

SPECTRUM SPEAKS

Season's Greetings from Spectrum Group!

As the year winds down, we want to take a moment to thank you—our clients, colleagues, and partners—for your ongoing support and trust. It's been an honour to assist you with the challenges, successes, and opportunities that came your way this year.

2024 has been a year of growth for Spectrum Lawyers. We welcomed new lawyers, including lawyers Rebecca and Alyssa and administrators Alisha and Kelly.

As we prepare for the year ahead, our focus remains on delivering practical, high-quality legal solutions tailored to your needs. Whether helping you overcome legal hurdles or achieve your goals, we're here to make the journey as smooth and successful as possible.

From everyone at Spectrum, we wish you a festive season filled with joy and relaxation. Here's to a happy, healthy, and prosperous 2025!

Office Closure Reminder:

We'll be closed from Friday 20 December and we will reopen on Monday 13 January.

Warm regards,
Fred & Donna



In this month's issue:

THE POWER OF A SALES & MARKETING STRATEGY- 2 & 3

THE IMPORTANCE OF CONTRACTUAL COMPLIANCE 4 & 5

ISSUING A STATUTORY DEMAND UNDER THE CORPORATIONS ACT - 6 & 7

BUILDING A STRONG LOCAL AREA MARKETING PRESENCE - 8 & 9

THE INTERPRETATION OF LIMITATION PERIODS - 10 & 11

THE DIVORCE PROCESS IN VICTORIA - 12 & 13

ABOUT SPECTRUM LAWYERS & SPECTRUM COACH - 14 & 15

The Power of a Sales and Marketing Strategy

BY FRED ABU-ELIAS

In the highly competitive residential construction sector, a well-executed sales and marketing strategy is more than just a tool for promotion—it's a foundation for success. Whether you're a builder offering standard designs or specialising in custom knockdown rebuilds, this strategy drives engagement, builds trust, and converts interest into lasting client relationships.

A strong strategy starts with knowing your audience. Standard plan builders often attract first-home buyers or investors prioritising simplicity and value. On the other hand, custom knockdown rebuild specialists cater to homeowners seeking tailored designs to upgrade their living space without relocating.

Understanding these distinctions lets you craft messaging that resonates—whether it's highlighting cost-efficiency and streamlined processes for standard plans or showcasing creativity and problem-solving expertise for custom projects.

Your digital presence plays a critical role in reaching potential clients. A user-friendly website should showcase what sets your business apart. For standard builders, this might mean a clear catalogue of designs, while custom builders should highlight their portfolio of unique projects. Including client testimonials and offering downloadable resources, like a guide to the knockdown rebuild process, can further enhance credibility and generate leads.



Communication is another cornerstone of success. Tailor your messaging to address your clients' specific goals and challenges. For standard plan builders, this might mean focusing on affordability and reliability. For custom projects, emphasise adaptability and your ability to bring personalised visions to life. Clear, consistent communication builds trust and positions your business as the right choice.

Localised marketing can also make a big impact. Custom knockdown rebuild specialists can benefit from relationships with local real estate agents, community sponsorships, or targeted campaigns focused on key suburbs. These strategies help you connect with the right audience in your service area.

On the sales side, a customer relationship management (CRM) system ensures no lead slips through the cracks.

Prompt follow-ups, personalised consultations, and tailored proposals are essential.

Finally, measuring your strategy's success ensures you're always improving. Metrics like lead conversion rates and client feedback provide valuable insights. By refining your approach, you can adapt to changes in the market while maintaining a client-focused edge.

For builders of all kinds, a cohesive sales and marketing strategy is key to sustained growth. It's how you stand out, generate leads, and turn prospective clients into advocates for your brand. Whether you're delivering affordable solutions or creating bespoke homes, the right strategy ensures your business thrives in a competitive landscape.



The Importance of Contractual Compliance

BY REBECCA CONNOLLY

Understanding the importance of contractual compliance and adherence to engineering designs is critical in the construction industry. The recent Victorian Civil and Administrative Tribunal (VCAT) case, *Whitaker v F.P & H.S Keogh Pty Ltd* [2024] VCAT 708, highlights the consequences of failing to meet these obligations.

This case serves as a cautionary tale for builders, building surveyors, and homeowners alike, emphasising the need for diligence, precision, and accountability in all aspects of construction.

Background of the Case

The Whitakers engaged F.P & H.S Keogh Pty Ltd to construct their home on reactive soil. To ensure stability, a waffle slab design was recommended, agreed upon, and paid for by the owners. However, the builder deviated from this design, failing to anchor the slab to piers as specified.

The result? Substantial slab movement and structural defects, leading the Whitakers to seek damages, including the cost of demolition and reconstruction.

VCAT Findings

The Tribunal's decision addressed several critical issues:

Cost-Effectiveness of Rectification

VCAT determined that demolition and reconstruction were necessary because:

- The slab was not anchored to piers, as required by the engineering design.
- The integrity of the piers could not be verified without removing the slab.
- Alternative rectification methods lacked evidence of effectiveness.

Breach of Contract

The builder's deviation from the agreed design was a significant breach of contract, compromising the structural integrity of the home and violating the terms of the building permit.



Liability Apportionment

VCAT found both the builder and the building surveyor equally liable. The building surveyor:

- Failed to identify non-compliance during inspections.
- Ignored warnings about uninspected and unverified elements.
- Issued an occupancy permit despite obvious defects.

Key Lessons from the Case

This case provides critical takeaways for those in the construction industry:

- **Adherence to Engineering Designs:** Builders must follow agreed-upon designs precisely. Unapproved deviations can result in significant legal and financial consequences.
- **Importance of Compliance:** Non-compliance with contractual and statutory requirements can lead to liability. Both builders and surveyors must ensure strict adherence to building permits and codes.

- **Role of Building Surveyors:** Building surveyors are vital in ensuring construction standards. Negligence during inspections or approvals can lead to shared responsibility for defects.
- **Effective Rectification:** Thorough evaluation is essential when deciding on rectification methods. In this case, demolition was deemed the most viable solution.

Conclusion

The decision in *Whitaker v F.P & H.S Keogh Pty Ltd* highlights the importance of accountability and meticulousness in construction projects. Builders and surveyors must prioritise adherence to engineering designs, uphold compliance, and maintain rigorous inspection protocols to ensure high-quality outcomes. By learning from this case, construction professionals can minimise risks, deliver exceptional results, and uphold their obligations under the law.



Issuing a Statutory Demand under the Corporations Act (Aus)

BY DONNA ABU-ELIAS

A statutory demand is a formal tool creditors can use to request payment of a debt from a company, governed by Section 459E of the Corporations Act 2001 (Cth). With rising construction costs putting pressure on businesses, statutory demands are becoming an increasingly discussed option for debt recovery.

This step-by-step guide provides an overview of the process to help you understand how statutory demands work. While this serves as a general outline, specific legal advice should always be sought to address your unique circumstances.

To issue a statutory demand, the debt must meet certain criteria. The amount owed must be at least \$4,000, due and payable, and not in dispute. Disputed debts or counterclaims can provide the debtor company with grounds to challenge the demand. Additionally, the debt must be a liquidated sum—precisely calculated and undisputed—arising from an invoice, agreement, or court judgment. Having a valid court judgment confirming the debt can significantly strengthen your position.

Once you've confirmed the debt is suitable for a statutory demand, the next step is preparation. The statutory demand must clearly state the debt amount, confirm it is due, and provide the company with 21 days to comply.



It must also follow the prescribed format (Form 509H under the Corporations Regulations) and, where applicable, be supported by an affidavit verifying the debt. If the demand is based on a judgment debt, an affidavit isn't necessary, as the judgment itself serves as proof.

Serving the demand is a critical part of the process. It must be delivered to the debtor company's registered office, either in person or by post.

Maintaining evidence of service, such as a signed acknowledgment or receipt, is essential to ensure compliance with legal requirements. An Affidavit of Service is also recommended to document the process.

Once served, the debtor company has 21 days to respond. They can either pay the debt, negotiate a settlement, or apply to the court to have the demand set aside. Common grounds for setting aside a statutory demand include a genuine dispute over the debt, a genuine offsetting claim, or a defect in the demand that causes substantial injustice. If the debtor company fails to respond or set the demand aside within this period, they are presumed insolvent.

If the company does not comply with the statutory demand, creditors can take further action by filing a winding-up application.

This involves applying to the court to wind up the debtor company on the grounds of insolvency. The application must include the statutory demand, an affidavit confirming non-compliance, and any other required court documents.

The winding-up application must also be served on the company's registered office and notified to the Australian Securities and Investments Commission (ASIC). Court rules require the application to be advertised in the appropriate format.

At the court hearing, the creditor must demonstrate that the statutory demand was valid, properly served, and not complied with. If the court is satisfied, it can issue a winding-up order and appoint a liquidator. The liquidator will take control of the company's assets, investigate its financial affairs, and distribute available funds to creditors.

For creditors who prefer not to pursue winding-up proceedings, alternative enforcement options are available. These include garnishee orders to recover funds from the debtor's bank account, writs of execution to seize assets, and charging orders to secure debts against property. While statutory demands are a powerful tool for creditors, they require careful preparation and execution to ensure compliance with legal requirements.

Seeking professional advice before initiating this process is crucial to avoid missteps and achieve the desired outcome.



Building a Strong Local Area Marketing Presence

BY FRED ABU-ELIAS

In competitive markets, a well-executed local area marketing (LAM) strategy does more than make your business visible—it builds trust and establishes genuine connections within your community. Whether you're a construction company, a retail store, or a professional services provider, becoming part of the local fabric helps your brand stand out and thrive.

The key to effective LAM is understanding your community. Every local market is unique, shaped by the demographics, interests, and culture of its residents. For example, if your audience includes young families, you might highlight affordability and practicality in your messaging.

In areas with more established professionals, focusing on premium services or products that align with their lifestyle could be more effective. Knowing your audience allows you to tailor your approach and deliver marketing that truly resonates.

Being present in your community is essential, both physically and digitally. On the ground, engaging signage, sponsorships of local events, and collaborations with neighbouring businesses can boost awareness. Online, ensuring your business is easy to find is just as important. A well-maintained Google Business Profile provides potential customers with accurate details about your location, services, and operating hours, while positive reviews build credibility.



Community involvement is another cornerstone of LAM. Supporting local causes—whether by sponsoring sports teams, contributing to charity events, or hosting neighbourhood initiatives—shows your commitment and builds goodwill. These efforts not only help the community but also introduce your brand to new audiences in meaningful ways.

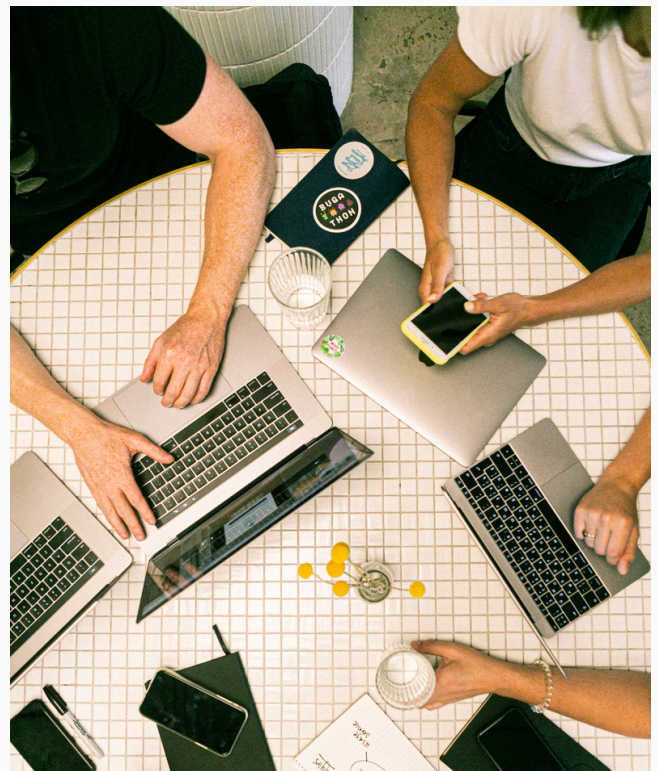
Consistency is crucial in local marketing. A one-off event won't have the same impact as regular engagement. Participating in ongoing community events or hosting your own—such as open days, workshops, or promotional activities—keeps your brand top of mind. When customers think of your industry, they'll associate it with your name.

Partnering with other local businesses is an excellent way to broaden your reach. For example, a construction company might team up with real estate agents or hardware stores to cross-promote services. These partnerships amplify your marketing efforts and position your business as a trusted member of the local network.

Digital platforms are invaluable for enhancing your LAM efforts. Social media channels like Facebook and Instagram allow you to engage directly with your community, sharing updates on local trends, client stories, or advice tailored to the area. Paid advertising on these platforms can target specific locations, ensuring your message reaches the right audience. Additionally, email newsletters can keep your local clients informed about promotions, events, or news, strengthening your connection with them.

Regularly assessing your marketing efforts is key to success. Metrics such as increased foot traffic, website visits, social media interactions, or customer inquiries can help you gauge what's working. By analysing these insights, you can refine your strategy, focusing on initiatives that drive the most impact.

A robust local marketing presence is about more than promoting your products or services—it's about becoming a valued part of the community. By engaging authentically, maintaining a consistent presence, and building meaningful connections, you create loyalty that fuels long-term growth. Local marketing isn't just an investment in visibility; it's an investment in trust, reputation, and relationships that matter.



The Interpretation of Limitation Periods

BY MARIA FOKIANOS

In a recent decision, *Shaw v Imperial Builders Pty Ltd* (Building and Property) [2024] VCAT 929, Member R Bennett addressed a complex dispute surrounding the interpretation of limitation periods under section 134 of the Building Act 1993 (Vic) (Building Act).

This case involved an application by the Builder under section 75 of the Victorian Civil and Administrative Tribunal Act 1998 (Vic) (VCAT Act) to dismiss the Owner's proceedings as statute-barred. The Tribunal ultimately dismissed the Builder's application, citing unresolved factual disputes and the need for further evidence before a determination could be made.

Background

The case centred on whether the Owner's claim was time-barred due to being filed more than 10 years after the issuance of a Certificate of Final Inspection (CFI) on 12 January 2010. While the Builder relied on the date of the CFI to argue the claim was statute-barred, the Owner contended that the later Occupancy Permit (OP), issued on 19 October 2010, was the relevant trigger for the limitation period.

The Builder referenced *Lendlease Engineering Pty Ltd v Owners Corporation No 1 PS526704E & Ors* [2022] VSCA 105, where the Court of Appeal held that the limitation period began from the issuance of the permit "in respect of" the building works under dispute.

However, the Builder argued that the OP in this case was unrelated to their contracted building work, meaning the limitation period could not start from its issuance.

In contrast, the Owner asserted that the Builder's application under section 75 of the VCAT Act should fail because the issues at hand relied on disputed facts, which required evidence to be presented and tested at a final hearing.

Tribunal's Decision

While the Tribunal noted that the Builder's argument appeared "superficially meritorious," it dismissed the application, highlighting the following:

- The case involved significant disputed questions of fact, particularly regarding the relationship between the CFI and OP and their relevance to the building work.
- The matter was not sufficiently clear-cut to justify a summary dismissal under section 75 of the VCAT Act.
- Complex issues of statutory interpretation and fact required further evidence to resolve, making it inappropriate to conclude the Owner's case was without merit at this stage.

Key Considerations

- **Disputed Facts:** The Tribunal highlighted that the precise relationship between the CFI and OP remained a critical factual issue.

- **Statutory Interpretation:** The interpretation of section 134 of the Building Act and its application to these circumstances required careful examination, which could only be resolved with additional evidence.
- **Unique Context:** The unusual sequence of permits—the CFI followed by an OP for a change in property use—necessitated further scrutiny.
- **Evidence Collection:** Parties should ensure robust evidence, including expert opinions, is available to address complex legal and factual issues.
- **Caution in Summary Applications:** Applications for summary dismissal require a clear lack of merit in the opposing party's case, which was not evident here.

Implications of the Decision

This ruling underscores the importance of a thorough evidentiary process in disputes involving statutory limitation periods. Key takeaways include:

- **Limitation Periods:** The case illustrates that limitation periods under the Building Act are fact-dependent and not always straightforward.

Conclusion

The Tribunal's decision in *Shaw v Imperial Builders Pty Ltd* serves as a reminder of the complexities involved in construction disputes and the importance of allowing factual and legal issues to be fully explored at trial. While summary dismissal may be an efficient tool in clear cases, it is not appropriate where significant factual and legal uncertainties remain unresolved.



Understanding the Divorce Process in Victoria

BY HANNAH SMITH AND ALYSSA STAROPOLI

Divorce can be a daunting experience, both emotionally and legally. However, understanding the divorce process can help ease some of the uncertainty.

Step 1: Meet the Eligibility Requirements

To determine whether you are eligible to file for divorce in Australia, you must meet the following criteria:

- You must have been separated for at least 12 consecutive months immediately prior to your divorce application;
- You must demonstrate that the marriage has irretrievably broken down and there is no reasonable likelihood of the relationship resuming; and
- You or your spouse must be an Australian citizen, a resident, or a person who has been in Australia for the last 12 months.

It is worth noting that in certain circumstances, separation may be recognised even if you and your spouse have remained living under the same roof.

Step 2: File an Application for Divorce

Once you have met the eligibility criteria listed above, you can file an Application for Divorce with the Federal Circuit and Family Court of Australia. This application can be made jointly or solely. In addition to your application, you will also be required to provide:

- Your marriage certificate (an original or a certified copy);

- Details of any children, including their living arrangements; and
- Information about any previous divorce or other family law agreements or orders

Step 3: Serve the Divorce Papers

If you have filed for a joint application for divorce, service of divorce documents is not necessary.

However, if you have filed a sole application, you will need to serve the documents on your spouse either by hand (by a nominated person) or through registered post at least 28 days before your court hearing.



Step 4: Responding to the Application

- If your spouse wishes to contest the divorce, they can file a Response to Divorce within 21 days of being served. If they do not respond, the divorce may proceed as an uncontested matter. There are only very limited circumstances in which an Application for Divorce can be contested, for example: if the parties have not been separated for 12 months.

Step 5: Attend the Court Hearing

In most cases, a court hearing will be scheduled approximately 2-4 months after filing your application for divorce. During the hearing, the court will review your application and supporting documents and may ask for additional information for unique circumstances (e.g. separation under the same roof or a short marriage).

You may be required to attend the court hearing if:

- You filed a sole application and have a child under the ages of 18 years;
- You indicated your desire to attend;
- Either party objects to the divorce being heard in their absence; or
- Your spouse opposes the application.

Step 6: Receiving Your Divorce Order

If the court approves your application, a Divorce Order will be granted, which becomes final one month and one day after the hearing. This order legally nullifies your marriage, allowing you to remarry should you choose. It is advisable to keep this document safe, as it is crucial for any future legal matters, such as applying for a property settlement.

Step 7: Post Divorce Order

It is important to understand that the divorce order simply deals with the dissolution of marriage and does not resolve issues relating to children and parenting arrangement or property division. If you and your former spouse cannot reach an agreement, family dispute resolution including negotiation, mediation or court proceedings can assist you in finalising settlement. It should be noted that property settlement must be completed within 12 months of the date of your divorce order.

Conclusion

Navigating the divorce process can be challenging, but understanding each step can help make the journey smoother. It is important to seek legal advice tailored to your circumstances to ensure you are informed and supported throughout the process.





Spectrum Lawyers provide legal services with legal expertise across the following areas:

Building and construction law

- To assist builders and/or owners efficiently resolve building disputes
- Developing streamline procedures and training to manage the challenges in today's market
- Advising consultants & contractors on their legal obligations under the Building Act & Regulations
- Advising building surveyors on compliance issues
- Debt recovery
- Dispute resolution at private mediations, DBDRV, Tribunal and Courts
- Reviewing building contracts and advising on rights and obligations

Conveyancing

- Assisting clients with the purchase or sale of residential or commercial property

General Counsel Services

- Reviewing and advising on procurement contracts and licenses
- Reviewing and drafting policies and terms and conditions
- Negotiating contractual documents
- Providing training (contract law, Australian Consumer Law, advertising, warranty, etc.)

Probate, Wills and Powers of Attorney

- Administering estates
- Drafting Wills and Powers of Attorney to protect your family and assets

Family Law

- Assist you in matters regarding separation and divorce
- Property and financial settlements
- Children's matters and dispute resolution

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Spectrum Coach are designed to understand your business intimately, which allows us to provide the focused, dedicated support that we hold to high standards to all our clients. We understand that every business is different, and will have different needs. Choose one of our services or choose them all – whatever works for you and your business.

Sales

Without sales, you don't have a business. Our training gives you guidance at a micro level, arming you with specific strategies that are proven to close sales.

Operations

Your front end and back end operations are key to turning a profit. From taking the initial sale to getting to a site start, we have designed processes that are easily adopted to improve efficiencies, increase profits and help you to manage your jobs more effectively.

Design & Drafting

Our extensive design library has a range of plans you can use to sell your new homes which are fully customisable. Our training will equip you with the tools you need to sell these plans based on their respective features and benefits. Need a custom design? We can do that too.

Marketing

You're busy doing what you do best – building homes. Let our in-house team help you market your business so you can do more of what you love. We can guide you through marketing your brand, generating leads, and can even help you build a website. We can also manage your social media, including writing content and posting on your social media pages.

Business Coaching

We get it - running a new homes business is complicated. As the business owner, you have to be across every aspect, and not all of them are going to be your specialty. Our general business coaching gives you a team that are skilled in all areas of business, from construction to finance.

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