

TURNER HOPKINS

BARRISTERS & SOLICITORS

TAKAPUNA

SPRING 2007

NEWSLETTER

NEW SENIOR ASSOCIATE

We are delighted to announce that Andrew Hooker has joined the firm as Senior Associate – Litigation.

After graduating from Auckland University in 1990, Andrew joined a specialist civil litigation firm in Auckland City and has practiced in the civil litigation area since then.

Specialising in civil litigation with extensive experience in insurance and financial services law, Andrew has developed a reputation as a passionate advocate for his clients. He has represented most major insurance companies and many brokers and advisers in all New Zealand Courts from the District Court to the Court of Appeal, and provided product and commercial advice across most sectors of the industry. Andrew is regarded as an expert in insurance and fraud throughout New Zealand and the Pacific and has been invited to speak

at conferences and training events by industry bodies and regulators.

With significant experience and contacts in Pacific territories including Papua New Guinea, The Solomon Islands, Fiji, Samoa, American Samoa and The Cook Islands, Andrew is able to provide advice on most areas of the law in these territories.

"I joined Turner Hopkins because the culture and values of the firm matched my approach to the law. Lawyers need to provide sound, economic and commercially realistic advice and services to their clients. The legal processes can be confusing, complex and expensive, and our job is to ensure that our clients are represented with passion and commitment, and for a realistic cost."

TURNER HOPKINS NEWS

In addition to Andrew Hooker joining us as a Senior Associate we are also delighted to announce that Christina Lee has joined the firm as a solicitor specialising in family law related matters. Christina replaces Isabel Jenner who has departed for her "OE" in the United Kingdom. Claire O'Donnell our Senior Associate is currently on maternity leave (until March 2008). Congratulations to Claire and Neil on the birth of their third child Caitlyn.

BARRIE HOPKINS

In an exciting development, Turner Hopkins, Takapuna, has entered into an association with the Auckland firm of Barrie Hopkins, Barrister, Solicitor and Notary Public.

Barrie, a Takapuna resident for most of his life, joined the City firm of Lovegrove George & Turner as a law clerk in 1946, subsequently becoming the senior partner in the firm which after several name changes practiced under the name of Turner Hopkins in Auckland, Takapuna, Albany

and Orewa. Although Barrie left Turner Hopkins to practise on his own account in the City 30 years ago, our firm of course still bears his name.

Over recent years we have been working together on matters where we think a sharing of experience and resources would be of benefit to our clients but now we believe a more formal association is appropriate.

Barrie will be well known to many of our clients, as will be Jackie Willoughby who has been with Barrie for 29 years and Debbie de Muth for 19 years.

We all believe a closer association will be of significant benefit to clients of both firms in the bringing together of experience, expertise and resources. Additionally, it now provides the facility for Turner Hopkins' clients to attend an Auckland City office (by appointment) if that is their preference – i.e. at Level 9, Shortland Chambers, 70 Shortland Street.

We at Turner Hopkins are looking forward to working more closely with Barrie and his team in the years ahead.

Mike Newdick
Michael Robinson
John Stirling
Andrew Hooker
Claire O'Donnell

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YOU'VE GOT MAIL – UNSOLICITED ELECTRONIC MESSAGES ACT 2007 – ARE YOU PREPARED?

On 5th of September 2007 the Unsolicited Electronic Messages Act (the Act) came into force.

1. What is the purpose of the Act?

The Act aims to prohibit unsolicited commercial electronic messages with a New Zealand link from being sent.

2. What is a commercial electronic message?

Under the Act it means an electronic message that –

- (i) **Markets or promotes – goods; or services; or land; or an interest in land; or a business or investment opportunity;**
- (ii) **assists or enables a person to obtain dishonestly a financial advantage or gain from another person; or**
- (ii) **provides a link, or directs a recipient, to a message that does 1 or more of the things listed in sub paragraphs (i) and (ii) above.**

3. Who will the Act affect?

All businesses or persons who send electronic messages such as emails to market products and services.

4. How do you comply with the Act?

The following areas are required to be complied with by the sender when sending a commercial electronic message:

The message must identify clearly the person who authorised the sending of the message (i.e. the sender must have the consent of the recipient);

The message must contain accurate information on how the sender can be contacted;

The message must contain a clear, functional unsubscribe facility;

The sender must not use address harvesting software (used for searching for and collecting internet addresses) or a harvested address list in connection with, or with the intention of sending unsolicited commercial electronic messages.

5. What happens if you do not comply?

There are various civil enforcement methods available to the person affected, the enforcement department and the Courts. In particular, the Courts can award a pecuniary penalty against the sender of up to \$500,000.00.

6. What can you do?

The Department of Internal Affairs recommends a simple three step process to ensure that you are not sending spam or breaching the new legislation.

Step 1:

Make sure that you have the consent of the recipients of the commercial electronic message.

Step 2:

Identify the business responsible for sending the commercial electronic message and how they can be contacted.

Step 3:

Include a functional “unsubscribe facility” in all commercial electronic messages.

We strongly suggest that you take time to review your business practices. We would be very happy to offer assistance to any clients who may require further advice in order to comply with these new legal requirements.

Dealing with a Deceased Person's Estate

People are often unsure of the process to be followed when dealing with a deceased's estate. Where a deceased has not left a will, the administration of an estate can be complex and costly. However, this article provides a brief guideline of the process where the deceased has left a will.

1. The will.

The original will should be held by the firm of solicitors who prepared it. The first step is to contact the solicitor concerned and advise him or her of the death. The will can then be checked to ascertain who has been appointed as the executor of the will and the identity of those named as beneficiaries. The will may contain special directions as to funeral arrangements.

2. Apply for probate.

The executor must appoint a solicitor to act for the estate who will then make an application to the High Court for probate. Probate is the process whereby the Court determines the authenticity of the will and confirms the authority of the executor named in the will to administer the estate. Generally, it is not necessary to apply for probate where the assets of the estate are less than \$10,000.00.

The application for probate must be supported by an affidavit sworn by the executor who must swear that he or she is the person named as executor in the will. He or she must also provide evidence of the death of the deceased (such as producing a copy of the death certificate) and confirm their belief as to the validity of the will. In addition, the executor must undertake that he or she will carry out the instructions contained in the will in accordance with the law.

3. Administration of the deceased's estate.

Once probate has been granted, the executor can proceed to administer the estate. The executor's duties include:

- Making arrangements for the burial or cremation of the deceased (prior to probate being granted);
- Preparing an inventory of the deceased's assets;
- Paying the funeral expenses and any other debts owed by the deceased from the assets of the estate;
- Paying any gifts or legacies to beneficiaries named in the will;
- Distributing the remainder of the estate to the beneficiaries; and
- Keeping a set of accounts recording all financial transactions in relation to the estate.

The terms of every will differ. For example, there may be provision for a life interest in a particular asset to be granted to a person during that

person's lifetime. This means that the executor will retain ownership of the asset until the person who has the benefit of the life interest has died. At that point the asset then becomes part of the "residuary estate" and can be distributed to the remaining beneficiaries.

4. Costs of administering an estate

Our charges for administering an estate are based on time and attendances involved. In our experience the cost will generally be in a vicinity of \$2,000 to \$5,000 depending on various issues including the number of beneficiaries, complexity of the deceased's affairs, and type of property held. This normally compares very favourably with charges rendered by Trust companies or quasi government agencies such as the Public Trust which charge on a percentage basis resulting in the costs being determined by the estate's value.

Rachel Pedrotti of this office has had many years of experience in dealing with estate administration. You should feel free to contact her or the commercial partners, Mike Newdick or John Stirling should you wish to discuss any matters relating to your will, estate administration or estate planning.

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Turner Hopkins Solicitors Nominee Company Limited operates pursuant to the guidelines set out in the Solicitors Nominee Company Rules 1996

For more information please contact Helen White at Turner Hopkins on 486-2169 or email helen.white@turnerhopkins.co.nz.

FINANCE COMPANIES –

Almost every one knows someone who has lost money with the recent collapse of Bridgecorp and other finance companies.

Turner Hopkins' new Senior Associate, Andrew Hooker, has significant experience in the area of financial and insurance law and the roles of financial advisers. He has been closely watching the media coverage of the collapse and in particular the role of financial advisers who advised clients to invest in these now failed companies. There is of course no problem investing in the higher return companies such as Bridgecorp, as long as you understand that with return comes risk. And that is where the role of the financial adviser comes into play. Most financial advisers would make sure that their clients understood the risks associated with some of the higher return finance companies, and advise them to spread their investments accordingly. But any advisers who recommended that a client invest in such

organisations without explaining the associated risks, and ensuring that the client understood, should now rightly be concerned about his or her liability.

In recent media reports there have been cases of financial advisers who have, for example, allegedly told clients that investing in Bridgecorp was "as safe as a bank". We have been contacted by a number of people who are asking us to look at recovery action against financial advisers, and it is likely that we will be commencing a group or class action.

Some of the cases are very sad, and when people have relied on advice from a financial adviser, they are entitled to assume that the adviser has thoroughly researched the investment, and fully informed them of their options, and risks.

OUR WEBSITE

Visit us on the internet at www.turnerhopkins.co.nz.

NEWSLETTERS

If you would like to receive our newsletter by email please reply to: helen.white@turnerhopkins.co.nz

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