

Newsletter of the Law

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March 2011

New law supports consumer rights

The Australian Consumer Law (ACL) is a single, national consumer law which came into effect on 1 January 2011.

The ACL will make it easier for consumers to understand and enforce their rights because they will be the same across Australia.

The new national law supersedes Federal, State and Territory legislation relating to:

- National unfair contract terms laws governing standard form contracts;
- Consumer rights when buying goods and services, replacing the existing laws on conditions and warranties;
- Product safety laws and enforcement of safety standards;
- Unsolicited consumer agreements,

such as door-to-door sales and other direct marketing;

- Lay-by agreements; and
- Penalties, enforcement powers and consumer redress.

The ACL will be enforced and administered by the Australian Competition and Consumer Commission (ACCC), each State and Territory's consumer agency, and, in respect of financial services, the Australian Securities and Investments Commission (ASIC).

This single law will be uniformly enforced across Australia with Australian Courts and Tribunals applying the same law to consumer disputes reducing costs and creating clearer and easier avenues of redress.

For further information please contact www.consumerlaw.gov.au



What's inside ...

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- New Personal Property Securities Register
- Family Law reform currently underway
- New Electronic Transactions Legislation
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- Free legal assistance for flood and cyclone victims
- Announcement of new Queensland Reconstruction Authority

New Personal Property Securities Register in October 2011

A new Personal Property Security (PPS) Register will be introduced from October 2011.

Currently the States, Territories and the Commonwealth Government all have different registers with different rules for personal property.

Personal property is considered to be any form of property other than land, buildings or fixtures which form a part of that land. It can include cars, art, machinery and crops as well as intangibles such as intellectual property and contract rights.



The PPS Law governs how personal property may be used as security for a loan and the PPS Register will allow lenders and businesses to register their security interests.

Secured parties, buyers and other interested parties will be able to search the PPS Register to find out if a security interest is registered over the personal property.

The aim of the new PPS Reform is to bring the Federal, State and Territory laws and registers under one national system.

How will this affect Queensland?

In Queensland the new PPS will replace the current Register of Encumbered Vehicles (REVS Qld), Bills of Sale Register (including Register of Liens on Crops of Sugar Cane and the Register of Cooperative Charges).

The new national PPS Register will be available online, updated in real time and able to be publicly accessed. All current State and Territory registers will be migrated to the new national PPS Register.

For further information please email enquiries@ppsr.gov.au.

What is a lien?

A lien is a form of security. It is a common law right to hold property as security for the performance of an obligation, such as a mortgage.

Liens are divided into two categories: possessory and non-possessory. An example of a non-possessory lien is a crop lien - where the lender has security over the crop without having possession of it.

Family Law Reform – Second inquiry now underway

In November 2010 two Commissions, the Australian Legal Reform Committee (ALRC) and the NSW Law Reform Commission, completed their first inquiry into family violence with the release of a report, *Family Violence: A National Legal Response* (ALRC Report 114, 2010) containing 187 recommendations for reform.

This report was a product of the year-long joint inquiry during which the Commissions conducted 236 consultations nationally and received 240 submissions from a wide range of relevant government, non-profit and private sector agencies.

The Commissions were asked to look at the many laws and legal frameworks at Federal and State levels that deal with family violence and to find ways to improve responses from agencies.

In April 2011 the Consultation Paper relating to the first enquiry - *Family Violence: Improving Legal Frameworks* was released.

This second inquiry concentrates on the treatment of family violence in specific areas of Commonwealth Law with four Issues Papers covering the treatment of family violence in these key areas:

- Employment and superannuation law
- Immigration law
- Social security law, and
- Child support and family assistance law.

Rather than produce one overarching Issues Paper it was decided to produce the four papers separately. The aim is to expose issues in each area and develop tailored management strategies

Submissions are invited for the first Issues Paper, *Family Violence – Employment and Superannuation (IP 36)*, where the Australian Legal Reform Committee examines both employment assistance and access to superannuation benefits for victims of family violence.

Specifically, it is looking at job assistance and superannuation law for protection of victims of family violence who may be coerced into transferring superannuation benefits or allowing early access to funds.

Both the report and the first Issues Paper are available from the ALRC website at www.alrc.gov.au.

Closing date for submissions to the first Issues Paper is 6 April, 2011.

Submissions addressing the questions on each Issues Paper may be made in writing, by email or preferably using the ALRC's online submission form.

The ALRC is also conducting an online discussion blog around Issues Papers and encourages people to participate at <http://alrc.govspace.gov.au/>.

A discussion paper will be released mid-2011 which will seek community feedback on the ALRC's proposals for reform. A final report will be presented to the Attorney-General on 30 November 2011.



New Electronic Transactions Legislation

Australia is currently updating its laws governing e-commerce.

In February 2011 the Attorney-General the Hon Robert McClelland MP, introduced the Electronic Transactions Amendment Bill to ensure Australia's electronic transactions legislation will be brought into line with recent advances in technology.

This was preceded by extensive consultation dating back to 2008. Queensland is set to soon pass amendments to its legislation with other States and Territories doing the same.

The changes would ensure that Australia's laws are up to date for businesses operating in the digital economy, providing greater legal certainty and encouraging growth in domestic and international electronic contracting.

The Bill seeks to clarify that a contract can be formed via an automated system, addresses the uncertainty around a contracting party's online location and also simplifies the process for

determining which transactions or other laws may be exempt from the Act.

What does this mean for you?

Given that much business and banking activity is now conducted online either via email or web sites (eg internet banking and retail purchases), the new Amendments needed to reflect the changes to transactions for goods and services.

Now when consumers click 'I accept' after conducting a business transaction, the Bill confirms the action of forming a contract even though the contract is formed with an automated message system.

These amendments also mean that a contract can be formed by sending messages over a secure system that requires the other party to log in and retrieve the message – a form of communication that is more popular as concerns about email security grow.

When the new Bill is enacted it will update the existing *Electronic Transactions Act 1999* to reflect internationally recognised standards for electronic commerce.

Once all the amendments are accepted in all jurisdictions, the Government will move to accede to the UN Convention on the Use of Electronic Communications in International Contracts.

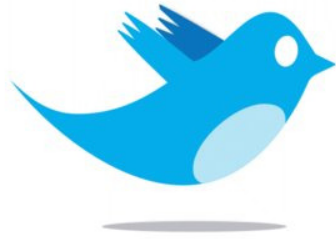
Adopted by the General Assembly on November 23, 2005 the Convention aims to promote legal certainty and commercial predictability to international electronic trade.

It is the first UN Convention concerning the digital economy and 18 countries have already signed up.



Navigating the 'Twittersphere'

This article takes a continued look at the emerging issue of Twitter in the legal space first discussed in the December edition of Newsletter of the Law.



Twitter is a social networking tool that allows users, or 'Twitterers' to publish their comments or 'tweets' in less than 145 characters for their 'followers'.

The use of this very popular publishing tool continues to grow daily with Twitter users worldwide sending an astonishing 25 Billion tweets in 2010.

The role of Twitter as a source of news during the Queensland floods and Cyclone Yasi has been widely reported with members of the public utilising social media to get information from government agencies such as the Queensland Police Service (QPS).

In December 2010, QPS had a mere 1,200 followers on Twitter, however recent natural disasters sent those numbers skyrocketing with more than 11,000 followers now following their regular police updates.

Where the police have usually relied on calling media conferences to get messages out during a crisis, they could now speak directly to those in trouble. The small QPS Media Unit worked around the clock to ensure a steady flow of information via social networking channels, either by tweeting road closure details or streaming live press conferences by Police Commissioner Bob Atkinson on their Facebook page.

For most people Twitter is a simple communication tool, but unlike other social networking sites such as Facebook, Twitter has a very open forum and therefore safety measures must be taken to ensure online safety and awareness.

The general rule of thumb to remember with Twitter is that once a tweet is posted, it is in the public domain and can be viewed by anyone.

Once posted, tweets can be retweeted by your followers to their followers and so on. It is not unusual to see one tweet retweeted multiple times by different followers.

In 2010 triple Olympic gold medal winner Stephanie Rice came unstuck with one of her tweets during a Wallabies game after their last minute Tri-Nations win over South Africa. The tweet was deemed offensive and the 22-year-old was forced to make a tearful apology in Sydney after losing her Jaguar sponsorship.

In Los Angeles a venomous twitter rant in 2010 saw rocker Courtney Love being issued with a libel claim against her by her former fashion designer. The designer was seeking punitive damages claiming that the tweets by Love have destroyed her reputation and her business. Love opted to settle out of court to the tune of AUD \$430,000.

However the immediacy of information that Twitter provides is a positive social turning point that can be used for the welfare of the community. As such a number of government departments now offer regular news updates for their followers (see opposite).

Twitter reference guide:

@username – The basic building block of conversations, for public replies to a tweet by the user after the @ sign.

D username – For a direct message to only the user in question. DM also works.

RT username – For a 're-tweet' or a tweet you want to rebroadcast. Prefaced with the original twitterer's user name.

The Dos and Don'ts of Twitter:

- Do think of Twitter as a public environment and think twice before 'tweeting'.
- Do take control of your privacy online.
- Do follow people on Twitter even if you don't know them – they can choose whether to follow you back.
- Do have an active involvement on a day-to-day basis, the more you respond the more people will stay with you as followers.
- Do check your links before retweeting them.
- Don't post anything you wouldn't want your mother to read.
- Don't abbreviate your tweet so much that it becomes illegible.

Government Agencies on Twitter:

Premier Anna Bligh
@TheQldPremier

Queensland Transport, Translink
@TransLinkSEQ

Queensland Police Service
@QPSMedia

Office of Fair Trading
@OFT

State Library of Queensland
@slqlq

Department of Education and Training
@QLDDET

Queensland Dept of Environment and Resource Management
@QldDERM

Queensland Health
@qldhealthnews

Australian Taxation Office
@ato_gov_au

Queensland Performing Arts Complex
@QPAC

Tourism Queensland
@tourismqld

Queensland Business
@Businessqldgov

Australian Law Reform Commission
@AusLawReform

Other useful news providers:

ABC Radio
@612Brisbane

Courier Mail
@cmail

7 News
@7newsroom

9 News
@newsaustralia

10 News
@channeltennews

Cyclone Updates
@cycloneupdate

Volunteering Queensland
@VolunteeringQld

St Johns Ambulance
@stjohnsambulance

Free legal services on offer for flood and cyclone victims

Hundreds of lawyers from across Queensland are offering free legal advice to flood and cyclone-affected Queenslanders trying to get their lives back on track. Legal practices large and small, including many from disaster-struck areas, are offering services on a *pro bono* basis to help local communities.

In response to this critical need the Department of Justice and Attorney-General, Queensland Law Society and Legal Aid Queensland set up Flood Legal Help.

People are encouraged to call 1300 65 11 88 for legal advice over the phone or to arrange a face-to-face consultation.

Alternatively, consultations can be arranged at any of the government's numerous community recovery centres.

People affected by flood or cyclone damage can seek legal advice on issues such as insurance claims, tenancy agreements, employment, credit, debt, fencing and family law.

Phone:

Flood Legal Help Line:
1300 65 11 88

Internet:

<http://www.legalaid.qld.gov.au/floods>

Search for a Queensland Floods community recovery centre at:

<http://www.communityservices.qld.gov.au/community/recovery/support-assistance>



Establishment of new Queensland Reconstruction Authority



A new authority has been set up by the State Government armed with the task of rebuilding and getting Queensland back on its feet after more than three quarters of the State was affected by floods and cyclone damage.

With legislated powers, the Queensland Reconstruction Authority will coordinate the mammoth task of rebuild and recovery.

The Bill proposes a number of amendments to the following Acts in order to support recovery efforts:

- Building Act 1975
- Disaster Management Act 2003
- Land Valuation Act 2010
- Integrity Act 2009
- Public Service Act 2008.

The Authority has established a Board to be overseen by Premier Anna Bligh as Minister for Reconstruction.

Major General Mick Slater will chair the Authority, which will also have a Federal government representative and other reconstruction experts from local and State Government and the private sector. Coordinator General Graham Newton has been seconded as CEO.

The Statutory Authority will manage the task of rebuilding and repairing vital infrastructure in more than 60 flood-affected communities across Queensland as well as implementing a statewide plan for reconnecting communities across the State.

The Authority will have the power to decide which roads, bridges and railways should be repaired immediately, along with deciding whether some places should be rebuilt as before, consulting with communities on possible alternatives.

Liaison with local governments will ensure that all the unique characteristics of each community are factored into the rebuilding process. Coordination between government and non-government organisations will take place to ensure the necessary services are established to help people during the rebuild process.

The Authority has also set up a dedicated office in North Queensland to support communities devastated by Tropical Cyclone Yasi.

Chief Superintendent Mike Keating has been seconded from the Queensland Police Service to head the dedicated office and will be the director of cyclone recovery.

The Authority will work specifically with local governments and communities in the North to ensure recovery and rebuild is underway as quickly as possible.



With virtually no part of the State left untouched by the recent destructive weather, the task of rebuilding is, in the words of the Premier, immense but not impossible.

The dedicated Authority will ensure there are no delays in the recovery process.

News Flash

As a direct result of the recent extreme weather conditions, statutory valuations have been delayed until the true effects of the weather events can be fully assessed. Statewide valuations were due to be issued by 31 March however the Queensland Government has amended legislation in order to defer the valuations, for this year only.

The Valuer-General will now issue new statutory land valuations prior to 30 June 2011.

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