

In touch with the law

The law is constantly changing and this newsletter describes developments which may be relevant to you. If you are in any doubt about these or any other aspects of the law, please make an appointment to see your solicitor.

INTELLECTUAL PROPERTY Who owns the rights to employee inventions?

The issue of commercial ownership of work by employees is being tackled in the courts.

Employers generally benefit from their employees' inventions, if they are made 'within the course and scope' of the employees' employment. Appropriating business opportunities which arise during employment for personal gain may be in breach of contract and a breach of an employee's duty of trust.

However, unless a contract of employment expressly provides for the ownership by an employer of all employee inventions, an employee may have rights over intellectual property in certain circumstances.

The NSW Industrial Relations Commission can also vary contractual provisions dealing with the ownership of intellectual property developed by employees, and order the payment of compensation to employees if those arrangements are held to be unfair.

In a recent case a small family firm was a



manufacturer and supplier of equipment used in tyre retreading. The sales manager for the firm was also a skilled machinist. He and another employee designed two products which were patented, and the employees assigned their interest in the inventions to the company. The sales manager then developed another invention in his own time, one which the company was not initially interested in developing.

Later, the company decided the design was patentable, offering him a nominal payment of \$1. He refused to sign the deed of assignment unless a proper payment regime was produced, later that year resigning from the company and subsequently developing the invention with another manufacturer.

The courts found that the inventor had made the invention outside the scope of his duties as an employee and in his own time, and that the company was not entitled to the rights to the patent. □

CONSTRUCTION

Owner-builders given greater scope

New home building regulations have introduced important changes for those undertaking residential building work.

The old regulations severely limited home owners in the building work they could legally undertake without being licensed. Work such as building a deck, repairing or replacing

windows, or even significant painting work was often in breach of the regulations, if the value of the labour exceeded \$200.

The new regulations increase the threshold from \$200 to \$1,000 for labour and materials, and create various exemptions from licensing, including the dismantling and moving of dwellings in most circum-

stances. They also exempt work where the person doing the work is the owner and the job does not involve specialist work, such as plumbing or gasfitting, or need a development consent from the local council.

The scope of residential building work exempted from compulsory home warranty insurance has also been expanded.

However, with sales off-the-

plan, developers still need to provide home-warranty insurance certificates within 14 days of the insurance contract being made. Since insurers often fail to provide the certificates in time, this still means a buyer might rescind their sale contract at any time before completion.

For further information on these matters contact your solicitor. □

ROAD ACCIDENTS

What compensation am I entitled to?

If you are injured in a road accident, the amount that you will receive in compensation will depend upon the seriousness of your injuries and the loss you have suffered as a result.

Compensation may include:

- if the accident occurred after 4 October 1999, compensation for pain and suffering only if it is agreed or assessed that your injuries amount to permanent impairment of greater than ten per cent of your whole body;
- medical and similar expenses;
- loss of earnings or loss of opportunity to earn;
- in very serious cases, care,

equipment, transport and home modifications.

Compensation will be paid as a once-only lump sum, although the green-slip insurer may have to pay your medical and rehabilitation expenses as incurred before your claim is settled. Compensation covers the past loss and the future anticipated loss.

Your solicitor can advise on whether you should make a claim for compensation, and about the strict time limits which apply. You may also need legal help in completing and lodging the claim form, and in negotiating on your behalf with the insurer.



INDUSTRIAL RELATIONS

Strong-arm tactics targeted in building industry reform

New laws have strengthened the powers of the Building Industry Taskforce, provided greater protection to whistleblowers in the industry, and stiffened penalties for some offences.

The Building Industry Taskforce investigates breaches of awards and agreements, and secures lawful behaviour in the building and construction industry.

In a case prior to the introduction of the new laws, used as an example of the need for stiffer penalties, the Taskforce had commenced an action against a union branch organiser who was alleged to have threatened or intimidated a manager due to give evidence to the Industrial Relations Commission. The union organiser was found guilty and ordered to pay the then maximum fine. Under the old laws that maximum fine was just \$500. Under the new laws the maximum penalty for breach of the Workplace Relations Act has been increased to 12 months imprison-

ment for an individual and a penalty of \$6,600 or \$33,000 for a body corporate.

The law has also been changed to better protect whistleblowers if, in good faith, an officer, employee or member of an organisation such as a union or an employer association, discloses information about breaches of the Workplace Relations Act to the

Taskforce, or another appropriate body.

Threatening or causing detriment to a whistleblower is an offence punishable by a maximum penalty of \$2,750 and six months imprisonment.

The new laws also give the Taskforce the power to require a person to provide information, produce a document or attend and answer questions.

A person is not excused because it might incriminate them or subject them to liability. Any failure to comply constitutes an offence punishable by a maximum fine of \$3,300 for a first offender or \$6,600 or six months' imprisonment for a repeat offender.

Anyone required to attend may be represented by a legal practitioner.

SECURITY

Businesses held responsible if staff are attacked

Many businesses need to overhaul their security arrangements in order to better protect staff from the danger of attack in armed robberies, the Industrial Relations Commission has found.

In a recent case, the Commission emphasised the responsibility of employers – as part of their duty under occupational health and safety laws – to

minimise risk to employees from the criminal actions of others.

In some recent cases, businesses which have failed to properly protect their employees have been heavily fined. Recently, a Sydney leagues club was fined almost \$200,000 for not protecting its employees better. A robber wearing a balaclava had taken a barman hostage at knife-point in the club before escaping with \$10,000. Three staff members required time off work

because of trauma. The judge described the club's security arrangements as "woefully inadequate".

As a result, the club introduced new, and much more expensive, security arrangements with security guards. While the judge recognised that providing security was an expensive exercise, he said there was "nothing impractical or difficult" about businesses having adequate security measures in place.

VENDOR DUTY

Exemption for financiers, extension for deceased estates

Since June this year people selling property have been liable to pay duty on its sale price.

An unintended consequence of the introduction of the new duty was its application to mort-

gagees when exercising powers of sale. An exemption has since been created, which took effect from July.

Under the new provision, vendor duty is not payable if the agreement or transfer follows the bona fide exercise of a power

of sale by a mortgagee, receiver, liquidator or trustee in bankruptcy.

It also extends the exemption from vendor duty of sales by a legal personal representative of a deceased person's principal place of residence. Prior to the

amendment, such sales had to take place within 12 months of the person's death to comply. The exemption now applies provided the sale takes place within 12 months of the grant of probate or letters of administration to the executor or administrator. □

DE FACTOS

Am I entitled to a property settlement?

New South Wales laws give important rights to de facto partners and people in close personal relationships.

The law gives such partners rights which are in some limited ways similar to those of a married partner claiming a property settlement, regardless of whose name the property is in. However, you usually need to show that you have lived together for at least two years.

If your relationship has lasted less than two years, you may claim if:

- there is a child of the relationship, or
- you are caring for a child of the other party, and the failure to make an order would result in serious injustice to you, or
- you made substantial contributions (financial or personal) for which you will not receive adequate compensation if the court does not make a property order, and the failure to make an order would result in serious injustice to you.

In deciding on the division of property, the court will take into account the financial and non-financial contributions of each partner – for example, the labour involved in renovating property or answering the phones for a business – and the contributions of each partner as a homemaker and parent.

The property on which you can claim may include real estate and personal property such as funds held in a company or

damages payable to your partner as a result of court proceedings, but generally not superannuation owned by the other party. Superannuation and property owned by a discretionary trust may be included as a financial resource.

Applications for property division must be made to the Supreme Court, District Court or the Local Court within two years of the end of a relationship. The maximum you can claim in the

Local Court is \$60,000, unless the parties agree to the Local Court hearing a claim for a higher amount. The maximum you can claim in the District Court is \$250,000. In some circumstances you may be able to apply outside the two-year period.

Will the law recognise my relationship?

The law will recognise your relationship if you and your partner:

- live together in a de facto relationship (either opposite sex or same-sex relationship) as partners on a domestic basis for a qualifying period; or
- have a close personal relationship which is between two adult persons, whether or not related by family, where one or other provides domestic support and personal care, which must not be for fee or reward.

If in doubt about your rights you should consult a solicitor. □



WATER

Precious resource under new management

New water management laws in New South Wales have separated water rights from land ownership, and introduced a planning regime that considers the needs of the environment.

The new system breaks up NSW into a number of water management areas, each of which will eventually have a water-sharing plan for its water resources. Over 30 of these plans have been formed so far.

Water-sharing plans establish rules for water required for ecosystem health, including how much water is needed to satisfy basic landholder stock and domestic rights, and how much is needed for extractive uses such as irrigation or industry.

The plans also establish rules for dealing in access licences, and a new system for taking water under licence.

A bulk-access regime now decides how available-water determinations are to be made (taking into account climatic variability), and puts in place priorities for adjusting allocations in the event of the reduction of available water.

At present the new system only applies to surface-water licences within water-sharing plans, if these have been made. Plans which will affect ground (bore) licences are expected to come into force in July 2005.

Access licences

The most significant change in the new laws is that there is no owner/occupier requirement to hold an access licence. Theoretically, anyone can hold one, including a passive investor with no interest in land. However, only a landholder who holds a water-use approval and, where relevant, a works approval, can actually use the water associated with an access licence.

A water-use approval allows a landholder to use water for a particular purpose at a particular lo-

cation, for example to irrigate on a specific lot.

A works approval authorises the construction and use of a water supply work, for example a pump or a channel.

Mortgages

In the past, financiers have asserted that a mortgage necessarily captured water entitlements, and that it was not necessary to actually refer to the licences in the mortgage document.

It would follow, therefore, that existing mortgages of land would encompass new access licences being issued. However, in a number of situations this may not be correct, such as

where only part of the land to which the licence is attached is mortgaged, or where a lessee holds the licence. It will be necessary to check with your solicitor in such cases to ensure that your interests are protected.

Dividing assets

Where assets are being divided, or prepared for dividing, as in a will, access licences should be considered a separate asset from farming land. Irrigators should review any wills they may have made to ensure that any water entitlements have been appropriately bequeathed. If simply left unmentioned, as part of a gift of land, the licences could end up being

left as part of the residue and, consequently, in unintended hands.

Future changes

Further changes intended for the state's water management laws will see perpetual licences being issued and – importantly for irrigators – compensation being given.

Current licence holders and intending purchasers need to be aware of any water-sharing plan that may affect their entitlements. Licences not within a water-sharing plan are still governed by the old water management laws.

Consult your solicitor for further information. □

