

July 2006

Inside...

Four year old on jury duty 1

...A four year old girl has been called up for jury service in England.

Welcome 1

New QLD Police laws 1

...QLD motorists who attempt to evade police may soon face fines of up to \$15 000.

New food tampering laws 2

...Shopkeepers and retailers now face heavy fines for not reporting suspected food tampering after the Queensland State Government passed new laws recently.

Marriage counsellor sued 2

...A man is suing his marriage counsellor for having an affair with his wife.

Cadbury & Darrell Lea fight over colour 'purple' 2

...Federal Court rules Cadbury does not own the colour 'purple'.

Insurance Broker convicted 3

...A Brisbane Insurance broker was convicted on fraud charges and sentenced to 18mths.

Contracts - What are you signing? 3

...the Office Of Fair Trading has warned that buyers should do their homework before signing property contracts.

Landmark SPAM decision 2

...The 2003 SPAM act shows it has teeth with a conviction in Western Australia.

Holden agrees to refunds 2

...Holden agrees to refunds after clients were overcharged during a recent advertising campaign.



MOVED???

We would appreciate it if you could let us know so that you can continue to receive Bradley & Bray in Brief. Please advise us of your new address by sending us a letter; forwarding an email to info@bradleybray.com.au or simply giving us a call.

FOUR-YEAR OLD ON JURY DUTY

A four-year-old girl has been called up for jury service in England.

Officials sent a letter to Beatrice Ball ordering her to attend a trial at Bristol Crown Court on 5 June, The Sun reported.

Beatrice's mum, Sam, said: "She found it hilarious. Beatrice is bright for her age but this is ridiculous."

"She knows what jury service is because her grandad was recently sent a summons and explained to her what he had to do."

Sam, 33, of Bedminster, Bristol,



contacted officials to explain and Beatrice has now been excused from jury duty.

Civil servants responsible for issuing jury summonses blamed Bristol City Council for the mix-up.

The Court Service said it was sent an old electoral list mistakenly containing Beatrice's name.

EVADE POLICE LAWS TO BE INTRODUCED IN QUEENSLAND

Queensland motorists who attempt to evade police and cause high-speed car pursuits will soon face permanent confiscation of their vehicle, a fine of up to \$15,000 and/or three years' jail.



The Queensland Government recently announced the new laws as part of changes to the Criminal Code under the Police Powers and Responsibilities and Other Acts Amendment Bill 2006. Premier Peter Beattie said the changes to the Criminal Code would make Queensland the first state or territory to introduce evading police as an offence.

"These laws are about safeguarding law-abiding motorists and giving police the power to deal with this minority of drivers who flout the laws and risk others' lives on the road," he said. "The average high-speed chase lasts less than three minutes and most of the people injured or killed are not the fleeing drivers."

The most common reasons for high-speed pursuits are offenders attempting to avoid police after a traffic or driving infringement, and offenders driving a stolen vehicle.

"That's why our legal changes don't just include confiscation of vehicles, but possible jail sentences and substantial fines," Mr Beattie said.

Research by the Crime and Misconduct Commission shows pursuits are most likely to be committed by males under 30 years of age, who are unlicensed and under the influence of alcohol or drugs.

Last year there were 562 police pursuits, including at least one fatality.

WELCOME!!!

Yes, it's that time again! Welcome to our latest issue of Bradley & Bray in Brief. The weather has definitely cooled now and winter is well and truly making it's presence felt and I'm sure you're snuggled up with a nice hot cuppa.

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 with a subject line of "newsletter", your name and address and we will be happy to forward all future issues to you by email.

If you do not wish to receive the newsletter any longer, simply contact us and we will remove you from our mailing list.

Should you receive your newsletter at the incorrect address or more than once, please let us know so that we can amend our records accordingly.

NEW FOOD TAMPERING LAWS

Restaurants, takeaway stores and other food and drink outlets face fines of up to \$15,000 for not reporting suspected or confirmed food tampering, under new laws introduced into State Parliament.

Health Minister Stephen Robertson said the Food Amendment Bill 2006 would better protect the public from food poisoning by compelling all food businesses to report instances of intentionally contaminated food to Queensland Health immediately.

The new laws follow the case of food contamination in Sizzler restaurants earlier this year, which raised concerns about the public safeguards against food tampering.

"Immediately after the incident became known, the Premier and I met with food industry leaders and government authorities to discuss quick and appropriate solutions."

"Like food legislation in other Australian jurisdictions, no mandatory reporting requirements exist, but that is something the State Government is now fixing in Queensland."

"We are doing this with minimal red tape because we are careful not to over-burden businesses with compliance."

Mr Robertson said the amendment would make it clear that reporting of food contamination was mandatory only if there was reasonable suspicion that it was done intentionally.

"The Bill takes into account that incidental and accidental contamination of food is commonplace and procedures are already in place to deal with these occurrences," he said. "Mandatory reporting will apply if foul play is suspected."

To support businesses in meeting their reporting obligations, Queensland Health will provide information and guidance to help prevent and identify food tampering.

Mr Robertson also announced a 24-hour hotline would be established for food businesses to report food tampering as soon as it became known.

"Queensland Health's investigation into the Sizzler incidents was hampered because our public health officers did not have any contaminated food to test," he said. "To ensure there is no delay in carrying out independent food analysis, businesses will be required to retain all of the suspected contaminated food."

Mr Robertson said businesses would also need to comply with other Queensland Health directions covering matters such as, the isolation and handling of food and other equipment that may have been contaminated, the possible evacuation of premises and health advice to consumers.

For more advice on your obligations under these new laws, please contact any of us here at Bradley & Bray.

MARRIAGE COUNSELLOR SUED OVER AFFAIR

A man is suing his marriage counsellor for having an affair with his wife.

The Chicago Sun-Times reported that Scott Buetow, 35, of McHenry County, Illinois, filed a breach-of-contract suit and was seeking more than US\$200,000 in punitive damages from his therapist and the counselling centre where he worked.

Mr Buetow and his wife began seeing marriage counsellor Dan Blair in April 2004 to 'strengthen and stabilise' their 10-year marriage.

However, Mr Buetow claimed that Mr Blair abused his position and had an affair with his wife that resulted in the couple's divorce.

"He [Blair] had an obligation to provide services, and he wilfully abused that for his own benefit," Mr Buetow's attorney, Hans Mast, said.

While providing both joint counselling and individual therapy sessions, Blair allegedly started a secret romantic relationship with Buetow's wife.

Mr Buetow and his 36-year-old wife were granted a divorce earlier this year.

CADBURY & DARRELL LEA FACE OFF

The Federal Court of Australia has ruled chocolate manufacturing giant Cadbury does not own the colour purple or have an exclusive reputation over the colour's use in connection with chocolate.

Cadbury took legal action against Australian-based rival Darrell Lea in 2003 for using a similar shade of purple in the company's store signage, uniforms and product packaging during its Christmas promotions between 2000 and 2004.

Cadbury argued that it had a "substantial, exclusive and valuable reputation" in the use of the colour purple in connection with chocolate and Darrell Lea's use of similar colours had misled consumers into believing that Darrell Lea's products were Cadbury's or that Darrell Lea had an association with Cadbury.

The main focus of Cadbury's case was that the shade of purple it uses in the packaging and marketing of its products distinguishes Cadbury from other competitors.

However, Federal Court judge Peter Heerey noted Cadbury had not consistently enforced its claim over the colour purple.

"Other traders have, with Cadbury's knowledge, for many years used a similar shade of purple.

"Cadbury has not consistently enforced its alleged exclusive reputation," he said.

Justice Heerey also cited Cadbury's 'co-existence agreement' with rival Nestlé, which permitted Nestlé to use purple in its products, such as the Violet Crumble bar.

Justice Heerey concluded that whilst Cadbury and Darrell Lea were both competitors in the retail chocolate market, they each had distinct products and identities, which were sold from different premises under distinctive trade names.

"Darrell Lea is entitled to use purple, or any other colour, as long as it does not convey to the reasonable consumer the idea that it or its products have some connection with Cadbury," he said.

INSURANCE BROKER SENTENCED



A Brisbane insurance broker has been convicted on 14 counts of fraud in the Brisbane District Court.

Peter John Mason, of suburban Morningside, pleaded guilty and was sentenced to 18 months' imprisonment to be wholly suspended for an operational period of two years on all charges.

The charges were a result of an investigation by the Australian Securities and Investment Commission (ASIC) into Mr Mason's conduct when he was director of Allstate Insurance Pty Ltd (Allstate), a registered insurance broking company.

ASIC alleged that between May and October 2001, Allstate received funds from clients by way of premium payments. While the funds should have been forwarded to insurance underwriters, it was proven that Mr Mason failed to do so.

Some underwriters subsequently terminated some of the insurance policies of Mr Mason's clients. These clients were unaware that their policies had ceased. As a result they were potentially left uninsured and at risk. The insurance policies covered motor vehicles, homes and businesses.

In January 2002, ASIC alerted about 740 clients of the situation in writing. At this time, Allstate also went into voluntary administration and subsequently, in February 2002, the company went into liquidation.

CONTRACTS – WHAT ARE YOU REALLY SIGNING FOR?



Buying property is one of the biggest financial commitments that you will make in your lifetime, and the Office of Fair Trading has warned buyers to do their homework before signing anything.

Fair Trading Minister Margaret Keech said buyers put themselves in long-term financial risk by signing a contract without fully understanding its implications.

"A contract is a legal document and you are bound by its terms and conditions," Mrs Keech said.

Mrs Keech offered the following

advice to home and property buyers before signing a contract:

- ensure all items in the sale are included in the contract;
- be aware that real estate agents and developers often prepare their own contracts;
- always take a copy of the contract to discuss with your solicitor before signing, as once signed it is binding;
- all residential sales contracts must have a Warning Statement (PAMD Form 30c) – read this thoroughly;
- shop around for a solicitor – fees are negotiable;

- ensure your solicitor provides you with a completed Lawyers Certification PAMD Form 32a – it will disclose relationships, benefits and people involved in the sale;
- appoint independent service providers such as solicitors, valuers, finance agents and building and pest inspectors for independence in the transaction; and
- don't feel pressured to sign a contract

For more advice and information on buying real estate, please contact us.

LANDMARK SPAM DECISION

The Australian Communications and Media Authority (ACMA) has secured its first successful prosecution under the Spam Act 2003, after the Federal Court found a West Australian based company and its managing director had contravened the Act.

Wayne Mansfield, and his company Clarity1, were found to have illegally sent more than 56 million commercial emails in the 12 months after the Spam Act 2003 was introduced in April 2004. Most of the messages were found to be

unsolicited and in breach of the Spam Act.

Justice Nicholson rejected the company's defence that the recipients of emails had consented to receive them. He further rejected the defence that the company could use harvested lists acquired before the Spam Act commenced to send spam emails at any time.

"The fact that address-harvesting may have occurred at a time when no such prohibition was in the law, does not prevent the application of the provision in its term from the date it came into

force," Justice Nicholson said.

ACMA chairman Chris Chapman said the case should give Australians confidence in the effectiveness of the legislation.

"The receipt of spam imposes significant cost and inconvenience on individuals and businesses by disrupting email delivery, clogging up computer systems, reducing productivity, wasting time, irritating users and raising the cost of internet access fees."

The Federal Court has advised that the determination of penalties will be made at a later date.

HOLDEN OFFERS REFUNDS



GM Holden has agreed to offer refunds to hundreds of consumers who were overcharged during the "You Pay What We Pay" employee pricing offer.

The GM Holden promotion offered all customers who purchased a car between October and December 2005 the same prices as Holden employees.

However, an Australian Competition and Consumer Commission (ACCC) investigation revealed GM Holden employees received discounts that were not available to the general public, including discounts on factory-fitted options and accessories as well as a discounted dealer delivery fee.

At the start of the advertising campaign Holden employees were offered a further special discount of between 25 percent

and 29 percent on select Holden vehicles, which was not available to the general public. The additional employee discounts meant some customers were overcharged by up to \$5,000.

GM Holden believed that the inclusion of fine print qualifications regarding options, accessories and dealer delivery fee limited the offer to the baseline price of the vehicle.

ACCC chairman Graeme Samuel said the ACCC believed the headline statement, "You Pay What We Pay", was so powerful that no qualification in fine print could undo the message it conveyed to consumers.

The ACCC has accepted GM Holden's court-enforceable undertakings to:

- provide written notice to the consumers who purchased vehicles during the promotion and were subject to the special

discount, offering the opportunity to return the vehicle for a full refund of the purchase price including additional charges;

- improve its trade practices compliance and have this reviewed by an independent third party;
- use its best endeavours to comply with any industry standards developed by the ACCC aimed at improving the quality, accuracy and availability of information to customers.

"The undertaking given by GM Holden provides a mechanism for redress for between 250 and 300 consumers who did not receive the special discount," Mr Samuel said.

"It also ensures that GM Holden is aware of its obligations under the Trade Practices Act and has in place policies, procedures and systems to ensure it delivers on promises made in its future promotions."



CHATTERBOX

Join us in welcoming **Hayden Richard Staite** to the Bradley & Bray family. Hayden was born to proud parents Kellie and Paul on 29th April, 2006 weighing in at 8 pounds 1 ounce.

Bradley & Bray is now online! Go to www.bradleybray.com.au for all the latest updates and a brief overview of what's happening at Bradley & Bray Solicitors. You'll find a complete staff listing as well as all our contact details. www.bradleybray.com.au

OUR OTHER OFFICE

Shop 5
Chancellor Park Retail Centre
11-19 Chancellor Village Boulevard
Chancellor Park
Phone: (07) 5445 8256

www.bradleybray.com.au

The information in this newsletter is merely a guide and is not a full explanation of the law. This firm cannot take responsibility for any action readers take based on this information. When making decisions that could affect your legal rights, please contact us for professional advice.