

COMMERCIAL UPDATE – DECEMBER 2006

1. Christmas Break

The offices of Pullinger Readhead Lucas will be closed from Monday December 25 2006 to Friday January 5 2007.

We will reopen on Monday January 8, 2007. We hope you and your families all have a safe and happy Christmas Break.

2. Users of Information & Communications Technology, Be Aware!

A host of Information and Communication Technology (“ICT”) devices are now an essential part of the way we conduct business: mobile phones, email, hand-held organisers, wireless paging and networks, intranet sites, easy access to the internet and thumb-drives amongst others. These help us operate more efficiently but they can expose our businesses to serious risks.

While some businesses have IT Policies, few have kept pace with changes in the technology, including the significant increase in high-risk technologies such as Personal Data Assistants (fancy mobile phones), and remote access. The accidental or intentional distribution of confidential information, or unauthorised access to a business’s computer network could have disastrous consequences. Abuse of the technology or interference by third parties can also expose a business to liability for breach of confidence, discrimination, harassment, defamation or misleading and deceptive conduct. A critical part of one’s strategy to minimise these risks is to develop and implement an effective Intellectual Property and Information and Communications Technology Policy (IP & ICT Policy).

A comprehensive IP & ICT Policy deals with the protection of intellectual property, and issues such as email use and email disclaimers, internet use, the use of Personal Data Assistants, security of information and copyright, remote and wireless network access, discrimination, sexual harassment and confidentiality. The Policy should comply with the guidelines of the Privacy Commissioner and the provisions of the Privacy Act 1988 (Cth).

Pullinger Readhead Lucas has developed a comprehensive IC & ICT Policy that can be customised for your business at a very competitive price. For further information contact Rob Lister at Pullinger Readhead Lucas.

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3. That's my Name! ... Sure?

There are fundamental differences between business names, company names, domain names and trade marks. These are often confused and the differences misunderstood.

Registering a business, company or domain name does not give any right of ownership or provide protection from competitors using your name. In fact, when registering a new company, a business name or a domain name, you should be careful not to infringe another person's trademark. The fact that ASIC or DOCEP registers the name is no defence to a trade mark infringement claim.

To adequately protect your business and its name, it is necessary to register it as a trademark. A trademark can be a letter, number, word, phrase, sound, smell, shape, logo, picture, aspect of packaging or any combination of these. Registration of a trademark will give you the exclusive right to use, license or sell relevant goods or services in Australia under that name and no other person will be entitled to use your trademark in the marketplace. Protection beyond Australian borders is also possible if you wish to extend the exclusive right to use your trademark overseas. The same applies to your product names and branding.

Whilst anyone can search a trade mark and apply for a trademark online through www.ipaustralia.gov.au, it is important to understand the law and the process and adequately identify and define the classes of goods or services in which you wish to protect your mark. We strongly recommend professional advice to ensure that you do not run into unexpected problems and that you receive maximum protection from your mark. Pullinger Readhead Lucas can assist you with these and all your other intellectual property needs at very competitive prices. For further information contact Rob Lister at Pullinger Readhead Lucas.

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4. New Contaminated Sites Legislation – The Impact on Land Acquisitions

The long awaited Contaminated Sites Act 2003 (“the Act”) came into operation on 1 December 2006. Amongst other things, the Act establishes a formal identification process and public record of contaminated sites. One of the objects of the legislation is to inform the land transaction process so that (in theory) no-one should acquire a contaminated site without knowing it to be contaminated.

From the commencement of the Act the buyer of property in Western Australia will have access to a contaminated sites database managed by the Department of Environment and Conservation (“DEC”). The database will show all contaminated sites, the classification of contamination and the restrictions on the use of the land. Any person can request a basic summary for \$30 or a detailed summary for \$300. A search of this database will become a standard search for conveyancers acting for buyers of land in WA. The DEC has also published a list of activities, industries and land uses which is a useful starting point when undertaking due diligence for any potential land acquisition. Special care needs to be taken if land is being acquired for residential purposes when previous land uses may include orchards and market gardens, petrol stations and mechanical workshops.

While one of the principles of the Act is that “polluter pays” for the cost of cleaning up a site, the responsibility for remediation may fall on the owner of the land irrespective of their knowledge of the contamination when they first purchased the land. This will be the case, for example, where the polluter cannot be identified, found or made to pay.

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5. Disclosure in Small to Medium Mining Entities

ASIC has recently emphasised the importance of listed entities providing timely and accurate announcements to the market, following the release of its report on small and mid-cap miners. The report identified potential concerns about the effectiveness of disclosures by these companies to the market.

ASIC noted that it is reviewing “disclosure patterns and practices in a number of speculative market sectors. Proper communication of information to investors in these sectors is critical because of the widespread use of technical information and industry jargon”.

ASIC went on to note that they are concerned that some entities may be making announcements for “promotional purposes rather than as a means of informing investors, and that this could potentially result in investors being misled”.

A copy of the report can be found on the ASIC website: www.asic.gov.au

6. Other ASIC News

Auditors

ASIC has recently announces that its ongoing audit inspection process will pay particular attention to auditor rotation requirements. As well as continuing to focus on the effectiveness of the audit firms' systems to ensure independence and quality, the next round of inspections will also examine how firms are managing the practical application of the auditor rotation requirements.

Banned Directors

The ASIC has also launched a national surveillance initiative to ensure that company officers banned from managing companies are complying with disqualification requirements and are not involved in the management of companies.

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7. Technical Amendments to Native Title Act

On 7 December the Attorney-General Philip Ruddock introduced into Federal Parliament the Native Title Amendment Bill 2006. The proposed amendments do not affect the right to negotiate procedures and are designed to address issues which have emerged through the practical application of the Native Title Act such as:

- adjusting the application of the registration test in specific circumstances to encourage claimants if they wish to amend claims to decrease the area claimed and remove deficiencies in the claim
- adjusting the information requirements for compensation applications according to the circumstances leading to the application
- removing ambiguities and providing greater flexibility in the provisions relating to Indigenous Land Use Agreements and the right to negotiate
- addressing issues which have emerged in future act notifications, including timing of notices
- clarifying the information to be included in the National Native Title Tribunal's Register of Native Title Claims, and the conditions under which claims are to be removed from the Register, and
- other changes to tidy up identified anomalies.

A copy of the amendment bill is available on the National Native Title Tribunal's website: www.nntt.gov.au.

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For Further Information and Advice

If you would like to subscribe/unsubscribe to the PRL Quarterly Commercial Update, please email us at info@prllawyers.com.au and type “subscribe” or “unsubscribe” in the subject box, as the case may be.

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