

# WILLIAMS EASON

incorporating BRASSINGTON & CO

## BARRISTERS & SOLICITORS

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### NEWSLETTER

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We are pleased to welcome to the firm the former clients of Brassington & Co. We have been in touch regularly with Gerald since his retirement, he is thoroughly enjoying it and looks better for it.

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### Through The Looking Glass....Privacy Issues Under The Spotlight

In the last fifteen years we have been hit by a tidal wave of technology, and it's thanks to this technology that we are able to obtain information on just about anything with a click of a mouse. We can stay in contact with family and friends the world over through email, chat rooms and websites such as Facebook and Bebo. We shop and pay our bills online, check ski conditions on Mount Ruapehu or the surf at Mount Maunganui all from our computers.

What most of us don't realise is that every time we use our credit card, surf the net or download photos we are creating a digital footprint. Alarmingly, a recent study by International Data Corporation (IDC) has revealed that the digital information generated about us on a daily basis (dubbed our "digital shadow"), is now greater than the total information that we actively create ourselves and it's going to continue to increase at a rapid rate.



A great deal of information about us is gathered through surveillance footage without us even realising it. Every time you walk into a department store, bank, petrol station or supermarket you are more than likely being filmed through closed circuit television (CCTV). CCTV is also used on many central city streets; Auckland's Queen Street alone has over 100 cameras operating, not to mention the cameras monitoring Auckland's motorways.

The Privacy Act 1993 requires that a person should be made aware that information is being gathered about them and the purpose for doing so. A Hamilton City nightclub came under scrutiny last year when the use of CCTV footage revealed a patron causing damage. The cameras were located in the nightclub toilets and the patron was not aware he was being filmed as there was no signage indicating that cameras were in use.

The release of the New Zealand edition of Google Street View has also been controversial. It is created from millions of photos taken from cars equipped with cameras that travelled the country taking images of our streets. The result is that anyone with access to the internet can take a virtual walk down your street and view the surroundings. Concerns raised about identification of people and vehicles have been addressed by the blurring of faces and licence plates. There is also a facility to report a concern about a particular image. This may be of small comfort as by the time the image is discovered, the damage could have already been done.

Privacy Commissioner Marie Shroff has identified privacy and data protection as being one of the

biggest issues of our time, and warned that the misuse of personal information, identity theft and fraud are all dangers that should not be ignored. In response, the Law Commission is currently undertaking a four stage investigation into privacy issues. Stages one and two were completed in 2008. These stages involved an assessment of privacy values, changes in technology, international trends and implications for New Zealand Law, and consideration of whether the law relating to public registers required systematic alteration. In stage three, the Law Commission will investigate the adequacy of current civil and criminal law in dealing with invasions of privacy. In the final stage, the Law Commission will review the Privacy Act 1993 and make suggestions on how it can be changed.

## Subdividing?

Whether you are subdividing a 1000m<sup>2</sup> section or a 100 hectare block of land, the basic process is the same. You should become familiar at the outset with the following stages of subdivision.

### Due Diligence Phase

Initially, depending on your particular subdivision, meet with either all or some of the following: surveyor, solicitor, engineer, council planner, architect, and accountant. Usually your surveyor and solicitor can tell you who will need to be consulted. The head title and district plan will be analysed to assess whether subdivision is possible and, if so, what conditions/restrictions might apply. At this point, the decision will be made as to whether it is feasible to continue with the subdivision on the basis of your original subdivision plan.

### Preparation of Scheme Plan and Resource Consent Application

Your surveyor will prepare the scheme plan and resource consent application to submit to council.



The scheme plan must show all boundaries on the existing head title and the layout and size of the new lots. It must also show the location of buildings, roads, significant natural areas, rivers or streams, reserves, easements, schedules and any other information required to assess the effect upon the environment (as required by the Resource Management

Act 1991). Once completed, the surveyor will submit the resource consent application to the council.

### Grant of Resource Consent

Prior to granting a Resource Consent, a site inspection is carried out by the council planner checking that the subdivision complies with the policies, objectives and rules set out in the District Plan. The planner will in most cases carry out consultation with the Regional Council, Council

Engineers and Building Inspectors to check that the subdivision meets their requirements. All going well, the council gives its approval and will grant resource consent. Most subdivisions that comply with the plan will be processed on a non-notified basis and a decision should be made within 20 days.

### Implementation of Conditions

In most cases, Council imposes conditions such as provision of water and sewer connections to new residential lots, formation of rights-of-way and vehicle crossings. These conditions and any others imposed will need to be met before new certificates of title are issued.

### Council Approval

When conditions have been met and development levies paid (if required), the surveyor requests section 223 and 224(c) (Resource Management Act 1991) certificates. These certificates are issued when the council is satisfied that the plan and implementation of conditions conforms to the subdivision consent. If any conditions have not been complied with, the council issues a consent notice.

### Issue of Title

The final stage involves the surveyor submitting the survey plan for approval and deposit by Land Information New Zealand (LINZ). At this stage the solicitor lodges the necessary documents for the issue of title including: order for new certificates of title, easements to grant rights of way, drainage easements, water right easements, and easements to create land covenants. The Solicitor simultaneously lodges these documents together with the section 223 and 224(c) certificates and consent notices with LINZ. The titles are usually issued 10-15 working days thereafter.

### Finally

Make a point of getting to know the above steps. You will then be able to take more control of the process while relying on the relevant experts to guide you through the finer points of that process.

## 90 Day Trial Periods Introduced

On 12 December 2008 the Employment Relations Amendment Bill was passed. The amendment allows employers who have fewer than 20 employees to terminate the employment of new staff within the first 90 days of employment without fear of a personal grievance for unjustified dismissal; provided the parties have agreed to a trial period in the employment agreement.



In all other respects the employee is to be treated no differently from other employees whose employment agreements do not contain a trial period. The obligation of good faith remains during the trial period with the exception that the employer is not required to consult and to provide information to the employee prior to termination.

The amendments are effective from 1 March 2009. The date of determining whether the employer has fewer than 20 employees is the date the employment agreement was entered into. The legislation does not specify who is counted as an employee and so, potentially, casual and part-time employees could be counted. The following conditions apply to the trial period:

- It will only apply to employees who have not previously been employed by the employer.
- Both parties must agree to the trial period.
- The trial provision must be a written provision in the employment agreement.
- The trial period must not exceed 90 days – so it could be for a shorter period than 90 days.
- During the trial period the employer may dismiss the employee by giving notice of termination.
- The employer must give notice of termination to the employee within the trial period in order to be protected by the trial provision.
- If the employee is dismissed they are not entitled to bring a personal grievance or other legal proceedings in respect of the dismissal.
- Employees will still be able to bring personal grievance claims for unjustified disadvantage, sexual or racial harassment, discrimination or duress.

Commentators have mixed views on the amendments. Australia and most other OECD countries allow trial periods.

The New Zealand Government has introduced this legislation in an effort to encourage employers to provide employment opportunities to people without financial risk to the employer if the employment relationship does not work out.

In an announcement on 11 December 2008 the Minister of Labour, Hon. Kate Wilkinson, stated that “By lowering the legal risks employers face, they will be more confident in giving people the opportunity to prove themselves” and that “The 90 day trial will provide real opportunities for people at the margins of the labour market”.

Given that the trial period must be agreed between employer and employee, those employees who are in demand and have some bargaining power will no doubt attempt to negotiate the removal of the trial period.

Employment problems can take some time to surface so employers will need to be vigilant to ensure they act within the 90 day period.

## Consumer Guarantees Act – An Overview

The Consumer Guarantees Act 1993 (the Act) does exactly what its name suggests; it sets out statutory guarantees that goods and services must meet. However, although it covers a broad range of day-to-day transactions, the Act does not apply to every sale and purchase.

There are two central requirements of the Act. Firstly, that the goods and services must have been sold or provided by someone “in trade”, such as a shop selling goods or a person whose work involves them providing a service. Secondly, the protection only applies to someone who is a ‘consumer’. The Act provides that a ‘consumer’ is someone who acquires goods or services that are ordinarily acquired for

personal, domestic, or household use or consumption. The definition focuses on what is being purchased, rather than on who is purchasing it. Examples of things covered by the Act would include the purchase of goods such as clothes, a DVD player, a car and groceries, or services such as car repairs, house painting, a haircut or accountancy services.

Because the guarantees are statutory, they apply whether or not they are mentioned in any contract that relates to the supply of the goods and services. However, it is important to know that a supplier can exclude the guarantees if the goods or services are bought for business use. For example, if you buy an

ordinary household dishwasher for use in the office, the supplier may expressly contract out of the guarantees.

The Act also does not cover goods or services that are ordinarily bought for commercial use, such as farming equipment or a printing press. Nor does it cover items bought privately, such as from a garage sale or a school fair.

There are a range of guarantees set out in the Act. Essentially they require goods to be of acceptable quality. This means they must be fit for their normal purpose, free from minor defects, safe and durable. For example, a hairdryer must blow hot air, not stop working intermittently because it overheats after a few minutes use, and keep functioning for a reasonable time after you buy it.

Similar guarantees exist for services, including the service being provided with reasonable care and

skill, within a reasonable time (unless you agree to a specific time), for a reasonable price (unless you agree to a specific price), and fit for the purpose you bought it for. For example, the Act will be breached if you hire someone to paint your small house and they haven't finished the job two months after starting it, or they use the wrong type of paint, or charge you twice as much as painters normally charge for painting a house like yours.

If the fault can be fixed or repaired, you must give the supplier the opportunity to fix the problem. They don't have to refund your money if they repair the problem, or provide a replacement item. If they do not fix the problem within a reasonable time you may take steps to fix it yourself and claim the cost of doing so from the supplier.

## Snippets

### **Resource Management Act – Amendments Proposed**

The National Government plans to introduce changes to the Resource Management Act (the RMA) to reduce unnecessary delays, uncertainties, and costs. On 16 December 2008 the Minister for the Environment, Hon. Nick Smith, announced the appointment of an RMA Technical Advisory Group to support the Government's program of reform for the RMA.



National will introduce a Resource Management Amendment Bill to:

- simplify and streamline the Act by limiting the definition of environment and reducing the consent categories
- provide priority consenting for large projects to reduce delays. The yet to be established Environmental Protection Authority will be required to process large project consents within a timeframe of 9 months
- improve consent processing by establishing a new complaints mechanism
- prevent vexatious or frivolous complaints by reinstating the Environment Court's power to award security for costs
- improve consent planning by simplifying council plans
- remove the ministerial veto on coastal consents (This is in response to the controversial Whangamata Marina decision)
- establish an Environmental Protection Authority (EPA) by expanding the existing Environmental Risk Management authority and increasing its responsibilities. The EPA will be responsible for

National Policy Statements, National Environmental Standards and major consents.

The Hon. Nick Smith states that the aim of the reforms is to get "good environmental outcomes without the high costs, long delays, and lack of certainty under the current Act".

Phase 2 of the proposed reforms will take place at a slower pace and will include:

- a review of infrastructure regulation and the interaction between the RMA and the Public Works Act
- development of a programme of action with regard to water quality and allocation
- a review of the RMA and urban design in our major cities.

Watch this space for further updates!

### **Holidays Act**

Although the National Government is planning to review the Holidays Act, they have promised to retain 4 weeks annual leave and to allow employees to trade the fourth week for cash.

*If you have any questions about the newsletter items, please contact us, we are here to help.*