

Car confiscation laws statewide

Queensland Police Minister Judy Spence has warned repeat offenders that car confiscation laws went statewide from Tuesday, July 1, after a trial in which nearly 1,500 cars were confiscated.

Ms Spence said: "Repeat offenders beware - flout the law and you could lose your vehicle for 48 hours for the first repeat offence, up to three months for a second repeat offence, or permanently for a third repeat offence.

"These laws have been trialled in the Southern Region and the North Coast Region (from July 1, 2007) and the South Eastern Region (from December 1, 2007).

"By the end of May, four people had their vehicles permanently forfeited, 39 people had lost their vehicles for up to three months, and 1,462 people had their vehicles impounded for 48 hours.

"Not only do offenders face the inconven-

FuelWatch scheme may spell death to independent retailers

A national FuelWatch scheme could lead to the death of independent fuel retailers, a Senate inquiry has been told.

The Senate committee inquiring into the National Fuelwatch Bill has been hearing submissions from Queensland industry figures in Brisbane. Under the proposed scheme, fuel retailers will be required to notify, by 2pm, their next day's retail price for fuel. They then must retain the notified price for 24 hours from 6am the next day. Service Station and Convenience Store Association of Queensland chair Tim Kane told the inquiry such a scheme would enable major retailers to price independents out of the market.

"That is what worries myself as a service station dealer, as I will not be able to compete in a marketplace because I am locked into a price for 24 hours," he told the hearing. "If one of my competitors posts a low price my consumers are probably disadvantaged because I would not be able to post a price equivalent to that." Mr Kane said independents currently checked competitors' prices up to four times a day and can easily change their price throughout the day.

ience of losing their vehicle, they have to pay the towing and holding fees.

"With the laws statewide, we anticipate confiscating thousands of vehicles each year, mainly from unlicensed or disqualified drivers. That is unless they learn their lesson.

"It can cost up to \$255 to tow a vehicle to a holding yard and thousands in fees if vehicles are in storage for months. My message to repeat offenders is you will be caught, you will be fined, you will lose your vehicle and you will incur serious costs."

The Type 2 hoon laws target repeat offenders who are charged with multiple offences in one of five categories:

- Driving an unregistered and uninsured motor vehicle
- Driving while unlicensed or disqualified
- Drink driving over 0.15
- Failing to supply a specimen of breath or blood, or driving under 24-hour suspension
- Driving an illegally modified vehicle.

Of the vehicles impounded to date, 1,297 or nearly 90 percent, have been for repeat unlicensed or disqualified offences.

Hazard perception test for new drivers

Novice drivers will soon undertake an online computer test to measure their ability to recognise and respond to potential driving hazards before they face them on the road.

The hazard perception test announced by Transport Minister John Mickel will become part of the new graduated licencing system introduced from last year.

Under the new young driver laws, provisional 1 drivers would be required to pass the online test from July 1 on their way to an open licence.

"Provisional 1 drivers will be presented with a number of behind-the-wheel video scenarios and will be asked to indicate when they think a hazard is developing, Mr Mickel said. "Their responses are then scored to assess their level of hazard perception skills."

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Has the Full Federal Court removed rights for persons accompanied by assistance animals?



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Has the Full Federal Court removed rights for persons accompanied by assistance animals and guide dogs?

On June 6, 2008, the Full Federal Court reversed the decision of Justice Collier delivered on June 22, 2007, finding that the State of Queensland had unlawfully discriminated against Che Forest by not allowing him to attend the Cairns Base Hospital and Smithfield Community Health Centre (to obtain dental treatment) accompanied by his assistance animals.

The facts

Che Forest resides in the Cairns region. He has an unusual mental illness characterised as an anti-social/personality disorder. He exhibits erratic behaviour, making it difficult for him to communicate and present himself in public. About 10 years ago, Mr Forest trained a border collie/kelpie dog named Buddy to accompany him in public. Soon Mr Forest went everywhere in public with Buddy, providing him with confidence. As Buddy neared the end of his working life, Mr Forest trained a boxer named Knuckles to take over the role of his assistance animal. Mr Forest formed an organisation to train assistance animals (animals, other than a guide dog, to alleviate the effects of a disability).

On November 16, 2004, Mr Forest was refused entry to the Cairns Base Hospital accompanied by his dog Knuckles. On November 17, 2004, and on three subsequent occasions early in 2005, Mr Forest was also refused entry to the Smithfield Community Health Centre for dental treatment when accompanied by both Buddy and Knuckles. Mr Forest brought his discrimination complaint as two complaints pursuant to the Commonwealth *Disability Discrimination Act 1992* (DDA).

Mr Forest was restricted to relying on federal disability discrimination legislation (DDA) as the Queensland *Anti-Discrimination Act 1991* (ADA) does not apply to his particular situation. The dictionary provided in the first schedule of the ADA defines "guide dog" as having the meaning given to it by section three of Queensland's *Guide Dogs Act 1972*: "a dog trained at an approved institution and used as a guide by a blind person or as an aid by a deaf person".

Section nine of the DDA is in wider terms than the ADA, is applicable throughout Australia and is in the fol-

lowing terms: "*Guide dogs, hearing assistance dogs and trained animals,*

For the purposes of this Act a person (discriminator) discriminates against a person with:

a visual disability; or

a hearing disability; or

any other disability;

(Aggrieved person) if the discriminator treats the aggrieved person less favourably because of the fact that the aggrieved person possesses or is accompanied by:

a guide dog;

a dog trained to assist the aggrieved person in activities where hearing is required or because of any matter related to that fact; or

any other animal trained to assist the aggrieved person to alleviate the effects of the disability, . . . "

Queensland Health had a policy allowing guide dogs for a person with a visual disability and assistance animals for a person with a hearing disability to enter their facilities but prior to the initial refusals of Mr Forest with his animals did not have an assistance animals' recognition policy. A policy was subsequently developed enabling Queensland Health full discretion to allow or deny access to their facilities for a person with an assistance animal.

Findings of Justice Collier in the Federal Court

Mr Foster had a disability within the meaning of section four of the DDA as his anti-social personality disorder affected thought processes, emotion, judgement or resulted in disturbed behaviour.

The complaint of indirect discrimination pursuant to section six of the DDA was made as it was unreasonable to impose the hospital policy of using its own discretion to assess whether an animal was an assistance animal. There were no objective criteria that Mr Forest could utilise to determine if he would be allowed to enter the respondent's facilities with his dogs.

Mr Forest's dogs were not ill-behaved and they were trained to alleviate the effects of Mr Forest's disability within the meaning of section nine (1)(f) of the DDA.

Findings of the Full Federal Court
The State of Queensland appealed

with the matter being heard over one day in January 2008 by Justices Spender and Emmett and Chief Justice Black. Justices Emmett and Spender delivered a joint judgement.

Justice Collier had incorrectly applied the requirements of section six of the DDA (indirect discrimination) to the facts. Justice Collier had not indicated what proportion of persons with Mr Forest's disability could not meet the term or indeed how Mr Forest could or could not meet the term as well as the percentage of persons in Mr Forest's group who would use an assistance animal, the proportion of persons in the base group without Mr Forest's disability who could comply with the term.

For discrimination to be established pursuant to section nine of the DDA, it was insufficient for the less favourable treatment to be on the grounds that Mr Forest was accompanied by an assistance animal. It was also necessary to establish that the less favourable treatment, the exclusion from the Cairns Base Hospital and Smithfield's Community Health Centre, was on the grounds of his psychiatric disability and this could not be established. Paragraph 115 of the joint judgement of Justices Emmett and Spender states:

"While it may be that Queensland Health discriminated against Mr Forest within the meaning of section nine, because it treated him less favourably because of the fact that he was accompanied by his dogs, it did not do so on the ground of his psychiatric disability... It follows that there was no unlawful conduct on the part of Queensland Health.

Chief Justice Black disagreed with the majority treatment of section nine of the DDA. He did not find that there should be an additional requirement for section nine to find the less favourable treatment must also be on the grounds of the aggrieved person disability. This would disadvantage a person not being admitted into a taxi or a building with a guide dog. He would have referred the matter back to the trial judge to ascertain if the less favourable treatment was because the dogs were dangerous or if they were assistance animals.

For information on disability discrimination, contact O'Briens Lawyers.

Optus network crash may cost tens of millions

Optus has issued an unreserved apology and said it would consider compensating some businesses for the loss of mobile, landline and internet services.

It also emerged that Optus customers were unable to reach the emergency 000 number during the four-hour breakdown on July 15.

A contractor laying pipe for Queensland's water grid accidentally cut the network's main fibre optic cable on the Gold Coast, plunging more than a million subscribers across the state and northern NSW into chaos shortly before 8am. Mobile phone customers, banks, businesses and the check-in and baggage handling systems at Brisbane International Airport were offline until the fault was fixed hours later.

Compensation to businesses would be considered case by case, an Optus spokesman said.

It emerged that emergency calls from Optus mobiles did not work during the breakdown and back-up measures did not kick in.

Usually if a mobile call to 000 can't be connected on one network during an outage, it will automatically "jump" to another network and be connected through that.

"In this instance, this did not work," the spokesman said.

According to legal sources, claims are expected to be made against both Optus and possibly whoever was responsible for cutting the fibre optic cable.

"There could be some significant claims arising from this," a lawyer said.

"Quite apart from Brisbane Airport, there's stockbrokers, small businesses whose business was brought to a halt and so on."

He said customers would need to check

their contracts and read the small print about loss of service.

"It could be the contracts preclude claims if service is reinstated within a certain timeframe," he said.

"You may see situations where people sue whoever was responsible for the actual cutting of the fibre optic cable. "With more than a million subscribers affected, this could be expensive to sort out."

The cable was cut during excavations at Molendinar undertaken by an alliance between Gold Coast Water, the Gold Coast City Council and construction company Abigroup.

Gold Coast City Council acting mayor Daphne McDonald said the cable "wasn't where it was expected to be."

"The procedures for establishing underground service locations were followed and checked three times before the excavation started," Ms McDonald said. "This included the 'dial before you dig' service.

"With any incident of this size, where so many people are affected, it's critical to find out exactly what went wrong, why it happened and what can be done to make sure it doesn't happen again.

"Council is working with its managing contractors Abigroup as part of ongoing investigations into the incident."

Optus is directing affected private customers to a hotline.

According to the Telecommunications Industry Ombudsman (TIO), there is no provision for compensation for pain and suffering, loss of business reputation, inconvenience and mental distress.

The TIO will only consider claims based on actual monetary losses.

For more information about compensation claims, contact O'Briens Lawyers.

Hotel fined for underpaying staff

The Workplace Ombudsman has announced that a NSW hotel owner who told a court he would not try to "rip off" his staff has been fined a total of \$22,000 for underpaying employees over a two-year period.

Murray Clarke, the sole owner and director of the Bucketts Way Hotel in Church St, Gloucester, in the Hunter region, has been given six months to pay the penalty.

The Federal Magistrates Court in Sydney imposed the fine after an investigation by the Workplace Ombudsman found Clarke had underpaid 14 workers almost \$12,000 between July 2004 and August 2006.

Workplace Ombudsman executive director Michael Campbell said the staff - five of them under 20 - were relatively unskilled and low paid.

The court heard they were paid an hourly rate of \$14.97 when they should have got \$16.75. The rate was subsequently lifted to \$15.94 when it should have been \$17.31.

Federal magistrate Shenagh Barnes said the hotel's breaches of the Motels

Accommodation and Resorts Award and the Australian Fair Pay and Conditions Standard represented "systemic underpayments over a long period of time".

Magistrate Barnes described the breaches as "a product of negligent disregard" for Clarke's obligations to his staff, which she noted "took some time to correct".

If you believe you are being paid less than you should be under the relevant award, consult O'Briens Lawyers.

New on-the-spot fines for breaches of electrical safety legislation have taken effect as part of a raft of changes

affecting electrical workers throughout Queensland, according to the Minister for Employment and Industrial Relations, John Mickel.

The new on-the-spot fines will provide additional enforcement options to electrical safety inspectors to target:

- failure by an electrical work licence holder (\$300) or an electrical contractor licence holder (\$300 for an individual and \$600 for a company) to comply with all conditions and restrictions of the licence;

- failure to test to ensure an electrical installation is safe before connecting to a source of electricity; and

- failure to perform a visual inspection of part of an electrical installation to ensure there are no serious defects (\$300 for an individual and \$600 for a company).

Mr Mickel said the amendments to the Electrical Safety Regulation 2002 aimed to improve the administration of electrical safety in several areas, including licensing, performance of live work, approval of electrical equipment and testing of electrical installations.

Other changes relate to:

- clarifying the meaning of a "qualified

business person" and a "qualified technical person";

- requirements for performance of live work;
- eligibility requirements for electrical licences;
- approvals for electrical equipment manufactured overseas;
- disconnection and reconnection of low voltage electrical installation; and
- updating fees to reflect CPI increases.

"Ultimately it's all about keeping people safe, whether they work with electricity or are a consumer," Mr Mickel said.

Law changes affect security provider licencing & training

Brisbane security providers are reminded that new licensing and training requirements for the industry have taken effect. The Attorney-General and Minister for Justice, Kerry Shine, said security industry now must comply with the third phase of changes to the *Security Providers Act 1993*.

"Security providers will now be issued Class 1 licences to be employed in the manpower sector as crowd controllers, security officers, bodyguards, and private investigators," Mr Shine said.

"Those providing security advice and installing security equipment will be issued a Class 2 technical licence. All Class 1 manpower licences will have new training requirements, with crowd controllers and bodyguards now required to do ongoing training as a condition of their licence.

"The changes are designed to promote community and public safety and the protection of property by ensuring only appropriate and competent people are licensed to operate within the industry.

"People who hold current security provider licences can continue to operate on their existing licence until it expires, but existing licence holders must lodge their renewal before their licence expires or face hefty fines for operating unlicensed."

Mr Shine said anyone operating without a current licence faced fines of up to \$75,000 for individuals or \$937,500 for businesses.

"Compliance officers from the Department of Justice and Attorney-General will continue to work closely with the industry during this introductory phase," he said.

"Officers from my department will ensure key industry stakeholders are aware of their licencing obligations, and continue educating the sector.

"It is vital members of the industry are fully aware of the impact the changes will have on them, particularly in relation to licencing and the need to keep their skills up-to-date."

Mr Shine said more than 650 people had attended regional forums held throughout Queensland.

"A new online resource has also been developed to assist members to understand the changes and how they impact on their business.

"The website explains in detail what the new requirements are for the industry, including licence categories, fees, training requirements and the licence process."

Trademark policing not eBay's problem, says court

According to a federal judge, companies such as jeweller Tiffany are responsible for policing their trademarks online, not auction platforms like eBay.

The Australian newspaper reported that Tiffany had sued eBay in 2004, arguing that most items listed for sale as genuine Tiffany products on eBay's sites were fakes.

But US District Judge Richard J. Sullivan in New York ruled that eBay could not be held liable for trademark infringement "based solely on their generalised knowledge that trademark infringement might be occurring on their websites".

According to The Australian, the Tiffany ruling was a welcome twist for eBay, which recently lost a different case stemming from counterfeit luxury goods. eBay is appealing that ruling.

For more information about trademarks, contact O'Brien Lawyers.

Queensland pet shops will be encouraged to source dogs and cats from breeders who care properly for their animals, and to discuss the home and care needs of pets with buyers, under a proposed new code of practice for pet shops.

The Minister for Primary Industries and Fisheries, Tim Mulherin, said the proposed code of practice, the first of its type in Queensland, was one of a number of initiatives aimed at reducing the number of unwanted pets.

The proposed code of practice for pet shops will complement proposed statewide legislation to require all cats and dogs to be registered and all cats and dogs to be microchipped for identification when sold or given away.

The Queensland Government will also run pilot studies to test innovative animal management initiatives by local governments.

"Between 2002 and 2006, the Queensland Animal Welfare League euthanased 9463 cats," Mr Mulherin said. "Over the same period, the Queensland branch of the RSPCA euthanased 44,173 of the 65,583 cats received, or 67.35 percent.

"Euthanasing that many kittens each year is distressing and doesn't meet the standards of a caring community."

"This proposed code of practice for pet shops sets out important guidelines - minimum standards which will go a long way in reducing the number of pets that end up unwanted, abandoned and euthanased in Queensland."

Renters targeted in online scams

The Victorian Consumer Affairs Minister, Tony Robinson, has warned that people should look out for online scams targeting would-be renters. Mr Robinson said Consumer Affairs Victoria had received several complaints about online rental scams.

"These scams involve rogues posing as private landlords," Mr Robinson said.

"In each case, the perpetrators claimed they were overseas and asked renters to send payment for the Melbourne property in advance.

"They should demand to inspect the property and ensure the landlord or agent shows proof that they are entitled to lease the property."

