

Newsletter of the Law

A B K J LAWYERS

ADAMSON BERNAYS KYLE & JONES

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Southport & Sydney

Ph: 1300 848 698

www.abkj.com.au

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Spring 2011

Queensland leads the way in workplace safety reforms

Queensland will be the first state to adopt the new *Work Health and Safety Act 2011* on Monday 6 July with other States and Territories soon to follow.

The new Act is a result of a three-year national reform and will replace *the Workplace Health & Safety Act 1995*.

In July 2008, the Council of Australian Governments (COAG) formally committed to the 'harmonisation' of work health and safety legislation and outlined a commitment for the states and territories to develop a nationally consistent framework.

The new laws broaden the definition of 'worker' to include labour hire, contractors and subcontractors and impose the onus of proof on the regulatory body to prove an offence.

The legislation also enables the courts to impose significantly higher penalties for breaches of the Act.

For more information please visit Safework Australia: safeworkaustralia.gov.au.



What's inside ...

- Release of three final issues papers on family law reform
- Pool registration extended
- New body corporate law
- Protecting the disabled
- Drink driving reform
- Gift card review
- Changes to Weapons Act
- Neighbourhood Disputes Resolution Bill

Sustainable planning now in place



High infrastructure charges that stall new projects, cost jobs and push up the price of housing in Queensland are now a thing of the past following the passing of the *Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Bill* on 25 May 2011.

The Bill aims to establish, through State planning regulations, a transparent 'adopted infrastructure charge' for trunk infrastructure. This will cap prices and simplify land supply and planning processes.

With set infrastructure charges now in place, land developers will know upfront what their infrastructure charges will be, a crucial factor in providing certainty for housing developments.

The new streamlined process is expected to stimulate growth, generate jobs and improve housing affordability for Queenslanders.

For more details, please visit the Department of Local Government and Planning website: dlgp.qld.gov.au/spa.

What is a trunk infrastructure?

'Trunk infrastructure' is a term that is used by planners, engineers and the development community.

It is defined as land, facilities, services and works used for supporting economic activity and meeting environmental needs such as: water supply, sewerage, stormwater, trunk roads and pathways and open space for community purposes i.e parks, sporting facilities, walking tracks and land for community facilities.

Domestic violence exposed – community to speak up

A discussion paper will be released in mid-2011 that will seek community feedback on the Australian Legal Reform Committee's (ALRC) proposals for reform with a final report due to be presented to the Attorney-General on 30 November 2011.

These proposals comprise of four issues papers, examining different aspects of the family law reform.

As part of this report the commission was asked to look at the many laws and legal frameworks at State and Federal levels that deal with family violence and to find ways to improve responses from support agencies.

The first issues paper on employment and superannuation law was released in April 2011 and was covered in the March edition of Newsletter of the Law.

The remaining three papers have now been released relating to:

- immigration law;
- child support and family assistance; and
- social Security law.

In the second issues paper, *Family Violence – Immigration Law (IP 37)* the ALRC considers the 'family violence exception' in Migrations Regulations

1994 (Cth) that aims to ensure visa applicants do not have to remain in violent relationships in order to obtain permanent residence in Australia. It also seeks to examine whether current provisions in the Migration Act (1958) are sufficient to protect the safety of those coming to Australia.

The third issues paper, *Family Violence – Child support and family assistance (IP38)* looks at family violence in child support and family assistance laws and questions how laws and practices can be improved to better protect victims. In particular, the ALRC is considering whether a definition of family law should be inserted into child support and family assistance legislation and if the Child Support Agency should screen clients for history of family violence.

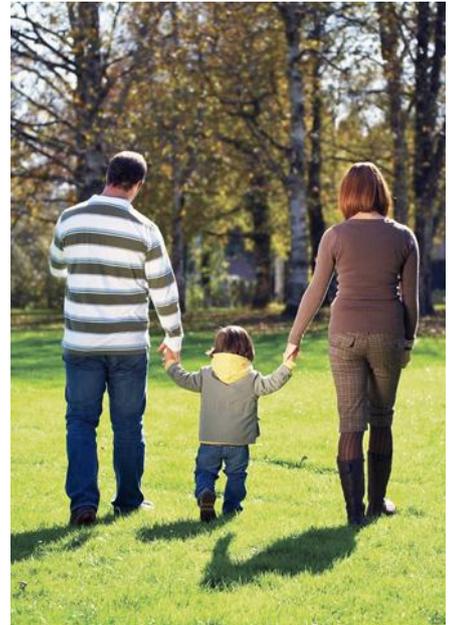
The final issues paper, *Family Violence – Social Security Law (IP39)* deals with the treatment of family violence in Commonwealth social security law, including income management.

In November 2010, the ALRC and the NSW Law Reform Commission completed their first inquiry into family violence with the release of a report, *Family Violence: A National Legal Response (ALRC Report 114, 2010)*

containing 187 recommendations for reform.

For more information please contact **Murray Bruce** or **Stephen Habermann** of **ABKJ Lawyers**.

Both the report and all four issues papers are now available to view or download from the ALRC website: alrc.gov.au.



Pool registration and safety standards

New pool safety standards

The Queensland Government has introduced new pool safety laws that amend the *Building Act 1975 (Qld)*.

The laws affect both new and existing pools and have significant impact on sellers, buyers, landlords, tenants and real estate agents.

All pools must comply with the new pool safety rules by 30 November 2015 (or earlier if they have been sold or rented before that date). However, should the property be sold or rented, pool owners, property buyers and real estate agents must ensure that a pool safety certificate is obtained before selling or leasing the property.

Information on pool safety certificates

Pool safety certificates are valid for one year for shared pools and two years for non-shared pools. Owners must arrange a new pool safety certificate before the expiry of the existing certificate.

Pool owners now have until 4 November 2011 to register their swimming pools on the State Government's pool register after a six month amnesty was granted by the State Government due to the devastation of the January floods and Cyclone Yasi.

All pools in Queensland must be registered and penalties of up to \$2,000 will apply after the November deadline.

The register was established on 1 December 2010, and provides residents, local governments, pool safety inspectors, and the Pool Safety Council with a central source of information about regulated pools.

To check if your pool is registered and your details are correct visit dlgp.qld.gov.au/poolsafety or call 1800 340 634.

Pool owners seeking a pool safety certificate will need to contact a licenced swimming pool safety inspector to arrange an inspection.

If you have any questions about pool safety standards and how it may affect you please contact **ABKJ Lawyers**.



Greater protection from body corporate increases

The new *Body Corporate and Community Management and Other Legislation Amendment Act 2010* (Qld) (BCCM) was given Royal Assent on 14 April 2011.

This legislation changes the way body corporate fees are proportioned between lot owners and can be amended.

New disclosure obligations for sellers

Sellers will now need to provide additional disclosure when entering into a contract for the sale of both existing and proposed community titled properties to which the BCCM applies.

Failure to provide this additional disclosure before the buyer signs the contract, may give the buyer a right to terminate the contract at any time prior to settlement.

For an existing lot, a copy of the Community Management Statement

(CMS) must now be given with the disclosure statement before the buyer signs the contract.

Contracts already given to a buyer but not yet signed by both parties

When a contract for a community titled lot is given to a proposed buyer but has not been signed by both parties, before the buyer signs the contract the seller must provide the buyer with:

- a new disclosure statement incorporating the four new statements (listed above) and a copy of the CMS; or
- if a disclosure statement has already been provided to the buyer, a written notice that includes the four new statements and a copy of the CMS.

For more information on the new body corporate law please contact **Michael Kyle** or **Tony Kyle** of **ABKJ Lawyers**.



Protecting the disabled

Promoting the United Nations Convention on the Rights of Persons with Disabilities, the *Queensland Forensic Disability Bill 2011* was introduced into Queensland Parliament on 7 April 2011 to provide a framework to support Queensland's Forensic Disability Service.

This service is a purpose built therapeutic environment for people with an intellectual or cognitive disability (and no mental illness) who are on a court appointed forensic order.

What is a forensic order?

A forensic order gives authority for a person to be detained in an authorised mental health service or, in some cases a high security unit, for treatment and care. The Mental Health Review Tribunal is the body responsible for independent review of all forensic patients (when a forensic order is made the person is described as a forensic patient).

What is the purpose of the Bill?

The *Forensic Disability Act 2011* proposes to provide for the involuntary detention, ongoing care and support, and protection of forensic disability clients while at the same time:

- safeguarding their rights and freedoms;
- balancing their rights and freedoms with the rights and freedoms of other people;
- promoting their individual development and enhancing their opportunities for quality of life; and
- maximising their opportunities for reintegration into the community.

The Bill would support the development of an improved service framework to ensure people with an intellectual or cognitive disability, and no mental illness, but who are on a forensic order to have access to disability support and other services.

The Bill also promotes better connections between the Department of Communities, Queensland Health and the broader disability service system.

For further information contact:

Forensic Disability Legislation
07 3224 4653
Forensic Disability Service on
07 3005 8710

Department of Communities:
fds@communities.qld.gov.au
communities.qld.gov.au or
legislation.qld.gov.au

In short

Cracking down on drink driving

In a major drink driving crack down the Government has made major changes to transport and law to catch and penalise offenders.

Amendments have been made by the State Government to the *Transport and Other Legislation Amendment Bill 2010* in response to its *Drink Driving in Queensland discussion paper*.

There are three major reforms which will take effect from mid-2011:

- Queensland Police will be able to immediately suspend drivers with a Blood Alcohol Limit (BAC) of 0.10, down from the current 0.15.
- An arresting or detaining officer will be able to perform an evidentiary breath analysis themselves, without the presence of a second officer as is currently required.
- The time limit for officers to get an evidentiary secondary blood or breath test will be extended from two to three hours.

For more information visit the Department of Transport: tmr.qld.gov.au.

Review makes its 'presents' known

The Queensland Deputy Premier and Minister for Fair Trading, Paul Lucas (MP) recently announced an intention to investigate the regulation of gift cards. Issues to be reviewed include best practice options for governing the terms and conditions of gift cards along with:

- what happens to interest on money from gift cards;
- what happens to unspent monies; and
- what happens if the company goes broke.

The investigation has been strongly supported by the Commonwealth Government and other States and Territories after a meeting at the Ministerial Council on Consumer Affairs on 3rd June 2011.

For more information contact the Department of Fair Trading Queensland: fairtrading.qld.gov.au.

Act wields power over weapons

There are now tougher controls and strict penalties for weapons-related offences. Currently Queensland laws require the registration of weapons and licensing of persons in possession of them.

Weapons covered in the legislation include firearms, laser pointers, possession of bladed weapons such as a ballistic knife or butterfly knife in a public place or school, and knives concealed in items such as a walking stick.

In 2008, a review of the *Weapons Act 1990 – Weapons Regulations 1996* and *Weapons Categories Regulation 1997* – was undertaken. This involved extensive stakeholder engagement comprising of more than 2,500 online comments and submissions from individuals and organisations. The review recommended significant changes to the Act to make it easier to read and understand, and as a result the Act and its Regulations were re-written.

In March 2011, the Queensland Government announced its intention to make changes to the Weapons Act in two stages. This was to ensure any amendments would strike a balance between the need for community safety and the legitimate interests of weapon users and owners.

On 12 May the first stage of these changes was introduced to Queensland Parliament.

For more details on these changes visit the Queensland Police Service police.qld.gov.au/programs/weaponsLicensing/weapons_bill/



Resolving fence and tree disputes

The Neighbourhood Disputes Resolution Bill 2010 was introduced to Parliament in November 2010.

A proposed new law to solve neighbourhood disputes about trees and fences will provide clear and practical ways to resolve neighbourhood disputes informally.

If disputes cannot be informally resolved, the Queensland Civil and Administrative Tribunal (QCAT) will be able to deal with these matters.

What general changes are proposed for fences?

The Bill proposes a wider definition of the term fence (including hedges) and clearer definition of the term 'sufficient dividing fence'.

Other changes include a single 'Notice for contribution to fencing work' form; clarification that the ownership of the dividing fence on a common boundary is shared equally; distinction between a retaining wall and fence; and clearer rules for pastoral and agricultural fences.

What general changes are proposed for trees?

The Bill proposes that the proper care and maintenance of a tree will be the responsibility of the tree keeper. In general terms, a person is a tree keeper if they are the registered owner of the land on which the tree is situated.

The Bill will promote public safety and responsibility will be placed on the tree keeper to ensure that their tree does not cause injury to persons or damage to neighbouring properties.

A neighbour will not have to return to a tree keeper, branches, roots or fruit which encroach on the neighbour's land.

When can a neighbour apply to QCAT to resolve a dispute about a tree?

Applications can be made if:

- the tree has caused, is causing or is likely to cause injury to any person
- the tree has caused, is causing or is likely to cause serious damage to a neighbour's land or property



- the tree has caused or is causing, substantial, ongoing and unreasonable interference with the neighbour's land.

Want to know more?

For more detail on the changes and how they may affect you please contact **ABKJ Lawyers**.

To look at the proposed new Neighbourhood Disputes Resolution Bill go to justice.qld.gov.au/justice-services/justice-initiatives/new-laws-for-trees-and-fences/neighbourhood-disputes-resolution-Bill-2010.

Learn more about the Queensland Civil and Administrative Tribunal processes: qcat.qld.gov.au.

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