

Autumn/Winter 2023 Newsletter

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Introducing Shona Squires

I joined the Commercial/Property team at Webb Farry as a Solicitor in November 2022, and I am thoroughly enjoying the robust firm culture, supportive mentoring, collegiately and of course our great new offices!

I have had a strong interest in the law since leaving school, having worked as a Legal Administrator and Registered Legal Executive throughout New Zealand and England for a number of years, before completing my Bachelor of Laws at the University of Otago in early 2021.

My legal career has been interspersed with a variety of business projects. These include managing a rental car company, owning/operating a busy property maintenance business (whilst juggling a newborn) and assisting with support and advocacy at the Disabilities Resource Centre in Queenstown. My varied life and business experience gives me a unique insight and empathy, when advising clients. Working in the Commercial/Property team at Webb Farry allows me the opportunity to assist with a wide variety of personal and commercial matters, which are both interesting and extremely rewarding.

I am currently a member of the CCS Disability Action (Otago) Local Committee which provides governance support to the many excellent staff and volunteers in the region.

Building Reports – what to watch for

By Bill Munro & Shona Squires

Obtaining a property inspection report (commonly known as a building report) is an important part of the property purchase process. If a vendor provides a prospective purchaser with a prearranged building report, a purchaser may see this as an attractive way to cut costs and save time. However, relying on a building report ordered by another is fraught with potential risk, not only for the purchaser who relies on it, but also for the vendor who commissions it.

This is because a building inspector's contract is with the party that ordered the report, and therefore the report author and vendor, rather than the purchaser, share a contracted legal relationship and associated warranties as to accuracy of information. This was highlighted recently in the media where a purchaser had relied on a building report commissioned by the vendor, which stated that the house roof needed some maintenance but was "currently performing". After moving into the property, a badly-leaking roof revealed far more significant issues, with the media article indicating equally high costs were required to remedy the issues. Here, the new owners may have limited recourse to the vendor, as they had confirmed or waived their report condition on the basis of the report provided, and had no recourse to the report provider, as the report was in the previous owner's name.

However, the law does provide certain remedies to purchasers, depending on the circumstances. Under the Contract and Commercial Law Act 2017, damages may be awarded for misrepresentation if a party had been induced to enter into a contract by misrepresentation, whether innocently or fraudulently. Even though a vendor may supply a building report with good intentions, they still may be found liable for misrepresentation. Further, if a real estate agent was found to have encouraged a purchaser to rely on a problematic, prearranged building report, there

may be grounds to pursue damages against the agent under the Fair Trading Act 1986, or bring a claim against either (or both) in the Disputes Tribunal (up to \$30,000.00).

The NZLS REINZ Agreement for Sale and Purchase provides that a property inspection should be undertaken by a suitably-qualified building inspector, in writing, and that the report must be completed in accordance with accepted principles and methods (including the New Zealand Standard NZS 4306:2005 for residential property inspections).

When making an offer on a property, we recommend that you state in the agreement that you wish to obtain a building report. This will provide you with 15 working days to arrange and approve your report, with a qualified building inspector, and discuss it further with us. If you ultimately decide not to go ahead with the report, the condition can be waived. However, if you wish to have a "builder mate" inspect the property, please also speak with us before signing the agreement as the vendor may be willing to amend the standard building report clause to allow for this.

An important consideration in the current property climate is that the market appears to have shifted to a 'buyers' market', and the time pressure to confirm that was experienced in recent years appears to have waned. As a result, we recommend:

- Take your time, and complete a proper inspection of the property;
- Be aware that the vendor may have purchased in a rush so there may be issues they're not aware of or, worse still, are aware of but are not disclosing; and
- Give us a call: we are here to help and have significant experience in the property market.

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Fair Pay Agreements – an overview of the new law By Kimberly Jarvis & Maddy McKenzie

Will you be captured by the Fair Pay Agreements Act 2022?

The highly anticipated framework for collective bargaining for Fair Pay Agreements (FPAs) came into force on 1 December 2022. The FPA process starts with a union applying to the Ministry of Business, Innovation, and Employment (MBIE) for approval to begin bargaining. To initiate this bargaining, the union would need to show that it either meets a representation test (i.e. 10% or at least 1000 employees who would be covered by the FPA support the application) or the public interest test (showing that the FPA covered low paid employees with limited bargaining power). When an FPA process is underway, every employee and employer in that industry or occupation is captured by the FPA.

The FPA application process is a lengthy and prescriptive one. A key part of the process is bargaining, which is done by unions on behalf of employees and employer associations on behalf of employers. It is important to note that you don't have to be a member of the union or employer association to be covered by the FPA – bargaining is done on your behalf regardless of your membership status.

The FPA must include the following terms:

- What work is covered by the agreement;
- The standard hours;
- The minimum base rates (including overtime rates and penalty rates);
- Training and development;
- How much leave an employee can have; and
- How long the agreement applies for.

While you may not get a say in whether the FPA applies to you, covered employees and employers are able to vote on whether they agree with the terms or not. If the majority

agrees from both sides, the FPA becomes binding and enforceable. If disputes arise or bargaining breaks down, the Employment Relations Authority can get involved to make decisions about the terms of the FPA.

Fair Pay Agreements are said to be the “best change for workers in decades.” They are a well-intentioned idea and most New Zealanders would agree with the intent to lift the wages of those on low to medium incomes. However, FPAs limit the ability for employers and individual employees to tailor employment terms to suit their needs, taking away the flexibility that comes with individual employment agreements.

Given that the FPA process is a long one, and that the law may be short lived in the hands of a National Government, we may not get to see many FPAs in action. So far, hospitality, bus drivers, and supermarket workers have signed up to the FPA process, but, to date, none have progressed past the first hurdle of MBIE approval to start bargaining.



Services Profile: Litigation and Dispute Resolution

Webb Farry focuses on achieving your objectives and, in our experience, seeking early legal advice can be the most timely, cost effective and efficient way to resolve a dispute whether it be:

- commercial disagreements
- property and construction issues
- relationship property
- employment disputes
- estate and trust disputes
- debt recovery action

Our friendly and pragmatic team will recommend the best path to take for your situation, whether that is negotiation, mediation, court proceedings or arbitration.

We have significant experience in mediations and Courts at all levels together with other specialist tribunals and commissions.

Each newsletter will profile one of the services we offer at Webb Farry

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