

# 1. Client News

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Autumn 2006

A free quarterly legal update

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*This newsletter is not intended to be the definitive analysis of legislation.  
Professional advice should be taken before any course of action is pursued.*

## Seeing red

Autumn normally conjures up images of cool mornings and sunny afternoons, punctuated by a kaleidoscope of colour with the swirl of falling leaves.

But the realities of leaf litter and troublesome, overhanging tree branches tend to taint the romantic imagery. They may even turn affable neighbours into bickering adversaries. So it's worth thinking about the potential hazards and how to handle them.

Trees and garden growth are not just an issue in autumn. All year round neighbours remonstrate against roots damage to pipes and pathways, uncontained weeds, tree damage to property and the nuisance of plant debris.

The simplest way to avoid a serious dispute is to talk to your neighbour about any problems you may have with your adjoining properties. Together you can acknowledge the issues, identify what is needed, discuss who will pay and decide when actions should take place. You can even consult your local council if you need clarification on property responsibilities or advice on appropriate remedies.

In the event that you cannot reach agreement on the treatment of an issue, the Dispute

Settlement Centre of Victoria will give you advice on mediation, including ideas and methods of communication and negotiation. If the situation becomes more serious, and you think you have a potential legal claim against your neighbour, you can seek low-cost legal advice from Victorian Legal Aid, a Community Legal Centre, or through the Law Institute of Victoria's Legal Referral Service.

But keeping neighbourhood peace might be the least of your worries if you are dealing with a post-Christmas debt hangover. Autumn seems to be the time when many of us are taking stock and finding our feet for the New Year; reassessing and renewing savings plans for the future and, for some of us, facing the reality of our Christmas consumption.

Consumer debt has become a huge issue in today's cashless society, where borrowing and credit is a way of life. The Christmas and New Year period tends to drive spending, with a recklessness that does not come without ramification. When the party is over, our impetuosity needs to promptly give way to rational thinking about how to best regain control of our budget.

Consider how much you owe, who you owe, the repayment options available to you and your obligations under agreements you may have made. Also, know your rights when dealing with credit providers and debt collectors so that your debts don't cause you undue stress. It is usually more beneficial to contact your creditors direct if you are experiencing difficulty in meeting repayment obligations. That way, you can discuss any extenuating circumstances and possibly negotiate a more favourable repayment schedule. Staying silent and ignoring a debt will only result in getting a creditor offside, making them more likely to resort to formal steps to recover money owed.

Knowing where to get help when things go wrong is just as important. Consumer Affairs Victoria is a good place to start. Free legal advice on issues of consumer credit and debt is also available from the Consumer Credit Legal Service (CCLS), which advocates on behalf of consumers on consumer protection issues, law reform, and unfair industry practices.

So, whether you're sweeping leaves or paying off your credit card, the only red you need to see this autumn is in the trees.

### More information

**From the LIV Bookshop** *Domestic Building Disputes in Victoria*, R Andrews \$29.95; *Alternative Dispute Resolution*, Tania Sourdin \$80; *Consumer Debt Recovery Law*, Weule & Brading \$38.50

**Useful web links** For guidance on dispute resolution visit: [www.justice.vic.gov.au](http://www.justice.vic.gov.au), which features a link to the Dispute Settlement Centre. Information on handling credit and debt can be found at: [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au)

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## Rewards of lengthy tenure

The importance of work/life balance is widely acknowledged by employers and employees alike. Giving workers a chance to renew their energies through periodic leave entitlements encourages productivity and, often, an ongoing commitment to the workforce. Most Australian States and Territories support this balance through legislative provisions in relation to long service leave ('LSL') entitlements.

The idea of long service leave derives from colonial civil service administration in South Australia and Victoria in the 1860s. After ten years of service to the colonies, British civil servants were legally permitted six to twelve months of paid leave to return home and visit their families. The idea stuck, with the other states later following suit and LSL entitlements progressively evolving to reflect the nature of the workforce that exists today.

In Victoria, the *Long Service Leave Act 1992 (Vic)* was recently amended, with reforms taking effect on 1 January this year. The *Long Service Leave (Amendment) Act 2005 (Vic)* ('the Act') gives those Victorians whose long service leave entitlements are not covered by an award, certified agreement or AWA arguably more generous entitlements in relation to long service leave. While the Act does not increase LSL entitlements, it does offer more generous provisions in relation to the accruing of leave by taking into account various factors and circumstances that, up until now, may have disadvantaged employees. The stated purposes of the Act are to make the law relating to long service leave more consistent with modern working practices as well as other Australian jurisdictions, and to ensure that employees who take leave for family reasons are not disadvantaged (section 1 of the Act).

The main provisions under the Act are as follows:

- Employees will be entitled to take long service leave after 10 years of continuous employment with one employer (to be phased in using a formula under the Act), calculated on a pro-rata basis
- The formula for LSL is one week per 60 weeks of employment, entitling an employee to approximately 8.66 weeks of long service leave after 10 years, or 13 weeks after 15 years of service
- Pro-rata LSL entitlements are available on termination of employment after 7 years (previously 10 years), regardless of the reason for termination
- Long term casuals and seasonal workers are included in the definition of employee
- All forms of paid and unpaid leave, except unpaid parental leave, will count as service for the purposes of calculating LSL
- Continuity of service is preserved while on unpaid parental leave (of up to 52 weeks)
- Public holidays falling within the leave period are now added to the leave period
- Where employee's hours vary and there is no 'ordinary pay', the Act prescribes that LSL be paid on the higher rate of pay calculated on either the average pay over the last 12 months or the average over the last five years (section 11)

- Directors can be prosecuted for offences under the Act, such as cashing out long service leave

The amendments arguably bring LSL entitlements more within reach of the modern employee, providing a fairer and more attainable entitlement for long term service.

### More information

**From the LIV Bookshop** *Work Choices Bill & Explanatory Memorandum*, \$66

**Useful web links** For a comprehensive guide to the *Victorian Long Service Leave Act* (1992), go to the Industrial Relations Victoria website at: [www.irv.vic.gov.au](http://www.irv.vic.gov.au)

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## Victorians breathe easy

This year kicks off a cleaner approach to public health, as Victorians see new tobacco laws coming into effect from 1 March. New legislative provisions in the *Tobacco (Amendment) Act 2005* (Vic) ban smoking in most enclosed work spaces and in covered areas of train station platforms, tram stops and bus shelters.

Putting a further stranglehold on the tobacco industry are restrictions on the promotion and sale of tobacco products, particularly at underage 'music/dance' events. The more subliminal-style promotions, delivered through 'buzz marketing' and non-branded tobacco advertising, have also been prohibited.

But perhaps the biggest kick in the teeth to the tobacco companies will be the proposed ban on smoking in enclosed licensed premises, due to come into effect 1 July 2007. It is expected to sound the death knell to the tobacco industry as smoking numbers continue their rapid decline and community groups lobby for further legislative restrictions.

According to research by the Department of Human Services, conducted in 2004, more than 89 per cent of Victorians support tighter law enforcement against cigarette sales to minors, while more than 80 per cent support smoking bans on licensed premises, such as bars, nightclubs and gaming venues.

Further to public opinion, the impact of smoking related illness on the health system has been a significant catalyst to legislative reforms. In a report highlighting the economic benefits of reducing smoking rates, the *Medical Journal of Australia* claimed that smoking was responsible for almost 300,000 hospitalisations in Australia between 2001 and 2002, resulting in nearly 1.5 million hospital bed days, at a cost of almost \$700 million.

The strategies to reduce smoking continue to intensify. But while smoking rates among adults have declined significantly, youth smoking rates are still a problem. This poses a challenge for anti-smoking groups like Quit Victoria, a joint initiative of the Cancer Council Victoria, VicHealth, Department of Human Services and the National Heart Foundation. Their most recent feat is the new graphic health warnings on cigarette

packets, which aim to motivate an unprecedented number of Australians to quit smoking.

This sort of action, supported by tighter legislative controls, can only strengthen the momentum towards a healthier lifestyle for the entire community.

### More information

**From the LIV Bookshop** *Peddling Poison: The Tobacco Industry and Kids*, Cleve Snell \$58

**Useful web links** For more information on the tobacco reforms go to: [www.health.vic.gov.au/tobaccoreforms](http://www.health.vic.gov.au/tobaccoreforms) or visit [www.quit.org.au](http://www.quit.org.au) for health information.

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## Record price-fixing penalties for supermarket giant

A long-running case against Australian Safeway Stores Pty Ltd (Safeway) concluded recently with the Federal Court handing down an \$8.9 million fine to the supermarket giant for fixing bread prices and misusing market power. This is the biggest penalty of its kind recorded in Australian legal history.

The judgement of *Australian Competition and Consumer Commission v Australian Safeway Stores Pty Ltd (no. 4)* [2006] FCA 21, handed down on 31 January 2006, followed a series of court challenges between Safeway owner, Woolworths, and the Australian Competition and Consumer Commission (ACCC) over the last decade. The allegations of misuse of market power concerned several incidents where Safeway was accused of cutting off supplies from Tip Top, Buttercup and Sunicrust because they were allegedly supplying bread to cheaper, rival retailers.

The court heard that shelf space in Safeway stores, which was normally allocated to those suppliers, was allegedly filled with product from alternative suppliers until the discounts from rival retailers stopped. This affected a number of independent retailers in metropolitan Melbourne and Albury.

The price-fixing allegation concerned an arrangement between Safeway and Tip Top, whereby it was alleged that bread prices at the Tip Top bakery at Preston market were being controlled by Safeway to insulate their nearby store from the threat of competition.

It was argued that, in both these instances, Safeway's actions contravened the *Trade Practices Act 1974 (Cth)* ('TPA'), which prohibits big businesses from abusing their market power. The provisions of the TPA are intended to champion a healthy Australian economy; one that thrives on competition and protects the small business sector, ultimately giving consumers better choice in price, quality and service.

The sizeable fine imposed on Safeway clearly demonstrates that TPA offences are considered serious and intolerable. In handing down the penalties, Justice Alan Goldberg stated: "*the penalties imposed on Safeway ought to be substantial and*

*reflective of the need, in particular, for general deterrence*” (paragraph 84 of judgement). The result of the case sends a very strong message to the business and commercial community, compelling them to foster a culture of compliance when it comes to trade practices legislation.

*The ACCC is pursuing Woolworths on another case of alleged anti-competitive conduct in the packaged liquor industry, following similar charges against Coles Myer’s Liquorland, which was fined \$4.75 million last year.*

### **More information**

**From the LIV Bookshop** *Competition Law in Australia*, Corones \$120; *Annotated Trade Practices Act*, Steinwall \$95

**Useful web links** For information about complying with the *Trade Practices Act 1974*, visit the ACCC website at: [www.accc.gov.au](http://www.accc.gov.au)

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## **Responding to the problem of family violence**

In November 2002, the Victorian Attorney-General referred the issue of family violence to the Victorian Law Reform Committee. The Committee’s task was to consider and report on the changes needed to ensure Victoria has the best available response to the problem of family violence. On 1 March this year, the Committee released its final report.

Family violence is an issue that affects the whole community, especially women and children. At least one in five Victorian women is affected by family violence, which is the leading contributor to death, disability and illness in the under 45 age group. The statistics are alarming, particularly when a high proportion of reported incidents are repeat offences.

An estimated \$2 billion is currently spent in Victoria on matters of family violence (approximately \$8 billion spent nationally), with a 72.2 per cent increase in the number of intervention orders sought by police from family disputes between 2004 and 2005.

In the past, the response by police, the courts and community services has been fragmented. While improvements have been made, last November the Victorian Government committed \$35.1 million, over four years, to develop a more effective response to family violence in this State. The initiative is relying on a holistic approach, spanning Women’s Affairs, Police and Emergency Services, Community Services and Children, Housing and Local Government, and the Attorney General’s office.

Perhaps the greatest focus is on the justice system. The Victorian Law Reform Commission report lists 153 recommendations for better protection of victims of family violence.

One of the more problematic features of the current legislation is the Intervention Order system, which arguably fails to treat family violence matters seriously when measured against other community disputes. A new Act dealing exclusively with family violence and ensuring a consistent approach from the police and the courts is one of the reforms proposed by the Commission.

Other recommendations include:

- Clarifying definitions of ‘family violence’ and ‘family members’
- Training for police and court personnel on matters of family violence
- Prioritising intervention order breaches (to prevent repeat offences)
- Improving the interaction between intervention orders and Family Court orders where children are involved
- Establishing a specialist police prosecutions unit to respond more efficiently to applications for intervention orders and criminal prosecutions
- Providing easier access to courts and improving physical safety measures
- Providing alternative methods for victims giving evidence
- Implementing a broad community education campaign

The report of the Victorian Law Reform Committee is to be applauded for putting a range of issues concerning the response to family violence firmly back on the agenda. An integrated and coordinated response across the various government agencies and community services that deal with the effects of family violence will be welcomed by all, especially those who need support and protection from this complex and far reaching social problem.

### More information

**From the LIV Bookshop** *Domestic Violence in Australia: The Legal Response*, Renata Alexander \$35

**Useful web links** “Changing lives: a new approach to family violence in Victoria”, from the Department for Victorian Communities, is available at [www.dhs.vic.gov.au](http://www.dhs.vic.gov.au), or visit [www.lawreform.vic.gov.au](http://www.lawreform.vic.gov.au) for the Victorian Law Reform Commission’s “Review of Family Violence Laws”.

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## Human rights top of the agenda

*This article is adapted from an editorial by LIV CEO, John Cain, which appeared in the Jan/Feb edition of the Law Institute Journal.*

After a tumultuous 2005, the Victorian Government’s recent initiative to introduce a Charter of Human Rights and Responsibilities is welcome news.

The past year was splashed with a series of conflicts threatening human freedoms across the country. Not least were the proposed anti-terrorism measures, which many construed as more pervasive than protective. The hype continued with controversies

shrouding our immigration detention system, one of which highlighted a secondary issue concerning inadequacies of treatment for the mentally ill.

While the emphasis on protecting public security sounds noble, it seems to have been made at the expense of our individual rights and liberties.

Last year's overwhelming public response to the forming of a Victorian Human Rights Consultation Committee was, perhaps, not so surprising. Following 2500 submissions from individuals and organisations, and capacity attendances at public meetings and forums across the State, the Committee delivered its key recommendations. Victoria's Attorney-General, Rob Hulls, responded by announcing the Government's commitment to enacting a Charter of Human Rights and Responsibilities.

Victoria will be the first Australian State to take this initiative, with the hope that the rest of the nation will follow suit. Further consultation with community groups and organisations like the LIV will be conducted before draft legislation is established.

Recommendations for the Charter, to date, include:

- Consideration and review of the protection of civil and political rights under the *International Covenant on Civil and Political Rights* 1966 (ICCPR);
- That the Charter is binding on all public authorities (state and local government, statutory authorities and Victoria Police);
- An overriding power for the Victorian Parliament to supersede a Charter in exceptional circumstances;
- Enactment of the Charter by 1 January 2007.

Among the ICCPR rights under consideration for protection by the Charter are: the right to life; the right to freedom of expression, association and peaceful assembly; and the right of minorities to enjoy their culture, practise their religion and use their own language.

The current level of human rights protection is limited to provisions under the Australian Constitution, which are subject to judicial interpretation. With the protection and promotion of human rights being so fundamental to democratic principles, the proposed Charter is a long-awaited step in the right direction.

### More information

**From the LIV Bookshop** *Human Rights Under the Australian Constitution*, Williams \$60;

*The case for an Australian Bill of Rights: Freedom in the War on Terror*, George Williams \$16.95

**Useful web links** To view the report of the Human Rights Consultation Committee, go to the website of the Victorian Department of Justice at: [www.justice.vic.gov.au](http://www.justice.vic.gov.au)

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## WEB REVIEWS

### **Australian Human Rights & Equal Opportunity Commission**

[www.hreoc.gov.au](http://www.hreoc.gov.au)

The website of the Australian Human Rights and Equal Opportunity Commission (HREOC) covers a range of topics geared towards the protection of human rights. There is news, advice and information presented under several clearly distinguished areas of interest. They include: social justice for Aboriginals & Torres Strait Islanders, public complaints, disability rights, human rights, racial discrimination & sex discrimination. Further information, specific to employers, teachers and students, is also easily accessible.

### **Land Channel**

[www.land.vic.gov.au](http://www.land.vic.gov.au)

Land Channel is a government resource providing extensive information and services about land and property in Victoria. The website is clearly laid out with 'how to' advice on property sales and leasing, as well as information specific to professions such as building, planning and property development. It also includes directories, maps and information regarding land titles.

### **Victoria's Virtual Library**

[www.libraries.vic.gov.au](http://www.libraries.vic.gov.au)

Victoria's Virtual Library provides easy online access to the public libraries of Victoria. You can search a collection of databases, which comprises full-text journals, books, newspapers and pictures. All you need is a public library membership card number and the information is at your fingertips.

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