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## NEWSLETTER

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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.

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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

## 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

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.

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.



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.

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.

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.

## How Urgent Is It Really?

The election year of 2008 saw the 48<sup>th</sup> parliament of Helen Clark’s Labour led minority Government use parliamentary urgency to conclude its legislative programme. Similarly the 49<sup>th</sup> parliament of John Key’s National led minority Government turned to parliamentary urgency in order to commence the implementation of its election promises within the first 100 days of office as promised. Government use of parliamentary urgency to advance its business has been available since 1903 and has been a key tool since the late 1920s.

So what is parliamentary urgency and how does it fit within the democratic processes? Parliament, or ‘the House’, is governed by its own rules. These are known as Standing Orders and Speakers’ Rulings. The House is responsible for making its own rules.

Towards the end of a parliamentary term the Standing Orders Committee may recommend



changes to the Standing Orders. The House may adopt these, ready for use in the new term. These rules, put in place over time, are designed to

ensure our parliamentary processes allow for fair and reasonable consideration before final decisions are made. And, as we all know, these final decisions determine the legality of an individual’s action in the community.

Rules 54, 55, 56, 57 and 58 of the 2008 Standing

Orders provide for parliamentary urgency and extraordinary urgency. Urgency may be moved by a Minister without notice and is decided without amendment or debate. A brief explanatory statement must be given by the mover. The use of urgency is a valuable mechanism for any government as it allows all stages of a bill (or bills) to be taken in the same sitting day.

If urgency is taken and the debate continues into the next day, the House still operates as if it were the same sitting day on which urgency was taken. So under urgency one sitting day can conceivably span more than one calendar day.

One of the most significant features of this process is that by moving into urgency, the select committee process is either truncated or lost altogether. Select committees work on behalf of the House and report their conclusions back to the House.

When considering a bill sent to it, the select committee invariably invites the public to make comments or submissions on the bill so that the committee members can take into account what the

public, experts and organisations think about the bill and how it might be improved. In the past, select committees have suggested bills be completely rewritten and on occasion scrapped altogether.

At the end of its enquiry the select committee furnishes a report and the chairman of the select committee makes the report available to the House and answers any questions members of parliament may have about the committee's recommendations. The bill then goes to its second reading in the House.

The select committee process is widely regarded as a very important part of Parliament's work, as it is through these committees Parliament can get the opinions and advice of the general public, experts and organisations when making law.

Our parliamentarians must bear in mind that the opportunity cost of fast tracking the legislative process for political expediency is the loss of public participation at the select committee stage of the process and, as a result, the possibility of better drafted and considered legislation.

## 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.*