

"Success Together"

MERRY CHRISTMAS & HAPPY NEW YEAR TO ALL!

We wish to firstly thank all of our valued clients for their continuing support throughout 2009.

Also, many thanks to our colleagues and business referrers for their support during another busy year.

And finally but not least, a special thanks to all the staff for their efforts to maintain an efficient and effective level of service and client satisfaction.

Office update

First anniversary

We now celebrate our first 12 months and our second Christmas in our new premises. We believe the move has been beneficial for both clients and ourselves.

Staff

We say goodbye to Robyn Bottger (part-time WP) who retires (for the third time!). We thank Robyn for her valued contribution during the past 10 months and wish her well for the future. Emma, our receptionist, is going to fill Robyn's role each Monday.

Emails

We again highlight the increasingly widespread use of emails as the main form of communication — particularly where seeking initial advice from or providing instructions to our firm. We very commonly find this causes considerable and unnecessary costs for clients over and above a phone call.

In many instances we don't receive sufficient information from the client to be able to give a proper response and this invariably leads to a string of emails when the matter may be resolved in a five minute telephone discussion. We encourage you to use emails only where appropriate. Consider making at least an initial telephone call as it is often more cost-effective.

Please remember that your emails will not necessarily be read over the break so if it is urgent you need to ring 0413 456 485 or seek alternative advice.

Please kindly advise us of your email address if you have not previously done so or of any change to your contact details.

Legislation update

Queensland Civil and Administrative Tribunal

QCAT commenced operation from 1 December 2009. It replaces many existing Tribunals including the Anti-Discrimination Tribunal, Commercial and Consumer

Tribunal, Small Claims Tribunal, Retail Shop Leases Tribunal and various professional disciplinary committees.

Transitional provisions have been put into place to deal with existing applications made to the former tribunals. Depending on when the application was made, the QCAT procedure will apply. In some instances the powers and functions of the former tribunal will be used.

Mostly legal representation is not permitted or only with the consent of all parties in appropriate circumstances. It is therefore critical that you get appropriate advice on the correct jurisdiction and how to best make and/or defend a claim through QCAT. We are happy to assist you with this.

Franchising Code of Conduct

On 5 November 2009 the Federal Government announced major changes to the *Franchising Code of Conduct* and the *Trade Practices Act* to provide greater protection to franchisees. Draft legislation for the amendments is due early 2010. The next review is due in 2013.

Franchisors will need to:

- ensure that their records are always complete, up to date and accurate because they could be subject to a compliance audit at any time
- ensure that they are able to substantiate any representations in relation to their goods and services as they may be subject to a substantiation notice at any time
- amend their disclosure documents to include a warning that the franchise could fail during the franchise term
- amend their disclosure documents and franchise agreements to deal specifically with end of term arrangements
- notify franchisees no later than six months before the end of the term of the franchise agreement whether or not they agree to renew the agreement
- follow the behaviours to be set out in the code in relation to dispute resolution.

Civil penalties up to \$1.1 million for corporations and \$220,000 for individuals will apply to anyone engaged in unconscionable conduct or making false or misleading representations to franchisees.



Strengthened ACCC powers

The ACCC has strengthened powers to conduct random audits without having any belief about non-compliance before conducting an audit but powers will be restricted to information that is required to be kept under the Code, e.g. it can ask for a copy of a franchisor's disclosure document.

Also, where a large number of franchisees are harmed by the behaviour of a franchisor in breach of the Code, the ACCC will be empowered to institute a 'class action' on behalf of 'harmed' franchisees against a franchisor.

Business Superannuation Clearing House

The Federal Government is proposing legislation to be effective from July 2010 to assist eligible small businesses (those with less than 20 employees) to meet their obligation to pay compulsory superannuation contributions for employees by paying to the approved Clearing House rather than to multiple individual funds. This should prove a much more efficient and cost effective method for numerous small businesses.

For the draft legislation and related material see www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1675

Case update

Bamforth's case

This case which is on appeal to the High Court deals, in simple terms, with the interpretation of how trust income is treated for tax purposes and how beneficiaries "share" in the income. Sections 95 and 97 of the Tax Act talk about income and net income. Trustees need to get sound financial advice before exercising any discretion on income distribution.

Stamp Duty exemptions

There still seems to be some confusion over the guidelines for claiming exemption for First Principal Place of Residence. The critical issues are:

- the value of the property must not exceed \$500,000
- owners must occupy the residence within 12 months of the date of settlement
- owners must remain in occupation of the premises for 12 months from the date of occupation
- owners can allow the seller or a tenant of the seller to remain in occupation of the premises for a period up to six months from the date of settlement and no longer
- owners cannot lease or rent the premises out at any time during the qualifying period.

Workplace Laws

The new National Industrial Relations System will be in effect from 1 January 2010, with all states (except Western Australia, which is refusing to participate) having referred their Industrial Relations powers to the Commonwealth. This legislation will end the overlap and duplication of State and Federal Workplace Relations Systems that have caused inefficiency and uncertainty throughout the Australian Economy for decades.

Victims of Crime

The *Victims of Crime Assistance Act 2009* is designed to reduce reliance upon the policy of providing large lump sum compensation to victims of crime but to change the focus to providing financial assistance to support not only to the victims but families and witnesses by providing counselling and rehabilitation.

Consumer Price Index (CPI) September 2009 quarter

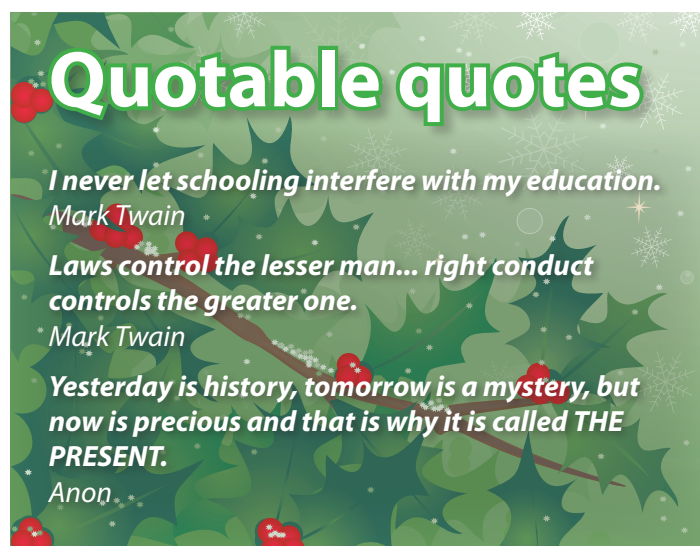
Australia's CPI rose 1% in the September quarter with an annual increase of 1.3%, still well within the Reserve Bank's target. Brisbane was 1.3% and 1.9% respectively.

Holiday office closure

Our office will close 1:00pm Thursday 24 December 2009 and re-open 8:30am on Monday 4 January 2010. Please leave non-urgent messages on our answering machine. In an emergency please ring 0413 456 485.

Merry Christmas and enjoy the holidays!

We look forward to assisting you with your legal matters in 2010 and beyond so please do not hesitate to contact us.



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.

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.