

Liability is limited by the Solicitors Scheme, approved under the Professional Standards Act 1994 (NSW)

August 2004 Newsletter

This newsletter deals with the new vendor duty, the application of anti-harassment policies to small business and the proposed prohibition on landlords recovering lease preparation costs.

STAMP DUTY

IMPOSITION OF VENDOR DUTY ON DISPOSALS OF PROPERTY

With the introduction of vendor duty (announced by the NSW Government on 6 April 2004 as part of its Mini-Budget), vendors who enter into an agreement to sell or transfer property in NSW on or after 1 June 2004 are liable to pay vendor duty. The duty is imposed at the rate of 2.25% on the dutiable value of the property unless one of the exemptions applies.

Vendor duty is only imposed on transactions involving "land related property" which is defined as:

- land in NSW; or
- a land use entitlement (e.g., ownership of units in a unit trust scheme); or
- an interest in NSW land or a land use entitlement except to the extent that:
 - it arises as a consequence of the ownership of a unit in a unit trust scheme and is not a land use entitlement, or
 - it is, or is attributable to, an option over land-related property.

The exemptions from vendor duty include:

- the principal place of residence;
- farms;
- land on which there is a new building (or a substantially new building);
- vacant land that has been substantially improved by the vendor; and
- the subdivision of a principal place of residence or farm.

There are criteria for each exemption which the vendor must satisfy before the exemption applies. For example, the "principal place of residence" exemption will apply if the vendor has continuously used and occupied a residence for residential purposes for at least 2 years or a total period of at least 3 years in the last 5 years.

Another general exemption is where the dutiable value on sale is not more than 12% of the dutiable value on purchase (there are also reductions if the increase is between 12% and 15%).

Unlike other categories of stamp duty, vendor duty is not necessarily payable within 3 months of a liability arising. For an agreement for sale of land and the transfer in completion of such an agreement, vendor duty must be paid no later than the settlement date. For a declaration of trust,

vendor duty should be paid within 3 months of the liability to duty first arising.

In addition to capital gains tax and GST, a vendor now also has to consider the issue of vendor duty on the sale of an investment property. As a result of the introduction of vendor duty, an investor may have to pay two lots of duty: stamp duty on the purchase and vendor duty on the sale.

Rebecca Chan

Email: rebecca@parrycarroll.com.au

Phone: 8257 3188

EMPLOYMENT LAW

ANTI-HARASSMENT POLICIES – IS SMALL BUSINESS DOING ENOUGH?

A recent decision by the Full Bench of the NSW Administrative Decision Tribunal indicates the answer to this question is "no".

It is mandatory for a small business (up to 40 employees) to have an anti-discrimination policy. But having such a policy is not enough. In order to avoid liability for an employees' conduct (or more appropriately, misconduct), a small business employer needs to take all reasonable steps to prevent harassment. Managers of the business may also be **personally** liable for their conduct.

The NSW ADT decision in *Aniscar v Mondo Consulting Pty Limited* [2004] NSW ADT 143 is a reminder of this obligation. The Tribunal ordered that a small business (with six employees) pay an employee \$5,000 in damages after it found the employer did not take active steps to prevent or deal with sexual harassment. Depending on the facts, the damages can be substantially more.

So what "active steps" can a small business take to attempt to stop or prevent harassment in the workplace? Some suggestions are:

- develop and distribute to employees simple anti-discrimination and anti-harassment brochures;
- set up an appropriate grievance/complaint handling procedures;
- educate managers and employees about their rights and obligations; and
- keep proper records of complaints.

If you need assistance in developing and implementing a policy or have a complaint, we can tailor a strategy to suit your business. Remember, prevention is better than cure.

Lena Banoob

Email: lana@parrycarroll.com.au

Phone: 8257 3131

RETAIL LEASES

PROPOSED PROHIBITION ON LANDLORDS RECOVERING LEASE PREPARATION COSTS

The Government introduced a Bill into Parliament on 5 July which proposes to amend the *Retail Leases Act 1994 (RLA)* to prohibit (with certain exceptions) landlords from recovering "lease preparation expenses" from tenants. A penalty of up to \$11,000 can be imposed if such a payment is made.

The term "lease preparation expenses" is defined as legal or other expenses (except registration fees) incurred by the landlord in connection with the preparation or entering into of a retail shop lease.

Proposed new subsection 14(4) provides that the new provision does not preclude any right a landlord may have to recover a reasonable sum from the tenant in respect of expenses incurred by the landlord in connection with making amendments to the proposed lease requested by the tenant. However, excluded are amendments with respect to the name of the lessee, the term and the rent, amendments in respect of terms a landlord fails to include or omit as agreed

and amendments requested before a tenant's disclosure statement is given.

Proposed subsection 14(5) requires a landlord to provide the tenant with a copy of any account presented to the landlord in respect of lease preparation expenses that the tenant is liable to pay. In effect, landlords will need to attach a copy of a separate solicitor's tax invoice (solely related to the tenant requested amendments which are not excluded) to the landlord's tax invoice to the tenant.

Similar provisions apply in respect of a renewal or extension of a retail shop lease.

The current provisions will continue to apply to a grant, renewal or extension of a retail shop lease that took effect before the date from which the new provisions apply.

The practical effect of the proposed changes will be that landlords will need to review all lease disclosure statement precedents to ensure they are changed when the new provisions come into effect.

The Bill also proposes to remove the provisions in the RLA which currently impose a requirement on a landlord to make available for examination by a tenant a six-monthly written expenditure statement by the landlord on account of outgoings to which the tenant contributes.

Peter Carroll

Email: peter@parrycarroll.com.au

Phone: 8257 3186
