

## Latest Webb Farry News

### Latest News

We are pleased to announce that Kimberly Jarvis has recently joined Webb Farry as an Associate. Kimberly has proven commercial and civil litigation experience and more recently has been working as a Barrister in relation to complex relationship property and international family law disputes. She is a strong and capable advocate and



negotiator and is also very experienced and confident in appearing as Counsel in a wide range of jurisdictions. Kimberly is looking forward to returning to private practice and we are excited to have her as part of the team.

We are also pleased to welcome Adele Isaacs who joined us as a graduate in early 2019. Adele is working primarily under the supervision of David Ehlers and is gaining experience across a range



of property and commercial transactions. Adele graduated from the University of Otago with a Bachelor of Laws with Honours and a Bachelor of Science. In her final year of study Adele's primary research area was Taxation law. She will be admitted to the bar as a Barrister and Solicitor in June 2019.

### AS Gallery

We are delighted to be currently hosting an exhibition in the AS Gallery by Metiria Turei. The exhibition will be on display until mid-May 2019. Please see the insert for further information.

## Trialling Employment Law Changes - By Lucia Vincent

Employers face big changes to breaks, trial periods and business sale situations this year. Union rules get a shake up, too. From 6 May 2019, the majority of the Employment Relations Amendment Act 2018 comes into force. Are you and your business ready?

### Trial Period.

Currently any business, irrespective of size, may use a trial period in an employment agreement for a new employee. If used correctly, employers can dismiss a worker with no reason and reduce risk of a personal grievance. Changes mean solely smaller employers (19 or fewer staff) may claim immunity. Signed someone up just before 6 May 2019? The trial period will still apply into August.

### Gimme a Break!

Employers already give staff reasonable rest and meal breaks appropriate to the time worked. Changes ditch our currently flexible system (allowing reasonable restrictions and compensatory measures instead of breaks). We revert to a rigid regime requiring an employer to provide at least two 10-minute paid breaks, and one half-hour unpaid break, evenly each eight hours. Exceptions are reserved for essential services and national security. Other legislated breaks may trump the regime if they are better or required (think: truck drivers).

### Transfers

Currently, smaller businesses can claim "exempt employer" status, when buying a business with vulnerable staff (such as cleaners, caterers and caretakers). If an exempt employer provides a written warranty, it avoids an obligation it would otherwise have to take on existing staff as a new employer on the same terms and

conditions. Changes remove any exemption and restore rights for vulnerable staff to elect to transfer to a new employer.

### Take me Back!

If ordered by the Employment Relations Authority or Employment Court, reinstatement forces an employer to take back an unjustifiably dismissed employee. Changes will again make reinstatement a primary remedy for a personal grievance for unjustified dismissal, wherever reasonable and practicable (making it easier to get).

### Collective Rules

- Changes restore the rule covering all new employees with the terms and conditions in the main collective agreement in the workplace, for the first 30 days of employment.
- Good faith will once again require parties to conclude a collective agreement unless a genuine reason exists not to (based on reasonable grounds). It's unreasonable to object in principle to collective bargaining; opposing a multi-employer collective agreement is okay (if you oppose it on reasonable grounds ...).
- Unions gain a head start when initiating bargaining (20 days).
- A collective agreement must contain the rate of wages or salary payable to employees or types of employees or work. Plus it has to indicate how to get a pay rise (how rates might increase during the term)!
- If requested, an employer must provide information about the role and function of a union to prospective employees in the form provided, unless exceptions apply (ie,

material being confidential or containing misleading material about the employer). Failing to respond to a request from a union within 15 working days is a "yes" by default to comply with the request.

- Union delegates get reasonable paid time off during normal work hours, to undertake union activities (such as representing employees), without unreasonably disrupting the employer's business or the delegate doing their job. This might be on notice to the employer or if agreed, randomly.

### Impact

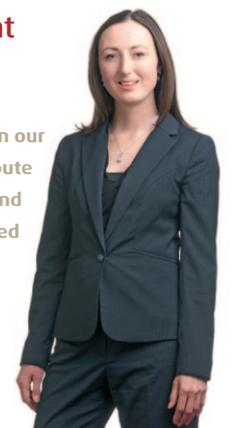
Changes impact all employers in some way. Get ready for employment law changes by reviewing your employment practice and policy now, to ensure you and your business are ahead of the game.

For specialist employment law advice on these and other changes, contact Webb Farry Partner Lucia Vincent at [lvincent@webbfarry.co.nz](mailto:lvincent@webbfarry.co.nz).

### Lucia Vincent

LLB, BA(Hons)  
Partner

Lucia is a Partner in our Litigation and Dispute Resolution team and is a highly respected employment law specialist with over ten years' experience in this field.





## WebbFarry Lawyers

### Protection of Personal and Property Rights Act 1988 (PPPR)

The purpose of the PPPR is to protect the personal and property rights of people who are not capable of managing their own affairs. This includes, but is not limited to, someone who is mentally ill, has an intellectual disability, or a brain injury that will affect their mental capacity.

There are numerous orders that can be granted under the PPPR, but the most common are an Order for Appointment of Welfare Guardian and an Order to Administer Property.

The Order for Appointment of Welfare Guardian relates to the welfare of an incapacitated person ("subject person"). A person will apply to the Family Court and if the application is successful is referred to as a welfare guardian. The welfare guardian will make decisions for the subject person in regards to their personal care; which includes medical care and dentistry.

The Order to Administer Property relates to the property of the subject person. A person will apply to the Family Court and if the application is successful is referred to as a property administrator. The property administrator will make decisions for the subject person in regards to property; examples of property are physical property and money. If any item of property is worth more than \$5,000.00 or the total income received annually is more than \$20,000.00 a specific order is required to be obtained for a person to be appointed to manage that specific property.

### Hague Convention

The Hague Convention ("HC") is the international law that governs the abduction of children. Abduction is defined as taking children from a country without the consent of their parents or guardians. Essentially, the HC regulates how countries interact with each other when a child has unlawfully been taken to another country. The HC's objectives include securing the prompt return of a child wrongfully taken from a country and to ensure the rights of the custody for parents or guardians. It is important to note that the HC applies to moving children from country to country, relocation domestically (within New Zealand ("NZ")) has different regulations and rules surrounding this.

The HC is only enforceable in countries that are party to it. This means that if a child was unlawfully taken to a country that was a party to the HC, the immediate return of the child/ren is required. If the country is not party to the HC, the process of returning the child becomes complicated, which in turn prolongs the process. In NZ the HC is entrenched under the Care of Children Act 2004.

In NZ the HC is most commonly used when parents separate and one parent wishes to move or has moved, to another country.

When a child is taken from NZ an application for their return must be made. The application must

To start the application process, the following documents must be completed:

- application for appointment of property administrator and/or application for appointment of welfare guardian;
- affidavit in support of application;
- information sheet for the Family Court;
- a report from a medical practitioner; and
- written consent from family members.

The next step is to file the above documents in the nearest Court to where the subject person lives. The Court will arrange service of the documents on relevant parties. Once all parties are served, 21 days from the date of service, any relevant party can oppose the application by filing a Notice of Intention to Appear.

As soon as the Court receives the application, a lawyer for the subject person ("lawyer") is appointed and paid by the Court. This lawyer will contact the subject person and help them understand the application to the best of their ability. The lawyer will then write a report and make recommendations to the Court; some examples of recommendations are:

- if any further medical evidence is necessary;
- should the orders be granted;
- should other family members be consulted etc.

The lawyer usually has 28 days to complete the report and the person making the application will also receive a copy.

satisfy that:

- the other country the child was taken to is a contracting state to the HC;
- the removal breaches the applicant's rights of custody (access) to the child;
- the applicant was exercising their rights of custody at the time of the removal; and
- the child must have been habitually resident in NZ immediately before removal.

If these are met, the child will be promptly returned to NZ and the decision of, if the child will move, will be decided.

When a parent intends to take a child out of NZ permanently and the other parent does not consent, the opposing parent can apply to the family court to prevent them from leaving the country until a decision has been made. Such an application should include:

- that the child is in NZ;
- that the removal will breach the staying parents right of custody;
- that those rights of custody are being exercised at the time; and
- that the child is habitually resident in NZ.

The decision to allow a child to move to another country then falls to the family court. The family court takes a holistic approach; this means that all



Once the report has been completed, the matter will be put on the "Registrar's List" to monitor progress. If the application is not opposed and the lawyer agrees that orders should be granted, the Registrar can recommend to a Judge that the matter be dealt with "on the papers". This means that a hearing is not required and the orders can be made immediately. The Judge will decide if an order should be made, or whether further information is required or a pre-hearing conference is necessary.

If the application is opposed, a pre-hearing conference before a Judge will be set down to identify the issues. At this point, it is recommended to seek legal advice from a family lawyer (if you have not done so already). These hearings are set down for 15 minutes. From there the Court may set down a mediation conference with a Judge to see if the issues can be resolved by further discussion, and an agreement achieved. Upon resolution of the issues and the Judge is satisfied the order(s) should be granted, an order can be made at the mediation conference.

Webb Farry have specialists that can assist you in these matters, please don't hesitate to give us a call.

facts are relevant to making the decision, with its main concern being the welfare and best interests of the child. The parent who has taken/intends on taking the child, must file a defence that includes grounds on which it is in the best interest of the child to leave NZ. The parent can rely on a number of defences such as:

- the staying partner gave their consent;
- the staying partner was/is not exercising their rights of custody;
- there is a grave risk (physical and psychological) to the child if they remained in NZ;
- the child would be put in an intolerable position;
- the child objects to staying in NZ; or
- the move to another country happened one year ago or more and is now settled and socially integrated into their new environment.

The most persuasive ground that will compel the family court to allow the child to leave NZ is that the move would be for the welfare and best interests of the child.

You should always seek legal advice about the best option available. Our family law team headed by specialist Larna Jensen-McCloy are experts in this field and would be happy to assist.



# WebbFarry Lawyers

## Meth contaminated properties

A property that has been used to manufacture methamphetamine, or has had methamphetamine smoked inside, can be contaminated with methamphetamine residue that can be present on the surfaces inside the property.

A property used for manufacturing this illicit drug has different health implications than a property where the drug was just smoked. The manufacturing process potentially involves additional hazardous chemicals that can leave residue on surfaces. It is important to note that the most common method used in New Zealand for manufacturing methamphetamine does not involve solvents as used in other countries. Instead of the traditional glass set up, a sealed pressure vessel, which minimises the release of associated fumes and contaminants, is more commonly used.

The level of residue on walls, flooring and other surfaces, for a property to be deemed contaminated in New Zealand, was previously set at 0.5 micrograms per 100cm<sup>2</sup>. There is currently no evidence that contamination at this level has any associated health risks for people living in the contaminated property. Researchers do note that more research is needed on the topic to build more robust and concrete conclusions on what is a safe amount of residue.

A report published in May 2018 by the Prime Minister's Chief Science Adviser, advised that the threshold for initial testing should be raised to 15mcg per 100cm<sup>2</sup>. This level does incorporate a safety margin, with models used being deliberately conservative in their assumptions. Housing New Zealand adopted these new guide levels, which significantly reduced the amount of properties in New Zealand deemed to be contaminated. Rapid tests, which is an initial screening test,



can be purchased online and carried out by any homeowner. However, these tests measure methamphetamine at very low levels (0.5 to 1.5mcg per 100cm<sup>2</sup>) so serve as an initial indication only. These tests can indicate if any rooms in the property require further investigation. A composite field test combines readings from multiple swabs taken from the property and adds them together. This can result in an inaccurate reflection of the level of contamination and give false impressions of high exposure. Professional testing can cost up to \$2,500 for a three-bedroom home. These tests measure methamphetamine residue at higher levels than 15mcg per 100cm<sup>2</sup>. Levels of contamination over this threshold can indicate that the property was used for manufacturing the drug.

If you are a landlord, it is recommended that you check whether your insurance company has any policies on testing. While the implications for the insurance industry of methamphetamine contaminated properties are less certain than the health implications, following your insurers advice will limit your liability.

If a property is found to be contaminated with methamphetamine residue at high levels, remediation in the form of cleaning the property and all porous materials and items such as furnishings and carpet is warranted. Methamphetamine residue does dissipate over time so airing out the property and cleaning walls and furnishings with any standard detergent can be sufficient in some situations. The report from the Chief Science Adviser suggests that remediation of properties where low levels of residue are detected is not justified. However, detection of low levels cannot definitively rule out that the property was used for manufacturing, so it may be prudent to clean the property as a precautionary measure if there is reason to suspect it may have previously been used to manufacture methamphetamine.

There is a very low chance that your property, or a property you are interested in purchasing, has been used to manufacture methamphetamine. Out of 1,600 public sector properties suspected of being contaminated that were tested by the Institute for Environmental Science and Research (ESR), only 1% of the more than 13,000 swab samples revealed high enough levels that could indicate a property was used to manufacture methamphetamine. These 1,600 properties represented a biased sample with a higher potential for contamination. Based on these findings, testing for methamphetamine in residential properties does not need to be the default course of action.

We would be pleased to assist with any legal advice relating to your investment properties, please don't hesitate to contact us if you have any queries.

## Snippets

### How can you requisition a title?

Under an agreement for sale and purchase of land, a requisition of title is a request made by the purchaser to the vendor to 'make good' any defects to the title of a property before settlement. The purchaser may have a right to requisition the title where there is a serious defect or encumbrance that is not notified or included in the agreement.

The purchaser may requisition the title within 10 working days from the date of the agreement. If a requisition is not made within this period, the purchaser is deemed to have accepted the title. Once the requisition is raised, the vendor can remove the defect before settlement or if the vendor does not comply with the requisition, the purchaser can cancel the agreement or proceed regardless.

Defects to a title (in the case of a cross lease) may include alterations to the external dimensions of a leased building that is not included on the current flats plan.

We suggest obtaining legal advice when purchasing a property.

### Why do we pay rates?

Rates provide income to councils around NZ to help fund services and facilities that benefit the public. Rates are collected for the overriding purpose of helping and improving local communities. Some of these services may include:

- road works, and new infrastructure
- waste collection, and water supply
- maintaining public grounds
- running community facilities such as libraries

- protection of buildings and general promotion for safer communities
- property information and advice

Councils calculate the annual rates for each property based on their respective valuations (including land and buildings) and the use of the property. Generally, these valuations are based on the current market value and are usually reviewed every three years. The use of a property generally falls into one of the three main categories being rural, commercial or residential.



# WebbFarry Lawyers

## Different way titles are held – crosslease, fee simple, stratum in freehold, leasehold

A title is a way to record the land and properties information, such as lot numbers, how big the section is, whether there are any covenants, easements or caveats registered against the title etc. There are several ways that titles can be held for land. Please note that the types of titles include, but are not limited to crosslease, fee simple, stratum in freehold, stratum in leasehold, and leasehold.

This article discusses in more depth, the titles that are known as crosslease, fee simple, stratum in freehold and lastly, leasehold.

A cross lease title is when there are several people who own an undivided share in a Lot of land, where the dwellings that the individual owners build on the Lot are then leased from the other Lot-owners. A normal term that these owners will lease the land for is approximately 999 years. Cross Lease titles can also be subject to right of ways. It is important to mention that there will also be a dominant and a servient tenement land owner, depending on where the dwelling is built. The dominant tenement will have all the benefits of the land, for example the right to the right of way, drainage, power and phone lines etc. However, repairs may be at the expense of both tenements, for example, if the right of way needs repair, both the dominant

and servient tenement will need to pay for the repairs needed even if the servient tenement does not use the right of way. An example of a cross lease title is when there are two dwellings on one Lot with each flat owner typically owning a half share in the fee simple estate. In the lease documents, which are registered against their respective titles, each dwelling owner then leases from both owners of the land the exclusive right to occupy their dwelling and the immediate land surrounding the building for approximately 999 years.

A fee simple title is where the owner of the dwelling has full control and freedom of not only the dwelling but the land surrounding it. The owners can enjoy the freedom of a permanent and absolute ownership of the land. A Fee Simple title is one of the most common titles we see when dealing with transactions for conveyancing.

A stratum in freehold, also known as a unit title, can be typically seen when there are two or more apartment type developments on a Lot. This type of title is like what we see in a fee simple title, but on a smaller scale. This means that instead of owning the dwelling and the land, the owners of a stratum in freehold will

own the dwelling and possibly any immediate grassing area/courtyard that the dwelling may have. They will own the dwelling in full and can enjoy the benefits of it. It should also be noted that unit titles will usually be subject to Body Corporate rules and/or fees.

A leasehold title is where a person buys the right to occupy the land and/or dwelling. The land and/ or premises will have special conditions that the person who wants to lease the property must abide by to be able to use the land and/ or premises. This type of title can be used for either residential or commercial purposes. An example here, to explain what this title is, would be when someone leases a building to run their business out of. The person will be paying the owner of the land and dwelling to occupy the premises. The business owner will have to follow the conditions that have been put in the lease agreement to be able to remain occupying the land and property. Types of residential leaseholds are flats and maisonettes, although some dwellings can be under long leases. Leaseholds will typically have lease agreements and they can be fixed term or for a limited period, they can include or exclude carparks, depending on what is in the lease agreement.

Webb Farry's solutions are always pragmatic, reflecting our awareness that strategies must be cost efficient if they are to successfully meet your objectives.



"The various teams within Webb Farry work together seamlessly to facilitate transactions and ensure your interests are always protected."

**Megan Bartlett** LL.B, B.A  
Partner

## Who's Who at Webb Farry...

**Partners:** David Ehlers, LL.B, B.Com  
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M E T I R I A  
T U R E I

*Tūruapō Astronesian 3000*  
15.02.19 – 22.05.19

*Mahuika, Atua of Fire and Kurangaituku, Atua of the Forest meet their  
Astronesian uri on a distant planet in a new future.  
Who will they remember?*

Textiles ability to tell stories is played upon in this iteration of new world orders linking Afrofuturism with Māori histories, laced with a trace of political activism. What if Māori occupied Space?

In this presentation of the project Tūruapō Astronesian 3000, on film and in photographic image, the performative textiles, activated by the body, are used to recount this future history that centres Māori as Astronesians, navigators of space in the past and in the future.

The works show one representation of the occupation of the future, a previously colonised place, and retells an indigenous history as indigenous people see fit, subverting that place and returning it to them. The works are built from inclusion, collaboration, agency and subversion – all core to tino rangatiratanga. In this way the creative theory and practice of the Astronesian - Polynesians who, with dominance and self-determination occupy space, technology and time, is explored and advanced.