

# ASCO BRIEF



December 2005

We wish to extend our sincere thanks to our clients who have supported us in our first six months. There have been some interesting and challenging experiences but we are now fully settled into our offices at Level 4, AFFCO House, 12-26 Swanson Street. We extend a warm invitation to anyone who hasn't yet visited us to do so.

We take this opportunity to introduce our accountant, Helen Foster who will be working with us on a part time basis. Helen joins us after an extended holiday in the UK and before that her role as practice manager for another law firm. Welcome to the team, Helen.

## PART I

### Quick Update

- Congratulations to the winners at this year's **FRANCHISE AWARDS:**

#### Supreme Awards

*Westpac Franchise System of the Year*  
Laser Franchise Group

*Westpac Franchisee of the Year*  
Shiraz Hajee, Jesters the Jaffle Pie Co, Sky City Metro

#### Business Services Awards

*Franchise System of the Year*  
Laser Franchise Group  
*Franchisee of the Year*  
Laser Electrical, Rosebank

#### Home Services Category

*Franchise System of the Year*  
VIP Home Services  
*Franchisee of the Year*  
Mark Habel, Select Cleaning, Auckland

#### Lifestyle Services Category

*Franchise System of the Year*  
The CACI Clinic  
*Franchisee of the Year*  
The CACI Clinic, Milford

#### Food and Beverage Category

*Franchise System of the Year*  
Esquires Coffee House  
*Franchisee of the Year*  
Shiraz Hajee, Jesters Sky City Metro

- ASCO hosted a team of delegates from the **Malaysian Government** in October with the dual mission of looking for master franchise systems which could be exported to Malaysia and learning about our franchise codes and businesses.
- Miles Agmen-Smith also presented to a delegation from the **Thailand Government** on a similar mission.

#### **TRUSTEES AND NOT FOR PROFITS should note:**

- The **Charities Commission** has just advised that existing charities will need to register with it to maintain their tax exempt status by 30 September 2007. The Register for Applications will open in the middle of next year. New tax regulations will come into effect on 1 October 2007. The process may take many not for profit organisations quite some time to complete and they should be putting it on their agendas now. For more information visit the Charities Commission website at [www.charities.gov.nz](http://www.charities.gov.nz).

#### Government Response to Small Business Advisory Group (SBAG) Recommendations

On 13 December 2005, Lianne Dalziel, Minister of Commerce and Minister for Small Businesses, released the government's response to the recommendations from SBAG. This covers vital issues for most business owners and operators and is worth a serious look. A full report on this is set out in the second part of ASCO BRIEF.

#### Franchise Legislation

There has been a push by a specific industry sector group for the introduction of franchise specific legislation. It is very interesting to consider this in relation to the general approach indicated by the government in its responses which is supportive of business concerns in many areas. It clearly understands the importance of businesses, including the small to medium sector, to the nation's economic health and

that the operations of businesses are both complex and delicate and require sophisticated solutions if issues do arise. In direct discussions with the Minister at the recent Franchise Awards she made it clear that she favoured a very carefully considered approach before any government legislative interventions.

#### New Zealand Business Consultation Website

The government's new website New Zealand Business Consultation is now available for businesses that wish to register to be consulted by government agencies during the formation of policy. The website can be found at:

[www.businessconsultation.govt.nz](http://www.businessconsultation.govt.nz).

#### Holidays – A Quick Guide for Employers and Employees

- An employer can close all or part of their business once a year and require employees to take leave for that period even if some employees will not have adequate leave. Employees must be given 14 days notice of closedown. For employees in their first year of employment, employers can either pay 6% of gross earnings to date or can agree to the employee taking annual leave in advance.
- From 1 April 2007 all employees will be eligible for 4 weeks annual leave. Until then employees are eligible for 3 weeks holiday after their first year of employment (unless their employment contract provides for more).
- There is no automatic right for employees to take leave in advance unless this is provided for in their employment contract.
- Employees are entitled to be paid for annual holidays before their holiday commences, unless the employer and employee agree that their normal pay will continue to be paid as before.
- An employee must be paid for their annual holidays at the greater of their ordinary weekly pay at the time the holiday is taken or the employee's average weekly earnings over the previous 12 months.
- If an employee is eligible for sick leave (or bereavement leave) before commencing scheduled annual leave, he or she is entitled to take a scheduled annual leave as sick leave.
- If an employee is eligible for sick leave (or bereavement leave) during the annual leave period, the employer may (but is not obliged to) agree to the employee taking that time as sick leave.

If you have any other questions about annual leave, please contact us.

#### ASCO Close Down

Our offices will close at 2 pm on Friday 23<sup>rd</sup> December 2005 and open again on 16 January 2006. If you require any urgent assistance during this period please contact Miles on 0274 971 021 or Liz on 021 774 333 or Jody on 021 119 5594.

*The team at ASCO Legal wishes you a safe and Merry Christmas. We look forward to working with you in 2006.*

#### PART II

#### Government Response to Small Business Advisory Group (SBAG) Recommendations

In August 2004, the SBAG published its first annual report which set out 19 recommendations for changes which the group believed would improve the business environment for small and medium sized enterprises (SMEs). These are very important for almost all business organisations. The recommendations are set out below together with the government's response as just released.

1. *That the government enhance funding to the Business in the Community and/or similar providers of mentoring services to upskill their mentors and mentor co-ordinators in order to provide a superior service to clients and market their services.*

Government Response – The government has allocated an additional \$3.6 million over the next five years through New Zealand Trade and Enterprise (NZTE) to provide quality training for business mentors, promoting the use of mentors and improvements in and advertising of the New Zealand mentor accreditation scheme.

2. *That the Government provide funding to SMEs with growth potential to engage an Advisory Board to assist them with governance.*

Government Response - The NZTE's Enterprise Development Fund list of eligible activities has been amended to include funding of advisory boards as a new eligible activity for up to three years.

3. *That the government support the use of existing and new business awards programs as a way bench marking information to firms. The expectation is that at times a common template would be devised that could be used by local business organisations and trade associations to establish and judge annual business awards.*

Government Response – The Business Capability Partnership, a private-public collaboration aimed at enhancing business and management capability in New Zealand is managing a government-funded project to develop and promote a suite of business diagnostics tools. The information collected will be gathered in a

publicly available data base. Firms will then be able to benchmark their performance against that of comparable New Zealand (and perhaps international firms).

4. *That there be readily and cheaply available to all SMEs a checklist of things they need to do and assistance that is available when starting up and growing a business.*

Government Response – In August 2005, the Department of Labour (DOL) published a how to hire guide for employers. It also released an employers guide to employment relationships. In the 2005 budget the government provided over \$9.9 dollars to transform the biz.org.nz website into a world-class business portal. It will enable New Zealand businesses to access the best business relevant material available to assist them to grow including checklists and planning tools from public and private sources.

5. *That a complete checklist of issues to be considered when hiring an employee together with supporting advice and guidance, quick plea and check plea for business.*

Government Response – See as for recommendation 3.

6. *That the government undertake policy development work aimed at making access to funds easier for SMEs with growth potential.*

Government Response – The government has implemented the Seed-Co Investment Fund to help develop the capability and participation of equity investors in early stage equity markets. Under the scheme the government will co-invest up to 50% in an equity investment, with a limit of \$250,000 investment in any proposal. The fund is expected to make initial investments by 2006.

7. *That the government urgently undertake a revision of rates of tax deduction for depreciation with the view of reducing taxation in the first three years of plant installation, and offsetting that with lower, allowable tax deductions for depreciation in the following years.*

Government Response – The government has announced legislation to amend tax depreciation rules. Under these changes short lived plant and equipment will generally be able to be depreciated using the “double declining balance” method.

8. *That the government develop a strategy for providing assistance to SMEs to implement sales and marketing strategies and plans.*

Government Response – In January 2005 the government launched the Enterprise Development Assistant Grant Market Development. This provides up to 50% of costs (up to \$100,000 p.a.) for offshore marketing and

promotional activities, allocated on a first in, first serve basis.

9. *That the government ensure basic enterprise education as part of the core curriculum at year 10 and that provision is made for better support for provision is made for better support for enterprise education providers and for promoting careers in business to school pupils.*

Government Response – In 2002 the Curriculum Stocktake Report identified a critical role for Education for Enterprise and fostering entrepreneurial “give it a go” attitude across the curriculum. Education for Enterprise is “learning directed towards developing in young people those skills, competencies, understandings and attributes which equip them to be innovative and to identify, create, initiate and successfully manage personal community business and work opportunity including work for themselves”. A review of the first working draft of the revised curriculum is underway to ensure Education for Enterprise has a strong focus across year 10 of the curriculum.

10. *That barriers to government agencies purchasing from New Zealand suppliers be identified and remedied to ensure that government makes greater use of its procurement powers as a tool to encourage innovation and growth in New Zealand SMEs.*

Government Response – The Ministry of Economic Development (MED) along with other government agencies is currently reviewing the implementation of the government procurement policy. Its brief has been expanded to include a focus on remedying any barriers to participation by suppliers, SMEs in particular. A report on the review is likely to be presented to ministers in February 2006. The SBAG has been invited to comment on the draft of the report prior to its finalization.

11. *That the government make greater efforts to harmonize borders with Australia and make trading with our neighbour easier.*

Government Response – New Zealand and Australian governments are committed to progressing the single economic market (SEM) agenda and are currently working on a number of SEM related initiatives including reviewing competition policy and consumer protection, banking regulation, securities offerings, rules of origin and the trans-Tasman mutual recognition arrangement.

12. *That each government department identify a small business advocate who would be responsible for presenting the SME perspective on any proposals being developed by that department that might impact that might impact on SMEs.*

Government Response – A number of government agencies have adopted this recommendation including ACC, the DOL and MED. The IRD has recently appointed a SME champion to act as coordinating point and focus for assessing the impacts of IRD proposals on and communications with SMEs.

13. *That a senior manager in each government department be charged with scrutinizing all the regulations designed by a department to assess the need for them, the quality and the impact they will have on business (and SMEs).*

Government Response – Both the DOL and the MED have persons in similar roles however other departments believe that existing managers should be accountable for producing good quality regulations. They do not believe that having a single person responsible will improve their quality of regulations and could produce confusion.

14. *That the government measure and publish the cumulative effects of the cost of compliance with regulations passed in the previous six months.*

Government Response – The government has asked the MED to prepare a report prior to 30 June 2006 on how more effectively to measure and reduce the compliance costs on business.

15. *That all business related legislation and regulations come into effect on only one or two predetermined days per annum.*

Government Response – The government accepts the need for certainty but notes that there will be times when the national interest makes it impossible to predetermine an implementation date. The ministers responsible for the MED portfolios have agreed to the implementation of this recommendation for their portfolios. The Minister of Labour has agreed that her department will ensure that each specific piece of work place related legislation comes in effect on dates chosen after consultation with business

16. *Those proposals for changes to regulations that affect businesses are put out for a minimum of three months consultation period and do not come into force until three months after the government or parliament agrees to the changes.*

Government Response – The ministers responsible for the MED portfolios have agreed to the implementation of

this recommendation. The Minister of Labour's responses recommendation is as above in relation to recommendation 15. The IRD already meets this recommendation as part of its generic tax policy process.

17. *That government agencies (particularly ACC, OSH and ERMA) run regular local information nights.*

Government Response – The DOL's small business support unit has held such local information nights but attendance from SMEs was low. Feedback and further inquiries showed that SMEs preferred these opportunities targeted at them and their specific interest sectors rather than a generic information evening. The DOL has now developed more responsive ways to meet SME needs, for example breakfasts workshops for difficult to reach residential building industry. The Minister of Small Business has instructed the MED officials to report on ways to provide for SMEs to engage government agencies in regional offence. The report will be completed early in 2006.

18. *That FBT on business vehicles be simplified by moving it from the FBT return to an adjustment on depreciation and the employer's income tax return and base this adjustment on the depreciated value of the vehicle.*

Government Response – The government announced a number of changes to FBT regulations regarding motor vehicles in the budget 2005. These recommendations included allowing vehicle owners an alternative option of calculating the benefit at 36% of the vehicle's depreciated tax book value (this is subject to a minimum value).

19. *That the legal procedures for dismissing non-performing staff be rebalanced and qualifying periods for personal grievance for probationary staff be provided.*

Government Response – The test for justifiability of dismissal and the issue of qualifying periods for personal was substantially considered during the process that led to the 2004 amendments of the Employment Relations Act 2000. The recent changes to the ERA aim to balance issues of fairness to employers and employees in personal grievance situations by specifying an objective test for justifiability.

For further information in relation to the small business advisory group visit [www.med.nz/irde/lsbag/index.html](http://www.med.nz/irde/lsbag/index.html).