

in relation to these two pieces of legislation is, by and large, still very appropriate. However, recent changes to the provisions of the Consumer Guarantees Act<sup>4</sup> ("CGA") mean that a forestry consultant in contracting out of the CGA on the grounds that they are supplying services to a business consumer should also consider the situation where the product of the services may be on-supplied by the client. In these situations, it might be useful to contain a provision in your

terms of engagement to require the client to, in turn, contract out of the CGA in terms of the on-supply.

### Conclusion

Against this background my view is that operating a consultancy business using a limited liability company is a "no brainer". However, more careful use of the grey matter is required in contractual formation in order to manage ongoing business risk.

<sup>4</sup> Consumer Guarantees Amendment Act 2003

## Registration Board provides standard terms of engagement guidelines for consultants

Rob Miller\*

The NZIF Registration Board will shortly release, for NZIF's Registered Forestry Consultants (RFCs), two Standard Terms of Engagement (TOE) for use in contracts for professional forestry consulting services. The two samples are:

- A **long form** Standard Terms of Engagement.
- A **short form** Standard Terms of Engagement.

The Board engaged Simpson Grierson to prepare the TOE forms as a guide for RFCs. The short form TOE is an abbreviated version of the long form document for use in smaller contracts under approximately \$10,000.

The Board recognises that while most of the larger consulting companies routinely use their own TOE in contracts, many of the smaller firms or sole practitioners do not. We are living in increasingly litigious times. Professional liability claims have been made, some successfully, against forestry consultants involving large sums. The Board recommends that all RFCs routinely adopt terms of engagement procedures in their work to minimise their professional risk when providing professional services.

Terms of Engagement set out the terms and conditions by which a RFC undertakes to provide professional services to a client. The NZIF standards include sample clauses on:

- Specific services to be provided
- Quality of services
- Payment terms
- Liability
- Intellectual property
- Confidentiality

- Supply of information
- Disclaimers
- Dispute resolution
- Other general matters

Issues of liability including limitations on liability are particularly important in contracts. The NZIF models provide for professional liability arising out of a RFC's performance or non-performance to be limited to either a fixed sum or some multiple of the level of fees paid by the client for the services provided.

The Board believes the introduction of the standard TOE will benefit RFCs because it will:

- Establish a clear and unambiguous understanding between the consultant and his or her client as to the nature of services provided and the conditions upon which they are provided.
- Limit the consultant's professional liability.
- Improve the perceived professionalism within the industry.
- Reduce future professional indemnity insurance costs.

The Standard TOE developed by the Board is meant to be a guide only. Consulting engagements vary and RFCs need to assess the suitability of the samples on a case by case basis and use a lawyer to review them before use. The NZIF accepts no responsibility or liability that may arise from the use of the sample TOE.

The NZIF Standard TOE will be forwarded to all RFCs and will otherwise be available on the NZIF website.

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