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GLAISTER KEEGAN LEGAL UPDATE FOR OUR CLIENTS

inbrief

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WHO WILL MAKE DECISIONS FOR YOU IF YOU CAN'T?

Most of us have thought about what happens to our assets when we die. But what happens if you're still alive and suddenly unable to make important decisions for yourself?

New Zealand's laws around decision-making capacity and Enduring Powers of Attorney are under review, with significant reforms recommended.

It's a timely reminder to ask: Do you have Enduring Powers of Attorney in place — and are the people you've appointed still the right people for the job?

Find out more: Look out for our full article on LinkedIn, where we explain why an EPA matters, what can happen if you don't have one, and what the proposed changes could mean for you.

CLIMATE LITIGATION SHAKE-UP - PARLIAMENT IS SUPREME

The Government has moved quickly to stop the development of climate change claims through the courts.

On 18 August 2026, the Climate Change Response (Tort Liability) Amendment Bill passed its third and final reading. It will become law after Royal Assent (Governor General sign off). The bill will remove potential tort liability (a tort is a civil wrong that allows someone who says they have suffered harm to seek a remedy) for climate change and climate change-related damage caused by greenhouse gas emissions.

Parliament is asserting it's supremacy in setting out what the law shall be, and at the same time letting the Supreme Court know it should tread lightly with development of the common law when it relates to matters of public policy.

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Glaister Keegan LAWYERS

CLIMATE LITIGATION SHAKE-UP - PARLIAMENT IS SUPREME CONTINUED

HOW DID WE GET HERE?

In 2019, Mike Smith, an elder of Ngāpuhi and Ngāti Kahu, filed proceedings against seven companies he alleged were responsible for significant greenhouse gas emissions.

Mr Smith relied on three tort claims: public nuisance, negligence, and a proposed new climate damage tort. The claims faced mixed success in the lower courts before reaching the Supreme Court. In February 2024, the Supreme Court unanimously ruled that all three claims were arguable and should be allowed to proceed to trial.

Importantly, the Court did not decide that Mr Smith would win. It simply decided the courts should be allowed to hear the case and consider whether the law should develop in this area.

The trial is currently scheduled for April 2027.

PARLIAMENT STEPS IN

The Government disagreed with the prospect of climate change liability being developed by the courts.
In announcing the bill, the Government said climate change policy should be dealt with through the Climate Change Response Act 2002, not through private lawsuits.
The bill is a direct response to the Supreme Court's decision. After the Court said the claims could proceed to trial, Parliament moved to change the law and prevent climate-related tort claims from developing.

ANOTHER TWIST

The issue became more controversial after the Chief Ombudsman released findings about the handling of an Official Information Act request by the Prime Minister's Office.

Following those findings, Mr Smith filed fresh High Court proceedings seeking declarations that the Government's announcement of, and Cabinet decision relating to, the legislation was unlawful.

"THE SUPREME COURT'S STRIKE-OUT DECISION, ALLOWING THE CLAIM TO PROCEED TO TRIAL, NOTED THAT THERE WAS NO BASIS TO CONCLUDE THAT PARLIAMENT HAD DISPLACED THE LAW OF TORTS IN THE REALM OF CLIMATE CHANGE IN NEW ZEALAND. THE BILL EXCLUDES TORT LIABILITY FOR CLIMATE CHANGE, AND FOR CLIMATE CHANGE-RELATED DAMAGE, CAUSED BY GREENHOUSE GAS EMISSIONS."

WHY IT MATTERS

While the Supreme Court is New Zealand's highest court, Parliament has the final say on the law. The Government's response to *Smith v Fonterra* shows a clear willingness to step in and change the law when it considers the courts are taking it in a direction it does not support.

Reinforcing this, the new Attorney-General, Chris Bishop, on 6 August in an address to the legal profession issued a blunt warning for the judiciary to stay out of politics and respect parliamentary supremacy, saying the courts lack the democratic mandate and institutional expertise needed to develop public policy.

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PROPOSED REFORM OF THE HOLIDAYS ACT

The Government is proposing to reform the Holidays Act and introduce new legislation concerning the calculation of and entitlement to leave. This article is a simple comparison of how leave works now versus how it would work under the proposed new system.

IMPLEMENTATION TIMELINE

- There will be a 24 month transition period after the Bill passes to allow employers and businesses to update their payroll systems and processes.
- Until the new law takes effect, current rules still apply.
- Employers will have 3 years to update employment agreements. After that, if an agreement conflicts with the new law, the legal minimums override the contract.

ANNUAL LEAVE

Current system for full-time employees

- Full-time employees get a minimum 4 weeks of annual leave as a lump sum after each 12 months of continuous employment.
- Full-time employees do not continue to earn leave after the first week of unpaid leave (except for sick, bereavement, or family violence leave).
- A "week" of leave is based on the full-time employee's work pattern at the time they take it.
- Leave balances are adjusted if their hours change.
- Leave must be taken in agreed portions of weeks.
- A full-time employee can request to cash up 1 week of leave every 12 months.

Proposed new system – based on hours worked

- A full-time employee earns annual leave from their first day, at a minimum rate of 0.0769 hours per hour worked.
- A full-time employee can also continue to earn leave while on paid or unpaid leave under certain legislation (for example, parental leave, jury service, volunteer leave).

- You do not earn leave during other unpaid leave or while receiving ACC payments.
- Leave is accrued in hours; therefore, no change to the balance if the full-time employee's standard hours change.
- Leave is taken in hours, based on the full-time employee's standard hours.
- In each 12 month period, a full-time employee can request to cash up to 25% of your annual leave balance (based on their last work anniversary).

SICK LEAVE

Current system

- A full-time employee gets 10 days after 6 months, then another 10 days every 12 months (up to a 20 day cap).
- Sick leave is taken in days on a day; that is, an Otherwise Working Day.

Proposed new system – based on hours worked

- Sick leave accrues from day one, at 0.0385 hours per hour worked, up to a 160 hour cap.
- Sick leave is taken in hours, based on a full-time employee's standard hours or rostered hours.

BEREAVEMENT AND FAMILY VIOLENCE LEAVE

Current system

- Available after 6 months of employment.
- Taken as full days.

Proposed new system

- Available from day one.
- Still measured in days, but a full-time employee can take part days, similar to sick leave.

PUBLIC HOLIDAYS

Current system

- A full-time employee gets paid for a public holiday if it's an Otherwise Working Day (OWD) for them.
- When it's unclear, both sides must consider a range of factors.

Proposed new system

- A new test applies for workers without fixed or patterned work days:
- A day counts as an OWD if the full-time employee has worked 50% or more of that weekday over the preceding 13 weeks.

CONTINUED ON PG 7

AI AND THE LAW: EMBRACING CHANGE, PROTECTING TRUST

Artificial intelligence (AI) is no longer a futuristic idea knocking at the door of legal practice. It is already here. For lawyers, the challenge is not simply to use AI, but to use it responsibly, carefully, and in a way that genuinely benefits clients.

In broad terms, AI can process, organise, and generate information at speed. In legal practice, that can be valuable. AI can assist with first drafts of correspondence, summarising lengthy emails or documents, preparing chronologies, comparing versions of agreements, identifying recurring clauses, and improving the clarity of client updates. For example, a lawyer reviewing a large chain of correspondence may use AI to prepare an initial summary of key dates and issues. A commercial lawyer may use it to highlight changes between document versions. A litigator may use it to organise background material before preparing advice. Used properly, AI can reduce time spent on repetitive tasks and allow lawyers to focus on judgment, strategy, and client service.

However, AI is not a lawyer in disguise. It can produce inaccurate material, miss context, reflect bias, or generate confident-sounding answers that are wrong. In legal practice, there are also serious risks around privacy, confidentiality, professional responsibility, and over-reliance. AI may assist with the heavy lifting, but lawyers must still hold the pen.

At Glaister Keegan Lawyers, our AI journey is guided by a balance of innovation and discipline. The firm has developed an artificial intelligence policy to guide the responsible, ethical, and practical use of AI. The policy includes strict requirements relating to privacy, confidentiality, competence, professional responsibility, and verification. Client confidentiality remains fundamental.

The firm will take a careful and measured approach to the use of AI tools. Any AI tool used by the firm must provide appropriate safeguards for privacy, confidentiality and information security. This means adopting tools and processes that support the secure handling of client information, controlled access, and responsible use, while maintaining the standards of care, confidentiality, and professionalism our clients expect.

Our staff are receiving appropriate guidance and training on the responsible use of AI tools, including their limitations and the circumstances in which they may be used. All AI-generated output will be checked by our staff before being used or relied upon. In short, we are embracing AI, but with the guardrails firmly in place.

For us, AI is not about replacing people with prompts. It is about equipping our lawyers to work more efficiently, think more clearly, and continue delivering practical, trusted legal advice in a changing world.

About the Author - Adrian Sharma is a qualified Fiji lawyer and our AML Compliance Officer. As he works towards requalifying in New Zealand, he continues to contribute his strong legal and compliance knowledge, with a keen interest in how emerging technologies such as AI are shaping the future of business and professional services.

PROPOSED REFORM OF THE HOLIDAYS ACT CONTINUED

ALTERNATIVE HOLIDAYS

Current system

- If the full-time employee works on a public holiday that is an OWD, they get one full alternative holiday, no matter how many hours they worked.
- The full-time employee must take their leave on another OWD.
- The full-time employee can cash their leave up after 12 months.

Proposed new system

- The full-time employee earns alternative holiday hours, matching the number of hours they worked (or were on call and called in) on the public holiday.
- The full-time employee can take the hours on any day they could normally work.
- The full-time employee can cash their hours up at any time.

LEAVE PAYMENTS

Current system

- Leave payments require multiple calculations to account for variable hours and payments.
- Annual leave taken soon after parental or volunteer leave is paid at a lower rate.

Proposed new system

- All leave is paid at an hourly rate, based on the lowest hourly rate payable for the day the leave is taken plus an average for piece rate work.
- Fixed allowances are paid in full during leave.
- Annual leave after parental or volunteer leave is paid normally.

LEAVE COMPENSATION PAYMENTS (REPLACING "PAY AS YOU GO")

Current system

- Employers and workers can agree to "Pay as You Go" (8% of gross earnings) for casual short term work.

Proposed new system

- A Leave Compensation Payment (LCP) of 12.5% of a worker's ordinary hourly rate is paid on all casual hours.
- Workers with standard hours also get LCP on additional hours they work, instead of accruing annual or sick leave on those hours.
- Fixed term workers earn leave from day one.

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GLAISTER KEEGAN WELCOMES ZAK NASIR TO OUR LAND DEVELOPMENT AND COMMERCIAL PROPERTY TEAM

We're pleased to introduce Zak Nasir, Senior Associate in our Land Development and Commercial Property team. Zak brings a unique blend of legal and planning expertise, helping clients navigate some of New Zealand's most complex property and development projects.

With extensive experience in land development, subdivisions, commercial property and resource management matters, Zak advises developers, private clients and infrastructure providers on all aspects of property acquisition, development structuring, subdivision, leasing and disposal. His practice spans projects of all sizes, from boutique developments through to major residential subdivisions involving hundreds of lots.

Before becoming a lawyer, Zak worked as a town planner, giving him a valuable understanding of the planning and development process. This background allows him to identify potential issues early and provide commercially focused, practical advice throughout the life of a project. Clients and colleagues alike value his ability to bridge legal, planning and development considerations to achieve successful outcomes. He has previously worked in London as a lawyer and most recently at a large top tier firm in Auckland.

Throughout his career, Zak has advised on significant commercial property transactions, large-scale development projects, leasing arrangements and Public Works Act matters. He is known for his pragmatic approach and his ability to work collaboratively with surveyors, engineers, planners and government agencies to resolve complex issues efficiently.

Whether assisting first-time developers or experienced industry participants, Zak is committed to delivering clear, practical solutions that help clients move forward with confidence. We are delighted to have him as part of the Glaister Keegan team and look forward to the continued value he brings to our clients and colleagues.

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