

Unsolicited Electronic Messages Act

The Unsolicited Electronic Messages Act is due to come into force on 5 September 2007, and is the first New Zealand initiative to deal with the problems associated with large volumes of spam. Given that almost all New Zealand spam originates from offshore, the Act is unlikely to have any significant impact on the volume of spam that reaches your inbox. However it is an important step in the international effort to control the spam problem, and to ensure that New Zealand does not operate as a 'spam haven' in the world.

The United States, Australia, Singapore, Canada, and the European Union, have all enacted similar anti-spam legislation.

While the Act is designed to deal with the intentional sending of large volumes of spam, often related to the sex or pornography industry and sent to hundreds of thousands or millions of recipients, the Act in New Zealand does not require a minimum number of recipients in order to constitute a breach – one email sent to one recipient can be unlawful under the Act.

Prior to 5 September 2007 therefore, New Zealand organisations that send out advertising, marketing, or promotional emails will need to ensure that:

- email address lists are checked to ensure that they contain only recipients who have consented to receiving emails, and that evidence is kept to establish consent;
- written policies are in place addressing the extent to which consent can be inferred from the pre-existing business relationship;
- written protocols are implemented which require that email marketing or promotional emails contain accurate sender identification and include a functional "unsubscribe" facility;
- a review of the use of links to your website (frequently used in email footers) is undertaken;
- a system of actioning unsubscribe requests is in place;
- compliance programmes are put in place to educate employees about the legislative changes and email policies.

Penalties for breaches of the Act range from a warning letter, through to pecuniary penalties of \$500,000 per company and \$200,000 per individual. Specific advice should be sought if you have any concerns in relation to the impact of the Act on your business, and further information can be obtained from the Department of Internal Affairs website - www.spam.govt.nz.

Additional Annual Leave

There has been some suggestion that where staff have a contractual entitlement to 4 weeks' annual leave, that the increase in the statutory minimum from 1 April 2007 means that they go up to 5 weeks' annual leave, the rationale being that they remain one week above the minimum entitlement.

The Employment Court has looked at the wording of a collective agreement for bus drivers which stated that they would receive 3 weeks' annual holidays (in accordance with the provisions of the Holidays Act 1981) and an additional 1 week in recognition of the nature of the work, a total of 4 weeks' leave per year. The Court held that the increase of the minimum entitlement to 4 weeks did not move the bus drivers up to 5 weeks' annual leave, as claimed by the union. The collective agreement met the minimum entitlements of the new provision of the Holidays Act 2003 since 4 weeks complies and this was also consistent with the intention of the parties, that is to provide for 4 weeks' annual leave.

This case was successful for the employer due to the wording in the collective agreement, this will not always be the case as the wording may differ. In some instances the words will favour an additional week over and above the statutory minimum of 4 weeks per year. A review of annual leave provisions in employment agreements is a worthwhile exercise to address this issue and amend if appropriate.

HarrisonStone has now been operating since 1 February 2007.

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