

Commercial eSpeaking

Arawa Street, PO Box 62
Matamata 3440
T 07 888 8137 | F 07 888 8134
lawyers@emlaw.co.nz | www.emlaw.co.nz



Edmonds Marshall
LAWYERS

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Welcome to the Winter edition of *Commercial eSpeaking*.

Our lead story is a commentary on the 2023 Budget delivered by the Minister of Finance on 18 May.

Also covered is an article on the need for a business continuity plan for serious events, and on page 4 we have the *Business briefs* section.

We hope you find this content to be both useful and interesting.

To talk further with us on any of these topics, or indeed any other legal matter, please don't hesitate to contact us. Our details are on the top right.



Budget 2023

Key points

With the country expecting a no-frills Budget to match the Hipkins' government's bread-and-butter focus on issues for 2023, this year's Budget had few surprises.

The Minister of Finance has focused on four main areas of expenditure:

- + Supporting New Zealanders with the cost of living
- + Delivering the services New Zealanders rely upon
- + Recovery and resilience, and
- + Fiscal sustainability.

We summarise the key points of this year's Budget.

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Business continuity planning

An essential component of running a business

Serious weather events such as Cyclone Gabrielle have increased the importance of businesses planning for the unexpected.

While there is no legal obligation to have such a plan, they help businesses maintain a high level of engagement with clients, customers and staff during times of uncertainty.

The best plans are regularly reviewed and rigorously tested, and are flexible to adapt to the need at the time.

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Business briefs

Update on construction contracts retention regime

From 5 October 2023, all commercial contracts entered into, or renewed, from that date onwards will be subject to the new requirements.

New obligations for businesses offering Buy Now Pay Later

Regulations introduced to protect consumers.

Large businesses may need to disclose payment practices

Proposed legislation will require large businesses to publicly report on their payment practices.

Are your T&Cs unfair?

Now is a good time to review the terms and conditions for your business.

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Budget 2023

Key points

With the country expecting a no-frills Budget to match the Hipkins' government's bread-and-butter focus on issues for 2023, this year's Budget had few surprises.

The government has a tightrope to tread in trying to deal with inflation, supporting the recovery from the Covid pandemic, and managing the significant economic effects of the Auckland Anniversary floods and the devastation from Cyclone Gabrielle. The Minister stood by his earlier statement that there would be no tax cuts in this Budget, but there would be increased cost of living support.

Already announced over the last few weeks have been a \$1 billion flood and cyclone recovery package, funding for climate change initiatives, and additional funding for education and the New Zealand Defence Force.

On the afternoon of Thursday 18 May, the Minister of Finance, the Hon Grant Robertson, presented the *Wellbeing Budget 2023 – Support for today, building for tomorrow*.

The Minister focused on four themes:

- + Supporting New Zealanders with the cost of living
- + Delivering the services New Zealanders rely upon
- + Recovery and resilience, and
- + Fiscal sustainability.

We summarise the key points of this year's Budget.

Cost of living support

There is to be free public transport for children under 13 years old, and permanent half-price fares for those under 25 years old. The Minister said, "This will help passengers meet the cost of public transport and encourage increased use, while also supporting New Zealand to achieve its climate change goals."

The \$5 co-payment for prescriptions will be removed from 1 July.

The government has pledged to lower households' energy costs. It has expanded its Warmer Kiwi Homes Programme providing around 100,000 new heating and insulation installations; 7,500 hot-water heat pumps; and five million LED light bulbs.

For early childhood education, eligibility criteria for 20 hours' Childcare Assistance has been extended to cover two-year olds, as well as three-to-five year olds. The subsidy rates will be increased. This comes into effect on 1 March 2024.

Delivering more reliable services

The government has acknowledged the need to make significant investments to protect and improve public services for Kiwis.

Housing: There is increased funding to deliver 3,000 new state houses.

Education: As announced a week ago, there is a commitment to boost skills, improve achievement, reduce class sizes and increase teacher pay. There will be 6,600 additional student places, and new classrooms and schools to fit them in.



Health: The government is to focus on the effects of winter on the health system; the urgent need for more medical staff (including 500 nurses), and to reduce the massive waiting lists.

There is a commitment to spend more than \$1 billion to increase the pay rates and boost staff numbers, and \$20 million to lift Covid immunisation and screening for Māori and Pacific peoples.

The Budget includes a range of investments to support Māori and Pacific peoples. These include:

- + Investment of \$223 million to improve housing outcomes for Māori. This includes \$23 million for an extension to the Te Ringa Hāpai Whenua Fund and \$200 million to increase the supply of Māori housing and to repair homes in Māori communities.

- + Supporting whānau and tamariki by expanding Whānau Ora services and support for wāhine hapū in the first 1,000 days of life for their pēpi, and
- + \$143 million has been set aside to foster Māori and Pacific language and culture.

Recovery and resilience

The government has already announced its package for the recovery and its investment in regional resilience from the Auckland Anniversary floods in late January and Cyclone Gabrielle in February.

There is a commitment for \$71 billion across the next five years for new and existing infrastructure investment (schools, hospitals, public housing, rail and road networks), in addition to funding set aside for projects that are still in the planning stage.

Business continuity planning

An essential component of running a business

Once reserved for large businesses with a high degree of public dependency, such as banking, hospitals or utility companies, business continuity and disaster recovery plans have become increasingly important for businesses of all sizes. Severe weather events such as Cyclone Gabrielle have increased the importance of planning for the unexpected.

While there is no legal obligation to have such a plan, they help businesses maintain a high level of engagement with clients, customers and staff during times of uncertainty while also creating an environment that is supportive of revenue generation. Good business continuity planning also ensures your legal and compliance obligations are not accidentally overlooked during a time of high stress and uncertainty.

What is a business continuity plan?

A business continuity plan (BCP) is also known as a disaster recovery plan or an emergency plan. Sometimes businesses split the plan into different areas that cover their response in an emergency (workplace death or serious injury, active shooter, robbery or sudden loss of digital services), disaster (earthquake, flood or pandemic) and business continuity (how we continue to work once we have responded to the disaster or emergency).

Creating a BCP

When creating a BCP it is critical to look at all elements of your business and what could happen in various scenarios. Asking yourself questions will help form the basis of your BCP, such as:

- + What are our key services?
- + How do we deliver our services?
- + What may we lose in a disaster and how can we protect against that loss?
- + Do we need to invest in technology or training for our staff?
- + Who are our key contacts, clients and stakeholders (don't forget the staff)? We should have a communications plan to be in touch with all.
- + Do our contracts protect the business from unnecessary loss?
- + What do we need to do to safeguard the reputation of our business?

Once a plan is in place, it is essential to test this plan with your staff. Not only do they bring a different perspective, but it also ensures that those people 'buy in' to the plan, and are prepared and trained in the BCP so it will work efficiently if you ever need to activate the plan.

Regulatory and legal considerations

Employment

Generally speaking, if your employees are ready and willing to work and, due to no fault of their own, there is no work that can be completed, the presumption is that your employees who would ordinarily be working are entitled to be paid.

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This means your BCP should consider how staff can add value to the business during the period. Additional planning should include ensuring that your individual employment agreements anticipate what may be required of your staff during a BCP event.

WorkSafe has been vocal that employers have a responsibility to help manage their employees' wellbeing. This is especially important during times of increased stress. Your BCP should ensure you have effective communication methods with your staff, including the ways in which the business will support them. This will help ensure that you have taken adequate steps to mitigate additional stresses on your staff.

Privacy

During a BCP event, without adequate planning and systems in place it is surprisingly easy to breach your obligations under the Privacy Act 2020 when staff are working from home.

Having work-related documentation available in the home to non-employees, as well as access to servers on personal computers that aren't adequately protected could lead to substantial breaches of privacy.

Availability of information

Some business documentation must be retained for several years, for example: tax returns, safety audits, professional services audits and so on. In a disaster, if your physical premises are destroyed or inaccessible, how will you comply with the required provision of information?

Since the COVID lockdowns taught many businesses the importance of being agile in a physically restricted environment, it is reasonable to think more regulatory bodies will be intolerant of excuses around a sudden loss of data that was insufficiently backed up.

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Business briefs



Update on construction contracts retention regime

In our Spring 2021 edition, we discussed the proposed changes to the retention money regime for construction contracts in light of the introduction of the Construction Contracts (Retention Money) Amendment Bill.

The legislation was passed on 5 April 2023 and it comes into force on 5 October 2023. In brief, the Act will require contractors to place retentions in a trust account with a registered bank in New Zealand (or other accepted form) and keep it separate from other money or assets.

All construction contracts entered into or renewed from that date onwards will be subject to the new requirements.

For more information about how the new legislation will work, please be in touch.

New obligations for businesses offering Buy Now Pay Later

The government recently announced it will introduce new regulations to extend the consumer protections in the Credit Contracts and Consumer Finance Act 2003 (CCCFA) to apply to Buy Now Pay Later (BNPL) schemes.

BNPL provides consumers with interest-free credit to buy goods and services and pay for them later. Consumer advocates have raised concerns that BNPL is 'easy money', which leads to vulnerable consumers taking on more debt than they can afford to pay back.

The CCCFA imposes certain obligations on lenders to protect borrowers. It does not, however, currently apply to BNPL.

While the new regulations are not yet finalised, it is expected that obligations for businesses offering BNPL will include:

- + Only charging reasonable default fees
- + Varying repayments on request when a consumer suffers unforeseen hardship
- + Offering financial mentoring services to consumers who miss payments, and
- + Being a member of an external dispute resolution scheme.

The new regulations are expected to be introduced to Parliament later this year.

Large businesses may need to disclose payment practices

The Business Payment Practices Bill is currently being considered by Parliament and, if passed, will require large businesses to publicly report on their payment practices.

As currently drafted, the proposed legislation will require businesses with more than \$33 million (including GST) in revenue for two or more consecutive accounting periods to report six-monthly on their payment practices on both a public register and on their own websites.

Information required to be disclosed will include time taken to pay invoices and the proportion of invoices paid in full. If businesses do not comply with the reporting requirements, they could face fines of up to \$500,000.

The purpose of the Bill is to improve transparency for business-to-business payment practices and provide small businesses with information to help with making decisions when engaging with large businesses. The Bill also encourages large businesses to improve their payment practices given its transparent nature.

The Bill is currently awaiting its second reading so there may be some changes before being passed into law. We will keep you up to date with its progress.



Are your T&Cs unfair?

The Commerce Commission has filed proceedings in the High Court against holiday home company Bachcare Limited. It alleges that some of Bachcare's contract terms with consumers are unfair under the Fair Trading Act 1986 (FTA).

The Bachcare contract terms in question are:

- + Regardless of how far in advance a guest cancels their booking the guest may lose up to 100% of the amount paid
- + Service fees are deducted regardless of whether the booking is cancelled by Bachcare or the guest, and
- + Where a booking is cancelled due to an uncontrollable event, such as an extreme weather event, and is unable to be re-scheduled, a guest could lose 100% of the amount paid.

Since 2022, the unfair contract terms regime has applied to contracts between businesses that have a trading relationship with an annual value of \$250,000 or less (known as 'small trade contracts').

The Commerce Commission appears to be increasing enforcement efforts now the regime has been in force for some time.

If you have not already done so, now is a good time to review your consumer terms and conditions, and small trade contracts to ensure they comply with the FTA.

Please contact us if you need help with unfair contract terms. +

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Budget 2023

Acknowledging the need to rebuild New Zealand's crumbling infrastructure, \$6 billion over a 10-year period has been allocated for a new National Resilience Plan. Initially focusing on 'building back better' from the effects of the floods and cyclone, it will also fund the country's long-term infrastructure deficit, and develop a credible pipeline to support the plan.

Fiscal sustainability

Whilst the Minister held fast on his promise not to raise income tax, the trustee tax rate (currently at 33%) will increase to 39% from 1 April 2024 bringing it into line with the top personal tax bracket. The Minister says this will create fairness and remove a potential loophole.

Whilst the Minister confirmed that the country's economy has emerged from the three years of Covid in a 'solid position' – the economy expanded by 2.4% over the 2022 calendar year and modest growth is anticipated for this year – there are headwinds. The continuing impact of the war in Ukraine, and worldwide inflation will affect New Zealand's economy.

Although inflation peaked at 7.3% in June 2022 and eased to 6.7% earlier this year, rising immigration to this country and the government's investment in infrastructure projects will increase demand. This may put more pressure on the Reserve Bank to contain inflation.

Whilst New Zealand is not in a recession, recovery from the knocks of the past few years may take longer than anticipated. The government expects the books to return to surplus in 2025–26, a year later than Treasury's December 2022 forecast.

The 2023 Budget is very much what the government had said it would do – no huge surprises and keeping a firm hand on the tiller to make New Zealand a better country in which to live. The proof, however, will be in the pudding as the year proceeds.

To read more detail about the Budget, click [here](#) for the Minister's speech. +

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Business continuity planning

Storage of information

If your business uses cloud storage of data or remote servers for backups or emergency continuity, care must be taken to ensure all data is stored in accordance with New Zealand privacy laws. If the data is stored offshore, the collector of the data (that's you or your business) is responsible for ensuring it is stored and handled at a standard comparable to New Zealand's privacy obligations.

Contract risk

Your terms of engagement or terms of trade should dictate what standard of service you are required to offer your clients or customers during a business disruption.

Equally, when you have contracts with other businesses, you should review their contract terms to ensure they will be sufficiently flexible for you during that disruption.

Preparation is key

A good BCP should help your business prepare in the face of many unpredictable environments, far beyond the basic natural disaster scenario.

The best plans are regularly reviewed, rigorously tested by business owners and staff, and are flexible to adapt to the need at the time.

If you have any questions about BCPs or would like our help in putting one together, please don't hesitate to contact us. We are here to help. +