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Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Email address: \_\_\_\_\_



POSTAGE  
PAID  
AUSTRALIA



Level 1  
The Reliance Centre  
203-209 Russell Street  
PO Box 149  
Bathurst NSW 2795  
DX 3103 Bathurst  
T 02 6331 2911  
F 02 6331 8957

Branch Office:  
95 Oberon Street  
Oberon NSW 2787  
T 02 6336 1485

**Rod Anthes**  
[r.anthes@kennyspring.com.au](mailto:r.anthes@kennyspring.com.au)  
**Angus Edwards**  
[a.edwards@kennyspring.com.au](mailto:a.edwards@kennyspring.com.au)  
**Kristi McCusker**  
[k.mccusker@kennyspring.com.au](mailto:k.mccusker@kennyspring.com.au)  
**Peter McManus**  
[p.mcmanus@kennyspring.com.au](mailto:p.mcmanus@kennyspring.com.au)  
**David Phoon**  
[d.phoon@kennyspring.com.au](mailto:d.phoon@kennyspring.com.au)  
**Daryl Pike**  
[d.pike@kennyspring.com.au](mailto:d.pike@kennyspring.com.au)

# Summer newsletter

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Welcome to the third Kenny Spring Solicitors newsletter, packed with updates and news on legal issues that affect your personal, business and working lives.

## KENNY SPRING SOLICITORS NEWS

### New faces



Kenny Spring Solicitors continues to grow with two new solicitors joining the team.

Peter McManus specialises in criminal and civil litigation, workers' compensation, debt recovery and bankruptcy. He graduated from the University of Technology Sydney (UTS) and comes to Kenny Spring Solicitors from a Penrith-based law firm. Peter has extensive experience in regional NSW, having spent 20 years working and managing rural properties.



David Phoon specialises in conveyancing, estate planning, deceased estates, and property and commercial matters. Not content with a Law degree, and a background in electronics engineering and software development, David is also studying his Masters of Tax at Sydney University and the Graduate Certificate of Trade Marks at UTS. David has a private pilot's licence and is also a guitarist and jazz pianist.

### Razors away – it's Movember!



Joining the Movember movement, Rod sprouted a fair crop of facial hair, a sight not seen for years.

"I'm bringing the Mo back because I'm passionate about tackling men's health issues and being proactive in the fight against men's depression and prostate cancer," said Rod.

Depression affects one in six men, and most don't seek help, which is a leading

risk factor for suicide. Prostate cancer is also a serious issue, affecting 18,700 Australian men last year. More than 2,900 Australian men died of prostate cancer which is equivalent to the number of women who die from breast cancer annually.

Contact Rod Anthes to donate to his Mo. All donations over \$2 are tax deductible and funds are used to raise awareness, fund research and increase support networks for those men who suffer from prostate cancer or depression.

### Oberon Relay for Life

Kenny Spring Solicitors participated in the Oberon Relay for Life on 27 and 28 September 2008, raising over \$1,500, contributing to the \$50,000 raised over the weekend. Thank you to all participants, and especially those who kindly donated to the team.

A member of the team was on the track for the entire event, which meant that the team covered approximately 200km. Several team members participated in the Survivors and Carers Walk including Wendy Bestwick. Wendy has survived cancer and despite still undergoing treatment inspired the team by completing several laps of the track. Kenny Spring Solicitors will be forming a team for the Bathurst Relay for Life in March 2009, contact Kristi McCusker for more information.



## LEGAL UPDATES

### Equal rights for de facto and same-sex couples

Changes to the *Family Law Act* will see de facto couples, including same sex couples, given access to similar legal rights as married couples, in relation to superannuation benefits, property settlements and spousal maintenance.

The new legislation provides access to the federal family law system, where the future needs of de facto couples will be taken into account in any property settlement. Previously, the separation of NSW defacto couples came under the *Property (Relationships) Act*, which only takes into account the contributions of parties and does not consider their future needs. This means that for two couples in the exact same

circumstances, except that one is married and the other is not, there were substantially different financial outcomes.

The right to spousal maintenance has also been considerably extended under the new legislation, giving a spouse with need a greater opportunity to receive spousal maintenance from the other, provided they have capacity to pay.

The amendments will take effect from 1 March 2009, and will apply to relationships that breakdown on or after that date. For further information on how the amendments may affect you, or for any other family law matters contact Angus Edwards.

## ISSUES

### Who can attend my doctor's appointment?

If you have been injured at work you may need to be involved in the preparation of a Return to Work Program, which is drafted in consultation with your nominated treating doctor, the rehabilitation provider and you. Some rehabilitation providers might want to accompany you to your doctor's appointment however, this is not always necessary and you may have the right to refuse. To find out more, contact Kristi McCusker.

### Calling in the debts

Chasing debtors is never easy, but there are a number of options you can pursue once you have obtained a court judgment against a debtor, including:

- A summons for them to appear before the court and have their financial details examined
- An order to deduct funds from the debtor's wages or bank account
- A court order for the sheriff to seize and sell the debtor's goods, assets and property if the debt is over \$10,000. This won't happen if the debtor chooses to settle the debt, or makes an arrangement with you to pay it off in instalments
- If the debt is over \$2,000, you can issue a bankruptcy notice upon the debtor demanding the debt is settled within 21 days.

### What is the minimum wage under WorkChoices?

The unpopular WorkChoices legislation introduced by the Howard government has left many businesses confused as to which system they now come under. While the Rudd government's changes look likely to begin in 2009, it's important for all businesses to get it right in the meantime, and ensure they understand the existing legislation.

The basic rule of thumb is that a company, or corporation, comes under the federal WorkChoices legislation. Anyone employed by a person, for example sole practitioners or partnerships, and not a company, remains under the state system.

To calculate minimum wages for your employees you need to ensure you are using the correct federal or state legislation. For companies, minimum wage increases are set by the Australian Fair Pay Commission (AFPC). These have generally been slightly lower than increases given by the state commissions. Sick leave has also changed under the federal system, with all employees entitled to 10 days 'personal leave' annually. Personal leave includes sick leave and carer's leave and is accrued monthly, even in the first year of employment.

For employees covered by the state system, to establish the current minimum wage you need to apply the AFPC increases to the state award rates as of 27 March 2006. Sick leave remains unchanged, with employees receiving five days in the first year and eight days a year thereafter.

The most up to date information on minimum wage rates for most awards is the Pay Scale Summaries section that can be found at [www.workplaceauthority.gov.au](http://www.workplaceauthority.gov.au). Contact Rod Anthes for more information on understanding which system you're covered by.

### Underpayment penalties: make sure you're getting remuneration right!

Employers need to be aware of the precise terms of awards or industrial agreements, and comply strictly with them, particularly in the area of allowances and overtime.

It's a common misconception that employees paid more than the award rates are not covered by the award. This is incorrect. Above-award rates ensures compliance with the minimum rate for the standard working week, but goes no further than that. Areas of possible award infringement need to be covered either by a formal workplace agreement, which replaces the award conditions with conditions more suitable to the individual business and also complies with the Fairness Test (soon to become the No Disadvantage Test again), or by other provisions in common law contracts.

Industrial tribunals continue to impose substantial penalties on employers found to have underpaid employees. Recent examples include:

- a motel owner was penalised \$66,000 for paying below the minimum hourly rate and failing to pay annual leave owing to two employees, totalling just over \$14,000
- a transport company was fined \$15,840 for eight breaches of the transport industry award by short-paying an employee overtime, public holiday hours and meal allowances totalling \$7,509.

Any correspondence received from the Workplace Ombudsman regarding underpayments or other alleged breaches of awards or agreements, needs to be treated very seriously. Contact Rod Anthes if you have any questions.

### When a doctor's certificate isn't from a doctor

WorkChoices legislation allows medical certificates to be supplied by a "registered health practitioner", such as optometrists, physiotherapists and pharmacists, rather than only by a medical practitioner.

The Pharmacy Guild of Australia has developed guidelines allowing pharmacists to issue certificates to patients with a

minor ailment, for a period of up to two days off work. Employers do not have to accept certificates issued by pharmacists outside these guidelines.



If you're concerned about the validity of an employee's medical certificate, you can set rules for what is acceptable in your workplace by making provisions in employment contracts or in workplace policies. For more information, contact Kristi McCusker.

### Union rights of entry

While union rights of entry are better defined and somewhat restricted by the WorkChoices legislation (and are likely to remain under the Rudd Government), rights of entry still exist, especially to investigate OH&S issues.

In a recent matter before the Australian Industrial Relations Commission (AIRC), an employer argued that the Transport Workers Union had not provided reasonable grounds for investigation, and had asked to inspect records more broadly than employment records. Union officials had requested access to GPS records and had asked questions about these records which the employer declined to answer. The company argued the union's right was limited to inspection of employment records.

The AIRC held that it was within the power of an authorised representative under the OH&S Act, to require the occupier of premises to provide "such assistance as is reasonably necessary to enable... investigation of the suspected breach," and that could include answering questions. For more information on employer and union rights of entry, contact Kristi McCusker.

### We specialise in a range of areas of the law, including:

Real estate, planning & conveyancing (selling and purchasing property)

Business & company advice, including debt recovery

Insurance disputes • Wills, probate & estate planning • Court cases • Family law

Defacto relationship disputes • Dispute resolution • Employment law • Workers compensation claims

Personal injury matters, including public liability & motor vehicle accident claims • Criminal & police matters

