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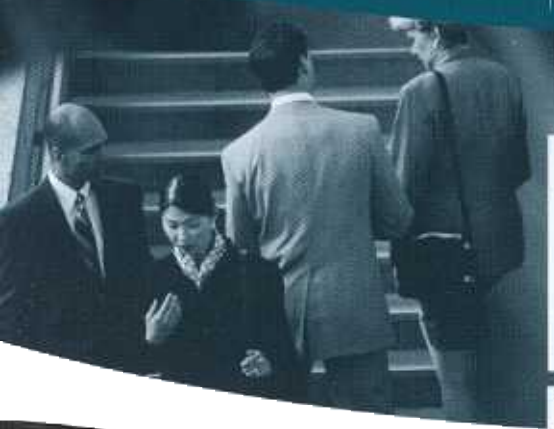

M&M Report

Editorial

by John Mullins

As a professional service firm, it is important for us to understand the expectations of our clients and to meet these expectations. Recently, we undertook a survey of approximately 50 of our clients, from individuals to small business to large corporations and public companies. The purpose of the survey was to get feedback and a rating on how we are performing in terms of delivery of our service and to obtain valuable suggestions as to how this could be improved.

As part of the process, we also sought feedback on our newsletters.

I am pleased to report that performance rated highly. We strive for constant improvement and have taken seriously any constructive criticism which we received. Our goal is to provide a superior level of service and advice.

Whilst the rating of our services was high, the rating of newsletters were extremely varied. We received feedback from "extremely good" to "no interest" or "no time to read such stuff". In this edition, we have shortened the length of the articles to attempt to make the M&M Report more user-friendly and more relevant to the readership. The diversity of articles in all editions is a constant challenge.

The response to our brochure on our Personal Legal Services Section has confirmed to us that, whilst many of our clients want highly technical commercial advice, there is still a great demand and need for law firms to deal with the personal issues of individuals and Mullins & Mullins is strongly committed to this.

With the end of the financial year approaching, can I suggest that you use the start of the new financial year as a prompt to ensure that your legal affairs are properly structured and in order. Our Personal Legal Services Section can assist you in this process.

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Y2K Information Disclosure Act

by Elizabeth Sheehan

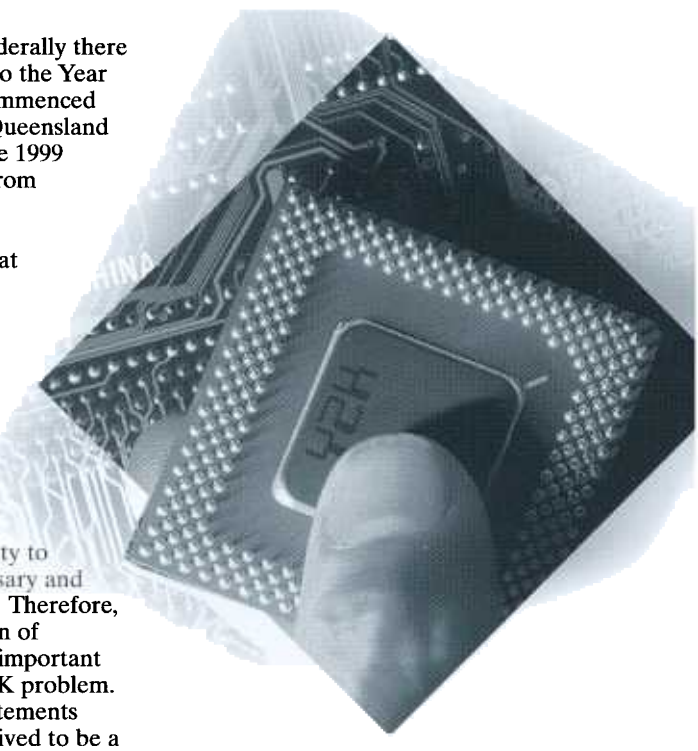
Both in Queensland and Federally there is new legislation in relation to the Year 2000 bug. The Federal Act commenced on 27 February 1999 and in Queensland the Act was passed on 16 June 1999 and has retrospective effect from 27 February 1999.

For some time now we have heard about the possibility that the Y2K bug may cause extensive disruption to the economy and the community if not adequately addressed before the end of the year.

The enactment of the legislation was prompted by the concern that insufficient information on the extent of problems caused by the Y2K bug could cause the community to panic and undertake unnecessary and costly preventative measures. Therefore, encouraging the dissemination of information is considered an important aspect of dealing with the Y2K problem.

However, the making of statements about Y2K problems is perceived to be a high risk activity and businesses and Governments have been reluctant to reveal their Y2K preparedness to other organisations or to provide assistance by sharing information. The concern to date has been valid due to the range of legal risks including negligent misstatement, defamation, breach of contract and breach of the Trade Practices Act.

The new legislation encourages the exchange of information by providing a limited form of protection against liability for errors in certain voluntary Y2K disclosure statements made between 27 February 1999 and 30 June 2001.



A Year 2000 disclosure statement is a statement in a written form which relates solely to any or all of certain listed matters associated with Year 2000 processing; the detection, prevention and remediation of Year 2000 processing problems, the consequences or implications or problems surrounding the supply of goods and services and activities of people and organisations, and the plans put in place to deal with those consequences and implications.

Continued on page 2.

Y2K Information Disclosure Act

Continued from page 1.

A disclosure statement includes a re-publication of an original Year 2000 disclosure statement. It must contain words indicating that a person may be protected from liability for the statement in certain circumstances. The statement must also contain the name of the person who has authorised the statement. The Act applies only in relation to the making of this voluntary statement, and does not affect any liability under statute or common law for actual Year 2000 related failures of goods and services.

The core of the Act is that no civil action lies against a person for or in relation to any matter or thing arising out of, or incidental to the making of a Year 2000 disclosure statement. Also the statement is not admissible as evidence against a person in a civil action.

The Act set out a number of exceptions. A Year 2000 disclosure statement will not be protected where:

- the statement is false and misleading, and the person making the statement knew the statement was false or misleading in a material particular, or was reckless as to whether the statement was false or misleading;
- the statement was made to another person in connection with the formation of a contract and the other person is a party to civil action which relates to the contract;
- the statement was made in fulfilment of contractual obligations;
- the statement was made to induce persons or a particular consumer to acquire goods or services and that person acquired the goods or services and is a party to civil action relating to those goods or services; or
- the statement is the basis for civil action which consists of proceedings relating to injunctions, declarations, regulatory or enforcement proceedings or intellectual property rights.

These laws deal with the conflict between the laws which regulate the provisions of information and the need for the open exchange of information in order the minimise the costs of the Y2K bug. They ease the risks associated with the provision of Y2K information but, at the same time, leave certain legal control in place.

Further the Government hoped that by removing the shackles of legal liability, larger businesses will now be free to assist smaller businesses with their Y2K preparation through the sharing of knowledge on the problem.

Where to Purchase

by Matthew Stapleton

Many readers would have recently noticed a concerted campaign by retailing and supermarket organisations for public support for the introduction of the sale of liquor into supermarkets and other retail outlets. This campaign, which included full page media advertising and petitions at the check-outs of many outlets, has been met with an equally vigorous campaign by various community groups and associations responsible for protecting the interests of hoteliers and the hospitality industry, such as the Queensland Hoteliers Association (QHA), to continue to maintain controls on the availability of liquor.

The timing of this campaign coincides with the National Competition Policy (NCP) review of the Liquor Act. Whilst the review of the Liquor Act is just one part of the NCP, it is perhaps the part which has created the greatest deal of public debate, and regardless of the outcome this debate is sure to continue.

History of the NCP

At the 1992 Premier's Conference, the States agreed to set up an Independent Committee of Inquiry to study the issue of establishing a National Competition Policy. The aim of such a policy was to "free up" trade between the States and create greater competition within the national economy. The result of greater competition on a national scale is greater efficiency in the economy as a whole and accordingly a more competitive economy internationally.

Following an extensive inquiry, the Committee delivered what has become known as the Hilmer Report. The report highlighted several measures which could be introduced to increase competition within the economy. These measures formed the basis for what would become the National Competition Code.

The recommendations of the Committee included:

- Extending the reach of the Trade Practices Act to include unincorporated businesses and state government businesses;
- Provision for third party access to nationally significant infrastructure;
- Ensuring that government businesses do not enjoy unfair advantages when competing with private businesses;
- Restructuring public sector monopolies to increase competition;
- A review of all laws which restrict competition.

In 1995 the Premiers agreed to implement the recommendations of the report and the result was the Competition Policy Reform Act 1995. This has been adopted by each state in the form of National Competition Code. Continued Federal funding is dependant on the States putting this code into effect.

Review of Anti-Competitive Legislation

The review of the Liquor Act is a result of the requirement to review possible anti-competitive legislation. Each state and territory is required to examine existing legislation to determine whether they contain anti-competitive provisions. In the event that they do contain anti-competitive provisions, the issue of whether these should be retained in the public interest must then be considered.

The key questions in determining the public interest are:

- Does the benefit of the restriction to the community as a whole outweigh the costs;

Legal Representation in the In

by Patrick Mullins Jr.

The State Industrial Minister, Paul Braddy, has introduced a substantial bill to amend the Industrial Relations legislation applying in Queensland. One of the amendments of interest is in relation to representation of parties before the Industrial Relations Commission (IRC).

Traditionally, lawyers have been excluded from the IRC except where both parties consent.

That has led to the rise of industrial advocates who have represented both employers and employees before the IRC. It is only in rare cases that both parties consent to legal representation. A party may now apply to the IRC to be allowed to be represented by a lawyer on the basis that there are either special circumstances that make it desirable to be legally represented, or

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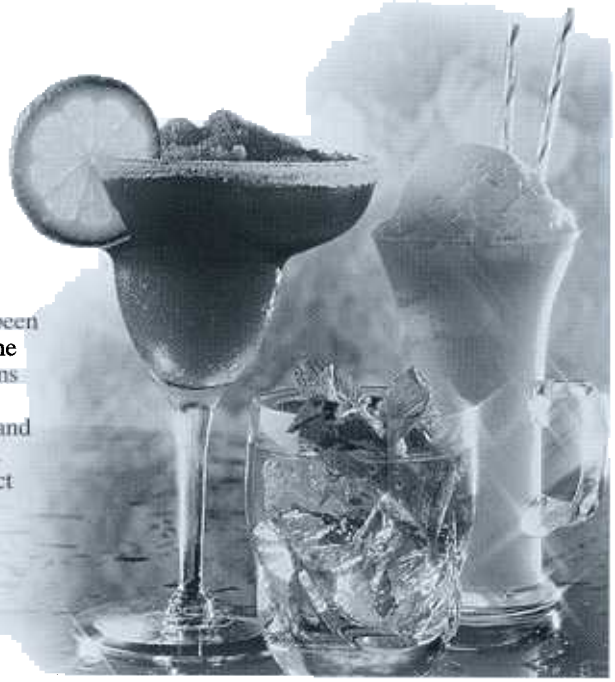


- Can the objectives of the legislation only be achieved by restricting the competition.

The Liquor Act

The review of the Liquor Act has been a multi-staged process made up of the release of an issues paper, submissions from interested parties, formal consultation with key stake holders and public hearings throughout the state.

The key elements of the Liquor Act which have formed the focus of the review include:

- Premiums;
- Take away liquor / Detached Bottle Shop restrictions;
- Regulations on the promotion and sale of liquor;
- Different privilege for different types of licences.

Take Away Liquor / Detached Bottleshops

It is the consideration of these issues that has created much public debate. Without going into detail of the respective arguments on each side, it basically comes down to a question of whether the need to maintain restrictions on the availability of liquor outweighs the advantages to the community of greater competition.

In determining these matters the review will consider, a broad range of conflicting policy considerations such as:

- Community Service obligations;
- Health and harm minimisation particularly relating to the aims of the National Health Policy and the Qld Drug and Alcohol Strategy;
- The economic impact to the change in the existing structure of the Qld liquor industry;
- Economic and regional development;
- The interest of consumers generally, as a class;
- The competitiveness of Australian businesses;
- The efficient allocation of resources.

The Next Step

It is anticipated that by 30 June 1999 the review body will deliver a Competition Impact Statement. This statement will contain a detailed summary of the costs and benefits (qualitative and quantitative) associated with the alternative options compared with the existing situations.

The outcome of this review, whichever way it goes, will create further public debate. Regardless of the outcome, the National Competition Policy is an on-going process which will affect numerous other sectors of the economy other than the liquor industry.

dustrial Relations Commission

hat they can only be adequately represented by a lawyer.

The IRC may consider these factors:-

- the amount claimed in the proceedings, if any;
- the nature and complexity of the matter;
- the nature of the evidence to be adduced;
- the cross examination likely to be required;
- the capacity of the party or parties to represent himself or herself;
- questions of law likely to arise; and
- where the duration or the cost of the proceedings will be decreased or increased if the party or person is represented.

It seems now that the Parliament recognises hat in certain complex matters where evidence may be difficult, or where cross examination is likely to be required, or where questions of law could arise, that parties may well benefit from legal representation.

It seems the Parliament also recognises hat there will be cases where the duration of the proceedings or the costs of the proceedings might be decreased if leave is granted for lawyers to represent parties.

There are a wide variety of matters which come before the IRC. Many of these matters arise under unfair dismissal provisions, but there is a growing jurisdiction in relation to the review of employment contracts, or arrangements, on the basis that they might be unconscionable.

Many points of law arise in relation to the interpretation of awards and union rules or interpretation of the legislation itself.

In days where Parliaments all over the country are legislating more and more to allow free competition, it was an anachronism that lawyers were excluded from our State IRC.

Mullins & Mullins has always had involvement in Industrial Relations and Employment Law and we now look forward to the challenge held out to us by the relaxation of restrictions on lawyers' right of appearance before the IRC.

Corporations Law

Single Director/ Shareholder Succession

by Julian Nathan

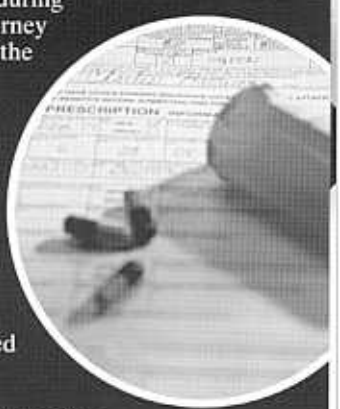
These days, the single director/shareholder private company structure is a popular way of operating one's small business. It allows flexibility and less administrative rigours and yet receives the advantages of operating a business through a company. The alternative to this in the past was operating as a sole trader.

One of the issues confronting the business is what happens if the director either dies or becomes mentally incapacitated?

On death, the personal representative/Trustee of the director's estate can appoint a new director. This ensures the business can continue to run smoothly. This also assumes that the director has a Will.

In absence of a Will, Letters of Administration of the estate must be obtained from the Supreme Court. This is a time consuming exercise and the business may come to a halt until the grant is made.

Where a director becomes mentally incapacitated, an appointed Enduring Power of Attorney can take over the business until the director's mental capacity is restored. If there is no such attorney, application to the Court will be required to ensure the business is preserved. Again, a time consuming and potentially costly exercise, which may expose the business to the risk of closing down.



There is an assumption that the Will and Enduring Power of Attorney are valid. If they are found to be defective, the outcomes foreshadowed above will apply.

In such companies, the business is the main asset of the director/ shareholder. To ensure that this asset is protected and continues to operate, the director should ensure that he/she has a valid Will and Enduring Power of Attorney in place.

We are happy to assist your queries in this respect.

Furthering Medical Research

by Patrick Mullins Jr.

For the past 10 years or so I have served in an honorary capacity as the Lawyer Member of the Ethics Committee at Greenslopes Private Hospital (formerly Greenslopes Repatriation Hospital). Since its privatisation, the Hospital has contracted with the Department of Veterans' Affairs and still provides care and treatment to Veterans and their families as well as offering a full service Private Hospital.

The Hospital is also a teaching Hospital within Faculty of Medicine at the University of Queensland. It is a centre of research into such areas as Hypertension, Gastroenterology, Endocrinology, Ophthalmology and Dermatology.

Under guidelines for the conduct of medical research approved by the National Health and Medical Research Council, each hospital where medical research is undertaken is required to have an Institutional Ethics Committee.

Apart from medical, scientific and nursing members, the Committee is required to have 2 lay members, a member of the Clergy and a lawyer as members.

The lawyer member's role is principally to ensure that the subjects participating in medical research are informed about risks of participating in a given study and that they give their informed consent to participate.

The Committee considers detailed protocols in relation to each proposal for research. Some involve trials of new drugs or treatment methods.

Participants in studies may be persons who are ill or diagnosed with a variety of complaints or subjects who are fully fit. The lawyers role is to ensure that participants fully understand what they will be subjected to in the study and what the risks are. People need to be able to weigh the risks against potential benefits to themselves personally or benefits which (although not enjoyed by them personally) will accrue to benefit the community at large.

Many of the research projects underway are related to health problems of veterans and the aging community in general.

My involvement on this Committee has been an interesting and challenging undertaking. It has been satisfying over the years seeing the publication of

reports of various studies undertaken at the Hospital by some very dedicated medical researchers.

The opportunity to work closely with members of the medical profession on a very positive undertaking has been a privilege. It has also been an opportunity to make a contribution to the Veterans' community, to whom we all owe so very much.

Retail Shop Leases Update

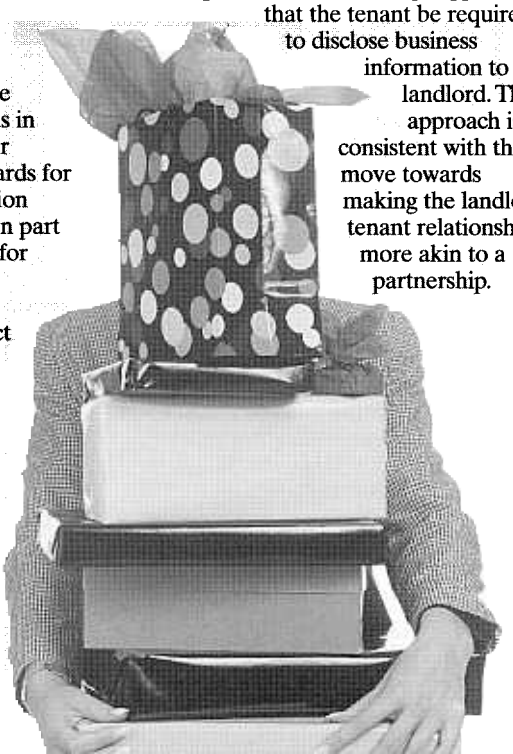
by Rebecca Gray

It has been five years since the last review of the Retail Shop Leases Act which resulted in the enactment of the 1994 Act. The next review is currently underway for which submissions closed on 12 February 1999. These submissions are in the process of being reviewed and it is anticipated that the Bill will be available by October 1999 for further public comment.

The 1994 Act attempted to promote equity between tenants and landlords in the retail shop industry. Among other reforms, minimum mandatory standards for leases and a low cost dispute resolution process was introduced. This has been part of a general trend over recent times for parliament to address the imbalance between landlords and tenants.

Generally speaking, the existing Act has been successful in achieving its aims although some inconsistencies and inadequacies have been revealed since its enactment. The Discussion Paper published by the State Development Committee identified that the major areas to be addressed in the review will include:

- Re-examining whether the Act is focussed to the right type of tenant. For example, do public companies and large national chains need the protection of the Act?
- Refining the definition of a "retail shop".
- Extending the disclosure requirements to when a lease is assigned. (Presently, this applies only upon entering a new lease).
- Greater disclosure regarding issues like the landlord's plans for future development. It is also being suggested that the tenant be required to disclose business information to the landlord. This approach is consistent with the move towards making the landlord-tenant relationship more akin to a partnership.



- A mandatory gross rental (that is, rental figures will incorporate outgoings so that there is a single fixed rental figure).
- The methods of rent reviews available (to expand the combinations of reviews for greater flexibility). The appropriateness of the existing dispute resolution procedure and the jurisdictional limit of the Retail Shop Leases Tribunal.
- The issue of whether to draw down into the Act the recent changes to the Trade Practices Act 1974 relating to unconscionable conduct in supplying goods and services.

We will let you know the outcome of the submissions in a future newsletter and analyse in more detail the changes being proposed in the draft Bill once it is released.

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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.