



Happy New Year, we hope that 2018 brings all that you wish – and more!

This edition of *Commercial eSpeaking* brings you articles that cover burning issues in business. If you would like to know more about any of these topics, please contact us – our details are above.

## Flurry of Employment Law Changes Ahead

The 2017 general election has given the Labour-led government an opportunity to re-shape the direction of employment law in New Zealand. We outline the upcoming changes, announced on 25 January, which include modifications to the 90-day trial period, the restoration of rest periods and collective bargaining. These changes will be incorporated into an amendment to the Employment Relations Act 2000. We also touch on the proposed compulsory redundancy provisions.

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## Great, You Have Found a New Business, Now How to Buy It?

There are a number of steps involved in buying a business, and working your way through them can seem quite overwhelming, particularly for first time buyers. Often prospective purchasers overlook important aspects and end up having to sort out issues that arise after settlement – at significant cost. This article puts the spotlight on common snags people experience when buying a new business.

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### Website privacy falling short

If you are collecting, or intend to collect, personal information through a website, the website privacy policy or notice should record how you will comply with the Privacy Principles.

### Amendments to cartel laws tighten up on anti-competitive behaviour

Recent changes to the Commerce Act 1986 have been introduced to promote competitive behaviour and provide clarity around competition law.

### Another hefty fine under new health and safety laws

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### Multinationals tax legislation introduced

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## The 90-day trial period

After early indications that this change was to affect *all* businesses, the government will abolish the current 90-day trial periods for businesses with more than 20 employees. The 90-day trial

periods remain in place for businesses with 19 or fewer employees.

New employees of businesses with 20+ employees now have recourse against any perceived unfair treatment and unjustified dismissal by allowing them to bring personal grievance proceedings during the first 90 days of employment.

If this proposal goes ahead and your business has 20+ employees, your employment agreements will need to be amended to remove reference to the 90-day trial period.

## Changes to compulsory breaks

Statutory rest and meal breaks will be restored, with limited exceptions for workers such as air traffic controllers where it is not practical for workers to take breaks at the same time. This will introduce new practical and logistical challenges to businesses in addition to introducing new compliance obligations.

## Union access to a workplace

The government proposes that unions will have free access to workplaces. Union representatives will be able to enter a workplace without consent – as long as it's at a reasonable time and doesn't interrupt business operations.

## Collective bargaining scope maybe extended

The government has introduced the first of a range of law changes designed to extend the scope of collective bargaining and make union membership more attractive.

This includes imposing a duty once collective bargaining is initiated to reach an agreement unless there is a genuine reason not to, requirements to include pay rates in collective agreements and to pass on the same conditions to new workers, protections against discrimination on the basis of union membership and the ability to engage in low-level industrial action without the threat of pay deductions.

The government has proposed a number of other changes to collective bargaining not contained in this Bill including the development of 'fair pay agreements' that set minimum employment conditions based on industry standards across entire industries without the ability for employers to opt out. There are also proposals to restore the right of film and television workers to collectively bargain, and rules preventing non-union members receiving the same terms without joining that union have been put on an extended timeframe to allow thorough consideration and input by all stakeholders.

## Proposed compulsory redundancy provisions

Within its first 12 months of office, the government will consult with all relevant stakeholders on increasing minimum redundancy protection for employees affected by restructuring. [Continues on page 5 >>](#)



# Great, You Have Found a New Business, Now How to Buy It?



Looking to purchase a business? We can help! There are a number of steps involved in buying a business, and working your way through them can seem quite overwhelming, particularly for first time buyers.

Often prospective purchasers overlook important aspects and end up having to sort out issues that arise after settlement – at significant cost. This article puts the spotlight on common snags people experience when buying a new business.

## Choosing a business structure

It's important that you select the business structure to suit your personal

circumstances and business aims. There are four main types of business structures, each with pros and cons:

1. Sole trader
2. Partnership
3. Company, and
4. Trading trust.

We can assist you to select the structure which offers suitable protections and bears the appropriate level of risk. Further, we can advise you of the merits of either buying shares in, or assets of, the business.

## Finance

Structuring the finance to purchase the business can be as complicated as selecting the business structure itself. You may choose to self-fund by lending the business money, or fund the purchase through a financial institution. We suggest this is explored as part of your due diligence.

## What's in a business?

The tangible assets of a business may include machinery, equipment, furniture, fittings, motor vehicles and other chattels.

The intangible asset of 'goodwill', which represents the benefit and advantage of the good name, or reputation, of the

business is also incorporated into the purchase price.

Vendors usually estimate the value of the 'stock in trade' owned by a business, the actual figure to be ascertained by stocktake on settlement. The Sale and Purchase Agreement should provide for a maximum percentage by which this figure can change, so you can rely on the value of stock being within a specific range.

## Tax

If the business will continue to be operated when it goes to sale, then it's sold 'as a going concern'. Under these circumstances, the Goods and Services Tax Act 1985 allows the transaction to be zero-rated for GST purposes. This means that if both parties are GST registered, then there is no GST to pay.

A prudent purchaser will want to ensure that the tangible assets are valued at the market rate to avoid paying unnecessary tax due to over-inflated values.

You may want to seek tax advice to ensure that you satisfy your obligations to the Inland Revenue.

## Business Briefs

### Website privacy falling short

Your business website is a powerful tool for engaging potential and existing customers, and for collecting useful data. Where information collected is personal information, however, you have obligations under the Privacy Act 1993. The legislation contains **12 Privacy Principles** which regulate how you collect, use, disclose and store personal information.

If you are collecting, or intend to collect, personal information through a website, the website privacy policy or notice should record how you will comply with the Privacy Principles. It should inform site visitors why their information is being collected, how it will be stored, who it will be disclosed to and how they can access it or request that it be destroyed.

The Privacy Commissioner's website has a free online tool called 'Priv-o-matic' which can generate a simple privacy statement; find it [here](#). Otherwise, if you are unsure whether

your current or proposed website privacy notice or policy is adequate, do talk with us. ■

### Amendments to cartel laws tighten up on anti-competitive behaviour

Recent changes to the Commerce Act 1986 have been introduced to promote competitive behaviour and provide clarity around competition law. The Commerce Act prohibits anti-competitive behaviour such as price fixing. As well, the changes broaden the scope of the definitions relating to other prohibited cartel activities including output restrictions and market allocation. This change aligns New Zealand's competition law with Australia and other jurisdictions.

In addition, the changes introduce new exemptions to what would typically be considered cartel arrangements. These exemptions recognise that the extended definition of cartel behaviour now captures otherwise legitimate business relationships between

suppliers and distributors that are also competitors. Two exemptions include certain collaborative activities and vertical supply contracts, provided specific criteria are met.

The changes also introduce a clearance mechanism where parties contemplating collaborative conduct can obtain prior approval from the Commerce Commission.

If you have any concerns about how these changes might affect your arrangements, please contact us. ■

### Another hefty fine under new health and safety laws

Health and safety in the workplace has been brought into the spotlight over the past decade to refocus employers' attention to ensure the safety of their staff. There have been a number of judgments under the Health and Safety at Work Act 2015, of which two stand out.

August 2017 saw the Budget Plastics case<sup>1</sup> which clearly showed employers how the Health and

Safety at Work Act would be applied by the courts, and the consequence of non-compliance.

In October there was another decision<sup>2</sup> where an employee suffered serious injuries after falling through a false ceiling. The court noted that the hazard was obvious and was 'easily and cheaply remedied'. Rangiora Carpets Limited received a discount on its fines for its previous good record and guilty plea; the final amounts payable were a \$157,500 fine (to be paid over two years), \$20,000 for reparation and \$1,228 for costs.

These cases show that the courts are not afraid to impose hefty fines where they are satisfied that the Health and Safety at Work Act has been breached.

*Hazardous substances in the workplace:* On 1 December 2017 the Health and Safety at Work (Hazardous Substances) Regulations came into effect. The regulations contain rules around managing substances that affect human health and safety in the workplace. Go [here](#) for more information. ■

1 *WorkSafe New Zealand v Budget Plastics (New Zealand) Ltd* [2017] NZDC 17395.

2 *WorkSafe New Zealand v Rangiora Carpets Ltd* [2017] NZDC 22587.

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## Flurry of Employment Law Changes Ahead

The process will need to address an anticipated strong reaction from small businesses which may result in an increase in business insolvency as redundancy entitlements may make business restructuring less desirable than insolvency. For employees, this may increase the chance of unemployment without redundancy compensation from an insolvent employer.

### Upcoming changes to the minimum wage and paid parental leave

We remind you that on 1 April the minimum wage will increase to \$16.50/hour and that on 1 July the paid parental leave entitlement will increase from 18 to 22 weeks.

The objective of these law changes signalled by the government's 25 January announcement is to improve conditions for employees. The government has indicated its focus will be on the advancement of small businesses. To meet this goal more consideration will need to be given to the proposed changes as, on the face of it, these proposals are wide-reaching and will place more responsibilities on small business owners.

The government will introduce the new legislation on Thursday, 1 February. We will keep you up-to-date on the employment law front as the year progresses. ■

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## Great, You Have Found a New Business, Now How to Buy It?

### Ensuring continued profitability

The vendor should provide a 'turnover warranty' stating the average weekly turnover for the business. The vendor must disclose any one-off events which have led to spikes in turnover for that period, otherwise this may amount to misrepresentation.

### Restraint of trade

A 'restraint of trade' allows a purchaser to prevent the vendor from competing against them, post-sale, by running a similar type of business within a specific geographical area and time limit.

Restraint of trade provisions must be reasonable. It's vital to ensure that any restraint of trade is wide enough to cover directors, shareholders and employees involved with the business whom you wish to prevent competing against you.

### Intellectual property

Buyers often forget to purchase intellectual property associated with a business. If there is a website, or any internet or social media content that you are purchasing with the business, you will need to cover this in the Sale and Purchase Agreement.

### Leasing arrangements

As many business operate from leased premises, you must ensure that you have the right to occupy the business premises on terms and conditions which are acceptable to you. There may be an existing lease which will need to be assigned to you – in which case you will need the landlord's consent.

### Employment contracts

Employees are a crucial part of a business, and they can have a significant impact on the successful continued operation of that business. If you are buying a business which has current employees, they will technically be made redundant on settlement. We can advise you how to manage the restructuring period, including offering new contracts to the employees whom you wish to retain.

The process of purchasing a business can be time-consuming and confusing. If you are looking at getting into business, we are happy to guide you so that you can focus on the exciting parts of your new venture. ■

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## Business Briefs

### Multinationals tax legislation introduced

New tax laws are being introduced to prevent multinationals from avoiding tax by shifting profits out of New Zealand. The Taxation (Neutralising Base Erosion and Profit Shifting) Bill will affect multinationals operating in New Zealand and overseas.

The measures will be aimed at addressing:

- » Multinationals that use artificially high interest rates on loans from related parties to claim tax deductible expenses
- » Arrangements that exploit differences between two or more countries' tax rules to pay less tax
- » Artificial arrangements to avoid having a permanent establishment, thus avoiding a taxable presence in New Zealand, and
- » Transactions with offshore group members that do not reflect the actual economic activities the multinationals are undertaking in New Zealand and offshore.

The new measures will see New Zealand's tax laws regarding cross-border transactions become more aligned with those in Australia and are generally consistent with OECD recommendations.

If the Bill is passed in its current form, it's expected that many of the proposed changes will come into force to align with the income years beginning on or after 1 July 2018. ■