

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

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PREPARATION KEY TO PAINLESS PROPERTY TRANSACTIONS

With interest rates coming down, changes to the "fall of hammer" auction rules and new guidelines governing how real estate agents advertise house prices, you don't want to be caught out in the property market this Spring.

Perhaps you are in the market to buy, or are thinking of putting the family home on the market? Either way, it pays to be across the rules, regulations and laws governing real estate. Forget "location, location", try "preparation, preparation" if you want the experience to be a painless one. There are laws in Victoria designed to stop agents from making false or misleading statements about property prices, in particular, underquoting the estimated selling price to potential buyers. Consumer Affairs Victoria has released guidelines that are designed to be "used to review underquoting practices and to assess compliance with the Fair Trading Act 1999 and the Estate Agents Act 1980". While the price you are willing to pay is the most important factor when organising finance, don't forget to take account of stamp duty, bank charges and other "hidden" fees such as mortgage insurance. Get a lawyer to review the Vendor's Statement, also called a Section 32 document, and make sure you understand what you are actually buying as well as your rights and responsibilities in relation to the property if you become the owner.

If you plan to bid at an auction, contact your solicitor before the day of the auction so that all documents can be reviewed and all the terms and conditions fully explained. Once you understand all the paperwork, you can set a realistic budget and be ready to bid with full confidence. Get to the auction early, do a final inspection and make sure you understand the auction rules.

Specific laws apply to the conduct of auctions and the rules agents must follow both before and during the auction. Before the auction, the agent must comply with the Sale of Land Act Regulations 2005 (Vic), which includes producing an auction information statement and providing, in writing, the rules applying to the auction.

At the auction, the agent must declare the laws that apply to the auction and whether there will be co-owner and/or vendor bids received at the auction. The Sale of Land Act 1962 (Vic) prohibits the agent from accepting dummy bids to push up the price of the property during the auction. Auctioneers must indicate bidders on request. Changes to the Sale of Land Act Regulations 2005 (Vic) mean that bids made after the fall of the hammer cannot be accepted by the auctioneer, unless the vendor or successful bidder refuses to sign the contract of sale following the auction.

If you are selling, you are responsible for the accuracy of your Vendor's Statement, or Section 32, which will contain information about rates, the property title, zoning, notices, orders and building approvals. A lawyer can help prepare this document, as well as draw up the Contract of Sale. Apart from price, other terms the Contract covers include the settlement date, chattels that form part of the sale and issues such as planning restrictions.

Victorians now have a new Contract of Sale for real estate transactions, that began on 28 September. The new Contract replaces both the Contract Note and the old Contract of Sale. Apart from simplifying and reducing costs involved in the conveyancing process, buyers and sellers should notice little practical difference in the sale process.

When it comes to real estate a lawyer can:

- advise on any contractual issue including your rights and obligations;
- check the information given in the Vendor's Statement on your behalf and advise you of your rights if false information has been given or necessary information has not been disclosed;
- negotiate contractual terms favourable to you and pursuant to your instructions;
- represent your interests if a dispute arises;
- ensure compliance with legislation and conduct relevant searches; and
- act for you in property settlements.

FAMILY-FRIENDLY POLICIES ARE WORK-FRIENDLY

What does "family-friendly workplace" really mean?

Many organisations talk about having a culture that embraces flexible working hours, part-time work for parents regardless of gender and job sharing. Some institutions even provide onsite childcare.

But when the pressure is on at home, a child is ill or an elderly relative needs extra care, how hard is it to ask the boss to change your working day or to slash your travel itinerary?

The Victorian government is hoping new guidelines will elevate family responsibilities outside the narrow confines of the human resources department and make it grounds for unlawful discrimination.

Deputy Premier and Attorney-General Rob Hulls said in August that the guidelines, "Building eQuality in the Workplace: Family Responsibilities – Guidelines for Employers and Employees", complemented new amendments to the Equal Opportunity Act 1995 (Vic) which made it unlawful for employers to unreasonably refuse to accommodate an employee's parental or carer responsibilities.

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Under the changes, employers do not have to automatically approve a request for more flexible work arrangements. But when asked, they must seriously consider more suitable working conditions for workers with family or caring responsibilities. In making a decision, employers must consider the cost of any new arrangements and the effect of those arrangements on others in the workplace, including the financial impact on the business.

Avoiding the scheduling of meetings before 9am to allow parents to drop children off at school or allowing employees to work additional hours to make up for time taken for parental or carer duties without loss of pay are just some examples of more family-friendly practices. Or, it could mean providing access to an office phone for calls relating to parental or carer responsibilities or changing the need for overnight work trips.

Mr Hulls said improving the work-life balance helped retain skilled staff – many of whom had parental or carer responsibilities. For employers, this means reduced recruitment and training costs and ultimately a boost to productivity.

PRIVACY IN AN INFORMATION AGE

Heather Osland has spent years trying to find out why the Victorian government refused to grant her a pardon for murdering her husband. The Bendigo woman served nearly 10 years in jail for the murder after a jury rejected her defence of "battered woman syndrome".

In 1999, she applied to the Victorian government for a formal pardon on grounds of compassion, but her petition for mercy was denied.

Under the Victorian Freedom of Information Act 1982, Ms Osland then sought access to legal advice provided to the Attorney-General by three prominent lawyers, advice that the government relied on in refusing her application. The Secretary of the Department of Justice refused access to the documents, saying they were exempt from FOI laws on the grounds that they constituted privileged communications. Ms Osland originally sought access to the legal advice through an FOI application to VCAT. Then president Justice Stuart Morris granted access to the documents stating that, although they were subject to exemption under legal professional privilege, the documents should be released as a matter of public interest as provided for under s50(4) of the FOI Act (the public interest override provisions).

The Secretary of the Department of Justice appealed to the Court of Appeal.

The Court of Appeal decided that legal professional privilege applied to the documents and that the public interest override provisions of the FOI Act did not apply, thereby not allowing release of the documents.

In August, a further appeal to the High Court ruled that the matter should be referred back to the Court of Appeal. Although the reasoning of the Court of Appeal was correct in this case, the High Court found that the Court had erred in not examining the documents when considering whether the public interest override actually applied.

Ms Osland won a technical victory in being able to return to the Court of Appeal to have her request for access reexamined. While Ms Osland continues to exercise her right to access information about her epic legal matters, an individual's right to privacy has also been in the spotlight with a landmark report claiming Australia's privacy laws need a major overhaul. The 2700 page report, *For Your Information: Australian privacy law and practice*, produced by the Australian Law Reform Commission (ALRC), finds that Australia's privacy laws are out of date in the digital age.

It recommends 295 changes to privacy laws and practices. ALRC president David Weisbrod, said the Privacy Act 1988 (Cth) was introduced 20 years ago before the advent of super-computers, the internet, mobile phones, digital cameras, e-commerce, sophisticated surveillance devices and social networking websites – all of which challenge our ability to safeguard sensitive personal information.

The report touches on 10 key areas including including children, credit reporting, health, data breach notification (fraud and identity theft), emerging technologies and creating an action for serious invasion of privacy.

CONDUCT CODES APPLY TO SPORTSPEOPLE AND SPECTATORS

Sport is now big business. So it should come as no surprise that sports law is one of the legal profession's fastest growing areas.

Some AFL footballers hit the headlines not just for their sporting prowess come finals time, but for public indiscretions which can become police matters. Olympic athletes can be quick to call in a lawyer to appeal selection decisions and sporting bodies are required to enforce legally-binding anti-doping rules and regulations as well as make sure its members behave according to codes of conduct.

So just how far will the arm of the law reach on the sports oval in the future?

The AFL Players Association recently voted to support changes to the AFL's drugs policy which will see players undergo hair tests to detect drug use within the previous three months. The testing will be after the off-season period. The players also backed a maximum 18-match ban for a third positive drugs test, up from 12 matches previously.

Down in the "little league", the Victorian government is looking at ways to stamp out sideline violence and curb the "ugly parent syndrome".

Sports Minister James Merlino says a code of conduct for spectators will be brought in to quell violent outbursts. The code, which could see offenders jailed, follows an increasing number of incidents involving bad behaviour by parents and coaches at junior competitions.

Mr Merlino said the program, which runs across junior football, soccer, netball and basketball, will raise awareness and be important in addressing bad behaviour during sporting events. Under the initiative, spectators, including parents, and officials will be asked to adhere to a code of conduct. Breaches would be reported to local clubs and officials, and lengthy bans may be enforced.

Mr Merlino said that, in the worst circumstances, violence should be reported to police.

TRIBUNAL REACHES 10-YEAR MILESTONE

As the name suggests, the Victorian Civil and Administrative Tribunal, or VCAT, is the body that deals with various civil disputes, ranging from domestic building works and problems with buying a used car, to issues with government agencies and guardianship matters.

Set up in 1998, VCAT was formed from the amalgamation of 15 boards and tribunals. It was designed to be a more efficient and low cost forum for the hearing of disputes and has wide ranging powers.

The civil justice tribunal deals with:

- the purchase and supply of goods and services;
- discrimination;
- domestic building works;
- guardianship and administration;
- disability services;
- legal profession services;
- residential and retail tenancies and owners corporations (body corporate); and
- consumer credit.

It also deals with disputes between members of the public and government (state/local) regarding planning and land valuation issues, licences to carry on businesses including medical

professionals and travel agents, state taxes and many other government decisions such as Transport Accident Commission (TAC) decisions and freedom of information issues. VCAT has three divisions – Civil, Administrative and Human Rights – with each division containing a number of “Lists” or sections which specialise in particular types of cases. Anyone can file a claims application with the relevant List. Time limits apply and fees are payable, although these can be waived in some cases.

The Fair Trading Act 1999 (Vic) allows for a very wide range of applications to VCAT, but claims must be made within six years of the dispute.

VCAT can refer a dispute to a mediator, order money to be paid or make an order that a contract be performed or that it be declared void.

To help settle a dispute, a Mediation, Directions Hearing or Compulsory Conference may take place before any actual hearing.

Once a matter has been heard, the sitting VCAT member either makes a decision on-the-spot or provides a written decision that is delivered to the parties as soon as possible.

UNDERBELLY - WHY COULDN'T WE WATCH IT?

Victorians finally got to see part of the multi-million dollar TV drama Underbelly in September, following a conviction in the murder trial that had prevented it from being shown in the state. Supreme Court Justice Betty King imposed a suppression order on the 13-part weekly series in February after the Department of Public Prosecutions argued screening it would prejudice the March trial. The decision to ban the broadcast in Victoria focused attention on the power of the Victorian Supreme Court to suppress publications or broadcasts which might prejudice a criminal trial. The question of whether a TV drama should be prevented from depicting events which are the subject of a current criminal trial had not been raised before in Victoria.

Other issues also emerged such as the ability of courts to restrict the flow of information in the “digital age” and how to balance freedom of speech with the right to a fair trial.

The Nine Network appealed the orders made by Justice King which restricted the “transmission, publication, broadcasting or exhibiting” of Underbelly – which was based on Melbourne’s gangland war. The appeal was unsuccessful with the Court of Appeal upholding the findings of Justice King that the TV drama might interfere with the ability of a jury to properly consider the evidence in the trial. This is because Underbelly gave an explanation of the murder, and

contained a mixture of factual and fictional dialogue which would not be made clear to a juror. The Court found the series could potentially expose the jury to not only facts (which might be inadmissible) but also to fictional conversations and events which might confuse the facts presented at the trial.

The ban on Underbelly expired when a Supreme Court jury convicted Evangelos Goussis of the 2004 killing of Lewis Moran in May 2008. Between 1998 and 2006, more than 30 people were killed in Victoria – deaths linked to various feuds between members of Melbourne’s organised crime underworld. Some of the murders remain unsolved and others are subject to criminal proceedings in which charges have been laid but which have not yet gone to trial. Which is why only the first five episodes of the 13-part series have been shown after a Supreme Court ruling by Justice Peter Vickery saw the sixth episode barred so as not to prejudice another accused criminal’s upcoming trial.

The episodes which did go to air were edited to meet concerns raised by the Director of Public Prosecutions, Jeremy Rapke, QC. The face of one actor, who appears briefly, was pixellated. The Nine Network did not seek to screen the remaining seven episodes of the show, but has said it has plans to commission a second series of Underbelly.

SAVE THE NET

The Federal Government is planning to force all Australian servers to filter internet traffic and block any material the Government deems 'inappropriate'. Under the plan, the Government can add any 'unwanted' site to a secret blacklist.

Testing has already begun on systems that will slow our internet by upto 87%, make it more expensive, miss the vast majority of inappropriate content and accidentally block up to 1 in 12 legitimate sites. Our children deserve better protection - and that won't be achieved by wasting millions on this deeply flawed system.

The Australian government plans to test a nationwide Web filtering system that would force Internet service providers to block access to thousands of sites containing questionable or illegal content, prompting cries of censorship from advocacy groups.

The proposed filter is part of a \$82 million "cyber safety plan" started in May with the goals of protecting children online and stopping adults from downloading content that is illegal to possess in Australia, like child pornography or materials related to terrorism.

But the plan has ignited opposition from online advocacy groups and industry specialists who say it would slow browsing speeds and do little to block undesirable content.

Last month, the minister of communications, Stephen Conroy, invited Internet service providers and mobile phone operators to participate in a live trial of the program, which is set to begin this year.

The proposed system consists of two tiers. Under the first, all Australian service providers must block access to around 10,000 Web sites on a list maintained by the Australian Communications and Media Authority, the federal monitor that oversees film classifications.

The second tier would require service providers to provide an optional filter that individuals could use to block material deemed unsuitable for children, like pornography or violence.

The government says the list, which is not available to the public, includes only illegal content, mostly child pornography. But critics worry about the lack of transparency and say the filter could be used to block a range of morally hazy topics, like gambling or euthanasia.

"Even if the scheme is introduced with the best of intentions, there will be enormous political pressure on the government to expand the list," said Colin Jacobs, the vice chairman of Electronic Frontiers Australia, a technology advocacy group. "We worry that the scope of the list would expand at a very rapid rate."

The proposal has set off a flurry of anxious chatter on social networking sites like Facebook, where thousands of users have announced plans to attend mass protests on Saturday. More than 85,000 users have also signed an online petition created by the left-wing advocacy group GetUp, which calls the

mandatory filter "a serious threat to our democratic values."

Some industry specialists have also criticized the plan.

"Our view is there are some serious shortfalls in what is being proposed," said Mark White, the chief operating officer at iiNet, Australia's third-largest service provider, which has applied to take part in the trial.

Mr. White said the mandatory filter was unlikely to work because it would not monitor illegal activity on peer-to-peer or file-sharing networks, where most child pornography and other illegal content is exchanged. The filter would also slow Internet browsing speeds for all regardless of whether they were trying to access forbidden sites, he said.

This concern has been affirmed by the government's own research. According to a July report by the communications and media authority, the best filter in tests of six unidentified Internet filtering programs slowed browsing speeds by 2 percent; the other five made the Internet run between 22 and 87 percent slower.

The study found that filtering programs were effective at blocking illicit material around 92 percent of the time, but around 3 percent of legitimate sites were mistakenly caught up in the filters.

Australia's largest service provider, Telstra, has also expressed doubts about the plan. The firm's chief operating officer, Greg Winn, said last week that using service provider filters to stop illicit content was "like trying to boil the ocean." As soon as the filter was applied, he said, someone would find a way to break it.

Clive Hamilton, a senior ethics professor at the Australian National University and a supporter of the plan, dismissed the arguments.

"The laws that mandate upper speed limits do not stop people from speeding, does that mean that we should not have those laws?" he said. "We live in a society, and societies have always imposed limits on activities that it deems are damaging," he said. "There is nothing sacrosanct about the Internet."

The children's welfare group, ChildWise, has also defended the plan, saying filtering of child pornography would be "a victory for common sense."

Mr. Conroy says he and the government are open to feedback from Internet industry groups and the public. On Tuesday, the minister introduced a blog seeking comment on Australia's digital future, including a string on how to "maintain the same 'civil society' we enjoy offline in an online world."

In an e-mail message, Mr. Conroy said the government was taking note of the industry's concerns about the technical limitations of the proposed filter. He added that the trial would provide "an invaluable opportunity for I.S.P.'s style to inform the government's approach."

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*On behalf of Management and staff
we wish you a
Merry Christmas and a Safe New Year*

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.