



**Our physical address:**  
7h Floor,  
Local Government Building  
114 Lambton Quay

**From**  
JOHN DEAN LAW OFFICE  
Telephone 472-9369  
PO Box 10107,  
Wellington  
E-mail jad@jdlo.co.nz  
www.jdlo.co.nz

**April 2005**

## Inside this edition

<b>The Foreshore Debate .....</b>	<b>1</b>
<i>Purpose .....</i>	<i>1</i>
<i>What is the Foreshore?.....</i>	<i>2</i>
<i>What About My Place? .....</i>	<i>2</i>
<i>Access .....</i>	<i>2</i>
<b>Smokefree Law .....</b>	<b>2</b>
<i>Retailers .....</i>	<i>2</i>
<i>Sports Clubs.....</i>	<i>2</i>
<b>Key Amendments To The Employment Relations Act .....</b>	<b>3</b>
<b>JDLO Personnel .....</b>	<b>4</b>
<b>What We Do.....</b>	<b>4</b>

*All information in this newsletter is to the best of the authors' knowledge true and accurate. No liability is assumed by the authors, or publishers, for any losses suffered by any person relying directly or indirectly upon this newsletter. It is recommended that clients should consult a senior representative of the firm before acting upon this information.*

## The Foreshore Debate

The issue of ownership of the Foreshore and Seabed entered the public arena in June 2003 when the Court of Appeal ruled that the Maori Land Court had jurisdiction to investigate customary title to the foreshore and seabed.

Proposed legislation to govern ownership of New Zealand's foreshore and seabed was controversial, and a source of much debate. However, on 24 November 2004, the Foreshore and Seabed Act 2004 ("FSA") was passed, together with amendments to the Resource Management Act 1991 ("RMA") to reflect the new legislation.

### Purpose

The FSA vests the full legal and beneficial ownership of all public foreshore and seabed in the Crown, and aims to maintain public rights of access while ensuring protection of the association of whanau, hapu and iwi with areas of public foreshore and seabed.

Key objectives of the FSA are:

- Recognising and protecting ongoing customary rights to undertake and engage in activities, uses or practices in areas of the public foreshore and seabed;
- Recognising territorial customary rights (where there has been exclusive use and occupation of an area of foreshore (to the exclusion of persons not belonging to the group) by group members without substantial interruption from 1840 onwards, and where the group has had continuous title to the land above the foreshore).
- Enabling applications to be made to the High Court to investigate common law rights;
- Enabling successful applicant groups to participate in the administration of a foreshore and seabed reserve, or enter into formal discussions on redress; and
- Providing for general rights of public access, recreation and navigation in, on, over and across the public foreshore and seabed.

## What is the Foreshore?

Under the FSA, the foreshore and seabed is deemed to be the area between the line of the mean high water springs, and the outer limits of the territorial sea. It includes the air space and water space above that area, and the sub-soil and bedrock below.

## What About My Place?

Some New Zealanders have been concerned that their coastal properties will be affected. The FSA only applies to **public** foreshore and seabed. Any land (including reclaimed land) that is subject to a specified freehold interest (and owned by a person other than the Crown or a local authority) and where a certificate of title for that land has been issued, is excluded. However, the RMA now provides that where a section of land that includes foreshore and seabed is subdivided, the foreshore and seabed portion of that land will vest in the Crown.

## Smokefree Law

---

The recent amendments to the Smokefree Environments Act 1990 have generated a lot of interest in the media over the past few weeks. Although the impression sometimes conveyed by the media is that a new law has come into effect, the amendments to the 1990 Act were actually passed at the end of 2003 and provided for progressive changes over a two-year period.

The most significant are as follows:

- Imposition of a ban on access to smoking products for those aged under 18 years of age effective from 10 December 2003.
- Buildings and grounds of schools and early childhood centres became smokefree with effect from 1 January 2004.
- Licensed premises (including bars, restaurants, cafes, sports clubs and casinos) became smokefree indoors from 10 December 2004.
- All other work places became smokefree indoors from 10 December 2004.
- Restrictions on the display of tobacco products in retail outlets apply from 10 December 2004.



Land that is reclaimed after commencement of the FSA, or which was not subject to a specified freehold interest, vests in the Crown. And (other than for limited exceptions) the Minister of Conservation will not transfer freehold title over reclaimed land, but may provide an applicant with a lesser right or interest in the land.

## Access

The Act protects and secures the rights of access for members of the public in or on the public foreshore and seabed, and the right to remain in that area and engage in recreational activities in or on the public foreshore and seabed, but subject to any territorial customary rights or prohibitions or restrictions on access imposed under the FSA.

## Retailers

There are a number of restrictions on retailers who sell tobacco products. These include:

- A prohibition on the promotion of the sale of tobacco products with other products.
- A prohibition on promotional schemes for the sale of tobacco products.
- Restrictions as to the manner in which tobacco products can be displayed.
- Appropriate signage warning of the dangers of tobacco use which must be displayed where tobacco products are sold within 200 metres of the point of sale.
- Strict marketing directives aimed at enforcing the prohibition on the sale of tobacco or herbal products to persons under the age of 18 years.

## Sports Clubs

All clubs or sporting organisations which are licensed for the sale of alcohol must comply with the new smokefree law. In particular, such organisations should be aware of the following:

- The fact that the premises are not open to the general public does not mean that compliance with the Act is not required.
- A club must take "reasonably practical steps" to ensure that it complies with the Act. Failure to do so could result in a fine.

Although the Act does not define what "reasonably practical steps" are, the Ministry of Health has issued guidelines which include the formulation of smokefree policies, displaying appropriate signage and prohibiting the sale of tobacco products on the club's premises. Further information can be obtained from the Ministry of Health.

The underlying objective in making these changes is to protect the public from the harmful effects of smoking and to further promote a smokefree lifestyle as the norm.

The changes to the law have not been welcomed by everybody, particularly some hotels and bars where employers and customers have voiced resentment at what they perceive as undue Government interference.

There are significant penalties whereby failure to comply can result in fines of up to \$4,000 in respect of each offence for companies and up to \$400 for each offence in respect of individuals. As some licensees of licensed premises (particularly hotels) have stated their intention to flout the law by continuing to allow smoking on their premises, presumably it will not be long until we have an indication as to the penalties likely to be imposed by the Courts in practice.

Have you, like us, had to forcibly inhale more damn cigarette smoke exhaled by doorway/outdoor smokers since December last year?!

## Key Amendments To The Employment Relations Act

---

On 1 December 2004 amendments to the Employment Relations Act came into force. The amendments aim to better support the key objectives of collective bargaining and good faith and provide effective processes for resolving relationship problems. It also protects employees, by including a requirement for an employee protection provision, if their job is affected by the sale or transfer of their employer's business or if their work is contracted out. The four main areas are summarised below:

1. **Collective bargaining** is actively promoted rather than simply permitted. Parties negotiating for a collective agreement must now conclude one, unless there is a genuine reason, based on reasonable grounds, not to. The Employment Authority can now facilitate collective bargaining in specified circumstances. Bargaining fee clauses are deemed to apply unless the employee notifies the employer in writing that the employee does not agree to pay it. Bargaining fees are to be deducted from wages and paid to the union concerned.
2. **The duty of good faith** – the meaning has been widened and there is now a legislative requirement for good faith behaviour. There are now penalties for failure to comply. Employers and employees need to be active and constructive in establishing and maintaining a productive employment relationship. This includes being responsive and communicative. There is a statutory requirement on an employer to consider any issues that employees (and prospective employees) raise in relation to bargaining for an individual agreement or any variation of one, and to respond to them.

3. **The processes for resolving employment relationship problems** now include:

- a Providing dispute resolution services through the Department of Labour to independent contract situations.
- b Procedures that allow mediators to address any party to a matter without any representative of that party being present and to express their views to one or other party with or without their representative being present, on the substance and process of the matter.
- c Allowing employers to pay by way of instalment, if financial circumstances require it.
- d Ensuring that any payment goes straight to the other party and not to their representative, unless their representative is a solicitor.

4. **Providing protection to employees in situations where business undertakings are sold, transferred or contracted out.**

From 1 December 2004 all new employment agreements must contain an 'employee protection provision' which meets the requirements of the Act. For existing agreements these new provisions need to be included at the earliest of:

- 12 months after 1 December 2004;
- When the agreement is next amended;
- If the employer's business is restructured, before that restructuring occurs.

This clause is not required if the employees fall within the definition of 'vulnerable employees', namely those providing cleaning, food catering,

caretaking or laundry services in specified sectors (ie school, hospitals or residential care sectors, airports, public service). These types of employees have special protections set out in the Act in the event of a restructuring.

*We can provide you with further information on the amendments to the Employment Relations Act and how they may affect you.*

## JDLO Personnel

---

We update our clients and associates with our current staff news.

### **KATIE FAIRBROTHER**

We welcomed Katie Fairbrother to our staff in January this year. Katie graduated from Otago University in 2002 with a Bachelor of Laws (LLB) and a Bachelor of Commerce (BCom). She was admitted to the bar in Wellington in 2003. Prior to joining JDLO as staff solicitor Katie spent two years at the Intellectual Property Office of New Zealand as an Intellectual Property Advisor.

Katie is developing her general practice, with emphasis on Family and Relationship Law and Employment Law, as well as litigation matters.

In her spare time - not that she will have much now she is at the coalface of the law - Katie enjoys home renovating, gardening, - she has just purchased a house! - exercising, music, wine tasting, films, water skiing, skiing and tramping.

### **MATHEW HARRINGTON**

Matthew has been a law clerk at JDLO on a part time basis for nearly three years. He is currently in his 3<sup>rd</sup> year studying Commerce

(BBS) at Massey University. He also took up law last year and is now in his 2<sup>nd</sup> year towards his LLB at Victoria University.

Matthew's other interests include: reading, film, music, fitness - including tennis and working-out at the gym.

### **LEWIS HOLDEN**

Lewis joined us last year, also as a part time law clerk. He is in his 3<sup>rd</sup> year studying Law (LLB) and Commerce (BCA) at Victoria University, majoring in International Business.

Lewis' other interests include debating, public speaking, film, and computers and website design.

### **MISCELLANEOUS**

JDLO has been operating for 26 years and a number of past employees who worked with us both before and after graduation are scattered all over New Zealand and further. We had a letter last month from Annalyse O'Dea who departed last June for her OE and is currently working in London. Both Chris Miller and John Greager, who many clients will remember, are also doing well in the law in London.

## What We Do

---

**We are a General Legal Practice with emphasis on:**

- **Business Advice and Transactions** – Company Formation, Partnerships, Agreements, Risk Management
- **Property Transactions** – Sales and Purchases, Building Contracts, Leasing, Renting
- **Family** – Matrimonial / Relationship Property, Dissolution of Marriage, Access, Custody, De Facto Relationships; Property Sharing Agreements
- **Employment** – Contracts, Disputes, Resolution, Tribunal & Court Proceedings

- **Financing** – Business and Domestic
- **Litigation** – Civil Law, Negligence / Contract claims
- **Insolvency** – Receiverships & Liquidations, Creditor Arrangement Schemes (formal & informal)
- **Estate Planning** – Wills, Trusts and Estate Administration
- **Education Law**
- **Immigration**
- **Intellectual Property**
- **Taxation**

**Part of our expertise is knowing who to consult at the independent bar or otherwise to assist you achieve results**

**Remember: Help us to be Proactive for You - Talk to us First**