



BarltropGraham LAWYERS Bulletin

MARCH 2006 • NEWSLETTER FROM BARLTROP GRAHAM LAWYERS

We wish you all the best for 2006. This summer break has been a beauty, recalling summers of old with lots of sunshine. Perhaps that is why the general atmosphere around Feilding is so positive, despite the efforts of politicians and economists to spread doom and gloom.

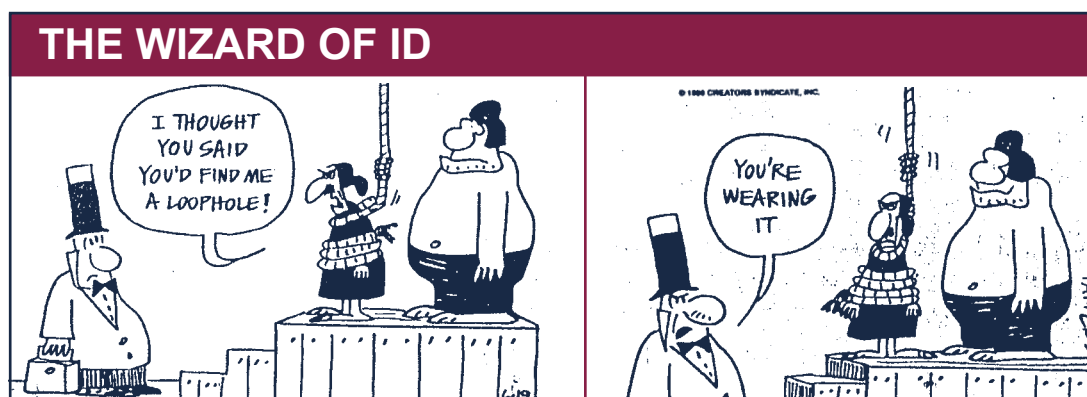
Our first newsletter of 2006 is earlier than usual so that we can record some staff changes in a timely manner and also advise you of office closures over holiday weekends and lunch hours.

The first staffing change arises from the retirement of Jan Robson, our Office Manager. Jan joined Barltrop Cobbe & Lockhart (as it then was) in 1970 and has been a valued staff member ever since. (A fuller summary of Jan's career appears inside). We wish her all the best for a long, well-earned retirement.

At the beginning of March we welcomed Vicky Sharp to our staff. Vicky has a background in the Courts Division of the Justice Department and, more recently, has worked for five years as a Customs Broker. She is to train as a Legal Executive and is looking forward to that challenge. We hope Vicky will have a satisfying career with us.

Finally, to office closures. Our offices will close for Good Friday (14th April) and re-open on Wednesday 19th April. We will then close again for four days from Saturday 22nd April to Anzac Day (Tuesday, 25th April). We hope this will not inconvenience clients, but the opportunity for long breaks before winter sets in was too good to miss! Also, we are hoping to ease pressure on staff by closing our offices between noon and 1pm each day.

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CARING FOR ANIMALS

Are you too busy caring for your children to properly care for your animals? Too busy making arrangements shifting house to make arrangements for the cat? Are you unsure what to do about neighbours who go away on holiday leaving their animal tied up without water or food?

Being unaware of your obligations as an owner or a person in charge of an animal, or failing to meet your obligations under the Animal Welfare Act 1999 ("Act"), can have dire consequences.

Among other things, the Act:

1. Sets out the obligations of owners (or persons in charge) in respect of caring for their animals;
2. Creates offences for failing to meeting these obligations; and
3. Sets out the maximum penalties for those who are convicted of failing to meet their obligations.

It also creates offences and imposes penalties for any person who wilfully ill-treats animals.

Statutory obligation

Under the Act, owners or persons in charge of animals have a statutory obligation to ensure the physical, health and behavioural needs of animals are met in a manner that is in accordance with good practice and scientific knowledge.

Owners and those in charge of ill or injured animals must, where practicable, ensure that animals receive treatment that eases unnecessary or unreasonable pain or distress. This obligation, however, does not require a person to keep an animal alive when it is suffering unreasonable or unnecessary pain.

Failing to care appropriately

It is an offence under the Act for owners or persons in charge of animals to fail to meet these standards of care. It is also an offence to kill an animal in a manner that causes the animal to suffer unreasonable or unnecessary pain or distress.

Further offences include abandoning an animal in circumstances where no provision has been made to meet the animal's physical, health and behavioural needs.

In order to be found guilty of failing to care for animals appropriately, it is not necessary for someone to actually intend to commit the offence. Individuals who are found to have committed an offence under the Act face maximum penalties of a 6 month prison sentence, a fine of \$25,000, or both.

Wilful ill-treatment of animals

It is an offence under the Act for any person (owner or otherwise) to wilfully ill-treat an animal in a way that causes the animal permanent disability, death,

pain or distress to such an extent that it is necessary to destroy the animal to end its suffering. Individuals convicted of wilfully ill-treating animals face maximum penalties of three years imprisonment, a fine of \$50,000, or both.

SPCA Bay of Islands v Jonson & Jonson

In April 2005, the Jonson's were convicted of failing to properly care for their cattle. The conviction arose from their failure to move the cattle from a low lying flood-prone run-off before a predictable flood left the cattle (including a number of calves) swimming for their lives. The couple were fined a total of \$4,000 and costs of \$1,915 for SPCA's expenses for what the Judge considered an entirely foreseeable event.

When you know an animal is being neglected or ill-treated

When you know an animal is being neglected or ill-treated you have a number of options depending on how serious the case is. Contact the Police in serious cases that involve danger or damage to persons or property. For less serious cases, contact your local SPCA or your local City Council Dog Rangers who together are responsible for laying prosecutions against offenders.



SNAIL IMPORTER NAILED

A 42 year-old woman from Nigeria is set to appear at England's Uxbridge Magistrate's Court after she was caught importing more than her own weight in edible snails.

The woman was detained at Heathrow after she said she had a "small item" to declare, the Guardian newspaper reports. Staff were suspicious of her bags and decided to search, finding sacks of the delicacy amongst her clothes.

"It was the largest seizure of snails ever at the airport," said a spokesperson for Customs and Excise, after his colleagues weighed the haul at 104kg.

The snails, which were found nestling amongst clothes and other packing, are thought to be giant African snails, which are apparently cheaper than the more famous French escargots.



LEAKY HOMES

Background

There has been considerable publicity about the problem of houses which are not watertight—commonly known as “leaky building syndrome”. There can be a number of causes for leaky buildings:

- Incorrect installation of monolithic cladding systems
- Inadequate construction of design features which do not allow for proper deflection or drainage of water
- Inadequate administration by councils and the Building Industry Authority
- A failure by the building industry to deliver the level of care and skill required for modern building systems
- The use of untreated framing timber.

What do you do if you own an affected property?

If you observe signs of cracking, staining or discolouration either on the exterior or interior of your property, then a weather tightness specialist consultant should be engaged to assess the damage before undertaking any repairs. The consultant will be able to advise you as to the likely cause of the damage which,

in turn, will enable you to assess what remedies are available to you.

Weather Tight Homes Resolution Service

The Weather Tight Homes Resolution Service was set up to assist affected home owners. Its purpose is to provide access to “speedy, flexible and cost effective procedures” for assessment and resolution of claims. In practice many building owners are dissatisfied with the service and the high cost of pursuing claims. Several action groups have been formed to address the problem.

How to avoid buying a Leaking Home

If you are purchasing an existing property, then arrange for a professional inspection of the house to be carried out by a qualified and experienced inspector. Professional or trade organisations include:

- Building Officials Institute
- Building Research Association Accredited Advisors
- Institution of Professional Engineers
- Institute of Architects
- Institute of Building Surveyors
- Institute of Quantity Surveyors.

If you are constructing a new home, then make sure the design takes into account weather management. This includes:

- Adequate drainage
- Using a design which ensures rain cannot enter the building through eaves or other features
- Adequate ventilation so that water which leaks inside cladding can dry if it cannot drain away
- The use of materials which are suitable to the environment for the area in which you are building.

Make sure you obtain guarantees from the cladding installer, system manufacturer and your builder. In addition, check your builder is a member of Master Builders or the Certified Builders Association of New Zealand.

Conclusion

In an effort to prevent further problems of buildings affected by leaky building syndrome in the future, the Building Act 2004 introduced stricter compliance procedures for the building industry. However, the problem is set to continue for some time in respect of buildings constructed prior to that Act coming into force and prospective purchasers should be aware.

FONTERRA CHANGES ITS CAPITAL STRUCTURE

Fonterra has changed the dairy farming landscape. Peak Notes have gone. These were capital notes issued to farmers whose milk production exceeded the milk required by Fonterra at certain times during the dairy season, thereby increasing the company’s production. In May 2005 the farmers, who are the Fonterra shareholders, approved the conversion of Peak Notes into ordinary share capital.

Under the previous capital structure, one Fonterra share was allocated for every kilogram of milksolids supplied. While this position will continue long term, the transitional stage to the new structure will see Fonterra’s share standard alter whereby there will be more than one share for every kilogram supplied.

New Applications

The application period phase of the transition ran to the end of February. Fonterra reaffirmed its payout forecast just before Christmas and must accept applications for the 2006/2007 season from potential new farmers, shareholder farmers who are ceasing supply and shareholders remaining in farming but wishing to increase or decrease their shareholdings.

Fonterra has set steps in the transition phase from 1 March 2006 until the new structure comes into effect on 1 June 2006. Peak Notes previously held by farmers who had exceeded production requirements during certain times of the supply season will be replaced by a capacity adjustment which shall apply to the transition payout. Supply Redemption Rights which farmers have accrued from previous seasons are to be replaced by additional ‘excess shares’.

There will be a new share standard in place during the period of transition which, as mentioned earlier, will mean more than one share for every kilogram of milk solids supplied. At the end of the transition period, the share standard will revert to one share per kilogram once the shares in Fonterra are realigned and consolidated.

Sale and Purchase Agreements

These changes have necessitated adjustments to the “Fonterra Clause” in agreements for the sale and purchase of dairy farms. The Fonterra share registry has also issued new forms that have to be completed at the end of each farming season. This year, more than ever, legal and other professionals advising the rural dairy section should share information and requirements early and liaise fully with the farm advisors as well as Fonterra.



“WORKPLACE BULLYING” – THE NEW MILLENIUM EMPLOYEE PERSONAL GRIEVANCE??

Given the lack of comprehensive research into “workplace bullying”, it is difficult to assess the existence and/or prevalence of this phenomenon in New Zealand workplaces.

Statutory recognition and protection from workplace bullying is limited to amendments to the Health and Safety in Employment Act 1992 (HSEA Act). These amendments came into force on 5 May 2003 placing robust general duties on both employers and employees. Importantly, the HSEA Act now places specific duties on employers in relation to “hazard management”. The amendments specifically relating to workplace bullying extend to the definition of “harm” and “hazard” to include “stress” and “fatigue”. According to experts, these are primary symptoms of an employee who is the target of a workplace bully.

What is workplace bullying?

There are numerous definitions of workplace bullying, yet all contain several salient features. In summary, workplace bullying is:

- Repetitive, health-endangering behaviour that amounts to mistreatment, having a detrimental effect on an employee’s dignity,

safety and well being;

- About the bully’s need for control; and
- Involves focused and systematic selection of targets.

Typical workplace bullying can involve physical behaviours, hostile verbal and non-verbal communications, interfering actions, withholding of resources, threats, abuses of power, isolating and degrading behaviours.

A common unconsidered response to the concept of workplace bullying and the proposition that such behaviour is abusive, is that competent management of employees requires “tough”, “straight talking”, “strong people”. Further, complainants of workplace bullying need to harden up—they are “trouble makers”, “weak” or “undesirable” employees. The risk, and in particular the costs associated with workplace bullying, must be carefully considered before such attitudes prejudice employers against taking all practical steps to protect employees against workplace hazards such as stress.

End result

According to experts, the risks and costs for employers associated with workplace bullying are decreased

productivity, increased absenteeism, high staff turnover, costs related to temporary staff, recruitment and training. Additional costs include exit packages or settlement agreements for complainants of workplace bullying, costs of litigation and associated legal fees.

Symptoms affecting performance for employers to be wary of include lower concentration, low morale, exhaustion, apathy, burnout, anxiety and depression.

What do employers risk?

Employers face potential liability for personal grievance claims under the Employment Relations Act 2000 and/or claims for breach of their statutory duty to provide a safe and secure workplace. A person convicted of an offence against the HSEA Act is now potentially liable for custodial sentences (maximum 2 years) and/or fines (maximum \$500,000.00).

Workplace bullying, with its increasing recognition and awareness, appears set on a path that will raise questions both for employers and employees. Its implications have the potential to be far reaching and costly for all parties involved.

NOISY NEIGHBOURS— WHAT ARE YOUR RIGHTS

Most of us are used to living in an environment where there is a certain amount of noise. However, there are also times when noise can become excessive and can interfere with the peace, comfort and convenience of other people.

How do you make a complaint about noise?

The Resource Management Act 1991 (“RMA”) imposes obligations on occupiers of land to ensure noise does not exceed a reasonable level. The RMA deals with problems with excessive and unreasonable noise and provides various remedies. The environmental health sections of local district or city councils administer the noise control provisions of the RMA.

What is excessive?

Your local authority will not take action unless it considers the noise to be excessive or unreasonable. Excessive noise is defined as any noise that is ‘under human control and of such a nature as to unreasonably interfere with the peace, comfort and convenience of any person’ (other than a person in or at the place from which the noise is being emitted), but specifically excludes noise from aircraft in flights, vehicles on the road and trains.

What is the process?

Local authority enforcement officers can issue excessive noise directions or abatement notices to control noxious elements, adverse effects on the environment or unreasonable noise. When a complaint of “excessive noise” is made to the local authority, an

enforcement officer will then be sent to the address. If the officer considers the noise to be excessive, either an excessive noise direction or an abatement notice will be issued to the occupiers of the address. Excessive noise directions are short-term notices that last for 72 hours. These notices are usually issued in cases where the problem is easily resolved, for instance, turning down the volume of a stereo if it is too loud. Abatement notices last indefinitely until either the council is willing to remove them or until an appeal is lodged and is decided upon by the courts. Such problems are usually more serious and occur over a longer period, for instance, industrial noise. If a noise direction or abatement notice is ignored, the officer has the right to enter the property and seize and impound the source of the noise.



JAN'S FAREWELL MESSAGE

In 1970 Barry and I purchased a property at Halcombe through this firm and a chance remark to Mr Barltrop that I would perhaps look for work in Feilding led to my job as trust accountant. Five ledgers, a biro and a manual adding machine—today I can operate on five screens of the computer and do not need an adding machine.

In 1976 I stopped work for a little while for the birth of our daughter Jo-Anna, who is now a Chartered Accountant and presently living in London. On my return to work later in the year I became a Legal

Executive with the firm and began my career in Estate Administration. I also attended on the investment of mortgage funds in the Nominee Company and did some cottage conveyancing.

I have worked through four changes of firm name and numerous staff changes, upgrades from manual typewriters to complete networked computer systems, the births of staff and partners' children (and now grandchildren) and sadly the deaths of staff members. I had intended to only stay a couple of years and it does not seem to have taken long to reach

this 35 year long tenure—although I now find that I have to wear my glasses almost all the time and my hair has turned grey.

I leave here to work in my garden, hopefully travel some more and spend more time with my husband. I have enjoyed immensely my contact with our clients and know that I will miss this.

I would like to thank the partners and staff of the firm for their support and friendship over this long period of time and wish them all the very best in their future endeavours.



A man standing in line at a check-out counter of a grocery store was surprised when a very attractive woman behind him said, "Hello". Her face was beaming. He gave her that "who are you?" look. He couldn't remember ever having seen her before. Noticing his look, she apologised. "I'm really sorry but when I first saw you, I thought you were the father of one of my children." She then left the store.

The man was dumbfounded and thought to himself, "What the heck is the world coming to? Here is an attractive woman who can't keep track of who fathers her children!" Then he got a little panicky. "I don't remember her," he thought, "but, MAYBE... during one of those wild college parties, I might have fathered her child!"

He ran from the store, caught her in the parking lot and asked, "Are you the girl I met at a party in college and then we got really drunk and had wild crazy sex on the pool table in front of everyone?"

"No", she said with a horrified look on her face. "I'm your son's SCHOOL TEACHER!"



ACCESS ONTO PRIVATE PROPERTY – YOUR RIGHTS AND OBLIGATIONS

The new Government had indicated it may not proceed with a proposal to provide public access over farms and instead may look at alternatives, including negotiation with land owners, to improve access. The news has been welcomed by Federated Farmers who say they will be taking a keen interest in the framework for negotiating rights of access.

Rights of access

So what are some of the issues surrounding your rights and liabilities on your land?

Network Utility Operators can request access to private land. They are usually involved in providing services such as gas distribution, telecommunications, electricity distribution, water supply and drainage or sewage systems.

Before entering onto land, a Network Utility Operator should provide information in writing to the owner. This information should include:

- The reason entry is required
- Any rights the land owner may have to object to the entry
- A description of the work to be done on the land
- Who will be undertaking the work
- Confirmation that any damage caused will be remedied or paid for
- A complaints referral procedure.

You do have the right to refuse entry to some operators but you must allow

others access in certain circumstances. If you are unsure as to which situation applies, seek advice from your lawyer.

Health and safety

The Health, Safety and Employment Act 1992 (“Act”) imposes obligations on land owners regarding access by third parties onto their land. The focus of the Act is on identification of hazards in the workplace. Residential premises are excluded from the definition of workplace so the Act’s provisions do not apply to most urban residential properties, nor to those parts of a farm that are used for domestic accommodation.

The purpose of the Act is to ensure that all practical steps are taken to ensure the health and safety of all persons on the property. Land owners whose properties are a place of work must ensure that the following people are not harmed by hazards:

- People in the vicinity of the place of work
- Employees, contractors and subcontractors
- People who are on the land with the owner’s consent and who have paid to be there
- Customers.

There are circumstances where a duty of care is not owed to visitors. This includes people visiting for the purposes of leisure and recreation and also includes trespassers.

Have a plan

As the issues of both access and health and safety are closely linked, it is worthwhile for land owners to have a policy in place to deal with them. In particular, it would be wise to ensure that practical steps are taken to manage any existing or potential hazards on the property.

SOME THOUGHTS FROM A CLIENT

If a pig loses its voice, is it disgruntled?

If love is blind, why is lingerie so popular?

Why is the man who invests all your money called a broker?

“I am” is reportedly the shortest sentence in the English language. Could it be that “I do” is the longest sentence?

If lawyers are disbarred and clergymen defrocked, doesn’t it follow that electricians can be delighted, musicians denoted, cowboys deranged, models deposed, tree surgeons debarked and dry cleaners depressed?

If you take an Oriental person and spin him around several times, does he become disoriented?

Donald Rumsfeld, the American Secretary of Defence, has won the annual “Foot in Mouth” award for bad English. Mr Rumsfeld said: “Reports that say something hasn’t happened are always interesting to me because, as we know, there are known knowns; there are things we know we know. We also know there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns—the ones we don’t know we don’t know.”

Meanwhile, Marks & Spencer will be awarded a “Golden Bull” for putting an extra label on a roast chicken salad which read: “Now with roast chicken”.



“No offence, Brother Benvenuto, but we’re putting you back on the bells.”