

- + CHILD CARE SALES AND ACQUISITIONS
- + PROPERTY LAW
- + BUSINESS LAW
- + JOINT VENTURES
- + COMMERCIAL LAW
- + ESTATE PLANNING

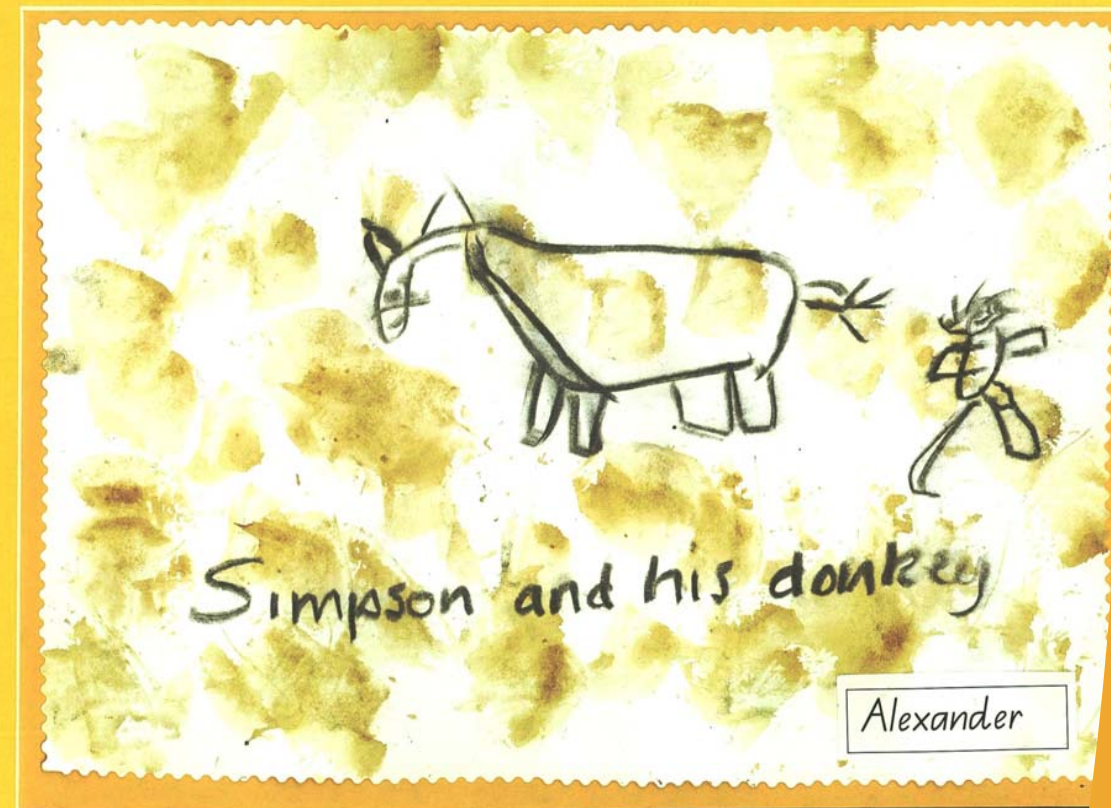
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CHILD CARE: | **A LEGAL SERVICES GUIDE**



Want to buy or build a child care centre?

SMALL, PRIVATE OPERATORS OR LARGE CORPORATE ENTITIES

Whether you are a small child care operator or a large corporation, buying a child care centre requires the right legal expertise. In today's market there are unique opportunities for those who may be interested in increasing their current portfolio with the purchase of viable or potentially viable child care centres.

This legal services guide is not only aimed at existing child care operators who may be interested in adding to their portfolio, but also those who are considering joining the market. This guide will also give you hints and tips at just some of the things that require careful attention.



DUE DILIGENCE

Every proposed purchase of a child care centre should undergo a thorough commercial and legal due diligence investigation. This is absolutely necessary to enable you to make a decision whether to buy. These investigations should include not only a detailed analysis of the business and its financials, but also of the land on which the business is positioned. Suitable inquiries should also be made with the relevant statutory bodies for legal compliance, licensing, accreditation and other related matters. The contract needs to give you sufficient discretion to terminate if you are not satisfied with your inquiries and receive a full refund of your deposit.

BUILDING A CHILD CARE CENTRE

If you wish to purchase land with the intent to build a centre, your investigations need to include whether local council will provide suitable development approval. It is vital that your contract is carefully drafted to ensure you are protected if approval cannot be obtained.

What are you buying?

A "GOING CONCERN"

The purchase (or supply) of a child care centre is usually purchased/supplied as a "going concern" for GST purposes. This means that the purchase price does not include any GST, and the seller needs to be registered for GST. The contract should include certain warranties that the seller needs to provide to ensure the GST status can remain. This equally applies to both the business and the land.

Your contract should be carefully reviewed prior to signing to ensure the correct GST status and warranties are included.

FINANCIAL ADVICE

The purchase of a child care centre, whether freehold or leasehold, will have certain taxation implications, other than GST. These implications may differ depending upon your financial status and how you intend to purchase and own the business. You should seek independent financial advice about your individual taxation and financial obligations and possible benefits. We strongly recommend you obtain this *prior* to signing the contract.

Your accountant should also be involved during due diligence to review financial data and provide you with the right advice.

FREEHOLD OR LEASEHOLD

When interested in purchasing a child care centre, you need to find out whether the purchase includes the land (i.e. freehold) or just the business (i.e. leasehold). It is quite common to find a centre is being sold together with the land, however this is not always the case. There are different considerations and implications if buying freehold as opposed to leasehold.

INTERDEPENDENCY

If purchasing freehold, there are usually 2 contracts involved. You need to ensure that each contract is interdependent (i.e. each contract is subject to the successful settlement of the other). In other words, you do not settle on the business without settling on the land as well. Your contracts need to

provide you with this protection in the event settlement of one cannot occur.

CHILD CARE LICENCE

To legally operate a child care centre you must be appropriately licenced. Your contract needs to be subject to you obtaining a suitable licence, and must also provide termination rights if the licence cannot be granted. You should have the contract checked to ensure you are afforded with the right protection.



RIGHT OF ACCESS DURING DUE DILIGENCE

During due diligence it is very important that the seller grants you access, (whether during or after business hours), to inspect various records of the business and to conduct physical inspections of the site (e.g. plumbing, building, and electrical). The contract should be carefully checked to ensure you are provided with suitable access rights. Once due diligence is completed and if you decide to proceed with the purchase, access should continue until settlement. This should also be provided for in the contract.

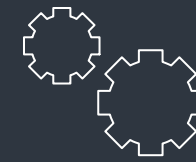


STOCK AND OUTGOINGS

- ✓ CENTRES CAN BE PURCHASED ON A "WALK-IN WALK-OUT BASIS". THIS NEEDS TO BE CHECKED AND UNDERSTOOD BEFORE YOU SIGN THE CONTRACT
- ✓ ALL "OUTGOINGS" SHOULD BE APPORTIONED BETWEEN SELLER AND BUYER
- ✓ CONTRACT SHOULD CATER FOR HOW BOND MONIES, PREVIOUSLY PAID BY PARENTS TO THE CENTRE, ARE DEALT WITH
- ✓ CONTRACT SHOULD ENSURE BUYER IS NOT NOTED AS COLLECTING AGENT FOR SELLER'S DEBTS FOLLOWING SETTLEMENT - (IS COMMON IN QLD AND CAN BE UP TO A PERIOD OF 30 DAYS)

MATERIAL CONTRACTS, MOTOR VEHICLES AND EMPLOYEES

- ✓ THE PURCHASE OF A CENTRE MAY INCLUDE MOTOR VEHICLES USED IN THE BUSINESS. YOUR CONTRACT SHOULD DEAL WITH THIS APPROPRIATELY
- ✓ THE PURCHASE OF A CENTRE USUALLY INCLUDES THE BUYER TAKING OVER SERVICE CONTRACTS - THESE NEED TO BE INVESTIGATED DURING DUE DILIGENCE
- ✓ EXISTING EMPLOYEES CAN BE TRANSFERRED BUT CONTRACT NEEDS TO BE PROPERLY TAILORED TO SUIT YOUR NEEDS



FINANCE

If you require funding from a bank or other lending institution to complete your purchase, you need to have the contract subject to you obtaining suitable finance.

You also need to ensure you are adequately protected under the contract if you cannot obtain adequate funding and need to cancel the contract and obtain a refund of your deposit.

RESTRICTIVE COVENANTS

You may wish to restrict the seller from operating another child care centre in close proximity to the centre you purchase. Often this is provided for in your contract to assist with the continued success of your centre. Your contract needs to be carefully reviewed *before you sign*, to ensure you are provided with adequate protection.

WARRANTIES

It is common for the seller to provide a number of warranties in the contract relating to the accounts of the business, records, assets, equipment, employees and a number of other matters. Usually, this is a matter of negotiation between the parties. It is important you seek legal advice *prior* to entering into the contract to ensure the seller has provided you with sufficient warranties. You will want to rely upon these warranties when deciding whether to purchase or not.

STAMP DUTY AND APPORTIONMENT OF PRICE

Stamp duty must be paid on the purchase contract. There are strict time periods involved. As the contract is normally a conditional contract you need to obtain early advice as to your stamp duty liabilities for your contract. If you are using 2 contracts for land and business, you may be able to apportion the purchase price across the 2 contracts as you see fit. Appropriate advice from your lawyer and accountant is recommended.

