



It is a very Kiwi characteristic to unwind by becoming involved in some sort of outdoor pursuit. At this time of the year, many of you will be making holiday plans and come late December will head for either the beach or the hills.



Our second issue of *MML News* takes a look at the Walking Access Act 2008 and examines "responsible conduct" as it applies to the use of walkways. The Act takes a more moderate line than the original suggested approach of compulsory acquisition of marginal strips for public use. Now land owners are being encouraged to negotiate with potential trampers in the hope that areas of our country not previously available to the public can be explored and enjoyed.

Whatever you decide to do at Christmas have a wonderful time. This will be our last newsletter for the year and we would like to extend to you and your family our best wishes for a wonderful relaxing and safe holiday.

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These Boots are Made for Walking - The Walking Access Act 2008

If you are a farm owner this Act won't walk all over you!

On 25 September 2008 the Walking Access Bill was passed in Parliament. The origins of the Bill hail back to 2004 when the Government floated the idea of creating marginal public strips across privately owned land to allow all New Zealanders access to important recreational waterways. Property owners were concerned law may be passed to compulsorily acquire privately owned land for public walkways and farmers raised various concerns related to disruption of stock, damage to private property near the walkways and public safety. One major concern was their own potential liability for accidents on their property.

In answer to these concerns a Walking Access Consultation Panel was established that received almost 1400 submissions in response to its consultation document. The Panel made various recommendations that have now been enshrined in the new Act.

The Walking Access Act 2008 ("the Act") establishes a New Zealand Walking Access Commission ("the Commission") to enhance and extend walking access to our great outdoors. The Commission will form national strategy and provide national leadership to co-ordinate access among key stakeholders. The Commission will also provide advice and information on walking access routes, determine the nature of the access (i.e. walking, bicycles, access with motor vehicles, dogs and use by hunters) negotiate new walking access across private land and facilitate the handling of any disputes.

The Commission will develop, promote and maintain a code of responsible conduct for users of walkways that will include such matters as:

- Standards of behaviour to be observed.
- Information about Maori customs, values and practices.
- Maori relationships with the land and waterways.
- A summary of benefits conferred and obligations imposed by the Act, and
- Any such other matters that the Commission feels would be beneficial to users of walkways and relevant landowners. A draft code is to be prepared as soon as practicable.

The Act preserves private property rights and provides that public access to private land should be achieved through negotiation and agreement with landholders rather than compulsory acquisition. It sets out the process that must be followed to declare a walkway over public land and to negotiate a walkway over private land and Maori freehold land.



Section 54 of the Act sets out a number of strict liability offences that may be incurred while using walkways. Strict liability offences include:

- Discharging a firearm
- Setting a net, trap or snare
- Placing poison or explosives
- Lighting a fire
- Taking plants
- Using a vehicle
- Taking a horse or dog on a walkway without authority

Section 56 sets out offences that require knowledge, intent or recklessness, such as interfering or disturbing livestock or wildlife, damaging or destroying structures and attempting to intimidate persons using a walkway.

The Act provides for the appointment of enforcement officers, for a term not exceeding 3 years, who have powers to prevent or stop offenders. A fine not exceeding \$5,000 may be imposed for offences under section 54 of the Act and a fine not exceeding \$10,000 for offences under section 56 of the Act.

Within 11 years from the commencement of the Act the Minister must report on a review into the Act and any recommendations for changes to the Act.

You can find out more about the Commission at its website, www.walkingaccess.org.nz.

BUSINESS LINKS

Can You Predict the Future of Your Business?

Would you like to see the financial outcome of every business decision - before you make it?

How many business decisions have you made over the last year that turned out different to what you had hoped or planned? How many "what would happen if I did this?" thoughts do you have every day but can only guesstimate at their outcome?

How excited would you be if you could watch on screen the financial future of your business unfold as you asked lots of "what if" questions? What if you set your business a financial outcome goal and were immediately told what key drivers would have to change to achieve that goal?

Many businesses are running on a knife-edge because of the impact of financial and economic conditions that are not easy to predict or prepare for. Right now, business owners must invest in and harness the very best tools possible to assist their decision making.

One of the very best tools available anywhere in the world is the software

programme ProfitOptimiser. It empowers a business owner to better prepare for the tough times ahead, to test almost endless scenarios, to test investment and expense decisions, to test changes in staffing levels, changes in pricing and changes in funding costs.

This tool is so powerful that major banks are now employing it to analyse their clients' funding strengths. Imagine the strength of your funding proposal if you knew the bank's covenants and ratios before you went to the bank. Get it right, and there's almost 100% chance that the bank will run with you. Quite good odds.

Accountants and Business Advisors Wood Rivers Hawes, through the generous support of Mortlock McCormack, has a 90-minute demonstration available to any interested business owner. If you are interested, please contact Jan Crooks on 377 2900 or Jamie Tulloch on 379 2343.



SNIPPETS

ENDURING POWERS OF ATTORNEY

Our last newsletter included an in-depth article about Enduring Powers of Attorney. A brief resume is provided below:

On 26 September 2008, the Act governing powers of attorney was amended. In brief, the Act has made powers of attorney documents more secure meaning they are less able to be abused by attorneys to whom power to act on a donor's behalf is given.

Among other things, the signature of the donor must be witnessed by a lawyer, qualifying legal executive, or an officer of a trustee corporation. The witness to the donor's signature must certify that he/she is independent of the Attorney.

Therefore, in the common situation where a husband and wife wish to appoint each other as attorneys, advice from two qualifying witnesses such as a lawyer/qualifying legal executive/officer of a trustee corporation is a necessity. Both parties should see their witness independently of the other.

The independent advice requirement will be the major effect of this amendment and is one of the measures that aim to ensure powers of attorney achieve what they set out to achieve.

DID YOU KNOW?

If all the beer produced around the world was put into cans – and there are some people who would probably think that was a very good idea – the resulting stack would go from the earth to the moon over 35 times. Just like that, you are smarter than you were a minute ago.

More than Just a Solicitor



Rob Glass joined Mortlock McCormack Law in July 2007 and works alongside Tony Herring. Rob has developed a passion for assisting new business owners take their first steps in addition to ensuring established company's are protected.

As a fresh-faced 15 year old, Rob Glass was making waves as a talented DJ. With his 6th form certificate marks providing early entrance into Canterbury University Law School Rob made the decision to leave school early and follow his dream of combining his love of music with the law.

That same year Rob established his own event brand and began running events throughout the South Island. These events have

featured international talent from Germany, Australia, United Kingdom and of course New Zealand. Events have ranged from 600 person concerts in Christchurch to intimate jazz and dinner evenings at Godley House. Rob's DJ'ing has taken him as far afield as Tahiti and he has played in front of crowds of over 2000 people at some of the country's most prestigious festival and venues.

Rob is now a member of a number of local music forums and associations and this year attended the largest music industry event to be held in Australasia, the Sydney Song Summit. His inside knowledge of the entertainment industry enables him to give sound practical and legal advice to a broad range of clients.

Children's Participation Increased by Changes to Family Courts

Counselling and Mediation

Children now have the opportunity to participate in counselling when decisions are being made about parenting matters, due to the passing of the Family Matters Bill on 2 September 2008.

Provided the parents agree, children will be able to attend part of the counselling, or speak with the counsellor directly.

Up until now, children's involvement in counselling was not specifically provided for by legislation.

In many cases, the benefits to both the children involved and their parents will be significant, as from an early stage in the process the child's view on what is important can be expressed and considered.

As well as counselling, parties involved in parenting matters (and other matters such as relationship issues) will be able to request family mediation to help them identify issues and to resolve matters by agreement. The mediation will not be overseen by a Family Court Judge but by a specialist mediator. The purpose of the mediation is to divert less complex family disputes away from formal court proceedings and to resolve them quickly and inexpensively. Children can also be involved in the mediation and will be able



to attend the counselling, to help them formulate their views.

Following the mediation, the mediator will be required to provide a report to the Court detailing the resolution reached between the parties, the issues still to be resolved and non-binding recommendations as to the next steps to be taken by the parties.

If parties (now including grandparents and other family members) are considering entering into a parenting agreement, they can request mediation or counselling. These can also both be accessed to help resolve a dispute arising from an existing agreement.

Other changes resulting from the passing of the Family Matters Bill include:

- Extending the duties of the Family Court Registrars.
- New positions of Senior Family Court

Registrars, with the intention that they will be able to relieve the pressure on Judges and reduce delays by dealing with, for example, routine procedural matters.

- New provisions for openness in Family Court proceedings have also been included with support persons and accredited media allowed to attend proceedings. Reports on the proceedings can be published by the media, but it is an offence to publish a report without leave of the Court where the report includes identifying information and a child or vulnerable person is involved. Support people will also be able to attend proceedings provided the judge agrees.

Implementation

The above changes are intended to increase the openness of Family Court proceedings and to improve the efficiency and effectiveness of the Family Court. The Bill was divided into 12 amendment Acts and will be implemented in stages. It is intended that most provisions will be in place by early 2009, although new services like the counselling for children, and family mediation, will take longer and the exact commencement dates are yet to be announced.

Art Awards 2008

The winner of the 2008 MML Art Awards was Greg Yee with his untitled installation, an expression of his family and community life in China.



Greg Yee and Sue McCormack

Greg's careful crafting of components to make up a work encompassing photographs/prints and ordinary house-hold objects was a popular choice for the ultimate award and will be displayed in MML's offices, along with previous winning works.

This was the fifth year MML has been involved in the awards and Warren Feeney, the guest judge, commented on the strength of the work produced. Other winners were Natalie Wahrlich landscape calendar, Sue Ollerenshaw After the Flush Board Game, Courtney Horwood Untitled photograph (old man) and Evan Gardner Priman Factory (model).

Members of MML, guests, CPIT students and tutors enjoyed the hospitality at the Christchurch Convention Centre and were able to view the more than 150 works displayed. Sue McCormack, partner of MML commented on the firm's philosophy to encourage and inspire young people to achieve their full potential.

SNIPPETS

BUILDING ACT UPDATE: Kiwi DIY Tradition Improved

One of the last acts of the outgoing Government was to cut back on DIY building regulations enacted as a result of the leaky building crisis.

The Government has realised that the response to the crisis was too extreme and has reduced the scope of work that requires building consent. Schedule 1 (Exempt Building Work) of the Building Act 2004 was amended by Order in Council on 16 October 2008. The work that does not require consent now includes such things as:

- Changing existing household plumbing
- Removing or changing non-load bearing walls
- Installing or replacing windows or exterior doors
- Making a home more accessible by widening doorways and building access ramps
- Construction of retaining walls that retain not more than 1.5 metres depth of ground
- The construction, alteration or removal of a pergola

These changes will allow Kiwis to once again take up their tools and go about what they have always done in that long standing tradition of DIY.



The Early Bird Catches the Worm – Time Limits in Civil Claims

Imagine that 2008 was just not your year. It began with the discovery that your home, bought four years ago, is a leaky home and needs major repairs that will cost over \$200,000.

A short time later your widowed mother died, leaving her entire estate, worth several million dollars, to your siblings because of a recent falling out with you – and that after years of living with you and your family. Then, two months ago, you lost your job because you stood up to your manager, who is a workplace bully. The final straw came when your plasma TV died last night during a test match, after having intermittent problems since you bought it 18 months ago.



You decide it is time to right some wrongs and go to see your lawyer. One of the issues that will be raised with you is limitation periods, which are time limits within which certain claims must be brought.

Some of the limitation periods that might apply in the present scenario include the following. You believe that the real estate agent who sold you the house misled you and you would like to bring a claim under the Fair Trading Act 1986. However, your claim under that Act might be barred because applications under the Fair Trading Act must ordinarily be made within three years of the date of the event.

You then consider bringing a claim through the Weathertight Homes Resolution Service against the architect, the developer, the builder, the roofing company and the council that issued the code compliance certificate. Unfortunately, the house is 11 years old and section 393 of the Building Act 2004 prevents claims being brought 10 years or more after the date the work was carried out.

You may have better luck bringing a claim against your mother's estate

pursuant to the Family Protection Act 1955 (or on the basis of a testamentary promise, if you had been led to believe that you would inherit some of the estate). The general rule for bringing such claims is that they must be filed within 12 months of the date that administration or probate is granted. However, in certain circumstances you need to be even quicker, because the estate may be distributed after six months, provided all beneficiaries indemnify the trustees for early distribution.

What about your case for unfair job dismissal? If you wish to bring a personal grievance pursuant to the Employment Relations Act 2000 against your employer, it must be submitted to the employer within 90 days from the date you were dismissed.

Surely the Consumer Guarantees Act 1993 won't let you down. However the Act provides that you must reject goods "within a reasonable time" and what is reasonable will depend upon the type of goods and how they were used. You might not be entitled to compensation if it turns out that the minor problems you have been having for 18 months should have been fixed and would have prevented the TV from stopping altogether.

These are only a handful of examples of the limitation periods that apply to a vast array of legal situations. While some of the limitation periods can be extended by a court, the examples highlight that it may be crucial to seek legal advice as soon as possible. Most claims must be brought within a certain time, or the opportunity to obtain a remedy will be lost.

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