

In the Loop

The Hicks Oakley Chessell Williams Newsletter

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Commercial property - don't be "nabbed" for your "DAB"

OWNERS, landlords or tenants of large commercial office buildings should take notice of the recently introduced *Building Energy Efficiency Disclosure Act 2010* (Cth) (**Act**).

The Act applies to large commercial office buildings, or parts of large commercial office buildings. These buildings are called Disclosure Affected Buildings (**DAB**). An area of a DAB is, unsurprisingly, called a Disclosure Affected Area of a Building (**DAAB**).

A DAB (or a DAAB) is defined as a building (or an area of a building) used or capable of being used as an office and where the net lettable area (**NLA**) is at least 2000m².

The Act applies to owners, landlords, or tenants intending to sublet.

The Act came into force on 1 November 2010 and provides for a 12 month transitional period. During the transitional period those to whom the Act applies will be required to:

- obtain a National Australian Built Environment Rating System (**NABERS**) rating of their DAB/DAAB;
- disclose the NABERS rating to all prospective purchasers and tenants; and
- include the NABERS rating in all advertising for the sale, lease or sublease of the DAB/DAAB.

From 1 November 2011, the scheme proper begins and there will be more stringent requirements.

There are automatic exemptions for:

- new office buildings (less than 12 months old);
- buildings sold through a sale of shares;
- strata titled offices (unless NLA exceeds 2000m²); and
- short, temporary or emergency leases (that are less than 12 months).

Duty to prevent insolvent trading: Guide for Directors

IN July 2010, the ASIC released Regulatory Guide 217 dealing with a director's duty to prevent insolvent trading. This Guide is a must read for all directors as it sets out key principles to help directors understand and comply with their duty under s588G of the *Corporations Act 2001* to prevent insolvent trading.

The Guide can be accessed via the ASIC website www.asic.gov.au (search: Regulatory Guide 217) or under 'Articles' on our website.

Antoinette Daley
Lawyer

Staff news

WE are very pleased to announce the return of Dianne Hodge from maternity leave. Dianne is a valuable member of our Corporate Law division and it's wonderful to have her back.

Furthermore, buildings (or areas of buildings) that may qualify for an exemption include those:

- which are used for police or security purposes;
- where it is not possible to assess energy efficiency;
- where it is not possible to assign a NABERS rating.

It is recommended that legal advice be sought on whether your building, or any part of it, falls within one of the above exemptions.

The critical point to note is that any sale, lease or sublease of your DAB/DAAB will require you to have a NABERS rating. It is our recommendation, whether you have plans to sell your building or not, that you should take action to obtain a NABERS rating.

Failure to have a NABERS rating may cause substantial delay to dealings with commercial property. Similar delays may arise where tenants, such as public companies, require 'green' clauses in leases, in addition to NABERS ratings.

Penalties for non-compliance range from civil penalties to being "named and shamed" on a Non Disclosure Register.

We can help with further information on how to go about obtaining a NABERS rating.

David Levesque
Trainee Lawyer

Summer 2010/2011

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Personal property securities (PPS) reform

PERSONAL property encompasses any form of property other than land or buildings and fixtures that form part of the land, and may include cars, boats, machinery, crops, shares, intellectual property and contractual rights.

Currently each Australian State and Territory has its own laws and registries relating to Personal Property Securities (PPS). However, from May 2011, the *Personal Property Securities Act 2009* (Cth) (Act) provides for a single national scheme governing all types of security interests over personal property, and one national online PPS Register, allowing lenders and businesses to register any security interests.

PPS reform is changing the law and practice for secured financing involving personal property. A number of existing Commonwealth, State and Territory PPS registers will close. Security interests which are currently registered on those registers will generally be transferred to the national PPS Register.

You need to be aware of how the Personal Property Securities Register will affect you or your business if you:

- are an organisation or individual that provides finance secured by personal property or lease personal property or supply goods on a retention of title basis;

- are thinking about buying personal property such as a boat or a car;
- lease equipment; or
- grant a security interest over personal property to a secured party.

Secured parties, buyers and other interested parties can search the PPS Register to find out if a security interest is registered over the personal property. A search will provide national information, so you will be able to find out whether there is any debt or other interest on the personal property anywhere in Australia.

Lachlan Vallance
Lawyer

Gender dysphoria & parental authority

QUESTION of whether a child's parents can consent to a child receiving a medical procedure which would "alter" the child's gender was considered in the recent case of *Re: Bernadette (Special Medical procedure)* [2010] FamCA 94.

The child, Bernadette, was born male in January 1992. In 2007 Bernadette's parents sought the permission of the Family Court for their son to undergo phases 1 and 2 of gender reassignment treatment.

Phase 1 of Bernadette's treatment entailed Bernadette receiving drugs to arrest the on-set of puberty.

Phase 2 of the treatment entailed Bernadette receiving hormonal medical treatment to induce the secondary sexual characteristics of a female.

Bernadette's parents gave evidence to the Court that their child had begun showing "female" behaviour, traits and preferences from the age of 3. Bernadette commenced seeing a child and adolescent psychiatrist in 1998 (at the age of 6) and was continuing to see one at the time of the hearing. In 2004 Bernadette's psychiatrist asserted that Bernadette met the criteria for the diagnosis of Gender Identity Disorder.

In early 2007 the Court granted Bernadette's parents permission to commence phases 1 and 2 of treatment and the matter would return to the Court for periodic judicial monitoring of the progress of Bernadette's treatment.

Later, in 2007, the Human Rights and Equal Opportunity Commission intervened in the proceeding. The Commission asked the Court to make a determination about the following:

- whether transsexualism is a condition which requires medical treatment; and if so,
- whether the proposed treatment for Bernadette was appropriate to treat the condition.

It was submitted by the Commission that if the Court answered yes to both of the above questions, then a decision by parents for their child to have phases 1 & 2 of the treatment for transsexualism did not require the permission of the Court but was within the normal scope of parental authority.

The Court considered the approaches to the issue by British and Dutch Courts.

The British adopt a cautious approach to the treatment of transsexualism in children, allowing puberty to be undergone. (Interestingly, some doctors believe undergoing puberty is necessary to ensure mature brain development in a person.)

Conversely, the Dutch advocate early intervention and parents do not need legal permission for their children to undergo gender reassignment treatments. (This approach is usually based on the belief that children in Bernadette's position may self harm if forced to go through puberty.)

In 2010 the Court handed down its judgment on the Commission's question that parents in general do not have authority to authorize medical treatment of either phase 1 or 2 for children with gender dysphoria.

The Court did not make any findings on the general questions about whether transsexualism is a condition which requires medical treatment.

The Court held that the overriding criterion, when considering an application of the kind made by Bernadette's parents (or any application concerning children), is "the child's best interests". This is assessed on a case-by-case basis and in accordance with the principles of the Family Law Act.

Amanda Rajah
Lawyer

The above article is based on a paper presented by Alice Carter at the Law Institute of Victoria Family Law Conference in November 2010.

With
Season's
Greetings
and
Best
Wishes
for the
New Year
from
all at
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