

The National Legal Eagle

Volume 4
Issue 1 *Autumn* 1998

Article 4

1998

Update

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Recommended Citation

(1998) "Update," *The National Legal Eagle*: Vol. 4: Iss. 1, Article 4.
Available at: <http://epublications.bond.edu.au/nle/vol4/iss1/4>

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Update

This is the first appearance of a new, regular, column in *Legal Eagle*. With the cooperation of the Legal Information Access Centre (LIAC) at the State Library, we aim to keep you up to date with what's happening in the legal world. Naturally, we can't hope to be comprehensive (there's always such a LOT happening in the legal world!) but we'll pick out the things we think you'll be interested in and that you need to know.

Workplace and the Law

Sacked apprentices reinstated

Until recently, apprentices at Qantas looked forward to a secure future. They expected that when their apprenticeship was finished they would be given a job. That's what always happened.

Over the last couple of years, however, Qantas has needed to reduce its workforce. Management decided not to offer apprentices a job on completion of their indentures. The apprentices then took their case to the federal Industrial Relations Commission, and won!

Qantas argued that they were entitled to sack the apprentices. Regulations under the Workplace Relations Act, 1996, exclude employees employed for a specific period of time or a specified task from unfair dismissal rules. Qantas argued that the apprentices were engaged for a set period of time for the sole purpose of training, which is a specific task.

The Industrial Relations Commission disagreed. The exact timing of an apprenticeship could not be determined, they said. And while training is a big part of an apprenticeship, it isn't the only part. The Commission decided that, where an employer has led an apprentice to believe that he or she will be offered a job at the end of the apprenticeship, the apprenticeship comes within the terms of the Act. They also said that while an employer is entitled to reduce the size of its workforce, the selection criteria for who will be retrenched must be fair. In this case, it was held to be harsh, unreasonable and unjust to sack people just because they were final year apprentices.

The Commission ordered Qantas to reinstate the apprentices. (*Fetz, Duhigg and Hennessy v Qantas Airways Limited*, AIRC (Ross VP) 17 November, 1997, (ALLR 90-560; (1997) 42 AILR 3-660).

For further reading, see "Hot Topics", No 11, *Industrial Relations*, published by LIAC.

World Order

The Ottawa Treaty

In December, 1997, 121 nations signed the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction. The Convention is based on customary rules of international law which prohibit the use of weapons which do not discriminate between civilians and combatants or which cause unnecessary suffering or superfluous injury.

Anti-personnel mines are all of these things. They are also cheap, small and easy to lay. Unfortunately, they are harder to remove. The result has been widespread suffering and social and economic havoc. Signatories to the Treaty must never use, develop, produce, stockpile or transfer anti-personnel mines or help any other nation to do so. They must also destroy existing stockpiles within four years. Mines in the ground must be destroyed within ten years. In the meantime, every effort must be made to exclude civilians from the areas where they are laid. The Treaty includes provision for mine clearing, mine awareness and rehabilitation of victims.

Mine affected states can get help from other signatory states with all of this.

Further information can be obtained in the website of the International Red Cross, <http://www.irc.org/unicc/icrnew>.

The Family and the Law

B and B

Bob and Barbara (not their real names) were divorced in 1993. Their kids lived with Barbara but saw Bob often. In 1995, however, Barbara met Warren and they decided to marry. Only problem was, Warren lived in Bendigo in Victoria and Bob, Barbara and the kids lived in Cairns. Barbara wanted to move to Bendigo with the kids, but Bob said "No!".

The case ended up before the Full Court of the Family Court. Barbara won. The Court decided that, under the Family Law Act, the best interests of the child remained the paramount consideration in parenting orders. Other considerations are:

- the degree and quality of the relationship between the child and each parent;
- the reason for relocation;
- the distance and permanency of the move;
- the effect on the child on the move.

For more information on parental rights and responsibilities, see *Hot Topics - "Juvenile Justice"*, published by LIAC.

Technological change

Office of Information Technology

The NSW Government has recently announced a range of measures to keep itself abreast of and actively involved in Information Technology. There is a new Minister and an Office of Information Technology and a joint government and business think tank – the Information Technology and Services Alliance. A cabinet sub-committee will coordinate the government’s information technology policies.

NSW has also committed itself to cooperate with the Commonwealth on information technology issues.

The government has even gone on-line with its enthusiasm on *connect.nsw*, “Using the Internet to do Business and Improve our Quality of Life”.

Privacy and the Internet

In March last year, the Council of the Organisation for Economic and Development (OECD) recommended guidelines for Cryptography Policy. It has, over the years, made a number of recommendations and declarations on transborder data flows and privacy and the security of information systems.

Australia has played an active role in the development of

OECD instruments, and has adopted OECD instruments. It has however, failed to introduce laws to meet OECD guidelines or the requirements of the European Union’s Framework (Data Protection) Directive. The Federal Privacy Act applies only to information held by public agencies and to credit reporting.

Last year, despite recommendations from a number of advisory bodies, the Government announced that it did not intend to introduce uniform private sector privacy laws.

In response, the Privacy Commissioner has released a Consultation Paper on proposals for a voluntary code of conduct to meet appropriate privacy standards. The Consultation Paper:

- proposes a scheme to deliver international best practice in fair information practices;
- proposes a uniform national scheme;
- contains a more “plain English” version of the information privacy principle in the Commonwealth Privacy Act, 1988;
- includes mechanisms to ensure compliance, possibly an independent scheme administrator, appeals mechanisms, compensation and other remedies; and
- proposes that the scheme will be led by the Privacy Commissioner.

It is hoped that the scheme will be set up this year.

Law Society Community Assistance

The law Society of New South Wales Community Assistance Service provides assistance to more than 70,000 people every year.

Most people at some stage in their lives need help with the law. Law Society Community Assistance helps people who want to know their legal rights and people who need to know what legal services are available to help them with a particular problem. Community Assistance is also able to help people wanting the service of a solicitor and people needing urgent legal advice.

The Law Society Community Assistance is an Information Service. Telephone talks on the law are currently available and cover the following areas:

Family Law
 Wills and Estates
 Debts and Bankruptcy
 Criminal Law
 Young People and the Law



<http://www.lawsocnsw.asn.au>

The Law Society's
Community Assistance Service
is funded by the
Law Foundation of NSW

Neighbourhood Disputes
 Commercial Law
 Personal Injury matters
 Employment Law
 Lawyer’s Charges and Services

There are a number of talks available in each area. An enquiry officer will help you choose which talks best suit your needs. Many talks are also available outside business hours seven days a week.

You can call the Community Assistance Helpline 9373 7300 (Sydney Metropolitan Area) or FREECALL 1800 357 300 (outside Sydney) for immediate access to:

Assistance from the Department’s enquiry officers about the legal services and other organisations which can best help you,

Telephone talks on the law, or

The latest and most sophisticated solicitor referral database in Australia.



Schools Conflict Resolution and Mediation Competition

The aim and philosophy of SCRAM is to recognise the opportunities for change and progress that can result from conflict and to maximise the ability of students Australia-wide to manage conflict in a way that leads to a positive outcome.

It also aims to acknowledge the increasing use of mediation by courts and the community and to equip students with the skills necessary to participate in a mediation process.

Objectives

The SCRAM objective for students is to create an awareness of their responsibilities when dealing with others, to further personal development, to encourage self esteem and to learn to manage conflict in a productive way.

For the school, SCRAM, will reduce conflict in the school environment, modify aggressive behaviour, reduce tension in the classroom environment and maximise the opportunities for learning for all students.

Within the community, SCRAM will reduce aggressive behaviour resulting from poor conflict management skills, promote open communication to resolve contentious issues, maximise the benefits of co-operative problem-solving and halt the trend towards litigation.

Mediation

SCRAM provides an opportunity for students to develop, refine and practise co-operative problem-solving skills.

Mediation is a structured problem-solving process designed to encourage the parties to identify the issues that are in dispute, consider options and work towards an agreement that will meet the needs of all parties.

The skills that are required for mediation are particularly relevant to personal development. They include active listening, questioning, analysing, empathising, speaking clearly and logically and a lot of creative thinking.

The values that mediation are based on include respect for self and others, valuing differences, personal integrity and a belief that conflict, if handled properly, can result in a change for the better.

While it sounds contradictory to encourage co-operative problem-solving in a competitive framework, it is hoped the tangible rewards offered will encourage students to develop the skills and values needed to be successful in the competition in an enjoyable and effective way.

Competition Structure

The competition is open to Queensland, New South Wales and Victorian students enrolled in Years 9 and 10 or the last two years of junior school.

Each State runs the competition independently and sends its winner to the National Grand Final. The National Grand Final will be rotated between Brisbane, Sydney and Melbourne.

The competition is conducted by a SCRAM Committee comprising two representatives from the Queensland Law Society, the Law Society of New South Wales, the Law Institute of Victoria and the national sponsor, Legalcare. The committee is responsible for the rules of the competition, writing the competition problems, arranging adjudicators and liaising with teachers.

Each competing school will participate in two rounds. Teams will be scored on each round and these two scores are added together. The initial rounds must be completed on or before the date nominated by the SCRAM Co-ordinator and any team who has not completed the mediation by that time will forfeit.

The eight highest scoring teams at the end of each State series will compete in the State Final Series. The Final Series is a knockout competition based on scores. From the schools in the quarter finals four schools with the highest scores are selected for the semi-finals and in the semi-finals the two schools with the highest scores proceed to the State Final. The winner of each State Final will then proceed to the National Grand Final.

If there is more than one school on the eighth position, the school with the highest mediators' score from the initial two rounds will be given the place in the Final Series. If teams are still equal after this criteria has been applied, they will all proceed to the Final. Once the final eight schools are declared, they are all treated as equal.

Prizes

At the State level all students will receive a Certificate of Participation. The State Finalists will receive a school trophy and individual medallions.

At the National Grand Final the prizes for the winning schools are:

1st Prize	\$5,000
2nd Prize	\$3,000
3rd Prize	\$2,000

For further information contact:

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