

## Cooling off rights amendments also postponed

The *Consumer Affairs Legislation Amendment (Reform) Act 2010 (Vic)* removed the exception to cooling off rights where a purchaser received independent legal advice before signing the contract. However, the start date for that provision has also been postponed until 30 June 2012 by the *Consumer Acts Amendment Act 2011 (Vic)*. That is, after 30 June 2012 pre-contractual advice to purchasers will not preclude the cooling off period.

## Personal Property Security Reform start date

The Personal Property Security Reform start date now appears to be Monday 30 January 2012. LPLC will shortly email a second bulletin dealing with some of the practicalities for businesses and law firms.

Practitioners are still encouraged to ensure that they equip themselves with a full understanding of the reforms as soon as possible. LPLC's bulletins are available on our website at [www.lplc.com.au](http://www.lplc.com.au).

## Stamp duty payment period reduced

The time to pay stamp duty in Victoria will be shortened from 90 days to 30 days as of 1 April 2012. The Act that brought in the change is *State Taxation Acts Further Amendment Act 2011*, which was assented to on 29 November 2011.

Practitioners should review their current practice for lodging documents requiring stamp duty to ensure they will be able to comply with the much shortened time frame. It would be advisable to insist that clients provide the stamp duty amount before the transaction is finalised to avoid delay.

## More Common GST Hotline queries

Here is another common GST Hotline query. Practitioners are reminded that we still have our GST Q & A on our website, now organised in practice areas making it easier to find the right answer.

**Q: My client is an owner builder who completed his house in 2008 and is now selling. At the time of building the house he was working as a builder for a company, now he runs his own building company. The client claims that he had no intention of selling so quickly but things have changed. Will his intentions at the time of finishing the house or during the building of the house have any bearing on whether GST is payable or not? Or is it plainly that GST is payable?**

**A:** The answer is predicated on the assumption that the house is in the name of the client as an individual and not the client's building company.

Certainly the supply of new residential premises attracts GST, but only where the supplier is registered or required to register for GST and the supply is in the course or furtherance of an enterprise.

The question of the application of GST in this case will be determined by the intention of the client at the time of construction, including the preparatory/planning phase, as well as the actual construction phase: if, at those times, the client intended the residence to serve as his/her own residence, then the supply will not be in the course or furtherance of an enterprise and will not attract GST.

That said, however, the client will have to be prepared to satisfy the ATO that his intention was that the residence would be a private or domestic asset, and anything in the circumstances surrounding the construction giving a contrary impression (such as the claiming of input tax credits in relation to building costs) would present a problem for the client.

If the property was in the name of a company, there would be an inference that the company was engaged in something with a business flavour as the residence would be constructed for the occupation of a third party – after all, a company cannot have a personal residence or private or domestic assets.

## Farm debt mediation process

From 1 December 2011 the *Farm Debt Mediation Act 2011* requires that creditors of farmers offer farmers the opportunity to mediate their debt situation before commencing debt recovery proceedings. The offer must be in writing and the farmer has 21 days to respond. If the farmer does not respond the creditor may commence proceedings as usual.

A note about the changes can be found on the Department of Primary Industry website at [www.dpi.vic.gov.au/agriculture/farming-management/business-management/farm-debt-mediation](http://www.dpi.vic.gov.au/agriculture/farming-management/business-management/farm-debt-mediation).

The note suggests that farmers have someone monitor their mail if they think that there is a likelihood that a creditor may want to bring proceedings over the holiday period and they are going to be away.

Practitioners should be aware of the procedures involved and the tight timeframe for response, in case they receive instructions from farmer clients over the holiday season.

## Conveyancing vigilance when reading contracts

We have recently been given several examples of sale of land contracts with unusual clauses which would have been very easy to miss.

In one example, the contract looked just like the standard form contract in the Estate Agents (Contracts) Regulations 2008 but general condition 2.1 had been changed to read "The vendor does not warrant that these general conditions 1 to 28 are identical to the general conditions ...". In fact the general conditions had been amended by deleting three clauses and altering several others. There were only 25 clauses in the general conditions.

Purchasers' practitioners should not take for granted that the contract of sale they are presented with is in identical terms to the form prescribed in the regulations. Where the contract appears to be in the standard form the warranty in clause two should be read carefully to ensure it has not been changed.

When the new standard form contract was first passed, it was suggested at many of the seminars discussing the contract that it would be preferable to not amend any of the general conditions including the warranty at clause two. Instead the special conditions should be used to make any amendments to the general conditions. We recommend that this is a better course to take than purporting to use a standard form contract that has in fact been altered.

The other contract of concern did amend the general conditions by way of a special condition. It purported to amend general condition 28.4(a) and require the purchaser to provide a charge over all of the purchaser's real estate as security for the 10% deposit. While the amendment is badly worded it is something that purchasers should be alert to.

## Keep your email details current

Individual practitioners who receive In Check via email are reminded to let us know directly when their email addresses change.

You can do this by sending an email to [heather.hibberd@lplc.com.au](mailto:heather.hibberd@lplc.com.au).

LPLC's office will be closed from  
1pm on Friday 23 December 2011  
and opening again on  
Tuesday 3 January 2012.

### WHY RISK MANAGEMENT?

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### LEGAL PRACTITIONERS' LIABILITY COMMITTEE

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