

THE CONDUIT

19
SUMMER



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CALENDAR DATES

December

Monday 9th

Monday 23rd

Wednesday 25th

Thursday 26th

FB Live: Conveyancing Q&A

Christmas Closure

Christmas Day

Boxing Day

January

Wednesday 1st

Monday 6th

Sunday 26th

Monday 27th

Tuesday 28th

New Year's Day

Coutts is back into business

Australia Day

Public Holiday

School Zones back into effect

February

Monday 3rd

Friday 14th

Wills Express Night

Valentine's Day

A MESSAGE FROM ADRIANA



Dear All,

The Festive Season is just around the corner, literally, and as the year draws to a close, I would like to take this opportunity to thank you, our clients and our community, for your ongoing support to Coutts.

I would also like to take the time to say thank you to my staff, I truly appreciate the tremendous time, energy and commitment in which you put in to your work.

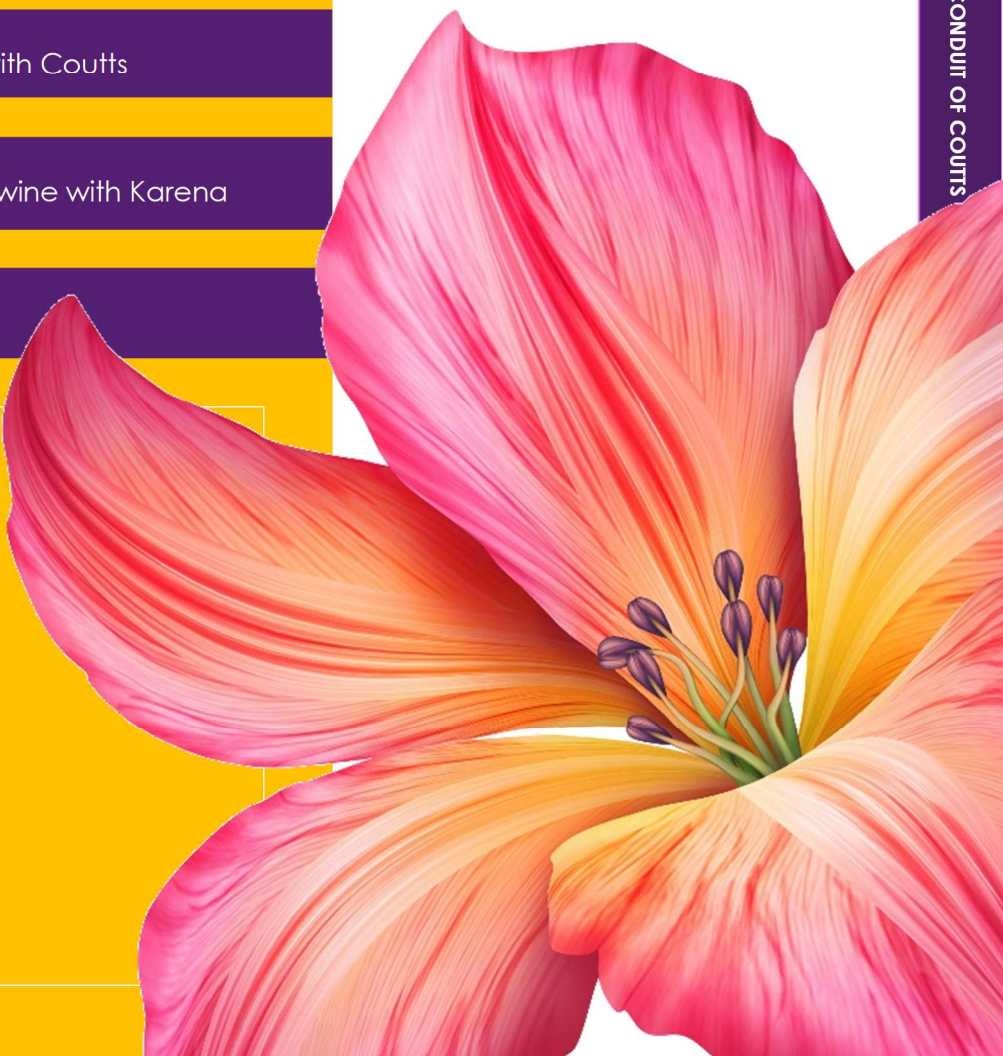
To our clients, our last day for this year will be Friday 20th December and our office will reopen on Monday 6th January 2020.

Thank you again for all your support in 2019, on behalf of my team and I, we wish you all a very Merry Christmas and a Happy New Year.

We look forward to seeing you in 2020.

Yours Sincerely,

Adriana.



The First Home Buyers First Home Loan Deposit Scheme



Carina Novek
Property Manager

From 1st January 2020, the First Home Loan Deposit Scheme will commence. This scheme is aiming to help first home buyers enter into the property market sooner by providing a Government guarantee that allows the first home buyer to purchase a home with a deposit of only 5%.

The scheme means that the additional amount required to reach a 20% deposit will be guaranteed by the Government, which ensures that the borrowers will not need to pay lender's mortgage insurance, giving first home buyers a saving of up to \$10,000.00. The support from the



Government will stay in place for the life of your loan.

An income threshold will apply to this scheme. You qualify if you are a single earning up to \$125,000.00 or a couple with a combined income of up to \$200,000.00. You must also both be first home buyers.

There is a catch! This offer is only open to a maximum of 10,000 loans every year – so get in quick!

Bidding at Auction? Then our guide is for you.

Bidding at an auction can be an overwhelming thought if you have not purchased property in this way before. So we thought we would give you our tips and tricks to make sure that you bid right.

1. **Pre-Approval** - Speak to Mortgage Broker or Bank to obtain pre-approval.
2. **What happens at an auction?** Attend other auctions to see how an auction is run
3. **The Right Property** - Find a Property you are interested in and attend the open home – ask the agent for a copy of the Bidder's Guide.
4. **Get the Contract** - Request a copy of the Contract for Sale and send it to your Licensed Conveyancer for review.
5. **Negotiating** - Similar to a private treaty purchase you have the opportunity to negotiate the Contract. The weeks leading up to the auction is when this must occur. If the Contract was successfully negotiated, then your Licensed Conveyancer should give you a copy of the requests and the vendor's solicitors response to take with you for reference.
6. **Inspect the Building** - Arrange a Pest and Building Inspection, while this cost is not refundable is you

are not successful at auction it is a small price to pay for peace of mind if you are the new owner of the Property

7. **Deposit** - Arrange your deposit to ensure you are prepared if you are successful. Your options are:
 - 10% cash deposit (unless a lesser deposit has been previously negotiated);
 - Deposit Bond. A deposit bond can be obtained through your mortgage broker. When related to an auction purchase a deposit bond cover you for 10% of your maximum intended bid. If you intend to use a deposit bond you need to ensure your Licensed Conveyancer has received approval for this from the vendor's solicitor.
8. **Time to make a move** - Register to bid by contacting the agent prior to the auction.
9. **Ready Set Bid** - Make the highest bid!
10. **Make it yours** - Now is the time you sign the Contract for Sale and plan to pay the deposit.



Kylie Fuentes
Licensed Conveyancer

Unfairly Dismissed?

Sometimes it's the process not the action.



Karena Nicholls
Partner

How can it be that an employee who has engaged in misconduct warranting dismissal be successful on an unfair dismissal application?

A fly in fly out female mineworker played a prank by placing a sex toy together with butter knives inside a male colleague's hand luggage. When airport security opened the bag, she filmed it on her phone. Whilst this was being investigated, she then appeared in a photo with two other female colleagues who had unbuttoned their uniform tops and bared the top their breasts whilst bending forward.

The employer a BHP subsidiary proceeded to summarily dismissal.

The employee lodged an unfair dismissal claim arguing that it was extremely disproportionate, and that the employer had not applied the disciplinary policy consistently as the other employees in the photo were not dismissed.

What did the FWC say?

- That the employer did have a valid reason to dismiss as she had breached the company's values of respect and integrity.
- That the selfie incident alone could have been dealt with by a written warning letter.
- That the employer failed to adhere to the BMA Guideline to Fair Play policy ("guidelines") and was obligated to follow them.
- That although the employer had a valid reason to dismiss the employee the failure to follow the guidelines made the dismissal unfair.

What did the employee receive?

- Reinstatement of employment is the preferred but in this case the Commissioner thought it would be inappropriate because of loss of trust and confidence she therefore ordered the employer pay 10 weeks wages which was then reduced by 50% for misconduct.

What can employers learn?

- You must follow the guidelines, policy & rules when it comes to dismissal. A failure to do so may result in a successful unfair dismissal claim.
- If you are going to dismiss an employee it is always best to get advice.



Oh Oh Oh! Flight Centre pays \$252k penalty for a Christmas and Easter promotions gone wrong.



Amanda Olic
Senior Associate



The Australian Competition and Consumer Commission (ACCC) has issued Australia's largest travel agency with two infringement notices for its misleading online and newspaper advertisements which promoted holiday vouchers during the 2018 Christmas and 2019 Easter seasons.

Flight Centre offered \$250 vouchers to consumers who spent \$1,500 on a holiday package with Flight Centre. These vouchers could be redeemed when booking their next holiday with the travel agency.

The consumer regulator alleges that Flight Centre's advertising was misleading as it failed to make an important disclosure. The travel agency's promotion failed to disclose that consumers were required to spend another \$5,000 on their next holiday booking in order to redeem the voucher.

The ACCC decided that Flight Centre breached the Australian Consumer Law and mislead consumers.

Ms Court said "businesses are warned that the terms and conditions of any deal or promotion must be prominent, so that consumers understand what is involved in redeeming the offer."

Over 35,000 consumers received these vouchers. Although Flight Centre attended to payment of the \$252,000 fine, this payment does not constitute an admission of liability under Australian Consumer Law.

Flight Centre has since waived the requirement for consumers to spend at least \$5,000 to redeem the voucher and extended the period in which the 2018 Christmas promotion vouchers can be redeemed from 30 June 2019 until 31 December 2019. Likewise, the 2019 Easter promotion has been extended and redeemable 31 December 2019.

Water Pollution: Water and Fuel Never Mixes

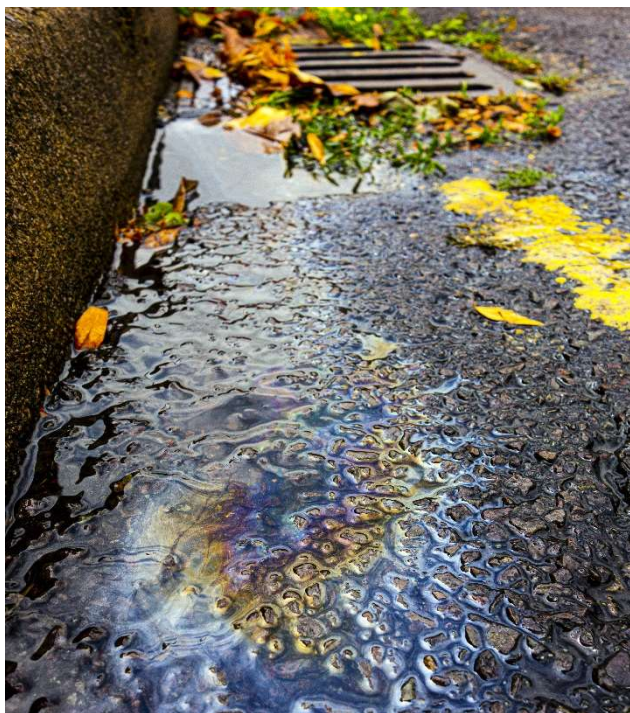


Nichole Orr
Lawyer

Putting the wrong fuel into your car. We probably all know of someone whose done it or maybe you've done it. It's a horrible and costly mistake to make. What do you do?

Putting the wrong fuel into your car. We probably all know of someone whose done it or maybe you've done it. It's a horrible and costly mistake to make. What do you do? Drive? Mix it with the correct fuel? Call a mechanic or drain it yourself? Then what do you do with fuel? One answer - do not dump the fuel down a drain!

This was the decision confronting a normally law-abiding citizen. Unfortunately, the decision he made landed him before the Local Court facing a maximum penalty of 1,000 penalty units, \$110,000.00, under Section 215 of the *Protection of the Environment Operations Act 1997*.



Legislation

The Defendant was prosecuted under Section 120 of the *Protection of the Environment Operations Act 1997* – Prohibition of pollution waters.

Background

Late last year returning from a family holiday the Defendant stopped off to refuel. Using his wife's car, probably distracted, not thinking he used the incorrect fuel. Innocent mistake. But that's where

his innocence stops. Instead of calling a mechanic or disposing of the fuel in a lawful manner he elected to push the vehicle over a storm water drain and dump the fuel. This particular storm water drain led into a river.

Unbeknown to the Defendant his actions were being photographed by a member of the community who then reported it to Local Council. Local Council investigated the incident and fined the Defendant. The Defendant elected to have the matter heard in court. Despite electing to attend court, the Defendant decided to enter a guilty plea.

Prosecuting the Offence: Matters to take into consideration

Section 241 of the *Protection of the Environment Operations Act 1997* sets out the matters which are to be taken into account when sentencing for offences committed under the Act. These include:

- (a) the extent of the **harm caused or likely to be caused** to the environment;
- (b) the **practical measures** that may be taken to **prevent, control**, abate or mitigate that harm;
- (c) the extent to which the person who committed the offence could reasonably have **foreseen the harm** caused or likely to be caused to the environment by the commission of the offence;
- (d) the extent to which the person who committed the offence had **control over the causes** that gave rise to the offence;
- (e) whether, in committing the offence, the person was complying with orders from an employer or supervising employee; and
- (f) other matters that the **court considers relevant**.

The take home lesson

Upon reflection, the most challenging aspect of prosecuting this offence was to shift the mindset that only corporations can face large penalties. This prosecutor can recall clearly the silence that fell in the courtroom when asked by the Magistrate what the maximum penalty is for this offence. It's very high - \$110,000.00 high. If you were to take a poll, it's not what most people would guess. The figure probably came as a shock to the unrepresented defendant as it did to the legal practitioners in the courtroom, who all looked down when the Magistrate was looking for a volunteer to assist the defendant.

But this figure is what the community expects. A maximum fine needs to deter, it needs to make people stop and think. It needs to set a standard. Of course, the defendant was not fined anywhere near that amount. But every person in that court learnt a valuable lesson.

The New Strangulation Laws in NSW

According to the Australian Bureau of Statistics, between 80 to 100 Australian women die each year at the hands of their male partners. In domestic violence situations, strangulation is considered as a red flag for serious future violence and can even be an indicator for a future fatal incident. NSW's homicide statistics show that a quarter of all murder victims had previously been a victim of strangulation prior to their death. Research has shown that women who have previously been strangled by their partner are 8 times more likely to be killed by that partner.

Strangulation is currently an offence under section 37 of the *Crimes Act NSW 1900*. However, the current offence requires that the victim be strangled to the point of losing consciousness, or until they are rendered incapable of resisting and that the perpetrator is reckless as to rendering the victim unconscious or unable to resist. Not only does this create an impossible burden of proof on the Prosecution, it does not capture the majority of strangulation offences that occur in domestic violence situations. When strangulation occurs in domestic violence situations, it is not necessarily done with the intention of rendering the victim unconscious, and therefore an offence under this section is unlikely to be proven. In instances where an offence of strangulation cannot be proven, a lesser charge of assault is pursued by the Prosecution, which carries a maximum penalty of 2 years imprisonment.

In an increased focus on domestic violence, the NSW Government has introduced the *Crimes Legislation Amendment Bill 2018* to Parliament to create a new offence of intentionally choking, suffocating or strangling a person without consent. The offence will be punishable by a maximum term of 5 years imprisonment. It is intended that the removal of the requirement that the victim be rendered unconscious or unable to resist and captures domestic violence situations whereby the victim is strangled in an attempt to control, coerce or intimidate the victim. It also more accurately reflects the severity of the crime.



Luisa Gaetani
Senior Lawyer



Lara Menon
Law Graduate

Grandparents right to see their Grandchildren under Family Law?



Grandparents are often an important part of a child's life. Grandparents can be involved in lots of different ways - perhaps it's a regular babysitting role, maybe its breaking the bed time rules or serving up dessert before dinner. Whatever role it may be, grandparents often want to be a part of a child's life.

Grandparents can sometimes encounter issues when it comes to seeing their grandchildren. Whilst there is no automatic right for a grandparent to see their grandchild, the *Family Law Act 1975 (Cth)* allows for a grandparent of the child or any other person concerned with the care, welfare or development of the child to apply to the court for a parenting order.

There are many situations in which a grandparent may want to apply for a parenting order to see a grandchild and some common situations are:

1. The parents have separated and neither parent is facilitating time with the grandparents.
2. The parents are still together but refuse to let the grandparents spend time with the child.
3. One of the parents may have passed away and the surviving parent isn't allowing the grandparents to see the child.
4. The grandparents may want a child to live with them, for reasons such as the parents aren't involved in the child's life or there is a significant safety concern for the child in the parent's care.

It's important to know that there is typically a requirement to try family dispute resolution before proceeding to court (some exceptions may apply). This means the grandparents and parents could try mediation with a third-party mediator to try and resolve the issues and come to an agreement first.

If separated parents already have court proceedings on foot, then grandparents may need to be joined to these court proceedings as a third

party. Alternatively, grandparents may need to be the ones to start the court proceedings. There are several different orders a grandparent could seek such as:

1. to spend time the child;
2. to communicate with the child e.g over telephone or skype;
3. that the child live with the grandparents and that the grandparents have parental responsibility for the child.

In any parenting matter a court will look at what is in the best interests of the child. That is the paramount consideration of the court when making a parenting order. The amount of time or communication that a child has with a grandparent will be based on what is best for the child.

There are many factors that a court will look at when determining what is in a child's best interests. Some additional considerations are:

1. the views of the child (usually depending on the maturity and level of understanding);
2. the nature of the child's relationship with parents and grandparents;
3. the likely effect of any changes in the child's circumstances including separation from parents, any other child or other person such as grandparents who the child has been living with;
4. the capacity of parents and grandparents to cater for the needs of the child including emotional and intellectual needs;
5. any family violence.

If a dispute arises solely between the parents of the child, and it doesn't involve the grandparents then proceedings will need to be commenced by one of the child's parents. A grandparent cannot start proceedings on behalf of a parent who is capable of doing this for themselves.



Luisa Gaetani
Senior Lawyer

OUT AND ABOUT WITH COUTTS



A wine with Karena Nicholls



Profile

Position: PARTNER

Location: NARELLAN, NSW

Areas of Practice:

- INJURY COMPENSATION; AND
- EMPLOYMENT LAW.

Q: What was your first job?

A: *My first job was at the age of 12. I would ride my motorbike up the road to an orchard and was a fruit picker on weekends.*

Q: What are three things in life you could not go without?

A: *Firstly, my family and friends. But a good book and wine is not far behind.*

Q: Do you have a career highlight so far?

A: *There are two specific matters that have changed the way I look at life. One was a medical negligence claim and one of the most challenging cases I have ever had to experience. I was able to obtain the much-needed resources for a family to care for their severely brain damaged child. This case grew my passion in injury compensation. The second most significant highlight was an asbestos claim. This case reminded me of fragility of life and how it can be cut short in an instant. It is being able to provide some comfort to those who have suffered which brings me the most joy.*

Q: If I wasn't a lawyer, I would be . . .

A: *A doctor. I love the medical world.*

Q: Outside of the office, what are you involved with?

A: *Helping my daughters as ambassadors for the children's hospital.*

Q: Lastly, if you could offer words of wisdom to your younger self, what would they be?

A: *Don't sweat the small stuff and live in the moment.*

Your Questions Answered



My 17-year-old would like to have a New Year's Eve party with his friends at our house. What is the law in regard to supplying alcohol to minors?



Luisa's response:

The legal drinking age in Australia is 18. However, alcohol may be consumed by minors on private premises providing there is written consent from their parents (a text message is fine!). If you are the responsible adult supervising the party, then you must not be intoxicated and you must supervise the amount of liquor being consumed and make food available



My partner and I are looking at purchasing a property together. What is the difference between owning the property as joint tenants or tenants in common?



Kaisha's response:

The main difference to these types of ownership is how your asset will be treated should one of you pass away. In Joint Tenancy you both have equal interest in the property. In this scenario, if one of you passed away then the "right of survivorship" applies, that is, the property will automatically pass to the surviving owner. However, as tenants in common you would each hold a distinct percentage or share of the property, this could be an equal (50/50) or unequal (70/30) share. In this type of arrangement, if one of the owners were to pass away then their share of the property does not automatically pass on to the surviving owner but instead forms part of their estate and distributed in accordance with their will or the laws of intestacy.



I would like to take my child overseas, however my ex (my daughter's dad) has been absent from both our lives for over 4 years and I do not know his whereabouts. What can I do?



Luisa's response:

You may still apply for a passport using the B9 – child without full parental consent form, requesting special circumstances due to the inability to make contact to the other parent and also due to the absence of contact with the other parent for a substantial period of time. When submitting this form, you must provide substantial information and evidence to support your application such as, but not limited to; evidence that you have tried to locate and contact the other parent, a certified copy of your child's Birth Certificate or a court parenting order. If your application is still unsuccessful, you can make an application to the court for an order granting permission for the child to obtain a passport, which can be quite a lengthy process.



I was recently hit by car whilst walking across the road. I have undergone 1 skin graft on my leg already, and speed was not a factor in the accident. I didn't use the pedestrian crossing and the car simply didn't see me. Is there anything I can do to help cover my loss of wage whilst I recover from the incident?



Karena's response:

Firstly, I am sorry to hear about your accident. You may actually be entitled to injury compensation from a Motor Vehicle Accident, where you can claim for pain and suffering from the accident and any restriction due to your injury, past and future financial loss as well as medical treatment expenses. It is important that if you were to seek compensation, then you do so sooner rather than later as time limits do apply. We are NO-WIN NO FEE, and we are more than happy to commute to you.

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