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LIV CLIENT NEWS

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CHRISTMAS PRESENTS TIMES OF RISK

It is unwanted, it is unwelcome and sometimes it seems like it's unavoidable. But none of that makes it right.

"It" is sexual harassment in the workplace, an annual topic of conversation at this time of year. The combination of end-of-year functions and alcohol can make for a humiliating – or worse – time for a victim.

Sexual harassment is defined by the *Sex Discrimination Act 1984 (Cth)* as "any unwelcome or unwanted sexual behaviour which makes a person feel offended, humiliated and/or intimidated where that reaction is reasonable in the circumstance".

It has nothing to do with mutual attraction or consensual behaviour and is against the law.

According to the Victorian Equal Opportunity and Human Rights Commission (VEOHRC), sexual harassment can include:

- an unwelcome sexual advance;
- a request for sexual favours;
- unwelcome comments about a person's sex life or physical appearance;
- suggestive behaviour such as leering and ogling;
- unnecessary physical intimacy such as brushing up against a person;
- sexually offensive comments, anecdotes or jokes;
- displaying sexually offensive visuals (such as photos, pinups or calendars), reading matter or objects;
- sexual propositions or continued requests for dates;
- physical contact such as touching or fondling; and
- indecent assault or rape (also criminal offences).

Sexual harassment does not have to be repeated or continuous to be against the law. It can be a one-off incident.

It would be nice to think that after more than two decades of legislation and education, sexual harassment has been consigned to the textbooks, a less-than-tasteful reminder of bygone attitudes to workplace relations, a regrettable "before" overshadowed by an enlightened "after" in society's attitudes towards women.

The statistics say otherwise.



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- A telephone survey conducted in 2008 by the Australian Human Rights Commission found that 22 per cent of women and 5 per cent of men have experienced workplace sexual harassment at some time.
- Around one in five of these respondents who expressly said they did not experience sexual harassment according to the definition in the *Sex Discrimination Act*, went on to report experiencing behaviours that may in fact be sexual harassment under the law.
- The telephone survey found that sexual harassment often escalates over time from non-physical behaviours such as sexually suggestive jokes to more serious behaviours such as unwelcome and inappropriate physical contact.
- More than 60 per cent of complaints lodged with the VEOHRC come from women.

Unfortunately, sexual harassment is still alive and well in our workplaces. Hopefully your workplace has a sexual harassment policy in place. Having such a policy is a sign of a business that has best practice standards.

Most end of year celebrations pass without

a hitch, but if you feel you are the victim of sexual harassment during this period, speak with your employer or your lawyer.

For more information see the Australian Human Rights Commission website www.hreoc.gov.au or the VEOHRC website www.humanrightscommission.vic.gov.au.

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PROPERTY LAWS SET FOR MAKEOVER

Victoria's property laws are set for a major overhaul after a review found many of them were archaic and difficult to follow.

The Victorian Law Reform Commission (VLRC) review calls for an overhaul of the *Property Law Act 1958* to simplify, modernise and update the Act, remove any inconsistencies with other laws, bring Victoria in to line with other Australian jurisdictions, reduce the administrative and compliance burden on business and the not-for-profit sector and improve access to justice and dispute resolution.

The VLRC recommends putting in place clearer guidelines for disputes where boundaries on the title are inaccurate, a landowner's building encroaches on a neighbour's property, or if someone mistakenly installs a fixture or building on another's property.

These are some of the most common property disputes and it is hoped that the clearer guidelines for boundary titles, as well as greater discretion for courts when resolving such disputes, will assist people to better deal with what can be disruptive neighbourhood issues.

The VLRC recommends creating a new



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Property Law Act using modern and accessible language, saying the existing language is often unintelligible and uses outdated terminology that can be traced back 200 years. It has also identified obsolete or arcane provisions in the existing legislation, recommending that these be repealed,

updated or simplified.

The VLRC is currently preparing a second report into property laws, which will focus on the issues of covenants and easements. Further work on other areas of property law is being considered, with a view to commencing a second stage of reforms.

BEWARE CYBER-BULLIES



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It may seem like it has been around a lot longer, but it is only in the past decade that social media has begun to be a part of mainstream Australian life. And like so many other things, it has its positive and negative sides.

Facebook, Twitter, Windows Messenger and more have brought the world into our computers and phones. But that ready connectivity contains risks.

Internet scams, particularly banking-related activities, are now widespread. The Australian

Competition and Consumer Commission has established the SCAMwatch site (www.scamwatch.gov.au) to help people recognise, report and protect themselves from these scams.

There are obvious privacy concerns in personal information being stored by internet service providers. But one issue in particular has struck a chord with parents and has given rise to a new term – cyber-bullying.

Victoria's Department of Education and Early Childhood Development (DEECD)

defines cyber-bullying as “the use of email, text messages or internet chat rooms to humiliate and distress someone”.

It can take the form of posting defamatory messages on social networking sites, online rumours, exclusion from an online group, and sending unwanted texts, instant messaging or emails.

A Microsoft/Galaxy Research survey in 2008 found one in four Australian children had been cyber-bullied.

The survey also revealed that the chance of being cyber-bullied increases as children reach their teens, with 31 per cent of children aged 14-17 reporting they have been cyber-bullied, compared to 21 per cent of 10-13-year-olds.

In some cases, cyber-bullying can be a criminal offence. Yet 83 per cent of parents did not know what to do if their child was being cyber-bullied and two out of three parents said that they were unsure about the best way to help their children.

Bullying in any form is not acceptable and you can take action to stop it. Schools and employers have a responsibility to provide a safe environment and stop discrimination.

WORK AND LIFE BALANCE IN LAW FIRMS

Law firms are increasingly embracing flexible working arrangements. Now they have a new guide to help them retain and attract lawyers who want to balance working hard for their clients with a life outside work.

Do You Manage?, a guide produced by Victorian Women Lawyers (VWL), was launched on 25 October by Sex Discrimination Commissioner Elizabeth Broderick.

VWL convenor Astrid Haban-Beer said it was very clear that flexible work practices were of significant importance within the legal workplace.

"This guide will provide assistance in implementing arrangements that work for all those involved: the lawyer, the partner and the firm," Ms Haban-Beer said.

VWL consulted widely among the legal profession as part of its research in preparing the guide. It found that while law firms were willing to provide flexible work options, there were many challenges including managing days, hours or work type, managing work overflow, managing the impact on the team, and managing reward and career aspirations.

Critical factors for a successful flexible

work arrangement, according to the VWL research, included clarity of the terms of the arrangement, appreciation of the value of the arrangement, support and involvement of the team, and issues being openly and promptly discussed.

"It was clear the more successful arrangements were based on a clear understanding of the arrangement and detailed discussions, involving the whole team, of the day-to-day issues," Ms Haban-Beer said.

The peak body for lawyers in Victoria is a supporter of flexible work practices.

Law Institute of Victoria (LIV) president Steven Stevens said the increasing move towards flexible work practices in law firms made sound commercial sense because clients looked favourably on firms seen to be adopting policies that supported flexible work options.

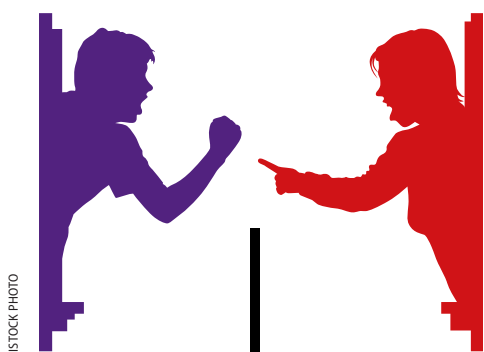
"There is a lot of concern about leading balanced lives among younger lawyers, which I think is a really healthy thing," Mr Stevens said.

"We want to build resilience in lawyers so that they stay in the law for life."



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TAKING JUSTICE TO THE PEOPLE



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Increasingly, legal matters are being conducted in the Victorian Civil and Administrative Tribunal (VCAT).

The tribunal deals with a diverse range of

"every-day" matters including the purchase and supply of goods, discrimination, domestic building works, guardianship and administration, disability services, health and privacy, mental health, and residential and retail tenancies, as well as disputes between people and government.

VCAT was created in 1998 as a "one-stop-shop" to provide Victorians with access to a cost-effective civil justice system. It hears approximately 85,000 cases a year.

VCAT's vision is to be an innovative, flexible, accountable and accessible organisation that delivers a fair and efficient dispute resolution service.

The organisation recently commenced a three-year "Transforming VCAT" plan to implement findings from a comprehensive review of its operations.

Some of the review's findings have already started to be implemented. There are now after-hours and Saturday hearings and offices in outer metropolitan Melbourne close to where a significant proportion of the parties who come to VCAT live.

Having VCAT available to hear cases closer to their homes and at more flexible times will allow more people to access its services.

VCAT is also increasing its regional presence. Staff will be based at Bairnsdale, Benalla, Cobram, Korumburra, Mildura, Moe, Morwell, Robinvale, Sale, Swan Hill, Wangaratta and Wodonga by the end of the year, followed by 11 more locations by the end of 2011.

If the basis of any legal system is justice for all, then any move to make justice more accessible to more people is a good thing.

MANY HAPPY RETURNS

Among the many standard Christmas traditions, it seems that returning presents on Boxing Day is right up there with them.

The enormous queues in department stores on 26 December aren't just filled with savvy shoppers looking to capitalise on the post-Christmas sales. There are plenty of others lining up with expressions that are anything but cheery.

As thoughts turn increasingly towards Christmas shopping at this time of year, it is worth remembering that times of increased spending are also times for consumer vigilance against rip-offs and misleading advertising.

But new protection will be available in 2011, with the Australian Consumer Law (ACL) coming into effect on 1 January. The ACL replaces 17 existing national, state and territory laws with a single national consumer law. It is part of the *Trade Practices Act 1974*, which will be renamed the *Competition and Consumer Act 2010*.

Key changes with the ACL include:

- suppliers and manufacturers having to honour new “consumer guarantees” that will automatically apply to goods and services;
- new restrictions on door-to-door sales and other face-to-face marketing;
- new requirements for contracts, including information about “cooling off” periods and bans on unfair contract terms; and
- a national product safety law and enforcement system.

Consumer protection agencies will be given new enforcement powers and there are new penalties for breaking the law. The ACL will apply to any business that sells, leases or



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hires goods (including secondhand goods) to consumers, provides services to consumers, is a manufacturer, or imports goods.

Each time a customer buys goods, they enter into a contract with the trader. If an item or a service does not meet an implied condition – a minimum quality and performance standard that may be reasonably expected – the customer is entitled to seek a remedy from the trader or service provider. This can take the form of a refund, repair, replacement

(exchange) or store credit (gift card or voucher).

If there is no breach of an implied condition – for example, if the customer changed their mind, found the goods cheaper elsewhere or couldn't provide proof of purchase – the trader may choose to provide a remedy, depending on their store refund policy.

Stores must have a clear refund policy to ensure staff and customers know when a remedy will be provided. The policy can't modify, exclude or restrict implied conditions.

For more information, please contact:



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