

## PRESENTER

### **Lisa Hansen, Barrister, Wellington**

Lisa Hansen has been a barrister sole since February 2010. She has a background in public law and was a Crown Counsel at Crown Law from 1997 to January 2010. She undertakes a wide variety of general civil litigation, employment, resource management, medico-legal and opinion work. Lisa has advised a range of clients on all stages of the consultation process, including advising clients engaging in the process as a consultee on how to best present their interests or concerns. She has also appeared as counsel in judicial review proceedings where consultation was in issue, including *Anning v Minister of Education* and *Butler v Attorney General*.

# CONTENTS

<b>SUMMARY .....</b>	<b>1</b>
<b>PART ONE: THEORY AND PRINCIPLES.....</b>	<b>3</b>
INTRODUCTION – CONSULTATION IN A NUTSHELL.....	3
CONCEPTUAL FRAMEWORK – ADMINISTRATIVE LAW.....	3
WHEN THE OBLIGATION TO CONSULT ARISES.....	6
<i>Statute – express reference to consultation .....</i>	6
<i>Statute – implied obligation to consult.....</i>	7
<i>Legitimate Expectation.....</i>	8
<i>Where fairness requires.....</i>	9
<i>Source of the obligation .....</i>	11
THE PRINCIPLES.....	11
<i>What are they? .....</i>	11
<i>Where did they come from? .....</i>	12
THE EXTENT OF CONSULTATION REQUIRED.....	13
DISCUSSION AND ELABORATION OF THE PRINCIPLES.....	14
<i>Consultation must be undertaken at a formative stage .....</i>	14
<i>Adequate information must be provided.....</i>	15
<i>Adequate time.....</i>	16
<i>The decision maker must consider the submissions and keep an open mind. Consultation does not equate to negotiation.....</i>	17
<i>Further consultation may be required.....</i>	17
<i>Manner of consultation: how are views to be received .....</i>	19
<i>Summaries of submissions.....</i>	20
<i>When a consultee fails to engage .....</i>	20
<i>Voluntary consultation .....</i>	20
<i>Checklist.....</i>	21
<i>Consequences of inadequate consultation.....</i>	21
CONSULTATION AND THE TREATY OF WAITANGI: CROWN OBLIGATIONS .....	22
<b>PART TWO: CONSULTATION UNDER THE LOCAL GOVERNMENT ACT 2002.....</b>	<b>25</b>
STATUTORY REQUIREMENTS .....	25
HOW THE CONSULTATION TAKES PLACE.....	27
WHEN CONSULTATION GOES WRONG .....	27
<b>PART THREE: CONSULTATION IN EMPLOYMENT LAW.....</b>	<b>33</b>
THE STATUTORY OBLIGATIONS .....	33
PROVIDING INFORMATION UNDER S 4(1A).....	36
FAILING TO COMPLY WITH THE PROVISIONS.....	38
THE QUALIFICATIONS/EXCEPTIONS TO THE DUTY TO PROVIDE INFORMATION .....	38
PRACTICAL TIPS .....	40
SOME BEST PRACTICE CONSULTATION FOR EMPLOYERS.....	40
STAGE 1 .....	41
STAGE 2 .....	41
STAGE 3 .....	41
<b>PART FOUR: PRACTICE GUIDELINES AND SOME PRACTICAL SUGGESTIONS .....</b>	<b>43</b>
UK GOVERNMENT CODE OF PRACTICE ON CONSULTATION .....	43
OTHER USEFUL GUIDES .....	44
TIPS FOR CONSULTORS .....	44
DOING WRITTEN CONSULTATION .....	45
<i>Checklist.....</i>	45
TIPS FOR CONSULTEES – WRITING SUBMISSIONS .....	46
<i>Particular guidance.....</i>	46