

# Macrossan & Amiet Solicitors

news update

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## New Road Rules: Ignorance is no excuse

By Georgina Paterson

Effective from October 2009 the state government has introduced new road rules aimed at providing consistent legislation across all Australian States and Territories.

The key changes include:-

- fog lights - turn off fog lights in clear weather. If you drive with fog lights on in clear weather you risk being fined \$40;
- single centre line - don't U-turn. If you do a U-Turn over a single continuous centre line you risk being fined \$180 and three demerit points;
- seatbelts - all passengers must buckle-up. If you drive with a passenger of any age without a seatbelt or child restraint you risk being fined \$300 and three demerit points;
- wheeled recreational device - if you ride one when and where they are not permitted you risk being fined A\$40.

**Where we've come from and what the law is NOW**

### 1. Fog Lights

Previously the rule referred to rear fog lights only.



Georgina Paterson

Now a driver must only operate front or rear fog lights if driving in fog or other hazardous weather conditions. It is now an offence to use front fog lights in clear weather conditions.

### 2. Centre Dividing Line

Previously, the rules did not explicitly prohibit a driver from performing a U-Turn if there was a continuous dividing line or a continuous dividing line to the left of a broken continuous dividing line.

The new rule makes it clear that a person cannot cross, either;

- A single continuous dividing line; or
- A single continuous dividing line to the left of a broken dividing line to perform a U-Turn.

Continued on page 7

# New Vegetation Management Laws: Your rights and obligations

By Sarah Dennis

The moratorium on clearing high-value regrowth ended 7 October 2009 and new arrangements protecting regrowth took effect from 8 October 2009.

## The Act

Vegetation management is regulated through the *Vegetation Management Act 1999* (VMA) and the *Integrated Planning Act 1997*. These new laws aim to protect vital regrowth areas throughout the State, including Mackay and the surrounding areas, while allowing landholders to continue to manage their property responsibly.

## What regrowth areas are affected?

The Department of Environment and Resource Management's (DERM) website ([www.derm.qld.gov.au](http://www.derm.qld.gov.au)) provides property maps of assessable vegetation. Clearing in areas labelled category X, and all regrowth not shown on the regrowth map is unaffected by the regrowth laws.

High-value regrowth vegetation and regrowth watercourses are now regulated under the vegetation management framework and are shown on the regrowth vegetation map. These areas are considered to be mature native vegetations that has not been cleared since 31 December 1989.

All native vegetation within 50 metres of a regrowth watercourse is regulated in the priority Great Barrier Reef catchments of Burdekin, Mackay Whitsunday and Wet Tropics.

## What type of clearing is exempt under the Act?

Many exemptions apply to the new regrowth regulations, including:

- clearing regrowth vegetation for routine management and essential management e.g. fire management lines, fire breaks and fences
- establishing necessary built infrastructure in areas less than two hectares
- clearing areas of regulated regrowth vegetation for extractive industry within a key resource area or for a significant community project
- burning vegetation to reduce hazardous fuel loads.

The full list of exemptions is contained in the *Guide to exemptions under the vegetation management framework*.

## New Regrowth Vegetation Code

Any clearing within an area identified as high-value regrowth vegetation or a regrowth watercourse, must be carried out in accordance with the regrowth vegetation code, unless the clearing is exempt.

Under the code, clearing can occur in most areas of 'of concern' and 'least concern' regional ecosystems on freehold land. It can also occur in most areas of 'least concern' regional ecosystems on leasehold land for agricultural and grazing purposes.

However the code protects habitat for threatened species, vegetation near creeks and wetlands and on



Sarah Dennis

steep slopes. The code also protects native vegetation up to 50 metres from regrowth watercourses.

## What do landholders need to know?

Landholders wishing to clear vegetation on their property do not need to apply for a permit to clear regrowth vegetation under the code; all that is required is that they notify the Department of Environment and Resource Management (DERM) and follow the requirements set out in the Code.

Landholders wanting to clear regulated regrowth vegetation must submit a completed regrowth vegetation code clearing notification form, to DERM. Landholders are not required to wait for confirmation that the form has been received before clearing is commenced.

## Further information

For further information about new regrowth regulations and the code, landholders should refer to the DERM website, in particular the following links:-

- Vegetation Management Information <http://www.derm.qld.gov.au/vegetation/index.html>
- Landholder's Guide to the Regrowth Vegetation Code [http://www.derm.qld.gov.au/vegetation/pdf/regrowth\\_guide\\_code.pdf](http://www.derm.qld.gov.au/vegetation/pdf/regrowth_guide_code.pdf)
- Regrowth Vegetation Code Clearing Notification Form [http://www.derm.qld.gov.au/vegetation/pdf/regrowth\\_clearing\\_notification\\_form.pdf](http://www.derm.qld.gov.au/vegetation/pdf/regrowth_clearing_notification_form.pdf)

# Unfair Dismissal under the Fair Work Act 2009

By Steven Hales

The Law relating to unfair dismissal for employees employed under the Federal and Industrial Relations system has undergone change since the *Fair Work Act 2009* was introduced on 1st July 2009. Under the *Fair Work Act 2009*, an employee can make an unfair dismissal claim regardless of the business size of its employer so long as the employee has completed a minimum employment period.

The minimum employment period for a business other than a small business is 6 months. The minimum employment period for a small business is 12 months.

The definition of a small business is one, which employs less than 15 full time equivalent employees.

To make an unfair dismissal application an employee must first be covered by the National Workplace Relations System (employed by a public company) and to be eligible to apply.

To be eligible to apply an employee must amongst other things be covered by a modern award or an enterprise agreement if they earn more that \$108,300.00 a year. The Fair Work Australia website <http://www.fwa.gov.au/> provides information for employee interested in finding out whether they are covered by a relevant modern award or enterprise agreement.

An application for unfair dismissal must be lodged with Fair Work Australia in consideration within 14 days of the date of the employee's dismissal. Any late applications may only be

accepted by Fair Work Australia in exceptional circumstances.

On receipt of an unfair dismissal application, Fair Work Australia will advise the employer and allow them an opportunity to respond to the application.

An employer may object to an unfair dismissal application on the basis that: -

1. The applicant was not unfairly dismissed.
2. The application was lodged with Fair Work Australia outside the prescribed time limits.
3. The applicant is not covered by the unfair dismissal laws and is not eligible to make an application.
4. The application is vexatious or has no reasonable prospects of success.

In the event the application is not withdrawn the matter will proceed to a conciliation phase designed



Steven Hayles

to assist employers and employees reach an agreement regarding the application. If the conciliation phase is unsuccessful, the matter will then proceed to either a conference or hearing before a member of Fair Work Australia. A party's right to a lawyer or paid agent appearing on their behalf at either a conference or hearing will only be granted with the permission of Fair Work Australia.

If Fair Work Australia is satisfied an employee was unfairly dismissed then it may order the employee's reinstatement or the payment of compensation to the employee if satisfied that reinstatement is inappropriate. However any compensation ordered will be limited to a maximum of \$54,150.00 and there is no power for Fair Work Australia to order compensation for shock, distress or humiliation.

The screenshot shows the Fair Work Australia website. At the top, there are navigation tabs for 'Fair Work Online', 'Fair Work Ombudsman', 'Fair Work Australia', and 'Contact FWA'. The main header features the Fair Work Australia logo and the phone number '1300 799 675' with operating hours 'Mon - Fri, 9.00am - 5.00pm' and a 'Live help is now open' indicator. A search bar is located on the right side of the header. Below the header, there is a 'Quick links' section with links for 'Search FWA documents', 'eFiling', and 'Forms'. A 'Modern awards' section is also visible, stating that modern awards came into effect on 1 January 2010. On the left side, there is a list of services including Agreements, Annual wage reviews, Awards & award modernisation, Cases & decisions, Dismissals, Dispute resolution, Entry notices & permits, Hearings & conferences, Industrial action, Legislation & regulations, Registered organisations, and Transition to Fair Work.

# New Freedom of Information Laws: How have your rights changed?

By Sarah Dennis

The Queensland Government has recently replaced the *Freedom of Information Act* with the *Right to Information Act 2009* (the RTI Act) and the *Information Privacy Act 2009* (the IP Act), to enable greater proaction and a more routine release of information. These reforms provide individuals with further protection of their private information, as well as more power to access government-held information, unless, on balance, releasing the information would be contrary to the public interest.

Both the RTI Act and the IP Acts allow people to apply for documents containing information. The IP Act creates a right for individuals to apply for their own personal information. The RTI Act creates a right for individuals to apply for all other information. Which Act your application will be dealt with under will depend on the type of information you are seeking.

## What is personal information?

Personal information is information or an opinion about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion. Information does not have to be correct in order to be personal information. Information does not have to contain a name to be personal information.

Simply put, your personal information is information that is about you. It does not have to be sensitive or relate only to your

private life. It could, for example, be information about where you work or where you go to school, or about your business affairs or your work roster.

## What Act is relevant to my application?

Applications for access to information under the RTI Act or the IP Act must be made on the approved form or by contacting the relevant government agency. Section 1 of the approved form asks the applicant to indicate which description most closely describes their application. If you indicate that you are seeking access to:-

1. documents that are non-personal in nature, your application will be dealt with under the RTI Act;
2. personal information relating to yourself or on behalf of another person, your application will be dealt with under the IP Act;
3. documents that contain both personal information relating to yourself or on behalf of another person and may contain the personal information of another person and/or non-personal information, your application will be dealt with under the RTI Act.

For further guidance regarding which Act applies to certain situations, you can contact the Information Commissioner's helpline on 07 3234 7373.



Sarah Dennis

## How much does it cost to apply?

There is an application fee of \$38.00 that must be paid when you apply for information under the RTI Act. No action can be taken on your application until this fee is paid. There may also be charges relating to processing the application and accessing the documents.

For applications under the IP Act, there is no application fee. Remember, though, that Act will only apply where all you have asked for in your application is your personal information. Under the IP Act, there may be charges relating to accessing the documents.

If you ask for other information then your application will be decided under the RTI Act, even if you apply under the IP Act.

## What if I need further information?

It should be noted that this legislation applies to a vast array of situations, and the specific circumstances of each case will be relevant to determining whether access to the requested information is granted.

For further information, you can contact the Office of the Information Commissioner through their website, and/or through the OIC helpline on 07 3234 7373.

*Information for this article has been sourced from the Information Privacy Guidelines, 'A guide for the community' found on [www.oic.qld.gov.au](http://www.oic.qld.gov.au)*

# Small Business Fair Dismissal Code

By Stuart Naylor



Stuart Naylor

Most likely you will have heard or read of the introduction of the *Fair Work Act* by the Commonwealth Government. Most of the provisions commenced on 1 July 2009 with some further changes to take effect from 1 January 2010.

One of the changes introduced under the *Fair Work Act* relates to unfair dismissal. Previously, under the *WorkChoices Legislation* unfair dismissal had been removed in relation to employers with less than 100 employees.

Like *WorkChoices* the *Fair Work Act* does not apply to all employers. Its application is limited to employers who are corporations or incorporated bodies or Commonwealth Government Agencies. The *Fair Work Act* has re-introduced the unfair dismissal remedy to all employers covered by the legislation irrespective of the number of employees.

In conjunction with the *Fair Work Act* the Government has passed a Small Business Fair Dismissal Code. In essence the Small Business Fair Dismissal Code will apply to corporate employers who have less than 15 employees. The effect of the Small Business Fair Dismissal Code is that if small business employers follow the procedures set out in the code then an employee will not be able to establish that their dismissal was unfair. It is therefore very important for small business employers to become familiar with the steps they are required to take to comply with the Small Business

Fair Dismissal Code. Recent experience suggests that the number of unfair dismissal claims being made has increased since the enactment of the *Fair Work Act*. There are other significant changes and employers need ensure they are familiar with the changes and how they apply. Our solicitors can assist with advice in relation to the Fair Work Act and in all employment related matters.

The Small Business Fair Dismissal Code is as follows:-

## The Code

### Summary Dismissal

It is fair for an employer to dismiss an employee without notice or warning when the employer believes on reasonable grounds that the employee's conduct is sufficiently serious to justify immediate dismissal.

Serious misconduct includes theft, fraud, violence and serious breaches of occupational health and safety procedures. For a dismissal to be deemed fair it is sufficient, though not essential, that an allegation of theft, fraud or violence be reported to the police. Of course, the employer must have reasonable grounds for making the report.

### Other Dismissal

In other cases, the small business employer must give the employee a reason why he or she is at risk of being dismissed. The reason must be a valid reason based on the employee's conduct or capacity to do the job.

The employee must be warned verbally or preferably in writing, that he or she risks being dismissed if there is no improvement.

The small business employer must provide the employee with an opportunity to respond to the warning and give the employee a reasonable chance to rectify the problem, having regard to the employee's response.

Rectifying the problem might involve the employer providing additional training and ensuring the employee knows the employer's job expectations.

### Procedural Matters

In discussions with an employee in circumstances where dismissal is possible, the employee can have another person present to assist. However, the other person cannot be a lawyer acting in a professional capacity.

A small business employer will be required to provide evidence of compliance with the Code if the employee makes a claim for unfair dismissal to Fair Work Australia, including evidence that a warning has been given (except in cases of summary dismissal). Evidence may include a completed checklist, copies of written warning(s), a statement of termination or signed witness statements.

## profiles

## Winner of the 2008 Macrossan & Amiet Prize: James Cook University - Nerida Whelan

My name is Nerida Whelan and I have just completed the third year of my law degree at James Cook University.

I was fortunate enough to be awarded the Macrossan & Amiet Prize last year. This prize was awarded to the second year law student from the Mackay region who obtained the highest pass in their second year law subjects. The prize included a \$500 payment and the offer of a paid summer clerkship with the firm, which I was only too glad to have the opportunity to partake in.

With only one year remaining prior to the completion of my law degree, the summer clerkship could not have come at a better time. Law school teaches students the theoretical and conceptual side of the law and while it does this well,

students are rarely exposed to the practical side the job prior to commencing their traineeship on the completion of their degree. As a result, I am finding my time at Macrossan & Amiet very beneficial as it is exposing me to the practical side of law, which is very new and exciting.

I was raised in Yeppoon and call Central Queensland home. My parents are both teachers who have always encouraged me to do well academically and to pursue a career path that I would find fulfilling.

As a child, 'what I wanted to do when I grew up' changed from week to week. However, at the age of 12, I began to watch a television show by the name of Ally McBeal and (embarrassingly enough) my fascination with the law began. This continued with more realistic



Nerida Whelan

exposure during high school when I completed legal studies.

When I finished high school I decided to experience the real world and worked full time in a local pharmacy for two years. During this time, I discovered that I needed to be challenged intellectually at work to keep my job interesting. As a result, I decided to enrol in a law degree to see if the law fitted these criteria, and thankfully it did.

I am interested in all areas of law but have a special interest in family law, criminal law and personal injuries. So far I have enjoyed my time with Macrossan & Amiet and thank the firm for the opportunity.

## Work experience: Hassan Farooq

Hi, my name is Hassan Farooq.

I recently finished my first year of law at James Cook University. Throughout years 11 and 12 I was very conflicted with what I wanted to do. It was a huge life decision which I was not comfortable with, let alone ready to make. I primarily chose law so I can have a number of options available to me. It was a late decision but the right one, in retrospect. As I started university I realised that I had far more free time, so inquisitive about the legal system I would turn up to one of my lecturers and asked if I could get work experience. He was not very helpful and I ended up making arrangements by pleading with small law firms to let me sit in and watch them work.

This arrangement worked for a while and greatly helped me with assignment tasks from the university.

The year went by very quickly and I felt that I needed more exposure into how solicitors conduct their work on a day-to-day basis. My parents are clients of John Formosa and he offered to give me some work experience at Macrossan & Amiet Solicitors. I jumped at the opportunity to get work experience here.

Perhaps the greatest lesson that I learned from working at Macrossan & Amiet is that working as a lawyer is very different from studying. Throughout school and even my first semester of university I thought that if I pass the subject I will be fine. I deliberated that my university life was just hurdles which needed to be passed and forgotten to obtain my degree. How foolish of me. When I arrived at the firm I thought that I had a good grasp of how things are done.

Quite frankly I had no idea what was going on. I had a sudden epiphany - if I did not respect this trade and the vast amount of knowledge that it requires to be competent, not brilliant, but just competent then I will not go very far at all.

This did not really scare me but it gave me a new sense of appreciation for the time I have in university. To not just repeat what my lecturer says but to really think about what I am studying and how to come to a solution through a pragmatic and prudent method. This will mean that I need to go one step further and be more proactive with my studies to achieve this. I am very grateful for my short time working here at the firm and will seize the abundant experience which Macrossan & Amiet has offered.

# New Road Rules: Ignorance is no excuse

Continued from page 1

The penalty is \$180.00 and 3 demerit points (or \$80.00 fine for non-motorised vehicles).

### 3. Seatbelts

Previously, a passenger aged 16 years or older was solely responsible for wearing a properly adjusted and fastened seatbelt - now IT'S THE DRIVER who will be wearing the fine.

The driver of a vehicle is also responsible for ensuring that ALL passengers regardless of age are wearing a properly fastened and adjusted seatbelt.

There is a \$300.00 fine and a 3 demerit point penalty for the driver (as well as the noncompliant passenger).

### 4. Wheeled Recreational Devices

A wheeled recreational device or toy cannot be used on:

- A road with a dividing line or median strip; or
- A road where the speed limit is greater than 50km per hour; or
- A one way road with more than 1 marked lane; or
- On a road at night.

There is a \$40.00 fine for anyone breaching this rule.

### 5. Pedestrians and Walkers

A pedestrian (or those of you doing your 30 minutes a day) must walk facing oncoming traffic - so you don't get hit from behind (especially important for those using a mp3 or Ipod). If you don't - it's a \$40.00 fine!

### **IGNORANCE of the Law is NO EXCUSE**

Section 22(1) of the Criminal Code expressly provides:

*Ignorance of the law does not afford any excuse for an act or*



*omission which would otherwise constitute an offence...*

Lets take a look at the leading High Court case which illustrates this issue - *Ostrowski v Palmer* (2004) 206 ALR 422:-

Mr. Palmer was a commercial fisherman who was convicted of having fished for rock lobsters in a closed zone contrary to fishing regulations. Mr. Palmer had relied on a copy of regulations supplied to him by the Western Australia Office of Fisheries. However the copy given was incomplete and omitted an amendment which closed off the area in which he was apprehended.

In the High Court of Appeal, Mr. Palmer argued that this was a 'Mistake of Fact'. That is, at the material time (he was caught fishing) he was under a mistaken belief, that the material provided to him by the Western Australia Office of Fisheries comprised a complete set of what was required to enable him to determine where he could and could not set his pots to fish for lobsters.

The High Court of Appeal disagreed with Mr. Palmer. It was held that:-

- Mr. Palmer erroneously believed that no law

prohibited him from fishing for rock lobster in that area. It is irrelevant that his belief was induced by the conduct of an Office of Fisheries employee (McHugh J)

- Mistake concerning the "state of things" would have occurred if Mr Palmer had been mistaken as to an *element of the offence*. Such a mistake would have occurred, for example, if Mr Palmer believed that he was not fishing for rock lobster or that he was not in the geographical area where he was
- If a defendant knows all the relevant facts that constitute the offence and acts on erroneous advice as to the legal effect of those facts, the defendant, like the adviser, has been mistaken as to the law, not the facts
- The only mistake Mr. Palmer made was a mistake that resulted from his 'ignorance of the law'.

In other words - ignorance of the law is no excuse (even if you do your best to ascertain the law and act accordingly).

## last word



Kylie Davies

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# Community Consultation: Have your say on law changes and local issues

As we embark on a new decade one thing is for certain, we are bound to see a whole raft of law changes, amendments and repeals.

We endeavour to keep you abreast with the changes that impact on your everyday life, and one thing that I find quite enjoyable while researching current changes is monitoring the proposed changes and having the opportunity to sign petitions and comment on proposed amendments to our laws.

There are a number of different government departments that allow for community consultation, such as the Office of Fair Trading, who currently have

community consultation open on draft Bunk Bed Policies and movable home laws.

On a local level, the Whitsunday Regional Council currently have community consultation available on the Botanic Gardens draft master plan. You can download the plan and comment on it prior to any decisions being made by Council.

It may feel like one person cannot make a difference, but I believe that if you at least have a say, one day your opinion may not go unnoticed.

*Until next month,  
Kylie.*

## Our January chuckle:

**A man walked into a bar with his crocodile and asked the bartender,**

**“Do you serve lawyers here?”**

**“Sure do,”** replied the bartender.

**“Good,”** said the man.

**“Give me a beer, and I’ll have a lawyer for my croc.”**

If you have any queries about any of the articles in this newsletter, please feel free to [email mac@macamiet.com.au](mailto:mac@macamiet.com.au) or [phone 4944 0333 \(Mackay\)](tel:0749440333) or [4948 4500 \(Whitsundays\)](tel:0749484500) to speak directly with the author of the article.