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## In this issue...

Drink Driving

Lawyers Real Estate

Sorry, ummmmm...

Legislative Changes

BizConnect

Personal News

Welcome to Legal Insight. As the year progresses and we head towards both a State and Federal election there are sure to be promises made and legislative changes that will impact all of us.

## Drink Driving – personal responsibility or blame the licensee?

Hotel proprietors and licensees owe a duty of care to their patrons, but patrons still need to take personal responsibility for any decision to drink-drive. The High Court has examined the issue of drink-driving and duties of hotel proprietors and licensees in a landmark case late last year<sup>1</sup>.

In this case, an intoxicated patron died in a road accident after driving his motorcycle home from the hotel where he had been drinking after work.

The patron arrived at the hotel about 5.15pm and on hearing of police breathalysers in the area made an arrangement that the hotel licensee would keep the motorcycle in the hotel storeroom and hold onto his keys. When the patron was ready to go home, the licensee was to telephone the patron's wife to pick him up.

After drinking for about three hours, the licensee offered to call his wife but the patron refused, insisting the licensee hand over the keys so he could ride the motorcycle home.



<sup>1</sup> C.A.L. No 14 Pty Ltd v Motor Accidents Insurance Board; C.A.L. No 14 Pty Ltd v Scott [2009] HCA 47 (10 November 2009)

## Ancient Wisdom

In Virginia in 1631 profanity was frowned upon in a big way. Habitual users of profanity, if convicted, were fined thirty pounds of tobacco. The penalty for uttering blasphemous words more than three times was being barred from being elected to public office. And a law required clergy to read the clean speech law regularly in churches!

The licensee claimed that the patron was agitated but did not appear drunk and he repeatedly sought assurances from the patron that he was “right to ride”, with the patron responding that he was fine.

The licensee retrieved the motorcycle and the patron drove it away – with fatal consequences. There was conclusive evidence the patron's accident was directly related to his blood alcohol reading of 0.253.

The patron's widow and the Motor Accidents Insurance Board sued the hotel proprietor and its licensee for negligence, claiming they owed a duty of care to the patron which had been breached, resulting in his death.

On appeal the High Court noted, that while licensees do owe a general duty of care to patrons who use their premises, in this case there was no breach of duty by the licensee, as the licensee had asked the patron to let him telephone his wife but the patron refused. The Court considered that the licensee could not have been reasonably expected to physically restrain the patron or refuse him possession of his own property when he resisted.

Further it was decided that even if there was a duty of care that was breached, the breach had to have directly caused the patron's death. On these facts, there was no evidence that even if the licensee had tried to telephone the wife to take the patron home that the wife would have been successfully contacted, responded by attending and that the patron would have willingly left with her.

The case highlights the practical difficulties faced by hotel licensees when dealing with their patrons.

If you would like to receive an electronic version of Legal Insight, please:

- call Tristan Tottenham of our office on 9870 9870
- write to us at PO Box 450, Ringwood 3134
- send an email to [office@hutchinsonlegal.com.au](mailto:office@hutchinsonlegal.com.au)

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## Sorry, ummmm... The legal implications of saying "sorry"

Eric Clapton captured something of the reluctance and frustration many feel in accepting responsibility when they say sorry, in the lyrics to the song "Get Lost" "...Why should I say I'm sorry...there is nothing I can do..."

The problems associated with not admitting a mistake or saying sorry presented a particular problem for those in the medical field. For example, if there had been a mistake made in the treatment of a patient in hospital, the natural instinct of not wanting to admit a mistake had been made was having a detrimental effect upon the future treatment of patients.

The State and Federal Governments of Australia have introduced legislation aimed at encouraging bodies to take responsibility when they have made a mistake. The legislation seeks to allow a party to say sorry without necessarily being liable for damages. The legislation is not universal and given differences between the approaches of different governments, care needs to be taken if you are wanting to apologise without attracting legal liability.



## Legislative Changes

### 1. **Personal Property Securities Act 2009 (Cth)**

A new Register is to be maintained noting any security interest over personal property taken/given by a person.

### 2. **Disability (Access to Premises – Buildings) Standards 2010 (Cth)**

In an effort to ensure people with a disability are not discriminated against by being unable to access new buildings (or new parts of existing buildings) this Standard seeks to clarify how developers can ensure such buildings are accessible for people with a disability. The Standard applies from 1 May 2011 to any new works.

### 3. **Trade Practices Amendment (Australian Consumer Law) Act 2010 (Cth)**

From 1 July 2010 new national product safety regulations will come into force. Further "unfair terms" in standard form contracts between businesses and consumers are prohibited. The enforcement and penalty provisions have also been updated and strengthened.

### 4. **Child Employment Amendment Bill 2010 (Vic)**

Subject to this Bill being passed it is intended to apply from 1 January 2011. The main purpose of this law is to amend the definition of employment to ensure protection for children under the age of 15 years who commence work.

# BizConnect

## Maroondah Business Breakfast Series 2010

Hutchinson Legal are the sponsors for the next BizConnect breakfast, to be held on Wednesday 23 June. The guest speaker for this occasion is Chris Buckingham, CEO of Destination Melbourne. Chris is passionate about the tourism industry and optimistic about the future of Melbourne and Victoria as an outstanding global visitor destination.

His priorities are: The sustainable development of tourism industry, effectively communicating the significance of tourism and ensuring that we grow effective leaders in the tourism industry.

Email [tristan@hutchinsonlegal.com.au](mailto:tristan@hutchinsonlegal.com.au) if you would like to have further information forwarded to you about this event.

## Personal News

We are pleased to welcome Bernie Curtin to the team at Hutchinson Legal.

Bernie has been practising law for 15 years and is also a qualified accountant. He has held senior positions within large companies and comes to us with a unique and varied background. He has a keen interest in Little Athletics and coaching.

Bernie has a very strong background in assisting those who want to buy and/or sell businesses and would be pleased to assist you with any business transaction.

Jen Sinclair who has been working with us for almost four years is now a Law Clerk. If you are buying or selling a property Jen is available to assist you.

HUTCHINSON LEGAL

per Grant Hutchinson & Con Nottas

Tel: (61 3) 9870 9870

Fax: (61 3) 9870 5704

Email: [office@hutchinsonlegal.com.au](mailto:office@hutchinsonlegal.com.au)

PO Box 450, Ringwood 3134.

Visit us at [hutchinsonlegal.com.au](http://hutchinsonlegal.com.au) (Last updated May 2010)

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