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for life

Welcome to the Winter edition of Legal Insight.

The Danger of Trite Truths

An elderly woman recently discovered the danger of trite truths when she found \$20 lying on the ground in the main street. Picking it up and continuing down the street, she was confronted by young boys who claimed the money belonged to them. The lady simply said, "Finders keepers, losers weepers," and attempted to continue on her way despite the protest of the boys. The situation escalated, and when the police were called, the woman insistently repeated her slogan and refused to return the money. Ultimately, the police charged her with theft by finding.

While the woman's commonly-known maxim does bear a vague relation to finders' rights, it does not accurately present the details of the law. This is normally the case with such clichés/generalisations. In this situation, relying upon a catchphrase was not smart. When in doubt, it is always wiser to get professional advice than to rely upon cute slogans.



New Duties for Incorporated Associations

With the recent spate of high profile court cases involving James Hardie, Centro and other large corporations, the phrase "directors' duties" has appeared frequently in the news. Did you know, however, that if you are a committee member of an incorporated association, you also have legal responsibilities?

While office holders have always had some duties, the Victorian Government is increasing the responsibility and providing

Words to the Wise

**"It's a beautiful day...
Don't let it get away."**

Bono

greater structure around these legal expectations. Passed in April 2012, the *Associations Incorporation Reform Act 2012* will significantly impact the way sports clubs, community organisations, churches and other incorporated associations are governed.

Major changes in the legislation include the following:

- New duty to exercise powers with reasonable care and diligence
- New duty to exercise powers in 'good faith' and for a proper purpose
- New duty to prevent the association trading while insolvent
- New requirements for conducting disciplinary action against members
- Introduction of civil penalties of up to \$20,000 for office holders who breach their duties
- A three-tiered reporting procedure based on the organisation's annual revenue

These are just some of the changes, and the effect of the legislation will be to make the duties of incorporated associations' office holders similar to the legal obligations of corporate directors. The impact upon volunteer committee members will be significant, and while the new Act is expected to commence operation by the end of the year, it could be brought into force as early as 1 August 2012.

Recognising that many of our clients are involved in the leadership and management of incorporated associations, we are planning a complimentary seminar specifically designed to inform community organisation office holders of their duties, rights and responsibilities under the new legislation.

To register your interest for the Incorporated Associations Reform Act Seminar, please contact Tristan at Hutchinson Legal.

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FastFACTS

If you would like to receive an electronic version of Legal Insight, please:

- call Tristan Tottenham of our office on 9870 9870
- write to us at PO Box 450, Ringwood 3134
- send an email to office@hutchinsonlegal.com.au

Why Incorporating Might Be For You

For many community groups, incorporating their association provides important protection for members and allows for the long-term continuity of the organisation. Some of the specific advantages include the ability of the organisation to open bank accounts, enter into agreements, accept gifts and bequests and obtain public liability insurance in its own name. Incorporating an association also protects the members and provides some protection for office bearers from being held personally liable for the organisation's debts and legal obligations.

However, incorporating also brings a new set of requirements, formalities and responsibilities, so you should consider carefully whether it is the best choice for your organisation. Obtaining professional legal advice will help you choose the best structure for your group.



is actually responsible, and who has the power to remedy your situation. Sometimes an authority that *can* help is not best – there may be another body which can help you *more*.

TIP 1: ALWAYS IDENTIFY THE MOST APPROPRIATE AUTHORITY

The Nuclear Enthusiast

Although you might not think a lawyer would say this, you don't need to sue *everyone, every time*. Many situations do not require a full-frontal attack, and ensuring that your response is proportionate to the circumstances can prevent unnecessary escalation. In determining whether to be confrontational or conciliatory, remember that written complaints are more permanent, and therefore generally become 'bigger issues'. A verbal or personal complaint can potentially cause the offending party less 'loss of face', allowing the issue to be resolved quickly and quietly with a more amiable outcome. On the other hand, the permanence of a written complaint can carry greater weight, requiring the authority's attention and demanding response.

TIP 2: MAKE YOUR COMPLAINT APPROPRIATE TO THE SITUATION

The Hearsay Historian

Many confident witnesses have sworn to the accuracy of their recollection. Many confident witnesses have also been wrong. Few things will destroy your negotiation capital as quickly as factual inaccuracy, so keeping a full record of all correspondence is a good idea. You might also keep a log of dates, notes of conversations and photos or samples that might be relevant to your complaint. All of this information will put you in a solid negotiating position when you need to recall your version of the events.

TIP 3: KEEP GOOD RECORDS, AND MAKE SURE YOUR FACTS ARE ACCURATE

If you need to make a complaint, responding accurately, appropriately and to the right person can go a long way to achieving a positive resolution.

Personal note...

"...Mornings of joy give for evenings of tearfulness..." These words which are part of a famous hymn come to mind as we reflect on the passing of a few relatives close to members of the HL team.

This year Paul's father, Martin's mother and mother-in-law and Grant's mother have died. We appreciate the support and sympathy shown.

How ^{NOT} to Make a Complaint

Noisy neighbours. Unreliable internet providers. An uncooperative government agency. While these problems are a reality of life, a large part of how much a dispute affects you lies in how you deal with it. Whether your disagreement is minor or catastrophic, understanding how and to whom to make a complaint can be the difference between a quick resolution or a drawn-out, full-scale war. The following are some ways that you *shouldn't* make a complaint.

The Police Informant

No matter what the situation, some people immediately call the police, or the local council, or the Prime Minister. When you need to make a complaint, however, be sure to do some research and find out who

A handwritten signature in blue ink that reads "Con Nottas".



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FastFACTS

294billion 2,000

The number of emails sent globally per day

Bee species native to Australia

6

Years within which to commence legal proceedings for recovery of unpaid debts in normal circumstances

499,500 60

Australians who are victims of identity theft each year

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Clients should not act only on the basis of material contained in this newsletter because the contents are of a general nature only and may be liable to misinterpretation in particular circumstances. Changes to legislation can occur quickly. Do not act on any of the contents of this newsletter without first obtaining specific advice from a lawyer.