NEWSLETTER

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One-stop-shop for major projects

In March this year the Government delivered on its promise to introduce a fast-track consenting regime, with the Fast-track Approvals Bill (Bill). The Bill would establish 'a one-stop-shop' for many of the approvals necessary to progress major infrastructure and development projects. It would allow one application to be lodged and considered by one decision-making body, which would provide approvals under all the other relevant legislation provided in the one-stop-shop.

RMA Minister Chris Bishop stated that the Bill is based on the RMA fast track regime developed by the previous government, but that it is "far more extensive in its scope and will be far more effective." He also cited a recent report by the Infrastructure Commission which showed that since 2014, the cost for consenting infrastructure projects had increased by 70 per cent and the time taken by upwards of 150 percent.

Approvals covered in the Bill include those under the Resource Management Act, Conservation Act, Wildlife Act, Freshwater Fisheries Regulations, Reserves Act, Heritage New Zealand Pouhere Taonga Act, Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act, Crown Minerals Act, Fisheries Act, and Public Works Act 1981 (to take or deal with land).

To access the fast-track approvals process (FTA process) there are one of two paths: either by applying to be referred by the joint Ministers (Minsters of Infrastructure, Regional Development and Transport), or by being listed in Schedule 2 of the Bill. Two types of projects will be listed in Schedule 2: Part A listed projects, which will automatically be referred to the FTA process to be assessed by an expert panel (EP), and Part B listed projects, which will need to be considered by the joint Ministers for referral to an EP. An independent Fast-Track

Projects Advisory Group has been setup to make recommendations to the joint Ministers on projects to be listed in Schedule 2. Any person or organisation can apply through the Ministry for the Environment portal to have their project listed in Schedule 2.

To determine if a project can be fast-tracked, the joint Ministers would assess projects against criteria set out in the Bill, including whether the project would have significant regional or national benefits. Projects considered would include those that would deliver regionally or nationally significant infrastructure, increase the supply of housing, support primary industries, support development of natural resources, or address significant environmental issues.

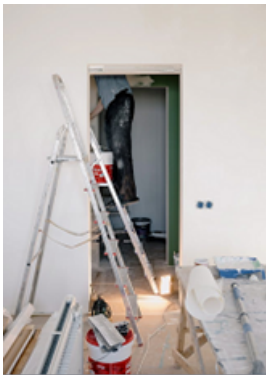
An EP with the skills and knowledge needed to assess the merits of an application would be appointed for each project. The EP would make recommendations (within a 6-month timeframe) to the joint Ministers who would then determine whether a project should be approved or declined. In making their decision the joint Ministers must seek and consider comments from other Ministers, local government, and relevant Maori groups.

The joint Ministers can deviate from the EP's recommendations provided they have analysed the recommendations and conditions included in accordance with the relevant assessment criteria in the Bill. They may also refer a project back to the EP for reconsideration.

The Bill passed its first reading on 7 March and is now with the Environmental Select Committee for review, with a report due back by 7 September 2024.

Repairs to rental properties not deductible?

A recent technical decision summary (TDS 24/02) issued by Inland Revenue involved a dispute with a taxpayer that purchased several residential rental properties. Soon after purchasing, the taxpayer conducted renovation work on the properties, such as replacing kitchen units and carpet, adding dishwashers and heat pumps, and cleaning and repairing roofs.



Inland Revenue (IR) concluded that the capital limitation applied to the costs involved with the work completed, on the basis the renovation costs formed part of the cost of acquisition of the properties, and the work completed was beyond ordinary repairs and maintenance.

The key facts considered in coming to this conclusion were the condition of the properties when purchased, whether the purchase price was discounted, and the cause of the need for the work. It was found that the properties were in average condition on purchase, and that the taxpayer renovated them to make them more attractive to higher paying tenants. This led IR to assert that the purchase price was therefore discounted, as the vendor could have obtained a higher price had they conducted the repairs themselves before sale.

The taxpayer argued that the work was done to restore the properties to their original condition, with no real improvements being made. They asserted that the properties were fit for purpose at the time of purchase, evidenced by the fact that all but one property was tenanted. The less-than market purchase price was due to the fact that multiple properties were being purchased at once, hence a single transaction discount applied. Moreover, the taxpayer had attempted to negotiate a lower price with the vendor at the time of purchase due to repairs being needed but was unsuccessful. The taxpayer asserted that the photos IR relied on to prove that the properties were unfit for purpose were not representative of the condition of the properties as a whole, as the taxpayer had used these selected photographs for negotiation purposes.

This has been a topic well covered by previous case law, but one that easily lends itself to interpretation. In this case there is room to disagree with IR's interpretation. One would have to assume that price is always impacted by the condition something is sold in. If one were to take a literal interpretation of the IR's view, any subsequent repairs made to a recently purchased asset would point to a discount being received on the purchase price and should therefore be treated as capital in nature.

Clearly there is a fine line to traverse in such situations, and we may not have seen the last of this case if the taxpayer takes the matter further.

GenAI – a leap forward

Artificial intelligence (AI) is the new buzzword at the moment, with business leaders touting its importance and the significant impact it will have on the way we conduct business. The reality is that AI has been around for a while, but in the past few years has taken a great leap in terms of its usefulness and accessibility for the general public.

AI is a blanket phrase for computers performing tasks that would usually require human intelligence to perform. It is exceptionally good at recognising patterns and making predictions and is being widely used already. For example, the facial recognition on your phone or the personalised ads you see pop up on the web are all a result of AI. Generative AI (GenAI) is an evolution of this, whereby it can use existing data and patterns to create completely new content. GenAI is what is causing such a stir recently, due to the broadness of its potential applications and how disruptive it could be for many industries.

According to PwC's 2023 Emerging Technology Survey, 73% of US companies have already adopted AI into their business, with 54% using GenAI. With many firms creating their own GenAI chatbots, employees can use these to research legislation, summarise spoken meetings using speech to text, or craft an email from scratch. Broader use cases see programmers using GenAI to help them write code, product designers using it to evaluate new designs, or marketers to identify leads and develop marketing strategies. In the creative industry GenAI has been even more disruptive, with unique videos, pictures or songs being crafted from a simple chat prompt.

Every so often a new technology comes along that completely changes the way in which the world operates. In recent times, this has been things like the internet, or smartphones. Many are now claiming that GenAI will be the next big shift, and that its impact on the future will be unprecedented.

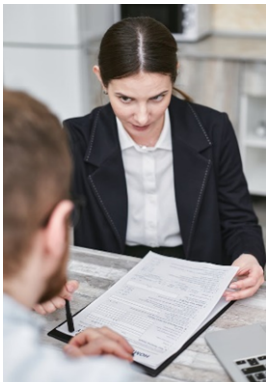
The first ever global summit on artificial intelligence was hosted in November last year, where 28 nations declared the need to work together to manage the risks associated with such powerful technology. Public figures like Elon Musk even described it as a 'threat to humanity', given the potential for AI to become more intelligent than its human creators.

While the threat of world domination is hopefully something on the far horizon, when it comes to AI, no one can really say how fast the technology will evolve, particularly when it is able to learn and teach itself.

With access to GenAI available to everyone through platforms like ChatGPT, it's worth considering whether it might be helpful to you or your business.

Insurance contract law reform to benefit everyday Kiwis

A long anticipated reform to insurance contract law, which appeared initially as a member's bill in March and then adopted by the Government as the Contracts of Insurance Bill (Bill), passed its first reading on 2 May and was referred to the Finance and Expenditure Committee. According to Hon Andrew Bayly (Minister of Commerce and Consumer Affairs), the Bill will "modernise insurance law and make it easier for everyday Kiwis to get insurance and make a claim."



One of the key changes the Bill introduces is to the duty of disclosure placed on the policyholder. Currently before entering or renewing a contract of insurance, a policyholder must disclose to the insurer all information that could influence their judgement in setting the premium or in taking the risk. This places the burden on the policyholder to know what the insurer would consider relevant. Under the Bill, for consumer policyholders (personal, domestic, household), the current disclosure requirements would be replaced with the duty "to take reasonable care not to make a misrepresentation to the insurer". In effect, placing the onus on the insurer to ask the right disclosure questions. In determining if 'reasonable care' has been taken by the policyholder, the matters that may be taken into account include: how clear and how specific any questions asked by the insurer were, how clearly the insurer communicated the importance of answering those questions, and any explanatory material or publicity produced or authorised by the insurer.

Where a consumer policyholder has breached their duty to take reasonable care, under the Bill the insurer would no longer have the right to avoid the contract outright, unless the policyholder's breach was deliberate or reckless. Where the misrepresentation was not deliberate or reckless the insurer will have proportional remedies based on how the insurer would have responded if the correct information had been given.

For non-life policies, remedies include: if the insurer proves that they would not have entered contract on any terms, the contract can be avoided and claims refused, but premiums paid returned, or if the insurer would have entered into the contract, but would have charged a higher premium, the insurer may reduce proportionately the amount to be paid on a claim.

Non-consumers (commercial, business) under the Bill will now have a duty to provide to the insurer "a fair presentation of the risk". This includes the disclosure of "every material circumstance that the policyholder knows or ought to know", or if they are unable to, that they provide sufficient information to make a prudent insurer aware that they need to ask further questions in determining whether to take the

risk, and on what terms. For breaches of duty of 'fair presentation', proportionate remedies apply, similar to that for consumers.

The Financial Markets Conduct Act 2013 will also be amended to include the requirement for insurers to ensure contracts are worded and presented in a clear, concise, and effective manner – the intent being to help make insurance policies more readily understandable and comparable for consumers.

Public submissions will close 3 June, with the Select Committee's report due 3 September 2024.

Snippets

Changes to bright-line rules

Legislation has recently been passed which repeals the current bright-line tests.

There were previously three separate bright-line tests which applied to the sale of residential land:

- Land acquired on or after 27 March 2021 that is not a 'new build': 10-year test.
- Land acquired on or after 27 March 2021 that is a 'new build': 5-year test.
- Land acquired on or after 29 March 2018 but before 27 March 2021: 5-year test.

These tests have been replaced with a 2-year test applying to all residential land equally. It applies to disposals that occur after 1 July 2024, i.e. a property purchased before 1 July 2022 and sold after 1 July 2024 will not be subject to the bright-line test.

The main home exclusion that required an apportionment between the time and area that the property was used as a main home is also repealed. Under the two-year regime, to qualify for the main home exemption the home must be predominately (more than 50%) used as such, both from a time and land area perspective.

Rollover relief rules are also extended to capture more types of transfers, allowing the transferee to obtain the original purchase date and cost of the transferor. For example, transfers can now be made between relatives within two degrees of blood relationship without triggering a bright-line disposal.

Each of these changes revert the rules closer to their original intended purpose, which was to bring gains made by property speculators into the tax net.

Questionable spending?

Rates are rising across the country, with a recent economist's report showing an average expected rise of 15%. This is the largest rise the country has seen since 2003, which begs the question, where is all the money going? Inflated construction costs and widening responsibilities take the majority of the blame, but one can't help but wonder if there might be an element of 'questionable' spending involved.

Across the world there are some compelling examples of spending that would be considered less than palatable to the ratepayer. The Gold Coast city council spent $2 million on an art installation consisting of street lights painted to spell the letters 'Gold Coast'. The problem was, passing motorists couldn't make out what the lights were supposed to say. A vote to remove the lights was passed, with an estimated removal cost in excess of $250,000.

Further afield, in Illinois, $98 million was allocated to a project to research and apply a solution for trains making noise as they come to a stop, after complaints were made from two former clients of the Illinois House Speaker. The city of San Francisco spent four years testing various trash can prototypes, some of which ranged in price from $11,000 to $20,000 each. The city of Liverpool spent over £300,000 on three public art installations depicting an elephant in a Viking boat, a tree with a giant frisbee in it, and a large chair with bird wings attached to the back of it.

Are there any similar examples in your city?

If you have any questions about the newsletter items, please contact us, we are here to help.