

In the Loop - Winter 2016

The Hicks Oakley Chessell Williams Newsletter

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Lawyers & Notary

Property & Conveyancing News



We are delighted to introduce you to Lisa Yong, a property lawyer, who has joined our property and conveyancing team.

Lisa speaks fluent Chinese Cantonese and Mandarin and has substantial knowledge of property transactions and can guide both vendors and buyers through their conveyancing transactions.

Lisa was admitted to practice 2013 after graduating from Monash University with a Bachelor of Laws and a Bachelor of Biomedical Science. Lisa completed her legal training at The College of Law.

Holiday Checklist: plane tickets, accommodation...and making your Will

Planning an overseas trip is exciting and the checklist may include: plane tickets, accommodation, adventure tours, books to take, insurance, vaccinations, getting the dog minded, getting the children minded or organising the children's passports as well as your own passports, and making your Will.

At Hicks Oakley Chessell Williams we find that planning a holiday is one of the main reasons for people to finally get around to making their Will.

No one likes to think about dying, however protecting themselves, their families and their assets in case the unthinkable happens seems to come to the forefront of people's minds as they are about to jet off.

Fear of flying is a factor for many people and a series of missing planes and increased terrorist attacks hasn't helped. Some people who have never had a fear of flying pre-children develop one with parenthood. Some would prefer to 'all go down together' rather than die and leave the children without them. Parents jetting off without the kids may start to panic and think about nominating a guardian for the children, just in case.

Holiday Wills

Some people are making Wills that only apply if they die on holidays. Provisions in Holiday Wills typically include what should happen to them if

they die overseas or on the actual flight. They may have specific wishes to be carried out with regards to their funeral arrangements.

Powers of Attorneys

It's a good idea to have these made at the same time. Powers of Attorney will ensure that you have appointed someone to make decisions for you whilst you're away, or if you are unable to make them for yourself when you return.



Don't Leave it to the Last Minute

We advise that it's better to plan your Will a couple of months before your departure

date – giving you peace of mind and reducing the last minute rushing around. Make sure your Will is correctly signed and witnessed before you leave. Once your Will is done, unless your situation changes, it should be good for your next holiday as well.

It's also wise to make sure your family know where copies of your Wills are and who your solicitor is who has the original as well as funeral wishes (as often Wills are not checked until after the funeral).

Once the Wills are made and the children's guardians named, it's time to relax. Enjoy your holiday.

Lachlan Vallance - Principal
Accredited Specialist - Wills & Estates



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If you would prefer to receive our newsletter by email, please email sarah.hicks@hocw.com.au.

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VCAT - A Growing Jurisdiction

Daily we see stories in the press about cases in the Courts of Victoria: Supreme, County and Magistrates Courts. The Courts get most of the publicity, but what about the Tribunal where many more disputes are brought and resolved: the Victorian Civil & Administrative Tribunal (VCAT)?

VCAT finalizes more than 85,000 cases a year. Most of these are disputes. Individuals and small businesses are far more likely to be involved in a VCAT dispute than in a Court proceeding.

VCAT Structure

VCAT has four divisions: Administrative, Civil, Human Rights and Residential Tenancies.

Civil Division

The VCAT Civil Division has three lists: Civil Claims, Building & Property and Owners Corporations. These lists handle a variety of disputes relating to:

- Consumer matters
- Domestic building disputes
- Owners corporation matters
- Retail tenancy disputes
- Property disputes

The rest of this article focuses on the Civil Claims List:

Can I be represented by a lawyer?

Usually the permission of the Tribunal is required before a lawyer can appear. This will ordinarily be granted in more complex matters. Permission would not normally be given where the claim is \$10,000 or less.

Disputes about goods and services

VCAT deals with disputes arising out of the purchase or supply of any goods or services of any value, in Victoria. It also has jurisdiction for claims made under the Australian Consumer Law for misleading conduct and unconscionable conduct and consumer guarantees.

The Tribunal can make a variety of orders, including for payment of money, orders reviewing varying or cancelling contracts, damages for payment of money, declaring unfair terms in a consumer contract and other orders.

Can a party recover costs?

The starting point in VCAT is that each party is to bear their own costs in the proceeding (Section 109 Victorian Civil & Administrative Tribunal Act 1998). However, Section 109 also provides that the Tribunal may order that a party pay some or all of the costs of another party, having regard to various factors including:

- Whether a party has conducted the proceeding in a way that unnecessarily disadvantaged another party (eg, failing to comply with orders or directions, causing adjournments etc).
- Whether a party has been responsible for prolonging, unreasonably, the time taken to complete the proceeding.
- The relative strengths of the claims and whether a party has made a claim that has no tenable basis.
- The nature and complexity of the proceeding.

It is common for costs orders to be made in contested civil claims.

What is required for a mediation or hearing?

Preparation is the key. As a general comment, all relevant documents should be produced and clearly be explained. Witnesses should be at the hearing available to give evidence. Your position should be presented clearly and cogently.

What do I do if I receive a VCAT claim?

You should read the documents carefully and take particular note of any hearing date specified and any requirements to file documents with the Tribunal. Should you wish to seek legal advice, we recommend that you put together a summary of the claim and, ideally, a basic chronology to explain the history. This makes it much easier for the lawyer to understand what has happened and what the issues are.

The above is a basic summary of some aspects of VCAT. The VCAT website has more information www.vcat.vic.gov.au

Please contact Matthew Hicks, on 9629 7411 if you would like any more specific advice

Matthew Hicks - Principal
Accredited Specialist - Commercial Litigation



Should my Spouse and I act as Trustees for our SMSF?

Members obligation - All SMSF members must be either Trustees as individuals or directors of the company acting as Trustee.

Benefits of Corporate Trustee - A Corporate Trustee of a single member fund will only require one director. Corporate Trustees are generally recommended notwithstanding the additional expense in establishment and administrative costs.

The benefits of a Corporate Trustee are usually seen to outweigh the cost disadvantage.

These benefits include:

- a change of individual Trustees requires change of ownership in all documentation every time a change of Trustee occurs. This is not required with a Corporate Trustee if the change is a change of Director(s);
- ownership of SMSF assets by an individual Trustee may be intermingled and mistaken for assets owned by the individual in their own right, particularly with shares or real estate;
- financial records and particularly bank account details may be confused between personal assets and liabilities and trust assets and liabilities.

Tony Oakley - Principal
Accredited Specialist - Business Law