

# The Jackson Russell report



## Limited Action By Simon Davies-Colley

Changes to the Limitation Act came into force from 1 January 2011. The Act establishes a time limit for anyone wishing to bring a legal claim. For example, a person wishing to bring a claim for breach of contract or recovery of a debt generally has 6 years to bring the claim. After 6 years, you may be prevented from bringing the claim.

This may sound harsh but the purpose is to encourage a person with a claim to address it within a reasonable time period and, on the flip side, to prevent people from being sued for events which occurred so long ago that to sue them would be unfair.

There are some new exceptions to the 6 year period. For example, if you had "no knowledge" of the event which gave rise to your claim. This can have the effect of extending the limitation period for 3 years from the date that you found out about or should have known about the event.

The new Act imposes a 15 year "longstop" period. That is, after 15 years from the event, you cannot bring a claim. There are a few exceptions to this longstop including incapacity, being aged under 18 at the time of the event, being a trust beneficiary claiming from a trustee and various personal/sexual injury claims.

We generally recommend that you bring a claim as soon as you are aware of it. If you have a matter which you think may be close to a statutory limit Jackson Russell can provide you with advice on how to "stop the clock" and preserve your interests.

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## Disclaimer

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# The Jackson Russell report

WINTER 2011

## Change of address for Jackson Russell

A new era is about to begin for Jackson Russell. Our lease has expired in the Fonterra Centre and from Monday 20 June we will be working from new office premises, just around the corner at level 13, 41 Shortland Street, Auckland Central.

We are very proud of our history and the premises are an integral part of the history. Jackson Russell was originally located in Fort Street in 1844. We moved in 1874 to Shortland Street where we remained until 1991 before moving just around the corner to Princes Street and into the new KPMG building (now the Fonterra Centre).

*"We engaged award winning architect Pete Bossley to design our new office"*

says Jackson Russell partner Mark Sullivan. "We were also engaged in a thorough process to select the right building within a tight budget. It was a happy turn of events that space in a Shortland Street tower block came up that perfectly suited our requirements and the concept design."

Pete Bossley, in the Ponsonby studio of Pete Bossley Architects, reflects on the design brief and the concept plan.

*"It is an interesting job because we had to design something which reflected the tradition of the august Jackson Russell brand, but we also had to be modern; in doing that we had to try and find a design balance where a whole range of different clients could be comfortable. The design was for a forward looking firm but with tradition."*

The 13th floor at 41 Shortland Street has sea views to the north and wonderful greenscape views out over Albert Park to the south. The west side of the building enjoys a splendid cityscape of the area around Queen Street. Pete Bossley says the floor plate lent itself ideally to the organisational layout of the law firm.

*"In our planning we were very conscious of how the Jackson Russell legal teams work and function together, and dividing up the space so the shared resources they operate with are central to everybody – it worked out well."*

Peter Sisam, project architect from Pete Bossley's office, says they had to go through a robust process of understanding how the legal teams worked, how they were structured and how they related to one another, to produce an efficient and effective working environment. The floor plan has been divided into 3 business areas, and in making wide use of an open plan, the designers have effectively linked the areas to one another.

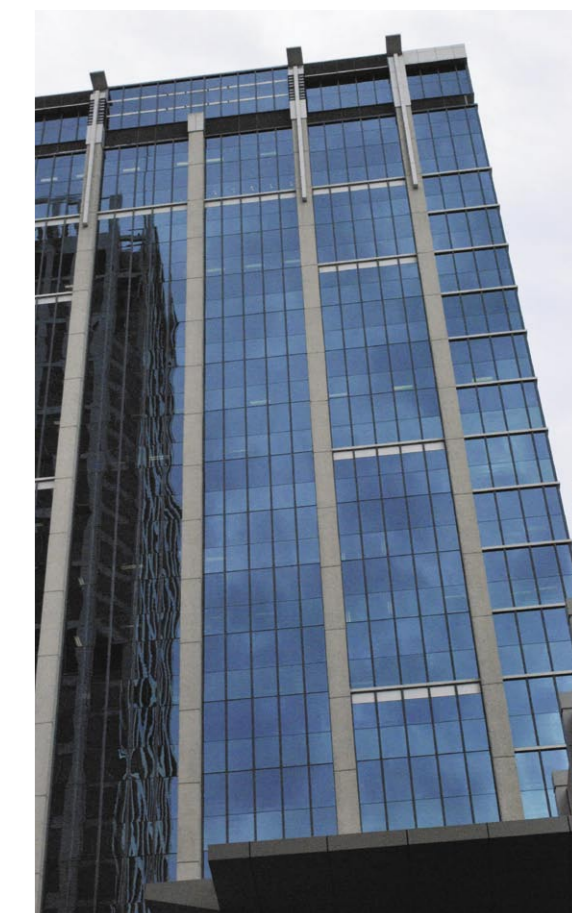
Mark Sullivan says the design concept should work brilliantly. "Pete and his team worked with us to help develop our direction and have come up with a contemporary forward-looking result and within our budget."

OUR NEW LOCATION  
LEVEL 13, 41 SHORTLAND ST



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Pete Bossley Architects design staff reviewing the Jackson Russell plans (L to R Peter Sisam, Karen Ngan Kee, Pete Bossley).



Of the design, Pete Bossley says,

*"I think it's worked incredibly well and it's going to promote a whole lot of efficiencies within the firm, compared to the old layout. People will feel good being in there because it's elegant, but there's also an energy about it, which I think people working there and the clients will enjoy."*

Another part of the brief, from Jackson Russell to the designers, was to source, and use, New Zealand manufactured furniture and finishes in the work spaces for the staff and in the client areas.

Pete Sisam says they really appreciated the enthusiasm amongst the Jackson Russell team to use local fabricators and designs rather than import them.

*"With this job we have supported local industry and it has worked really well."*

Pete Bossley says the end result will be clean and fresh, and Mark Sullivan backs him up by saying everyone at Jackson Russell is eager to get into the new offices.

*"It's a fabulous contemporary space and design which we hope our clients will enjoy just as much as we will."*

Jackson Russell works from level 13 at 41 Shortland Street from Monday 20 June. Telephone and fax numbers remain unchanged.

Client parking will be available in the new premises. Please see the map layout, and instructions for using our client parks, on page 6 of this newsletter.

## Abolition of Gift Duty and its effect on existing and new trusts By Greg King

The Government has announced that from 1 October 2011 the gift duty regime in NZ may be abolished. This could have important consequences to you if you have an existing trust and if you do not have a trust it may simplify the process of establishing one and transferring assets into it.

### The Existing Regime

Currently if you wish to transfer assets to a trust without incurring gift duty the assets are sold to the trust at market value with a debt owed to you by the trust which is progressively forgiven until the debt is repaid.

The gifting legislation restricts the value of gifts which may be made free of gift duty. An individual may gift up to \$27,000 per year which means a couple can gift \$54,000 per year.

The documents required to transfer assets to a trust are normally a Sale and Purchase Agreement, a Valuation, a Deed of Debt, a Deed of Forgiveness and Gift Statements.

It takes several years for the value of assets to be completely forgiven and during this time the value of any debt owing by the trust may still be attacked by creditors.

### The New Regime

It may be much easier to transfer assets to a trust. The assets may be gifted directly to a trust at their market value so there will be no debt owing by the trust to the donor.

The documents required to transfer assets to a trust will be simplified to a Valuation and a Deed of Gift so there will be no ongoing gifting programme required.

Income tax issues such as recovery depreciation may still need to be considered.

### Effect on You

If you have an existing gifting programme your Jackson Russell adviser will contact you to advise on how you may benefit from these changes.

If you do not have a trust these new changes mean that it will be much easier to transfer your assets to a trust and much quicker to protect the value of your assets. Contact us to see how you may benefit from these changes.

## Government tightens rules around companies By Marcus Rudkin

The Government has announced it will tighten requirements around company directors and company registration. The key change will be a requirement for all New Zealand companies to have either one director resident in New Zealand or, a New Zealand based local agent.

The proposed changes are in response to increased threats from criminal activity to New Zealand registered companies.

The changes will put an increased onus on the New Zealand resident directors or local agents as they will be responsible for ensuring their companies comply with New Zealand company law. The local agents or New Zealand resident directors will be liable if their companies breach those compliance requirements.

The Registrar of Companies will also receive expanded powers allowing the Registrar to remedy issues concerning compliance and any doubt around the accuracy of information including the ability to note on the register of any company that is under investigation by the Registrar and to investigate the actions of directors and shareholders.

A bill setting out these measures is expected to be introduced into Parliament this year and will require amendments to the Companies Act 1993 and related legislation if passed.



## Mediation – Solving the Problem By Caroline Harris

Not all legal disputes end up in Court. In fact, most disputes that find their way to a lawyer's office are resolved through some form of settlement negotiation. If you are involved in a dispute, whether it is over money, business or property, but have reservations about "taking it to the next level", consider Mediation.

### Why Mediation?

As the pace and complexities of business increase, the rise in the popularity of Mediation to resolve disputes is unsurprising. Unlike formal litigation, Mediation allows parties to determine their own outcome; in their own time; and in a confidential setting.

Many people have little appetite for the cost, time and distraction that can be associated with waiting for their day in Court. Determination of a dispute at trial is inherently uncertain. Mediation takes the dispute out of the hands of a third party decision-maker and restores control back to the parties themselves.

### What is Mediation?

Mediation is simply an "off the record" meeting to discuss and try and reach a settlement of the dispute. A Mediation is managed by a Mediator but it is the parties themselves who determine the result – namely, whether a settlement is reached and on what terms.

The Mediator does not have any decision making authority. The Mediator will not advise the parties or determine who is right or wrong. The Mediator's role is to guide and control the settlement discussion in a helpful way so as to encourage parties to stick to the issues and keep their eye on the prize – settling the dispute and putting it behind them.

### What happens in the room?

First, the introductions. The Mediator, the parties, their lawyers and sometimes key witnesses or experts will introduce themselves to the room. The Mediator will briefly explain the process.

Next, the parties will each give a brief opening statement of their position in the dispute. This is often delivered by the lawyers but also provides an opportunity for the parties themselves to speak directly and openly about their point of view.

The next phase is often called the "whiteboard discussion". After listening to the opening statements, the Mediator will summarise and identify the issues in dispute and prioritise them for group discussion by writing an issues agenda (usually) on a whiteboard. This is typically a collaborative process and often proves to be a critical point in the Mediation. Experienced Mediation lawyers will often promote for discussion the issues which favour their client's case so as to avoid too much time being spent on their client's "risk" issues.

Next, settlement discussions – the parties and their lawyers will debate the "whiteboard issues" in a reasonably informal way, testing each other's legal positions and evidence. The object of this phase is to reach an agreement which is based on each party coming to understand their individual consequences of not settling the dispute. Those consequences may be facing expensive and risky litigation; adverse publicity; ongoing stress and distraction; or not recovering money or property owed to them. A successful Mediation will result in a settlement agreement to which all parties agree. The terms of settlement should be clearly understood and recorded in a binding agreement.

### Mediation is here to stay

Not all disputes are suitable for Mediation. The Courts continue to play a vital role in determining legal outcomes and establishing the legal principles upon which lawyers can advise clients of their legal risks.

However, Alternative Dispute Resolution (ADR) in the form of Judicial Settlement Conferences and Mediation now have an official role in New Zealand's Justice System. In both the District and High Courts, parties are referred to settlement conferences to try and resolve their disputes before trial. Other statutory Tribunals such as the Weathertight Homes Tribunal require parties to attend Mediation before allocating a hearing.

While Mediation does not take place in the Court room, it is still a legal process requiring a particular set of skills from your legal advocate to: firmly advance your position; advise you of your settlement alternatives; and negotiate a settlement which represents a good outcome for you.

