

**Injured at work
or on the road?**

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A VOLATILE CLIMATE

Discussion about drought and water is carrying significantly greater punch this summer. Ignoring the climate change debate is like failing to acknowledge an elephant in the room, or icebergs floating alongside the coast of New Zealand.

In an interview with the ABC's Four Corners, Prime Minister Howard described climate control as a question of balance. But after the Lowy Institute polled public concern for the environment ahead of terrorism, the government has been forced to reconsider the issue. Even more convincing was World Bank Chief Economist, Sir Nicholas Stern, who reported that global warming could result in the world's worst recession since the Great Depression.

It seems the debate is no longer a question of whether climate change exists but, rather, who is responsible.

A question of climate

The Climate Action Network Australia (CANa) has forewarned more than 140 Australian companies, including mining, petroleum, transport, manufacturing and financial organisations, of their potential legal liability for climate risks. With a landmark action filed recently in California against the country's six biggest car manufacturers, litigation against Australian companies whose activities contribute to climate change is becoming more conceivable.

But before public nuisance actions emerge, the regulation of greenhouse gas emissions is the main priority.

It appears that South Australia is leading the way, with the State Government's release of a draft bill to reduce local greenhouse gas emissions and increase the consumption of renewable energy to an ambitious 20% by 2014. It has also proposed new 'feed-in' legislation, rewarding those who can generate solar power to put back into the electricity grid.

Victoria looks to be following a similar suit, with the Government's Our Environment, Our Future – Sustainability Action Statement 2006. Its initiatives include drought assistance for farmers and communities affected by water shortages, a sustainable water strategy for the central region, and progressive water restrictions.

A question of water

Drought and bushfires have become very real environmental and economic concerns, more obviously felt going into summer. The lack of rain in rural areas has been particularly devastating for our farmers. Water has become a scarce resource, the management and cost of which have become serious issues for the government and the community. Increasing water prices and trading water between regions and states are just some of the propositions under consideration.

Amendments to the Water Act 1989 (Vic) in recent years have helped activate Government initiatives towards defining legal entitlements to water, as well as its access and use by all Victorians. The broader view is to balance economic, environmental and social needs.

But the legal issues raised by the government's control of water rights through this recent legislation are complex and currently being examined by the Law Institute of Victoria. One issue is that access to water is no longer considered part of the proprietary right enjoyed by those with an interest in land, namely owners and occupiers. A question yet to be resolved is whether the separation of water rights from the land could give rise to claims for compensation.

The state of our environment is a growing and global cause of concern. The effects of recent legislative initiatives aimed at conserving and managing our water supply will be tested in the coming months. But responsibility begins in our own backyards.

Useful web links Visit Climate Action Network Australia (CANa) at www.cana.net.au

CHANGES TO CONSUMER CREDIT CONTROL

As we roll into the Christmas holiday period of peak spending and credit card debt, Victoria's consumer credit market will see new protective measures come into effect.

The aim of Victoria's credit regulatory scheme is to balance the interests of the credit industry with those of consumers, but it is not an easy task. Public access to credit, usually through credit cards, is a significant driver of demand for consumer goods, which in turn fuels economic activity and growth in other industries. But mounting demand can translate to soaring credit card debt, which in Australia has reached more than \$36.6 billion. Add to that the continuing rise in interest rates and we are left with many Australians struggling to manage their finances.

This growing concern over credit and debt has prompted the State Government's amenable response to the Report of the Consumer Credit Review (the Report) and its 38 recommendations made earlier this year. The credit review itself, conducted during 2005, was initiated by the Bracks Government as part of their social action campaign: A Fairer Victoria. Their response to the corresponding Report adopts an

CHANGES TO CONSUMER CREDIT CONTROL

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an extensive range of measures to encourage affordable credit, while preventing predatory finance practices.

Among these measures are bans on pre-approved credit card limits, which have not been voluntarily selected by the customer. There are also plans for a state-wide network of No Interest Loan Schemes, an improved registration system for providers and a commitment to remove unfair contract terms. Further, the Consumer Credit Code, which prohibits credit providers from accepting household goods as security for consumer credit, is now likely to be amended.

But while the consumers are being looked after, how does the credit industry fair?

- The issue of unreasonable fees and charges is to be considered in a national context, with the government working in consultation with the Ministerial Council on Consumer Affairs (MCCA) to develop a regulatory impact statement on the matter;
- The inclusion of warnings about the dangers of only making minimal repayments is being considered as a requirement on all credit card statements;
- The existing prohibition on unsolicited credit cards in the Fair Trading Act will be expanded to include unsolicited credit limit increases;
- The MCCA has been encouraged to enhance protection for debtors who are considering reverse mortgages by forcing credit providers to present a 'no negative equity guarantee' along with a comprehensive information statement on reverse mortgages.

These are just some of the obligations likely to be applied to credit providers under the Report's recommendations. However, considering most of the major credit providers are national, Victorian legislation will need to be remedied alongside national laws in order to be effective. Amendments to the Consumer Credit Code must be considered in a context that transcends State borders and minimises conflict with other jurisdictions.

In the meantime, consumers must remind themselves of the trips and traps of credit consumption, particularly in this season of high expenditure. While Consumer Affairs Victoria (CAV) provides useful information about credit and debt, the Consumer Credit Legal Service (CCLS), a joint initiative between CAV and Victoria Legal Aid, is a valuable resource for those with legal problems in this area.

Useful web links

Information on handling credit and debt can be found at www.consumer.vic.gov.au.

Legal advice can be sourced from www.ccls.org.au.

A FAIR DAY'S PAY FOR A FAIR DAY'S WORK

As interest rates rise, petrol prices continue to soar and consumer costs escalate in the wake of Australia's worst drought on record, the minimum wage increase announced on 26 October could not have come at a better time. Taking effect from 1 December 2006, the wage increase of \$27.36 per week on all pay scales up to \$700 per week will benefit Australia's lowest paid workers.

Under the Workplace Relations Amendment (WorkChoices) Act 2005, the Australian Fair Pay Commission (Commission) was established to replace the Australian Industrial Relations Commission as the independent wage-setting body responsible for conducting wage reviews in the Federal workplace relations system. The first decision of the Commission involved an extensive consultation process both with key stakeholders and a broad range of representative organisations with an interest in minimum wages in Australia.

The role of the Commission is to determine and adjust the Federal Minimum Wage (FMW) and minimum classification rates of pay, as well as special FMWs for juniors, trainees and employees with disabilities, minimum wages for piece workers, and casual loadings.

In setting the minimum wage, the Commission must consider:

- The capacity for the unemployed and low paid to obtain and remain in employment;
- Employment and competitiveness across the economy;
- Provision of a safety net for the low paid; and
- Provision of minimum wages for junior employees, trainees and employees with a disability to ensure they remain competitive in the labour market.

The minimum wage increase, the first since June 2005, applies to employees receiving minimum wage rates including:

- those receiving the standard FMW Wage; or
- those receiving a rate of pay included in Australian Pay and Classification Scales.

Those not covered under the increase are employees covered by the five year transitional federal award system, those covered by Australian Workplace Agreements (AWAs) or Agreements approved prior to the commencement of WorkChoices and those covered by preserved State Agreements.

While this first wage decision from the Commission appears to have taken both supporters and critics of the new pay-setting body by surprise, the next general wage-setting decision, due mid 2007, will be watched with interest. This, together with the commencement of a wage review in early 2007 focusing on minimum wages for junior employees and those trainees, will determine whether this decision really is the 'final nail in the scare campaign' against WorkChoices, as described by Workplace Relations Minister Kevin Andrews. Either way, the resolve of the federal government has been strengthened with the recent High Court decision dismissing challenges to the constitutional validity of the WorkChoices legislation. The decision opens the way for the Commonwealth to regulate more aspects of business activity previously left to the states.

Useful web links

Visit the Australian Fair Pay Commission at www.fairpay.gov.au and the Office of the Employment Advocate www.oea.gov.au, which includes tips on negotiating workplace agreements.

HUMAN RIGHTS ON TRIAL

At the opening concert of their Australian tour, Irish rock band U2 called for the release of Australian David Hicks from Guantanamo Bay detention camp in Cuba, where he has been awaiting trial on charges of conspiracy to commit war crimes, attempted murder and aiding the enemy since 2001.

U2 joins a long line of global Hicks' supporters, who make no judgement on Hicks' guilt, but rather the system that has detained him without proper judicial process or regard for human rights.

Earlier this year the US Supreme Court ruled that the Military Commission, which Hicks was to appear before, was illegal and in contravention of the Geneva Convention and the US military code of justice. It was a landmark ruling bringing into question the presidential powers used to establish the first US war crimes tribunals since World War II.

So what does this mean for Hicks and the future of Guantanamo?

Recently, the US government ratified a new military commission process via the Military Commissions Act 2006 (the Act), which has been criticised for its failure to satisfy the Supreme Court's concerns. It is argued that while the new process allows for plea bargaining, it also permits accused persons to be prejudged as terrorists without rights to a fair trial. Considering David Hicks' case does not fall within the perimeters of the Act, a question remains about what will happen to him.

The only way out for Hicks right now is repatriation by the Australian Government. But, while Prime Minister Howard has expressed concern regarding the time that is being taken with Hicks' trial, he has also pointed out that if Hicks is brought back to Australia, he cannot be tried for the same offences because they were not offences under Australian law at the time they are alleged to have taken place. Instead, Mr Howard has

suggested other methods of trial in the US be considered, for instance a court martial or civilian trial conforming to the US Supreme Court decision.

Hicks' military lawyer, Major Michael Mori, has criticised the lack of action from the Australian Government, suggesting that five years detention in Guantanamo is penalty enough for someone who has never violated Australian law.

But terrorism is a hot topic in Australia and the rule of law gets controversial wherever the threat of terrorism is concerned. Victorian Jack Thomas was recently cleared of charges of receiving funds from a terrorist organisation, but was issued with a control order which limits his use of telecommunications, imposes a curfew and requires him to regularly report to police. Might this be what awaits David Hicks if he is returned to Australia?

At a recent meeting of Australian State and Territory Attorneys-General, discussion about Hicks' case concentrated on the serious breakdown in fundamental principles of law. The Attorneys-General met recently in Fremantle, along with Major Mori, to sign the Fremantle Declaration, which upholds the right to a fair trial, the prohibition of detention without trial, the prohibition of torture and the prohibition of the death penalty and, in addition, called for urgent action on Hicks' ongoing detention.

As we approach the fifth anniversary of the detention of David Hicks, the pressure is definitely still on. In the meantime Mr Hicks continues to wait and the principles of human rights continue to be tested.

Useful web links

For general information on international human rights standards, visit the official United Nations web site: www.ohchr.org.

PUTTING THE BREAKS ON HOONS

Hoon - noun Colloquial: a fast, reckless driver of cars or boats (Macquarie Dictionary).

Victorian Police now have the power to impound, immobilise or forfeit vehicles under new anti-hoon laws implemented on 1 July 2006. Since the amendments to the Road Safety Act 1986 came into effect, police have seized more than 440 vehicles associated with hoon-related offences.

Data released by the Assistant Commissioner for Traffic, Noel Ashby, and Minister for Police and Emergency Services, Tim Holding, shows the tough new laws are definitely making an impact. Of the 'hoons' apprehended since the new laws were effected:

- 99% were male;
- 75% were aged between 16 and 25 years;
- 4% were learner drivers;
- 50% were probationary licence holders
- 54% had their cars confiscated after they were caught doing 'burnouts', 'doughnuts', 'fishtails' or 'monos' (motorcycles);
- 51% committed the offence in a Holden.

The zero tolerance approach to dangerous driving means that first time offenders can have their vehicles impounded or immobilised for 48 hours, while second time offenders risk three months without wheels and third time offenders may have their vehicle permanently confiscated by the Court. A costly exercise for a cheap thrill.

A hoon is considered to be someone who: intentionally causes their vehicle to lose traction with the road, exceeds the speed limit by 45kmph or more, engages in unauthorised racing or speed trials on a road or near to a road that is open to the public, or drives without a valid licence. Police may seize a car on-the-spot within two days of the offence, or serve notice to the offender within 10 days.

It is important to note that vehicles can be seized irrespective of whether the culpable driver is the registered owner of the vehicle. This means that mum or dad might find themselves without a vehicle if the children are caught committing any of the aforementioned offences in the family car.

While the anti-hoon laws are one way to address the dangers on our roads, further laws to be introduced in 2007 go a step further, with special focus on novice drivers. Considering the 120 people killed and 2300 seriously injured in crashes involving young drivers each year, the proposed laws aim to double the time a learner driver must hold a learner's permit before being eligible for a probationary licence from six months to a year. Learner drivers under 21 years of age will also need to fulfil 120 hours of supervised driving before applying for their licence.

Useful web links

For road safety information visit www.justice.vic.gov.au/road-safety.

STAGING CHILD SUPPORT REFORM

Changes to the Child Support Scheme are supposed to be promising to better balance the interests of both parents while endeavouring to work in the best interests of the child. Since the introduction of the Child Support Scheme in 1988, the circumstances of many Australian families have changed dramatically. A shift in community values has seen greater importance put on the involvement of both parents in the life of the child, even after separation.

The federal government hopes that its changes to the Child Support Scheme will reduce conflicts between parents, encourage shared parenting and ensure child support is paid on time and in full.

It is a measured approach, which is being implemented in three stages, with the first having been in effect since 1 July 2006. The second stage begins 1 January 2007 and the third and final stage starts

1 July 2008. Since 1 July 2006:

- the minimum payment has been increased;
- greater capacity of the Child Support Agency (CSA) to ensure payments are made in full and on time;
- non-resident parents on income support have access to higher Newstart and related payments;
- reduction in the maximum amount of child support payable by high income earners;
- arrangements for assessing the capacity of parents to earn income has changed;
- a greater proportion of support payments can be spent directly on the children; and
- Family Relationship Centres, the Family Relationship Advice Line and other counselling services expanded.

From 1 January 2007:

- CSA decisions can be reviewed by the Social Security Appeals Tribunal;

- the relationship between the courts and the Child Support Scheme will be strengthened; and
- more time given to working out parenting arrangements before Family Tax Benefit is effected.

Stage three of the changes will come into effect on 1 July 2008 and will introduce a new formula for calculating payments. This new formula assumes that older children cost more than younger children. It also reduces the amount payable by non-resident parents who have overnight contact with their children. In addition, the stage three changes will:

- ensure a minimum payment is made for each child support family;
- ensure that dependent step-children are taken into account when calculating a parent's child support liability for their first family;
- take into account income from second jobs and overtime that assists with re-establishment for the first three years after separation;
- simplify the process for applying for a 'change of assessment';
- improve the arrangements for parents who wish to make their own agreements; and
- make the child support rules easier for parents who get back together.

Whether the changes actually do deliver a fairer system with fewer disputes between separated parents, we will have to wait until 2008, once all changes have been implemented, to see.

Useful web links

For details of the child support reforms visit www.facsia.gov.au/internet/facsinternet.nsf/family/childsupport.htm and www.familyassist.gov.au.

WEBSITE REVIEWS

TravelSmart

www.travelsmart.vic.gov.au

TravelSmart is a state government initiative working with individuals, households and organisations to reduce dependency on cars and encourage the use of sustainable travel alternatives such as travelling by public transport, cycling and walking. Visitors to the website can check out the education programs available, recommendations for households, work places and local community, and even case studies of those who have already made progress.

Google Scholar

<http://scholar.google.com>

Conducting academic research on the internet is made easy with Google Scholar. This is your free search for peer-reviewed papers, theses, books, abstracts and articles from academic publishers, professional societies, preprint repositories, universities and other scholarly organisations.

Edmund Rice Centre

www.erc.org.au

In the name of social justice and advocacy, the Sydney-based Edmund Rice Centre undertakes a range of projects including research, advocacy, networking, engaging with schools and the community sector, running cross-cultural immersion programs and providing services and training. The website provides comprehensive information and news on a range of social justice issues including human rights, immigration and climate change.

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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.

DISCLAIMER:

The information in this newsletter is not intended to be a complete statement of the law relating to the issues raised. Accordingly, no person should rely on this information without first obtaining specific advice from our office.