# QSLAW

## quarterly

Issue 24

Q&S QUINN & SCATTINI Lawyers

# Dangerous Driving: The Risks & Consequences Of Reckless Driving

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Unlike most offences relating to the conduct of drivers, dangerous driving or dangerous operation of a motor vehicle is a criminal offence, not a traffic offence. Under section 328A of the *Criminal Code 1899* (QLD) ("**the Code**"), dangerous operation of a motor vehicle is defined as a person who operates, or in any way interferes with the operation of, a vehicle dangerously.

**What Is The Meaning Of "Dangerously"?**

"Dangerously" is to be given its ordinary dictionary meaning of something that presents a real risk of injury or damage. The ordinary meaning of "dangerous" is "fraught with or causing danger; involving risk; perilous; hazardous; unsafe."[1]

A person operates a vehicle dangerously when the person operates a vehicle at a speed or in a way that is dangerous to the public having regard to all the circumstances.[2] Those circumstances may include:

- The nature, condition and use of the place where the driving occurred, and
- The nature and condition of the vehicle being driven, and
- The number of people, vehicles or other objects that are, or would be reasonably expected to be in the place, and
- The concentration of the alcohol in the driver's blood, and
- The presence of any other substance in the driver's body.[3]

**What Is The Penalty For Dangerous Driving?**

Dangerous driving carries a maximum penalty of 200 penalty units ($26,690) or 3 years imprisonment.

The Code provides a number of additional circumstances which will make the charge of dangerous driving more serious. These are called "circumstances of aggravation" and being convicted with a circumstance of aggravation will mean you will be exposed to a greater maximum penalty."

**What Circumstance Of Aggravation Could I Be Charged With?**

The "circumstances of aggravation" for this offence are:

- While adversely affected by an intoxicating substance,
- While excessively speeding or taking part in an unlawful race or unlawful speed trial, and
- Has been previously convicted of dangerous operation of a motor vehicle.

A charge of dangerous operation of a motor vehicle must be heard in the Magistrates Court.

A charge of dangerous operation of a motor vehicle with a circumstance of

aggravation can be heard in the Magistrates Court, or you can elect to have your matter heard in the District Court.

**"While Adversely Affected By An Intoxicating Substance"**

If your blood alcohol concentration is 0.150 or higher, you can be found to have been adversely affected by an intoxicating substance.

Being adversely affected by an intoxicating substance is not conclusive proof that you were driving dangerously, but it is something that will be considered.

**"Whilst Excessively Speeding Or Taking Part In An Unlawful Race Or Unlawful Speed Trial"**

For the purposes of section 328A, you can be found to have been excessively speeding if you were driving over 40 km/h over the legal limit at the time of the alleged dangerous driving.

Unlawful race and unlawful speed trial encompasses any race between vehicles or animals on a road, attempts to break speed records on a road and competitions to test a drivers skills when a prize over $100 may be won by a competitor.

**What Is The Penalty For "Circumstances Of Aggravation?"**

Dangerous operation of a motor vehicle with a circumstance of aggravation carries a maximum penalty of 400 penalty units or 5 years imprisonment.

If a person has:

- Previously been convicted of dangerous driving while adversely affected by and intoxicating substance, or
- Twice previously been convicted of dangerous driving, drink driving or drug driving,

the court must impose imprisonment as either a part of the whole of the person's sentence.

**"To Cause Death or Grievous Bodily Harm"**

If a person is seriously injured or dies as a result of your dangerous driving you will be charged with a more serious offence under the Code. The maximum penalties for this offence are much greater and the charges will be dealt with in the District Court.

**How We Can Help**

If you have been charged with a dangerous driving offence, you should obtain legal advice immediately.

Defending your criminal charge with our experienced lawyers at your side can mean the difference between securing the best, or an average, outcome.

We are available at any of our local offices or by telephone or video-conference.

Get the best representation and book a Criminal & Traffic Law Consultation for $99.

Speak to our expert dangerous driving lawyers on 1800 999 529, email mail@qslaw.com.au or visit qslaw.com.au.

## References

[1] Supreme and District Court Benchbook (No 129.2)
[2] Ball and Loughlin (1966) 50 Cr App R 266; R v Parker (1957) 41 Cr App R 134.
[3] Supreme and District Court Benchbook (No 129.1)

# Signing Your Will In The COVID-19 Environment

**Clark Saint**
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**Wills & Estates**

Over the last few weeks many of our estate planning clients have expressed concern about the risk of being exposed to COVID-19 if they have to leave their houses to sign their wills.

Section 10 of the *Succession Act 1981* ("**the Act**") requires a will to be executed in writing and signed by the testator ("**the will-maker**") and the will-maker's signature must be made or acknowledged in the presence of two or more witnesses who are present at the same time. This means that at least three people would need to be present at the time the will is signed.

The Queensland courts have adapted promptly to deal with the issues arising from COVID-19 and have recently issued Supreme Court Practice Direction No. 10 of 2020 titled "INFORMAL WILLS/COVID-19." This Practice Direction is only to apply to documents that are signed between 1 March 2020 and 30 September 2020.

The Practice Direction is significant in that it empowers the Registrar of the Supreme Court to sit as the Supreme Court and decide applications to dispense with the requirement for witnesses to be in the physical presence of a will-maker when the will is signed.

Section 18 of the Act already provided judges with the power to dispense with execution requirements for a will, alteration or revocation of a will, provided sufficient evidence is presented to the court. But there is no guarantee that an application to dispense with the signing or witnessing requirements under section 18 of the Act will be successful. Section 18 applications are also costly compared to obtaining probate for a properly signed will.

**The Supreme Court Practice Direction No. 10 of 2020 titled "INFORMAL WILLS/COVID-19" is only to apply to documents that are signed between 1 March 2020 and 30 September 2020.**

Under the new Practice Direction, the Registrar may dispense with the signing requirements under Section 10 of the Act if evidence is produced to the satisfaction of the Registrar that:

1. The will was prepared by a solicitor, or a solicitor is one of the witnesses to the will, or a solicitor is the person supervising the signing of the will.

2. The will-maker intended the document to take immediate effect as their will, alteration to their will or full or partial revocation of their will.
3. The will-maker signed the document:
    (a) In the presence of two witnesses who were in the presence of the will-maker by way of video conference but not physically, or
    (b) In the presence of one witness who was in the presence of the will-maker by way of video conference but not physically.
4. The witness or witnesses were able to identify the document that was signed by the will-maker.
5. The reason why the will-maker was unable to sign the will in the physical presence of two witnesses was because of either government-enforced or recommended, or self-imposed isolation or quarantine arising from the COVID-19 pandemic.

So under the Practice Direction, steps can currently be taken to correctly sign your will while not in the physical presence of the two witnesses by the use of video conferencing.

**How We Can Help**

Quinn & Scattini Lawyers have been taking instructions for wills by way of Skype for several years.

Now Skype (among other methods) can be used to help a will-maker comply with the requirements for signing their wills in accordance with the Supreme Court Practice Direction, for wills being signed between 1 March 2020 and 30 September 2020.

Arrange to have your will expertly prepared by Quinn & Scattini Lawyers.

Call us on 1800 999 529, email mail@qslaw.com.au or visit qslaw.com.au.

# Family Law Arbitration – The Benefits

**Taryn Hokin**
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**Family & De Facto Law**

Family law arbitration is a process where an independent arbitrator is appointed to decide a matrimonial or de facto property dispute.

Parties present their arguments and evidence to the arbitrator who makes a final determination to resolve the dispute.

It is often a good idea to consider the family law arbitration process because parties who make an application with respect to property matters in the Family Court or the Federal Circuit Court often face significant delays obtaining a final outcome for their matter.

It is not unusual for matters to be finalised more than 2 years after the date the initiating application was filed in court.

When compared to the court process, family law arbitration can provide a quicker and more cost effective way to resolve property disputes.

The family law arbitration process can take just a few months from start to finish.

Importantly, arbitrators are required to make decisions in accordance with current family law court practices, which are in line with the *Family Law Act* (1975) and relevant case law.

The outcome of family law arbitration is that parties should expect decisions to be made that are similar to decisions made by the family law courts.

**5 Steps To Family Law Arbitration**

1. Select the arbitrator.
2. Obtain an order or agreement to conduct the arbitration.
3. Establish the rules of arbitration proceedings at a pre-hearing conference.
4. Conduct and attend the arbitration.
5. Register the award with the Court.

**The Benefits**

- More cost-effective than waiting to proceed to a final hearing at Court.
- Arbitration proceedings are confidential.
- You can have input on how the arbitration will proceed.
- In most instances you will resolve your disputes quicker than Court.
- The Arbitrator's decision is final (although decisions can be appealed).

Save time, money and heartache with family law arbitration.

**The family law arbitration process can take just a few months from start to finish. Parties should expect decisions to be made that are similar to decisions made by the family law courts.**

**How We Can Help**

We have the legal expertise and negotiation skills required to ensure your arbitration is successful.

Our family lawyers take the time to listen carefully to your needs and communicate in a professional, effective manner.

They will guide you through the process and provide professional legal representation at your family law arbitration – keeping you up-to-date and in control of your family law arbitration.

Get the best legal representation with Quinn & Scattini Lawyers.

To discuss any aspect of your family law matter or if you would like further information about the family law arbitration process please contact us on 1800 999 529, email mail@qslaw.com.au or visit qslaw.com.au.

# Now Is The Time To Review – Your Contract Rights & COVID-19

**Roly O'Regan**
**Special Counsel**
**Commercial Litigation**

In these uncertain and unusual times, many businesses and individuals who have signed contracts are increasingly finding it difficult to fulfil their obligations in light of the COVID-19 restraints.

As a consequence, it may become necessary for you to consider the relevant legal principles which apply to your contracts.

Many contracts may contain a mechanism for review or to allow either party to avoid the obligation to fulfil its performance.

**Frustration**

Frustration of a contract may occur where the following three criteria are met:

- Through no fault of either party,
- An unforeseen event occurs, and
- The event renders performance of the contract completely impossible or materially different from what was originally anticipated.

For example:

- Where a contract specifies a method of performance which is essential to the contract, COVID-19 restrictions which make that method impossible may amount to frustration.
- Where key personnel / staff become unavailable or essential timeframes cannot be met, that may also frustrate the contract.

In these circumstances, the contract becomes frustrated as it has become impossible to perform.

**Force Majeure**

It is not uncommon for a contract to include a force majeure clause.

Force majeure clauses often relieve a party from liability for an inability to fulfil their contractual obligations due to circumstances beyond their control such as, for example, COVID-19.

However, the circumstances must be unforeseeable and unavoidable, and must make performance of the agreement impossible for the duration of the event.

**Final Word**

It is therefore prudent to seek legal advice regarding the status of any contracts that have been or may be impacted by the COVID-19 event.

If the contract is frustrated, it is necessary to consider which obligations are to be discharged and whether there is any scope to recover monies already paid.

As we do not know how long the effects of COVID-19 may last, it is prudent to make provision in future agreements to cover both COVID-19 interruptions and similar

events that may occur in the distant future.

**How We Can Help**

Quinn & Scattini Lawyers' experienced Commercial Litigation Team have assisted many clients with commercial contract disputes, across a range of businesses and industries.

Our lawyers review commercial contracts with a fine-tooth comb and provide timely advice on your contractual rights and obligations, and legal avenues to resolve issues.

Resolve your commercial contract dispute with Quinn & Scattini Lawyers.

We know what it takes to get the best possible result for you.

As one of our clients said "*Invest in the best – Q&S.*"

To speak to one of our experienced lawyers about your contract or dispute, call 1800 999 529, email mail@qslaw.com.au or visit qslaw.com.au.

# Out of Bounds – Boundary Realignment & Partial Land Acquisitions

**Property & Business Team**

For many land owners boundary issues do not arise as most blocks of land are surveyed and marked correctly.

However assume at your peril that your boundary and the plan are identical (we have a separate article titled "Boundaries & Surveys" if you would like to know more on this topic). If you do then find yourself in a position where you or your neighbour are encroaching on each other (particularly if the encroachment is built on) a boundary realignment or partial land acquisition will generally be required.

There are also many other reasons to alter the boundaries of your lot. Often farmers will want to acquire part of a neighbouring lot, developers acquiring multiple parcels of land for staged developments, some neighbours agree to realign shared driveways or other access points, or perhaps you simply want to change the shape of your block.

No matter the reasons, the following outlines the process to realign a boundary or partially acquire a neighbouring lot.

**Contract Of Sale**

Yes, a contract is required to purchase part of a lot. A partial land acquisition is still a dutiable transaction in Queensland, with the contract required to be stamped and duty assessed on the value of the land acquired.

The real benefit of the contract is also to house the terms of the sale; including parties, real property description, amount of land being acquired, finance conditions, purchase price (including any deposit),

mortgagee consent conditions, settlement date, and any other special conditions required.

Most contracts will be conditional upon the survey plan being registered prior to settlement.

This ensures the new parcels of land are created before money changes hands.

**Survey Plan**

The next stage is to engage a surveyor to draft a new survey plan creating the new lots.

This plan will cancel the current lots while simultaneously creating the new ones.

Surveyor's fees can be quite high and it is recommended that a quote be obtained prior to entering into a contract, or at the very least have the contract conditional upon satisfactory survey.

**Land Title Requirements**

**Mortgagees**

If you or your neighbour have a mortgage registered on your title you will be required to obtain the mortgagees' consent to the lodgement of the plan.

Most banks are willing to consent, however they will usually require a copy of the contract and proposed plan prior to providing the approval.

Generally the banks will be required to surrender their mortgage prior to lodgement of the plan.

This should be noted to the surveyor as any current mortgages will need to be omitted from the new plan.

The bank will then lodge a new mortgage over the new lot.

They generally charge a fee to prepare the additional documents and for their agent to attend lodgement, so be prepared for the additional cost.

The land titles office also charge their own document lodgements fees, which will also need to be factored in.

**A partial land acquisition is still a dutiable transaction in Queensland, with the contract required to be stamped and duty assessed on the value of the land acquired.**

**Transfer**

The Land Practice Manual in conjunction with the *Land Title Act 1994* (Qld) require all parties to the transaction to transfer the land to the receiving party.

The transfer is also required to be stamped and any duty paid to the Office of State Revenue.

**Plan & Document Lodgement**

The Torrens system of titling in Queensland requires strict adherence to

lodgement order to create and record interests on land titles.

This is why an experienced legal practitioner should be engaged to prevent any requisition fees that result from improper lodgement order.

**Settlement**

Once the plan and associated documents register, the new titles will have been created.

The settlement clause of the contract will come into play and the final purchase price can be paid.

This completes the process.

**How We Can Help**

At Quinn & Scattini Lawyers our experienced property lawyers are well aware of the pitfalls associated with boundary realignments and partial land acquisitions.

If you find yourself in need of assistance navigating the above, please contact us for professional service at a reasonable price on 1800 999 529, email mail@qslaw.com.au or visit qslaw.com.au.

# *Connect* with

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