

# Employment lawyers debate big burning issues

This year's Burning Issues Forum on 19 September gave practitioners an opportunity to reflect on the big employment law issues of the past 12 months and to discuss and consider those likely to become relevant in the year ahead.

Kylie Dunn (partner, Russell McVeagh) opened the forum with a presentation about recent and upcoming changes, addressing triangular employment relationships.

Dunn compared and contrasted the approach of the Employment Court in *Prasad v LSG Sky Chefs New Zealand Limited* with the approach taken under the Employment Relations (Triangular Employment) Amendment Act 2019.

The Amendment Act comes into force on 27 June 2020 (or earlier by Order in Council). While it does not alter the employer/employee relationship, it will introduce the concept of a "controlling third party".

This can be joined to a personal grievance claim in certain circumstances.

It will be interesting to see how *Prasad* and the new Amendment Act are used in cases involving labour hire workers, secondees and similar arrangements.

David France (partner, Kiely Thompson Caisley) and Peter Cranney (Oakley Moran) then led discussion and debate about the issues relating to availability provisions.

They opened by commenting on the mistaken belief of some practitioners that the availability provision machinery in the Employment Relations Act 2000 was intended to apply only to "zero hour contracts".



Kylie Dunn, David France, Judge Mark Perkins, Peter Cranney and Catherine Stewart

That has now been debunked in light of several recent cases from the Employment Court but many further issues are likely to be highlighted in cases to come.

Catherine Stewart (barrister) led a session about the introduction of family violence leave (previously referred to as domestic violence leave).

Some "burning issues" she noted included the new personal grievance and discrimination claims that could now be raised by the sufferers of family violence, as well as the approach that could be taken to addressing family violence leave in employment agreements.

Stewart also covered the complex and sensitive privacy issues that can arise from requests for flexible working arrangements or leave because of family violence issues.

Finally, Judge Mark Perkins covered "the searingly-

hot question of penalties" (as it was described in the ADLS CPD calendar).

Judge Perkins' presentation addressed several recent cases illustrating the Employment Court's approach to penalties, most notably in recent cases, *Preet, Prabh, Victoria88* and *Nicholson*.

Difficult and technical issues such as interplay between penalties and pecuniary penalties (addressed in Parts 9 and 9A of the Employment Relations Act 2000, respectively) and the assessment of quantification of penalties were considered.

The judge also noted the possibility of penalties being ordered against people who are not party to the employment relationship but who have been instrumental in the relevant breach. – **Liz Coats, partner, Bell Gully** ✂

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George Mikaera ANANIA, Late of 28/116 Wellington Street, Freemans Bay, Auckland, Married, Truck Driver, Aged 72 (Died Between 8/06/19 & 13/06/19)

Masao NAKAKITA, Late of 3-6-3-612 Udase, Mihama-Ku, Chiba City, Chiba, Japan, Single, Retired, Aged 56 (Died 19/08/18)

Melita GALWAY, Late of 484 Kahikatea Flat Road, RD1, Auckland, Married, Report Developer, Aged 55 (Died 09/03/19)