

Online shoppers be wary

The ever-increasing popularity of online shopping has brought many associated legal issues to the fore. Convenient shopping, wide product ranges and monetary savings are just a few advantages for consumers shopping online. It is very tempting to shop in the comfort of home or whilst at work, however consumers need to be wary when making purchases on the internet. The Office of Fair Trading offers a few simple steps that consumers can follow for a safer online shopping experience. Trawling the internet presents a wide range of different options to complete an intended purchase. Consumers should only buy from businesses that are familiar and reputable. If possible, contact the company before purchasing products to verify credibility.

Once the credibility of the business is established, it is also worthwhile to confirm that the product being purchased is legal and will work in Australia. It is also recommended to check for a valid guarantee. Before committing to a purchase, check that the contract and accompanying details of the purchase are very clear. The delivery details, return policy if the goods are faulty, and which party pays for postage on returns should also be unambiguous before committing to an online purchase. The internet connects people from all parts of the world and consumers should be cautious of this when purchasing products from web-based businesses. If not checked out thoroughly, purchasers may be hit with unexpected currency conversions, taxes,

customs duties, delivery and posting fees.

One of the pitfalls of online shopping is it provides scammers with easier access to unsuspecting shoppers. Before making a purchase, find out how personal details are used by the business online and only provide personal details if the website is secure. Online customers should also be given the chance to confirm or reject an order before paying for goods.

Throughout the entire online shopping process, as much documentation as possible should be kept. Print out the order before sending or submitting it, note down the reference numbers and ask for a tax invoice or receipt. Upon purchase, check credit card/bank statements against the order and report discrepancies immediately.

Online businesses should only require the basic information for the purchase of goods. Don't provide any additional financial information and look for a closed padlock or 'https' address to ensure that the website is secure.

If any problems do arise, address them immediately and produce the stored documentation of the purchase process. Contact the Office of Fair Trading or relevant industry dispute schemes for help. Look out for scams – online shopping has a lot of potential benefits but it also provides an easy avenue for scammers. If something seems too good to be true, it probably is. With a little preliminary research and taking into account these tips, online shopping can be a very convenient and enjoyable experience!

Cancelling gym membership

It's that time of year when New Year's resolutions that were initially made with the best of intentions are a mere distant memory. Each year gyms undergo an advertising campaign to capitalise on the well-meaning souls who have decided that, 'this will be the year to get fit'. While those intentions were earnest at the time, by mid-year much of the initial enthusiasm has waned. Whether a loss of motivation or the slight possibility that local parks have been discovered as a viable alternative venue for exercise, many are looking to cancel gym memberships.

There are a few factors to keep in mind when going through the process of cancelling a gym membership. The original contract should be read carefully to confirm the total cancellation fee incurred, this should be stated clearly in the contract. Once the amount of the fee is established, put the membership cancellation request in writing so that it is official and documented for reference purposes.

Finally, if the gym membership was being paid for by direct debit, the final date for which money will be drawn from the respective bank account should be checked and confirmed with the gym. If due process is followed gym membership cancellation should be relatively easy, unless getting fit is a New Year's resolution next year!

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Thief botched own robbery

A German thief broke into a sports club and was arrested after he turned on the floodlights so he could see in the dark.

The man broke into the club at 3am and also managed to switch on the football pitch sprinkler system.

Police were called to the sports ground after the club's groundsman saw the floodlights from his nearby home.

A police spokesman said: "He had no torch and turned on the first lights switch that he could find, the switch to the floodlights of the club's football pitch."

Legal briefs:

Loan laws extended

Banks and other lenders will have to continue to provide mandatory comparison rates to clients in accordance with the *Consumer Credit (Queensland) and Another Act Amendment 2007*.

Under the legislation, lenders and banks have to provide 'hype-free' information about interest rates and charges for a further two years.

The legislation aims to provide those seeking loans with financial information that does not hide true fees and charges.

Independent contactors

New laws for independent contractors came into effect early this year.

The laws increase the protection for workers against unfair contracts that compromise entitlements.

Under the *Independent Contractors Act 2006*, it is now illegal for an employer to disguise an employment relationship as an independent contracting agreement, or to threaten employees to change their status to that of an independent contractor.

The independent contractors law also stops state laws from requiring contractors to be treated as if they were employees.

Television piracy

Subscription television provider Foxtel has been awarded more than \$1 million in a legal bid to fight subscription television piracy.

Foxtel sued Western Australia-based technology business, Mod Shop, which advertised 'smart cards' or 'card share' processes that could over-ride Foxtel's subscription television technology.

The activities of Mod Shop were deemed illegal by Justice Antony Siopis, who also recognised the importance of such a decision in the fight to beat subscription television piracy and so awarded additional damages.

Since Foxtel initiated legal proceedings against Mod Shop, the Commonwealth Government has made unauthorised use of subscription television signals against the law.

Piracy is now a criminal offence under Commonwealth law.

High juvenile crime in Queensland

Queensland children under the age of 16 are more likely to be under supervision in the juvenile justice system than any other Australian state.

This figure and other alarming statistics are presented in a report by the Australian Institute of Health and Welfare. The Sunshine State also had the highest number of ten-year-olds under juvenile supervision and, overall, Queensland accounted for more than a quarter of young offenders under community supervision.

The report also found:

- about 90 percent of juveniles in Australia's justice system were released into the community under supervision, while ten percent were in detention
- the number of young people either

on community supervision or in detention fell by about seven percent compared with 2000-01 when national figures were first collated

- 12,649 child offenders were serving some kind of court order in 2004-05. On any given day, an average of 5047 were under community supervision and 784 were in detention
- offenders were most likely to be young men, with males accounting for five times as many community supervision orders and 12 times as many in detention than females
- a third of offenders were indigenous, but among the youngest group (ten to 13-year-olds) two-thirds were indigenous.

New body corporate guidelines

Increasing numbers of Queenslanders are moving out of suburban housing blocks to take up residence in units, apartments and flats.

The Australian Bureau of Statistics (ABS) states that, in Australian capital cities, one in five households were living in flats, units or apartments in 2003-2004.

The ABS also says that over recent decades the number of people living in high-rise housing has increased at a faster rate than the total population.

The increasing popularity of dwelling in units, apartments and flats can be attributed to the attractive lifestyle associated with this type of housing.

Proximity to restaurants, shops and places of employment is a major drawcard for people to take up residence in an apartment.

Aside from the popularity of apartment living, there are some major issues to be aware of before making the move from the suburbs.

Living in buildings that house large numbers of people is completely different to the unrestrictive living on a suburban block. Those who dwell in apartments, flats and units have very little control over the space of their accommodation.

Most residential blocks have a body corporate committee responsible for major decisions that affect residents. Works such as changing the paint colour

or nature of the brickwork on a residential building are decisions that have to be run past the body corporate committee.

Other issues that can arise between residents are noise between apartments, noise travelling upwards from people having parties down below, pets and barbecues on balconies.

Choosing to live in an apartment comes with many terms and conditions, and it is advisable that contracts are read carefully and a legal representative is consulted if necessary.

Queensland Parliament recently passed the Body Corporate and Community Management and Other Legislation Amendment Bill to create legislation that requires body corporate committees to abide by a standard code of conduct.

The legislation amendment is designed to hold body corporate committees more responsible for making decisions on reasonable grounds and setting a stronger framework for them to work within.

The legislation also aims to act as a tool and guide for committees to promote the best interests of the body corporate and disclose any conflict of interest an individual committee member may have.

Seek legal advice from your local solicitor before signing a contract for close residential living.



a case in point . . . Honest Tea

The Registrar of Trade Marks has awarded Australian company Springleaf Iced Tea the right to use the words 'honest tea' on its labels after a legal battle with a United States-based firm.

US corporation Honest Tea failed in its bid against Springleaf Iced Tea for the exclusive use of the words 'honest tea' to promote and distribute its products in the Australian market.

The Springleaf Iced Tea company based in Sydney came into existence in 2005, and produces organic iced teas that are distributed throughout Australia. In fact, when Springleaf teas are prepared, it is in the largest pot of tea in the Southern Hemisphere!

The use of the words 'honest tea' by Springleaf on iced tea labels in the Australian market was contested by US firm Honest Tea, which began operation in 1998 and since then has produced a range of iced tea beverages with a particular interest in organic iced tea.

The company distributes products throughout the US, Canada, Japan, France, Mexico, United Kingdom, Switzerland, Singapore, Taiwan, Sweden Costa Rica and the Caribbean Islands bearing the trade mark, 'honest tea'.

Since 1998 Honest Tea has had many opportunities to capitalise on the Australian market with its organic iced tea products. The company also received many requests from retailers and wholesalers to act as distributors for Honest Tea products in Australia. None of these were taken up.

Honest Tea's chairman claimed that,

due to the fact that the company's website had been accessible worldwide since 1998, the trademark 'honest tea' was in use in Australia.

Throughout legal proceedings Honest Tea did not produce any actual proof of the sale of their goods in Australia. The company tried to rely on circumstantial evidence to prove that the trade mark was in use in Australia. No measures of reputation of Honest Tea, including, advertisements, sales figures, advertising expenditure or other promotions, were provided as evidence.

The presiding hearing officer of the 'honest tea' case, Don Nancarrow, found that in spite of all the evidence provided by Honest Tea, none of the information qualified the use of the trade mark 'honest tea' by the company in the Australian market.

Honest Tea tried to rely on circumstantial evidence rather than a direct record of commercial sales to establish the use of the trade mark in the Australian market. The outcome of the legal action resulted in Springleaf Iced Tea company being allowed to use the words, 'honest tea'.

The hearings officer said: "A consideration of the trade mark 'honest tea' may bring to mind the phonetically similar word 'honesty' or may conjure up the idea of 'tea that is

pure of any additives or impurities', that is to say, 'tea and nothing but tea'. Neither of these ideas, in my opinion, would lead a prospective purchaser to suffer 'deception or confusion' when the trade mark is used on the goods and services nominated by the two companies."

Springleaf cofounder Annie Young commented on the decision: "We use the words honest tea on Springleaf labels because it's made with real brewed tea, not tea concentrates."

"This result lets us get on with the job of growing our business by presenting Springleaf as a real alternative to the sugary drinks pushed by the multinationals."

The Springleaf case was the latest in a string of instances in which large US corporations had threatened small Aussie firms, including the legal battle over the Ugg boot trademark, according to NSW Small Business Minister David Campbell.

"It is time the Federal Government looked after small businesses in this country by stopping such frivolous actions," Mr Campbell said.

In the wake of the 'honest tea' trademark case, the World Intellectual Property Organisation (WIPO) announced a record number of international trademark applications in 2006, with Australia's applications increasing by just over 29 percent.

Small business growth aid

The Queensland Government has announced a Small Business Solutions initiative providing Queensland's small business owners with training support to boost skills and aid the growth of small business.

The program will be particularly useful to new business owners for researching a business idea and obtaining finance.

"Our new Small Business Solutions Unit will provide new and existing small

business operators with the tools to assess their skills needs," Queensland Training Minister Rod Welford said.

"It will develop and offer high quality, flexible programs so that training is available when, where and how small business needs it. Existing business operators will be able to get support to identify their specific skills needs and tailor programs to meet individual situations."

"There will also be a program for new

and intending business owners on researching a business idea, understanding the legal side of business, and obtaining finance."

Small business operators seeking more information can call 1300 406 080, or go to the website, www.smallbusinesssolutions.qld.gov.au.

See your local solicitor for comprehensive advice regarding the legal issues involved with setting up a small business.

Tank installation tips

Queenslanders are being urged to curb water usage in compliance with strict water restrictions, as a result of the severe and prolonged drought.

Consequently, the demand for water tanks has risen dramatically, and Fair Trading Minister Margaret Keech has a few tips to consider when installing a water tank:

- get detailed written quotes, preferably at least three
- check the identity and reputation of the supplier including the ABN and business name registration
- have all aspects of the job included in the quote, such as the site, preparation, installation terms and delivery
- read and understand the terms and conditions of quotes
- keep all receipts and paperwork
- if a plumber is required, make sure the plumber is registered with the Queensland Building Services Authority by calling 1300 272 272.

Steps to a successful collective bargain

Collective bargaining occurs when two or more similar businesses join together to negotiate a deal for the sale or purchase of products or services with a common customer or supplier, according to the Australian Competition and Consumer Commission (ACCC).

Collective bargaining is subject to the *Trade Practices Act*, and early this year the Act was amended to encourage and support collective bargaining by small businesses. The changes brought about a new process of 'notification' that can be cheaper and quicker than the simple authorisation of a collective bargain.

The Act was also changed to include a six-month limit for the ACCC to consider

authorisation applications, and the ACCC now also has the power to waive or reduce the fee on such applications.

The following 11 steps have been developed to make starting a collective bargain a little bit easier:

1. Decide what you want to achieve with your collective bargaining
2. Decide who you want to collectively bargain with – your common customer or supplier
3. Set up your collective bargaining group
4. Plan your collective bargaining application
5. Decide who your representative will be

6. Contact the ACCC
 7. Consult with your customer or supplier
 8. Further consultation with and guidance from the ACCC
 9. Decide on the process and lodgement
 10. Wait for the ACCC's decision
 11. If all clear – go ahead and collectively bargain
- The revised notification process can now take as little as 28 days.
- Consult your local solicitor for more detailed information regarding the legalities involved with putting together a collective bargaining proposal and contract.

New code of conduct to protect potential franchisees

The Australian franchise industry is worth \$130 billion and provides 600,000 of the population with jobs, according to Minister for Small Business and Tourism, Fran Bailey. Deciding to undertake a franchise involves important business decisions and gathering all the appropriate information.

The State Government defines a franchise as an agreement under which a franchisor licences a franchisee to operate a developed method of doing business that is identifiable as being associated with the franchisor. A franchisor generally provides ongoing assistance, guidance and systems in return for a periodic payment of fees and/or purchases from the franchisee. A franchise can occur in two forms, the first being a business format franchise where the whole business concept is licensed, including the name, appearance and method of carrying on the business.

There is also a product franchise where the product is manufactured and/or supplied by the franchisee.

The Franchising Code of Conduct requires franchisors to disclose specific information about their business and to follow specified rules when dealing with potential franchisees.

The Australian Government recently accepted 31 recommendations to review the disclosure sections of the code to improve franchise negotiations.

Under the reforms, prospective franchisees are able to contact past franchisees to ask for details about a franchisor.

"Franchising is an undoubted success story," Ms Bailey said. "But despite its overall success, growing industry concerns on the disclosure of information led me to order the review."

The review aims to enable franchisees to gain as much information about a franchise as possible to make an informed business decision.

"These reforms are about empowering people to make the right business decisions. It will reduce the risks for franchisees by requiring greater disclosure and will help build the long term sustainability of the industry."

"For example, if you were interested in purchasing a franchise, you will now be able to contact a previous franchisee subject to their agreement and ask about a franchisor. Did they deliver what they promised? Were they helpful? Did they help make your franchise a success or a failure?"

The Australian Competition and Consumer Commission (ACCC) lists a few points to be cautious of when investigating a franchise opportunity. Be wary of franchisors who:

- are reluctant to provide information in writing
- are reluctant to give details of other franchisees within their system (required by the code)
- require full up-front payment for the business to be made before any information is released
- claim that by purchasing the franchise large amounts of money can be made quickly and with little effort – that is, if it looks too good to be true.

The Franchising Code of Conduct requires a signed statement made available to the franchisor outlining the extent of legal advice obtained by a prospective franchisee.

Plan well and obtain good advice from your local solicitor when investigating, and before entering, a franchise.

Aussies struggling against high housing prices

Australians are in the midst of record low levels of housing affordability and the situation is having a huge impact on the country's real estate market. Once upon a time it was a matter of when, not if, Australians were going to own their own home. The current real estate market has turned that statement upside down with major implications for the lower end of the housing market.

Capital cities are now too expensive for first home buyers according to the Housing Industry Association (HIA). The price of a suburban block and any real estate that could remotely be classified as 'inner-city' has sky-rocketed, forcing first home buyers to look at real estate in regional areas. To be able to enter the housing market, Australians are being forced to uproot and relocate in accordance with the geographic variance of housing prices. In terms of population growth rate in Australia, regional Queensland is second to Darwin, with an increase of 2.5 percent in 2005 and 2006. The Australian Bureau of Statistics (ABS) has also found that the growth of population in regional Queensland beat the state's capital, with Brisbane only recording a rise of 1.6 percent. Low levels of housing affordability are also contributing to prolonging the rent cycle for many Australians. A report by the Real Estate Institute of Australia (REIA) shows that generation X and Y Australians are stuck in the rent trap and struggling to save a deposit for a first home purchase. This group of Australians may well become known as the Rent Generation, says REIA president Graham Joyce.

"With the erosion of home loan affordability, it is not surprising that home ownership amongst 25-34 year-olds has fallen, and that first home buyers only represent 17.7 percent of total home-buyers financed, well below the ten-year average of almost 22 percent," Mr Joyce said.

To add to the woes of those trying to enter the Australian real estate market, the home loan scenario isn't particularly rosy. The Deposit Power/REIA Home Loan Affordability Report showed that Queenslanders required 36.3 percent of family income to meet average loan repayments in the December quarter. Home loan affordability deteriorated seven percent for the Sunshine State in 2006, according to the report.