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NEWSLETTER

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Electoral Finance Act 2007

The controversial Electoral Finance Act 2007 (The Act) came into force on 1 January 2008. It is designed to reform campaign finance and has been heavily criticised by many to be an unjust limit on freedom of speech. Its critics say that it is an assertion by the government of a new audacious right; the right to determine the amount of assistance that political parties can receive from supporters. On the other hand, the Act's supporters say that it is a just limit on the freedom of speech, as other principles such as preventing undue influence due to wealth, override the freedom of speech argument and in fact tends to level the playing field regarding the amount of money each party receives.

Purpose

The Act's purpose is to strengthen the law governing electoral financing and broadcasting in order to maintain confidence in our electoral system, while at the same time promoting public participation, preventing any undue influence on the outcome due to wealth. It is also seen as providing greater transparency and accountability on the part of candidates, parties and other persons engaging in election activities, and to ensure there are controls on the conduct of election campaigns.

The Act monitors spending by political parties and campaign groups from 1 January to polling day if the election is held in the third year of the election cycle; previously it was 3 months before polling day.

Changes to Donation Regime

Under the Act, anonymous donations can be made of up to \$1,000 and must be sent to the Electoral Commission which then makes payment to the intended party. Donations over \$1,000 cannot be made anonymously. Disclosure of identity is made to the Electoral Commission which in turn pays the donation to the party. However, it cannot disclose the identity of the donors.

If more than \$12,000 is spent, registration as a non-political third party is necessary. However the Act has placed a limit on the amount of spending by such "third parties" of \$120,000.

Election Advertisements

Advertising must carry a statement recording who is behind it and, if it has cost more than \$12,000 to set up, then the person who is behind the advertising must also be registered with the commission as a third party. Care must be taken because advertisements do not need to mention the name of a candidate or party to qualify as an "election advertisement". The definition of

“publishing” covers almost all means of sending a message to the public.

It has recently been reported that Tim Shadbolt is planning to breach the Act by advertising without the necessary written authority. He is also not going to state his full name and address or include any authorising statement. The police are intending to prosecute.

Offences

It is an offence to contravene the Act and the penalties have been increased for anyone convicted of a corrupt or illegal practice. The period in which a prosecution can be brought has also been increased. However, the Electoral Commission and the Chief Electoral Office have

discretion in referring matters to the Police. Matters are not to be referred if considered “so inconsequential that there is no public interest in reporting those facts to the New Zealand Police”.

Conclusion

The legislation is in its infancy and therefore it is not yet known what effect it will have. However, if money is to be spent on supporting your preferred political party, never mind how much bang you can expect for your buck, just remember to make sure you spend that buck in accordance with the new Act.

The Disputes Tribunal



Last year Edith, an elderly widow, paid a local painting contractor \$7,000 to paint part of her house. After only 12 months the house looks terrible and needs to be painted again. The painting contractor has refused to fix the work and Edith has found another more reputable painter who will redo the work for a further \$7,000.

Edith’s lawyer has advised her that she can sue the first painter in the District Court but that the cost of doing so may make it uneconomical for her. Fortunately for Edith, she can bring a claim in the Disputes Tribunal.

What types of claims are covered?

The tribunal is very versatile and can hear claims about almost anything, from car repairs to grazing stock, from a faulty new computer to hair dressing for a wedding gone terribly wrong.

There are some limitations. There must be a dispute - you can’t file a claim if someone simply refuses to pay a bill, when there is no argument about whether they owe the money. The Tribunal is also limited in terms of disputes concerning employment, land sales, wills, rates, taxes, and other statutory amounts.

For most disputes the tribunal is an informal, inexpensive, quick and private way to resolve the disagreement.

If the dispute relates to something worth up to \$7,500, a claim can be filed as a matter of right. If the value is between \$7,500 and \$12,000, both

sides must consent for the matter to be heard by the tribunal. The tribunal has no jurisdiction to hear a claim over \$12,000.

Procedure

The tribunal is much more flexible than a District Court. No one is allowed to be represented by a lawyer and the rules provide that the tribunal shall determine disputes “according to the substantial merits and justice of the case”. In doing so it is not bound to give effect to strict legal rights or obligations. This emphasis on what is fair and just, rather than the letter of the law, allows a referee to take matters into account that a judge in a District Court may be prevented from considering.

In Edith’s case, she may have signed a contract with a clause prohibiting her from claiming compensation more than 6 months after the work was completed. The referee is not bound by that provision and may award her \$7,000, if that seems to be fair and just. The referees are also not bound by the evidential rules of a court.

Preparation is the Key

Probably the single most important aspect of bringing (or defending) a claim in the tribunal is preparation. Make sure that you have copies of any important documents, such as bills, receipts, photographs or reports. Ensure that any important witnesses can attend. If they cannot do so in person they may be able to attend by telephone and support a written summary of what they saw or know. Review each step of your claim (or defence) thoroughly before the hearing so that you can anticipate any challenge that the other party might make and anticipate any concerns that the referee may have.

Conclusion

Long memories of the problems associated with the Disputes Tribunal's predecessor, the Small Claims Tribunal, mean people sometimes assume

the tribunal is only suitable for the most basic disputes. In fact, if you prepare your claim carefully and thoroughly, it can be an excellent forum to resolve a dispute of up to \$12,000.

Room with a View

Introduction

Imagine this, after considering the various housing options you decide you want an apartment in the heart of Auckland City. You want to be close to the action. It's central, a perfect base, a long term investment!



The city has many beautiful views so you want to be elevated to take advantage of the opportunity for that. You spy a brochure which covers the key aspects of your search. The apartments are not built yet but the glossy publication promises classy central city living, and that view. Once you have signed up and the building has been constructed, you walk in and discover that a roof is obstructing your priceless view!

A Misrepresentation

The key question for the court in the case that followed this disappointing discovery by the purchaser was whether the misrepresentation made in the brochure meant that the agreement to purchase could be cancelled. Alternatively, would the Court require the purchaser to pay over the purchase price and buy an asset that did not live up to the initial expectations? The Court in this case said settlement must proceed.

The Agreement and Plans/Specifications

After the "tease" in the original brochure, came the actual agreement for sale and purchase with detailed plans and specifications. These, when taken as a whole, showed the existence of the roof in front, and fully disclosed the exact situation. The agreement included the standard provision that once signed, the agreement was the binding and complete legal arrangement between the vendor and purchaser.

In other words, the brochure was not to be taken into account when finally deciding what the terms of the contract were. As the purchaser had the opportunity to take any legal or other advice available prior to signing, there was no reason, in the Court's view, why the contract should not stand. The Court ruled that the settlement must proceed.

Conclusion and Warning

In the excitement of the purchase, who would have given a thought to the roof next door, particularly as nothing was constructed at the date of signing. In hindsight, the warning is clear and the principle applies to every signed sale and purchase agreement. Before you sign, obtain all the advice you can, because prior representations will usually not be a relevant factor. In this instance, not only legal advice was required, but specific architectural advice regarding the plans and specifications was also needed.

New Zealand's Emissions Trading Scheme

Climate change is a hot topic as the mercury rises ever higher around the world. Legislatures are increasingly looking to new mechanisms to combat climate change and the New Zealand Government is now no exception.



In December 2007, the Government introduced the Climate Change (Emissions Trading and Renewal Preference) Bill which will give rise to New Zealand's first domestic emissions trading scheme.

Purpose

The Bill has two primary purposes. Firstly, to establish the New Zealand Emissions Trading Scheme (NZ ETS) and secondly, to create a preference for renewable electricity generation by implementing a 10 year moratorium on new fossil-fuelled thermal electricity generation.

Staged Entry

The government has provided for staged entry into the scheme as follows:

Stage 1 - Forestry sector, retrospectively from 1 January 2008. However, the obligation to comply

with the standards does not take effect until 31 December 2009;

Stage 2 - Liquid fossil fuel sectors, from 1 January 2009. As with forestry, the obligation to comply takes effect from 31 December 2009;

Stage 3 - Stationary energy sector and industrial process (non-energy) emissions, 1 January 2010;

Stage 4 - Agriculture, including farming and horticulture, and waste, 1 January 2013.

Participants

The NZ ETS affects three types of participants.

1. Businesses that are labelled as “points of obligation”. These businesses (yet to be identified) will have specific obligations and must surrender New Zealand Units (NZUs) to cover direct emissions or emissions associated with their products. These businesses will generally be at the top end of the sector. For example, fuel companies, rather than motorists.
2. Businesses that receive freely allocated emission units for eligible afforestation.
3. Businesses that trade NZUs to take advantage of market opportunities that could arise.

Allocation of Units

Snippets

Education Update – Violent Students

A school principal has successfully defended a judicial review of her decision to stand down a 7 year old student with ADHD for five days after a violent incident in the classroom.



The Education Act 1989 provides that a principal may stand down a student if there has been gross misconduct that is a harmful or dangerous example to others, or, the behaviour is likely to cause serious harm to the student or other students. Upon standing down a student, the principal must immediately notify the Ministry of Education and the parents, and give reasons for the decision.

The High Court reviewed the circumstances surrounding the decision and found that the principal acted within the law.

The Government is yet to show exactly how it will allocate NZUs. It will do so depending on how different sectors and participants will be affected and whether they can pass costs on to consumers. Businesses such as fossil fuel providers and electricity generators, who can pass on cost increases to consumers, will need to purchase credits to meet their obligations. However, businesses, such as forest and farm owners, that cannot pass on costs will have units allocated to them.

Societal Impact

Expect an increase in transport and energy costs and the cost of products arising from various industrial processes. Essentially the cost of business will be directly related to the extent to which a business is able to reduce or offset omissions, thereby reducing the cost of NZUs. Consumers are inevitably going to resist these costs being passed on.

Eventually everyone will be affected in some way by climate change legislation. It is necessary for the business world to turn its mind to mitigating those cost consequences now. If you are an emitter, you can plan to reduce emissions, purchase NZUs, or reduce emissions below the sector level and sell spare units to another emitter.

Whichever way you look at it, humankind is going to inevitably pay for emitting carbon and, as some might say about politics: left or right is dead; it's all about the environment.

Consumer Guarantees Update

A recent High Court decision has finally answered a long-standing question arising from the Consumer Guarantees Act 1993: can a consumer take it upon themselves to arrange for the repair of a defective good and then claim the full cost back from the supplier; or, must the consumer first give the supplier the opportunity to provide a remedy?

The decision is unequivocally clear - the consumer must first afford the supplier the opportunity to remedy the defect. This is in line with the general policy of the Act that the suppliers of goods are liable to provide remedies as they, and not the consumers, should bear the risk of defective goods.

If you have any questions about the newsletter items, please contact us, we're here to help