



NEWSLETTER

Coode & Corry

Solicitors



EMPLOYEES AS CARERS

An employee who is a "carer" for someone has a right to ask their employer to alter their work arrangements so that they fit in with their responsibilities as a carer. Whether or not an employer has to agree to the request depends on a number of issues such as whether the changes would make it impractical for the carer /employee to carry out their job properly.

A "carer" is not only a person who is looking after a disabled spouse, parent, etc but can also be a parent who has to look after normal healthy children or a sick spouse or family member.

In a recent case a full time employee (employed under a 3 year contract) who was off work on maternity leave wanted to return to work on a part time basis because of the usual demands involved with having a new baby at home.

The court ruled that whilst the employer did not have to allow the employee to work part time in her existing job (because the nature of her work was such that it could not be done on a part time basis) , the employer was being unreasonable in refusing to offer the employee other part time work when there was other suitable part time work available within the company.

The court awarded the employee \$33,600 for lost wages plus

general damages of \$5,000 .

Clearly it is important that an employer carefully consider any such request from an employee and consider the ramifications of refusing any such request.



CIRCA 1890

TREE BRANCHES

If a neighbours tree has branches coming onto your property then you may be wondering what you can do about it.

Firstly if there is a council Tree Preservation Order applying to your land then you are required to obtain council consent before cutting back any tree covered by the TPO (ie usually any tree/

bush over 3 metres high).

Secondly you should ask the neighbour to prune back the tree . If the neighbour does not do this then you can cut back that part of the tree that is protruding over your property.

Some trees are protected as heritage items so you need to check with your local council to make sure the tree in question is not protected .

If damage is done to your property by the neighbours' tree then you may be able to sue the neighbour for compensation.

Sueing a neighbour is not something to be done lightly however.

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In this issue:

Page 1:

Employees as carers
Overhanging trees

Page 2:

South Sydney Leagues club
Access to neighbours land

- Bruce Coode
- Stephen Corry

Our office will close at midday on the 23rd of December 2003 and we will reopen on Monday the 5th of January 2004

Merry Xmas & a Happy New Year

THE LAST BUNNY

In what is probably the last remaining piece of litigation arising from the “Super League” war between News Limited and the ARL the High Court has dismissed the last of the challenges launched against the merger arrangements.

The South Sydney club challenged the arrangements under s45D of the trade Practices Act on the basis that the restriction to the number of clubs amounted to an unlawful restraint of trade in that it was an arrangement between two competitors (ie News Limited and the ARL) for the purpose of “preventing, restricting or limiting” the supply of goods or services to the public.

The court said that whilst the effect of the arrangement was in fact to limit the number of teams, from 22 to 14, and to reduce the number of

competitions from 2 to 1, the purpose of the arrangement was to structure a viable national competition and not to limit competition.

On that basis the arrangement was held to be a lawful restraint of trade and so was perfectly valid.

ACCESS TO NEIGHBOURS LAND

Several laws potentially give people the right to gain access to , or other rights over, a neighbours land.

The Access to Neighbouring Land

Act gives a “person who, for the purposes of carrying out work on land...requires access to adjoining or adjacent land” the right to apply to the Local Court for an order giving them access to that land .

Additionally the Conveyancing Act allows the court to impose an easement on any land “if the easement is reasonably necessary for the effective use or development of other land ”. The court in such cases will look at the impact of granting an easement and would normally require the landowner to be compensated for the easement that is imposed onto their land.

The Dividing Fences Act authorizes anyone who has an order to erect a fence to go onto the neighbours land.

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