



APRIL 2018

SNIPPETS

AUCKLAND'S TRAFFIC "FIX"

Filling up the tank in Auckland will soon cost even more than the rest of the country.

A 10 cent per litre petrol tax is expected to be in place by 1st July this year. The tax will be added to the price of petrol and is believed to be a straightforward way to raise 10% towards Labour's \$28 billion 10 year Auckland transport programme.

It is intended that the money raised will fund a rail link from Auckland CBD to the airport, West Auckland and along other key Auckland roads, as well as new roads/busways and bike paths. The tax is also intended to contribute to the cost of a rail network between Hamilton and the big city. The expectation is that the anticipated traffic decongestion will allow for more intensive housing development around transport hubs, bringing economic benefits to those areas. Moreover, it is hoped that with this plan, Auckland's dire public transport system will move into the 21st century.

2018 GISBORNE/WAIROA HILL COUNTRY FARMER OF THE YEAR FIELD DAY



Peter and Christine Reeves from Mokairau Station, Whangara, were recently announced as the winners of the bi-annual Hill Country Farmer of the Year competition.

The field day will be held on Tuesday, 22 May 2018 commencing at 9.30am – or 9.00am if you wish to attend the Gisborne Branch of Federated Farmers Annual General Meeting.

The Reeves family are a long standing client of Graham & Dobson. We extend our congratulations to all the members of the Reeves family and staff of Mokairau Farms Ltd in achieving this highest award for hill country farmers in our district.

PAID PARENTAL LEAVE UPDATES

From 1 July 2018, the paid parental leave entitlement increases from 18 weeks to 22 weeks and this is expected to increase to 26 weeks from 1 July 2020.

Self-employed parents (including farmers) are eligible for paid parental leave under the Parental Leave and Employment Protection Act 1987. Paid parental leave applies to both births and adoptions.

TROUBLE IN TOYLAND

Sales at the world's three biggest toymakers – Lego, Hasbro and Mattel – slumped during the crucial 2017 holiday season and the outlook for 2018 is not much better.

Kids are tiring of movie-linked playthings that used to be reliable moneymakers and venerable brands such as Barbie are showing their age. The big toymakers are aware they have not had a lot of involvement in the fast growing mobile-games sector which already commands 20% of the US\$187 billion global toys and games market.

Today's kids are wedded to their smartphones and social media and savvy marketers are using this to promote their products with social media-fuelled crazes built around cheap miniature collectibles such as Hatchimals – tiny stuffed animals that 'hatch' from plastic eggs. Moreover, the company who makes them ramped up anticipation for Hatchimals with YouTube videos and multi on-line posts that showed the eggs without disclosing what was inside!



Now Hasbro is moving to transform brands such as Monopoly and My Little Pony into mobile games and Lego is stepping up investment to pair its traditional plastic bricks with digital technology.

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IRD AUDITS

Increasingly, taxpayers are facing audits and often penalties where they failed to meet their tax obligations.

The purpose of an audit by the IRD is to ensure that the correct amount of tax has been paid and that taxpayer's obligations under the various Inland Revenue Acts have been complied with. It is believed that for every \$1 spent by the IRD on investigations, approximately \$5 is recovered. An audit might simply be a check of a GST registration, or it could be a full investigation of business records.

The IRD can start investigations for all sorts of reasons. Some of these triggers might be:

- *Information anonymously received from other taxpayers:* i.e. a tip-off. There is a form, IR873, where individuals can report suspected tax evasion or fraud.
- *Computer analysis of the taxpayer's business accounts or personal tax returns:* IRD has data that, once analysed, highlights potential discrepancies.
- *Deviations from industry averages and cash economy:* IRD has ramped up its systems to mine data to see if the income of a business stacks up against the average industry levels
- *Checking of third party records (such as employer or bank records) and matching to the taxpayer's records:* IRD can access bank accounts and credit card data held by Kiwis in 51 different countries. They can also identify NZ bank accounts that have been credited with foreign income or are paying off overseas balances
- *Holding an overseas credit card or bank account:* often such accounts are used to bring overseas income into the country. A recent example is when the IRD gave a deadline to declare the transfer of pensions, as they attract tax, but some taxpayers did not declare them. The IRD had already obtained details of up to 30,000 clients from pension firms. The Department waited until the deadline had passed before issuing audit letters to those who did not make the declaration.
- *Random selection:* Sometimes it is just that "your number is up" and it is your turn.
- *Taxpayer's compliance/payment records:* Whether the taxpayer has complied with the tax laws in the past and if the taxpayer has historically paid taxes on time
- *Examination of a particular issue or problem:* This is more likely to affect a particular group of taxpayers.
- *Information received while conducting another taxpayer's audit:* This may suggest that the taxpayer's records should be checked.

An audit is a costly exercise for the taxpayer regardless of its outcome. Even when there is no or a small amount of undeclared income, the process is not only costly but also stressful.

Where penalties and interest are imposed, these may be more than core outstanding tax. However, penalties can be significantly reduced if the taxpayer discloses any undeclared income before the commencement of an audit whether it was omitted accidentally or by design.

Comment:

Each year in March, Graham & Dobson offers clients audit insurance through Audit Shield. If an IRD audit is instigated, this insurance covers the cost of using a professional adviser such as your accountant and/or lawyer for the investigation, but does not cover core outstanding tax nor interest and penalties imposed.

EMPLOYMENT:

A TRIAL PERIOD AND A PROBATIONARY PERIOD ARE NOT THE SAME IN LAW

Prior to the introduction of the trial period, it was common for employers, as the means of assessing whether an employee could do their job, to have a probationary period clause in their employment agreement template, while possibly being unaware that an employee can bring a personal grievance for unjustified dismissal in relation to this provision. When legislation introduced trial periods, this alternative provision became the norm in agreements as it provides greater protection to an employer from a personal grievance claim. With the trial period legislation currently in the Government's spotlight, it is important to be aware that the two provisions, although used for similar reasons, have very different requirements and effects under the law

Because under Sections 67A and 67B of the Employment Relations Act 2000 trial period clauses remove longstanding employee protections, access to dispute resolution and to justice, the Employment Court has ruled they be interpreted strictly and as having that consequence only to the extent that is clearly intended.



In order for a trial period clause to prevent an employee raising a personal grievance for unjustified dismissal, the employer must ensure that the clause in the employment agreement is be very specific to comply with s68(92).

A trial period provision means a written clause in an employment agreement that states that –

- For a specified period (not exceeding 90 days) starting at the beginning of the employee's employment, the employee is to serve a trial period
- An employee serving a trial period means an employee who has not been previously employed by the employer.
- During that period the employer may dismiss the employee
- If the employer does so, the employee is not entitled to bring a personal grievance or other legal proceedings against the employer in respect of the dismissal.

Comment:

- **Trial periods must only be used for new employees so cannot be used if the employee already works for the employer but wants to try a new role. In this situation, a probationary period can be used.**
- **Unlike a trial period, a probationary period is not limited to 90 days so it could potentially be used for a longer assessment period, if agreed and reasonable.**

PUBLIC HOLIDAYS & OTHERWISE WORKING DAY CALCULATIONS



It is that time of the year where many public holidays have taken place. One challenging issue for employers who operate varying rosters or employ staff on variable hours is how to determine whether a public holiday is an otherwise working

day for an employee. Whether a day is an otherwise working day has a significant bearing on the extent to which an employee receives an entitlement of a day in lieu for working on a public holiday.

Some employers may use a mathematical formula to determine whether a day is an otherwise working day by applying a 'three or four week' rule – that is, if the employee worked on the same day during any of the three or four weeks prior to the public holiday, then the employee would be regarded as working on an 'otherwise working day' and be provided with a day in lieu for working the public holiday (plus time and half for the hours actually worked); if not, then no day in lieu would be provided.

However, the Employment Relations Authority recently ruled out such a systematic approach being applied. The case for entitlements to day/s in lieu concerned employees who were employed on variable rosters for which days of work varied on a frequent basis. The Authority was not prepared to give a one-size-fits-all answer of what percentage of Mondays (for example) an employee would have to work for a Monday public holiday, if worked, to be regarded as an otherwise working day, attracting a day in lieu. The Authority emphasised that an individualised approach was required for each employee and each public holiday and that the specific reasoning must be recorded for each employee – this determination may include an overview of the employee's working pattern of the past 26 weeks or 52 weeks.

Comment:

While the individualised approach to determining days in lieu requires a greater allocation of employer resources, the Employment Relations Authority commented that this was part of the price the employer paid for the benefit it gains by using variable rosters.

Authority cases are not precedent setting, unlike decisions of the Employment Court. However, they potentially have a persuasive influence and this case therefore indicates that risk may occur when applying a blanket systematic approach to determining whether a day is an otherwise working day.

COMPULSORY INSURANCE FOR BUILDERS

Once again the Ministry of Business, Innovation and Employment is looking into the feasibility of making it compulsory for builders to take out insurance. This approach is common in Australia, where individual States require builders not only to be licensed but to take out insurance for residential building projects.

A builder's warranty, also known as a builder's guarantee, is where a third party, usually an insurance company, guarantees to protect a homeowner's financial investment during construction if their builder fails to complete the project, usually due to the builder having gone bust.

The guarantee will reimburse a lost deposit or finish the build, absorbing any extra costs to do so. The insurance is also required to guarantee to fix defects for up to 10 years.

Currently in New Zealand compulsory disclosure statements are supposed to be used by builders to increase awareness among homeowners with guarantee insurance being optional. However, there is evidence many builders are not following the new disclosure rules and uptake of builder's guarantees among the building public remains low. The Building Act also makes builders responsible for their work for up to 10 years. So why is an insurance needed on top of this? The reality is that our construction industry is a volatile one, with lots of competition because of low barriers to entry, low margins and in some cases building businesses being run by people who lacks skills in business management (management of the financial side of being a builder is an aspect that the Licenced Building Practitioner scheme does not address). For some, particularly in boom building times, failure is inevitable, with customers and suppliers often bearing significant losses.

Compulsory insurance would also increase the barriers to entry to the industry, helping weed out poor performers increasing the overall health of the sector. Banks are also increasingly demanding an independent 10 year guarantee before they will lend for construction, primarily because of the deposit protection and completion guarantee included in them.

However, the possibility of builder's warranty insurance becoming mandatory in New Zealand is less a result of the Government wanting to protect homeowners and more due to their desire to cap the liability of councils for defective building work. Capping council liability opens up the risk of homeowners being out of pocket if the builder is not around to contribute their share to the repair – hence a compulsory builder's warranty would need to be introduced, alongside any capping of council liability.



There is no doubt builder's insurance can be a difficult 'sell'. After all, who wants to recommend their customers take out insurance in case they go bust or their workmanship is not up to scratch!! This is why mandatory insurance should become a reality, but it does mean all builders, and ultimately homeowners, pay for the poor performance of a few bad operators. This aside, given the very reasonable cost of the insurance for the protection it affords, an independent builder's guarantee makes good sense for customers and builders alike.

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THE BAGPIPER

As a bagpiper, I play many gigs.
Recently, I was asked by a funeral director to play
at a graveside service for a homeless man. He
had no family or friends, so the service was to be
at a pauper's cemetery in the
Nova Scotia backcountry.



As I was not familiar with the backwoods, I got lost, and,
Being a typical man, I didn't stop for directions.
So I finally arrived an hour late and saw the funeral director
had evidently gone and the hearse was nowhere in sight.
There were only the diggers and crew left and they were eating lunch.
I felt badly about my tardiness and apologised to the men.

I went to the side of the grave and looked down and saw the vault lid was
already in place. I did not know what else I could do, so I started to play.
I played out my heart and soul for this man who had no family or friends.

And as I played 'Amazing Grace', the workers began to weep – in fact we all wept together.

When I finished, I packed up my bagpipes and started for my car.

Though my head hung low, my heart was full.

As I got into my car, I heard one of the workers say

“I never seen anything like that before,
and I've been putting in septic tanks for twenty years”

