

# *the Conduit*

22  
SUMMER



**COUTTS**

LAWYERS & CONVEYANCERS



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## CALENDAR DATES

### December

Thursday 1st	Summer Starts
Thursday 1st	Wollongong Wills Express Night
Monday 5th	Narellan Wills Express Night
Monday 5th	Facebook Live (Pre-recorded)
Monday 19th	Facebook Live
Saturday 24th	Christmas Eve
Sunday 25th	Christmas Day
Monday 26th	Boxing Day
Saturday 31st	New Year's Eve

### January

Sunday 1st	New Year's Day
Tuesday 3rd	Campbelltown Offices re-opens
Monday 9th	All Offices Re-Open
Monday 16th	Facebook Live
Sunday 22nd	Chinese New Year
Thursday 26th	Australia Day
Monday 30th	Facebook Live (Pre-Recorded)

### February

Thursday 2nd	Wollongong Wills Express Night
Monday 6th	Narellan Wills Express Night
Monday 13th	Facebook Live
Thursday 14th	Valentine's Day
Monday 27th	Facebook Live (Pre-Recorded)



## A MESSAGE FROM

# Adriana

With the end of 2022 fast approaching I just wanted to touch base and give you an update about what is happening inside of Coutts.

This year has been another year of exciting changes at Coutts. We have expanded our Campbelltown and Wollongong offices, making them bigger for our ever-growing Coutts Family. If you haven't had a chance to see them I would kindly suggest you drop in for a visit. We will also be looking to renovate our Narellan office in the Christmas break which will see it closed until 9 January 2023. However don't be alarmed if you need us, we are just a short drive away at our Campbelltown office which will open from 3 January 2023.

As the year draws to a close, I am always big on asking people to reflect and see how far they have come, and try and celebrate the improvements, the wins and the time we have to spend with our friends and families. Work for many of us has been the constant and savior over the last three years, so be grateful for what you have achieved.

Reflecting on Coutts and the year that we have had, I believe that business success does not merely come from financial growth, but one's capacity to make a positive difference in people's lives. This is something we pride ourselves on to continuously do throughout the year no matter what the time of year brings.

However it can be said, whilst for most of us Christmas is a joyous festive season, for the disadvantaged who may not be able to enjoy this period it can be quite the opposite. To ensure everyone has the capacity to celebrate comfortably, Coutts have continued our partnership with Turning Point Camden and have donated practical resources for people who may be going through difficult times.

Finally, I would like to thank our clients and community, for your support during this challenging period. Remember, our lives are not defined by failures or triumphs, but rather our grit and resilience throughout the entire journey. Coutts will continue to work hard to achieve the best possible outcome for you and look forward to walking into 2023 by your side. 2023 looks to be a challenging year for most families and households, and I can assure you I will continue with my colleagues to advocate on the economical issues we face to government irrespective of it being local, state or federal. Unfortunately, the year ahead looks to be tough, but I believe in support of each other and coming together over common issues can bring strength and power, let's not forget this when facing the challenges predicted for 2023.

Remember to be kind, reach out to others no matter what their status or position is, and continue to 'be kind' rather than judge and question maybe that's the step in the right direction to bring in 2023.

*thank you*





# A Quick Guide to Interstate Conveyancing

## KEY TAKE OUTS

- ✓ Are you looking at purchasing interstate?
- ✓ Did you know that Conveyancing transactions are different in each state?
- ✓ Did you know some States has different stamp duty concessions that apply to both first home buyers and non-first home buyers?

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When Purchasing and Selling property, it is important to know and understand how the process works in each State and Territory. It is also important to know the key conditions and benefits that apply to either buyers or sellers in each State. The process for conveyancing, along with the key points differ between all States and Territories and knowing the difference between each can assist when completing a conveyancing transaction.

### Queensland (QLD)

In NSW when purchasing a property, the buyer is required to finalise finance and obtain any property inspection reports either prior to an unconditional exchange or within the cooling off period, where applicable. What is the contract process in QLD? The same requirements apply, but the conditions surrounding each requirement is different. In QLD Contracts can be (if required) conditional upon a buyer obtaining finance to complete and/ or the buyer obtaining any property inspection reports. These conditions are additional to a cooling off period and normally vary between 7 to 21 days dependent on what both parties agree.

### Victoria (VIC)

What documents are required to sell a property in Victoria? When selling in NSW, Contracts need to include a list of prescribed and mandatory certificates, without this Contracts are not valid and cannot be exchanged. The concept is very similar in VIC; however, the documents are provided by way of statement, known as a Vendor Statement; it is legally required and is mandatory with every Contract of Sale prepared.

Can a deposit be released early after an unconditional exchange of contract? Another key point for VIC when selling or purchasing, is that the Contract on most occasions will automatically allow an early release of deposit once Contracts are unconditional. The release of deposit is subject to specific conditions,

however if a buyer is not aware of this the condition, they may be caught off guard and unaware of any risks the release of deposit may cause to them and the transaction.

## South Australia (SA)

Conveyancing in South Australia is very similar to QLD and VIC. Contracts in South Australia can be conditional upon finance and property inspection reports if required. Just like VIC and NSW, the Contract has a legal requirement to include specific documents and warranties. In SA this is known as the Form 1; this is prepared and provided by the seller to the buyer. Without the Form 1, Contracts cannot be exchanged unconditionally.

How long is the cooling-off period when buying a house in South Australia? Upon the Form 1 being provided, a buyer is entitled to a 2-business day cooling off period.

## Australian Capital Territory (ACT)

Can you own land in ACT? In NSW and other States mentioned above, when entering a Contract, a buyer is entering a Contract to purchase the land and any dwellings constructed on the land; in the ACT however, this is not the case. When you enter a Contract in the ACT, you are not entering a Contract to Purchase the land, you are instead entering into a 99-year lease with the Crown being the Government. Therefore, at the end of a conveyancing transaction in the ACT a buyer will enter a lease registered on title and the title will remain registered to the Crown.

## Tasmania (TAS)

What is the conveyancing process in Tasmania? Like most states in TAS, when a person is selling the agent prepares the Contract to market the property, whereas in NSW a solicitor or conveyancer will prepare a Contract and then send it to an agent to market the property. Purchase Contracts in TAS aren't automatically conditional upon a buyer obtaining satisfactory finance or building inspection reports, unless these conditions are requested and negotiated between the parties.

## Western Australia (WA)

In WA an agent can assist a person to prepare a Contract with the mandatory documents to allow the agent to market the property.

What happens to outstanding rates when buying a property? In WA on settlement of a property, the seller allows any outstanding amounts due for Council and Water rates payable to the buyer and the buyer is responsible to pay the rates after settlement to finalise registration of the property into their name.

## Northern Territory (NT)

In NT a Contract of Sale can be prepared by either a Conveyancer, Solicitor, or an Agent; however, an agent cannot finalise a Contract and exchange it unless it is approved and finalised by a Solicitor or Conveyancer.

Are fixtures and fittings included in a property sale? In Northern Territory, the contract will provide for all fixtures and fittings, which normally include items that are screwed, bolted, joined, nailed, glued, or plumbed into a property. If any fixtures are not included in the Sale, there to be noted as exclusions in the sale. All private treaty sale Contract include a cooling off period of 4 business days.

## Conclusion

Every State and Territory in Australia have consistencies as well as differences with the way they handle their residential conveyancing processes. As a buyer and seller, these variables can have a major impact on your rights, as well as the financial burden that you may incur; therefore, it is important to remember this when purchasing or selling property interstate.



**Angela Lizzi**  
Lawyer



# The Basics: Environmental Planning Instruments (SEPPs, LEPs and DCPs) explained

## KEY TAKE OUTS

Helping you to understand the foundations that underpin the environment and planning law space means you are ready for your next move in property development. Here we will be answering the following critical questions about Environmental Planning Instruments:

- ✓ What are the Environmental Planning Instruments?
- ✓ What are the State Environmental Planning Policies (SEPPs)?
- ✓ What is the purpose of a Local Environmental Plan (LEP)?
- ✓ What is a Development Control Plan (DCP) and how is it different to the LEP?

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## What are Environmental Planning Instruments (EPIs)?

Environmental Planning Instruments are the legislative documents that apply to property development in NSW.

The different EPIs are:

- ✓ State Environmental Planning Policies; and
- ✓ Local Environmental Plans.

Development Control Plans are slightly different in that they are developed by each Council but are more advisory.

## What are the State Environmental Planning Policies (SEPPs)?

There are 12 SEPPs, which each focus on a separate planning principle being:

- ✓ Exempt and Complying Development
- ✓ Biodiversity and Conservation
- ✓ Industry and Employment
- ✓ Resilience and Hazards
- ✓ Resources and Energy
- ✓ Transport and Infrastructure
- ✓ Planning Systems

- ✓ Precincts—Central River City
- ✓ Precincts—Eastern Harbour City
- ✓ Precincts—Regional
- ✓ Precincts—Western Parkland City, Primary Production.

SEPPs are policies prepared by the Department of Planning and Environment. Generally, they deal with land use and urban and regional development in a state-wide context. However, they may deal with specific sites with state significance or provide a legal framework for a specific planning issue. Importantly, the effect of a SEPP is that it can override an LEP and can prohibit certain types of development or can allow development in a certain zone.

A SEPP can also act as standalone planning law, having legal force, such as the SEPP for Exempt and Complying Development.

The purpose of the SEPPs is to free up the planning process and expedite development.

## What is the purpose of a Local Environmental Plan (LEP)?

A Local Environmental Plan divides the Council area (or Local Government Area) into land use zones. Land use zones help to identify what types of development are allowed in each area either with or without consent or prohibited. The land use zones are broken down into the following categories:

- ✓ Rural
- ✓ Residential
- ✓ Economic
- ✓ Mixed Use
- ✓ Business
- ✓ Industrial
- ✓ Special land purposes
- ✓ Recreation
- ✓ Conservation; and
- ✓ Waterways

LEPs are developed by Councils, however, they must incorporate compulsory sections as set out by the Standard Instrument—Principal Local Environmental Plan (2006 EPI 155a).

Councils use LEPs to guide the planning decisions concerning both private and public land through zoning and development controls, these include zoning, maximum building height and floor space ratios.

## What is a Development Control Plan (DCP) and how is it different to the LEP?

Like the LEP, SEPPs override Development Control Plans. The creation of a DCP is legislated under section 3.43 of the Environmental Planning and Assessment Act 1979 (the EP & A Act).

A DCP supports the LEP by providing specific and detailed development controls relating to complex aspects of design and providing guidance. These controls include minimum rates of car parking, setbacks for buildings and minimum landscaping requirements.



Compliance with a DCP is more flexible than the controls stated in an LEP as it is not a legislative instrument. Section 3.42 of the EP & A Act provides Councils flexibility in applying the controls set out in a DCP where alternative solutions can be applied to give effect to the LEP, facilitate development and the objectives of the zone as they are regulations and not a statutory requirement.

If you would like to know more about how the SEPPs, LEPs and DCPs apply and affect your property or development [reach out to our Environment and Planning Law team.](#)



**Kylie Fuentes**  
Lawyer



# New Bill Proposes Changes to NSW Motor Accident Legislation

## KEY TAKE OUTS

- ✓ The [Motor Accident Injuries Amendment Bill 2022](#) was introduced into NSW Parliament on 19 October 2022
- ✓ The proposed amendments have emerged out of the Clayton Utz and Deloitte Statutory Review of the Motor Accident Injuries Act 2017 [Report](#)
- ✓ The Bill proposes to make a number of changes, some of which will affect benefits for persons injured in a motor vehicle accident and the legislative process for bringing a claim

The Motor Accident Injuries Amendment Bill 2022 (“the Bill”) was introduced into NSW Parliament on 19 October 2022. The Bill proposes to make a number of changes to the existing legislation, some of which affect an injured person’s statutory benefits. In this blog, we set out the proposed amendments and how it compares to the current law.

## The Key Proposed Changes, The Law Currently, and the Potential Effect

### 1. A Change in Terminology

One of the key proposed changes to the current law is to omit reference and definition to the term ‘minor injury’. Currently, the law provides that a ‘soft tissue injury’ or ‘psychological or psychiatric injury that is not a recognised psychiatric illness’ is a ‘minor injury’.

The term ‘minor injury’ has repetitively been criticised as trivialising an injury, undermining the impact on an injured person, and the use of the term has been reported to cause unnecessary distress to an injured person.

The Bill proposes to replace the term ‘minor injury’ with reference to a ‘threshold injury’. In effect, the change in terminology does not change the substantive definition of the term, nor the operation of the relevant provisions, but is somewhat less insulting to persons who do not reach the requisite ‘threshold’ to lodge a damages claim.



## 2. An Extension of Weekly Payments and Medical Treatment

Another proposed change to the legislation is to extend the first entitlement period of statutory benefits payable to a person injured in a motor vehicle accident to 52 weeks. Currently, persons who are mostly at fault or sustain ‘threshold’ injuries only, are not entitled to weekly benefits after 26 weeks.

Should the proposed amendment be passed by Parliament, persons who are primarily at fault or sustain ‘threshold’ injuries only will be entitled to weekly benefits for up to 52 weeks and medical treatment of at least 52 weeks. This will ensure that persons injured in a motor vehicle accident will have greater and consistent financial support for both loss of earnings, and for treatment and care, in turn providing additional support to better enable a person to return to work and their pre-accident activities.

## 3. Clarity as to What Constitutes ‘Reasonable’ Treatment and Care

Thirdly, the Bill proposes to establish a guideline-making power for the types of treatment and care that would be considered reasonable and necessary in the circumstances. Currently, there is no clear guideline as to what constitutes ‘reasonable and necessary’ treatment and care, which results in a large proportion of treatment and care requests in dispute. In effect, this change will reduce the need for insurer decision-making, reduce the need for injured persons to interact with the insurer, expedite treatment requests and an injured person’s access to treatment, enhance the autonomy in the scheme of injured persons, and will provide consistency in the scheme.





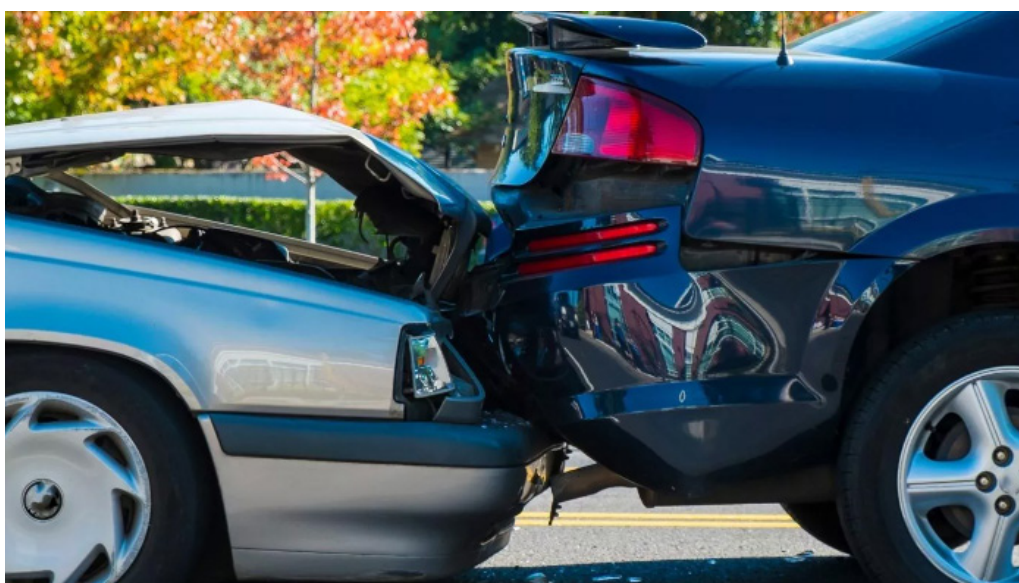
## 4. Expediting Disputes Relating to Permanent Impairment

The Bill further seeks to amend the Act so that an internal review is not required for a decision relating to the degree of an injured person's permanent impairment. Currently, where there is a dispute as to an injured person's degree of permanent impairment, the Claimant must first seek an internal review of the insurer's decision before the matter can be referred to the Personal Injury Commission for referral to a medical assessment. This change will expedite claims and facilitate quicker progress of such medical disputes.

## 5. Removing the Waiting Period

Section 6.14 of the Motor Accident Injuries Act 2017 currently provides that 'a claim for damages cannot be made before the expiration of 20 months after the motor accident...unless the claim is in respect of the death of a person or injury resulting in a degree of permanent impairment of the injured person that is greater than 10%'. What this means is that, currently, an injured person who does not sustain at least 10% permanent impairment, must wait a period of 20 months before a common law damages application can be served on the insurer. This leaves a lot of injured persons waiting in 'limbo' before they can progress their claim to the next stages.

The Bill proposes to remove the 20-month waiting period so that injured persons who sustain a 'threshold injury' and who aren't wholly or mostly at fault for the motor vehicle accident, can lodge damages claim at any time. The removal of this waiting period will allow claims to commence and be finalised quickly and will reduce the emotional and psychological strain of a lengthy claims process.



## When Will the Changes Come into Effect?

It is too soon to tell! The Bill is currently in the Legislative Assembly with the debate currently adjourned for 5 clear days. The Bill will need to be passed before both Houses before it is forwarded to the Governor for assent, following which the amendments will typically come into force 28 days after it is assented to or on 1 April 2023 by proclamation.

Watch this space!



**Elly Manoe**  
Senior Lawyer



# What am I Entitled to? – Underpayment of Wages and Entitlements

## KEY TAKE OUTS

- ✓ Wages and Employment entitlements are accrued in accordance with relevant awards, enterprise agreements and employment agreements
- ✓ Employees are entitled to set breaks depending on the number of hours they have worked. Employment agreements will outline the minimum amount of time off allowed during a shift.
- ✓ Sometimes employers may unknowingly or wilfully underpay wage entitlements. It is important to raise these issues with your employer or seek legal advice to rectify any underpayments.
- ✓ McDonald's Australia has recently come under fire for underpayment of employee's wages and over not providing paid rest breaks to workers. The claims are currently before the Federal Court.

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## What are Employment Entitlements?

Wages and employment entitlements are accrued in accordance with an employee's award, enterprise agreement or employment agreement. They also vary depending on the age, industry, qualifications and work duties and responsibilities of each employee.

All employees in Australia are entitled to a minimum wage and the 11 National Employment Standards (NES), although casual employees are entitled to a limited selection of NES. It is important to check your relevant award or agreement to confirm what you are entitled to.

## Give me a break...

Employers have an obligation under the Workplace Health and Safety Act 2011 (NSW) to ensure that employees are safe at work. This includes the safe physical environment as well as ensuring the safe emotional wellbeing of employees. The industry, award or agreement may also set out the employer's obligation to offer employee breaks.

There are two types of breaks:

- ✓ A rest break allows an employee to rest for a short period during work hours, this time is usually

paid for by the employer.

- ✓ A meal break is a longer period of uninterrupted rest that allows the employee to eat a meal, this time is usually unpaid.

Other types of breaks employees are entitled to include; breaks between shifts, long service leave and public holidays.

Employees are entitled to set breaks depending on the number of hours they have worked. Employment agreements will outline the minimum amount of time off allowed during a shift. Furthermore, each industry has different minimum break requirements.

If you do not think you are being given the correct breaks during your shift, the employment team at Coutts Lawyers and Conveyancers can review your position and advise you of your entitlements.

## You've been underpaid, what now?

Sometimes employers may unknowingly or wilfully underpay wage entitlements. If you believe you have been underpaid, it is important to raise these issues with your employer or seek legal advice to rectify the underpayment. Having a conversation with your employer can be a quick way to work out if you are owed anything, saving both time and the cost of going to court. Your employer may not have realised that they didn't pay you the right amount.

If you are not comfortable talking to your employer, or after your contact your employer the entitlements remain unpaid, you may consider seeking legal assistance. The employment team at Coutts Lawyers and Conveyancers can review your position and advise you of your entitlements and demand payment of any underpayments on your behalf.

You can also contact the Fair Work Ombudsman (FWO) who can investigate complaints against employers to ensure that they are acting in compliance with legislative requirements.

- ✓ If an employer continues to deny making payment of underpayments, then you can commence proceedings for unpaid entitlements through a court case. Court cases for the recovery of unpaid wages and entitlements are usually heard in the Fair Work Division of the Federal Circuit Court of Australia as follows:
- ✓ If the amount claimed is under \$20,000, the court will follow a small claims procedure. A small claims procedure allows cases to be heard with less formality.

If your claim is over \$20,000 you can still make a claim in the Small Claims Division, but your compensation will be capped at \$20,000. Alternatively, you can make a general application to the Fair Work division.

There are time limits in relation to a claim for underpayments of wages and/or entitlements. A claim is required to be made within six (6) years from when the breach occurred, i.e.. when you should have been paid the correct wage or entitlement.

In some cases, an employer is unable to pay entitlements that are owed to its employees and may end up bankrupt or in liquidation. Through schemes such as the General Employee Entitlements and Redundancy Scheme (Geers) or Fair Entitlements Guarantee (FEG), you may be able to recover some or all of your unpaid wages and entitlements.

However, there are limitations on what you are able to claim. The employment law team at Coutts Lawyers and Conveyancers can assist you if you find yourself in this situation.



## Case Study: McDonald's under fire for various breaches to Australian workers

McDonald's Australia is facing legal action against 100 of its Australian Franchisees over allegations of underpayment and anti-union behaviour, with almost 1000 employees involved in the claim.

Further to this, McDonald's Australia has recently received backlash for allegedly denying paid breaks to Australian workers. Following an investigation by Retail Union, The Shop, Distributive and Allied Employees' Association (SDA) has commenced a claim against McDonald's in the Federal Court over the denial of paid breaks to workers. The SDA is seeking compensation of at least \$250 million on behalf of more than 250,000 current and former McDonald's workers across Australia.

The claim has named 323 McDonald's operators who have allegedly denied paid rest breaks to workers over the past six years. Further, the SDA is alleging that workers from more than 1000 former and current McDonald's sites were denied their uninterrupted 10-minute break when working over four hours or more during a shift. It is alleged that workers were misled or not informed about their rest break entitlements.

McDonald's Australia has issued a statement that denies the allegations. "We are very mindful of our obligations under applicable employment laws, including the former enterprise agreement and the Fast Food Industry Award, and continue to work closely with our restaurants to ensure employees receive all current workplace entitlements and pay" a McDonald's spokeswoman said.


The claims are currently being heard in the Federal Court, however, a final hearing date is yet to be set. Coutts Lawyers and Conveyancers will provide a further update once the decision of the Federal Court comes to hand.

The McDonald's Australia case is an example of why employees need to be aware of what entitlements they have, especially if there is a belief an employer may have neglected to provide those entitlements or pay correctly.

If you have any questions or believe your employer has underpaid your wages or not provided you with your entitlements, please contact our friendly employment law team to discuss your options available.



**Melissa Care**  
Senior Associate



# Is defamation a crime in NSW?

## KEY TAKE OUTS

- ✓ Defamation can be brought through commercial litigation or as a criminal charge under section 529 of the Crimes Act 1900 (NSW).
- ✓ In addition to the numerous elements that the prosecution must prove beyond reasonable doubt, there are several defences which can be raised to determine whether the defendant had a lawful excuse for their conduct.
- ✓ The complexities of defamation can be difficult to navigate without professional advice.

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## Is defamation a criminal offence?

The criminality of defamation is a controversial topic because the competing interests of freedom of speech and protection of reputation can be difficult to balance. Whilst it is typical for defamation to be brought through civil proceedings, under section 529 of the *Crimes Act 1900 (NSW)*, it can also be prosecuted as a criminal matter.

## What constitutes criminal defamation?

The criminal offence of defamation involves a person, without lawful excuse, publishing a matter that is defamatory of another living person knowing the matter to be false and intending to cause serious harm to the person or any other person, or being reckless as to whether such harm would be caused.

## How do you prove criminal defamation?

In order for the prosecution to secure a conviction, they must prove the following elements beyond reasonable doubt:

- ✓ The defendant published a matter that was defamatory to another living person,
- ✓ The defendant intended to cause serious harm to that person or to any other person or were reckless as to whether serious harm would be caused,
- ✓ The defendant knew the published matter was false, and
- ✓ The defendant did not have a lawful excuse for their conduct.

Section 529(3) of the *Crimes Act 1900 (NSW)* stipulates that if found guilty, a person could face up to three years in prison.

## What is the difference between criminal defamation and civil defamation?

In a previous Coutts blog by Senior Associate Melissa Care titled '[Johnny Depp v Amber Heard – Depp-famation Trial](#)', she explained that defamation is mainly civil in nature however, despite being incredibly rare, in NSW you can also be criminally charged for this offence.

The main difference between these alternate avenues is that if successfully pursued civilly, the defamation could result in monetary penalties however, considering section 529(3) of the *Crimes Act 1900* (NSW), a penal sentence may be ordered.

If criminally charged, the Police are required to get approval from the Director of Public Prosecutions before commencing proceedings.

BOCSAR has confirmed that there have not been any charges that were finalised under s 529 of the *Crimes Act 1900* (NSW) however, the criminal offence of defamation remains.

## What is considered 'defamatory' in criminal law?

Pursuant to subsection 529(11), the definition of 'defamatory' is the same as that found in the [Defamation Act 1995 \(NSW\)](#). It encompasses the following: *"A comment may be considered under this offence if the material was published, identified the person alleging defamation directly or indirectly and had a defamatory meaning."*

It may be considered defamatory if it was likely to cause the person to be shunned, shamed, or avoided by others, adversely affects the reputation of the person, or damages the person's professional reputation.

## When can lawful excuse be used as a defence for criminal defamation?

The defence of 'lawful excuse' is contained in subsection 529(4) of the *Crimes Act 1900* (NSW) and stipulates that it would be considered a reasonable excuse if the defendant having regard to the circumstances happening before or at the time of the publication, would have a defence for the if the victim had brought the offence under civil proceedings. This means that the civil defences are also relevant for the criminal charge in proving lawful excuse.

The available defences in civil proceedings include;

1. Justification (s 25)- where the defamatory material is substantially true;
2. Contextual truth (s 26)- where accusations arising from the context of the material are substantially true;
3. Absolute privilege (s 27)- the material was published during the proceedings of a parliamentary body;
4. Public documents (s 28)- the publication was a fair copy, summary, or extract of a public document;
5. Fair reporting of a matter that is of public concern (s 29);
6. Qualified privilege (s 30)- the information ascertained was provided to a person in reasonable circumstances;
7. Honest opinion (s 31)- the publication was an honest opinion rather than a statement of fact, that was related to a matter of public interest and based on proper material;
8. Innocent dissemination (s 32)- where the person was an employee and the primary publisher did not know they were publishing defamatory material not due to their own negligence;



9. Triviality (s 33)- the circumstance of the publication was such that the plaintiff was unlikely to suffer harm.

When the 'lawful excuse' defence is raised, the onus of proof then shifts to the prosecution to prove beyond reasonable doubt that the defence does not apply to the specific circumstances.

## Criminal and Civil Defamation Lawyers

As highlighted in the brief guide above, defamation can be a very confusing charge to deal with. If you have been charged with defamation, you should seek legal advice as soon as possible. Similarly, if you believe that you have a claim in defamation or want to defend a defamation claim, we advise that you seek legal advice. At Coutts, our criminal law and commercial litigation teams would be happy to assist you.



**Lara Menon**  
Senior Associate



**Isabel Strahan**  
Paralegal





# Out and About with COUTTS





# A Wine with... Claire

## PROFILE

**Position:** Senior Associate

**Location:** Wollongong

**Area of Practice:** Wills & Estates



**Q: How would you describe yourself in two words?**

A: Honest and hard working

**Q: What would your best friend say is your best quality?**

A: A good listener

**Q: My favourite motto / mantra is:**

A: Impossible only means you haven't found the solution yet

**Q: My pet peeve is:**

A: People leaving clothes on the floor next to the laundry basket!

**Q: On the weekends you can find me:**

A: Having fun with my family

**Q: The last book I read was:**

A: No child of mine by Susan Lewis

**Q: The top 3 most used emoji's on my phone are:**

A: 😂 😜 👤

**Q: My favourite move of all time is**

A: Grease



# Your Questions Answered



## **WE GOT MARRIED BUT SEPARATED JUST A FEW MONTHS AGO. CAN I STILL APPLY FOR A DIVORCE?**



If you have been married for less than two years, but have been separated for at least 12 months, you will be able to apply for a divorce, but only if you have a certificate from a counsellor. The certificate will need to be filed with the court at the same time that your application is made.

The court does not require that both parties attend upon the counsellor.



## **CAN YOU CREATE MORE SHARES IN A COMPANY?**



The number of shares the company should issue depends on your individual circumstances. However, if you intend to incorporate a simple company, with you and maybe one or two others as directors, then generally a company will issue a nominal amount of shares, say 100 shares at \$1.00 each.

The company can issue more shares to others as time progresses.

We recommend consulting your accountant for specific advice in this regard.



## **WHAT SHOULD I DO IF I BELIEVE MY WORKPLACE RIGHTS HAVE BEEN INFRINGED?**



If you believe that your employer may have breached your employment rights, you should seek legal advice as soon as possible. Our firm specialises in employment law and will be able to provide you with a detailed description of your case and how it is likely to play out in court. Claims made with the Fair Work Commission need to be filed within a certain time period (21 Days), so if you are having any doubts at all, seek legal advice as soon as possible.



## **WHEN SHOULD I SEEK LEGAL ADVICE IN CRIMINAL MATTERS?**



In criminal matters, including traffic offences, obtaining legal advice at the earliest opportunity is crucial. Time can be of the essence in traffic offences, especially where there is a timeframe in which an appeal must be lodged. We also recommend obtaining advice before making any decisions, including entering a plea of guilty, electing to have a traffic offence dealt with by the Court or participating in a Police interview.



## **WHEN SHOULD YOU APPLY FOR A HOME LOAN?**



You should submit a formal application to your lending body for a loan on the property as soon as possible. You should not exchange contracts for the property (with or without the cooling off period) before at least a pre-approval has been obtained in writing. With your formal application, you will have to pay fees to the lending body, such as establishment and valuation fees. The lending body will value the property to determine whether the property is adequate security for the amount of the loan. The lending body lends a percentage of the valuation of the property, not a percentage of the purchase price.



## **WHO CAN APPLY FOR A GRANT OF PROBATE?**



The person or persons named in the Will as the Executors are responsible for applying for a Grant of Probate. If the first named Executor has passed away or is unable to act as the Executor because they are unwell, then the person named as the substitute or alternate Executor will be able to make the application.

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**CALL US ON  
1300 268 887**

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**Adriana Care  
Managing Partner**



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