mullins report

MULLINS

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Celebrating 35 years

JOHN MULLINS MANAGING PARTNER

ON 31 MARCH 2015 THE FIRM celebrated 35 years in business.

As many of you would know, the firm was started in 1980 by my father, Patrick Mullins. It was a very small firm in those days with my brother Pat and myself as his article clerks. We were admitted solicitors about 12 months later.

The practice of law and the use of technology were all very different back then. Computers hardly existed, there was no such thing as a fax machine (let alone the internet or email) and the world turned much slower than it does today. Notions of global economies and global markets certainly did not exist.

The firm has grown steadily over the years to today when we have 18 partners. A significant amount of the growth occurred over the last 20 years.

My father was later awarded an OAM. My mother was able to join us for the high tea which we held in the office with our staff to celebrate the event.

I was asked the other day what my father would have been most proud of and I had to think about that but the answer was very obvious. Dad was bought up in an era where ethical, honourable behaviour was expected. He was fortunate to do his articles at a very well established and reputable firm at O'Shea Corser & Wadley and there he was tutored in the high standards of law and ethical behaviour.

He impressed upon Pat and I by both his word and action the importance of reputation. As I look at it today the thing he would be most proud of is that the firm has established and maintained a reputation as ethical, honourable lawyers and we practice law that way.

Just about everything else has changed from the way we communicate, to the offices that we occupy, to the desks that we sit at, email, digital filing and digital dictation, even voice recognition dictation. How we do things has changed considerably, but what we do, which is fundamentally assisting and helping our clients in times of difficulty or to achieve their commercial imperatives, has not changed. We still do that with commitment and act ethically and honourably.

We look forward with great enthusiasm to the next 35 years recognising that the pace and change will continue unabated but we are ready for and look forward to the challenge.

L-R: John Mullins, Betty Mullins and Patrick Mullins

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How Australia Post's new delivery timetable could affect your business

RYAN SOLOMONS SENIOR ASSOCIATE

EARLIER THIS MONTH, AUSTRALIA POST published a fact sheet outlining the upcoming changes to the speed of service for senders of mail, which will take effect after September 2015.

The changes refer to a new Regular Service which provides a cheaper option (set at the current price of mail) to send mail two days slower than the current timetable. The current timetable will now be defined as a Priority Service at an increased price and Express Post will remain the same.

This proposed change will bring regular mail in line with changes introduced last year for business mail. Australia Post reports that about 70% of business mail is already being sent via the slower Regular Service.

The reason for the change is unsurprising due to the increase in electronic communication and decline in traditional post. The fact sheet stated that "*posties are delivering 1.2 billion fewer letters than they did seven years ago*".

However, we should highlight that (aside from the obvious effect on the cost of postage) there are other more discrete effects and businesses will need to take steps to ensure their internal processes continue to meet their legal obligations.

For example, contracts and arrangements with suppliers that involve the sending and receiving of notices and documents by post. The timetables built into these arrangements and relevant legislation rely on the current Australia Post standard delivery schedules.

With the upcoming changes, businesses will now need to adjust these timeframes in accordance with Australia Post's new timetable or implement processes to ensure all mail is sent under the Priority Service or Express Post.

Where time is a highly relevant factor, businesses may also need to keep a record of important correspondence sent or received, including whether it was sent by Regular, Priority or Express Post.

In particular, and most relevant to the author who is a litigation lawyer, is the impact these changes have when serving documents on another party by post.

Where there may be a dispute about when documents were received by post, you may need to prove that the:

- envelope was prepaid (or the correct postage was affixed) and what timetable for postage was paid for;
- envelope has the correct name and address of the addressee;
- relevant documents were actually included in the envelope together with the letter; and
- envelope was actually posted including details of when and by whom.

A full copy of the guide is available on the Australia Post website. We would be happy to assist in helping you to understand these changes and in implementing appropriate processes in preparation.

In the meantime, enjoy throwing out your non business mail envelopes as you may be keeping them come September.

PPSA review handed down

TONY HOGARTH PARTNER

THE INTERIM REPORT (THE REPORT) ON THE statutory review of the *Personal Property Securities Act 2009* (PPSA) was tabled before parliament on 18 March 2015. In August last year the Attorney-General, Senator the Hon. George Brandis QC stated "*the interim report forms part of the first phase of the review and foreshadows the release of discussion papers covering issues for further consideration and feedback by stakeholders*".

The 543 page report considers, among other things, the effect of the reforms introduced by the PPSA, levels of awareness and understanding, the incidence and causes of non-compliance, opportunities for minimising regulatory and administrative burdens, including cost and opportunities for further efficiencies.

The Australian States referred constitutional power to the Commonwealth to support personal property security reform in Australia, resulting in the repeal or amendment of more than 70 separate statutes, all of which had a variety of registration requirements and systems.

Two years on from the commencement of the PPSA regime, business is still coming to grips with the changes the PPSA has introduced to the business world and the security protection (and risks) available to protect the interests of business and individuals alike.

The executive summary of the Report notes that "*the clear feedback from submissions is that much still needs to be done if the Act is to achieve* (the goals of) *providing more certain, consistent, simpler and cheaper arrangements for personal property securities*". The Report details recommendations for amendment of the PPSA for consideration by the Government.

Pending the absorption and implementation of the many recommendations of the Report by Government, business must remain vigilant to protect the ownership and security interests of individuals and other entities, and to be aware of what interests may have been registered against them. A search of the PPSR Registry will reveal who may have registered security interests against your company or business and what assets may be affected by those security interests. You may be surprised! Be aware of registration time limits. These are critical and if you fail to meet the registration time limits to protect your interests, you may lose ownership of or security over an asset you thought was yours.

The battle for your superannuation: are you ready?

CHRIS HERRALD ASSOCIATE

AS MANY PEOPLE NOW HAVE A significant portion of their wealth in superannuation funds (often with large life insurance benefits included), proper control must be exercised by the member of the superannuation fund regarding to whom their death benefits are paid. This is done by making a binding death benefit nomination.

Historically, for superannuation funds other than self-managed superannuation funds, the trustees of the superannuation funds could not be forced by the member to pay the member's death benefits to particular people. It was up to the trustees as to whether the death benefits were paid to the deceased member's estate or dependants.

Since 1999, members of superannuation funds have been able to make binding nominations as to who can receive their death benefits, provided that:

- The rules of the superannuation fund permit a binding death benefit nomination;
- The death benefits are paid to the member's legal personal representative or dependants;
- There is strict compliance with any prescribed formal requirements for the completion of the nomination document; and
- Expiration dates, if applicable, are observed.

If a person fails to make a valid binding death benefit nomination, then there is an increased scope for a deceased's estate and dependants to fight, in court, over the payment of superannuation death benefits.

The consequences of failing to make a binding death benefit nomination have been highlighted in the following situations, all of which ended up in a court battle:

- A binding death benefit nomination was found to be invalid because it was not completed correctly. The death benefits were paid to a spouse, and not the estate as the deceased had wanted. The estate was otherwise insolvent so the deceased's children from a former relationship missed out.

Since 1999, members of superannuation funds have been able to make binding nominations as to who can receive their death benefits

- A man died intestate (ie. he hadn't made a will) and had not made a binding death benefit nomination. The death benefits were ultimately payable to the estate and the beneficiaries on intestacy received the funds. There was evidence to suggest that the deceased would not have wanted some of the people who received funds to get any money.
- A woman made a binding death benefit nomination in favour of her children however at the time of her death it had expired so the trustee, who was her surviving husband, paid the death benefits to himself as he was legally entitled to do.

Wherever possible, make sure you take the proper steps and obtain appropriate advice to ensure your superannuation death benefits are paid to the people you want to receive them.

New look REIQ residential contracts

REBECCA CASTLEY PARTNER

IF YOU HAVE BOUGHT OR SOLD A house recently, you may have noticed that the contract looks different. The REIQ, in conjunction with the Queensland Law Society, has redesigned the standard contracts to accommodate the reform to property law which took place from 1 December 2014 and to enable the option of e-conveyancing as from 25 May 2015.

The new *Property Occupations Act 2014* simplified the form of residential contracts. The warning statement at the front of the contract is no longer required. Instead, a short statement appears above where the parties sign to explain that a cooling off period may apply.

The new look contract has a redesigned Reference Schedule. There are also changes to the standard terms which include:

1 Settlements must occur by 4pm (not 5pm). This applies to both paper settlements and e-conveyancing settlements.

2 Land tax will now be fully payable by the seller. There is no entitlement for the seller to make an adjustment to recover land tax from a buyer.

3 There is a new standard condition which sets out the process if the parties have opted for an electronic settlement.

4 The term "business day" now excludes a day in the period 27 to 31 December inclusive. Anything that needs to be done under the contract on one of these days will carry over to 2 January.

5 Encumbrances such as easements and covenants affecting the property must be expressly referred to in the contract. It is not enough to simply attach a copy of the title search.

6 If a buyer requires the keys to be delivered at settlement (rather than be left with the selling agent for collection), the buyer must give not less than two business days notice to the seller.

7 Notices under the contract are permitted to be given by email (either to the email address of the other party or its solicitor as stated in the Reference Schedule or which is otherwise specified in a notice). A notice by email will only be taken to have been given once it is capable of being retrieved by the addressee at the nominated email address as per the *Electronic Transactions (Qld) Act 2001*.

8 The seller must provide to the buyer upon request sufficient details (including the seller's date of birth) to enable a buyer to undertake searches of the Personal Properties Securities Register (eg. to determine whether there are any security interests registered over chattels included in the sale).

The introduction of electronic conveyancing in Queensland is also now imminent. This will be a significant change in conveyancing practice. We will let you know more about those important changes in a future issue.

Workers compensation and risk management for employers

DAVID SHANNON SOLICITOR

NO WORKPLACE IS ENTIRELY safeguarded against accidents and certainly no one can control when they happen or who they affect. Of course it is unfortunate for any employee to suffer an injury and therefore employees are offered compensation, rehabilitation and return to work programs. But what if an employee was underperforming or about to be dismissed at the time of their injury? We have seen several cases where employers have struggled to performance manage workers due to their obligations under the *Workers Compensation and Rehabilitation Act 2003* (**the Act**).

Under the Act, employers have a statutory obligation to provide reasonable and appropriate workplace rehabilitation for an injured worker and to actively assist in providing rehabilitation services (ss226-229 WCRA). In addition, the employer cannot take steps to dismiss an injured worker within twelve months of the date of the original injury. This is largely because the worker is not fit for employment in his or her position (ss232B-232D of the Act).

For example, after completion of a suitable duties program and apparent medical fitness to resume normal duties, a worker can return to the workplace. What if, upon their return, the worker appears unable to perform their usual duties or, alternatively, has lost enthusiasm for performing those duties?

Employers are then faced with a number of decisions, including simply taking steps to end the worker's employment. In some cases, employers will not have suitable duties (ie. a task requiring minimal physical input) and a move to terminate could commence immediately. But it isn't always that simple. There are considerations of discrimination, statutory prohibitions of the type described in the Act and potential impacts on insurance premiums.

In these situations, it is not uncommon for the injured workers to also have a claim for damages for personal injury against the employer. Ending a person's employment can result in disruption to the damages claim managed by the insurer.

There are ways to bring a worker's employment to an end with minimal disruption and limited consequences for the management of a personal injury damages claim. These predominantly focus on the medical fitness for a worker to perform his or her usual duties.

An employer can use the services of an appropriately qualified and registered medical specialist to assess the fitness of the worker to perform his or her usual work duties.

If the employer receives an opinion from a medical specialist that a particular worker is not able to perform their duties, the employer can then put in train measures to end that person's employment without statutory penalty.

The situation has to be handled with care as there are workplace health and safety issues that apply. The employer has a duty under the *Work Health and Safety Act 2011* to ensure their business operations are carried out in such a way to minimise the risk of injury in a practicable sense to the worker and coworkers in the workplace.

In these situations, we always recommend employers consult their industrial relations lawyer, who will likely suggest getting assessed by: a registered medical practitioner or a medical specialist to test the worker's fitness for duties; a registered occupational therapist to test for fitness for duties; and/or a registered psychiatrist for fitness for duties within the context of the employer's usual business operations.

Depending upon the outcome of the assessments, the employer may be justified in taking steps to end a person's employment.

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