



M & M

Report

Editorial



by John Mullins

The Twenty-first Century is upon us and as anticipated the Y2K bug did not bring an end to life as we know it.

The economies of the world, including the Australian economy, are growing at an impressive rate and the challenge for government and the regulators is to avoid the boom and bust situation that existed for most of the twentieth century. We have already seen interest rate increases and in recent times significant correction in the booming technology, communication and publishing stocks. Expressions such as *the old economy* and *the new economy* are starting to emerge.

Whilst the way people are doing business is certainly changing people themselves are not changing at any where near the same rate. Our goal at Mullins & Mullins is to constantly improve, but not radically change the way we relate with our clients. It is this relationship and the trust and confidence built up over time which enables us to deliver an effective service. Of course we are embracing all of the modern methods and technologies to enable us to deliver that service, but the service still relies upon the personal interrelationship of our people and our clients.

With that in mind, we dedicate a column in this edition to bringing you up to date with some of the changes at Mullins & Mullins. The firm has grown to 50 in response to our need to deliver the best services to our clients and hopefully in response to our clients' needs.

Elsewhere in this edition the topics range from the oldest profession to new laws in relation to the Internet and Internet copyright issues. Employment law has always been an important part of our practice and is our lead article in this edition.

Keeping up with the Law of Employment

A Full Time Job



By Samantha Kane

Employment laws provide a wide array of protections and requirements for employers and workers, ranging from unfair dismissals, breach of contract and recovery of wages, freedom to join or not to join a Trade Union. They also include unfair work contracts, anti-discrimination and sexual harassment laws.

Recent years have seen these laws rapidly change causing some confusion and uncertainty.

With this in mind, Mullins & Mullins have expanded our employment and industrial relations section, which provides assistance in relation to all employment issues, with particular expertise in relation to anti-discrimination and sexual harassment matters.

One such development in the area is the unfair contract provisions contained in State and Federal Industrial legislation. In Queensland, *section 276 of the Industrial Relations Act 1999* gives the Queensland Industrial Relations Commission the power to amend or declare void (wholly or in part) a contract (whether an employment contract or principal and independent contractor arrangement) which it considers to be unfair. An unfair contract is defined as one which is "harsh, unconscionable or unfair". The section permits any unfair part of the contract to be severed or varied. If the contract is unfair in its entirety, then it can be declared void. The

Commission can also order payment of compensation in relation to a contract that is amended or declared void.

Whilst a similar provision has existed in Queensland for some time, *section 276 of the new Industrial Relations Act 1999 (Qld)* has further widened the scope of the unfair contracts provisions. It is an avenue of redress which has been

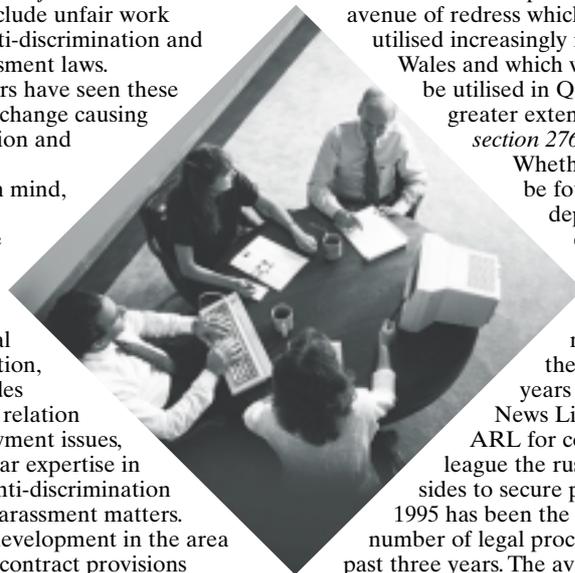
utilised increasingly in New South Wales and which we predict will be utilised in Queensland to a greater extent as a result of *section 276*.

Whether a contract will be found to be unfair depends upon the circumstances of each contract.

By way of example, many will recall the battle of a few years ago between News Limited and the ARL for control of rugby league the rush by both sides to secure players in April 1995 has been the subject of a number of legal proceedings in the past three years. The avenue used by a number of players to challenge the validity of their contracts was the unfair contracts provisions of the *Industrial Relations Act (NSW)*.

One such case involved seven players who were attempting to avoid their ARL contracts. Four of the players were found to be entitled to avoid their contracts will three were not.

When any party is considering entering into a contract, terminating an existing contract, or attempting to ascertain or enforce entitlements under a contract, it is crucial that independent legal advice be obtained without delay.



First Home Owners Scheme

By Louise Conlan

This scheme is designed to offset the impact of GST on the purchase of residences where the purchaser is a first home buyer. This is a national scheme and a consultation draft of the *First Home Owner Grant Bill 2000* is currently available for public comment.

The national scheme, to be administered by the States and Territories, will commence from 1 July 2000 and applies to people who are buying or building their first home.

The scheme involves a one-off non means tested payment of \$7000 (or the amount paid for buying or building the home, whichever is the lesser) to eligible applicants. The payment will be available to those people who enter into a binding contract to buy an existing home, or build a new home after 1 July 2000.

It will also be available to owner builders who commence building a home after July 1 2000.

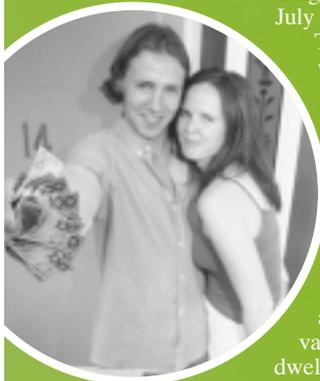
The payment will be the same regardless of the area in which the home is bought or built, or the value of the home. It applies to a variety of dwellings including

houses, flats, units and any other self contained, fixed dwelling that meet local planning standards.

All owners of the home will need to be parties to an application for a grant under the scheme.

People who are married or in a de facto relationship must make a joint application with their spouse or de facto. To be eligible, an applicant must be a person who is an Australian citizen or permanent resident of Australia. The applicant must also intend to make the home their principal place of residence and actually start living in the home within a reasonable time.

In Queensland, applications for a grant under the First Home Owners Scheme should be made to the Office of State Revenue. The grant will be paid to successful applicants, or someone to whom the applicant directs the grant to be paid, through the process of electronic funds transfer after the relevant transaction has been completed.



The Legalisation of



By Curt Schatz

Whilst we provide no moral view on this issue, we thought there would be sufficient public interest in the topic to discuss the recent State

Government legislation in the form of the *Prostitution Act 1999 (PA)* which commences operation on 1 July 2000.

The State Government has recognised that street prostitution is associated with organised crime, sexually related health risks and community disharmony. It also seeks to make the streets safer for those "street workers".

Essentially, the Government is permitting prostitution to occur in licensed brothels as opposed to street corners or in public areas. It is hoped that this measure will have the following results:

- lessening organised crime involvement;
- provide a healthier society;
- provide a higher quality of life in various local communities; and
- address security and safety issues.

The PA provides for the establishment of a Licensing Authority to implement a licensing and monitoring regime for prostitution in Queensland. This scheme is similar to the manner in which hotels and clubs are licensed. The first step in operating a hotel or club in Queensland is to obtain development approval under the *Integrated Planning Act 1997 (IPA)*. A club owner or hotelier must also obtain the relevant liquor licence from the Liquor Licensing Division.

The main reason for such licensing is to decrease the various risks associated with prostitution.

The Licensing Authority may refuse to grant a licence for various reasons. Some of these include:

- the applicant holds a licence under the *Liquor Act 1992*;
- the number of brothels in a particular area does not warrant any further brothels; or
- the applicant is not a suitable person or has been convicted of certain offences.

It is interesting to consider these criteria. One of the criteria for applications for

INTERNET

Internet User Beware: Privacy & Security Online



By Elizabeth Sheehan

Use of the internet is expanding at an astonishing rate world wide. The Government has undertaken to provide

electronic service delivery for Commonwealth Agencies by 2001 and to encourage the use of electronic payments as the norm for Commonwealth payments by the end of 2000. It would seem that the internet is here to stay and if you have not tried it yet, it is time to get "on-line".

We wish to highlight some of the confidentiality issues that arise in relation to the use of the internet. The resolution of the privacy and security issues of internet use are vital to the widespread acceptance of electronic business transactions.

PRIVACY

Users commonly think that, because they do not enter their names or other details to gain access to web pages, there is a high degree of privacy in their use of the internet. However, with most web browsing

software, any request to a website discloses the identity of the machine used to gain access. Similarly a list of previously accessed web pages can be obtained from a machine.

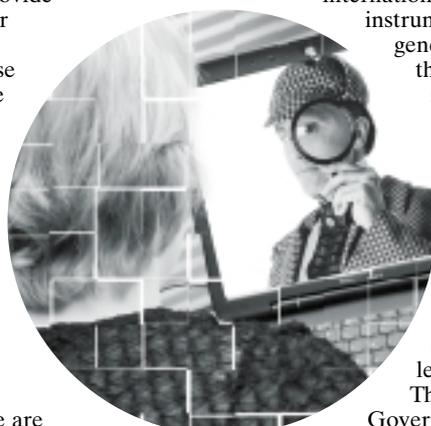
There is now an amazing capacity to collect, collate and disseminate information about an individual.

To date, the law does not adequately address the privacy issues that this creates. Australia is signatory to a number of international privacy

instruments that provide general guidelines for the collection of information on individuals.

However, the effectiveness of these instruments is limited as they must be implemented and enforced by domestic legislation.

The Commonwealth Government is currently drafting the *Privacy Amendment (Private Sector) Bill*. The Bill will amend the *Privacy Act 1988* to provide a privacy scheme for the private sector. The Act will regulate the collection, use, disclosure and accuracy of personal information collected on individuals. The Act recognises the risk to privacy that the



Brothels



liquor licences is “public need”. Whilst it is not suggested that public need is an issue with this matter, demographic statistics and the number of licensed brothels in an area will be taken into account.

In relation to whether a person is suitable to be granted a brothel licence, the Licensing Authority will scrutinise the applicant’s criminal history, financial resources and other antecedents. Licences will be granted for a one year period and will often be granted on a probationary basis or with conditions.

Town planning issues are also relevant. Such issues are more relevant in some areas than others. For example, a brothel in an industrial area will be easier to get approved than other areas where public notification requirements will have to be met. The reason for this is to require the applicant to consider and make submissions on the likely impact on the locality, in which the brothel is to be situated. It may also give the local public the right to object on the basis of loss or diminution of amenity or other reasons.

In terms of the *PA*, an application for use as a brothel may be refused after consideration of the following:

- the land is in a residential area or within 200 metres of a residential area measured according to the shortest route that may reasonably be used in travelling;
- in close proximity of schools, churches or other facilities;
- demographics of the population;
- size of the establishment to be utilised for the purposes of prostitution; or
- any other demographic statistics that are deemed appropriate or relevant.

There will need to be strong liaison between the Licensing Authority and Local Governments to ensure that municipal and planning laws reflect the intent of the legislation. It may require amendment to various local authority planning schemes. In addition, the reputation and character of people seeking to apply for a brothel licence will be heavily scrutinised to ensure they are run by people who are fit and proper to carry on business in this industry.

AND THE LAW

internet poses, and that to take advantage of the new technology, consumers must have confidence in how business will deal with the information they provide. The Bill was expected to be introduced into the Commonwealth Parliament in February of this year.

SECURITY

Another important aspect of confidentiality on the internet is the security of internet communications. Traditionally, assurances in transactions are derived from an original document, the signature of the person with whom you are dealing or even the receipt of a sealed envelope. These forms of protection are lost on the internet.

The challenges faced by those conducting business on the internet include ensuring that:

- the parties involved in the transaction are authentic;
- the information is complete and accurate; and
- the originators of the transactions cannot later deny them.

The Commonwealth Parliament has sought to deal with this problem to some extent by introducing the *Electronic Transactions Act 1999*. It is proposed that all the States introduce mirror legislation. The Act aims to validate electronic transactions. It contains provisions in relation to signatures; the production of original documents; the retention of electronic communications and the formation and validity of contracts. It also contains rules dealing with the time and place of dispatch

and receipt of electronic communications. The legislation has been drafted broadly to accommodate technological developments.

To date, confidentiality issues on the internet are not sufficiently regulated. However a regulatory framework is being developed to provide an on-line environment where information and transactions are authentic, secure, private and legally sound.

Digital Copyright



By Matthew Stapleton

The introduction of Pay TV and the Internet are 2 matters that have exposed some gaps in the existing copyright laws. In recognition of these gaps the *Copyright Amendment (Digital Agenda) Bill* was introduced to Federal Parliament on 2 September 1999. The Bill, seen by many as the most significant amendment to Australia’s copyright laws since the introduction of the *Copyright Act in 1968*, was immediately referred to The House of Representatives Standing Committee on Legal and Constitutional Affairs.

The changes contained in the Bill are aimed at establishing a legal framework to encourage online activity and the growth of

the information economy. The Bill also aims to ease concerns of creators and owners of copyright material who are concerned that they do not have effective means of redress or remuneration in relation to use of their copyright material on the Internet. The

existing protection for owners under the *Copyright Act 1968* includes technology-specific transmission rights.

The main aim of the Bill is to ensure that copyright law continues to promote creative endeavour whilst allowing reasonable access to

copyright material on the Internet and through new communications technologies.

The Committee considered all aspects of the Bill and has made a number of recommendations. These recommendations were a result of a number of submissions by various interest groups such as APRA, ARIA and PPCA. The committee also received evidence from a number of witnesses. These changes will now be considered by the Government and the Bill put before Parliament again. Once the Bill has been passed we will provide you with a summary of the provisions. In the meantime the Bill and the Committee’s report can be obtained from www.aph.gov.au



M&M Personnel



By John Mullins

As you may have gathered from the various new faces contributing to this publication, staff numbers at Mullins &

Mullins have been growing over the last few years. Our total staff numbers have now reached 50.

There has been very significant growth in recent times. The firm was established 20 years ago this month by our consultant Mr Patrick Mullins senior as a sole practice.

From 1 March two of our highly experienced Associates David Williams and Cameron Seymour became Partners of the firm, bringing the total Partner number to 7. David practises in the commercial law area with the majority of his work being in the franchise sector acting for major franchisors and many franchisees. Cameron Seymour practises in insurance litigation, particularly personal injuries, acting for major insurers and self insurers.

In January three of our highly committed articled clerks were admitted as Solicitors and at the same time two new articled clerks joined the firm.

Michael Klatt has taken on a senior role in our Personal Legal Services division advising individuals on legal issues particularly commercial legal issues for individuals. Samantha Kane has joined our litigation section and will practice in the area of employment law and industrial relations, with particular interest in the area of anti-discrimination and sexual harassment.

Anthony O'Dwyer joins us on 3 April as an Associate in the property and commercial area to fill the gap created by Rebecca Gray's trip to the UK. We look forward to welcoming Rebecca back in about 12 months time.

With such an increase in staff we have appointed Kellie Breen as the Human Resources Co-ordinator to ensure that training, motivation and performance remain of the high standards at Mullins & Mullins. Kellie also fills a void created by Vicki Jacklin being on maternity leave after the recent birth of her baby daughter.



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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 or solicitors of Mullins & Mullins with whom you usually deal. If you have any comments regarding our newsletter we would like to hear from you.



Contaminated!



By Rachel Wolfe

Whether you are a first home buyer, a renovator or a property developer wishing to demolish and develop on a particular site,

you must give due consideration to the provisions of the heritage and contaminated land legislation.

Standard searches conducted in residential conveyancing should include searches of the Contaminated Sites Register and the Heritage Registers. Unfortunately these searches are not always conducted where parties wish to reduce the cost of the conveyance.

The implications of not conducting the searches can be quite serious if the property is found to be on a register. It may result in limitations on the use of the property for which it was intended and purchased for; the value of the property could be affected resulting in serious implications for the financier, and any proposed development application may not be approved by the Local Government.

Contaminated land issues are not only relevant for properties in traditional contaminated areas, and heritage issues are not only relevant for attractive old buildings. Many properties are now affected by contaminated land issues and heritage issues, and these issues are becoming more important for residential owners, developers, valuers and financiers. It is not sufficient to rely on the sales pitch of a real estate agent who states that the property is not listed or to take the view that the property "looks ok" and therefore it is not listed.

Land contamination is mainly caused by past or current industrial activities, waste disposal and leaking underground storage tanks. In addition to posing a threat to human health, flora and fauna, people should be concerned about their legal and financial liabilities. It is estimated that there are between 10,000 and 60,000 contaminated sites in Australia.

Information concerning contamination of land can be obtained from the Department of Environment. The registration of property on the Contaminated Sites Register is also noted in the Titles Office. A search is conducted to establish if the property is listed on the Contaminated Sites Register, has previously been listed on

the register or has been the subject of a notice to clean up contamination. The cost of the search is \$34.50.

A search of the heritage registers should be conducted to reveal if the property has some heritage value. Various restrictions are placed on the repair and renovation of properties listed on the Heritage Registers. If the property is being purchased for commercial purposes or for demolition, a heritage listing will present many problems for a developer. The cost of the search is \$25.00.

Information concerning the heritage status of property is available from the Department of

Environment, the Australian Heritage Commission and the Local Government.

Further, having an understanding of the Local Government's heritage scheme and its aims and objectives is essential for renovators, developers and financiers for restrictions to developing where homes are not individually listed on the register.

It is prudent to conduct searches of the Contaminated Sites Register

and the Heritage Registers prior to signing the Contract. The Standard REIQ Contract of Sale provides for the purchaser's rights in the event that the property is on the Contaminated Sites Register or has a heritage status at the date of the Contract. However if the property is registered after the date of the Contract, the Purchaser may not have any recourse.

Further, the *Trade Practices Act 1974* prohibits the making of false or misleading representations concerning the characteristics of land and the use to which it may or may not be lawfully used.

Therefore a Contract of Sale which does not disclose hidden contamination of the land or heritage status may contravene this section. In addition, incentives are given to land owners and occupiers to participate in environmental protection. A number of costs incurred for conducting or financing environmental activities are tax deductible under the *Income Tax Assessment Act*.

In consideration of the consequences of a property being listed on the Contaminated Sites Register or having Heritage Status, it is important that the necessary searches always be conducted, especially in light of the minimal cost of each search.

