

NEWSLETTER

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In the Office

Another year is quickly coming to an end, which means the time has come to contact us about all those legal loose ends that you want tidied up before Christmas. Making sure your Will and Powers of Attorney are up to date is something we would recommend.

We have been busy as a collection point for the Waikato Women's Refuge during their winter drive. Thanks to all the great people of Cambridge we filled our entire stationary room with donations and we started filling the far end of our office. The kind and generous donations to this good cause were very much appreciated. We delivered a truck full of goods to the refuge office in Hamilton which was gratefully received. On Friday 29th September the staff wore "loud shirts" in support of The Hearing House and Southern Cochlear Implant Paediatric Programme, two charities dedicated to enabling deaf children with cochlear implant or hearing aids to listen and speak like their hearing peers. We are grateful for the donations we received.

On Thursday our receptionist Tayla went to the Hamilton Fire Station to talk to a group of teenage boys from Hamilton Boys High School about driver safety. Tayla was involved in a serious car accident 3 years ago and is lucky enough to now be able to share her story with others in the hope that they stay safe on the road. While she was there she was introduced to 5 of the awesome firefighters who assisted Tayla at the time of her accident and she had an opportunity to use the equipment that was needed by the brigade to cut her from her vehicle. Tayla has expressed so much appreciation and gratitude to her rescuers and the very important role that our service men and women play in the community.

As always, the team is here to assist with all your legal needs. It has been a very busy year and I am grateful to my fantastic team for stepping up and taking on the work load. The "team" aspect at Vosper Law is always evident to everyone dealing with us and I am very proud of them.

vosper

LAW

"Practical advice, trusted for generations"

Domestic Violence Victims Protection Bill

Domestic violence ("DV") has proven to be a significant issue in New Zealand. For example in 2016, the New Zealand ("NZ") Police investigated 118,910 incidents of family violence, that equates to approximately one DV incident every five minutes. The most recent parliamentary debate on the issue has resulted in The Domestic Violence – Victims' Protection Bill ("Bill"), originally proposed by the Green Party, which had its first reading in March 2017. This Bill aims to offer greater protection to victims of DV ("Victim/s") in an employment context. The Bill aims to reduce:

1. The stigma attached to being a Victim;
2. The abuse of Victims in the workplace; and
3. To require employers to adhere to more understanding practices.

The Bill proposes to assist Victims by introducing a definition of, "a victim of domestic violence" under section 5 of the Bill and amending several different



pieces of employment legislation to better cater to the needs of Victims.

The Bill defines a Victim as a person who suffers DV who can produce a "domestic violence document" ("DVD") because they have suffered DV or provide care to an individual in their immediate family who suffers DV. A DVD is a collection of documents that provide evidence that a person falls within the definition of a Victim. Examples of these documents are a police report or criminal proceedings.

The proposed changes to employment legislation are the introduction of DV leave, flexible working for Victims, Health and Safety Requirements and new prohibited grounds of discrimination. These are described below.

1. DV leave: The Bill proposes to amend the Holiday Act 2003 by introducing ten days within a 12 month period paid "domestic

violence leave” for Victims. To be eligible, the person must supply their employer with their DVD. The employer will be expected to approve the leave “as soon as practicable”.

2. **Flexible working for Victims:** The Bill proposes to amend the Employment Relations Act 2000 so that Victims can request flexible working arrangements such as working from a different location or unusual hours. Employees who make this request will need to have been employed by the same employer for at least six months and have not made a flexible working request for at least 12 months.
3. **Health and Safety Requirements:** The Bill proposes to amend the definition of “hazard” to include situations arising from DV. This would require persons conducting a business or undertaking (PCBU’s) to have a policy for dealing with hazards that arise in the workplace due to DV. A PCBU will also have to take reasonable and practicable steps to provide health and safety representatives with training to support workers who are Victims.
4. **Prohibited grounds of discrimination:** The Bill proposes introducing being a Victim as a prohibited ground of discrimination under the Human Rights Act 1993 and the Employment Relations Act 2000.

The current government states that this Bill is seeking to remedy something that has already been addressed by the existing provisions within current Employment and Health and Safety legislation. Immigration Minister Mr Woodhouse also stated there was no need for the initiative as many employers go above the minimum employment standards; for example, Countdown already offers ten days DV leave. The discussion above suggests that the current government is content to leave more comprehensive DV initiatives to businesses. They have voiced the opinion that they believe the extra leave will burden small businesses and therefore do not support the Bill in its current form. However, leaving the instigation of DV initiatives to businesses may result in Victims only receiving the limited support offered by current legislation.

Currently, it is estimated that DV is costing \$368 million or more a year particularly through lost productivity, businesses losing

staff, and retraining. The Human Rights Commission has launched a campaign to encourage businesses to introduce more comprehensive family violence policies in their workplaces. Equal Employment Opportunities Commissioner Dr Jackie Blue states "By implementing a family violence policy, the cost savings to the business will be truly significant but crucially, for victims, it can be life-changing and life-saving."

Where many New Zealand businesses are going beyond the current legislation to provide support to Victims, some are not. This Bill, if passed into law will recognise DV as a workplace hazard and accordingly, require New Zealand businesses to implement new workplace policies. So, with the report from Parliament due on 8 September 2017, this is one space to watch.

Cloud Storage

The idea of cloud storage has become more pertinent over recent years given the exponential advancement of technology. More businesses endeavour to have more ‘paperless’ environments with the view to creating more efficient, not to mention tidier, storage systems. ‘Cloud storage’ or ‘cloud computing’ was defined by the United States Department of Commerce National Institute of Standards and Technology as a model for enabling convenient network access to a shared pool of resources, including networks, storage and applications, that can be accessed with minimal service provider contact.

Types of cloud storage

There are many different cloud storage models which each carry different risks. These include, but are not limited to, private cloud, community cloud and public cloud. Private



cloud is where the cloud infrastructure provides for the exclusive use by a single organisation e.g. Cisco. Community cloud is for the use by a specific community of organisations that share the same mission e.g. Google Apps. Both the private and community clouds may be owned and managed by the organisation, a third party or mixture of both and exist on or off premises. Public cloud is for the open use by the general public and is typically owned and operated by

a government department or a business e.g. Amazon.

Benefits of cloud storage

Some of the benefits for investing in cloud storage include reliable backup storage, more storage capacity, flexibility, economies of scale, more efficient professional services, reduced IT costs, fewer hardware write-offs, better quality servers, and reduced risk of losing physical files during natural disasters as has occurred in the Christchurch earthquakes. However, with these benefits come a number of risks.

Risks of cloud storage

Client confidentiality is a core concept, for example, within the legal industry, a lawyer has a duty to protect and to hold in strict confidence all information concerning a client's business and affairs under the Lawyers and Conveyancers Act 2006 and the Privacy Act 1993. Generally, this is one of the major factors for some businesses being reluctant to implement cloud storage systems. There have been a number of unfortunate instances where private information has been disclosed; for example, in February 2015 the United States Internal Revenue Service was hacked whereby personal information of 334,000 accounts was unlawfully accessed through the online tax system.

Potentially, a cloud storage provider could have access to client information or even sell stored information to unauthorised persons. With cloud storage having no geographical boundaries, the relevant and applicable legal jurisdiction can become blurred, particularly in the context of overseas third party cloud storage providers. Cloud storage providers may require ownership of the stored data to protect their interests and may provide information to government agencies when requested. In light of this, when engaging services of cloud storage providers, the terms and conditions of any agreement should be carefully considered. Further, a cloud storage provider would need to be capable of customising software for, by way of example, the legal industry, and adapting to its changes. Local cloud storage providers may have the flexibility to provide this; however, they may not offer the same technology and financial security as overseas cloud providers. Anyone who engages the services of a cloud storage provider must ensure that client

confidentiality will not be compromised and all reasonable steps have been taken to ensure third parties or hackers cannot access client data. Accordingly, clients should be informed that their personal information is held with a third party.

Methods to mitigate cloud storage risks

Even with all the necessary precautions in place, breaches may still occur. However, there are ways to mitigate the risks associated with cloud storage; examples include implementing the necessary agreements for acceptable service levels and remedies for non-compliance and conducting due diligence of service providers; creating strict restrictions and security on access to information; enforcing terms for the transfer of data; and knowing where the data will be stored and the privacy laws applicable. Backup systems for damage control must be established and highly confidential information could be stored in a different manner to low risk information.

The decision to invest in cloud storage is a balancing act between the efficiencies of technology and the potential risks associated with privacy in the light of business strategy and priorities.

Why is competition law important? – NZME and Fairfax media merger case study

What is Competition Law?

Competition law promotes or seeks to maintain competition in marketplaces. It does this by restricting anti-competitive trade practices, mergers and business acquisitions, and economic regulation.

Why is Competition Law Important?

The Ministry of Business, Innovation and Employment's ("MBIE") Report titled "Competition in New Zealand Industries: Measurement and Evidence" (the "Report") submits that competition in the market can create a positive relationship between profits and productivity for businesses. An increase in competition stimulates managerial efforts and promotes businesses to be more innovative which increases productivity over time. As competition increases, the less efficient businesses tend to exit the market, encouraging quality products within the market. In contrast, a lack of competition arguably results in an average performing

economy due to the absence of competition as a driver towards productivity and quality. The Report addresses the possibility of high levels of competition decreasing the productivity and quality of the market place. However, studies of the relationship between competition and innovation often show that a majority of markets would perform better with the competition. The Report records that New Zealand markets are small and isolated due to New Zealand's geographical position. Therefore, increased competition is likely to stimulate rather than curtail innovation.

New Zealand Commerce Commission

The Commerce Commission ("the Commission") operates under the Commerce Commission Act 1986 and monitors and governs competition in the markets. The Commission examines anti-competitive practices such as agreements between businesses that have the potential to increase prices or reduce the choice of goods or services. A relevant case study is the application for a merger between the two largest news companies in New Zealand, New Zealand Media and Entertainment ("NZME") and Fairfax New Zealand ("Fairfax").

Merger between NZME and Fairfax

In late 2016, NZME and Fairfax proposed a merger between the two companies which would see NZME paying Fairfax Australia \$55 million if the merger was allowed.

Allegedly, the merger was proposed due to Fairfax's falling revenue. Fairfax Australia reported that for the New Zealand Branch revenue fell 8 percent for the last six months of 2016 and its operating profit dropped 10 percent due to a consumer shift from traditional media sources to online media sources. Greg Hywood, the Chief Executive of Fairfax Australia, said that they had plans to restructure Fairfax into a more sustainable business model if the merger was not approved.

Despite Fairfax explaining their market challenges to the Commission, the Commission gave a preliminary "no" to the merger on 8 November 2016. They then rejected the merger completely on 2 May 2017. The decision released by the Commission stated that if the merger were allowed to proceed it would result in, "an unprecedented level of media concentration for a well-established democracy." Due to the extent of the two organisations' investments, the Commission's decision reports that the

merger would be likely to lessen competition by increasing prices and/or decreasing quality for the readers and/or advertisers in advertising and reader markets, and as a result, the merger should not be cleared.

Fairfax has now appealed the decision of the Commission to the High Court on the basis that the Commission exceeded its authority by considering social and political considerations. The companies also reported that the Commission had breached procedure due to the anonymity and confidentiality afforded to the parties that made submissions against the merger. The companies allege that the Commission had breached the principles of natural justice and procedural fairness. The High Court process began at the end of May; there have been no further updates.



Conclusion

Without competition law regulating mergers, the merger between NZME and Fairfax would not have been questioned and the possible consequences would not have been explored. The NZME and Fairfax case study demonstrates that competition law can assist in protecting consumers and citizens alike and, therefore, is very important to the development of our economy and society at large.

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