



O'NEILLS BUSINESS LAWYERS

"Success Together"

NEWSLETTER
WINTER 2008

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Providing personalised, quality, value for money legal services

Welcome to our first ever Winter newsletter. There are a few changes in our office and many in the law.

STAFF UPDATE

We would like to introduce two new staff members. These additional appointments are part of our re-structure and our commitment to improve our service at both a professional and support staff level.

- **Leo Chih-Hung Shih**, Graduate Lawyer, B-IT and LLB (full time) was admitted to the Supreme Court of Queensland in January 2008. He joined the firm in February and speaks, reads & writes Mandarin fluently.
- **Stephanie Collard**, Receptionist (full time), Stephanie, who will be your first point of contact and also undertake general office duties, brings over 2 years experience in legal offices to the role.

EMAIL ADDRESSES FOR STAFF

- Kerry O'Neill: koneill@oneillslawyers.com.au
- Neal McGinley: nmcginley@oneillslawyers.com.au
- Leo Shih: lshih@oneillslawyers.com.au
- Sheryn Cherry: scherry@oneillslawyers.com.au
- Wendy Tyquin: wtyquin@oneillslawyers.com.au
- Stephanie Collard: scollard@oneillslawyers.com.au

AREAS OF PRACTICE EXPAND

As our name suggests the firm focuses on business/commercial law, but with a substantial practice in estate law. The firm also has a growing practice in the area of civil and commercial litigation including personal injury claims, business disputes, breach of contract and debt recovery.

Neal has over 20 years experience in litigation law, including all areas of personal injury, but also criminal compensation claims, workplace health and safety risk management and dispute resolution. Neal is also very experienced in business/commercial law and conveyancing.

Kerry works primarily in the business/commercial and estate law areas.

Leo will assist both Kerry and Neal with all work. In addition to his law degree Leo also holds a degree in IT which is increasingly more important to the way lawyers and business generally operate.

NEW OFFICE - MOVING IS GETTING CLOSE

Planning for the new office is proceeding well, but some building construction delays mean we will probably not be relocating to the Hypercentre at Upper Mount Gravatt until early to mid August 2008. We will let you know more as "moving" date approaches.

◆ TELEPHONE

We will be installing a new telephone system with additional lines to improve telephone access during busy times.

◆ PARKING

We will have two car parking spaces available for clients underneath the building. If you find neither available, parking is available in the surrounding streets including Sanders in front of the building and Freda at the rear of the building. Additionally, limited parking may be available in The Village Shopping Centre which is almost directly opposite the Hypercentre. Lift and stair access is available to all levels.

"SUCCESS TOGETHER"

Our philosophy is to work with you to achieve success in whatever way we can whether that be the purchase of a home or a business, doing your Estate planning, recovering a debt or compensation for injuries in a motor vehicle accident or resolving a dispute. We want you to achieve the best possible outcome by listening to you and giving you both legal and practical advice that will help you do that. We also adopt a proactive approach to avoid future potential problems. We take pleasure and pride in assisting you so that we can attain "Success Together".

BE ECO FRIENDLY! Help us to help the environment (and you) by providing us with your email address and notifying us when it changes so that we can email you when appropriate such as this newsletter rather than posting it. Forwarding letters and documents to you and others by email means less time and paper, fewer trees are cut down and savings to you in costs. Please email us your current email addresses, phone numbers, etc, and we will update our records.

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RECENT CASES & LEGISLATION

◆ ENDURING POWER OF ATTORNEY STILL VALID

The Supreme Court has held that an Enduring Power of Attorney validly signed by the principal is still effective even when the attorney/s does not sign the EPA until after the principal has lost capacity. This confirms it is not critical for the attorney/s to sign immediately after the principal signs the EPA but we do not recommend any delay occur.

◆ WILL DISPUTED BY ADULT DAUGHTER

In a recent Queensland Supreme Court decision, an adult daughter suffering from cerebral palsy convinced the Court to award her over \$1 million from her late father's estate because provisions in the Will were inadequate. The money was placed on trust to provide for her future adequate care. This reinforces the need to ensure your affairs are properly arranged and that you have a valid and appropriate Will to address your circumstances.

◆ PROCEEDS OF CRIME - LOVE & AFFECTION

The High Court has recognised that real estate confiscated by the police as criminal proceeds is held subject to the spouse's interest. The husband assigned half of the property to the wife for "love and affection" and this was held to be adequate consideration so the wife got to keep half.

◆ CLAIM BY QUADRIPLAGIC - NO SIGN NEEDED

The Queensland Appeal Court has denied a claim where the person became a quadriplegic after diving into a rock pool on the basis that the Government did not, on the balance of probability, breach its duty of care by not erecting a sign around the submerged rock pool.

◆ **MISLEADING CATALOGUE – NO GENUINE SALE**

The ACCC was successful in having the Federal Court rule that the Valentine and Mother's Day catalogues issued by Prouds Jewellers contained misleading representations under the Trade Practices Act in using the form of price comparison "Was \$199/Now \$99.50" on the basis that it had not offered those products for sale at the higher price immediately prior to the sale. The Court found there was not in fact a sale as the public would expect. If you do not have a genuine sale, you run the risk of prosecution and fines as well as loss of reputation.

◆ **RESIDENTIAL TENANCY BREACHES**

The landlord or tenant may only sue to recover damages for breach of a Residential Tenancy Agreement within six months after the party became aware of the breach. The Court held the six month limitation period under the Residential Tenancy Act supersedes the six year period under common law.

◆ **DE FACTO PROPERTY SETTLEMENTS – GOING FEDERAL**

Currently these settlements must be pursued through the State Courts however the State Governments have now agreed to transfer their powers to the Federal Government so that these matters can be dealt with under the Family Law Act giving de factos the same rights as married couples. This will mean the power to split superannuation, which cannot be done under State legislation. We expect it will be some considerable time yet before the law is enacted.

◆ **BUSINESS NAMES - GOING FEDERAL**

Commonwealth State and Territory small business Ministers have agreed in-principle to a national business name system which will also allow an Australian Business Number to be obtained at the same time. This will significantly reduce the time and cost involved for someone wishing to register a name nationally, but the system can also be used to register a name in a single State or Territory. We will keep you advised as to when this new system is likely to commence.

◆ **PRE-PURCHASE BUILDING INSPECTIONS – MAJOR CHANGES**

Brent Smith of Twenty 20 Building Inspections has alerted us to new Australian Standards introduced in December 2007 regarding pre-purchase building inspections. For more information visit www.twenty20buildinginspections.com however two highlights are:

- a formal agreement setting out the scope of work must now be entered into; and
- some areas of work the building inspector can no longer comment on eg plumbing and electrical. Purchaser clients will therefore need to obtain independent reports from suitably qualified tradespersons

It is therefore very likely that Contracts for the purchase of residential property will need longer settlement dates to accommodate the extra time required to get additional reports, if necessary.

◆ **PAY DAY LOAN INTEREST CAPPED**

The State Government has placed a 48% cap on the interest, fees and charges, on what are known as pay day loans, usually made to low income, disadvantaged or vulnerable consumers.

◆ **SUPER FUNDS CAN BORROW**

Recent changes and an ATO Ruling regarding Instalment Warrants now allow a Super Fund to borrow but only in compliance with very strict criteria. This provides opportunities but you must get the right advice before entering into any contract. The penalties for non-compliance are great so tread warily.

CONSUMER PRICE INDEX CHANGES The CPI for all groups in Brisbane for the March 2008 quarter increased by 1.3% for the previous quarter and 4.2% for the twelve month period.

THE IMPORTANCE OF MAKING A WILL

"Heath Ledger's former partner Michelle Williams has been warned she may have to fight to ensure her infant daughter receives part of her famous father's fortune. Two of Ledger's uncles sensationally turned on the actor's father amid revelations the 28-year-old made a will (before the relationship) leaving his wealth to his parents and sisters." Fox News

The failure to make a "current" Will illustrates the importance of doing so on important occasions.

It is estimated around 50% of people who die in Queensland each year fail to make an adequate Will or have no Will at all. We encourage you (yes, we do earn a fee but the estate costs a lot more if you don't have a Will) to consider this when:

- When you or your children turn 18 years of age; or
- Upon the birth of your child; or
- You enter into or are ending a relationship;
- Named executors or beneficiaries predecease you; or
- There is a significant change in your or your beneficiaries' circumstances eg a pending divorce or bankruptcy, mental health or disability.

There could be costly litigation if you do not have a Will or your Will does not address all relevant considerations and make appropriate provisions. See "Disputed Will" above.

FINANCIAL AGREEMENTS – PRE, DURING & POST RELATIONSHIP

Sir Paul McCartney did not sign a pre-nuptial agreement before marrying Heather Mills resulting in the High Court awarding her 24.3 million pounds (\$A52.7 million) in March 2008. You may not be rich and famous like the former Beatles legend but it is important for each of you to protect your assets and your children's inheritance from claims of this nature. Sir Paul will survive quite nicely but will you or your children if you lose a significant share of your previously acquired assets?

BUYING OR SELLING A BUSINESS

We believe, based on our 30 years of experience that it is vital you consult us and your accountant **before** signing a Contract to sell or buy a business as failure to include the right terms and conditions can result in significant problems for you with employees, tax etc. You need to consider many things including due diligence, finance, landlord's consent, lease issues, restraint of trade, etc.

AGREEMENTS TO LEASE – ARE THE PARTIES BOUND?

In many cases, yes, but if not worded correctly there can be a dispute on this point and often at great expense and stress. Contact us before you sign.

SOME THOUGHTS ON FLYING

Both optimists and pessimists contribute to our society. The optimist invents the airplane and the pessimist the parachute. Gil Stern

If God had really intended men to fly, he'd make it easier to get to the airport. George Winters

The strength of the turbulence is directly proportional to the temperature of your coffee. Gunter's Second Law of Air Travel

There are only two emotions in a plane: boredom and terror. Orson Welles

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