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Law News

Smart card' a step closer

A national 'smart card' is a step closer after legislation for the proposed card has been introduced into Parliament. The health and welfare access card will carry personal information and provide access to up to 16 government social services.

The Minister for Human Services Senator Ian Campbell said that the card, which will include a biometric photograph and microchip carrying detailed personal information, would make dealing with the government easier, faster, more secure and less complex. It is anticipated that the 'smart card' will benefit Australians through:

- reduced wait time in cues
- improved security so that entitlements to access health and social services can't be stolen
- less running around for Australians by providing a one-stop avenue for changing personal contact details across a number of agencies
- no more clutter in wallets with the new card replacing a number of existing cards.

Claims have been made that a national 'smart card' may lead to private information becoming more accessible and that the card would become a national identity card rather than a replacement of the current medicare card. The government has assured Australian's that information on the card will only be used in relation to government social services.

Federal Police Commissioner Mick Keelty believes the introduction of the card will become a tool to fight the growing crime of identity fraud that costs Australians about \$2 billion per year.

'We have to do something, we can't keep going along thinking that people's identity cannot be counterfeited,' Mr Keelty said.

'The way it's transported across the Internet and the way counterfeiting is occurring across the Internet, we have to do something. In the development of the card, what we're aiming to do is to try and reduce the amount of identity fraud.'

The national 'smart card' is anticipated to be introduced next year.

Midnight mine claim

An enterprising mining developer is in court after taking advantage of Crown land reservations on a uranium mine site that officially ended at midnight on 6 December last year. The developer pegged a midnight stake on the billion-dollar outback site and is fighting the Northern Territory Government in court for the right to keep his claim.

Norm McCleary and five other men pegged the claim under a blanket of darkness at the Angela and Pamela uranium sites 25km south of Alice Springs, estimated to be worth between \$1 billion and \$2 billion. Mr McCleary believes he was entitled to stake a claim on the uranium sites until 8am the following morning.

'We were the ones who got out there and as soon as it passed 12 we all started banging in our posts and merrily went through the scrub,' Mr McCleary told reporters outside the Supreme Court in Darwin.

'You don't lie in bed, you get out there and strike while the iron is hot.'

The government's lawyer said Mr McCleary had not obtained permission from the mining warden before entering the land and staking his claim. Mr McCleary labelled himself 'a businessman' and adamantly rejected suggestions he was an opportunist.

For comprehensive advice on property ownership disputes please contact your local solicitor.

Newsletter

FEBRUARY 2007



GW

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WISE WORDS

“ The shortest distance between two people is a smile ”

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A case in point:

Employees can now be held personally liable for misleading and deceptive conduct

The High Court unanimously decided in the case of Houghton v Arms that two business employees, Houghton and Student, were personally liable for providing misleading financial advice.

Background

On 13 December last year, the High Court found two business employees, Houghton and Student, to be personally liable for misleading and deceptive conduct. The employees were ordered to pay for the damages incurred by the business that relied on their inaccurate advice.

The client, Arms, traded under the business name of Australian Cellar Door and provided online marketing for the products of small wineries.

Arms engaged the services of WSA Online Ltd (WSA) to provide advice and services on website design, construction and development.

The services of WSA were provided to Australian Cellar Door by two employees described as the 'WSA online project manager' and the other as a

'guru of interactive website design and development'.

Following financial advice from the two employees of WSA, Australian Cellar Door operated at a loss for 12 months until June 2001.

In mid-2001 it adopted a different business structure to begin operating at a profit and prompting Arms to initiate proceedings in the Federal Court against the two WSA employees seeking damages for alleged misleading and deceptive conduct.

Decision

Initially, the Federal Court held WSA, as a business entity, to be liable under the Trade Practices Act 1974 (Cth), but found the two employees, Houghton and Student, were not personally liable as employees of WSA.

Judge Ryan specifically determined that Houghton and Student had not engaged in trade or commerce on their own account. On appeal, the Full Court of the Federal Court found in favour of Arms, determining that an employee acting within the scope of actual authority could be liable for misleading and deceptive conduct.

Houghton and Student appealed to the High Court. The High Court held that the two employees had engaged in conduct that could be classified as trade or commerce. And thus it was determined that Houghton and Student had engaged in misleading conduct and were liable to pay damages to Arms.

For more information regarding the Trade Practices Act and details of your employment contract please contact your local solicitor.

Curb on deceiving quilt content claims

Following an Australian Competition and Consumer Commission (ACCC) investigation, leading Australian suppliers of bed quilts and duvets will stop falsely representing to consumers that their products contain 100 percent down.

In response to the investigation quilt suppliers advised the ACCC that the 100 percent down claims relied upon the labelling percentage tolerances or allowances specified in the voluntary Australian Standard 2479-1987 ('Down and/or feather filling materials and filled products').

'Consumers often pay a premium price for down-filled quilts and duvets and are entitled to expect that composition claims made by businesses can be relied upon,' ACCC chairman Mr Graeme Samuel said.

Following the investigation suppliers have undertaken to:

- not make any down content percentage representations that cannot be substantiated by regular independent testing of their finished products using recognised testing procedures for down-filled products
- place corrective newspaper advertisements in each state and territory in which their quilts have been sold
- place a corrective notice on their respective internet websites
- maintain a trade practices law compliance program for a period of three years.

Unkind scissor-wielding thieves

In Rio de Janeiro a peculiar crime occurred when scissor-wielding thieves clipped off the waist-length locks of a young Brazilian woman as she rode in a city bus.

'We got on at the same stop and they sat behind me,' the young woman said. 'Then all of a sudden I felt someone pulling my hair. My friend tried to help me but they just cut it off, right at the base.'

Police believe the thieves hoped to sell the stolen hair to a hairdresser or beauty salon that could charge very high prices for top-quality hair extensions.



Dodgy readings land private seller in hot water

A Brisbane resident has been fined \$2,000 and ordered to pay \$300 in compensation for falsely advertising an odometer reading.

Fair Trading Minister Margaret Keech said in October 2005 a Nissan Pathfinder 4WD was advertised for private sale, stating an odometer reading of 66,000km.

'Two months later the buyer discovered service records that showed the vehicle's odometer reading was 75,792km six months before purchase,' said Mrs Keech.

'Following a complaint from the buyer, the Office of Fair Trading investigated and found that the original odometer was faulty and had been replaced.'

'The 4WD would have travelled around 75,000 km more than the advertised reading of 66,000 km.'

'The man was fined under the Property Agents and Motor Dealers Act 2000 for failure to disclose vital information.'

Mrs Keech advised consumers to be on guard against odometer tampering and to check logbooks and other documentation carefully.

The Office of Fair Trading has a Glove Box Guide with information on buying a new or used vehicle.

Visit www.fairtrading.qld.gov.au to download a free copy or call 13 13 04.

General News

Steroid smuggling fine

A Southport man has been fined \$12,500 after he was linked to a Customs investigation that netted more than 3000 steroid tablets.

The man was charged with seven counts of importing a prohibited import and one count of possessing a prohibited import. The offender will serve six months in jail if the fine is not paid within 18 months.

The investigation began in April last year after Customs officers at the Sydney International Mail Centre intercepted six envelopes and one parcel sent from the United Arab Emirates. Each envelope contained undeclared tablets taped to a piece of cardboard.

As a result of the interception, Customs officers executed search warrants on a Southport residence and a further 500 tablets were seized. Three envelopes containing tablets were also intercepted by Customs officers at the Melbourne International Mail Centre.

Don't get trapped by cash-back offers

Fair Trading Minister Margaret Keech is urging Queenslanders consumers to be aware of the potential pitfalls of cash-back offers.

'Cash-back offers usually require the purchaser to apply direct to the manufacturer for reimbursement,' Mrs Keech said.

'The Office of Fair Trading has received 37 complaints over the past three years relating to cash-back offers. Some complaints had to wait 35 to 54 months before the money was sent by the manufacturer.

'I am concerned that some consumers may end up out of pocket because of excessive delays and other potential problems.

'If the business closes, relocates or their contractual arrangements collapse, customers can be left without a leg to

stand on and few effective compensation options.'

Before signing up to cash-back schemes consumers should:

- read the fine print carefully
- check the terms and conditions of the offer
- understand their rights
- ask questions if they have any concerns.

If you are unhappy with a trader's policy or have problems claiming a cash-back offer, lodge a complaint with the Office Fair Trading on 13 13 04.

Bearing false witness

Courts are familiar with cases in which someone forges a property owner's signature on a mortgage and induces someone else to witness the forgery, then borrows money on that security. A recent case in a New South Wales court rings warning bells to those asked to witness property document signings.

In the case of *Graham v Hall*, an unsuspecting wife's signature was forged on mortgage documents by her husband to refinance the family home to pay his debts. Such dishonest misrepresentation, the court explained, strikes at the heart of the system that signature witnesses are charged to protect. From his observations throughout the case, Judge Ipp suggested

that the standard of care required that a witness be honest and not only ensure a signature is made in his presence, but also identify the person in the document – by reference to a passport or driving licence.

For more comprehensive information about witnessing document signings contact your local solicitor.

Comprehensive travel insurance

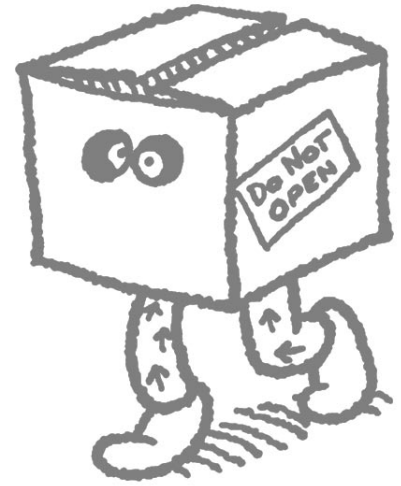
Travel insurance is often overlooked when organising annual holidays, but if something goes wrong it can be money well spent.

Many people pay an amount of money quoted by travel agents expecting that in a holiday crisis the cover will be adequate. Often travellers don't have sufficient cover, so it is very important to ask travel agents exactly what the insurance covers. There are certain activities that may not be covered under different policies, such as adventure activities or luggage stolen from an unlocked vehicle.

If travellers are aware of the parameters of their travel insurance, they are better informed to make decisions about what to do and not do on holiday. Other important factors to consider when choosing travel insurance are clauses relating to terrorist activities, advice from the Australian Department of Foreign Affairs and Trade and the traveller's age.

If you disagree with a decision about a travel insurance claim, raise the matter with the insurer through their dispute resolution system.

If this is not satisfactory contact your local solicitor for advice.



Sneaky escape!

A convicted fraudster escaped a high security jail in Germany by climbing into a cardboard box and posting himself to freedom.

The man escaped from the mail van as it drove away from the prison.

The escape was only noticed when the mail truck arrived at the sorting depot and a hole in the box was discovered.

'Was' pricing deemed misrepresentation

A West Australian bicycle retailer has admitted to misrepresenting savings available when advertising sale prices of bicycles.

A catalogue advertising the bicycles advertised a 'was' price and a lower 'sale' price for Mongoose and Gemini bicycles. The retailer admitted that the advertised bicycles were never actually sold at the 'was' price.

The Australian Competition and Consumer Commission (ACCC) concluded that the representation contravened the consumer protection provisions of the Trade Practices Act 1974. The bicycle retailer complied fully with the ACCC and took action to ensure that incorrect comparative price advertising would not occur again.

'Businesses need to be careful when they are putting together advertising material to ensure all pricing claims can be substantiated,' ACCC chairman Mr Graeme Samuel said.

For more information on incorrect pricing claims contact the ACCC on 1300 302 502.

Cops strapped for cash

In the Bulgarian capital, Sofia, police are claiming that they are so strapped for cash they cannot afford pens and paper to question suspects.

Kiril Kirov, a constable with the force said, 'We don't even have pens and paper and we have to go to the nearby shops and ask for some if we are about to do some questioning.'

In a recent incident, officers were forced to ask a local repair company to lend them some tape to seal a crime scene as they could not afford any themselves.

Beware house-cladding rip-offs

Consumers have been warned by acting Fair Trading Minister Geoff Wilson of two itinerant traders in Brisbane offering to seal cladding on the side of homes. The scammers ripped off an elderly Hawthorne couple of \$5000 for just 30 minutes' work. 'They turned up at the couple's house unannounced, offering to apply some waterproof sealant to cladding, supposedly to stop rising damp in the walls,' Mr Wilson said.

'They even drove the man, who is in his 80s, to the bank and waited in the car while he withdrew his money.'

Mr Wilson said residents approached by door-to-door tradespeople should:

- ask to see a Queensland Building Services Authority licence
- not pay cash, not let the tradesperson take them to a bank and not pay for anything upfront
- get a written contract
- demand a receipt with the trader's name and street address on it.

'Be suspicious of tradespeople who call uninvited, prefer cash payments, do not supply proper receipts or contracts and have easily removable signs, or no signs, on their trucks,' Mr Wilson said.

If you suspect a tradesperson might be dishonest, contact the Office of Fair Trading immediately on 13 13 04.

Weak brakes lead to bike recall

A dangerous bicycle has been recalled thanks to quick action by the Office of Fair Trading and Kmart.

Troy Raymond Ellis and his company Cyber Village Pty Ltd were fined for breaching the Fair Trading Act and were ordered to pay costs after a Brisbane magistrate found they had blatantly disregarded the law and frustrated fair trading investigators. Fair Trading Minister Margaret Keech said Ellis, of Spring Hill, and his business I-Central – an online retailer of computers, software and mobile telephones – first came to the attention of the Office of Fair Trading (OFT) in 2001.

'Since then, OFT has received almost 120 complaints from Queensland and interstate about Ellis and his company, most from people alleging he had not delivered goods they paid for,' Mrs Keech said. 'When Fair Trading first received complaints, we investigated and attempted conciliation. Further complaints were received and it was obvious Ellis

had chosen not to modify his behaviour. In 2005, after further discussions and meetings with the Office of Fair Trading, Ellis and 'I-Central' were publicly named to warn consumers.

'Shortly after, Ellis closed his doors and left the country. When he returned, Fair Trading was there to ensure he faced the consequences of his actions.'

Mrs Keech said Ellis had ignored 32 requests from Fair Trading for information relating to his business dealings.

'Magistrate James Gordon said although it was rare for a court to impose the maximum penalty for a first time offender, Ellis repeatedly ignored requests made by the Office of Fair Trading,' she said.

'The magistrate said the conduct was ongoing and those who frustrated the investigation process should pay an appropriate price.'

Lorikeet lifter fined

A family from the Gold Coast hinterland has been charged with stealing a rare black-capped lorikeet worth \$1800 from the Nerang Pet Barn late last year. The husband, wife and 17-year-old daughter were arrested after police released video footage showing a woman removing the lorikeet from its cage and slipping it into her handbag. Magistrate Graeme Lee recorded a conviction against the wife and fined her \$500. The offender's lawyer, Bill Potts, had the Gold Coast court in hysterics when the matter was heard, making light of the offence with some bad bird puns.

'The offence occurred when she was p*****d as a parrot,' he told the court.

'It was a fairly paltry offence and low in the pecking order,' Mr Potts told a 'flock of reporters' outside court. The prosecution tried to say it was foul but when we appeared at the beak not a squawk could be heard.'

The valuable lorikeet was subsequently returned when it was left in a cardboard box at the back of a local pizza restaurant.

'I described the offence as budgie-smuggling,' Mr Potts said. 'It certainly has ruffled a few feathers but there's no evidence of physical or psychiatric harm to the bird.'

Sydney importer caught short

A Sydney company has been fined \$3,000 and ordered to pay court costs for selling garlic ten percent under the weight advertised on the packaging.

'A trade measurement officer visited the business to check weighing instruments and fruit and vegetable pre-packs for compliance with the requirements of the Trade Measurement Act 1990,' Fair Trading Minister Margaret Keech said.

'During the visit the officer inspected 12 pre-packed bags of 'fresh garlic', marked 250g. These were weighed and found to be on average 223.6g, which represents an average shortage of around ten percent.'

'Traders are breaching the law if they pack or sell an article which is short of the quantity marked.'

'Short measure is no small matter; consumers deserve to get what they pay for.'

For more information on getting what you paid for, download a free copy of the Trade Measurement Tips for Consumers from www.fairtrading.qld.gov.au.

Queensland tops for family holidays

According to national travel magazine Holiday with Kids, Queensland is home to nine out of ten of the top family holiday resorts in Australia. Tourism Minister Margaret Keech said she was not surprised by the result.

'More than 3.7 million, or 22 percent, of domestic visitors to Queensland travelled as a family group in the year ending September 2006,' Mrs Keech said.

In the same year families spent more than 20 million visitor nights.

'You only have to look at the strong hotel occupancy rates during the current family holiday period to see the impact families have on Queensland's tourism economy.'

'Some of the holiday activities undertaken by holidaying families include dining out, going to the beach, shopping, sightseeing and visiting amusement and theme parks.'

'Not surprisingly the Gold Coast is Queensland's number one destination for family holidays, closely followed by Brisbane and the Sunshine Coast.'

'It is home to some of the world's best beaches, is Australia's amusement capital and has some of the best national parks and hinterland attractions in the state.'

For more information on holidaying in Queensland visit www.queenslandholidays.com.au

Welcome

Kerrie Cooper has commenced as our new receptionist.

Tessa Amey has joined the Litigation support team.

Evonne Demameil is the newest addition to our Commercial Property support team.

Sarah Daly, secretary in the Litigation department has left and is awaiting the arrival of her second child in April. Everyone at GW wish her well for the future.

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