contempt” and were “entirely unrepentant and lacking any contrition”.

In his 19-page judgment, Magistrate Wilson said Pirrottina had “thumbed his nose” at the Workplace Ombudsman and the court.

In response to the company’s claim that a significant penalty should not be imposed because it would force the business to close and put the workers out of a job, Magistrate Wilson said: “The court cannot condone such industrial relations blackmail.”

If you have concerns about your employment conditions, please contact your local solicitor.

Man without key has drink-drive conviction quashed

A Beenleigh man found guilty of drink-driving after trying to help his sister start a brokendown car had his conviction quashed on appeal.

In a bizarre case, both a magistrate and a District Court judge had held David Brian Egglemosse intended to use a vehicle parked in a vacant lot alongside the Pacific Motorway at Loganholme, south of Brisbane, in September 2005.

However, a new ground was raised in the Court of Appeal which showed Egglemosse had a defence under a section of the *Transport Operations (Road Use Management) Act*, that was not argued before either original hearings.

A summary trial in the Magistrate’s Court heard Egglemosse’s sister Norma got a lift home as a passenger in the car which stopped and rolled into a vacant lot.

Believing the car had run out of petrol, she rang her brother David, a mechanic, but when she returned, the driver of the vehicle had left.

Meanwhile, David Egglemosse walked a short distance to the vehicle, put fuel into the car and worked on the disconnected battery. He then went to the driver’s side to lean into it to see if it would start. He found there were no keys in the ignition and returned to the front of the car where the bonnet was still up.

Police arrived and breathalysed Egglemosse, who returned a blood-alcohol reading of 0.15 per cent.

Egglemosse pleaded not guilty on the basis he had not intended to drive the car and did not even have a key to it.

However, the magistrate convicted him, fined him \$720 and disqualified him from driving for nine months.

Egglemosse appealed to a District Court judge who threw out the appeal and ordered he pay \$900. He then went to the Court of Appeal and, in a unanimous judgment, his appeal was granted.

The Court of Appeal set aside the conviction, fine and disqualification imposed in the Magistrate’s Court and also set aside the order that he pay \$900 in District Court costs. A verdict of not guilty was substituted for the Magistrate’s Court verdict.

Court of Appeal president Margaret McMurdo said Egglemosse had established on oath that he had no intention to drive the vehicle and the car was not a traffic hazard.

For advice on appeals, contact your local solicitor.

This newsletter is a free service. If there is any issue you would like us to cover in a future newsletter please call us. Also, if there is anyone you know who would like to receive this newsletter please let us know and we’ll add their name to our distribution list.

However, if you do not wish to continue receiving it please let Colin Fleming & Company know and we will not send it to you again.