

# GARLAND

# WADDINGTON

## SOLICITORS



### Law News

## Myth: Whistleblowers shunned and tormented

*The myth that most public sector whistleblowers are shunned and tormented by their peers has been disproved, according to the results of a major national study.*

Only 22 percent of the whistleblowers surveyed said they were treated badly by management or co-workers, with 78 percent reporting they were treated either well or the same by management and co-workers. Bad treatment or harm suffered by whistleblowers was most likely intimidation, harassment, heavy scrutiny of work, ostracism, unsafe or humiliating work, and other workplace-based negative behaviour. Those that reported bad treatment felt most of it came from management, rather than colleagues or co-workers, and even successful whistleblowers reported adverse psychological experiences from their whistleblowing, although not as adverse as those treated badly.

The research shows that whistleblowers can blow the whistle on serious wrongdoing without necessarily suffering, but only if they do it internally and carefully, have realistic expectations, and organise their own support. The report from the project also concludes that agencies need to better ensure their managers are equipped to take responsibility for their role in receiving disclosures and managing whistleblowing. It says governments need to reform legislation to ensure best practice whistleblowing systems in agencies, including more central coordination, provisions to recognise public whistleblowing, and provision for effective whistleblower compensation. The new study – which is part of the largest multi-jurisdictional study on public integrity issues ever undertaken in Australia – suggests that as many as 460,000 public servants may have formally reported wrongdoing within or by their organisation over the last two years, and that around 197,000 of these could be public interest whistleblowers.

Other key results of the study included that:

- 71 percent of respondents had observed at least one instance of wrongdoing in their organisation in the previous two years
- 61 percent of respondents observed wrongdoing they regarded as serious
- 28 percent of respondents formally reported the most serious wrongdoing they observed
- 20 percent of respondents are estimated to be 'whistleblowers'
- 12 percent of respondents are estimated to be public interest whistleblowers (that is, reporting corruption, fraud, maladministration and serious misconduct).

## Queensland changes historic double jeopardy laws

*Queensland's double jeopardy laws, which have been a part of English law for 800 years, have been amended.*

The amendments now enable an acquitted person to be retried if 'fresh and compelling' new evidence emerges in a murder case. However, the overhaul of the laws which prevent people from being tried twice for the same crime will not be retrospective. The bill creates two exceptions to double jeopardy protection by allowing a retrial for a charge of murder where there is new evidence, and allowing a retrial for a crime that would attract a sentence of 25 years or more, if the original acquittal is tainted. The changes acknowledge that advances in forensic science and DNA evidence may mean that compelling evidence not available at the original trial may become available at a later date. Queensland is only the second Australian jurisdiction to implement significant reforms to double jeopardy rules, and defended them for not being retrospective.

## Newsletter

DECEMBER 2007



# GW

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“ A committee is a cul-de-sac down which ideas are lured, then quietly strangled. ”

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## A case in point:

# Naturopath not guilty of manslaughter

## The decision

*A 39-year old man charged with manslaughter for his treatment of a chronic kidney disease sufferer has been found not guilty by the jury.*

A Sydney naturopath has been found not guilty of the manslaughter of a patient suffering a chronic kidney disease who was desperate for a cure. In February 2002, the now 39-year old naturopath placed his patient on a live-in detoxification program at his premises in Sydney. The 37-year old security guard patient, who had chronic renal disease and lost 11kg over 10 days while being treated, died there from a heart attack. The patient was charged \$3,000 for a seven-day stay with the naturopath and this was then extended. The naturopath claimed he offered the patient 'lifestyle rejuvenation' and dietary education. He also claimed he did not tell the patient to stop taking his medication or promise him a cure. The post-mortem examination

showed that the patient died from a heart attack and had a previously undiagnosed severe heart condition. The naturopath was accused of pretending to be a doctor, however his only qualifications consisted of a PhD purchased from Sri Lanka for \$850. The patient visited the naturopath after his sister found a leaflet or part of an ad in a newspaper about the naturopath's business. The advertisement asked the question: Need A Cure? The naturopath was asked to explain his definition of a cure.

"As a medical evangelist, we would read Matthew chapter 10," he said, producing a copy of the Bible from his pocket.

"The word cure is a terminology that I use in a spiritual realm.

"I've always considered myself to be a gospel medical missionary."

He said people visited his practice to be "educated spiritually, mentally and physically".

The naturopath also told his patient of the eight laws of health he believed in: nutrition, exercise, water, sunshine, temperance, rest, trust and divine power. In denying responsibility for the death, the naturopath had claimed the man "was dying anyway".

"Because he died on my premises, that does not mean that I'm responsible for his death," he told the inquest.

The jury foreman delivered a not guilty verdict for the naturopath in relation to the charges of manslaughter.

## Baker fined for underweight pastries

*A Sunshine Coast baker has been fined \$4000 for supplying a health food shop with underweight pastries.*

The baker pleaded guilty to selling underweight danish pastries, fruit slices and sausage rolls. An inspector from the Office of Fair Trading discovered the underweight products during routine spot checks.

New online information outlining the Australian Competition and Consumer Commission's processes for investigating complaints about franchisors has been launched. The ACCC receives about 1000 complaints about franchising systems every year. Allegations about franchisors are subject to a rigorous investigation process, which may result in further action, such as administrative resolution or litigation. The provision of this extra information is to send a clear message to the franchising sector that the ACCC will vigorously and transparently investigate and pursue breaches of the law and the Franchising Code of Conduct.



The inspector found a number of pastry products being sold between 7 and 27 percent under the weight specified on the packaging. The percentages may seem quite small, but the cost to consumers over many transactions has the potential to be quite high. It's an offence under the Trade Measurement Act 1990 to supply pre-packed products that do not meet the weight specified on the packaging.

It is hoped the fine will warn other food manufacturers that breaches of trade measurement laws are treated seriously in Queensland and will not be tolerated. Breaches of trade measurement laws carry fines of up to \$20,000 for an individual and \$100,000 for a company. For more information about trade measurement laws in Queensland visit [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) or telephone 13 13 04.

## Summer product safety reminder for consumers

With summer approaching, sun-loving consumers have been reminded about the safety risks of some products used in water sports and other outdoor activities. Consumers purchasing items such as toys, swimming pools and swimming pool accessories should proceed with caution, especially when buying such items for children. The Office of Fair Trading offers these summer safety tips:

- always supervise young children around water – never leave them alone
- remember, swimming aids are not safety devices
- check fencing requirements with your local council before buying any type of large pool
- be aware that some inflatable pools must be fenced under Queensland pool fencing standards
- choose sunglasses carefully as ultra-violet rays can cause serious eye damage
- toy sunglasses are just that – toys – and should not be used by children as protective sunglasses.

For safety brochures, fact sheets and guides about a wide range of popular products visit [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au).

## Franchising systems

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# Changes to legislation affecting security providers

*The Security Providers Act 1993 regulates the security industry in Queensland by setting out the minimum obligations and requirements for the industry.*

Queensland Parliament approved changes to the Act to raise the standards for people working in the security industry and will cover sectors of the industry that have not been licensed before.

The changes will come into effect in three stages. They are:

- increased penalties – implemented July 1, 2007
- increased spot checks – October 1, 2007
- new licence categories – scheduled mid-2008.

Penalties for operating without a licence will be five times the previous penalties and include jail time for repeat offenders.

The penalties for an individual have been increased from a maximum of \$7,500 per breach to:

- a maximum of \$37,500 for a first offence
- a maximum of \$52,500 or six months imprisonment for a second offence
- a maximum of \$75,000 or 18 months imprisonment for a third or later offence.

Licences will be issued under two classes. They are:

**Class 1 licence** – a licence to perform one or more of the following functions: bodyguard, crowd controller, security officer, private investigator.

**Class 2 licence** – a licence to perform one or more of the following functions: security adviser, security equipment installer.

From mid-2008, anyone wanting to enter the security industry, prior to completing the required training, can apply for a restricted licence to perform one or more of the following functions: bodyguard, crowd controller, private investigator, security officer. Current licences will continue to be valid and increased spot checks will occur when a current licence is renewed. Prior to the commencement of the new licence classes in mid-2008, renewal notices will guide existing licensees on any changes affecting their licence. For more detailed information on the categories, visit [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) or call 13 13 04. These guidelines provide basic information, however please contact your local solicitor for professional advice about the new legislation.

## New laws to protect against predatory pricing

*Small business will have greater protection from unfair competition by bigger rivals under new laws.*

The amendments to the Trade Practices Act prevent the misuse of market power and clarify laws on predatory pricing. The Government amended the legislation so that a corporation with a substantial share of a market cannot supply goods or services below cost for a sustained period in order to eliminate or damage a competitor. Under existing law, the protection does not apply where the supply or acquisition of goods is worth more than \$3 million. The threshold will be raised to \$10 million. For more information about the Trade Practices Act, please make contact with your local solicitor.



## Extra explosive requirements

*The Australian Government has specified extra requirements for the use of plastic explosives and they are now in effect.*

The new requirements make it an offence to manufacture, possess, traffic or import and export unmarked plastic explosives, unless a person or corporation has a valid written authorisation from the Attorney-General. Unmarked plastic explosives are, 'those which do not have a minimum concentration of one of the prescribed chemical detection agents incorporated into the plastic explosive'. A written authorisation will only be provided by the Attorney-General where the unmarked plastic explosives will be used:

- by Australian manufacturers for a six-month period until February 25, 2008
- by users of existing stocks of unmarked plastic explosives until August 25, 2010
- for defence and/or police purposes
- for research, development, testing of explosives or explosives detection equipment, training in explosives detection or forensic science.

It is now an offence under the Customs (Prohibited Import) Regulations 1956 to import plastic explosives without a permit. When importing plastic explosives an application form must be submitted and a manufacturer's certificate provided as evidence of

## Safety a priority for family Christmas holidays

*The festive season is a popular time of year for annual family holidays. The roads are busy and it can be difficult to find good accommodation. There are a few safety tips to keep in mind to ensure a happy and safe family holiday.*

Many holiday accommodation venues will have bunk beds to cater for children. Parents should be mindful of the potential injuries that can be caused by bunk beds and check that they have the necessary safety features.

In 2002 Queensland introduced mandatory safety standards for bunk beds to prevent injuries, including:

- the elimination of gaps to reduce the incidence of head entrapment
- provision of a guardrail at least 160mm above the top of the mattress on all four sides of the upper bed to prevent falls
- no protrusions over 8mm to reduce the risk of clothing becoming caught and resulting in hanging
- properly attached ladders to provide safe access.

For more advice and information about safety requirements for bunk beds visit [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au). Contact your local solicitor for more comprehensive information of the mandatory safety standards for bunk beds.

whether the plastic explosive is marked or unmarked. All plastic explosives are a prohibited export under the Customs (Prohibited Export) Regulations 1958. For more information on the new requirements for plastic explosives, visit the Attorney-General's website, [www.ag.gov.au](http://www.ag.gov.au). To gain a greater understanding of the legislation and amendments regarding plastic explosives, please contact your local solicitor.

# Facebook users risk identity fraud

*The increasing popularity of online community websites is putting users of these websites at increasing risk of identity fraud.*

Websites such as Facebook and MySpace enable users to list personal details, including date of birth and address details. Fraudsters can then use this information to search for more comprehensive personal details.

Much of the personal information included on these social-community websites is often enough to apply for a credit card or open a bank account. Facebook users often try to increase the size of their network with a maximum number of friends. Those users are easy prey for fraudsters who can easily gain access to their personal details. Online websites and social communities often have the option for members to adjust the privacy settings to protect information from fraudsters, but many fail to do so. Facebook claims that some 200,000 people sign up to Facebook every day, and the site has more than 42 million members. Facebook has recently decided to publicly list its members' profiles on search engines such as Google and Yahoo, unless a user actively opts out of the scheme. Internet users need to be wary and make sure that personal details are not publicly available over the internet to avoid identity fraud troubles.

# Watch out for computer fraudsters

*A Queensland company has been fined \$1500 for failing to substantiate claims about its gambling software, according to the Office of Fair Trading.*

Cressida Corporation was found guilty in the Southport Magistrates Court on a charge that it failed to respond to a notice issued under the Fair Trading Act 1989. The company sold horse racing software and the Office of Fair Trading called on the company to prove its claims about the software. The company chose to ignore the notice. Fair trading investigators have the power under the Act to ask traders to prove claims about the products they sell. Schemes, such as this horse racing software, are promoted by professional sales techniques using glossy brochures and high pressure tactics.

Anyone considering buying into such schemes needs to read the fine print before signing documents or paying money. More often than not, the risks of these computerised schemes far outweigh the possible benefits. The Office of Fair Trading received 476 complaints about computerised gambling or investment systems in 2005 and 2006.

# IP manual for electronics industry

*The Australian Government has launched an Intellectual Property Management Manual for the electronics industry.*

The manual aims to encourage business-to-business cooperation on innovative projects in Australia that enhance productivity, growth and international competitiveness in Australian industries. Practical and relevant intellectual property-related advice for the growing, globally competitive electronic-related industries is provided in the publication. A particular emphasis has also been placed on licensing, contracting of services, and undertaking joint ventures in Australia and internationally. Intellectual property

is far more than patenting an invention. When intellectual property is created, it is the value of the created knowledge and how to protect that intellectual property that has value. Intellectual property is a valuable asset for every organisation, and should be carefully managed. Without good management, organisations may be unaware of its value or benefits, or may expose itself to unnecessary risks. For comprehensive information about intellectual property and how to protect it, please contact your local solicitor.

# Exploitation charges brought against restaurateur

*A Blue Mountains restaurateur has been cleared of exploitation allegations after investigation into his employment of a chef he brought from India to work in his kitchen.*

But the District Court jury convicted the restaurateur of falsifying a job offer on the Indian man's visa application. The Indian man was brought to work in the restaurateur's kitchens in 2005 and was immediately set to work for six weeks straight after arriving in Sydney.

The 24-year old worked 14 hours straight, six days a week and also claimed he received no payment for his work, was denied access to painkillers, slept in a hallway and kept his belongings in a shed. After 1½ days of deliberation, the jury of six men and six women returned a not guilty verdict on a charge of bringing the Indian man to Australia, reckless as to whether he would be exploited.

Immigration officers raided the Indian restaurant after a tip-off and found a file containing papers related to the Indian employee's visa application. Attached to the application was a job offer from the restaurateur that set out work conditions and a salary. The form, with a sample of the Indian man's signature at the bottom, said the chef would be paid \$40,000 a year to work 38 hours a week. The Indian man claims he was never shown nor signed a contract, and was told to send seven samples of his signature before coming to Australia.

# Puppies caught in scam

*Consumers are being warned by the Australian Competition and Consumer Commission that scammers have been placing advertisements in online and newspaper classifieds for pedigree puppies.*

Consumers have paid online for the advertised pedigree puppies and they never arrive. The ACCC cautions consumers that too-good to be true offers for pedigree puppies should ring some alarm bells. When purchasing a pedigree dog, it is advisable to seek advice from someone in the industry, such as breeders' or kennel associations, a vet or the local pet shop.

Consumers should avoid any arrangement with a stranger that requires upfront payment via money order, wire transfer or money gram. Another way to check if an ad for a puppy is a scam is to do an Internet search using the exact wording in the ad. For more information, visit the ACCC's SCAMwatch website, [www.scamwatch.gov.au](http://www.scamwatch.gov.au).

# National ban on lead toys

The Federal Government has announced a national ban on children's toys that contain unacceptable levels of lead. Under the Trade Practices Act, it is now an offence to supply toys that have lead migration levels above the specific limit specified in the current Australian Standard. For more information, visit [www.accc.com.au](http://www.accc.com.au).

## Office News

This Christmas we have decided to do something completely different. Instead of sending out Christmas cards, we will be sending out New Years cards. So stay tuned to your mailbox. Perhaps we'll start a new trend!

This newsletter is a free service. If there is any issue you would like us to cover in a future newsletter please call us.

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