

**PLEASE
READ
THIS**

Our office experienced technical issues with the 'newsletter@smithpartners.co.nz' email that have affected all senders of emails to that address. We apologise for the inconvenience this has caused. We would appreciate you resending your request to this email should you wish to receive our newsletter electronically in the future.

Inside this edition

Green Leases - The Way of the Future 1

Protect your Business from Bad Debtors2

Employment Relations (Flexible Working Arrangements) Amendment Act 20072

Residential Care Subsidies3

Solicitor Profiles4

Snippets4

It's Not Easy Being Green:
Commerce Commission Warns.....4

Trees for Survival4

Green Leases – The Way of the Future



Worldwide focus on environmental sustainability has given rise to a green building movement that aims to incorporate environmentally sustainable design principles into the building process and maintain those principles after the building has been built.

When a building is completed, and the tenant moves in, what measures need to be put in place to ensure ongoing commitment to environmentally sustainable design principles? Addressing these issues has resulted in the introduction of the Green Lease concept.

Green Lease Schedule

It is predicted that the concept of the green lease will become a standardised schedule to accompany standard commercial lease documents. At this stage, however, drafting is done on a case by case basis. The schedule would incorporate obligations of landlords and tenants to comply on an ongoing basis with environmentally sustainable design principles. A

collaborative approach is required by landlord and tenant to ensure that the principles are complied with over the term of the lease.

Contents of Schedule

A green lease would include the following:

- binding promises
- remedies
- incentives for both parties to improve environmental performance
- ongoing requirements such as:
- obtaining Green Star NZ ratings
- cleaning with environmentally friendly products
- reducing energy/water use
- recycling
- having an environmentally friendly fit-out and building management process

The landlord would be obliged to ensure that target ratings are achieved and maintained for the term of the lease. The tenant would also make a similar undertaking in relation to its fit-out.

Management committee

A management committee is required in accordance with the green lease schedule.

Partner's Corner

On 1st August 2008 a new piece of legislation called the Lawyers and Conveyancers Act 2006 came into force.

This law implements a number of changes and additions which affect the legal profession, including a new set of 'conduct and client care' rules. Put simply, these rules form the code by which we practice law, including how we deal with the public and clients, how we deal with other practitioners, and how we act as officers of the court.

What does this mean to you our client? We have taken this opportunity to update our Terms and Conditions of Engagement, and have drafted an 'information for clients' sheet. This contains information about how to go about making a complaint, in the unlikely event that you have not received a competent level of service from Smith & Partners.

This means that you may receive more paperwork from us than usual. Previously our Terms and Conditions were only sent out to new clients, however we are currently sending this important information to ALL clients, old and new, as we are instructed to act. Please note our Terms and Conditions are available to access on our new website at all times. We will aim not to send these to the same client more than once, although you will receive a Letter of Engagement from us for each new matter.

The purpose of the Letter of Engagement is to confirm your instructions to us, let you know who will be responsible for completing your work, who that persons supervising partner and assistant is, how much we expect our fees to be, and on what basis we charge our fees.

We look forward to serving your needs.

There should be a binding agreement to comply with obligations under a 'green management plan' and a review by the management committee at least every two years. A process for remedial action should be included, with disputes referred to a 'green expert'.

Landlord/Tenant benefits

The scheme will provide benefits for both landlords and tenants. The benefits for tenants include:

- Reduced outgoings (likely to include: water, electricity, waste management, air-conditioning).
- Ability to provide an excellent working environment
- Enhancement of reputation

Landlords would benefit as they are able to attract quality tenants and increased returns over the long term.

Protect your Business from Bad Debtors



Owners or managers of small to medium sized businesses will be increasingly aware of how the global credit squeeze is affecting New Zealand. As finance companies collapse, fuel costs escalate and interest rates rise (amongst other things) the pressure grows for everyone to cut costs and make savings.

One common response from debtors to these pressures is to delay paying creditors – including you. Effectively they are using you as a low cost source of extended funding.

Planning how best to protect your business from bad debtors involves both practical and legal issues, as set out in the following paragraphs.

Take time at the outset to ensure the customer can and will pay. Sometimes the promise of a new order for work overrides common sense enquiries at the time about the customer's circumstances and their ability and willingness to pay the price you require.

Ensure that you have full details of your customers before you commit to the work. This includes all of their contact details but also the legal name and type of entity. All too often creditors go to take enforcement action only to find they are missing details that compromise debt recovery. For example, you might assume your customer is John Brown trading as John's Timber Supplies only to find out that he was representing John Brown Limited trading as John's Timber Supplies. This can result in you having no action against John Brown personally, only his limited liability company, which might be insolvent.

If your customer is a small company, obtain a guarantee from the directors. It is often more effective to pursue a director personally, rather than a company.

Environmentally sustainable buildings

Some of the factors requiring consideration when constructing environmentally sustainable buildings include:

- a comfortable, productive and healthy environment
- low energy use/greenhouse gas emissions
- sustainable/healthy transport options
- low water use
- recycling

More prescriptive green leases are likely to emerge over time. What could be perceived by developers/landlords as unwelcomed increased costs in the short term may eventually provide long term cost benefits associated with putting in place environmentally sustainable design principles.

Have written terms of trade that the customer signs before you supply the product or service. This makes it very difficult for the customer to dispute your terms at a later stage, which often happens if the terms are posted with an invoice, after supply, or not recorded in writing at all. Include terms that:

- state when payment is due
- set a default interest rate for late payment, and
- provide for recovery of full legal costs, should you have to take enforcement action.

If appropriate, include specific reference to creating a security interest pursuant to the Personal Property Securities Act 1999. This will enable you to become a secured creditor. If you do this, you will also need to be aware of the process for registering a financing statement on the Personal Property Securities Register (PPSR) at www.ppsr.govt.nz/cms, without which your security won't be complete and is likely to be ineffective.

Take steps as soon as a customer is late. Speak with them if possible. If not, write to them. Too often debtors are not contacted early enough and a problem that could have been a minor one becomes a major one.

The overall key is to take care with your procedures and documentation at the outset of the transactions. It may require time and money to put everything in place but it will more than pay for itself over time.

Lawyers often deal with creditors who fail to recover some or all of their debt, despite having provided an excellent product or service, because they haven't taken enough care or obtained adequate advice when setting up their paperwork and procedures.

Contact Taufil Omar should you require information on how to register a financing statement on the PPSR.

Employment Relations (Flexible Working Arrangements) Amendment Act 2007

The Employment Relations (Flexible Working Arrangements) Amendment Act 2007 ("the Act") was given Royal Assent on 26 November 2007 and came into force on 1 July 2008.

The Bill was introduced by Green Party MP Sue Kedgley and was designed to address the perceived need of employees with young families who were simply dropping out of the work force

rather than obtaining more flexible working arrangements to meet the needs of their family.

Who may apply?

Any employee who is responsible for the care of any person and who has been working for their employer for not less than 6 months may make an application under the Act. There are no requirements that the employee be related to the person they are caring for and there is no definition of what the 'care' may involve.

What are flexible working arrangements?



The employee may apply to vary their conditions of employment related to their hours of work, days of work, and/or place of work and this request must be in writing. The request made will entirely depend on the needs of the employee in caring for another person.

What information must be supplied?

The employee must specify:

- how they wish to vary their conditions of employment
- whether the request is to permanently vary their conditions of employment or for a specified period of time
- how the variation will allow them to provide better care for the person they are caring for,
- what changes the employer may need to make if the employee request is approved.

Can more than 1 request be made?

If a request is made the employee is not entitled to make another request under this part of the Act for another 12 months.

Residential Care Subsidies

If you or a family member requires long-term residential care in a rest-home or a hospital, you may be interested to know that there is a Residential Care Subsidy available to those who require financial assistance towards the costs associated with long-term residential care in a rest-home or hospital. The principle behind the subsidy and eligibility thresholds is that those who require long-term residential care should meet the cost of their care as much as they are able to, but if they have insufficient assets to pay for their care they may be eligible for the subsidy.

Eligibility for the Subsidy

In order to be eligible for the Residential Care Subsidy one must have been assessed as needing residential care in a rest-home or hospital and be likely to need that care indefinitely and be aged 50-64 years, be single and have no dependent children or be aged 65 years or older and have assets within certain thresholds set by the government.

From 1 July 2008 those who do not have a partner or who have a partner also in long-term residential care must have assets valued at \$180,000.00 or less to qualify for the Residential Care Subsidy. For those people who have a partner who is not in care they are able

What the employer must do

The employer does not have to accept the request. The employer must notify the employee within 3 months whether their request has been approved or refused and, if refused, notify the grounds for refusal and provide an explanation of the reasons for their decision. If the employee is dissatisfied, he or she may refer the matter to mediation. If that does not resolve matters, the problem can be referred to the Employment Relations Authority for a determination.

What are the grounds for refusal?

The Act sets out the following broad grounds for refusal:

- a detrimental impact on the quality or performance of work
- additional cost
- inability to reorganise work
- inability to recruit additional staff
- insufficiency of work
- planned structural changes
- detrimental effect on ability to meet customer demand
- the potential to undermine the terms of a collective agreement where the request relates to working arrangements to which the collective agreement applies

What if the employer does not respond?

If the employer has not complied with their obligations under the Act the employee may refer the matter to a Labour Inspector for assistance in resolving the matter. The employer may be fined up to \$2000 by the Employment Relations Authority.

A review of the operation of these amendments must be carried out by the Minister of Labour as soon as is practicable after 1 July 2010.

to choose a threshold of either \$85,000.00 not including the value of their vehicle or house or \$180,000.00 including the value of their vehicle and house. Both of these thresholds increase by \$10,000.00 on 1 July each year.

If a person exceeds the threshold he or she is expected to sell those assets to pay for his or her care. Alternatively if a house asset prevents eligibility because it is counted as an asset, in some circumstances Work and Income may lend the subsidy as an interest-free loan and require payment when the house is sold or payment from your estate.

Assets and Gifting

A way to both preserve your assets and still be eligible for the Residential Care Subsidy is to gift some of your assets to family members or to the trustees of a trust to be held on trust for the trust's beneficiaries. The assessment of assets will ignore any gifts that were made five or more years before you apply. Any gifts made within the five years before your application in excess of a total of \$5,000.00 in one year will still be treated as part of your assets in your application. However, Work and

Income do have the power under the Social Security Act 1964 to review all gifts you have made and to assess your assets as including a gift made if they believe that the gift was made with

Solicitor Profile - Elizabeth Briggs



Elizabeth Briggs has joined the family and employment team, taking over from Marie Harrison who has left for her OE. Elizabeth was admitted as a solicitor last year and joins us from a city firm where she worked in corporate/ commercial law. Prior to attending Law school Elizabeth worked in human resources and has practical

knowledge of the issues facing employers and employees.

Elizabeth’s passion is family law and she will be providing advice on all areas including parenting arrangements, custody disputes, relocation issues, maintenance and relationship property, and will be working with the family law partner Rebecca Teirney.

Snippets

It’s Not Easy Being Green: Commerce Commission Warns



With rising fuel prices and increased awareness of our ‘carbon footprint’, being Green has become all the rage – or perhaps more appropriately - envy. It should come as no surprise then that advertisers have

pounced upon what is being dubbed ‘greenwashing’ as an essential tool for marketing. Indeed some have taken to it with such fervour, that in their bid to out-green the competition, the accuracy of the claims may be left wanting.

This has become a focus for the Commerce Commission who in issuing warnings recently noted that the “growing trend to greenwashing by businesses is cause for concern if the green, eco-friendly or sustainability claims are false or misleading”. The Commission will be keeping a close eye on the issue, and where necessary, enforcement action will be taken under the Fair Trading Act.

Trees for Survival – Quail Road, Kaukapakapa

Taufil Omar, an Associate at the firm was involved in the Trees for Survival project at Quail Road through the Rotary Club of Mount Roskill Inc. (“the Club”).

The project is a partnership between the Club, Waikowhai Intermediate School (“WIS”) and businesses which support the school and the Auckland Regional Council.

the intention of reducing your assets to qualify for a government benefit or subsidy. Please feel free to talk to Kylie Taylor at our office should you require further assistance.

Solicitor Profile - Ilsaad Razak



Ilsaad Razak (Razak) joined as a Solicitor in the Litigation Team of Smith & Partners on 7 January 2008. Razak has previously practiced in the Fiji Islands as a Barrister & Solicitor engaged in Civil Litigation, Arbitration, Debt Recovery, Bankruptcy, Winding Up Proceedings and General Commercial work including drafting and

opinion work on Commercial Contracts.

Razak completed his Bachelor of Law Degree (LLB) in 1997 and his Professional Diploma in Legal Practice (PDLP) in 1998. Razak provides support for general Civil Litigation and Dispute Resolution and works very closely with partners Greg Muller and Rebecca Teirney.

Just over 1.7million trees were planted in Aotearoa in 2007. The effort is part of the UNEP billion tree campaign.



The planting assists control soil erosion, safeguards our water quality, provides habitats for our native wildlife, as well as remove carbon dioxide from our atmosphere.

The planting may assist the farmer as well as New Zealand with the passing of the Emissions Trading Scheme (ETS) legislation on 11 September 2008. All facets of the economy will be affected with limits placed on the amount of greenhouse gas emission. Buying credits under the ETS will become the norm and both individuals as well as businesses need to get a grasp of the new regime.

(L-R: Brent Leete (WIS), Taufil Omar and Luc Marie (Club members))

All information in this newsletter is to the best of the authors’ knowledge true and accurate. No liability is assumed by the authors, or publishers, for any losses suffered by any person relying directly or indirectly upon this newsletter. It is recommended that clients should consult a senior representative of the firm before acting upon this information.

If you have any questions about the newsletter items, please contact us, we’re here to help. If you would like to receive this Newsletter electronically, please forward your email details to newsletter@smithpartners.co.nz.



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ENDURING POWERS OF ATTORNEY IMPORTANT LAW CHANGE WILL MAKE THEM MORE EXPENSIVE AFTER 26TH SEPTEMBER 2008

Enduring powers of attorney are special powers of attorney that enable the recipient of the power of attorney to use them to manage the affairs of another person should that person be incapable of giving instructions by reason of, say, dementia or other serious illness.

Currently the practice of many solicitors is to have a husband giving an enduring power of attorney to his wife and visa versa.

An amendment to the Act of Parliament that sanctions enduring powers of attorney means that both the husband and the wife or partners in a permanent relationship for that matter, will have to have separate legal advice from separate law firms before giving an enduring power of attorney to one another.

This will increase the total cost of an enduring power of attorney and mean serious inconvenience to a couple who would normally have the documentation completed by their family solicitor.

Currently, we think that a reasonable fee for completing enduring powers of attorney for husband and wife or partners would be, say \$200.00 plus GST. The possible cost of the exercise for separate advice is likely to total something in the vicinity of \$600.00 plus GST.

Clearly, there is a considerable saving both in time and cost if clients were to complete their enduring powers of attorney prior to the 26th of September 2008. We urge our clients to make time before then to have their enduring powers of attorney completed.

LAUNCH OF NEW WEBSITE!

Smith and Partners Lawyers has re-launched its new website with a vibrant new look, new content and features electronic newsletter functionality and includes a search facility.

To better serve our clients, the website will now archive past electronic PDF copies of our quarterly newsletters.

We are thrilled with the new website. We believe it represents the full service nature of our legal practice and reflects our long term strategic plan to become a leading law firm providing quality legal services to our clients. The design of the website reinvents our style but at the same time aligns the new style to our branding. The aim of the new website is to provide a fresh, clean and professional look that fits with the way we serve our clients. The new website does not derogate from our 'simple, shoot straight' practice identity that complements the personalities of the Partners and staff of the firm.

Law firms are now also required by the Rules of Conduct and Client Care to provide information to clients pursuant to the Lawyers and Conveyancers Act 2006. Clients will now be able to view 'Information for Clients' and the firm's 'Terms & Conditions of Engagement' on our website all the time.