

ANDREW DOUGLAS SOLICITORS

news letter of the law

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How Cut-Price Conveyancing Can Be Done Properly

You can get possibly the cheapest conveyancing price in town without having to worry about the old adage that "You get what you pay for". How is that possible?

All you need is a reputable lawyer who uses a reputable mortgage broker (who receives the same commission from all lenders) and use that broker to obtain finance with your preferred financier.

Like most brokerage arrangements, you get exactly the same deal with the lender while the lawyer can pass on some of the commission received by the broker to give you a genuine discount without

compromising the quality or integrity of their service.

Otherwise many lawyers have chosen to reduce their conveyancing charges to 1970's prices

by methods like overloading their conveyancing clerks with too many files (and then not admitting or compensating for their mistakes) or other tactics such as charging for items in outlays that are not really outlays to subsidise cheaper professional fees.

Instead, Andrew Douglas Solicitors offers a



by Andrew Douglas

\$300 discount off a reasonable purchase price for a standard house or land contract so that you pay \$245 + GST and outlays if you borrow at least \$200,000 through their mortgage broker (or a \$150 discount if you borrow at least \$150,000).

The same discounts apply to any transfers or refinances of properties for which you pay \$245 + GST or \$95 + GST (depending how much you borrow) instead of the normal price of \$395 + GST for all standard transfers or sales of property.

So why pay more than you have to and why take the risk of getting what you pay for? You can have the best of both worlds and have cut-price conveyancing without cut-price performance.

Queensland to ban advertising by 'claims harvesters'

Queensland will ban radio and TV advertising by 'claims harvesters' – non-lawyers who offer free advice about personal injury claims but who only want to sell people's details on to lawyers.

Premier Peter Beattie and Attorney-General Linda Lavarch said advertising by claims harvesters told people they could get tens of thousands of dollars for injuries in places such as work, shopping centres, sporting events or schools.

Claims harvesters ask for fees of up to \$8000 and this extra, unnecessary cost is passed on to the injured person.

The *Personal Injuries Proceedings Act 2002* prevents lawyers advertising personal injury services on radio and television. However, claims harvesters avoid the existing law because they are not lawyers.

Claims harvesters are so called because they collect personal injury claims from as

many people as possible, with the sole intention of selling case histories on to lawyers.

"This is an extra, unnecessary expense that is passed on to the plaintiff, eating into any payment made to them," Mrs Lavarch said.

Mrs Lavarch said the Queensland Law Society and Australian Lawyers Alliance had alerted her to the problem of claims harvesters.

She has asked the Department of Justice and Attorney-General for advice of how best to ban TV and radio advertising by claims harvesters.

An amendment to the *Personal Injuries Proceedings Act 2002* is the most likely way to proceed.

"It is only fair that claims harvesters face the same advertising restrictions as lawyers and companies acting on behalf of lawyers," Mrs Lavarch said.

What's inside...

A case in point... Age discrimination

A recent decision of the Anti-Discrimination Tribunal has found that a group of flight attendants who applied for jobs with Virgin Blue were treated less favourably than younger applicants.

Schoolies trade mark breaks free

Break Free Holidays has agreed it will no longer threaten legal action against organisations who make use of the word 'Schoolies' in cases where it has no right to do so.

Queensland's privacy laws to be strengthened

Secretly filming or observing people in private places will soon be outlawed.

Identity fraud

With advances in technology, identity fraud is becoming a major problem that is growing by as much as 300 percent a year.

Divorce rate on the decline

The latest statistics from the Australian Bureau of Statistics reveal that Australia's divorce rate has decreased for the third year running.

Big Brother Uncut in breach of code

An investigation into episodes of *Big Brother Uncut* has found the show breached the Commercial Television Industry Code of Practice.

No smoking zones extended

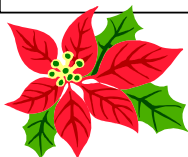
The 'no smoking' zones in licensed pubs and clubs have been extended.

Supermarket tries to ban office romance

A major supermarket chain has lost a court appeal to ban employees in its German stores from having relationships with co-workers.

Baby mix-up case

Two couples involved in a baby mix-up have lost their bid for compensation.



THE STAFF AT ANDREW DOUGLAS SOLICITORS
WISH YOU A WONDERFUL, SAFE AND VERY MERRY CHRISTMAS
AND ALL THE BEST FOR THE NEW YEAR IN 2006.





a case in point age discrimination

Employers must be careful not to discriminate against potential employees on the basis of age, either intentionally or unintentionally, as a recent ruling by the Anti-Discrimination Tribunal Queensland illustrates.

The Anti-Discrimination Tribunal Queensland has found a number of flight attendants who applied for employment at Virgin Blue between 2001 and 2002 were treated less favourably than younger applicants.

In *Hopper & Others v Virgin Blue Airlines Pty Ltd*, the complainants alleged Virgin Blue unlawfully discriminated against applicants who were or appeared to be over the age of 35.

The group of former Ansett flight attendants, aged between 36 and 56, applied for positions as cabin crew with Virgin Blue between 2001 and 2002. All failed to gain employment with the airline.

The complainants did not allege Virgin Blue imposed any age limitation on applicants. Rather, that Virgin Blue had adopted an age criteria – either consciously or unconsciously – through a subjective assessment process, which prevented the complainants being fairly considered for employment.

The recruitment process

Virgin Blue's recruitment process involved a number of stages, including an initial application, followed by a group assessment. Although applicants were required to nominate their age, Virgin Blue did not select potential interviewees on the basis of age.

Each of the complainants attended a group assessment session. Around 60 applicants attended each session with up to six assessors employed by Virgin Blue to review the applicants.

The selection process depended on the assessment of applicants' behavioural competencies, including 'assertiveness', 'team work', 'communication' and 'Virgin flair'.

The complainants alleged that the imposition of the behavioural competency testing as a requirement for employment detrimentally affected older applicants, particularly those over 35 years.

Tribunal member Douglas Savage rejected this contention and found that no intentional indirect discrimination could be established. "The uncontested evidence of every witness that spoke of behavioural competency testing was that it was intended to, and did in fact, produce an age neutral result," he said.

The evidence

The complainants presented statistical evidence that in the relevant period only one person of 36 years' of age was employed from over 750 applicants.

Virgin Blue contended that the

statistic was a consequence of the age makeup of the applicants. However, the tribunal found around 90 percent of applicants were in the 18-35 age bracket, and 10 percent were aged 36 or over.

Virgin Blue admitted that up until the end of 2002, no flight attendants over the age of 36 were appointed.

Findings

Member Savage found that whilst the behavioural competency testing was designed to produce an age neutral result, the testing in this case failed and Virgin Blue assessors unconsciously discriminated on the basis of age and targeted younger applicants.

"Inevitably a danger of employing the behavioural competencies system, especially as it required an assessment of 'Virgin flair', was to identify with persons of the same age and experience as the assessors, or what the assessor regarded as, if not the same age, a 'fun' person," Member Savage said.

The tribunal concluded the complainants were treated less favourably than younger applicants, however, there was no evidence of intentional discrimination by Virgin Blue.

If you have any concerns about age discrimination, seek legal advice.

Schoolies trade mark breaks free

Break Free Holidays has undertaken that it will no longer threaten legal proceedings against third parties who make use of the word 'Schoolies', in circumstances where Break Free Holidays has no right to do so.

An ACCC investigation found Break Free Holidays currently holds a number of trade marks comprising the word 'Schoolies' and in some cases had threatened to undertake legal proceedings against organisations for making use of the word.

On some occasions Break Free Holidays asserted that a form of approval was required from them prior to referring to this term in advertising.

The ACCC found that Break Free Holidays may have breached s52 of the *Trade Practices Act 1974* by representing that third parties cannot make use of the word 'Schoolies' irrespective of the context in which the word was used.

By offering the undertaking to the ACCC, Break Free Holidays has agreed to:

- for five years, obtain proper legal advice prior to communicating with third parties in relation to their use of the word 'Schoolies'
- establish a register of communications documenting approaches to third parties about their use of the word 'Schoolies', to be provided to the ACCC annually for three years, and
- implement a trade practices law compliance program for three years

ACCC chairman Graeme Samuel said the holders of monopoly rights, such as trade marks, should not try to extend these rights by misrepresenting possible infringements or restrictions on use.

"Businesses should be very mindful of the limits of their intellectual property rights. It's important to ensure that overzealousness doesn't drift into the misleading and deceptive category of representations", he said.

For advice on trade marks, contact your local solicitor.

Supermarket tries to ban office romance

Supermarket chain Wal-Mart has lost a court appeal to try to legally ban its employees in Germany from having office romances.

The regional industrial tribunal in Dusseldorf upheld an earlier decision by the Wuppertal industrial tribunal that Wal-Mart's 'ethics rules' were in breach of German law.

Wal-Mart had attempted to introduce an ethical code forbidding "lustful glances and ambiguous jokes" and "sexually meaningful communication of any type". The code also stated, "You may not go out with or have a relationship with someone who could influence your employment situation or whose employment situation you could influence."

The tribunal found that rules governing personal relationships were incompatible with German labour laws and agreement with the regional labour council would be necessary to implement them. Wal-Mart said they were only trying to protect their employees from sexual harassment.

The supermarket chain has the opportunity to appeal the verdict at the Federal Labour Court.

Queensland's privacy laws to be strengthened

Secretly observing or filming people in private places will be outlawed under new legislation to be introduced into State Parliament.

Premier Peter Beattie said the laws, introduced as part of the Justice and Other Legislation Amendment Bill 2005, would make it illegal to film or observe anyone engaged in private acts, such as undressing or showering, without their consent.

"As it stands, there is nothing to stop a person covertly video-recording the private activities of another adult in places where they would reasonably expect their privacy to be protected," Mr Beattie said.

He said the problem had been exacerbated with the advent of new technologies such as digital cameras,

mobile phones and the Internet.

"The so-called practice of 'up skirting', where an offender uses a concealed camera to film up under someone else's clothing, will also be outlawed," he said.

Anyone caught distributing images or visual recordings of these private acts could face a maximum penalty of two years' jail.

Mr Beattie said legitimate surveillance conducted by police and staff in correctional institutions and mental health facilities would be excluded from the new laws.

It is anticipated that the Justice and Other Legislation Amendment Bill 2005 will come into effect early in 2006.

Identity fraud

With clever scams, sophisticated technology and other tools readily available, identity fraud is a huge problem that is growing by as much as 300 percent a year.

In 2003 the Australian Transaction Reports and Analysis Centre (AUSTRAC) estimated that identity fraud costs more than \$1.1 billion a year in Australia. However, most studies and commentators agree that many instances of identity fraud are not reported.

Identity theft can be as simple as finding identification cards in garbage bins, to the use of card readers, hacking into computers, stealing and forging documents such as a driver's licence and 'phishing'. Phishing is the act of sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft. For example victims may unwittingly hand over bank account usernames and passwords.

'Shoulder surfing' is where fraudsters spy on people at ATMs. 'Skimming' is where credit card data is copied from the magnetic strip electronically. Examples include restaurants where the customer hands over the credit card for payment or where a rogue's reader is attached surreptitiously to an ATM and the PIN that is entered is observed via a minute hidden camera.

One victim of skimming had his card copied at an ATM and his PIN observed, probably with a pinhole camera. Fraudsters withdrew \$3,000 over the next three days. A Visa Australia spokesperson told a national forum on bank fraud that skimming had increased 300 percent in 12 months.

The Proof of Identity Steering

Committee (POISC) is a cooperative effort by government and the financial sector to address issues relating to proof of identity.

POISC commissioned the Securities Industry Research Centre of Asia-Pacific (SIRCA) to conduct the first comprehensive study of the cost of identity fraud on the Australian community.

In November 2003, the Minister for Justice and Customs launched the *SIRCA Report Identity Fraud in Australia: An Evaluation of its Nature, Cost and Extent*. The projects being undertaken include:

- identity fraud profiling
- identity fraud control systems and design
- cost analysis for managing identity fraud
- crime control policy.

Queensland

The Queensland Crime and Misconduct Commission has noted that identity fraud is the fastest growing category of fraud in Australia and internationally. The Queensland Police Service (QPS) *Annual Statistical Review 2003-2004* indicated that computer fraud offences increased by 16 percent in one year.

The Queensland Police Commissioner considered that the increase was due in part to the new methods used by fraudsters and the increase in consumer activities such as Internet banking and paying bills online. Sixty people have been charged with 3,000 identity fraud-related charges over the past 12 months.

Legislative response

There is no Australian legislation making it a criminal offence to merely steal or assume another person's identity,

Divorce rate on the decline

A report published by the Australian Bureau of Statistics (ABS) reveals that divorce rates in Australia have decreased for the third consecutive year.

In 2004 there were 52,747 divorces granted in Australia, which represents a decrease of 0.7 percent compared with the number of divorces granted in 2003.

The number of divorces granted has decreased following a record high of 55,330 granted in 2001. However, the divorce rate has increased by 9.2 percent since 1994 and 22.3 percent since 1984.

In 2004, 16 percent of divorcing couples were married less than five years, 25 percent between five and nine years, 59 percent were married for 10 years or more and 16 percent had been married for 25 years or more.

Of the Australian states and territories, New South Wales granted the highest number of divorces (15,007), followed by Queensland (13,279) and Victoria (12,544).

Following on from the trend in previous years, more females than males lodged applications for divorce. However, there has been an increase in the number of joint applications for divorce. In 2004, 28 percent of divorces were the result of joint applications, compared to 15 percent in 1994 and 0.4 percent in 1984.

Males and females aged between 35-39 years experienced the highest divorce rate.

with the exception of South Australia where identity theft is a specific offence. Other states rely on offences relating to forgery and dishonesty.

The *Commonwealth Privacy Act 1988* deals with the collection, storage and use of personal information but not the theft of that information. Effective from March 1 this year, the *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No. 2) 2004* prohibits credit card skimming and Internet banking fraud, including phishing.

The *Financial Transaction Reports Act 1988* and the *Financial Transaction Reports Regulations 1990* provide that it is an offence to open an account in a false name by tendering a false identification document.

In Queensland, relevant provisions of the *Criminal Code 1899* include fraud – s408C(1), false pretences – s492, falsifying records and producing false records – s441, stealing – ss390-8, and misappropriation – s408C.

If you have been the victim of identity fraud, seek legal advice.

Big Brother Uncut in breach of code

Network Ten is to change its procedures for the production of *Big Brother Uncut*, following a finding by the Australian Communications and Media Authority (ACMA) that episodes of the show breached the Commercial Television Industry Code of Practice.

The ACMA investigation found material screened in two episodes of *Big Brother Uncut* was in excess of the MA classification.

One breach involved what the ACMA deemed "a gratuitous and demeaning portrayal of nudity". The other breach was

for very coarse language not suitable for 15 year olds.

Other material broadcast on the show was considered to approach the limit of content permitted at the MA classification level.

Acting ACMA chair Lyn Maddock said broadcasters are obliged to take particular care in selecting material for programs classified as MA.

"ACMA has found that on two occasions it investigated, Network Ten did not take sufficient care in selecting material for *Big Brother Uncut*," she said.

In response to the ACMA findings, Network Ten has provided undertakings that will change the way future *Big Brother Uncut* programs will be prepared and classified.

Ten has advised that *Big Brother* production processes have been reviewed to help prevent sexually demeaning behaviour occurring and will ensure there is sufficient time for editing future programs prior to broadcast.

Ten will also provide confidential weekly reports to the ACMA about any viewer complaints that *Big Brother Uncut* breached the code.

No smoking zones extended

All licensed pubs and clubs are now required to designate at least two-thirds of their indoor areas as 'no smoking' zones, under new measures introduced as part of the State Government's tobacco law reforms.

Liquor licensees must designate the new no-smoking areas, identify these areas to patrons and ensure patrons don't smoke there. The smoking ban includes two-thirds of all gaming machines in licensed premises.

In January 2005, the Government banned smoking close to all non-residential buildings, near playgrounds, at public swimming areas and in major sports facilities.

Queensland pubs, clubs and other licensed premises were also required to make at least one-third of their enclosed area, including gaming machine areas, non-smoking. This 'no smoking' zone has now been extended to two-thirds of all indoor areas.

Health Minister Stephen Robertson said the measures would ultimately lead to a total smoking ban in enclosed areas at all Queensland licensed premises from July 1, 2006.

Mr Robertson said Queenslanders had responded positively to the new tobacco laws.

"Queensland's smoking rate has fallen below the 20 percent barrier for the first time and fewer Queenslanders than ever are smoking," he said.

Mr Robertson said the Government would continue to police the tobacco laws. Since enforcement began in March following the three-month amnesty period, environmental health officers had inspected more than 98,000 sites.

To date, 713 on-the-spot fines have been issued throughout the state.

Baby mix-up case

Two couples whose babies were mixed up in hospital have lost their bid for compensation because they don't want their biological children back.

The two mothers gave birth to baby boys at the same time in a hospital in Concordia, Argentina, six years ago.

One of the mothers was suspicious the boy given to her when she left the hospital was not her natural child and she eventually uncovered the truth.

After both couples learned of the mix-up they tried to sue the state for compensation. However, both couples decided they would prefer to keep the son they had brought up, rather than their biological child.

Judges dismissed the case because the couples didn't want their natural sons back. Both couples have said they will appeal.

Queensland homes to have smoke alarms

All homes and units throughout Queensland must be fitted with smoke alarms by July 1, 2007, under new state government legislation designed to improve fire safety throughout the state.

Premier Peter Beattie and Minister for Emergency Services Pat Purcell announced the new amendments to the *Fire and Rescue Services Act 1990*, which require all homes built before 1997 to have at least one one-year battery powered smoke alarm installed.

Mr Beattie said under the *Building Code of Australia* all homes built after 1997 are required to have mains-wired smoke alarms installed.

"However, there is currently no legal requirement for most pre-1997 houses and units to have smoke alarms installed," he said.

Currently 19.2 percent of Queensland homes do not have smoke alarms installed, and another 8.8 percent of homes have alarms installed that are not working, usually because the battery is dead or missing.

Queensland Fire and Rescue Service figures show 78.1 percent of all home fire deaths have occurred in homes without smoke alarms.

Mr Beattie said each year there are approximately 1,100 house fires in

Queensland with an average of 16 deaths and 145 injuries.

"The risk of a fire death in homes without a smoke alarm is up to three times higher than homes with alarms," he said.

The legislative changes will also restrict overcrowding in nightclubs and address the number of false alarms in buildings with automated alarm systems.

It is expected the legislation will impact on around 300 to 600 licensed premises throughout Queensland.

Further details on the introduction of smoke alarms are available from the Department of Emergency Services on 1300 369 003.

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