

The firm for Families.
Expertise for the individual, family & business.

ISSUE 5. SUMMER 2010/11

Our areas of expertise:

- Private Clients- including property law, wills and the administration of estates and trusts.
- Commercial & Business law
- Family Law
- Litigation

TDE rates highly in client survey

Planning for the future is an important part of ongoing business practice.

In September, we posted a survey to a random sample of our client base. Questions ranged from your experience of dealing with our firm to what type of service you might like to receive in the future.

Both the number of completed questionnaires and the high level of satisfaction they illustrated were very pleasing. From your feedback, our clients appear to enjoy the personal, practical and professional way in which we aim to deal with all our clients.

Interestingly, some clients were not aware of the full range of services that we now offer. Today, an active and broad-based practice is in operation, serving the needs of a diverse range of clients. Unlike many other city law firms, Tolhurst Druce & Emmerson maintains a strong allegiance to serving the needs of our private client base. Many families and individuals have trusted our firm with their legal affairs for decades in areas such as property law, wills and the administration of estates and trusts.

Over the years the firm has also developed a strong level of expertise in other fields including commercial and business law, litigation and family law.

All named questionnaires were placed in the draw to receive a number of Hoyts movie packs. Some of the lucky winners included; Andy White, Con Kotsiakos, Diane Wise and Dr Anusha Guruge. We would like to thank all our clients who took the time to complete our questionnaire. Your thoughts and feedback are greatly valued and we will use these findings to continue to improve our services to you in the future.



The information in this newsletter is not intended to be a complete statement of the law relating to the issues raised.

Accordingly, no person should rely on this information without obtaining specific advice from lawyers.

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Intellectual Property

– What is it and how do you protect it?

For many businesses, intellectual property (IP) is their most valuable asset. But what exactly is IP? In most cases, IP is the type of property that has been created by your mind or intellect. This includes inventions, designs, trade secrets, confidential information, software products or literary works. Proprietary knowledge can also fall into the IP category. Whatever the difference, the one thing most intellectual property shares is the need for legal protection.

1. What IP rights can be registered?

Intellectual property covers a range of assets, many of which can be registered. These include:

a. Patents

By registering a patent, a legal monopoly is created on your invention or new and improved technology. This prevents anyone else from manufacturing, using and/or selling your inventions in Australia. Once registered, this cover lasts for 20 years.

b. Trademarks

Trademark protection ensures that you legally own the way you distinguish your goods and services from your competitors and traders. Trademarks can be in the form of a letter, number, word, phrase, sound, smell, shape, logo, picture, aspect of packaging or any combination. Once created protection lasts for 10 years, but is subject to a renewal fee.

c. Industrial Designs

The appearance of articles is commonly called industrial design. By protecting the visual appearance of manufactured products, others are prevented from using your design.

d. Plant Breeders' rights

Legally ensure you have exclusive commercial rights to any new plant varieties.

e. Domain Names

Register any domain names as part of a general IP protection strategy.

f. Social Networking names

Ensure you register as many appropriate Twitter, Facebook or LinkedIn names as part of your general IP strategy.

2. Unregistered rights

Under law, some IP rights exist automatically. These include:

a. Copyright

Copyright vests automatically on creation of items such as; works of art, literature, music, films, broadcasts and computer programmes.

b. Circuit layout rights

Circuit layout rights are automatic for integrated circuits and computer chips.

c. Unregistered or unregistrable Trade Marks.

Unregistered or unregistrable Trade Marks may still be possible to protect by action at common law or under the Trade Practices Act or the Fair Trading Act.

d. Trade Secrets or Confidential Information

This type of information is common to all businesses and can be very difficult to protect.

3. What should you do?

We recommend that you seek our advice to protect your intellectual property and review your overall IP exposure. It is also imperative to develop an internal strategy to identify, routinely audit and thereby protect and defend your IP rights.

- *For further information on this topic, please contact: Peter Moore, Accredited Business Law Specialist on p.moore@tde.com.au*



The GAIC places new liabilities on land in Victorian urban growth areas.

Melbourne's urban sprawl places pressure on the Victorian Government to provide a range of basic infrastructure. This includes roads, sewerage and utility connections. In response, the Parliament of Victoria passed on May 25, 2010, the Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Act 2009 (Vic) (GAIC Act). The GAIC Act came into operation on July 1, 2010.

In essence, this new legislation places potential financial liabilities on purchasers and developers of designated land in urban growth areas. This includes, but is not limited to, land in Cardinia, Caroline Springs, Casey, Hume, Melton, Mitchell, Whittlesea and Wyndham.

Who must pay GAIC?

- Purchasers of land (unless it is an exempt transaction)
- Owners of land, if subdividing or applying for a building permit (both are subject to exemptions)

How much is the GAIC?

The amount of the GAIC is determined by the size of the land – not the sale price or any other valuation. It is a flat rate per hectare and is only paid once. There are 2 designated land types each with a different GAIC costing. In the 2010/11 Financial Year, GAIC will be charged at either \$80,000 or \$95,000 per hectare. The cost per hectare depends on when the land was brought within the Urban Growth Boundary. The GAIC will be indexed annually from July 1, 2011, using the Consumer Price Index for Melbourne.

What does the GAIC mean for you?

The GAIC brings into effect new requirements for Vendor's Statements. This means that obtaining expert property law advice when selling or purchasing land in urban growth areas is now more important than ever before.

- *For further information on this topic, please contact Josephine Condon at j.condon@tde.com.au*

The New Civil Procedure Act – creates change for litigation

Litigation in Victoria is set to change with the introduction of The Civil Procedure Act 2010. To take effect on New Year's Day, this act will introduce substantial changes to the conduct of civil disputes in our state.

What is the intention of the Act?

The intention of the legislation is to reform and modernise the laws, practices and procedures for the resolution of civil disputes. Legal practitioners, clients and the Courts will now have to comply and implement certain obligatory requirements prior to the commencement of civil proceedings.

Most importantly, there will be a greater emphasis on the early resolution of disputes by agreement. At the very least, litigants will now be encouraged to confine their issues to ones of substance. The Courts will support and encourage early resolution by either agreement or the narrowing of the issues in dispute. "Proportionality" is the concept underpinning the procedural changes, whereby costs and the time spent in dispute are seen to be proportionate to the complexity of the issues and the amount in contention.

What will it mean for me?

The proposed changes are designed to change the adversarial nature of litigation to one more allied with the concepts of mediation. Litigants will need to understand this and be prepared to participate in alternative dispute resolution strategies prior to, as well as during, the course of legal proceedings.

- *For further information on this topic, please contact: Peter Weller, on p.weller@tde.com.au*

TDE goes green with Christmas wishes

In lieu of purchasing Christmas cards, Tolhurst Druce & Emmerson have made a donation to The Lord Mayor's Charitable Foundation.

We take this opportunity to wish all our clients and business associates a very happy and safe holiday season and thank you for your continued patronage of our firm.



Partner Profile:

Peter Weller

Peter assists many clients in dispute resolution and litigation. Frequently, this is in areas such as business and property law, wills and estates.

Peter has conducted an extensive portfolio of work in estate-related disputation, often including litigation over wills and family provision claims. On a daily basis he sees the importance of combining a vigorous approach to clients interests coupled with a pragmatic understanding of the preservation of familial relationships.

Peter also conducts property and business related disputes with clarity and an appreciation of commercial practicalities.

What do you enjoy about working at Tolhurst Druce & Emmerson?

I enjoy the practice of law and appreciate the congenial office environment at TDE.

How would you explain your personal legal style?

Experienced, vigorous and results-driven.

What is your idea of a perfect holiday?

My perfect holiday destination is a place with historical significance, somewhere that allows me to pursue my passion for history.

What do you enjoy reading?

I really enjoy reading books about Norman history, particularly the history of Southern Italy and Sicily. As a keen student of history, I also enjoy reading anything related to medieval history.

The importance of superannuation splitting

Relationship breakdown brings into play a large number of issues. For both married and de facto couples, even those with modest assets, the splitting of any superannuation is an important factor to consider. In many cases, particularly in long-term relationships, superannuation is often the largest asset outside of the family home and should not be overlooked.

Under the Family Law Legislation Amendment (Superannuation) Act 2001 (FL Super Act), splitting of superannuation is allowed for superannuation assets.

Who is eligible under the superannuation splitting laws?

Couples who have been married and have been divorced for less than 12 months, those who are separated but are still legally married and those who have been in a de facto relationship for over 2 years, but have now separated, all are eligible under the superannuation splitting laws to divide superannuation assets.

What should you do?

In the event of a relationship breakdown it is imperative that you include superannuation in the division of assets. Even relatively modest amounts of \$5,000 and above should be included in any property negotiations.

Even if you have no assets other than superannuation, it is imperative that you finalise your financial relationship with your spouse/partner and have final orders made at the Family Court. This will ensure that whatever you earn or inherit in the future will remain with you and not be the subject of any future court proceedings with your former spouse/partner.

We strongly suggest that any clients who have not legally finalised their property settlements contact our office for advice.

- *For further information on this topic, please contact Randall Bradshaw r.bradshaw@tde.com.au or Margot Druce on m.druce@tde.com.au*

Christmas Season Office Closure

The Partners and staff at TDE wish all our clients a safe and happy Christmas and holiday season.

Our office will be closed from Thursday December 23, 2010 and will reopen on Monday January 10, 2011.

Wedding Bells

It is with pleasure that we announce the marriage of our solicitor Andrea Martin. Andrea is well known to many clients through her work in the Private Client area. Formerly Andrea Richards, she was married to Ashley in the beautiful rural setting of Daylesford earlier in the year. We wish Andrea and Ashley a lifetime of happiness together.

