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Summer 2008

**Our office will be closed from 12 noon on Tuesday 23 December 2008
& will reopen at 8:30 on Monday 12 January 2009.**

**The partners and staff wish everyone a happy
and safe festive season.**

Building Act Update – Yes, you can do those renovations in your summer holidays!

Hon. Shane Jones, the Building and Construction Minister, has amended DIY building regulations enacted as a result of the leaky building crisis.

The Government has realised that the response to the crisis was too far reaching and has reduced the scope of work requiring building consent. The work which no longer requires consent now includes:

- 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 which 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 2008 was just not your year, beginning with the discovery your home, bought four years ago, is a leaky home needing major repairs which will cost over \$200,000.

A short time later your widowed mother died, leaving her entire estate, worth several million dollars, only to your siblings because of a recent falling out with you. 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 see your lawyer who tells you there are time limits within which certain claims must be brought.

The limitation periods which apply in this scenario include:

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 which 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 for provision from 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 claims is that they must be filed within 12 months of the date administration or probate is granted. However, in certain circumstances you need to be even quicker, because the estate may be distributed after six months.

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 of the date you were dismissed.

Surely the Consumer Guarantees Act 1993 won't let you down! However the Act provides you must reject goods "within a reasonable time". What is reasonable will depend on 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, if fixed, would have prevented the TV from stopping altogether.

This is a handful of the limitation periods applying to a vast array of legal situations. While some of the limitation periods may be extended by a court, the examples highlight 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.

If you would like further information, call **Sue Wooldridge 09 407 0174** or **Graeme McLelland 09 407 0179**.

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 at the possibility of compulsory acquisition of private land for public walkways and farmers raised concerns related to disruption of stock, damage to private property near walkways and public safety. One major concern was their own liability for accidents on their property.

In answer to these concerns a Walking Access Consultation Panel was established which received almost 1400 submissions. The Panel made various recommendations which 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 a 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 which will include:

- 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

Bay of Islands Walkway

At a local level, the Bay of Islands Walkway Trust has opened another leg of their project to develop a public

2008 has been a year of successes for clients and the families of staff...

The 2007 rosé vintage of Bruce Soland and Sue Calnan from **Fat Pig Vineyard** was judged top rosé at the 2008 Wine State Awards, and their 2006 Syrah won silver in the International wine awards.

Judith Graham's son Cameron plays inline hockey for the Stringrays Under 16s team which won the Baur Cup, the U16s Senior Tournament and the U16s Nationals. He represented the U16s Northern Region team and is trialling for the New Zealand U16s in December. Judith's daughter Ashleigh played for KKHS First XI soccer team which finished 3rd in the women's league and qualified to play in the top 32 teams in the NZ Nationals competition.

- Any other matters 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 to 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 prohibits the following by walkway users:

- 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

Anyone committing one of these offences is liable even if they didn't intend the action. Section 56 sets out offences requiring knowledge, intent or recklessness, such as interfering or disturbing livestock or wildlife, damaging or destroying structures and attempting to intimidate persons using a walkway.

Enforcement officers will have powers to prevent or stop offenders. Fines of up to \$5,000 under section 54 and \$10,000 under section 56 may be imposed.

The Act contains an automatic revision provision and the public will have the opportunity of making further submissions as to how it is working.

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

walking track following the foreshore from Okiato to Russell. For information visit www.boiwalkways.co.nz.

Lisa Baker's daughter Claudia was one of the members of the Kerikeri Primary School future problem solving team which won the primary division of the national finals held at the end of October. The team had to present solutions to a problem concerning "risk averse society" in New Zealand for 2035 and beyond.

Simone Scully's son Matthew came sixth in the Optimist green fleet NZ Sail One Winter Championships sailing regatta held at Murrays Bay, Auckland and was placed eighth at the North Island Optimist Championships in Taupo.