

Spring 2009



Government Targets Drugged Drivers



The Land Transport Amendment Act ('the Act') was passed on 25 July 2009 and will come into force on 1 December 2009. The Act is in response to the public's growing concern about drug-impaired drivers posing a serious risk on our roads.

The Act not only covers controlled drugs but also prescription medicine not taken in accordance with the instructions of a health practitioner.

Under the Act it is now an offence for a person to drive or attempt to drive a motor vehicle when impaired and the driver's blood contains evidence of the use of a controlled drug or any prescription medicine.

Currently, drivers cannot be forced to take an impairment test.

Under the Act, an individual may be required by a police officer to undergo an impairment test if he or she is:

- a driver or someone attempting to drive a motor vehicle
- a person whom a police officer has good cause to suspect has recently driven or attempted to drive a motor vehicle under the influence of drugs, or
- the driver of a vehicle which has been involved in an accident, or if they are unable to locate the driver, then a person whom the police officer has good cause to suspect was in the vehicle at the time of the accident.

Impairment tests

The impairment tests to be implemented are already used extensively worldwide and New Zealand police officers are to receive specialist training in the United Kingdom. Proposed tests include balance (the one-leg stand test), co-ordination (the walk and turn test), and the eye-pupil response test.

If a person fails the impairment test then a blood test will follow to establish whether the person has taken a controlled drug or any prescribed medication.

Defences

There are however some defences available. It is not an offence if the person consuming the controlled drug or prescription medicine has done so in accordance with:

- a current and valid prescription, and
- any instructions from a health practitioner or the manufacturer of the drug or medicine.

It is also not an offence if the person has been administered the drug or medicine by a health practitioner without a prescription, and they have complied with any instructions the health practitioner has given them.

Penalties

The penalties for drug-impaired driving are similar to the current penalties for driving under the influence of alcohol: six months disqualification of licence and a fine of up to \$4,500.

Any evidence gathered for a conviction under the Act cannot be used as evidence in a prosecution under the Misuse of Drugs Act 1975.

New form of land sale and purchase agreement

Vendors and purchasers now have a choice as to the type of agreement used when buying and selling land. Until now, real estate agents and lawyers have worked together using a single form of agreement prepared with input from the Real Estate Institute and the Auckland District Law Society.

The REINZ has now released a new form, which aims to use everyday language and simplify contractual terms.

It remains to be seen how well the new agreement works. It now forms two separate parts and vendors and purchasers must make sure they have both sections and understand them. Vendor and purchaser rights and

obligations, time frames and terminology are now very different.

Lawyers fear that until the new agreement "beds down" there will be many disputes as to the meaning of the new words and phrases. Don't forget to ask for time to talk to your lawyer before signing any agreement to avoid an expensive mistake.



Phone Graeme McLelland on 407 0179 or Sue Wooldridge on 407 0174 for cost effective advice.

Every Rose has its Thorn

New Zealand's highest appellate court, the Supreme Court, has recently delivered its decision in *Rose v Rose*. The case is about the classification of property. The Property (Relationships) Act 1976 ('the Act') defines relationship property and separate property. Relationship property is the pool of common property and at separation it is to be divided equally, unless there are extraordinary circumstances which would make equal sharing "repugnant to justice". However, *Rose v Rose* illustrates how there are also pathways in which separate property becomes relationship property.

Relationship Property

Relationship property as defined in the Act includes:

- the family home – whether acquired before or during the relationship
- family chattels – whether acquired before or during the relationship
- all property jointly owned
- property owned immediately before the relationship began, if it was acquired in contemplation of the relationship and it was intended for the common use or the common benefit of the partners
- all property acquired after the relationship began, unless it is separate property (s9 and s9A) or the succession, survivorship, trust and gift provisions (s10)
- increases or gains in relationship property, subject to exceptions
- increases in the value of one partner's separate property, if the increase is attributable to:
 - the use of relationship property
 - the direct or indirect actions of the other spouse or partner.

Separate Property

Separate property is defined in the Act as being any property that is not relationship property.

Rose v Rose

The basic approach of the courts has been that if the non-owning partner contributes to an increase in the value of the other partner's separate property that increase in value becomes relationship property.

In this case, Mr Rose's separate property included a farm he owned prior to the marriage.

Mrs Rose sought to share the increase in the value of the farm at the date of separation. Mrs Rose argued that during the course of the marriage relationship her outside earnings combined with her duties as a homemaker enabled her husband to keep his farm and develop it into a vineyard. During the term of the marriage relationship the farm appreciated in value significantly due to inflationary pressures and its location within a prime grape region in Marlborough.

The Court accepted Mrs Rose's argument and held that Mrs Rose was entitled to a 40% share in the increase in the value of the separate property. Mr Rose was given a 60% share giving him greater credit for the inflation and general increase in the value of the land.

It is considered a landmark decision because despite the apparent indirectness of Mrs Rose's contributions, she was awarded a 40% share of the increase in the value of the separate property.

A Suggestion

It is possible to prevent separate property becoming relationship property by completing a relationship property agreement which also specifies that no matter what the contributions made to the relationship or specific property by the other partner during the life of the relationship, it is to remain separate property.

Contact Sarah Jury on (09) 407 0176 for advice about separate and relationship property.

Snippets

Meet our staff.



Simone Scully is personal assistant to Sue Wooldridge. Simone and her partner Sam were both born in Kaikohe and have always lived in the Bay of Islands area. They have three children



Judith Graham is personal assistant to Graeme McLelland and has lived in Kerikeri for the past 9 years with her husband and two teenage children. They own an engineering business in Mill Lane, Reef Rite Engineering.

Bay of Islands walkway

In our summer 2008 issue, we mentioned the success of the BOI walkway (www.boiwalkways.co.nz), so it is good news that the government will support the first stage of the coast to coast walkway which is intended to eventually link up with the BOI path.

Hospice

Enclosed with this newsletter is a brochure from Hospice Mid-Northland, whose work we at McLeods have supported for a number of years. We encourage you to consider supporting Hospice, either by helping out or making provision in your will.