



LAWYERS & ASSOCIATES

NEWSLETTER - SEPTEMBER 2011

Increase in Minimum Wage

Award Minimum wages increased by 3.4% from 1 July 2011. This change increased the federal weekly minimum wage to \$589.30 per week or \$15.51 per hour.

All employers, including those who are party to a registered agreement (e.g. certified agreement, collective agreement, enterprise agreement, AWA or ITEA), should ensure that employees' base rates of pay satisfy the new minimum rates of pay.

Pre-litigation Requirement Repealed in Victoria

In our March 2011 newsletter we discussed the pre-litigation requirements in the *Civil Procedure Act 2010* ("the Act") which commenced from 1 July 2011. These requirements include parties having to take genuine steps to resolve disputes and identifying the issues in dispute before issuing legal proceedings.

In Victoria, the *Civil Procedure and Legal Profession Amendments Act 2011* repealed the compulsory pre-litigation requirements and granted Victorian Courts the power to decide whether any voluntary or mandatory pre-litigation processes should be taken by the parties to a dispute based on the circumstances of each case.

It is advisable to any party involved in a dispute to consider Alternative Dispute Resolution ("ADR") prior to issuing legal proceedings. Businesses should also consider incorporating in their commercial agreements ADR as the first mechanism of resolving certain disputes. ADR may involve using an independent party known as a mediator who is experienced in resolving disputes. The ADR process provides parties with control over the outcome of their dispute thereby avoiding an unfavourable decision imposed on them by a Judge and reduces the expense of legal proceedings.

Director's Liability to Pay Employee Superannuation Contributions

From 1 July 2011, company directors are personally liable for their company's failure to pay employee superannuation guarantee amounts.

A director that receives a Penalty Notice from the Australian Taxation Office will become personally liable for a penalty equal to the amount of the unpaid tax if, after 21 days, the company fails to pay the tax or enters into administration or liquidation.

Directors who resign before the tax is due will be liable if they were a director at the time the tax became payable. Furthermore, directors that are appointed after the due date are also liable for the penalty 14 days after their appointment.

The above regulations also apply to directors who fail to pay superannuation guarantee charge.

If the company engages a contractor, it will not be liable to superannuation contributions. However, whether an individual is a contractor or employee is a question of law. Clients are advised to seek legal advice to determine whether an individual is an independent contractor and if changes need to be made to their contracts to minimise risk of liability.

Unsolicited Goods and Services

Under the Australian Consumer Law, a business or individual selling goods or services to someone who has not agreed to purchase or receive them cannot render an invoice for the goods, services or advertising entries to a person, unless they have a reasonable belief that they have a right to be paid or the invoice states that "*this is not a bill and you are not required to pay any money*".

The criminal and civil penalties for breach of Australian Consumer Law are up to \$1.1 million for a body corporate and \$220,000 for an individual.

Personal Property Securities

Personal property is generally, property other than land, buildings and their related fixtures.

The new personal property securities regime in the *Personal Property Securities Act 2009* ("the PPS Act") will commence in October 2011. It combines over 70 Commonwealth, state and territory laws into one national Register.

The new regime affects leasing, financing, supply of goods with retention of title, company charges,

purchase and sale of personal property, bankruptcy and corporate insolvency.

Any business that supplies goods by way of sale or lease or even by bailment has a risk of suffering significant losses in the future if they are unfamiliar with the changes and take the necessary steps to guard their rights. On the hand, businesses that are aware and utilise the Register will take advantage of the benefits by being capable of enforcing rights over personal property.

Essentially, there are 2 ways for a secured party to seek a security interest over collateral, either by agreement or based on the provisions of the PPS Act. A security interest arises if a transaction provides for an interest in personal property that secures payment or performance of an obligation. The PPS Act lists other transactions that provides for a security interest including a conditional sale agreement, a hire purchase agreement, a consignment of goods and lease of goods. Furthermore, certain transactions give rise to a security interest whether or not the transaction secured payment or performance of an obligation. Such transactions include a commercial consignment of goods and a PPS lease.

Unless businesses amend their trading terms and/or register security interests they can be at risk of losing their property if a lessee or bailee becomes insolvent.

SEMINARS*

Venue for all Seminars

MLB Lawyers & Associates,
Level 1, 441 South Road,
Bentleigh Victoria

Preparing to sell your business

ABSTRACT: This seminar provides invaluable legal and marketing advice on preparing your business for sale.

DATE: 22 November 2011

TIME: 6:30 – 7.30PM

Purchasing a business

ABSTRACT: This seminar provides essential information on choosing the right business for you and on successfully maintaining and building your new business.

DATE: 24 November 2011

TIME: 6:30 – 7.30PM

Intellectual Property Rights - Trademarks, Copyright, Design Rights, Patents, Confidential Information

ABSTRACT: This seminar provides an overview of trademarks, copyright, design rights, patents, confidential information and ways of protecting such rights.

DATE: 29 November 2011

TIME: 6:30 – 7.30PM

**All dates and times of our seminars are subject to change depending on numbers of participants attending.*

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