

## AUSTRALIA'S NEW DEFAMATION LAWS

### INTRODUCTION:

At Monahan + Rowell, we seek to keep our clients regularly informed of major changes in the law that may affect you. This is an update on the latest legislation regarding defamation and intellectual property.

What does this legislation mean to you?

### AUSTRALIA'S NEW DEFAMATION LAWS

**A trading company with more than 10 employees is prohibited from bringing a claim for defamation. A Publisher's apology does not constitute an admission of liability and is inadmissible in a Court of Law. Only "the truth" is a defence in this type of action. Damages are capped at \$250,000.00.**

As of 1 January 2007, these are just *some* of the changes that are part of the new uniform defamation laws operating throughout the states of Australia and in the Australian Capital Territory, with the exception of Northern Territory, which is yet to introduce the new legislation.

Australian defamation law has developed through both legislation and the common law, which has led to inconsistencies between the States and Territories. A practical difficulty of the different laws governing defamation was that defamatory publications that were actionable in one State/Territory were not necessarily recognised by another. Further, the offence of criminal defamation varied between the States and Territories.

Briefly, the principal features of the Victorian *Defamation Act* encompass the following landmark reforms:

- Publication of a defamatory matter constitutes a cause of action.

- A plaintiff has a year in which to bring a civil action for defamation and up to three years following publication of the defamatory material.
- A claim for defamation is lost upon the death of the plaintiff.
- Corporations cannot sue for defamation. An individual can commence proceedings (even though the material may also defame the company).
- The distinction between slander (the spoken word) and libel (in print) is abolished – essentially, this means that a claim can be brought for publication of any defamatory material.
- Truth is the only defence to a civil action for defamation.
- Judges alone are responsible for determining the quantum of damages.

### CHANGES TO AUSTRALIA'S INTELLECTUAL PROPERTY LEGISLATION

The main practical implications are set out as follows:-

- Private home-owners will now be able to record a television program to play at another time.

- Music recordings can be moved from one format to another (for example, copying a song from a CD to a digital music player) for private and domestic use.
- Certain material can be converted into another format for private use (eg scanning an owned book) but copyright should always be acknowledged.
- The exceptions for the use of copyright material without the requirement for payment or permission of the copyright owner have been extended to libraries, archives and educational institutions.
- The introduction of criminal sanctions for copyright infringement.
- Circumventing technical protection measures installed by the manufacturer is strictly prohibited. Such offence is punishable by five years imprisonment and/or fines up to \$60,500.
- The owner of a registered trade mark once lapsed, can oppose a trade mark accepted under the prior continuous use provisions of the new Act.
- Incorporated associations can now own collective trade marks.
- Bad faith has been introduced as a basis to oppose a trade mark application.
- All renewal dates should be recorded carefully, as the grace period for bringing a renewal application for a trade mark, after the renewal date has lapsed, has been reduced from 12 months to 6 months.

Please feel free to contact us should you require more information to help you.

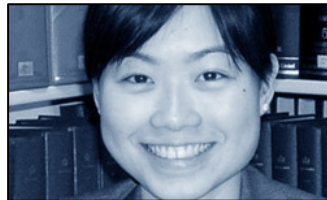
## POINTS OF INTEREST

The auction season has commenced and we would be pleased to assist you with the sale or purchase of your property.

Another year has passed and it may be time to consider your Will, or Power of Attorney. Monahan + Rowell, *the thinking client's law firm*, is here to advise and assist you and your family for your private and business requirements. Please feel free to contact us to discuss your needs and requirements.



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