

NEWSLETTER

Legal Up-Date

August 2003

WELCOME TO LEGAL UP-DATE

Welcome to the first edition of our new newsletter, Legal Up-Date. We intend publishing the newsletter on a regular basis, and hope that the articles will be of interest to you.

If you have questions about any of the articles or if you would like further information, please contact us. We would also welcome your comments and suggestions, either about improving what is presented or about topics that would be of interest to you.

NO MORE ANNUAL RETURNS

As from 1 July 2003, companies are no longer required to lodge an Annual Return with ASIC. Companies must, however, advise ASIC of changes as and when they occur. This is generally done by lodging a Form 484 within **28 days** of the change occurring. Form 484 replaces the following ASIC forms:

1. 203 – Notification of Change of Office Hours or Address of One or More Corporation;
2. 304 – Notification of Change to Officeholders;
3. 207 – Notification of Share Issue;
4. 284 – Notification of Share Cancellation; and
5. 316 – Annual Return of a Company.

The new Form 484 has three sections: A, B and C. These sections can be lodged individually or together, depending on the types of changes you need to notify. There is no lodgment fee if Form 484 is lodged within 28 days of the date of change. If the form is not lodged within that period then, the following late lodgment fees are payable:

- (1) \$65.00 (up to 1 month late); or
- (2) \$260.00 (over 1 month late).

On each anniversary of a company's date of incorporation (the "review date"), the company should also receive an "ASIC extract of particulars" which should contain all relevant information of the company. This statement must be reviewed and any changes

notified to ASIC within 28 days of the review date by lodgment of a Form 484. If the information is correct and up to date, you must notify ASIC simply by

payment of the annual review fee. You need not lodge any further documents with ASIC.

The annual review fee must be paid within 2 months of the review date or late fees will be incurred. The amount of the annual review fee for a proprietary company is \$200.00 and a public company is \$1,000.00.

DOES YOUR CASE HAVE REASONABLE PROSPECTS OF SUCCESS

The Civil Liability Act 2002 came into force on 20 March 2002. The Act has significantly increased the existing obligation on legal practitioners not to provide legal services in circumstances where no reasonable prospect of success exists. The Act requires that legal practitioners (barristers and solicitors) must not provide services in relation to a claim or defence (as the case may be) unless the practitioner believes, on the basis of provable facts and a reasonably arguable view of the law, that the claim or defence has reasonable prospects of success.

The aim of the legislation is to prevent claims being made and defences being raised that are clearly fanciful, vexatious or frivolous. Whether a reasonable prospect of success exists must be determined before commencing or defending an action. Therefore legal practitioners will require proof, (whether in the form of documentation or other proof) to show that the case has merit. Further, the lawyer on the record must sign a certificate stating that the claim or defence has reasonable prospects of success before the document is filed with the court.

A claim or defence has reasonable prospects of success if the claim or defence is not fanciful, or has a real chance of success.

But what degree of success is taken to be the minimal requirement? Unfortunately, the Act does not provide an answer. In any event, whether it is reasonable would depend on all the circumstances of the case in question and is not capable of

determination without a thorough examination of all the relevant facts of a particular matter.

Our advice is always to discuss possible litigious matters over with your lawyer. Your lawyer should assist you in identifying the facts that are necessary to support your claim and in assessing whether there is a reasonable chance of success. If you are on the receiving end of a claim, you must have enough evidence to justify defending the action.

If you have any questions, we will be more than happy to discuss them with you at a time convenient to you.

DEVELOPMENTS IN COPYRIGHT LAW - EMPLOYEE'S MORAL RIGHTS

Recent amendments to the Copyright Act recognise a person's moral rights in copyrighted works. These amendments not only affect people like authors and journalists, but may also have significant implications in an employer/employee relationship. Matters may be further complicated for employers unless an employee's employment contract contains appropriate provisions dealing with the employee's moral rights.

What are Moral Rights?

Moral rights are rights belonging to an author of a copyrighted work. In essence, they comprise the following three rights:

1. a right to be identified or named as the author of the work in question;
2. a right not to be falsely identified as the author of a work; and
3. the right to have the integrity of the work preserved.

The concept of "moral rights" is concerned with the protection of an author's reputation through his or her work. It recognises that an attack on the work may be tantamount to an attack on the author's reputation. Moral rights can only be owned by a person individually and not by a corporation.

The concept of moral rights was established by the 1971 Berne Convention for the Protection of Literary and Artistic Works, but only introduced into the Copyright Act in Australia in December 2001.

Employer/Employee Relationship

In an employment situation, the copyright of all works produced by an employee in the ordinary course of his or her employment belongs to the employer. There is no need for the copyright to be

formally assigned to the employer. However, an employer does not have ownership in relation to the corresponding moral rights in those works as the moral rights belong to the individual who created the work, i.e. the employee. This can create a number of problems for an employer. For example, an employer may have to specifically acknowledge that the particular work was created by the particular employee. Further, an employer is prohibited from making any changes to the employee's work unless the employee gives his or her express consent. This may be problematic if, for example, the employee has already left the employer's service or if there is a dispute between the employer and the employee, whether about copyright or something else.

How to Overcome Employees' Moral Rights Restrictions

Moral rights may not be disposed of (i.e. either assigned or licensed) by the author. However, an author may waive his or her moral rights by giving consent to another person to do an act which would otherwise constitute an infringement of these moral rights. In an employment situation where the employee is likely to create written works, it is therefore imperative that a waiver or consent be built into the employment contract or letter. When a prospective employee accepts an offer of employment, the employee should be asked to sign a counterpart of the employment contract or letter. If the contract or letter contains a waiver of moral rights, it effectively binds the employee to the waiver. The situation is, however, more complex in a consultancy situation.

If you have any questions as to the appropriate wording in either an employment or a consultancy agreement, please contact us for assistance.

OUR NEW CITY PREMISES

We have now settled into our new city premises at Level 5, 23 - 25 O'Connell Street, Sydney. Please feel free to visit us when you have an opportunity; we would be delighted to show you our new offices.

YOUR FEEDBACK

If you have any comments about this newsletter, suggestions for improvement or would like to see any particular areas of law which interest you covered, please drop us a line at:

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