

# MACLARENS

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## LAWYERS

# NEWS

*protecting your interests*

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Established in 1945, Maclarens has serviced the legal needs of western Sydney for over 60 years. At Maclarens Lawyers, we conscientiously and thoroughly investigate your needs, conduct our due diligence and then provide advice to you in a clear and precise manner. Our team is extensively experienced, attentive and friendly, and is enthused to assist you with all your legal needs.



*Maclarens Lawyers welcomes **LIZA NGUYEN** to our firm. Liza joined Maclarens as an associate to assist in the growing family, wills and estate practice area of the firm. Liza completed high school and went straight to university to study law where she graduated with a Bachelor of Laws degree from University of Technology Sydney.*

*Since graduation, Liza has practised in family law, immigration law, personal injury law and conveyancing. She seeks to deliver personal advice and assistance to clients in all walks of life.*

*Liza is a registered migration agent and has successfully dealt with many immigration visas through the Department of Immigration and Citizenship.*

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#### **Need a Migration Agent? Maclarens are happy to help.**

#### ***Migrating to Australia***

Despite what appears to be a strict, regulated and politically controlled regime, thousands of visas are granted to non citizens to enter or remain in Australia each year. However it remains the objective of the Australian immigration system to protect the national interests of the Australian public. Therefore it is necessary to acquire a visa prior to entering Australia. This system helps regulate, control and monitor the flow of migrants and people living in Australia.

Entry visas can be granted, either permanently or temporarily, for reasons relating to family reunions, work, business commitments, education, study, tourism and working holidays. Visas can also be granted on humanitarian grounds. For those who do not fall clearly within a category of a visa option, a visa can still be granted in exceptional circumstances or by ministerial intervention. Relevant evidence will be taken into consideration and assessed on a case by case basis.

If you have family or friends who are thinking of migrating to Australia, why not call our office today to discuss the visa options that are available for travel? Ask for Liza Nguyen our registered migration agent. Remember, immigration advice can only be given by registered migration agents in Australia.

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**Supplying Goods? Insert a Romalpa clause.**

If you are a supplier of goods, and are waiting on payment, then you may run into trouble if the company you have supplied goods to goes into liquidation or receivership. Secured creditors, such as a bank with a fixed or floating charge, are paid out first, and unsecured creditors are left with the remnants, if any.

You can overcome this problem by inserting a *Romalpa* clause (which takes its name from *Aluminium Industrie Vaasen BV v Romalpa Aluminium Ltd* [1976] 2 All ER 522) into the contract of sale. This ingenious little clause, drafted in various ways, actually places suppliers *ahead* of secured creditors by maintaining that legal title of the goods is to remain with the supplier until the supplier is paid. Problems can arise however if the goods have been on-sold without payment.

Depending on the facts, you may either have a charge over the proceeds of sale, a claim under fiduciary law, or simply no proprietary claim at all.

**Liability for goods not fit for their purpose.**

Legal suits for damage incurred by defective goods have a long and marked history, including the famous tort case of *Donoghue v Stevenson* [1932] UKHL 100, where poor Mrs Donoghue suffered gastroenteritis as the result of drinking a ginger-beer with contained the remnants of a decomposing snail.

Today, as is constantly emphasised by the courts, the starting point is legislation. The most severe standard placed on a corporation that supplies a consumer with goods in the course of business, is that of the *Trade Practices Act 1974* (Cth), as well as the Sales of Goods legislation, which both imply statutory warranties into all transactions. These warranties include a warranty the goods or services are fit for purpose.

Whilst the term implied by the Sales of Goods legislation can be contracted out of, such is not the case with the Trade Practices Act, which only allows for certain contractual limits on liability. Furthermore, if these contractual limits on liability would amount to an unfair result, then they will be deemed void by the courts.

**Relationship breakdown as an independent ground for a claim of occupation rent from a co-owner.**

Where two or more parties co-own realty, either as joint tenants or tenants-in-common, each party is entitled to possession of the whole property. Traditionally, if one co-owner ("X") has been enjoying sole possession over the property, the other co-owner(s) could not seek an "occupation fee" or "rent" from X, subject to three special exceptions:

1. Where such an agreement exists between the co-owners.
2. Where the co-owner in sole occupation has committed the tort of "ouster": i.e. where X has either denied access to the other co-owner(s) or denied the title of the other co-owner: *Biviano v Natoli* (1998) 43 NSWLR 695.
3. Where X has made a claim to the other co-owners for improvements made by X to the property.

However, in *Callow v Rupchev* [2009] NSWCA 148, the NSW Court of Appeal has opened the door for a fourth, "independent", ground for seeking occupation rent: "relationship breakdown". Here, the court maintained that, where it would be "unreasonable" for co-owners to continue living together after the collapse of the domestic relationship, occupation rent can be sought from the co-owner who remains.

It should be noted, however, that, as of 1 March 2009, the majority of de facto (heterosexual and same sex) relationships will have their property and maintenance rights dealt with under the *Family Law Act 1975*, after the implementation of the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008*. This continues to be the position for married couples.

**Expansion of Lump Sum Benefits payable for Permanent Injuries**

Changes were made to the *Workers Compensation Act* expanding the scope of benefits payable for injured workers who have been permanently incapacitated as a result of injuries received at work which apply to injuries received as from 1 January 2002. Under the previous Table of Disabilities losses were generally limited to claims for permanent impairment of the arms, legs, neck, back, noise induced hearing loss, loss of vision or severe facial or bodily disfigurement. For workers injured since 1 January 2002 permanent impairment claims are now assessed as a percentage whole person impairment under the WorkCover Medical Guidelines and can include claims for permanent impairment for nerve damage, internal injuries or injuries such as occupational skin cancer that were not previously covered under the old Table of Disabilities. In addition, increased benefits are available for workers who have suffered spinal injuries occurring after 1 January 2006. For workers whose injuries have been assessed as attaining at least 10% whole person impairment, an additional entitlement for pain and suffering up to a potential maximum of \$50,000.00 is available on top of their permanent impairment entitlements. There is generally no time limit in bringing permanent impairment claims although persons injured at work are advised to bring such claims as soon as possible. Settlement of a permanent impairment claim does not otherwise effect an injured worker's entitlement to receive ongoing weekly payments of compensation or ongoing medical and treatment expenses arising from their injury.

**OUR SERVICES**

**Personal Services**

Family Law  
Wills and Estates  
Property  
Conveyancing  
Court Work (Criminal, Traffic, Civil)  
Public Notary

**Business Services**

Buying and Selling Businesses  
Commercial and Retail Leasing  
Companies and Trusts  
Commercial Disputes  
Local Govt/Land & Environment  
Intellectual Property

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