Legal Newsletter Example

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NEWSLETTER

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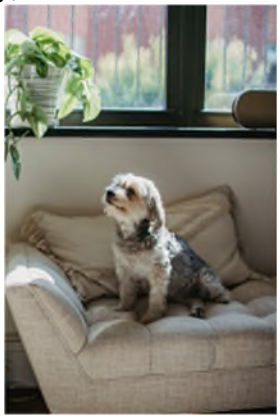
INSIDE THIS EDITION

Residential tenancies amendments

The Coalition Government's plan to improve tenancy laws took another step forward in May, with the Residential Tenancies Amendment Bill (Bill) passing its first reading.



The Bill's explanatory note points out that the demand for private rentals has continued to grow and exceeds supply, making it harder for households to find suitable accommodation and inevitably increasing rent prices. The most recent census data shows that between 2013 and 2018 the number of households renting increased by 16.5%, and that in 2018 those renting made up around 1 in 3 of New Zealand households (31.9%); with 84% of these renting in the private market.

Housing Minister Chris Bishop stated that the changes "will help increase the supply of rental properties by giving landlords the confidence to enter or re-enter the private rental market, and it will give people a better chance to secure a rental," and that it would apply "downward pressure to rents". Key changes proposed include:

- Reinstatement of 90-day no-cause terminations for periodic tenancies, meaning landlords could end a periodic tenancy without requiring a specific reason. Currently, landlords can end a periodic tenancy if they have a specific termination ground, e.g. carrying out extensive renovations on the property.
- Returning landlords' notice periods for ending a periodic tenancy on specified grounds to 42 days. At present, notice periods are 63 days where the owner or a family member want to move in, or to house employees (and this is in tenancy agreement), and 90 days where the property is being sold and the owner is required to give the purchaser vacant possession.
- The notice period that a tenant may provide to the landlord to terminate a periodic tenancy would be returned from 28 days to 21 days.

The Bill also recognises that pet owners often struggle to find rentals where pets are allowed, and that in part, this is the result of landlords concerns around recovering costs from tenants where damage exceeds the bond. To incentivise landlords to accept pets, the Bill allows for the payment of a pet bond of up to two weeks rent.

The tenant would still need to obtain the landlord's consent for pets, but the landlord could only withhold consent on reasonable grounds. The tenant would also be liable for damage caused by pets that is not fair wear and tear.

The Bill also adds some minor changes to improve the clarity of the law, including:

- clarifying that tenancy agreements prohibiting smoking inside a rental property are enforceable,
- facilitating the process for lodging tenancy bonds online,
- enabling the Tenancy Tribunal to make some decisions by reading the documents instead of having parties attend a hearing, and
- clarifying a tenant's ability to withdraw from a tenancy, at short notice, if their child or dependent is subject to family violence.

The Social Services and Community Committee's report is due back 21 Nov 2024. If passed, most of the changes would be expected to come into effect in early 2025, with the pet changes later in 2025.

Customer and Product Data Bill - Unlocking benefits for consumers

In providing services to consumers, businesses such as banks, power and telecommunications companies collect a wide range of customer and product data, including a customer's account history, transaction records and product usage information.

Earlier this year the Government introduced the Customer and Product Data Bill (Bill). Its purpose being to unlock the potential of customer and product data to create new products and services that benefit consumers, and to lower prices through opening up markets to increased competition.

The Bill's explanatory note states, "The purpose of the Bill is to establish an economy-wide framework to enable greater access to, and sharing of, customer and product data between businesses." This 'Consumer Data Right' would give consumers (individuals and businesses) in designated sectors greater control over their data and its use. For example, a customer may wish to share their power usage information with a price comparison service. Giving consumers the power to direct a service provider to share their information with a trusted third party would make it easier to shop around. Research in New Zealand and the United Kingdom suggests that consumers could make significant savings each year by simply switching banking, electricity or mobile plan providers.

Businesses that hold designated customer data (data holders) would be required to put in place systems and processes to make requested information available in a standard machine-readable format. Businesses would also have to make information about their products available, which will make product comparison and switching easier. However, not all data would be required to be disclosed. Requests for product data not ordinarily publicly available, and information which if disclosed would adversely affect the security, integrity, or stability of the data holder's information and communication technology systems, could be refused.

The Bill would be applied one sector at a time, with the Minister of Commerce and Consumer Affairs responsible for recommending the designation of sectors to which the Bill would apply. For each sector, the designation would specify the type of data and functionality to be made available to the customer, and with the customer's authorisation to accredited third parties. This detail would be delegated to secondary legislation, enabling a more tailored approach to regulating different sectors of the economy. The Bill sets out that the first sector to be designated would be the banking sector.

The Bill provides for additional safeguards around the privacy of individuals and confidentiality of customer information; which will complement the existing protections under the Privacy Act 2020. The Bill also sets out an accreditation regime for third parties that access data, to check and certify that they are trustworthy, competent and secure. Only accredited third parties will be able to request customer data from data holders or request actions on behalf of customers.

Minor infringement offences, including failing to comply with disclosure requirements can result in fines of up to $20,000. However, for failing to verify customers before providing data, fines of up to $2.5 million can apply.

The Bill is expected to progress through to the Select Committee with public submissions invited.

Revised Three Strikes sentencing regime introduced

The Three Strikes legislation looks to be making its way back with the introduction of the Sentencing (Reinstating Three Strikes) Amendment Bill (Bill) to Parliament in June this year. The three-strikes law was first enacted in 2010 by the National government as part of its agreement with Act.

Under the regime, an offender convicted of their first strike offence would be warned of the consequences of a repeat strike offence. If convicted a second time, they would be required to serve any prison sentence in full without parole, and be given a final warning. For a third strike offence, they will be required to serve the maximum penalty for that offence, without parole unless the court determined this would be manifestly unjust. If a person on their second or third strike was convicted of murder, they would receive a life sentence without parole, unless the court considered this would be manifestly unjust.

The Bill's explanatory note underlines that the Bill responds to the increase in violent crime reported to the Police between 2019 and 2024, and that by reinstating the regime the Government is reassuring the public by sending a strong message that repeat serious offending has very serious consequences.

The Bill will include the principal elements of the legislation repealed by Labour in 2022, with some modifications as outlined below.

The Bill adds 'strangulation or suffocation' to the previous list of 40 qualifying offences; this was considered to be a matter of consistency.

With a focus on serious offending, the Bill introduces a threshold where an offender would need to receive a sentence of 24 months or greater to trigger the application of the regime. This responds to concerns that the previous law was capturing minor offending and handing out disproportionately harsh outcomes beyond what was necessary to deter repeat offending.

A modified approach to murder sentencing would also be applied, with the mandatory period of imprisonment increasing at each strike (minimum 17 years at second strike and 20 years at third strike). Under the previous regime the minimum for either second or third strike was 20 years.

The 'manifestly unjust' exception, guided by principles in the Bill, would be extended to apply to all mandatory elements of the regime (both sentence and parole), and both second and third strikes. This would allow an element of judicial discretion to address outlier cases and recognise manifest injustice at each stage.

The Bill will introduce a limited exception that would allow the court to reduce the term of imprisonment where the offender pleads guilty. For murder at stage-3, a guilty plea would result in a minimum imprisonment of 18 years as opposed to 20. This change is seen as being in the interests of avoiding re-traumatising victims, and to reduce court delays.

The Bill is now with the Justice Committee, with its report due on 1 November 2024.

New consent path for overseas investment in Build-To-Rent housing

As part of the plan to improve housing supply and the rental market in New Zealand, the Overseas Investment (Build-to-rent and Similar Rental Developments) Amendment Bill (Bill) was introduced to the House in June.

The stated purpose of the proposed amendments is to remove barriers to overseas investment in large scale rental developments, including build-to-rent housing. Chris Bishop stated, "We need to take every option available to increase the supply of housing in New Zealand, and Build to Rent is one of those options."

Build-to-rent (BTR) refers to medium to large scale residential housing developments that are built to provide long term rental accommodation. Investors are typically looking for stable returns and capital appreciation over a longer period. As a result of this long-term view, the builds are generally of better quality and give renters more security of tenure.

As background, in 2018 the Overseas Investment Act 2005 (Act) was amended to classify residential land as a 'sensitive asset'; with the object being to restrict foreign purchases of existing housing stock ("the foreign buyers ban"). However, where an overseas investor wishes to purchase residential land to develop new housing, a pathway is provided under "the increased housing test". This pathway typically requires that investors divest their interest in the property after its completion (the "on-sale requirement"). An exemption to this rule

exists for large developments with rental arrangements, such as BTR, where 20 or more dwellings are to be built.

Although the Act might appear to work for BTR developments, industry stakeholders maintain there remain some significant barriers to overseas investment in the BTR sector in New Zealand. For example, for overseas investors looking to enter the BTR sector, one of the key considerations is that there is a clear path to divestment. As the investment required to finance large-scale BTR developments resides largely overseas, likewise, the pool of potential buyers for an existing BTR is primarily overseas. Under the Act, for an overseas person to purchase existing housing assets, consent is under the 'benefit to New Zealand' test, which relies on Ministers judging whether an investment meets the criteria. The uncertainty around what Ministers' views on the sale of assets to overseas investors will be, come time to divest, and its effect on the potential market for purchasers, makes the initial investment in developments such as BTR less attractive.

To give investors greater certainty as to expected outcomes, and to better support the growth of large rental developments, including BTR, the Bill would amend the Act to provide a new streamlined consent process that allows overseas investors to purchase large rental developments, providing they meet the "large rental development test". This test streamlines the consent process where an overseas investor acquires an interest in residential land that includes one or more buildings with 20 or more dwellings; and at least 20 of the dwellings are available for residential tenancy. It is also a condition that the overseas person (and certain related persons) cannot occupy the land.

The Bill is with the Finance and Expenditure Committee, with their report due back Nov 1, 2024.

Snippets

A word on employee share schemes

For businesses that trade through a company, circumstances might arise in which the shareholders consider selling a minority stake in the company to a key employee or group of employees. This could be to ensure that key talent is 'locked in' for the long term, as a means of succession if the existing shareholders are looking to wind-down, or simply as a means to link effort to reward. The pros and cons of transferring shares to key employees through an Employee Share Scheme (ESS) need to be carefully weighed because the devil is in the detail.

One aspect that can complicate an ESS is the management of minority shareholder rights. When employees are granted shares, they become minority shareholders and are entitled to certain rights (such as voting rights) within the company. Managing these rights can be complex and cumbersome and can detract from the overall appeal of an ESS for some companies. Additionally, setting up such schemes can be costly and time-consuming.

As companies consider their options, the fundamental gating question becomes what the shareholders are trying to achieve and whether there is a more suitable option. An alternative is to implement a phantom equity incentive where an employee is compensated (e.g. with bonuses) based on the value of a business and/or its performance. Phantom equity, can offer similar motivational benefits without the complexities of actual share ownership.

IR's hidden economy campaign

After a relatively quiet few years through the Covid pandemic, Inland Revenue's audit activity has been slowly increasing. This year's Budget allocated $29m to Inland Revenue (IR) for compliance, to target those not meeting their tax obligations. A range of areas will be looked into including the hidden economy, trust compliance, corporate restructures, organised crime and cryptocurrency.

From their hidden economy campaign, in June 2024 IR released insights from their investigation on small liquor stores. The investigation involved 220 unannounced visits nationwide, where investigators were looking for signs of income suppression, unreported sales and non-registered staff. While most businesses' affairs were in order, over 100 employees were found where PAYE had been deducted from their wages but not paid to IR. Nine liquor stores were escalated to the IR audit phase.

The visits have also unearthed migrant exploitation issues, including under the table wage payments and the use of migrant/familial labour not registered as workers. In some cases, evidence of poor employee relations was also uncovered.

IR indicated that over the next 12 months they will be keeping a close eye on smaller liquor stores and how they operate.

If you have any questions about the newsletter items, please contact us, we are here to help.