

## AGED CARE & RETIREMENT LIVING

### Choosing between an independent and supported-living retirement unit

You have made the decision to move into a retirement village. The next stage is to determine what type of accommodation and care you now need. For many people, the choice is between moving into an independent or a supported-living retirement unit. But what are the differences and what should you consider before you sign on the dotted line?

#### 1 Independent living units

Independent living units are designed for active, able-bodied seniors who wish to live autonomously. Generally, you purchase or lease a unit or apartment within a retirement village complex. For all intents and purposes you live as you have done in your own home. You still continue to cook your own meals, clean your own home and live your life as you choose. Some villages even allow small pets.

#### The appeal of security

For many, the appeal lies in the security that is offered. There is

comfort in living within a community with others of a similar age. The “lock and leave” nature of the accommodation is also helpful for those who travel. If you get into difficulties, most independent living units have an emergency call system.

#### No more maintenance!

Freedom from heavy maintenance is also attractive. Generally, tasks such as lawn mowing, gardening, painting and other external maintenance chores are handled by the retirement village operator. The cost for these services is included in your service fee, which is usually charged on a monthly basis.

#### The comfort of companionship

The companionship of others and the social activities offered are usually important factors. Generally, there is access to shared communal facilities such as a residents’ lounge, exercise facilities and libraries. Social events are arranged by the village operator and can include card

games, communal walks, shopping expeditions and dance classes – the list can be endless!

#### 2 Supported-living units

If you need a higher level of care, you may decide to choose a supported-living unit. The care offered in supported-living units varies between retirement village operators. It is important to be clear about what your needs are and to determine if the retirement village can adequately cater for them.

In most cases, the increased level of care involves the provision of meals, cleaning and some personal care tasks. Some nursing support may be available – but not by all retirement operators.

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#### What is the accommodation like?

Typically, your accommodation will be a single room with an ensuite within a large complex - possibly with in-room tea and coffee making facilities. Similar to an aged care facility, rooms are designed for wheelchair access, have lifting apparatus and are fitted with safety handrails in bathrooms.

#### What if my needs increase?

As your needs increase, some facilities may also provide aged care services within your supported-living unit or the option to move to an aged care facility. Often this is part of, or adjacent to, the retirement village. This can be very helpful, as the transition can be conducted with the minimum of interruption to you.

#### How do I make the right choice?

Making the right choice of retirement village and the level of retirement living accommodation can be difficult. Very useful general advice can be found on the Consumer Affairs website and by speaking to friends and family who have made this transition. Make sure you take the time to inspect a variety of retirement villages and question the operators and residents, (if possible). However, before signing any contract or other legally binding documentation it is important to contact us for legal advice.



**Anne Marie Gasbarro, Partner**  
a.gasbarro@mckeanpark.com.au



## Managing underperforming employees

**Disconnected, unmotivated and underperforming employees can cause significant cost to any business. When employers do not understand the issues that cause underperformance or fail to manage underperformance effectively, it can affect profitability.**

#### What is underperformance?

Underperformance should not be confused with misconduct. Underperformance mainly includes unsatisfactory work performance. Misconduct can include non-compliance with workplace

policies, or disruptive and negative behaviour that impacts on co-workers.

#### What are the reasons for underperformance?

There are many reasons why an employee may perform poorly. It may be because an employee does not know what is expected of them, there may be a mismatch between employee capabilities and the job they are required to perform, the employee may be suffering from personal issues at home or the employee may be subject to workplace pressures, such as bullying.

#### How to manage underperformance

Managing underperforming employees at an early stage is good business practice. Employers should follow these basic steps in addressing underperformance.



## Marriage break-down - commonly asked questions

When a relationship breaks down, people are experiencing one of the most stressful and emotionally challenging times of their lives. As lawyers, one of our most important tasks is to quickly gain the trust of our clients and to establish an open and professional rapport.

For many people, being able to understand the legal implications of their situation can help to reduce their concerns. That is why we encourage our clients to ask us any questions that may be on their mind. In this edition of our newsletter, we answer some of the most commonly asked questions relating to relationship and marriage breakdown.

### Q How do I get a divorce?

**A** You can apply for a divorce in Australia if either you or your spouse are:

- an Australian citizen
- regard Australia as your home and intend to live in Australia indefinitely
- ordinarily live in Australia and have done so for 12 months immediately before filing for divorce.

To be granted a divorce you will need to satisfy the Court that you and your spouse have lived separately and apart for at least 12 months and that there is no reasonable likelihood of resuming married life. It is possible, however, to live together in the same home and still be separated, 'under one roof'.

### Q I am thinking about separating from my partner. When should I seek legal advice?

**A** It is important that you seek legal advice as early as possible, even if you are not sure if you are going to separate. We are contacted daily by clients who simply wish to gain an understanding of their rights,

### 3 Meet with the employee

- Employers need to explain to the employee what the problem is, why it is a problem and how it impacts the workplace
- The employee should be provided with an opportunity to respond
- It is important that the employee is aware what is required of them and understands the issue

### 4 Jointly discuss a solution

- Employers should explore options to resolve performance issues (e.g. the employee may require additional training or support)
- It is important that the meeting is documented and the employee is aware of performance expectations
- Warning letters may need to be given. These set out the areas of underperformance, the timeframe for review, the assistance to be provided and a warning that if performance does not improve disciplinary action, including termination of employment, may need to be taken

### Conclusion

Managing poor performance correctly has a number of benefits. This includes increased productivity and health of the business. You should always seek our legal advice before terminating an employee for underperformance to minimise potential legal risks.



**Chris Molnar, Partner**  
Accredited Specialist in  
Workplace Relations  
[chris.molnar@mckeanpark.com.au](mailto:chris.molnar@mckeanpark.com.au)

## Managing underperformance

### 1 Identify the problem

- It is important for employers to correctly identify the problem for underperformance

### 2 Assess and analyse the problem

- Employers should assess how serious the problem is and what is required to assist the problem
- Employers should then arrange to meet with the employee and to make sure the employee understands that the meeting will be about their performance
- The employee should be allowed a support person during this meeting



obligations and entitlements. Often these questions relate to child custody, financial or property matters. Being proactive can make a major difference in protecting your present and future interests. Our advice will help to clarify your situation, providing peace of mind during an uncertain time in your life.

**Q I have received a Family Violence Intervention Order, forbidding access to my wife and children. What should I do?**

**A** If you receive a Family Violence Intervention Order, it is imperative that you seek our immediate advice. Although you may feel aggrieved and desperate to see your children, it is very important to adhere to the terms of a Family Violence Intervention Order. If you are found to have breached a Family Violence Intervention Order, the ramifications can be significant. Penalties can range from a fine to possible incarceration with conviction, not to mention potentially detrimental ramifications to your family law matters.

**Q My husband has left our marriage. He is the main breadwinner and has always handled our financial affairs. How can I protect my financial interests?**

**A** It is imperative that you seek our legal advice as early as possible. This is especially true if your husband has depleted your joint bank accounts and has redirected his wage to an account in his sole name. We have many clients who face this situation, or are unsure of the financial affairs of their marriage. In either of these instances, we excel in protecting our client's interests. If you obtain the right advice quickly, our team and external contacts can help you to significantly reduce the pressures associated with such a dramatic change to your life and circumstances.

**Q My relationship has broken down and I want to move out. My friends tell me that I will be at a disadvantage in a property settlement if I leave the family home. Can you please advise me?**

**A** Despite having the best of intentions, don't let helpful friends put you on the wrong track. While it is recommended that you stay in the family home, we understand that this is not always an option. For instance, if family violence is occurring in your household, it is vital that you and your children do not continue to be at risk. Moving out may cause short term financial implications, but these can be minimised with the right advice and access to support services. In this situation we can assist you and your family.



**Leigh Brown, Senior Lawyer**  
leigh.brown@mckeanpark.com.au

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## Early mediation – the new trend in litigation

Litigation is often seen to be all about fighting until the bitter end - or until the money runs out! However, there is a new philosophy that litigation should be approached from a dispute resolution perspective - rather than as legal trench warfare. This has resulted from clients wanting an outcome that won't break the bank and will conclude the dispute - allowing them to get on with their lives and business.

### Mediation – what is it?

As part of the legal process, all court proceedings are now referred to mediation. Effectively, this is a forced negotiation before an independent mediator. Normally this comes after a number of legal steps have already been taken, which incur costs on both sides. This means that parties are much further apart at the start of mediation.

### The benefits of early mediation

Early mediation, before costs get in the way of a settlement, can be a very effective form of dispute resolution. In a case run by McKean Park, a dispute occurred over a family trust and deceased estate with assets worth over \$30 million. Although a complex case,

all parties recognised the dangers and costs of litigating all aspects of the matter. An early mediation was arranged, before any proceedings were issued. After two days in mediation the matter was resolved, resulting in detailed terms of settlement. As the factual situation was very complicated, requiring the involvement of senior counsel, the mediation was expensive. However, the cost saving over having to issue proceedings and run them to conclusion in court was probably in excess of \$1 million for each side. Further, the mediated settlement was extremely fair to both parties, which helped retain some form of family communication, which would certainly have been destroyed if they had litigated.

### Early mediation is not for all disputes

Early mediation is not suitable for all disputes. You need enough information to allow proper discussion and consideration of the issues, a sensible opponent and parties prepared to take a commercial approach to the negotiations. Factors including convenience, time, personal cost, ongoing legal fees and the stress of litigation should all be considered.

### Early mediation is a pragmatic choice

Under our legal system, all parties are forced to mediation during the litigation process. Therefore, seeking early mediation is no longer considered a sign of weakness. If all parties are prepared to mediate, it indicates that everyone wants the matter resolved. Often, this is half the battle.

Disputes of all types are expensive to run, and have no certainty of outcome. Early mediation is not for every case, but is worthy of consideration. There is no downside and it may well lead to "dispute resolution" rather than "litigation," - with hopefully less stress, time and legal costs being incurred.



**David Brett, Consultant Lawyer**  
Accredited Specialist in Commercial  
Litigation & Nationally Accredited Mediator  
[david.brett@mckeanpark.com.au](mailto:david.brett@mckeanpark.com.au)

**Expert advice. Practical solutions. Personal service.**



## New Commercial Litigation & Insolvency Partner appointed

Our Commercial Litigation and Insolvency expertise has increased with the appointment of a new Partner, Chantal Reigo. Chantal conducts a busy and varied practice assisting business and corporate clients, developers, insolvency practitioners and family groups. After conducting a risk assessment she considers all options, including alternative dispute resolution. Should litigation be required, Chantal vigorously pursues her clients' interests with the aim of delivering practical and commercially-orientated legal outcomes. Outside of work, Chantal is a passionate Essendon supporter.



## We welcome a new Family Lawyer

McKean Park has welcomed a new Family Lawyer. Leigh Brown has joined our team as Senior Lawyer,

extending the expertise offered by Katrina Bristow and Maria Kourtis. Since graduating in 2008, Leigh has developed a reputation for achieving practical and solutions-orientated outcomes for his clients. Outside work, Leigh and his wife are kept busy with their 2 young sons.

## Victorian Small Business Commissioner speaks at our seminar

Owning and operating a small business has many challenges, including the possibility for legal disputes. This is true for landlords, tenants, businesses and suppliers alike. So how can businesses avoid litigation and achieve resolution to legal disputes? In May, we examined this topic at our ongoing Breakfast Seminar series. We were delighted that our guest speaker was Judy O'Connell, the Victorian Small Business Commissioner.

Judy explained how the Commission provides a number of options to assist in resolving business and tenancy disputes with the aim of avoiding potentially expensive Court cases.

**To receive a copy of the presentation, please contact David Brett on [david.brett@mckeanpark.com.au](mailto:david.brett@mckeanpark.com.au)**

## Our expertise

- Aged Care & Retirement Living
- Building & Construction
- Commercial & Taxation
- Commercial Litigation
- Family Law
- Insolvency
- Leasing
- Property & Owners Corporations
- Rotary
- Wills, Estates, Succession Planning & Estate Litigation
- Workplace Relations



## Phoebe Blank elected as President of LIV Young Lawyers

We are proud to announce that our Workplace Relations lawyer, Phoebe Blank, has recently been elected President of the Law Institute of Victoria's (LIV) Young Lawyers. In this role, Phoebe represents more than 9000 law students and early career lawyers. This significant appointment illustrates the respect that Phoebe has earned amongst her peers and within the legal profession.

A fourth-year lawyer at McKean Park, Phoebe works alongside leading Workplace Relations specialist, Chris Molnar. Congratulations Phoebe!

### Disclaimer

You should not act on the basis of material in this newsletter as the contents are of a general nature only and may be liable to misinterpretation in particular circumstances. Changes to the law occur quickly. Do not act on the contents of this newsletter without first obtaining advice from McKean Park Lawyers.

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