

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

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SURVIVING A CREDIT CRISIS

A new year often brings with it a renewed resolve to exercise more self control and discipline in various areas of life. Unfortunately, for some of us, the festivities over Christmas and the holiday period put us severely behind the eight ball. We have eaten too much, partied too hard and spent far too much money enjoying the festive season and now we need to take stock. The current tough economic times may have persuaded us to take it a little easier, but few of us will have ushered in the New Year without an increase in spending and a larger credit card debt. But don't despair, help is at hand.

If you owe money, it is important to make a realistic plan to repay it. Prepare a budget and commit to regular payments until the amount can be repaid in full. If you are experiencing difficulty in paying back money owed, it is important to act quickly. Do not ignore repayments or overdue notices. If possible, contact your credit provider and negotiate directly with them to make more suitable arrangements to repay the amount owed.

You can negotiate with your lender to reduce your regular loan repayments for a period of time to make the amount more manageable to repay.

Alternatively, if circumstances have left you unable to make any repayments, you may be able to wholly suspend your loan repayments for a period of time. For example, if you have become ill and unable to work or have lost your job, you may be able to vary your loan on grounds of hardship. The Victorian Consumer Credit Code (the Code) covers most private purpose (non-business) loans and outlines the requirements for hardship variations and the procedure to be followed. The Code also provides guidelines for the credit industry and offers protection for consumers dealing with credit providers. If you are unsuccessful in negotiating directly with your lender, you can make an application to the Victorian Civil and Administrative Tribunal (VCAT) to have the terms of your loan agreement varied. If you are unsure about dealing directly with your credit provider or need to make an application to VCAT, contact your lawyer. Your lawyer will be able to negotiate on your behalf and look over any variation documentation prepared by your lender.

Similarly, if you feel you are being treated unfairly or unduly harassed or pressured by a lender, there are various remedies available to you.

Complaint processes available through industry external dispute resolution schemes such as the Banking and Financial Services Ombudsman, Consumer Affairs Victoria and, at the national level, the Australian Securities and Investment Commission (ASIC) and the Australian Competition and Consumer Commission all offer protection and assistance for consumers.

Other agencies such as the Consumer Action Law Centre provide valuable information on a range of consumer credit issues including comprehensive factsheets on their [website www.consumeraction.org.au](http://www.consumeraction.org.au). Resolving to take control of your financial obligations will pay off in the long run.

FAIRNESS AMID ECONOMIC FEAR

In the current economic climate where fear about job security looms, the new Fair Work Bill 2008 offers some comfort to employed Australians. On 25 November 2008, Minister for Employment and Workplace Relations Julia Gillard introduced the federal government's substantive workplace relations legislation.

The Fair Work Bill (the Bill) replaces the Workplace Relations Act 1996 (Cth), finally laying to rest the unpopular and complex WorkChoice laws. In its explanatory memorandum, the Minister claims "the Bill creates a national workplace relations system that is fair to working people, flexible for business and promotes productivity and economic growth".

One of the key elements of the system is a set of 10 legislated National Employment Standards (NES) for all employees. The NES were created after extensive consultation resulting in 129 submissions received from a wide range of stakeholders from employer and employee representatives, state governments, business and community groups, and individuals. The NES cover matters such as maximum weekly hours of work, a right to request flexible working arrangements, parental leave and related entitlements, procedures for termination and redundancy pay as well as the provision of a Fair Work Information Statement for all employees.

The Bill also creates a proposed "one stop shop" for advice and support on all workplace relations issues and the enforcement of legal entitlements. The role of this independent statutory body, Fair Work Australia (FWA), includes facilitating collective bargaining, approving enterprise agreements and dealing with claims of unfair dismissal, workplace disputes and industrial action. Within FWA is the office of the Fair Work Ombudsman whose primary role will be to promote "harmonious and cooperative workplace relations and compliance with the Bill through education, assistance and advice".

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The Fair Work Ombudsman will also have powers to conduct investigations and, where appropriate, issue compliance notices and initiate court proceedings. The Bill has been referred to the Senate Education, Employment and Workplace Relations Committee and a report is expected at the end of February this year. Representing a major piece of legislative reform by the Labor federal government, the journey of the Fair Work Bill 2008 will be watched with great interest. Remember, if you have a workplace issue, your lawyer will be able to help you.

HOW TO SURVIVE A RECESSION

Bank manager slow to return your phone calls? Customers tardy in paying their bills? Worried about sales forecasts or what key staff are up to?

Welcome to the new world order that has seen cash replace credit and insolvency experts replace merchant bankers as the corporate sector's top earners.

Weaker sales and gloomy forecasts, coupled with the ageing of debtors' ledgers and tighter credit from lenders, has already sent many businesses reeling. White collar fraud is also expected to rise as the downturn continues. More than ever, you are going to need clear and practical advice on how to survive a recession. Understanding the legal issues facing your business is critical, especially when your own home or personal assets could be at risk. Lawyers are reporting an increase in the number of clients seeking help with writs for possession, facility guarantee claims, personal guarantees and other complex litigious problems involving negotiations with the major banks. Often where a bank security has included residential property, the asset has not sold in the timeframe necessary. When it has, the price has often been relatively low, fetching nothing like the prices in recent years. This has led to significant shortfalls which are being picked up under personal guarantees by directors and related entities.

As a business owner, if you want some form of enforcement on your debtors' ledger or you are keen to issue statutory demands or resolve disputes which may have been on the back burner, now is the time to talk to your lawyer – before you go bankrupt.

Recovery and insolvency experts point to good planning as the way to "recession proof" a business. This should include strategies to protect your personal as well as business assets. Preparing solid financial documents such as cashflow statements and budgets will also go a long way towards ensuring you survive any downturn.

And keeping a close eye on business assets such as stock and inventory can be the difference between a company that survives an economic downturn and one that fails. Reviewing costs will highlight any inefficiencies and should include an examination of existing contracts, leases and financial agreements. A lawyer can help you with this.

Redundancies also need to be handled carefully to avoid claims of unfair dismissal and the resulting damage to your reputation.

Fraud is another issue to be aware of. According to a recent survey of executives by Deloitte, most expect accounting fraud to increase during the next two years as pressure to meet earnings targets intensifies.

Sectors most at risk include computer, retail, telecommunications and health care, the Deloitte report claims. False invoicing, plant and inventory theft, stealing of cash, diverting of sales to an employee's own business, identity and credit card theft, kickbacks and manipulation of data can occur when there are poor internal controls.

"A slowing economy may increase pressure on companies to meet – and often exceed – short-term performance goals (sometimes at the detriment to the organisation in the long-term) or to demonstrate that shareholder value has improved due to management's leadership. In some instances, organisations may expect results that can be achieved only in a thriving economy. It is this mindset in slower economic times that can contribute to increased fraudulent activity," the Deloitte report states.

If you are a non-executive director of a company – big or small – remember you can be personally liable for the misconduct of your fellow directors.

Seek legal advice if you are concerned about fraud risk in the changed financial environment as the number of prosecutions and class actions are expected to rise when the accounts of insolvent companies are opened to forensic scrutiny.

PROPERTY LAWS CHANGE FOR DE FACTO COUPLES

The legal landscape has changed for de facto couples who separate and face the often difficult task of dividing up their assets.

Under new federal laws which came into effect on 1 March this year, property settlements for separating de facto couples will be in line with those for married couples.

The Family Law Courts can order division of any property that a de facto couple owns either separately or together.

The superannuation of each partner can now be split, and spouse maintenance ordered.

The Family Law Courts can make these orders if satisfied of one of the following:

- the de facto relationship is at least two years duration;
- there is a child of the de facto relationship;
- one of the partners made substantial financial or non-financial contributions to their property or as a homemaker or parent and serious injustice to that partner would result if the order was not made; or
- the de facto relationship has been registered in a state or territory with laws for the registration of relationships.

A de facto relationship is where two people – either of the opposite or same sex – are not married or related by family but live together on a "genuine domestic basis".

The new laws apply to de facto relationships that break down on or after 1 March 2009, and applications for a property settlement must be made within two years of the relationship ending.

However, couples whose relationship has broken down before this date can choose to have the new laws apply to them if they opt in to the new legislation and each obtains independent legal advice.

De facto couples who are about to enter – or are already involved in – a de facto relationship may want to consider a binding financial agreement which outlines property distribution and maintenance if a relationship breaks down.

Binding financial agreements can only be entered into after both parties have obtained independent legal advice.

Remember, your lawyer can help you with any of these issues.

GOVERNMENT TARGETS FAMILY VIOLENCE

As the work year begins and families look back on the holiday season, not all of them had a happy relaxing time. Many families experience considerable stress as they deal with mounting credit card debt after Christmas, long hot summer school holidays and doomed New Year's resolutions. Unfortunately, some of these pressures lead to family violence, particularly towards women and children.

The number of women and children who suffer significant risk, and even death, at the hands of other family members, remains a scourge on our society.

In Victoria during 2005-06, 43 per cent of homicides were related to family violence. While homicide rates in Australia have dropped by one third in the past seven years, the rate of family violence homicides has remained the same. As Victorian Attorney-General Rob Hulls states, "Research indicates that these homicides are the escalation of a predictable pattern of behaviour and should be viewed as a connected group, not as isolated events".

Clearly, more targeted crime prevention measures in this area need to be considered.

The inaugural White Ribbon Day, held in November 2008, put the spotlight on family violence and the need to speak out about it.

Mr Hulls said at its launch, "It is important that as a community,

and as a government, we condemn family violence in our words and in our actions, in our policies and in the way we approach and support family violence victims and perpetrators".

To address this issue, the Victorian government has announced an independent review into family violence deaths. The review, which will be led by the State Coroner's Office, will investigate such deaths and gather information for future intervention and prevention strategies.

The new Coroner's Prevention Unit will conduct the review as part of its mandate to improve the health and safety of Victorians.

Also, new legislation aims to provide improvements in the way family violence is dealt with by the police and courts. The Family Violence Protection Act 2008 (Vic) came into operation on 8 December 2008.

Under this Act, police can intervene more quickly to deal with violence and threats within families by issuing family violence safety notices.

Similarly, new laws protecting vulnerable victims by making it easier for them to stay in the family home and requiring the perpetrator to leave, all combine to seek to minimise the effects and occurrence of family violence.

BULLYING IS ALWAYS UNACCEPTABLE

High levels of bullying and sexual harassment in the workplace are going unreported because employees fear losing their jobs if they speak out.

As the economic crisis puts more pressure on the workplace through increases in redundancies and workplace cutbacks, concerns are held that bullying incidents will increase and be more likely to go unreported. A survey of 788 workers by CareerOne found that 62 per cent had been bullied by a senior person at work and that only 59 per cent had reported it. Similarly, 74 per cent of sexual harassment cases went unreported because of the fear of reprisals, including the possibility of losing the job.

Bullying can be subtle or overt. It can include name calling, public humiliation, deliberately leaving someone out of the communication loop, assigning meaningless tasks, stealing ideas and spreading rumours.

People being bullied can suffer anxiety disorders, stress, depression and insomnia; and for the employer it can mean lost productivity and staff loyalty, a damaged reputation, higher staff turnover and poor morale.

Under the various Occupational Health and Safety Acts, employers and employees have a legal responsibility to comply with any measures that promote health and safety in the workplace. The Human Rights and Equal Opportunity Commission says that because of this duty, employers need to eliminate or reduce the risks to employees' health and safety caused by workplace bullying, discrimination and harassment.

It is in employers' interests to act on cases of bullying and to have internal policies in place to make it easier for people to report such incidents.

A recent publication by Worksafe Victoria – Preventing and addressing bullying at work (February 2009) – is a practical guide for employers and employees that provides information on addressing and responding to bullying in the workplace, risk management strategies for employers as well as policies and procedures to manage bullying at work.

If the bullying relates to one of the attributes covered by federal or state anti-discrimination laws – such as sex, race or disability – then it will also be unlawful and a complaint can be made to the Victorian Equal Opportunity and Human Rights Commission. It is not always easy for workers to speak out about illegal, immoral or improper practices because of the potential personal repercussions. In the public sector, the federal government has moved to address greater protections for whistleblowers and has recently released a report into its inquiry on this matter.

The report is available at

www.aph.gov.au/HOUSE/committee/laca/whistleblowing/report.htm.

For information on bullying, go to

www.hreoc.gov.au/info_for_employers/fact/workplace.html.

Remember, if you have any concerns about your rights and responsibilities at work, your lawyer will be able to assist you.

HUMAN RIGHTS LEGISLATION FOR AUSTRALIA?

In Australia, we pride ourselves on our ethos of equality and fairness for all – giving everyone a “fair go”. Now the federal government is looking at whether it should enshrine such values in legislation to ensure human rights and responsibilities are protected.

Victoria has led the way in this field by introducing the Victorian Charter of Human Rights and Responsibilities Act 2006 which came into full effect on 1 January last year. This formal recognition of human rights ensures law-makers and public decision-makers take account of human rights. And a recently released analysis by the Victorian Equal Opportunity and Human Rights Commission (VREOC) shows it is having an impact.

VREOC CEO Dr Helen Szoke said people had used the Charter to gain access to vital services, to challenge government policy and to improve the way organisations operate. Dr Szoke said the Charter had helped ordinary people receive better services and resolutions to problems. For example, people with an intellectual disability were able to exercise their right to vote and young people with brain injuries were saved from being placed into aged care facilities. As part of the federal government's initiative, a national human

rights consultation process has been set up to give all Australians the chance to share their views on human rights. Federal Attorney-General Robert McClelland said the 60th anniversary of the Universal Declaration on Human Rights was an appropriate time to reflect on the effectiveness of Australia's current system of human rights protections, to see if gaps exist, and to explore a range of ways in which human rights protections could be enhanced.

The consultation will look at three key questions:

- which human rights (including corresponding responsibilities) should be protected and promoted?;
- are these human rights currently sufficiently protected and promoted?; and
- how could Australia better protect and promote human rights?

The Law Institute of Victoria is preparing a submission supporting a national human rights charter based on the Victorian Charter but inclusive of economic, social and cultural rights and appropriate proceedings and remedies.

You can share your views directly with the government's consultation committee by making a written submission either online or by post.

WHERE THERE'S A WILL ...

You may be keeping a daily watch on the stock prices or regularly checking your local housing market, but when was the last time you thought about your will? Or considered whether you need to make a power of attorney?

At a time when our attention is gripped by the daily surges in our investment portfolios, it can be easy for other considerations, such as updating a will or appointing a power of attorney, to get pushed into the background.

Yet planning for future contingencies is just as important. A will should be reviewed every five years or when a significant life event occurs – such as marriage, separation or divorce. Other circumstances that can affect wills include the death of the executor or beneficiary under the will, a change in relationship, the birth or death of children and the acquisition or sale of assets bequeathed in a will.

Your lawyer can help make or update your will, ensuring beneficiaries are provided for (for example, through the creation of a

trust), ensuring your wishes are clearly expressed and advising on circumstances where your will could be contested. Similarly, your lawyer can provide advice on preparing a power of attorney, which authorises a trusted person to act for you when you are overseas, hospitalised or no longer capable of looking after your own affairs.

There are three main types of power of attorney – a general power of attorney, enduring power of attorney (financial) and an enduring power of attorney for medical treatment. The Victorian Parliament's Law Reform Committee will be conducting an inquiry into powers of attorney aimed at streamlining and simplifying the process to enable more people to plan for their financial, lifestyle and healthcare needs. In the meantime, your lawyer can advise you on making or updating your will and whether a power of attorney can assist in your current circumstances and, if necessary, draft the appropriate legal documentation.

All Legal Work

**We fight for your rights
and get results.**

**SIMON
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LAWYERS**

If you don't fight you lose

1st interview free of charge and obligation – totally confidential

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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.