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## MOVED ???

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## WELCOME!

Welcome to our latest issue of **Bradley & Bray in Brief**. I hope that our new readers enjoy this issue as much as I'm sure our regulars will. So take a break, and sit back in a warm place with a nice cuppa and read up on all the latest.

As always, any suggestions as to the content of our newsletter are always welcome, feel free to contact Debbie with those suggestions at any time.

If you would like to receive our newsletter by email (in PDF format) or other information that we feel may be of interest to you from time to time, please send an email to Debbie on [ddavis@bradleybray.com.au](mailto:ddavis@bradleybray.com.au) with a subject line of "newsletter", your name and address and we will be happy to forward all future issues to you by email.

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## NEW BODY CORPORATE GUIDELINES FOR QLD

**Increasing numbers of Queenslanders are moving out of suburban housing blocks to take up residence in units, apartments and flats.**

The Australian Bureau of Statistics (ABS) states that, in Australian capital cities, one in five households were living in flats, units or apartments in 2003-2004.

The ABS also says that over recent decades the number of people living in high-rise housing has increased at a faster rate than the total population.



The increasing popularity of dwelling in units, apartments and flats can be attributed to the attractive lifestyle associated with this type of housing.

Proximity to restaurants, shops and places of employment is a major drawcard for people to take up residence in an apartment.

Aside from the popularity of apartment living, there are some major issues to be aware of before making the move from the suburbs.

Living in buildings that house large numbers of people is completely different to the unrestrictive living on a suburban block. Those who dwell in apartments, flats and units have very

little control over the space of their accommodation.

Most residential blocks have a body corporate committee responsible for major decisions that affect residents. Works such as changing the paint colour or nature of the brickwork on a residential building are decisions that have to be run past the body corporate committee.

Other issues that can arise between residents are noise between apartments, noise travelling upwards from people having parties down below, pets and barbecues on balconies.

Choosing to live in an apartment comes with many terms and conditions, and it is advisable that contracts are read carefully and a legal representative is consulted if necessary.

Queensland Parliament recently passed the Body Corporate and Community Management and Other Legislation Amendment Bill to create legislation that requires body corporate committees to abide by a standard code of conduct.

The legislation amendment is designed to hold body corporate committees more responsible for making decisions on reasonable grounds and setting a stronger framework for them to work within.

The legislation also aims to act as a tool and guide for committees to promote the best interests of the body corporate and disclose any conflict of interest an individual committee member may have.

Talk to us here at Bradley & Bray before signing a contract for close residential living.

# ONLINE SHOPPERS BE WARY

**The ever-increasing popularity of online shopping has brought many associated legal issues to the fore.**

Convenient shopping, wide product ranges and monetary savings are just a few advantages for consumers shopping online.

It is very tempting to shop in the comfort of home or whilst at work, however consumers need to be wary when making purchases on the internet.

The Office of Fair Trading offers a few simple steps that consumers can follow for a safer online shopping experience.

Trawling the internet presents a wide range of different options to complete an intended purchase.

Consumers should only buy from businesses that are familiar and reputable. If possible, contact the company before purchasing products to verify credibility.

Once the credibility of the business is established, it is also worthwhile

to confirm that the product being purchased is legal and will work in Australia. It is also recommended to check for a valid guarantee.



Before committing to a purchase, check that the contract and accompanying details of the purchase are very clear. The delivery details, return policy if the goods are faulty, and which party pays for postage on returns should also be unambiguous before committing to an online purchase.

The internet connects people from all parts of the world and consumers should be cautious of this when purchasing products from web-based businesses. If not checked

out thoroughly, purchasers may be hit with unexpected currency conversions, taxes, customs duties, delivery and posting fees.

One of the pitfalls of online shopping is it provides scammers with easier access to unsuspecting shoppers.

Before making a purchase, find out how personal details are used by the business online and only provide personal details if the website is secure. Online customers should also be given the chance to confirm or reject an order before paying for goods.

Throughout the entire online shopping process, as much documentation as possible should be kept.

Print out the order before sending or submitting it, note down the reference numbers and ask for a tax invoice or receipt.

Upon purchase, check credit card/bank statements against the order and report discrepancies immediately.

Online businesses should only require the basic information for the purchase of goods. Don't provide any additional financial information and look for a closed padlock or 'https' address to ensure that the website is secure.

If any problems do arise, address them immediately and produce the stored documentation of the purchase process. Contact the Office of Fair Trading or relevant industry dispute schemes for help.

Look out for scams – online shopping has a lot of potential benefits but it also provides an easy avenue for scammers. If something seems too good to be true, it probably is. With a little preliminary research and taking into account these tips, online shopping can be a very convenient and enjoyable experience!

## IN BRIEF

### LOAN LAWS EXTENDED

Banks and other lenders will have to continue to provide mandatory comparison rates to clients in accordance with the Consumer Credit (Queensland) and Another Act Amendment 2007.



Under the legislation, lenders and banks have to provide 'hype-free' information about interest rates and charges for a further two years.

The legislation aims to provide those seeking loans with financial information that does not hide true fees and charges.

### INDEPENDENT CONTRACTORS

New laws for independent contractors came into effect early this year.

The laws increase the protection for workers against unfair contracts that compromise entitlements.

Under the Independent Contractors Act 2006, it is now illegal for an employer to disguise an employment relationship as an independent contracting agreement, or to threaten employees to change their status to that of an independent contractor.

The independent contractors law also stops state laws from requiring contractors to be treated as if they were employees.

# CANCELLING THE GYM MEMBERSHIP

**It's that time of year when New Year's resolutions that were initially made with the best of intentions are a mere distant memory.**



Each year gyms undergo an advertising campaign to capitalise on the well-meaning souls who have decided that, 'this will be the year to

get fit'. While those intentions were earnest at the time, by mid-year much of the initial enthusiasm has waned.

Whether a loss of motivation or the slight possibility that local parks have been discovered as a viable alternative venue for exercise, many are looking to cancel gym memberships.



There are a few factors to keep in mind when going through the process of cancelling a gym membership. The original contract should be read carefully to confirm the total cancellation fee incurred, this should be stated clearly in the contact.

Once the amount of the fee is established, put the membership cancellation request in writing so that it is official and documented for reference purposes.

Finally, if the gym membership was being paid for by direct debit, the final date for which money will be drawn from the respective bank account should be checked and confirmed with the gym. If due process is followed gym membership cancellation should be relatively easy, unless getting fit is a New Year's resolution next year!

## TV PIRACY



**Subscription television provider Foxtel has been awarded more than \$1 million in a legal bid to fight subscription television piracy.**

Foxtel sued Western Australia based technology business, Mod Shop, which advertised 'smart cards' or 'card share' processes that could over-ride Foxtel's subscription television technology.

The activities of Mod Shop were deemed illegal by Justice Antony Siopis, who also recognised the importance of such a decision in the fight to beat subscription television piracy and so awarded additional damages.

Since Foxtel initiated legal proceedings against Mod Shop, the Commonwealth Government has made unauthorised use of subscription television signals against the law. Piracy is now a criminal offence under Commonwealth law.

## QLD GOVT TO ASSIST SMALL BUSINESS

**The Queensland Government has announced a Small Business Solutions initiative providing Queensland's small business owners with training support to boost skills and aid the growth of small business.**

The program will be particularly useful to new business owners for researching a business idea and obtaining finance.

"Our new Small Business Solutions Unit will provide new and existing small business operators with the tools to assess their skills needs," Queensland Training Minister Rod Welford said.

"It will develop and offer high quality, flexible programs so that training is available when, where and how small business needs it. Existing business operators will be able to get support to identify their specific

skills needs and tailor programs to meet individual situations."

"There will also be a program for new and intending business owners on researching a business idea, understanding the legal side of business, and obtaining finance."



**Queensland Government**

Small business operators seeking more information can call 1300 406 080, or go to the website, [www.smallbusinesssolutions.qld.gov.au](http://www.smallbusinesssolutions.qld.gov.au).

Talk to us here at **Bradley & Bray** for comprehensive advice regarding the legal issues involved with setting up a small business.

## A CASE IN POINT . . . HONEST TEA

**The Registrar of Trade Marks has awarded Australian company Springleaf Iced Tea the right to use the words 'honest tea' on its labels after a legal battle with a United States-based firm.**

US corporation Honest Tea failed in its bid against Springleaf Iced Tea for the exclusive use of the words 'honest tea' to promote and distribute its products in the Australian market.

The Springleaf Iced Tea company based in Sydney came into existence in 2005, and produces organic iced teas that are distributed throughout Australia. In fact, when Springleaf teas are prepared, it is in the largest pot of tea in the Southern Hemisphere!

The use of the words 'honest tea' by Springleaf on iced tea labels in the Australian market was contested by US firm Honest Tea, which began operation in 1998 and since then has produced a range of iced tea beverages with a particular interest in organic iced tea.

The company distributes products throughout the US, Canada, Japan, France, Mexico, United Kingdom, Switzerland, Singapore, Taiwan, Sweden Costa Rica and the Caribbean Islands bearing the trade mark, 'honest tea'.

Since 1998 Honest Tea has had many opportunities to capitalise on the Australian market with its organic iced tea products. The company also received many requests from retailers and wholesalers to act as distributors for Honest Tea products in Australia. None of these were taken up.

Honest Tea's chairman claimed that, due to the fact that the company's website had been accessible worldwide since 1998, the trademark 'honest tea' was in use in Australia.



Throughout legal proceedings Honest Tea did not produce any actual proof of the sale of their goods in Australia. The company tried to rely on circumstantial evidence to prove that the trade mark was in use in Australia. No measures of reputation of Honest Tea, including, advertisements, sales figures, advertising expenditure or other promotions, were provided as evidence.

The presiding hearing officer of the 'honest tea' case, Don Nancarrow, found that in spite of all the evidence provided by Honest Tea, none of the information qualified the use of the trade mark 'honest tea' by the company in the Australian market.

Honest Tea tried to rely on circumstantial evidence rather than a direct record of commercial sales to establish the use of the trade mark in the Australian market. The outcome of the legal action resulted in Springleaf Iced Tea company being allowed to use the words, 'honest tea'.

The hearings officer said: "A consideration of the trade mark 'honest tea' may bring to mind the phonetically similar word 'honesty' or may conjure up the idea of 'tea that is pure of any additives or impurities', that is to say, 'tea and nothing but tea'. Neither of these ideas, in my opinion, would lead a prospective purchaser to suffer 'deception or confusion' when the trade mark is used on the goods and services nominated by the two companies."

Springleaf cofounder Annie Young commented on the decision: "We use the words honest tea on Springleaf labels because it's made with real brewed tea, not tea concentrates."

"This result lets us get on with the job of growing our business by presenting Springleaf as a real alternative to the sugary drinks pushed by the multinationals."

The Springleaf case was the latest in a string of instances in which large US

corporations had threatened small Aussie firms, including the legal battle over the Ugg boot trademark, according to NSW Small Business Minister David Campbell.

"It is time the Federal Government looked after small businesses in this country by stopping such frivolous actions," Mr Campbell said.

In the wake of the 'honest tea' trademark case, the World Intellectual Property Organisation (WIPO) announced a record number of international trademark applications in 2006, with Australia's applications increasing by just over 29 percent.

### LIGHT'S ON BUT NOBODY'S HOME!

**A German thief broke into a sports club and was arrested after he turned on the floodlights so he could see in the dark.**

The man broke into the club at 3am and also managed to switch on the football pitch sprinkler system.

Police were called to the sports ground after the club's groundsman saw the floodlights from his nearby home.

A police spokesman said: "He had no torch and turned on the first lights switch that he could find, the switch to the floodlights of the club's football pitch."

### WHERE TO FIND US

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