

# News

**April 2006**

## Property Newsletter

### Smoke Alarms – Important news for Landlords

Whilst the installation of smoke alarms in newly built premises has been required for some time now, new legislation will come into effect on 1 May 2006 requiring the installation of smoke alarms in all existing rental accommodation. The legislation permits a six month moratorium on prosecutions to allow owners and agents to fit these alarms.

The requirement to fit smoke alarms will extend to all existing residential tenancy agreements and means that a landlord must ensure that either battery operated or mains wired smoke alarms are fitted and operational at the commencement of all new residential tenancy agreements.

Alarms are also required to be fitted in premises where existing residential tenancy agreements are in place. Where a tenant does not allow access to a property, the *Residential Tenancies Act* will be amended to allow landlords access to their properties to have smoke alarms fitted in order to comply with their obligations under the new legislation.

Fines of \$550.00 will apply for non-compliance after the six month moratorium which expires on 1 November 2006.

Should you require further information in relation to this new requirement you should contact your managing agent or Sam Kremer of our office. There is also information available on the Department of Planning's website at

[www.planning.nsw.gov.au/smokealarms/index.asp](http://www.planning.nsw.gov.au/smokealarms/index.asp)

### Retail Leases Act amended

The *Retail Leases Act* 1994 (NSW) was substantially amended as of 1 January 2006. There are close to 70 pages of amendments, most of which commenced operation on 1 January 2006.

As a consequence of these amendments, the Act is far more reaching and so now applies to a greater range of leases. Short-term leases which were previously exempt can now be caught within the ambit of the Act. The list of retail businesses to which the Act applies has also grown substantially.

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One of the more significant changes relates to security deposits. These provisions apply to leases entered into both before and after the commencement date of 1 January 2006. As a result of the amendments, all retail lease security bonds are required to be lodged with the Director General of the Department of State and Regional Development. Security bonds held by a landlord (or its agent) at 1 January 2006 must be deposited with the Director General by 1 April 2006. Security bonds received after 1 January 2006 must be deposited within 20 business days of receipt. The landlord or its agent may be liable for a penalty of up to \$2200 if they do not comply with these requirements.

As a result of these significant changes to the *Retail Leases Act*, we strongly recommend you obtain legal advice in relation to all future retail lease matters. Please also contact our office if you require assistance with lodging your security bonds.

## Water Management Act

Although the *Water Management Act (WMA)* commenced on 1 July 2004, we felt it was appropriate to review the arrangements. Under the WMA some 31 water sharing plans were implemented across New South Wales. If your property is within an area covered by an operational water sharing plan then your licensing arrangements will now be determined by the WMA. If not, then your arrangements continue to be governed by the *Water Act 1912 (WA)*.

During February and March 2005 approximately 11,000 licence holders received notification of the conditions of their new water access licences from the Department of Natural Resources (**DIPNR**). The new licences provided owners with greater security and with a clearly defined perpetual right to access water. The licences are valuable assets that can be sold, mortgaged, rented, subdivided, consolidated and moved from one location to another.

Under the WMA a range of new water licensing procedures were implemented including:

- Conversion of WA licenses to water access licenses controlled by the WMA.
- The listing of all water access licenses on the Water Access Licence Register maintained by the Department of Lands.
- The issue of water access licence certificates.
- New procedures for applying for new licences and approvals.

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- A range of new transactions called water dealings.

Under the WMA, the water access licence is separate from the water use and works approval. The reason for this is because the water access licence (water right) can be traded independently of the land whilst the water use and works conditions remain attached to the particular parcel of land. The water use and works conditions are set out in a separate document referred to as the Statement of Approval.

Whether or not you need a water licence depends on how and why you want to use the water. If you want to extract water from a river or aquifer (groundwater body) for commercial purposes then generally you will require a licence. However, all rural landholders in New South Wales have some basic rights to take water without a licence including domestic and stock rights, harvestable rights (or farm dams) and native title rights.

To check if the new licensing provisions of the WMA apply to your land you can view maps of the water sharing plan areas on DIPNR's web site at [www.naturalresources.nsw.gov.au](http://www.naturalresources.nsw.gov.au).

Should you require further information on water licences please contact Craig Munter of our office.

## Limitations on review rights for major projects

In late 2005, the NSW Government introduced amendments to the *Environmental Planning and Assessment Act* which were geared towards facilitating large scale and infrastructure developments and reducing the likelihood of delays in approvals by local councils and other local opponents.

Effectively under the new Part 3A of the EP&A Act, the Minister can "call in" major projects and assume the role of consent authority. This was intended to provide greater certainty to proponents of certain projects.

However, the appeal rights for both proponents and objectors who are dissatisfied with the decision of a Minister in relation to a Part 3A project can only be exercised if:

- the project is not a critical infrastructure project;
- the proponent is not a public authority; and

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- the project has not been the subject of a commission of inquiry or a report of a panel of experts under section 75G.

Firstly, there are no appeal rights for a proponent in relation to critical infrastructure projects. This may not prove to be a significant practical impediment as the only critical infrastructure currently categorised at present is the proposed desalination plant at Kurnell.

Secondly and more relevantly, one of the significant areas where appeal rights may be lost is where the project has been the subject of a commission of inquiry or report from a panel of experts under section 75G. Under this section, the Minister may at the Minister's absolute discretion convene a panel of experts to undertake a commission of inquiry or to provide a report on any Part 3A application. The panel may be required to report only on a small range of issues or even on one issue alone. But the consequence is that the report on that one issue is sufficient to replace entirely the applicant's appeal rights on all issues.

In addition, only one expert is required to comprise a "panel".

Therefore, appeal rights may be lost in circumstances where the Minister has made the project subject to a report by one expert alone.

Although the coming into existence of an expert panel report has the effect that the proponent loses all appeal rights, there is actually no requirement anywhere in the EP&A Act or the Regulations that the Minister must be bound by the expert report.

Objectors' appeal rights are similarly restricted.

Therefore, unless a proponent is confident of the strong likelihood of ministerial support for a project is known upfront, the only certainty is that, if the Minister refuses the application, that may be the end of the matter without any opportunity for a merit review.

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## **Assistance**

If we are able to assist you in any of these areas, or other property matters, please contact one of our Property & Construction Practice Group Team:

- Richard d'Apice - 9233 9011 or [rdapice@makdap.com.au](mailto:rdapice@makdap.com.au)
- Bill d'Apice - 9233 9013 or [wdapice@makdap.com.au](mailto:wdapice@makdap.com.au)
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## **Disclaimer**

This newsletter is a non-comprehensive general outline of the law as at 7 April 2007. You should not act upon or rely on any information contained in this newsletter without obtaining specific legal advice.

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