



The New Dynamic

A toolkit for in-house lawyers in a time of upheaval

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For many in-house legal teams across New Zealand, Level 4 lockdown took them quite some distance from business as usual. Many were deeply engaged in crisis response, aiding their organisations navigation of the tumult.

In revolutionary times, Lenin wrote of “weeks where decades happen.” The observation feels apt. Upheaval is far from over. New Zealand has so far managed to contain recent COVID-19 cases at the border and achieve a relative return to normality, but uncertainty remains about the persistence of the international health and economic crisis. In-house legal teams will have important contributions to make, particularly in helping organisations to adapt safely to new conditions.

Businesses are working to urgent imperatives. Market conditions are changing quickly and businesses are making commercial decisions faster than usual, seizing a new opportunity swiftly, in recognition that it might be a long wait for the next one.

An in-house legal team dealing with such a scenario will be working to find the right balance: on the one hand enabling, and not impeding, opportunities

that may be fleeting; on the other: ensuring that the business identifies and manages risks such an opportunity may carry.

In this new environment a number of vulnerabilities have come into sharper focus:

Supply chains

This is a vulnerability that many New Zealand businesses did not appreciate they had: an over-reliance on China to meet supply chain needs. Many businesses are now placing a greater degree of focus on contingency planning for supply chain and spreading the risk across different regions, such as other parts of Asia and Europe as well as investigating alternatives for sourcing locally. In-house legal teams can assist by providing a structure to the scenario planning, and testing whether the business has considered all relevant practical and legal risks.

Information Technology

Although the Level 4 Lockdown experience demonstrated to New Zealand businesses that their legal teams can work entirely remotely if needed, it has in many cases also exposed a lack of IT systems to deal with increasing complexity of in-house matters.

New Zealand companies have been slow to embrace legal tech or invest in tech solutions to support their in-house legal teams. Now, as businesses are looking to find areas to reduce costs and may even be facing redundancies, perceived ‘nice to have’ spending like legal tech to make their in-house legal team’s lives easier, may not be given sufficient priority. In-house teams may find themselves having to do more with less and being asked to find innovative solutions to improve their effectiveness. To find that solution, it’s important to effectively diagnose the problem.

Although in-house legal teams all know where the pinch points are in their practice, many do not have access to the data to support their pleas for increased resourcing needs or the need to manage expectations around the role of the in-house lawyer in the organisation. More New Zealand in-house teams are now focusing on gathering accurate data on key indicators such as team workflow and external legal spend (even using an Excel spreadsheet if no other options are available) as a low cost option to gather information so future resourcing can be appropriately tailored.

Social and environmental obligations

Before the pandemic, in-house legal teams were grappling with the risk that climate change posed to their respective organisations: no longer only a reputational risk for the business, but a legal risk as well. The recent High Court decision in *Smith v Fonterra Co-operative Group Ltd*, declining to strike out a claim that corporates owed a duty of care and were responsible to the public for their emissions raises the likelihood that environmental and social responsibility issues will become more prominent and require a greater degree of focus for in-house lawyers.

Looking ahead

Out of lockdown, many organisations have been accelerating existing plans to streamline workflows and ensure their in-house teams are prioritising the issues that really matter to the business rather than allowing the business-as-usual grind work to take them away from strategic projects. Organisations will be looking to their in-house legal team to be agile. They will be looking to them to adapt their usual internal approval or delegation of authority processes to meet the business needs in this new dynamic.

Now more than ever is the time to get templates in order and empower the business to make decisions within a pre-approved set of rules.

The **Anticipate-Measure-Manage** methodology outlined in the *New Dynamic* toolkit can assist in-house lawyers to approach these challenges and manage the legal risks for their businesses.

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