

On the front foot with complaints handling

PAT MULLINS



Any business involved in selling goods or services needs an appropriate complaints handling process. Industries where a code of practice

applies probably already have such a process mandated. But for businesses, where no common complaints handling process is mandated, it is a good idea to introduce one.

No business is immune to complaints. They range from the genuine and legitimate to the totally unjustified and illegitimate. A complaints handling process allows a business to sift through complaints, separating the genuine from the not so genuine, and respond appropriately to them.

A complaints handling process empowers the business to take control of its customer relations. A basic process will require the reduction of the precise nature of the complaint to writing, an investigation of the relevant allegations, a determination of whether the complaint is justified, and an appropriate response to the customer.

From a risk management perspective, it is an effective way to monitor process failures or poor performance. Timely investigation of a customer complaint often is key to identification of the cause. Risk management dictates an

responding to customer complaints allows the business to address issues early and respond to the customer (on the one hand) and to apply improvement strategies (on the other). It is an indispensable part of effective risk management.



examination of the cause and the introduction of sensible and effective measures to reduce the risk of system failure or underperformance.

A good business is one that runs as smoothly as possible. Monitoring and

Our team assists our clients to develop appropriate complaint handling processes across a range of industries and help them to stay one step ahead.

WE ARE MOVING

From 1 December 2008 we will be located at Riverside Centre

Our new address:

Mullins Lawyers
Level 21, Riverside Centre
123 Eagle Street
Brisbane QLD 4000

GPO Box 2026
Brisbane QLD 4001
Tel (07) 3224 0222
Fax (07) 3224 0333

Contents

MAJOR OVERHAUL OF AUSTRALIAN PRIVACY LAWS ANTICIPATED	2
DON'T FORGET YOUR "SUBBIES"	2
TAX CONCESSIONS FOR SMALL BUSINESS OWNERS	3
REPUTATION IS EVERYTHING	4
EDITORIAL	4



Major overhaul of Australia laws anticipated

STUART O'NEILL



The Federal Government has announced major reforms to Australia's privacy laws following an extensive report issued by the

Australian Law Reform Commission (ALRC).

The report titled "For Your Information: Australian Privacy Law and Practice" was issued on 11 August 2008 and makes 295 recommendations for reform. The key areas of recommended change are:

1. to introduce a single set of "Unified Privacy Principles" governing both public and private sector organisations. At present, there are differing sets of principles for each sector.
2. to introduce a statutory cause of action for invasion of privacy.

At present, consumers can only complain to the Privacy Commissioner about privacy matters, or apply to the courts for tortious or equitable relief (eg following a breach of confidentiality).

3. to require organisations to notify individuals if their personal information has been compromised. There is currently no such requirement under the Act.
4. to establish one national regime for the regulation of health information. Health information is currently regulated under different regimes between the Commonwealth, States and Territories.
5. to remove the employee records exemption, so that personal information about employees will be regulated by the Act.
6. to remove the small business exemption, which exempts businesses with an annual turnover of less than \$3 million. These organisations make up almost 94% of all Australian businesses.
7. to introduce specific rules governing the use of personal information for direct marketing purposes. Currently direct marketing is only regulated under the general principles.
8. to regulate government agencies with respect to cross border data flows. There is presently only limited protection of personal information sent overseas by private sector organisations.
9. to repeal the current credit reporting provisions (which are said to be restrictive compared to other countries) and to regulate

Don't forget your "subbies"

GREG SHAW



Most employers in Queensland understand that they must have a WorkCover Queensland Accidents and Insurance Policy ("WorkCover policy") in accordance with the *Workers' Compensation and Rehabilitation Act 2003 (Qld)* ("the Act").

Unfortunately, some employers do not appreciate that sub-contractors (or "subbies") may need to be covered under the employer's WorkCover policy.

Who needs to be covered?

Employers must ensure that all persons they engage who fall within the definition of "worker" under the Act are covered under their WorkCover policy.

Who is a worker under the Act?

Generally, a person will be a worker unless they satisfy each of the following three elements:

1. They are engaged to achieve a specified result or outcome. That may occur where they are engaged to complete a specific task and their remuneration is an agreed price based on the achievement of the specified result (as opposed to, say, an hourly rate);
2. They must provide their own plant, equipment and tools;
3. They are legally responsible for the cost of rectifying any defects in, or substandard performance of, tasks they were engaged to perform.

A person who performs labour only (or a substantial part of their work involves the provision of labour) will also be a worker under the Act.

A person may render tax invoices with an ABN, and be responsible for paying their own tax and superannuation, and still be considered as a worker.

What happens if a worker is not covered?

A person who is not covered under an employer's WorkCover policy may still make a claim under the Act. If their claim is accepted, WorkCover may recover from the employer:

1. All costs associated with the injured worker's claim plus a penalty of up to 50% of those costs; and
2. The difference between the premium actually paid and the premium that should have been paid, plus a penalty of up to 100% of that shortfall.

The costs of the claim may include:

1. a proportion of the workers' wage;
2. medical expenses;
3. rehabilitation costs;
4. lump sum compensation if there is a permanent impairment; and
5. damages and legal costs if the



credit reporting under the general provisions of the Act (which would include the Unified Privacy Principles).

The Government will consider the ALRC report in two stages. Firstly with respect to the Unified Privacy Principles, health information and credit reporting, and secondly with respect to the removal of exemptions, breach notices and the statutory cause of action for invasion of privacy. Draft legislation for stage one is planned to be introduced in 12 to 18 months' time.

If the changes are adopted, they will have a substantial impact on the way businesses are required to handle privacy information. Businesses will need to be vigilant in ensuring they comply with any changes.

injured person makes a common law claim.

What should an employer do?

Every employer must regularly review and consider whether or not each person they engage is a worker under the Act.

An employer who does not do so is breaking the law and placing themselves at risk of serious adverse financial consequences.

Tax concessions for small business owners

STUART O'NEILL

Small business taxpayers can choose a range of tax concessions to assist them in the small business sector.

Taxpayers can qualify for concessions if their annual aggregated turnover is less than \$2 million. This test includes the turnover of each business that the taxpayer is affiliated or connected with.

The concessions include:

1. a 25% entrepreneurs tax offset if turnover is \$50,000 or less, and a partial tax offset if it is between \$50,000 and \$75,000;
2. simplified depreciation rules for low cost assets (under \$1,000), primary producers and assets pooled by their effective life; and
3. an immediate deduction for certain prepaid expenses in respect of supplies of goods or services across income years (eg for a six month advertisement that crosses 30 June).

In addition, the small business Capital Gains Tax (CGT) concessions are now available whether the taxpayer meets the aggregated turnover test or the new threshold for the maximum net asset value test. A taxpayer will satisfy the threshold under the test if their net assets have a value of less than \$6 million under the rules.



The small business CGT concessions can reduce or entirely negate CGT on the sale of certain business assets. They are designed to give small business owners extra funds for retirement and to reinvest in their businesses. Under the concessions (in summary terms):

- You will only pay CGT on half of the capital gain when you sell an asset that is actively used or held ready for use in your business.
- You can defer the payment of CGT when you buy replacement assets using capital gains from the sale of other business assets.
- You can also use capital gains from the sale of business assets to contribute to your eligible superannuation fund. If you are over 55 years of age when you do this, the amount contributed will be exempt from CGT.

These concessions can provide small business taxpayers with considerable savings and are especially important when you are looking at structuring, restructuring or retiring from your business .



REPUTATION is EVERYTHING

ANDREW NICHOLSON



It is often said that reputation is everything. It may be difficult to build and can be easily lost, both through your own actions and sometimes the actions of others. Of course this is just as applicable to business as it is to individuals and applies equally to organisations ranging from SMEs to multi-nationals.

There are a number of steps which organisations may take to protect their name, reputation and brand, all of which are valuable assets of the business. In a tightening economy, where competitors may seek to leverage any available advantage, it is necessary for businesses to be vigilant in ensuring their reputation is maintained and that others do not seek to encroach on your territory.

To properly protect and maintain the value of assets, it is first necessary to identify them. Often businesses overlook what they have developed over a period of time or may regard valuable assets as just "part of the furniture". This can make it worthwhile to take stock through the form of an intellectual property assessment or audit.



DAVID WILLIAMS
EDITORIAL

The world wide financial uncertainty which commenced on Wall Street has now reverberated around the world. Our Reserve Bank, in a pre-emptive strike, has reduced the bench mark rate by 1% to try and create a soft landing for Australia by reducing the interest burden and maybe getting some activity into the economy. The fundamentals of our financial system are far more solid than those in other countries but the fall out will still be significant as Australia relies upon world wide credit.

When the bottom of the economic cycle has been reached, this will be the appropriate time for any business to reflect on and review its existing operations. It is timely to consider exit strategies in preparation for when you may wish to sell your business, or to take advantage of opportunities to acquire complementary businesses which can be integrated.

A trend that existed previous to this recent downturn was businesses acquiring a series of smaller businesses in the same industry but spread over a larger geographic area. This practice is known as the purchase of "roll ups". This could become a more prevalent activity in the type of market we are about to experience. Those transactions typically involve business owners being paid in cash or shares in the company that is acquiring the business, with obligations upon the vendors to remain involved in the operation of the business. This process provides to the owners of small businesses an ability to look at an exit plan that also has the potential for future growth.

From all indications, the calendar year 2009 will be challenging for business owners, with the prospect that 2010 and beyond will deliver better outcomes.

The articles in this newsletter are therefore reflective of areas that business owners should consider and implement if possible, at a time where activity may be low, but the ability to implement could be high.

Best of luck in growing your business in these challenging times.

Often businesses overlook what they have developed over a period of time or may regard valuable assets as just "part of the furniture".

The most common forms of protection for names are through:

1. company (and business name) registration;
2. domain name registration; and
3. trademark registration.

There is a common misconception that a name will be secure if one of these forms of protection is obtained. This is not the case. Each of these forms of protection is independent of the another. If each form of protection is obtained, it is easier to prevent infringement, which can occur in many forms. One of the more obvious examples is through the use of similar names and logos which may amount to one or more trade mark infringement, passing off, defamation or a domain name dispute. There may also be associated breaches of the *Trade Practices Act* if consumers are likely to be misled.

Of course, the stronger the branding, the greater the assets to protect.

The consistent use of names, trademarks and logos will assist in developing the strength of the brand, both in terms of reputation and through recognition in the market. We often see examples of businesses that take an ad hoc approach to brand development and are using a number of logos, names and trademarks. If they are not applied consistently, those identifiers may serve to confuse the market and to erode the value of the brand.

Investing in legal advice for asset identification, branding strategy and/or protection methods is a small price to pay to protect your reputation and your business' future.



mullins
LAWYERS

Level 22, Central Plaza One,
345 Queen Street,
Brisbane, Q 4000

GPO Box 2026,
Brisbane, Q 4001 DX 306

Telephone 07 3224 0222

Facsimile 07 3224 0333

email: dwilliams@mullinslaw.com.au
www.mullinslaw.com.au

Postscript: The information contained herein, whilst accurate, is of a general nature. If you have any queries in relation to the information contained herein, we ask that you consult the partners and solicitors of Mullins Lawyers with whom you usually deal. If you have any comments regarding our newsletter we would like to hear from you.

Should you not wish to receive this newsletter or any other marketing material from Mullins Lawyers please don't hesitate to advise immediately.