



SPECTRUM SPEAKS

THE COMPANY NEWSLETTER OF
SPECTRUM COACH & SPECTRUM LAWYERS

NEWS AND UPDATES FOR THIS MONTH:

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Hi everyone,

Here we are in April 2021! We're happy to see that we've reached a level of 'COVID normal' for our construction industry, And whilst some builders are suffering delays and price increases, we have seen some positive progress too. Businesses are welcoming their teams back into the office and clients are excited to see their projects finally making some good progress again.

Over the past few months, Spectrum Lawyers have been heavily focused on advising their clients on their rights to claim extensions of time, variations, suspensions and termination of contracts. Whist Spectrum Coach have been busy assisting their clients with how to progress jobs so that they can get to site as efficiently as possible, as well as how to lock in new sales to maintain profits.

Here's some key updates since our last newsletter:

- Spectrum Coach and Spectrum Lawyers have permanent offices located in Williamstown. This means we are now able to offer the option of training sessions and appointments at our offices, but we also continue to visit our client's offices.
- As Spectrum Lawyers continues to expand, we are excited to welcome a new lawyer to our team. Maria has recently joined us at Spectrum Lawyers and we will introduce her to you all in the very near future.

Stay well,

Spectrum Coach & Spectrum Lawyers

What's your 2021 plan?

WRITTEN BY FRED ABU-ELIAS

With 2020 now behind us, it's time to look to the future. And if we have learnt anything from the events of last year, it is always to have a contingency plan and be willing to adapt.

Personally, I saw a lot of great builders who I coach put their tools down and become exceptional sales consultants. Builders that are part of the Spectrum family recognised that they needed to shift their focus onto sales 80% of the time and building homes the other 20% of the time. They left the work site and adapted to the demands of their business.

I saw these building companies execute sales processes, call to action campaigns and take themselves out of their comfort zones to deliver some fantastic results by the end of 2020. The only reasons they were able to deliver strong results was because they were willing to change. Some had no choice but to change and they weren't too proud to ask for help.

Moving forward into 2021, it is time for builders, or any business owner for that matter to reflect on what they went through and to not just accept that what you have always done is what you should always do. You need to make sure you have a plan for 2021 - and even 2022.

What's your sales plan?

Sales plans are usually based around numbers, and measured around best practice.

Generally we look at how many leads we get and then measure our business from how many leads we can convert to an appointment. This is all fine if we set a benchmark to achieve, however, sometimes businesses forget to plan how they're going to generate leads. Now, you might say we do a lot to generate leads with advertising, but it depends on the type of advertising you're running. Are you running brand campaigns or promotional campaigns aimed at creating urgency? Quite often as builders we showcase or advertise what we do, how we do it, or what we sell.

It's still fine to have a plan to generate leads, most of the time builders will aim to get a name and number. I do it myself, I will sometimes giveaway free advice but ask the potential lead to give me their name and email. It's what we then do with those details that matters. Quite often we have to repeat this process to then generate a lead that then moves through the cycle of a sale.

When creating a sales plan to generate substantial leads, leads that will move through the cycle, look at what you're selling and whether it creates urgency. Will it make someone want to pick up the phone?

We work with a variety of builders, so not all campaigns will be relevant, but here are a few examples:

- Promotion - give away items
- Sell your process, regardless of how long it takes
- Create credibility by showcasing your knowledge



Whatever your sales plan is, make sure you create the plan. Pen to paper, set timelines, and stick to it. Remember to make sure you always assess the market and make sure its relevant.

How do you manage your pipeline?

Throughout my travels around Australia I have had the privilege of dealing with a variety of builders and they always have one thing in common. They have a large lead database - names, phone numbers and email and they usually send monthly newsletters. The question I have for all these builders is - are you all over your leads? It might seem to the point, however, every lead costs you money, so you need to be all over it.

I'm proud to say that most of the builders I have met manage their leads well, but some don't - and that's ok. Generally it's because they have never been taught how to manage their pipeline. It goes back to the old saying, *you don't know what you don't know*.

Defining your leads into segments is a great start. The most common segments are HOT, WARM and COLD.

Now, take this a step further and define each segment. This is personal to the business, however here's an example:

COLD – *client makes an enquiry just to receive information*

WARM - *client has engaged with the business personally, may have had an appointment, but not ready to have another appointment, happy to receive follow-up calls*

HOT - *client that has had 2 – 3 appointments and is constantly engaged with the business and moving forward*

Once you segment your clients and are able to define what each segment stands for, this will help you create better sales plans and target certain clients, You'll be able to understand each and every client and most importantly, you can accurately forecast new sales based on correct data. If you have a sales team, this will help you manage the team based on accurate measures.

Timely reminders now that we are back on-site

WRITTEN BY DONNA ABU-ELIAS

2020 was a disruptive year for many businesses, including the construction industry. And whilst sites remained open during most of last year, we are now seeing significant flow-on effects to supply and trades. Both of which are experiencing issues on site in relation to delays and significant increases in pricing.

Below are some timely reminders to ensure you are complying with your obligations, whilst trying to manage your projects.

Extensions of time

Don't wait until the end of the job to claim your extensions of time. If you are incurring delays on site be on the front foot with clients and discuss these delays with them. Most importantly, make sure you issue your compliant extension of time notices. This will require you to check the provisions in your contract:

- Is there a time limit by when you have to serve your notice of extension?
- What information must be included in your notice - have you clearly identified the days of delay and the reasons for the delay (are these qualifying events as defined under your Contract)
- How do you need to send your notice (is an email ok or does it have to be hand posted or delivered)

Increase in prices

Now this is a tricky one as you must ensure you are permitted to increase prices.

- Under section 15 of the Domestic Building Contracts Act, you are not entitled to increase the price due to an increase arising from the *costs of labour or materials or increased costs caused by delays in carrying out the work to be carried out under the contract*.
- If you have a genuine variation (ie a change to the plans or specifications under your contract) then you are permitted to issue a variation for the increased price, so long as you strictly follow the process under section 37 or 38 of the Domestic Building Contracts Act (depending on whether the variation was requested by the Builder or the Owner). This process includes:
 - The request for the variation must be in writing
 - You must set out what the effect on the building works will be and whether an amendment to the building permit is required
 - The variation notice must set out what the effect will be on the price and time and make sure this is clearly identified
 - The variation notice must be signed by the Owner

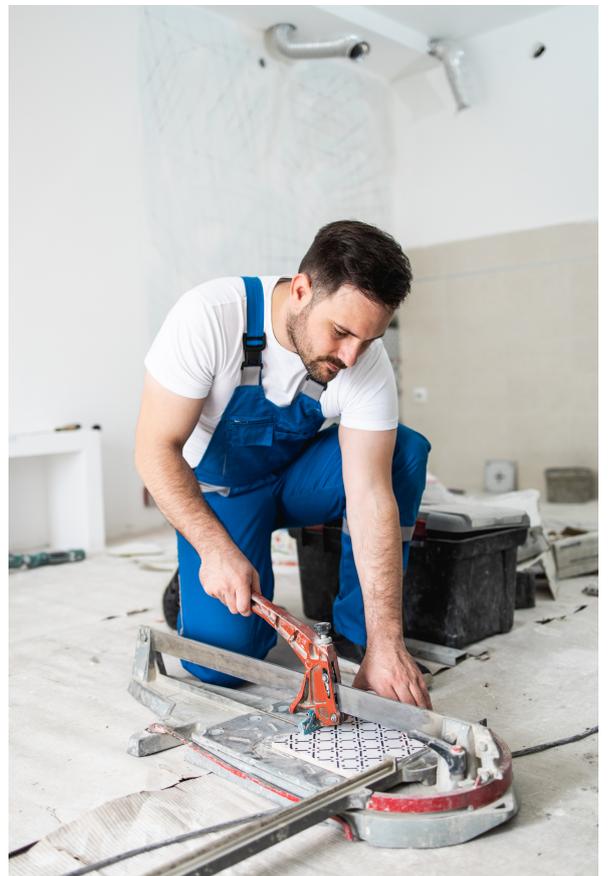
Product substitution

Just because a product may not be readily available does not automatically entitle the builder to substitute the product (even if the builder has inserted a special condition in their contract). A product substitution should be discussed between the owners and the builder and if agreed, should be reflected by way of a valid variation notice, as referred to above. The builder should not just change a product because they can keep the job moving or so that it is cheaper.

Suspension of works

It is important to remember that you are only entitled to suspend the building works for a qualifying event, so it is important to check your building contract for the reasons you are entitled to suspend. Further, if you have issued a payment claim but the Owner is disputing the works have reached that stage you are claiming, you may not be entitled to suspend the building works (if it is found that you have not in fact completed the staged works). Care must be taken before you suspend works, as a wrongful suspension may mean the Owner is entitled to claim that you have repudiated the building contract and then the contract may be brought to an end.

Chat to Donna to learn more about your contractual obligations to ensure your business is compliant.



Risk for Building Consultants following the Lacrosse appeal

WRITTEN BY DONNA ABU-ELIAS

The Victorian Court of Appeal on 26 March 2021, refused to grant leave in all but one of the building consultants' 25 grounds of appeal.

The Victorian Court of Appeal in Tanah Merah Vic Pty Ltd v Owners Corporation No 1 and Ors [2021] VSCA 72 ("Lacrosse decision") has refused to grant leave of appeal and in doing so, re-affirmed the original decision of Judge Woodward in the Victorian Civil and Administrative Tribunal (VCAT).

The impact for building consultants is that whilst a builder may be found to have breached the statutory warranties under section 8 of the Domestic Building Contracts Act 1995 (Vic) (for the installation of the non-compliant combustible aluminium composite panels (ACPs) on the facade of the building), the ultimate liability may rest with the various building consultants by operation of the Wrongs Act 1958. The test of what was 'reasonable' practice will be critical when assessing the activities of the building consultants.

Whilst the Lacrosse decision obviously focused on the issue of combustible cladding, *the decision is important to the general building industry as it looks at claims that may be brought against not only the builder, but also against building consultants generally.* Whilst in this case were the building consultants were the building surveyor, architect and fire engineer, this case also allows the possibility for other specialist building consultants to be found liable where their expertise are relied upon by the builders.

In the original VCAT decision, whilst the owner was largely successful against the builder (ie, the builder was ordered to pay 97% of the owners' claim in damages), it was the builder's success to pass on this liability to the building consultants that has more impact to the industry players, which has now been upheld in the Lacrosse decision.





This meant that the builder's damages was apportionable amongst the building consultants based on their concurrent wrongdoing (as determined in accordance with the Wrongs Act) and such an apportionment is based on their 'contribution' of loss and damages suffered by the owners. The Lacrosse decision upheld the original VCAT decision, namely:

- The building surveyor was found to be 33% liable for failing to exercise due care and skill under its consultancy agreement and also found to have engaged in misleading and deceptive conduct
- The architect was found to be 25% liable for failing to exercise due care and skill under its consultancy agreement; and
- The fire engineer was found to be 39% liable for failing to exercise due care and skill under its consultancy agreement and also found to have engaged in misleading and deceptive conduct

The risk allocation under your building contract between the builder and the building consultants is therefore an important one and it is likely that we will see more design and construct contracts with detailed risk allocation. This will pass the design risk of products/materials onto the architects where it is reasonable to do so. That is, where you have a design and construct contract, and the architect specifies a product/material to be used, the builder is not required to ensure that the product/material complies with the BCA (so long as that is reasonable in the circumstances). However, to protect building consultants, we may also see more risk allocation which requires builders to approve specifications or surveyors being more cautious in approving staged inspections.

Chat to Donna if you'd like to learn more about this topic.

Autism Awareness, *or do we mean inclusion?*

As many of our clients know, both Spectrum Lawyers and Spectrum Coach are strong advocates for Autism and the rights of people living on the Spectrum. Recently (actually, in a board meeting with Friend in Me Inc), I was asked whether we are trying to promote *inclusion, awareness or maybe even acceptance*. All important, but all subtly different. And this year, this question was heightened by our son, Jayden, starting primary school.

As a parent you remember milestones in your children's lives. And one for us will always be the day we found out Jayden was on the Spectrum. But just as important, was the day we shared this news with his sisters. I remember his sister, Alisha crying and I asked her why she was crying. She answered that she crying because she was worried he would be bullied by other children at school. So, with Jayden starting primary school this year, this thought had been at the forefront of our minds. Would his outbursts be understood, would his quirks be tolerated and would he be invited to play with other children?

We are so fortunate to live in a time where there is more awareness about Autism. Where a school is more accommodating to children's needs and where social stories are used to help children understand that whilst someone might be different, we still need to be kind and inclusive.

What this means for our family in particular:

- The school has adapted the classroom by having a quiet space for any child that requires some time to settle in without feeling pressure
- There is a sensory box of things like slime, fidget spinners and squishy toys for when kids need to release some pressure or just squeeze a toy to satisfy their sensory needs
- There are additional classes for particular tasks if required (for example, tasks requiring fine motor skills like handwriting, colouring and cutting)
- The school has directed play at lunchtimes for those children who find the school yard overwhelming and require a more controlled or quieter environment

So, I guess what I have learnt this year is that our message is not just about awareness - but also inclusion and acceptance. Because without all three you actually have nothing.



ABOUT US

SPECTRUM COACH



Spectrum Coach provides 5 core areas of service, Sales, Marketing, Operations, Home Designs and Business Coaching. They are designed to understand your business intimately, this 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 improve efficiencies, increase profits, and that are easily adopted, helping 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, and 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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ABOUT US

SPECTRUM LAWYERS



Spectrum Lawyers provide legal services with legal expertise across all areas of building & construction law.

We focus on three key areas:

Building and construction law

- To protect owners when constructing or maintaining their homes
- To assist builders and/or owners efficiently resolve building disputes, and
- Working with builders to develop streamline documented procedures and training to better manage the spectrum of challenges in today's market
- Advising building consultants and contractors on their legal obligations under the Building Act and Building 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

Wills and Powers of Attorney

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

General Counsel Services

- Reviewing and advising on procurement contracts and licenses
- Advising on general business law and day-to-day business operation issues
- Drafting policies
- Reviewing/drafting terms and conditions
- Negotiating contractual documents
- Providing training (contract law, Australian Consumer Law, advertising, warranty, etc.)

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