

What's Happening at Halliwells

- Welcome Paige McClelland! – Clients will have noticed a different voice and face greeting them when they contact the office. Paige has been our new receptionist since the beginning of June. She hails from Stratford, where she lives with her two year old daughter. Welcome aboard Paige!

Paige
McClelland ▶



Shannon is still with us – she has moved into her own office – both she and Alaire are now fully qualified Legal Executives.

- Most of the Halliwells staff are very active with various sports. Of recent note were the Hawera Lawn and Squash Rackets Club interclub championships. Jenna and Alaire played each other in the final of their competition. Alaire won, but congratulations to you both!

- Samantha Turner has been elected to the Turuturu School Board of Trustees.

- Te Karaka Foundation was officially launched on 2 June 2016 in New Plymouth with Stephen Tindall himself in attendance. TKF already has either received or promised endowments of \$700,000.

Ken with Stephen Tindall ▶



Leases

Standard Form Leases – Maintenance, Repair and Reinstatement Obligations

Leases normally contain provisions for repair and reinstatement obligations.

Standard form leases (the most common sort), cover off most maintenance, repair and reinstatement issues, but often these are amended. In such cases, parties to leases need to be aware of their obligations.

This article looks at the lease most commonly used by our clients: the Auckland District Law Society Lease, sixth edition (ADLS lease). In particular:

1. The standard of maintenance or repair required during and at the conclusion of the lease;
2. The lessee's liability for the cost of repairs and reinstatement at the end of the lease

Lessee's General Maintenance, Repair and Reinstatement Obligations

The ADLS lease provides that the lessee (tenant) is:

- required to keep the interior of premises maintained during the lease, and to return the premises at the end of the lease, in the same state it was at the beginning of the lease.
- to repair damage to the premises throughout the lease.
- to remove any alterations or additions prior to expiry and reinstate the premises (including making good any damage).

The Standard of Maintenance and Repair Required

Maintenance

The ADLS lease requires the lessee to maintain and yield up the premises with regard to the condition of the premises at the start of the lease (excluding fair wear and tear). It is important that a record of the condition of the premises at the start of the lease is kept.

Repair

Often leases do not refer back to an objective standard of repair or to the commencement date. The ADLS lease does, but lessees should be careful to check whether a higher standard (eg 'tidy to the reasonable satisfaction of the lessor') might apply.

Liability For Reinstatement

The Lessee must remove any alterations or additions and reinstate the premises to the same condition at the start of the lease, if required by the lessor.

The ADLS lease contemplates three reinstatement scenarios:

1. The lessee removes its alterations and additions (either before expiry of the lease, or later with the lessor's permission), and pays for reinstatement;
2. The lessee removes its alterations and additions, but fails to reinstate, in which case the lessor can recover the costs incurred in reinstating;
3. The lessee does not remove its alterations or additions. In this case, the lessor becomes the owner of the additions and can recover the costs of removing them (and of reinstating), from the lessee.

Paraphrased with permission from article by Australasian lawyers Minter Ellison Rudd Watts in the ADLSI Lawnews magazine ("More Than you Bargained For? Repair and Reinstatement in Standard Form Leases")



HALLIWELLS
Established 1896

New Office in New Plymouth...

Halliwells New Plymouth office – Now in the newly renovated HTL Building at 27 Eliot Street.

Clients are welcome to call Paige 0800 425 549 or 06 278 5114 for an appointment to see Preston or Ken who alternate in New Plymouth on Thursday afternoons.

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NEW Health and Safety Law

Since the Pike River mine explosion in 2010 and the Royal Commission of Enquiry that followed, the Government has been working at improving our health and safety (in the workplace) law. That law is here: the Health and Safety at Work Act 2015 (the Act) came into force in April this year. That law focusses on:

- Risk management
- A better definition of the different parties who have duties under the Act – directors and 'officers' now have primary liability
- Creating better engagement between all people in a workplace about health and safety issues.
- Greater penalties for breaches
- Had a greater focus on hazard identification
- Held a company's breach as primary: director liability was secondary
- Made employers primarily liable for breaches

The previous law:

- Held a company's breach as primary: director liability was secondary
- Made employers primarily liable for breaches

Levels of Duty Holders and the standards expected of them

Officers – 'Due Diligence'

'Officers' include people who hold positions that allow them to exercise significant influence over the management of a business. For example, in a company, a Director would be an officer. The executors in estates or trustees of a trust that carried on farming operations would likely be seen as officers. In a Partnership, any one of the Partners would be an officer. Officers must exercise due diligence to ensure the business they control is health and safety compliant. Due diligence includes taking reasonable steps:

- To acquire and keep up-to-date knowledge of work health and safety measures implemented in the workplace.
- To be familiar with the particular health and safety risks in your particular workplace
- To ensure adequate record-keeping of health and safety matters
- To ensure that management (or PCBUs – see below) :
 - has the resources available to eliminate or minimise health and safety risks
 - has processes in place for receiving information about incidents, hazards and risks and for dealing with them quickly
 - implements and has processes for complying with its or their duties under the Act

Persons Conducting and Business or Undertaking (PCBU) – 'Reasonably Practicable'

A PCBU is a person who conducts a business or undertaking:

- Alone or with others
- Whether or not that business or undertaking is conducted for profit or gain

It is important to remember that:

- a person may belong to more than one class of duty holder (eg a PCBU could also be an officer). And more than one person may have the same duty
- Where there are two or more PCBUs working on the same job, those PCBUs have a duty to consult and cooperate with each other about their health and safety duties

Continued on following page...

NEW Health and Safety Law *Continued...*

PCBUs must take "reasonably practicable" steps to ensure the health and safety of workers. Reasonably practicable is defined as doing whatever can reasonably be done in relation to ensuring health and safety, taking into account all relevant matters, including:

- The likelihood of the hazard or risk occurring
- The degree of harm that might result from that risk or hazard
- What the person concerned knows (or should know) about the hazard or risk and ways of eliminating the risk
- The availability and suitability of ways to eliminate or minimise the risk
- After assessing the risk, the cost of eliminating or minimising it

Workers – 'Reasonable Care'

Workers and others have an obligation to take reasonable care for their own health and safety and not to affect the safety of others. It is important to remember:

- The new Act requires that there is greater consultation with workers about health and safety issues
- Workers are able (and expected) to participate more in health and safety matters

Notifiable events

PCBUs must also:

- Notify WorkSafe of any 'notifiable event', 'notifiable incident' or 'notifiable injury or illness'. Those terms are defined in sections 23, 24 and 25 of the Act and readers are encouraged to read them. In very broad terms, WorkSafe must be notified of any serious workplace deaths, injuries, illnesses or serious, health and safety related 'near-misses'. Notice must be given by the fastest possible means in these circumstances.
- Preserve sites at any place where a notifiable event has occurred (you are able to assist injured people and take action to minimise further risks though)
- Keep records – records of each notifiable event must be held for at least 5 years.

Insurance

No person can contract out of their health and safety obligations. Nor can a person insure themselves against any liability for breaches of health and safety obligations.

Regulations

Detailed regulations underpin the Act. Those regulations can be found at: <http://www.business.govt.nz/worksafe/hsa/legislation/hsa-regulations#at-a-glance>

*No person can contract out of their health and safety obligations.
Nor can a person insure themselves against any liability for breaches of health and safety obligations.*

Farms

A PCBU who manages or controls a workplace must ensure that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person.

Note that where a PCBU is conducting a farming business, that duty applies only in relation to the farm buildings and any immediately surrounding part of the farm. It does not

apply to the main dwelling house on the farm, or any other part of the farm (unless work is being carried out in that part at the time).

Summary

The people charged with the primary duty of care under the new health and safety legislation are PCBUs. IF you are a PCBU you should:

- Create a culture of health and safety risk minimisation in your workplace – involve all people entering or working in your workplace
- Undertake regular health and safety risk assessments of your workplace
- Ensure all workers receive health and safety inductions and know what is expected of them
- Monitor contractors' health and safety performance and make sure it is consistent with your own
- Ensure you have robust systems for recording and reporting health and safety related incidents and 'near-misses'
- Investigate all incidents and near-misses thoroughly

Maori Land – *How succession of Maori land works*



The Maori Land Court ("MLC") is the New Zealand court that hears all matters relating to Maori Land. It is governed by Te Ture Whenua Maori Act 1993 ("The Act"). The Act's purpose is to assist Maori

to promote the retention, use, development and control of Maori land.

Maori land is not general land. Maori land is mainly comprised of Maori freehold land which is land where Maori customary interests have been converted to freehold title by the MLC. The succession, gifting and transfer of Maori land are conducted through the MLC.

Maori land can be owned either by one or several owners, either in shares or interests. When a landowner dies, the ownership of their interests remains with them until their interests have been succeeded by application to the MLC. An application for succession is normally filed by the descendants or representatives of the deceased landowner or by the surviving landowners or their representatives i.e. Lawyers for the Estate, or the deceased's family.

Succession can be straight forward at times. If the deceased landowner left a Will, any successor named in the Will must fall within the definition of "preferred classes of alienees" as per the Act. This group includes; the children and grandchildren of the deceased landowner, blood relatives to the deceased landowner, other beneficial owners that are members of the hapu (sub-tribe) associated with land and descendants of any former owner of the land who is or was a member of the hapu

associated with the land. If the deceased landowner did not leave a Will (died intestate), the successors are determined in the following order; a deceased surviving spouse or civil union partner receives a life interest which will pass to the deceased's children once the spouse or partner dies or remarries or enters into another relationship; if there was no surviving spouse or partner, the deceased's children; if no children, the deceased's siblings and if no siblings, it will be necessary to find out where the deceased's interests came from and from that whakapapa (genealogy) work out the entitlement.

When an application for succession is being prepared, evidence consisting of a death certificate, a grant of probate or letters of administration, a copy of original Will, must be filed with the application. Once the application has been correctly filed, the Maori Land Court will assign a case manager who will check the Court records of the land or people involved and prepare a summary of evidence which will be referred to a Judge who may direct further enquiries to be made. Normally a formal hearing will then be allocated and the applicant (person who filed the application) and other interested parties will need to appear at their hearing or their representative. At the hearing, the Judge will ask those present questions pertaining to the application and the deceased landowner's interests and determine whether a Succession Order is made and if so, on what terms.

After the hearing, a record of the hearing will be typed up and signed by the Judge and sent to the applicant and other interested parties. If a Succession Order is made, the Order will be drawn up and sealed by the Court and then sent to all parties after a two month period, unless otherwise directed by the Judge. The two month period is provided to enable any appeals to be made.

Property Transactions and Methamphetamine Contamination

Media attention on methamphetamine ("P")-contaminated houses is fueling considerable panic in some quarters. People unfortunate enough to have purchased properties contaminated with P seem to get a lot of press at the moment.

Although outright panic is unjustified, the problem of P use (and indeed clandestine "P-Labs") is on the rise. Clients purchasing a property, particularly one that has a history of being used as a rental, should at least be aware of the issue.

A well-drafted due diligence clause inserted into an agreement (preferably one that places the onus of having the property tested for P-contamination on the vendor) could allow clients to avoid costly errors. Two simple rules should be followed:

1. Let us see your agreement to purchase a property before you sign it
2. If you have any reason to suspect P-contamination of any level in the property, let us know