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Law News

Smoke alarms now mandatory

Queensland has new smoke alarm laws that now require all homes to be fitted with smoke alarms under the Fire and Rescue Service Amendment Act 2006.

From July 1, all older homes (pre-1997) need to have working smoke alarms installed in the hope that the number of people escaping house fires safely will increase. The minimum recommendation is a nine-volt battery powered smoke alarm, in which the battery requires replacement annually. Home owners are encouraged to align the battery-change date with a birthday or anniversary date to make it easier to remember.

About 13% or 200,000 Queensland homes are not fitted with smoke alarms. Since July 1, 1997, in Queensland, it has been the law under the Building Code of Australia that smoke alarms are installed in residential homes built, or significantly renovated, after that date. Queensland is catching up to other Australian states with similar legislation that has produced statistics showing more lives are being saved. South Australia, Victoria and New South Wales all have mandatory smoke alarm laws and the Queensland laws most closely mirror those in Victoria and New South Wales. Queensland legislation requires that homes must be fitted with any smoke alarm that meets Australian Standards.

With the new legislation, when property sales occur vendors need to lodge a form with the Queensland Land Registry stating that smoke alarms are installed in the property and that the purchaser has been informed that the smoke alarms are installed. Fire officers will investigate complaints received about residences that are non-compliant with the new legislation. There will be a maximum fine of \$375 for those residents who do not have fire alarms installed right now.

The required location of smoke alarms in homes reflects the location requirements for smoke alarms in the Building Code of Australia (BCA) for new homes. The requirements outline that smoke alarms should be located close to the sleeping area of the home and there also needs to be a smoke alarm on each level of the home. For more comprehensive information visit, www.fire.qld.gov.au.

The Queensland Fire and Rescue Service have determined that 78.1% of all home fire deaths are from homes that do not have smoke alarms installed. Furthermore, 47.4% of those deaths occur between 12am and 8am when residents are sleeping. These statistics have reinforced the importance of the Fire and Rescue Service Amendment Act 2006.

The new smoke alarm laws also sets out some requirements for both landlords and tenants involved with rental properties. Landlords are required to install smoke alarms that meet the minimum legal requirement of an alarm that meets Australian Standards in rental homes. Landlords are also required under the legislation to test and clean each smoke alarm 30 days before starting a new tenancy agreement. Another action that landlords must take 30 days before starting a new tenancy agreement is replacing (in accordance with the manufacturer's specifications) each battery in smoke alarms that are flat or not working.

Tenants also have obligations under the Fire and Rescue Service Amendment Act 2006. Landlords are only required to test and clean smoke alarms before the start of a new tenancy agreement and therefore, by law the tenants must test and clean smoke alarms every twelve months. Tenants also have to replace batteries that are flat or almost flat, and notify their landlord or agent as soon as practical if the smoke alarms in the rented residence are not working or functioning properly.

For more information, contact the Queensland Fire and Rescue Service (QFRS) on 1300 369 003 or visit www.fire.qld.gov.au.

Rogue security providers made to pay

Increased penalties for unlicensed security providers in Queensland came into effect in July. Under the Security Providers Amendment Act 2007, individuals and businesses operating without a security licence will be penalised up to \$75,000 and \$937,500 respectively. Individual repeat offenders may face jail time. Spot checks will be conducted regularly across the state.

Newsletter

SEPTEMBER 2007



GW

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WISE WORDS

“ All things are possible except skiing through a revolving door. ”

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A case in point:

Employee sacked for behaviour conducted outside of work hours

A decision by the Australian Industrial Relations Commission (AIRC) earlier this year, in the case of Klepacz v Reflections Group Pty Ltd, found that an employee was liable for behaviour outside of work hours within a certain set of circumstances.

The employment contract in Klepacz v Reflections Group Pty Ltd was terminated on the grounds of misconduct under the Workplace Relations Act 1996.

For ease of identification, the employee with the terminated employment contract will be referred to as Mr K. Mr K was employed as a cleaning supervisor from January 2006 until July 2006 by Reflections Group Pty Ltd. In June of 2006 he took leave from his employer to cope with stress.

In early July, Mr K was transferred to another shopping centre to carry out cleaning duties and no longer carried the supervisor title. The reasons cited for moving to a different shopping centre were to deal with the current stress he was suffering. In court it was disputed whether Mr K had actually agreed to this transfer.

After commencing a shift at the new shopping centre, Mr K again went on leave to deal with stress and remained on leave until his contract was terminated. While on leave, on July 19, 2006, Mr K showed up at his workplace, the first shopping centre where he was a supervisor cleaner. During this encounter Mr K requested to enter the company's staff room to retrieve a telephone number. He did so and the cleaner on duty made the company manager aware of what had taken place.

On July 22, 2006, Mr K again attended the same shopping centre, this time wearing a jacket bearing the logo of the company. Mr K claimed he was at the premises on a personal shopping trip. He was approached by the manager at that venue and a discussion ensued about Mr K's previous visit to the shopping centre and his prior access to the company staff room.

After that discussion Mr K went outside for a cigarette. According to his evidence he was distressed about being confronted about a work-related issue when he was not on duty at work.

On finishing the cigarette, Mr K entered the shopping centre's foodcourt to seek out the employee who had told the manager of his visit to the company staff room when off-duty to retrieve a phone number. Mr K felt that this act of telling management was an act of disloyalty.

Another employee of the company gave evidence that she saw Mr K going to the food court and she stated that she advised him to, 'calm down and go home because you are drunk.' Mr K denied seeing that employee on the day in question.

An altercation then took place in the food court between Mr K and two employees of the cleaning company. The Shopping Centre security was contacted and Mr K was escorted from the premises.

The company believes that there were 15 to 20 members of the public present in the food court at the time of the altercation. Mr K claimed that there were only two or three present.

Mr K denied having been intoxicated but acknowledged having consumed alcohol. Mr K's employment was terminated by the company on July 24 for, "two priority main things. One was abusing the staff on site. Secondly Mr K was doing so whilst intoxicated."

The confrontation in the food court took place in front of members of the public, the number is disputed, but still a number of members of the public. At the time of the altercation Mr K was also wearing a jacket bearing the company's logo. The court decided that the other employees of the cleaning company who came into contact with Mr K during the reported visits to the shopping centre, acted in a reasonable manner under the given circumstances.

There is evidence in the form of a medical certificate, that Mr K was suffering from 'work stress and anxiety disorder' between August and September 2006. The judge found that no such evidence existed at the time of the incident in July 2006.

The AIRC found that the conduct of Mr K amounted to misconduct and was likely to cause damage to the employer's interests. And thus the AIRC concluded that, based upon all of the circumstances and evidence it was found that the termination of Mr K's employment was not harsh, unjust or unreasonable.

For detailed advice on industrial relations issues in the workplace please consult your local solicitor.



New safeguard for Australian workers

Recent amendments to the Workplace Relations Act 1996 have appointed a Workplace Ombudsman (WO) to take on nationwide responsibility for the protection and enforcement of the rights of workers and employers under Australia's new workplace relations laws. The new WO is a safeguard for Australian workers to turn to when they need independent, impartial and professional advice about workplace rights and obligations. Information and resources are also available from the WO to help employers understand their compliance obligations under the legislation.

Some of the new powers that the WO has been given include:

- ensuring employers comply with their obligations under the new Fairness Test including recovery of underpaid entitlements as well as litigate for penalties
- prohibition on dismissing an employee for the sole or dominant reason that an agreement fails, or may fail, the fairness test
- prohibition on coercing an existing employee to agree to modify or remove a protected award condition.

Visit www.wo.gov.au or phone the WO helpline on 1300 724 200 for more information. The WO also has 26 offices throughout regional and metropolitan Australia.

Fire safety tips

The risk of house fires is a concern all year round. By following a few simple safety tips, you can help protect your family from the devastation of a house fire.

Here are three tips to stay safe

1. Ditch old style bar heaters, cut off the cord and safely dispose of them
2. Dress children in low fire danger clothing – certain styles and fabric types are more flammable and dangerous than others
3. Install working smoke alarms. It is now mandatory that all Queensland homes have smoke alarms.

Young drivers subject to extensive laws

In February, the Queensland Government passed the Transport Legislation and Another Act Amendment Act 2007 that outlines new rules for young learner and provisional drivers. The first phase of the new laws commenced in July.

Young drivers have been scrutinised over their inexperience on the road and this legislation aims to improve their skills and directly combat some of the horrifying statistics. Each year AAMI produces an AAMI Young Drivers Index that collates statistics, trends and issues relating to young drivers. The most recent AAMI Young Drivers Index from late 2006 includes some scary statistics:

- 70% of young drivers have been in a vehicle with a driver driving dangerously
- 70% of young drivers have sent or read a text message while driving
- 52% are concerned that they would be over the blood-alcohol limit after a night of drinking
- one in seven young drivers have admitted that they become angry at the actions of another motorist and tailgated them.

In 2006, 83 young people were killed on Queensland roads. This is very high as young drivers represented only 13% of all licence holders, but 25% of the road toll. The new legislation for young drivers attempts to combat miserable statistics such as these for young drivers.

The new pathway for obtaining an open drivers licence will now look something like this:

- Written road rules test
- Learner licence
- Practical driving test
- Provisional licence 1
- Hazard perception test
- Provisional licence 2
- Open licence

The new rules will be implemented over three phases. The first phase, a graduated licensing system, was implemented on July 1, this year. The second phase, including a support package for young drivers having trouble finding a supervisor for

their learner driving, is expected to be implemented in December this year. The third and final phase of the new legislation will be hazard perception testing and is scheduled to be implemented in mid-2008.



The age of eligibility for obtaining a learner licence has now dropped to 16. There are a number requirements and restrictions for learner drivers under the age of 25. Young drivers must:

- hold their learner licence for a minimum period of 1 year
- display L-plates at the front and rear of their vehicle
- gain 100 hours of supervised on-road driving experience, including 10 hours of night driving
- take note of restricted mobile phone use for both the learner driver and supervisor.

After holding a learner licence for one year, young drivers can take a practical

driving test to obtain their provisional licence 1 (P1). Drivers need to be at least 17 years of age to obtain their P1 and must hold their P1 licence for at least one year. Some of the new requirements when holding a P1 licence include:

- displaying red P-plates at the front and rear of the vehicle
- only having one passenger under the age of 21 (excluding immediate family members) travelling with drivers on their P1 licence between 11pm and 5am
- not driving high-powered vehicles
- having a blood alcohol concentration of 0.00

After young drivers have held a P1 licence for one year, they are then eligible to undertake a hazard perception test to obtain a provisional licence 2 (P2). This test measures a young driver's ability to recognise, and appropriately respond to, potential dangerous situations on the road.

The P2 licence must be held for two years before graduating to an open licence and green P-plates must be displayed at the front and rear of the vehicle. Drivers on their P2 licence are subject to the same night driving, high-powered vehicle and passenger restrictions as those that apply under the P1 licence.

Parents usually play a major role when their child is attempting to obtain a driver's licence, and so it may be time for them to consider updating their driving skills.

RACQ urges parents to undertake a refresher driver education course to brush up on driving skills and quash any bad habits that may have been acquired over years of driving.

For more information on RACQ's Driver Education Program, please phone 1800 680 039.

For more information about the changes to laws for young drivers, please visit www.transport.qld.gov.au/youngdrivers.

Relationship between violent head injuries and juvenile violent offending

Researchers at the University of Sydney have found a link between head injury (causing unconsciousness) and severely violent criminal offending (including homicide and grievous bodily harm).

- 35% of the sample used in the study reported a history of significant head injury
- 30% of those reporting a history of head injury also reported a second head injury
- the most common causes of head injuries were fights (44%) and sport, recreation or misadventure (30%)
- more than half of those reporting a head injury reported cognitive or behavioural problems associated with the injury
- a history of head injuries was also found to be significantly associated with severe violent offending, particularly where the young offender also engaged in hazardous drinking.

The sample used for the study included, 242 young offenders with an average age of 17. Of that sample 92% were male and 42% Indigenous.

DNA to paw print dog attacks

A new DNA pack has been developed to aid investigations into dog attacks. The new dog attack DNA kit will allow local councils, livestock owners and police investigators to easily gather canine DNA evidence at dog attack scenes.

The new DNA dog attack packs may help when:

- a dog attack victim is unable to identify the exact dog
- an attack happens in a park when there are multiple dogs
- a dog owner refuses to cooperate with council investigations
- the owner of the alleged dog attack has multiple dogs of the same breed at their residence
- a neighbourhood dog is wrongly accused of being involved in an attack – DNA may be able to exclude the dog

Support for ageing Australian workforce

The Australian Bureau of Statistics 2006 census results paint a picture of an ageing Australian society. The average age of the Australian population is now 37 years of age.

The census report also cites that over the past ten years the number of people over 65 years of age has increased by 500,000 people, or from 10% of the population to now 13%.

The 55-to-64 age group has also increased from just 9% of the population to 11%. In the wake of such statistics the Australian Government has introduced resources to aid aged pensioners who wish to return to work.

Age pensioners are defined as men aged over 65 and women over 63, and they now have access to the individually tailored Employment Preparation and Job Search Training service. The service provides skills assessments, access to training courses to upgrade skills, self esteem, confidence or job search skills. For more information, visit www.jobwise.gov.au.

Aside from the new support services available for aged pensioners, from September 20, the Age Pension assets test will change (the income test is not affected). The effect of the changes to this test will include:

- the maximum amount of assets a person can have and still get a pension will increase
- more people will become eligible for pension payments and many part-pensioners will have their payments increased
- many people who were previously ineligible for an Age Pension payment because of the value of their assets may become eligible.

All of these initiatives by the Government are aimed at minimising the impact of the ageing Australian workforce. For those who may be entering the workforce at a mature age, visit your local solicitor for detailed information about new workplace laws.

Refusal to deal

The Australian Competition and Consumer Commission (ACCC) constantly receives complaints from small businesses that are refused the supply of certain goods and services from manufacturers, wholesalers or distributors.

In general, businesses may choose with whom they deal, but nobody has an absolute right to be supplied. However, there are a few circumstances when a refusal to deal is illegal under the Trade Practices Act 1974.

There may be sound commercial reasons – legal ones – why a customer is refused supply of goods or services by a particular supplier. However, suppliers need to be careful that ‘excuses’ are not used as a front for anti-competitive conduct. The ACCC has outlined a few situations of refusal to deal that break the law:

- **Illegal agreements:** agreements with competitors that involve restricting the supply of goods for the purpose or effect of substantially lessening competition in a market in which the businesses operate
- **Boycotts:** agreements between competitors to refuse to deal, or to limit dealings, with other parties that are illegal under the Act

- **Misuse of market power:** a firm with a substantial degree of power in a market cannot take advantage of that power to damage other businesses
- **Exclusive dealing:** one person imposing restrictions on the other's freedom to choose with whom or in what it deals
- **Third-line forcing:** a specific form of exclusive dealing prohibited by the Act. It involves either the supply of goods or services on the condition that the purchaser buys goods or services from a particular third party or a refusal to supply because the purchaser will not agree to that condition.
- **Resale price maintenance:** suppliers, including manufacturers and wholesalers, may not specify to resellers a minimum price below which goods or services are not to be resold or advertised for resale.

For more detailed information, please contact your local solicitor.

Police vehicle confiscation powers

Queensland police now have more power derived from new vehicle confiscation laws, enabling them to confiscate vehicles for a range of offences and can now ask for proof of age from passengers in cars driven by provisional licence holders.

The strict new laws aid police by enabling them to take the vehicles of those drivers who repeatedly break road rules. Anyone committing driving offences of drink driving and driving while disqualified twice in three years will have their car impounded for 48 hours. If they commit a third offence they risk losing their vehicle for three months and if offenders are caught a fourth time they could lose their vehicle permanently.

The new laws have already seen two drivers have their vehicles confiscated. On top of the court costs these two drivers may incur for the alleged offences, they will have to pay \$251 to get their car back from the towing company.

Energy ombudsman for electricity consumers

The Queensland electricity industry has just been opened up to industry competition, creating a wave of new options for electricity consumers.

A new Energy Ombudsman (EO) has been appointed to help Queenslanders wade through the varying options for electricity supply. The EO provides a free, fair and independent service for consumers if they are involved in a dispute with their electricity retailer and will keep watch to catch any unscrupulous operators.

Other measures to protect consumers under the full retail competition include, a 10 business day cooling-off period which gives customers the right to change their mind about their choice of electricity supplier and a new marketing code of conduct to protect people from dodgy marketing practices. The community should be aware that Energex and Ergon Energy are still the providers to call if there are problems with electricity supply.

For more information, please contact your local solicitor.

Courtroom antics

Q: Do you recall the time that you examined the body?

A: The autopsy started around 8.30pm

Q: And Mr X was dead at the time?

A: No, he was sitting on the table wondering why I was doing an autopsy.

Q: This myasthenia gravis, does it affect your memory at all?

A: Yes.

Q: And in what ways does it affect your memory?

A: I forget.

Q: You forget? Can you give us an example of something that you've forgotten?

Office News

Welcome

Solicitor Stephen Quartermain has joined Brendan in the Litigation department along with secretary Joanne Lake (working alongside Deb McMaster) to both Brendan and Stephen.

Alex Armstrong is the new office junior.

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