



EDITORIAL

We are now well into the festive season and no doubt you are all busy and very much looking forward to Christmas and a well-deserved break.

We have some interesting articles in this edition of our newsletter, brought to you by four of the six MML partners on a range of different matters. We hope you enjoy them.

2017 has been another very busy year for the MML team, and we have enjoyed helping our many clients with their various legal matters.

We take this opportunity to wish you and your loved ones a very Merry Christmas and a safe, happy and relaxing summer holiday.

Sarah Manning
Partner

NEW WEBSITE LAUNCHED!

We're very excited to unveil our new website. Check it out at mmlaw.co.nz



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Andrew Logan

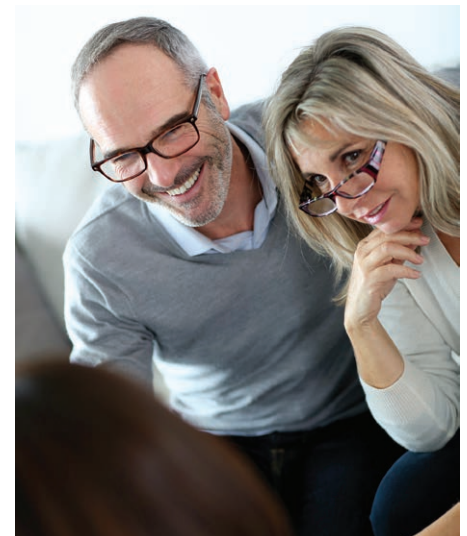
Reform of Trust Law and What You Need to Know

The new Trusts Bill was introduced to Parliament on 1 August 2017 and has had its first reading.

The introduction of the Bill to Parliament is the first step of the process for it to become law. It is likely that the Bill will not become an Act until some time in 2018 subject to the new Government's legislative agenda. The Bill is designed to "re-set" and "re-state" the law surrounding family trusts as we know it. It will replace the Trustees Act 1956 and incorporate some of the developments in trust law which have been established by the Courts over the last few decades.

The Bill raises the bar in terms of expectations on trustees. Many trustees, if they are being honest, will readily admit that they have very little understanding about what it means to be a trustee and how family trusts should operate in general. This can be anything from a lack of understanding of what the trust deed says, the failure to separate personal and trust assets and generally an inadequate state of administration. Often trustees believe that simply having a trust deed is "enough" to maintain a trust. The general misunderstanding and misuse of family trusts, the sheer number of family trusts in New Zealand and the Court's attitudes to family trusts have all resulted in the need for the Bill and trustees are now on notice that a failure to engage properly with the family trust and fulfil their responsibility in accordance with the law will have serious legal consequences.

The re-setting and re-statement of the law has many subtle and important changes so that it will no longer be a case of "business as usual" for trustees. There will be a



greater need for legal and accounting advice to navigate through the changes and that will have a consequence for the time, cost, and attention trustees will need to commit to their family trust.

One of the most significant changes brought about by the Bill will be a disclosure regime for the supply of information to beneficiaries. The Bill proposes to place a positive and active obligation on trustees to provide a range of information to beneficiaries about the family trust which until now has not been a legal requirement. The days of the family trust being "private" will go and it is likely that the supply of financial information and information about trustees' decisions will create a new dynamic between trustee's and beneficiaries. This may not be viewed by some trustees as "a good thing". The disclosure regime will also focus trustee's attention on who the beneficiaries are. Many trust deeds are drafted to provide ...

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MML PEOPLE

Double Admission a Double Delight

On 12 October 2017 Billy Clemens was admitted as a Barrister and Solicitor of the High Court of New Zealand. His Supervising Partner Tony Herring had the pleasure of attending the admission ceremony as moving counsel. As if one admission wasn't exciting enough; Anna Rumbold, daughter of Partner Sue McCormack, was also admitted on the same day. We are very proud of both Billy and Anna.



Newly appointed Solicitor Billy Clemens and Partner Tony Herring



Mother and Daughter, Anna Rumbold and Partner Sue McCormack

Sue McCormack

The Terrace

Six years after promising to rebuild on his riverfront land, Antony Gough will this month see the first business move into the development called The Terrace.



Antony took Sue and an entourage of architects, project managers and other family members to Melbourne in 2013 to look at hospitality outlets and the concept of laneways being a big part of The Terrace development which will bring Christchurch back to life and give strength and confidence to our city.

The Terrace has been under construction on Oxford Terrace in central Christchurch since mid-2013, and will accommodate bars, restaurants, offices and a car park.

Stage 1 of the development has been developed by Antony and has an office tenant moving in shortly, followed by hospitality tenants some of whom will take over their premises ready for the Christmas opening.

Stage 2 of the development has been developed by Antony and his brother Harcourt and his family. It is a six-storey glass fronted office building on the corner of Oxford Terrace and Cashel Street, which will accommodate office tenants including Westpac and the accountancy firm KPMG.

Stage 3 of the development has been developed by Harcourt and his son Christiaan, along with Antony and his other brother Tracy. It is going to be a

multi-level carpark combining office and hospitality. Watch this space!

We wish Antony, Harcourt, Tracy and their families every success in The Terrace and all of us at Mortlock McCormack Law are very much looking forward to socialising at The Terrace soon.



Antony & Sue on the balcony in "Building A" facing the Avon River (Ōtākaro)

Continued from page 1.

... for a wide range of beneficiaries and many of those beneficiaries are never realistically intended to receive a benefit. Often extended family or charities are included and allow for a "disaster scenario" where all the immediate family die at the same time. However under the new disclosure regime siblings, cousins, parents who are named as beneficiaries will receive a range of information about the trust, its assets, finances and how they are used.

In preparing for the new trusts environment, now is the time to take

stock of your family trust and ask four very important questions:

1. **Why do I have a family trust?**
2. **Are the reasons I originally set up my trust still valid, or valid because of my current circumstances?**
3. **Who are the beneficiaries of my family trust and are they really who I mean?**
4. **Am I sure that the benefit of having a family trust not going to be outweighed by the disadvantages, particularly in light of the disclosure regime?**

Once the Parliamentary process has determined the final shape of the Bill, we will be providing further information. Irrespective of the final shape of the Bill, change is coming and we encourage those with family trusts to think about them and review the purpose it serves.

If you continue to have questions or think we can be of assistance, contact Partner Andrew Logan – DDI 03 343 8452 / andrew@mmlaw.co.nz



Sarah Manning

Updated Law on Earthquake Prone Buildings



There is now a new national system for managing earthquake prone buildings (EPBs). This framework came into effect on 1 July 2017, and it affects the owners and users of EPBs, together with local councils, engineers, agents and other building professionals.

The new system divides New Zealand into three “earthquake” categories, and different rules now apply to each category. A map showing the categories is shown below at the end of this article.

Local councils are tasked with identifying EPBs within their regions, within certain timeframes (with shorter timeframes for higher risk areas). Owners of EPBs will then be obliged to take action to either strengthen or demolish their earthquake prone buildings.

This map shows the three earthquake risk areas:

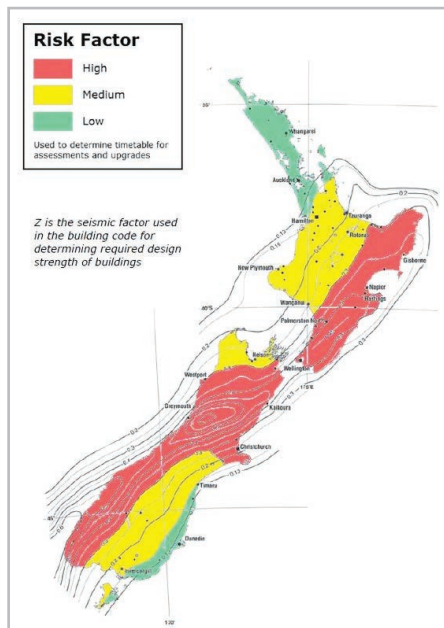


Photo: NZ government

The system focuses on the most vulnerable buildings, in terms of public safety, and the provisions apply to non-residential (ie commercial) buildings and also to some larger residential buildings.

The residential properties to which the rules apply are those that are at least two storeys and either:

- contain three or more household units, or
- are used as a hostel, boarding house, or other specialised accommodation.

In high-risk areas, such as Christchurch, Wellington and Napier, buildings need to be assessed within 5 years and upgraded within 15 years.

In medium-risk areas such as Tauranga, Hamilton or Nelson, the timeframe is 10 and 25 years respectively

In low-risk areas such as Auckland, buildings need to be assessed within 15 years and upgraded within 35 years.

Certain “priority” buildings in high and medium risk areas, such as emergency facility buildings ie hospitals, and schools, must be identified and strengthened in half the time.

There is some flexibility to add 10 years to the timetable for registered heritage buildings and to exempt buildings with low risk and low usage.

The timeframes are set out for easy viewing in the box below.

In accordance with the timeframes, owners of potentially earthquake-prone buildings

will be notified by their local council and will be asked to provide an engineering assessment of their building/s.

To assist owners and local councils, the government has prepared an “EPB Methodology” which will help with identifying, assessing, and making decisions on potentially earthquake-prone buildings.

If you receive a notice that your building is “earthquake prone” you will need to respond to the council within a set timeframe, and either show that the building is not earthquake prone, upgrade it, or accept that it is earthquake prone. If the building is not upgraded within the specified timeframe, the council has wide powers i.e. the council will be able to carry out the required work (and bill you) or demolish the building. Also, non-completion of required upgrading work within the timeframes is an offence and the maximum fine is \$200,000.

Also, if a building is deemed “earthquake prone” a notice must be displayed prominently on the building until such time as it is upgraded or otherwise deemed not to be earthquake prone. The notice will have a different coloured border depending on how “dangerous” the building is thought to be ie orange and black diagonal lines for a building which is 0-20% NBS, black and white diagonal lines for 20-34% NBS, and notices for EPBs which have no NBS rating yet assigned must have a solid orange border.

The new rules will also have implications for occupiers of EPBs, given that all businesses have ongoing obligations to their staff and customers under the Health and Safety laws and regulations. Landlords and tenants will also need to check their leases carefully, and turn their minds to these issues when negotiating new leases or taking on an assignment of a existing lease as part of a business purchase.

Please contact Sarah Manning – DDI 03 343 8456 / sarahm@mmlaw.co.nz if you would like any more information.

This table shows the timeframes for action:

| Seismic Risk Area | Councils must identify potentially earthquake-prone buildings by: | | Owners of earthquake-prone buildings must carry out seismic work within (time from issue of EPB notice): | |
|-------------------|---|-------------|--|----------|
| | Priority | Other | Priority | Other |
| High | 1 Jan 2020 | 1 July 2022 | 7.5 years | 15 years |
| Medium | 1 July 2022 | 1 July 2027 | 12.5 years | 25 years |
| Low | N/A | 1 July 2032 | N/A | 35 years |

MML PEOPLE

WELCOMES

PA/Legal Secretary, Margy Sharplin joined the firm in September. Margy brings with her 25 years' experience in large to small firms in both New Zealand and Australia. Margy works with Partner Hamish Douch and Legal Executive Justine Bateman. Great to have Margy on board!

Summer Law Clerk, Josh Hitchcock is our fresh face around the office. Finishing up at UC this year and having the task of completing Profs in 2018, Josh will be under the supervision of Partner Kent Yeoman for his Summer Law Clerk term.

CONGRATULATIONS

Solicitor, Billy Clemens on his appointment to the bar in October 2017.

FAREWELLS

PA/Legal Secretary, Rizza Brosnan after 3 years with MML Rizza departs for a change in pace and lifestyle. We wish Rizza all the best for her journey ahead.

Legal Secretary, Claire Smith MML has depended on Claire for quality admin assistance over a number of years. Claire leaves the MML team to take on a new and exciting role with the Ministry of Justice. Well done Claire!

ACKNOWLEDGMENTS

The University of Canterbury "Child and Family Law Prize in Honour of Hugh Cottrell" – the Partners of Mortlock McCormack Law are privileged to establish this yearly prize in recognition of academic excellence in Child and Family law at the UC School of Law in Hugh's name.

Mortlock McCormack Law
Child and Family Law Prize
in Honour of Hugh Cottrell



Kent Yeoman

Franchise – Opportunity & Risk

A recent survey indicated that New Zealand was the most franchised country in the world.

Whilst perhaps surprising, it is clear that there are many opportunities available to franchise or license businesses, and also purchase a franchise (or even a franchise system). However, there are risks in franchising, particularly if you enter into a franchise without fully appreciating how it works and your potential liability.

Setting up a franchise system or licensing

If you intend to expand your business by franchising, there are important considerations that we can help you with. You need to:

- Assemble a group of advisers who have an in-depth knowledge of the franchising industry. This includes a lawyer that is experienced with franchise agreements but also in setting up franchises and other similar systems;
- Get the structure right at the start. It is difficult to make changes further down the track, especially if you already have franchisees that are signed;
- Protect the intellectual property that you are going to franchise. This will form the basis of your franchise system and what franchisees will pay good money to acquire the right to use.

There are many different ways to structure a franchise system. It does not have to be a full blown franchise which can be daunting and expensive. There are different options available.

Buying a franchise

Again, you need the right advice from a lawyer experienced in franchising. Someone like myself, who can point out the risks, quickly identify clauses that are tough but included for good reasons and who can



assist in negotiating changes where needed. Such input up-front regularly saves money for clients initially and in the long run.

Do your due diligence on the franchise and the franchisor. Is the franchise working well? Is it financially strong? Can you make money out of the business?

The franchise agreement is the foundation for the business. It is often lengthy, complicated and onerous. It needs to be adhered to for the term (often many years) in good times and in bad, including the payment of all franchise fees. Before signing it is almost always worth negotiating some of the important terms and conditions and fees.

There can also be many other important documents linked together, which need to be considered carefully. These include the operations manual, the lease, your financing documents and your franchisee structure.

What is your exit strategy? All franchises end and while the franchise will keep going without you, what will you be left with? This needs to be considered carefully as often the documentation does not fit the expectations and plans.

However, don't be put off! The statistics consistently show that the right franchise can be very successful.

Partner Kent Yeoman – DDI 03 343 8453, kent@mmlaw.co.nz can advise you on franchise matters, or other matters in the business/commercial sphere.

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