



**O'NEILLS**  
Business Lawyers

# CHRISTMAS 2007 NEWSLETTER

*Providing personalised, quality, value for money legal services.*

## MERRY CHRISTMAS TO EVERYONE

*We hope you have all had a good year, both at work and play, and that there have been a lot more ups than downs. Whatever you do over the Festive Season, please make sure you take the opportunity to enjoy what you have and your family and friends.*

*We had another extremely busy year, fortunately with few glitches and firstly like to acknowledge and thank all staff for their great efforts (often working extra days and hours) to get through all that needed to be done. Sheryn, Wendy, Sarah, Sandy & Peter (and recently Neal) have all contributed to the effort to maintain the high level of service we want to achieve. We are aware there have been times when phone calls have taken a little longer to return, or letters taken a little longer to send out, and thank you for your patience during those periods.*

*We also thank each and every one of you who have supported the firm over the years and particularly in 2007. It is very much appreciated and hope we can continue to assist you in the future and achieve "Success Together".*

## WE ARE MOVING... but not very far!

Thanks to the ongoing support of many clients and a growing band of referral associates the practice has continued to grow to the point where the current premises are no longer suitable. Single level premises have been acquired in a to-be-built commercial building at 50-60 Sanders Street, Upper Mt Gravatt to provide more space and greater accessibility. Completion is anticipated in April/May 2008 with occupation after fit out by the end of June. More about this closer to the date.

## LEGISLATION CHANGES IN 2007

### > CORPORATIONS ACT

Significant amendments have been made to the insolvency provisions of the Act and in fact it is the first significant overhaul of the Voluntary Administration provisions since their introduction in 1993.

Changes address such issues as electronic communication, rationalisation of advertising requirements, reduction of costs, transparency and speeding up communication to all interested parties. Amendments including those made to forms such as the Statutory Demand will hopefully result in a better outcome for all stakeholders.

### > CRIMINAL CODE

The 800 year old rule of law and fundamental principle of justice known as "double jeopardy" has been abolished and an accused can be tried a second time where there is new compelling evidence which was not previously available and may now lead to a conviction.

### > LEGAL PROFESSION ACT 2007

The Queensland Government passed the above Act which is effective from 01.07.2007 with some transitional provisions in place until 01.01.2008 in relation to Disclosure and Costs. The Act provides for incorporation of legal practices, multi-disciplinary practices and a new Client Disclosure and costs regime.

The changes will not mean much to most clients but as with much of the legislation that is passed these days dealing with the professions, they will add a significant time and financial burden and therefore cost to the overheads of lawyers in order to comply with additional disclosure and reporting requirements. There will be an increased requirement to advise clients on the progress of a matter, especially those that are longer term such as litigation, and to provide more regular trust account statements where funds are held on trust for clients.

**IN THE FUTURE** we can expect a flurry of new legislation from the new Federal Government.

### > FAMILY PROVISION CLAIMS

Under the *Succession Act* a "dependant" of the deceased, may apply to the court for a greater share of the deceased's estate left to them under the will. Time limits apply to the giving of notice and the making of the application. The court only has power to deal with estate assets at the time of the Order, so it is critical that you take steps promptly because if you don't, the estate may be administered and there may not be any assets left which the court can make an order in respect of. So even if you do have a valid claim, it may be futile if there are no assets left. This is exactly what happened in a 2007 Queensland Supreme Court case where the Application was made well out of time.

### > EXECUTOR'S COMMISSION

Executors are entitled to claim commission for acting in that role. Please note solicitors do not as a rule charge an executor's commission but are paid for their legal costs incurred. This exception would not apply where the solicitor was retired from practice and therefore acting in a personal capacity.

Commission is calculated upon capital realisations, transferred assets and income collections. The commission can be very significant in large Estates and run into tens of thousands of dollars and will involve an application to the Court which, of course, also increases the costs of the Estate.

Some clients include a specific gift in the Will of a sum of money which is stated to be compensation to the Executor instead of a commission. You should give thought to this in your Will.

**WE WISH YOU AND YOUR FAMILY A VERY MERRY AND SAFE CHRISTMAS AND A HAPPY AND PROSPEROUS 2008!**

**OUR OFFICE WILL BE CLOSED FROM 12PM FRIDAY, 21 DECEMBER 2007 TO 8.30AM ON TUESDAY, 2 JANUARY 2008**

**FROM KERRY, PETER, NEAL, SHERYN, WENDY, SARAH & SANDY**

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**IMPORTANT NOTICE:** This is not advice and clients should not act solely on the basis of information herein, which constitutes general comments on various legal and commercial issues. Clients should consult the appropriate advisors before acting upon any matter herein.



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Counselor! Kindly refer to it as "murder," not "thinning out the herd."

➤ **WHAT DOES THAT MEAN?**

- **Testamentary Trust** - This is a discretionary (usually) trust created within your Will that can be used to provide asset protection, tax advantages and other benefits. It can help stop assets being frittered away by beneficiaries or lost in a matrimonial property settlement or in bankruptcy. The structure of your assets is vital in making a Testamentary Trust effective. Eg you must make sure you have the appropriate direction through a Binding Nomination as to where your superannuation proceeds are to be paid upon death. It is an effective estate succession tool.
- **Trust Cloning** – This is where you create a second trust that is identical to the first, including the beneficiaries and its terms and is used where you may want to transfer an asset between the trusts for various reasons. Cloning may allow a CGT exception to apply and there are obvious tax benefits where it does. It is vital that you get proper advice before doing this as not all trusts can be cloned due to the widely-drawn beneficiary clause commonly used. This clause can result in beneficiaries in each trust being beneficiaries of the other trust, meaning that the trusts are not in fact the same – the exception test will not be satisfied potentially leaving you with CGT to pay.

➤ **BUILDING AND CONSTRUCTION INDUSTRY PAYMENTS ACT**

This Act may be used by contractors to fast-track payment of money owed to them. We can assist you to do this.

If you are served with a Claim by a contractor it is essential that you respond in accordance with the legislation. A major developer in a disputed amount of \$8 million failed to respond and was ordered to pay almost \$14 million because of this failure.

➤ **DIRECTOR'S RESPONSIBILITIES**

Due to the significant number of recent successful prosecutions by ASIC of directors who have failed to meet their responsibilities under the Corporations Act, it is timely to remind anyone who is a director or officeholder that they cannot simply ignore the obligations they have under the Act and to fellow officeholders and shareholders and can face both heavy fines and jail terms for breaches.

➤ **JUSTICES OF THE PEACE/COMMISSIONERS FOR DECS**

Clients often need to sign documents in the presence of a Solicitor, Justice of the Peace or Commissioner for Declarations and we accommodate our clients wherever we can to do this. It is often more convenient for clients to have those documents witnessed externally and there are many JP's and Commissioners for Declarations (C.Decls) within the community, however they are not always easy to locate. The Department of Justice and Attorney-General has a "JP's in the Community" program which operates at various locations. For assistance in this regard please visit [www.justice.qld.gov.au/jps](http://www.justice.qld.gov.au/jps).

➤ **GUARDIANS OF MINOR CHILDREN – SHOULD THEY BE COMPENSATED?**

If you appoint a guardian for your minor children through your Will it is generally binding. You should give consideration however as to whether you should make a lump sum payment to guardians who may need to extend their home or sell and re-buy a larger home where they do not have adequate room in their existing home to accommodate your children. Generally speaking the trustee of any trust funds for your children will have the ability to advance money for and on their behalf during their minority for such things as food, clothing, health and education.

➤ **CPI** rose by 0.7 points from the June to September 07 quarter and 1.9 points from the September 2007 quarter.

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"I'm not sure it was worth it, but it certainly was the world's best judge joke."



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➤ **THE HOLIGRAPHIC (HOMEMADE) WILL? IS IT VALUE?**

We have dealt with a number of homemade Wills over many years but more commonly in the last few years since "Will Kits" became commercially available. Whilst that may seem a way to save you dollars we can tell you that, in every single instance in which we have been involved with a Will made at home without the benefit of professional advice, there has been a problem with the document. Without exception the costs involved in "fixing" the problem have many times exceeded the legal fees saved in the first instance. Additionally, if the Will is incorrectly drafted your wishes may not be followed and there is the possibility of, a claim contesting the validity of the Will, a dependent bringing a family provision application or an application needing to be made to the Court to interpret what the Will actually means – all of which is good for the lawyers and not for your beneficiaries! Additionally, you get no benefit of professional indemnity insurance where the solicitor is negligent in preparation of the Will.

➤ **REIQ CONTRACTS**

The practice of settling residential contracts in 30 days has long been ingrained however the reality is that many do not settle within that period resulting in contracts being terminated or extensions being sought and often on more than one occasion. This means extra costs are incurred. For some considerable time now many financiers have taken much longer than before to approve finance, again meaning extensions are necessary and costs are incurred. Financiers whether for the vendor or the purchaser, are also taking longer to be ready for settlements. The Qld Law Society is talking to the REIQ about changing this practice as the timeframes (often 7 or 14 days for finance or building) are now unrealistic in many situations causing headaches and heartache. We suggest you look at say 21 days for finance and building/pest and 45 days for settlement.

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➤ **STAFF UPDATE**

Many of you would have already met or spoken to the staff, but here is some individual background and their favourite saying:

- **Sheryn Cherry**, paralegal/administration (C.Dec) (Mon-Thur 8.45am to 3.00pm) commenced March 2001. Sheryn is responsible for cottage conveyancing and assists with commercial conveyancing; keeps the books balanced and assists with administration. Sheryn has over 20 years experience in her roles. **"When life hands you lemons, pass the salt and grab the tequila baby!"**
- **Wendy Tyquin**, paralegal/word processing (C.Dec) (Job shares – Wed/Thurs/Fri with Sarah), commenced April 2007. Wendy has over 20 years experience in legal offices; is our backup for cottage conveyancing and also has a lot of experience in other areas, including Estate Administration. **"Que Sera Sera"**.
- **Sarah Simpson**, receptionist/WP/3<sup>rd</sup> year law student, (Job shares Mon/Tues with Wendy) commenced April 2007. Sarah undertakes typing, general office duties and some legal research; and has 18 months experience in legal offices. **"Such is life"**.
- **Sandy Norton**, WP (casual on Friday), commenced August 2006 and has over 10 years experience in legal offices. **"Life is what happens while you're busy making other plans"**.
- **Peter Keenan (Locum)**, who initially came in to assist me for about a month, will not be returning in the New Year after more than 2 years generally managing the litigation and assisting me with the overflow in commercial work. With his business and personal commitments becoming more demanding he is now unable to continue in this role.
- **Neal McGinley**, Out goes one Irishman and in comes another. Neal who has over 20 years experience in a number of areas of law, but specialises in commercial and civil litigation and who will initial work Mondays, Wednesdays and Fridays.
- **We hope to employ a graduate solicitor in 2008 to provide support in all areas of work and to help get work done in a timely fashion.**

➤ **EMAIL ADDRESSES**

Direct email addresses are:

- Kerry O'Neill: [koneill@oneillslawyers.com.au](mailto:koneill@oneillslawyers.com.au)
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- Sarah Simpson: [reception@oneillslawyers.com.au](mailto:reception@oneillslawyers.com.au)
- Neal McGinley: [obl@oneillslawyers.com.au](mailto:obl@oneillslawyers.com.au)

➤ **AREAS OF PRACTICE**

Just a quick reminder that whilst the firm focuses on business/commercial and estate law, it also handles civil and commercial litigation, such as personal injury claims, breaches of contract and debt recovery; and all types of conveyancing.

**CHANGED YOUR ADDRESS, PHONE OR EMAIL? PLEASE LET US KNOW TO ASSIST WITH EFFICIENT CONTACT.**

*Over the break please leave non-urgent messages on the office answering machine. In an emergency please ring 0413 456 485. Kerry returns to work on 7 January.*

**MERRY CHRISTMAS AND ENJOY THE HOLIDAYS!!!!!!**

**FEEDBACK:** We welcome your comments on our Newsletter and its contents. Is it useful? What sort of information would you like to see included/excluded? We also welcome comments on our quality of service and ways to improve it.

**WE WISH YOU A HAPPY NEW YEAR !!!!**

**RSVP: IF YOU DON'T WISH TO RECEIVE GROUP EMAILS PLEASE LET US KNOW AS WE RESPECT YOUR PRIVACY.**