

NEWSLETTER

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BILL INTRODUCED TO PREVENT FOREIGN ABUSE OF NEW ZEALAND COMPANY LAWS

Despite our notable reputation as one of the least corrupt countries in the world, New Zealand remains subject to criticism for its weak company laws that are too easily exploited by international crime syndicates. There is a concern that 'loop-holes' in our company laws allow foreign fraudsters to set up shell companies in New Zealand, which are then used to conduct fraud such as tax evasion and money laundering overseas.



It has been reported that over the past five years 150 New Zealand registered companies have committed serious offences in overseas jurisdictions, such as drug, human and arms trafficking. A further 1000 companies have been identified by the Reserve Bank of New Zealand as potentially being involved in international financial fraud. Suspicious behaviour by companies was evidenced late last year where 829 separate companies were registered as having the same office in Johnsonville. An investigation by the Ministry of Economic Development has so far seen 1800 companies being struck off the Companies Register for failing to provide evidence of legitimacy.

The concern that inadequacies in our domestic legislation could cause serious detriment to our international trade has resulted in a call for law reform. The Companies and Limited Partnerships Amendment Bill ('the Bill') was introduced to Parliament on 13 October 2011. Its purpose is to reassert and strengthen our company laws. If passed by Parliament, the Bill will amend the Companies Act 1993 ('the Companies Act') by:

- requiring each company registered in New Zealand to have a director or agent to be resident in New Zealand,
- granting additional powers to the Registrar of Companies to investigate and manage non-compliant companies,

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- banning directors of non-compliant companies from assuming management positions in other companies for up to five years,
- striking companies off the Companies Register for supplying inaccurate information or continued non-compliance with the Companies Act,
- better aligning requirements under the Companies Act with the Limited Partnerships Act 2008 to prevent similar exploitations, and
- classifying serious breaches of directors' duties as criminal offences.

The Government is also seeking to introduce anti-money laundering legislation in 2013 to further safeguard and scrutinise the operation of companies. In a report titled

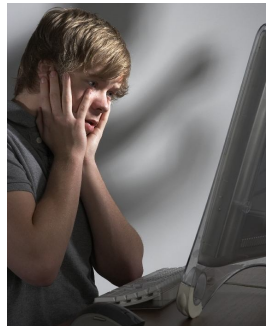
“Strengthening New Zealand's Resistance to Organised Crime”, the Ministry of Justice further proposes new laws to effect:

- an improvement of domestic and international information sharing,
- an enhancement of anti-money laundering and crime proceeds recovery measures,
- a reduction of misuse of current legal arrangements,
- protection against cyber-crime,
- prevention of corruption and bribery, and
- the disruption of identity crimes.

It is hoped that these initiatives will give greater confidence in our domestic company laws and restore our image as a safe country in which to conduct business.

CYBER-BULLYING

Although bullying is nothing new, the digital age has given rise to a new breed of bullying, known as cyber-bullying. Cyber-bullying is where the internet, telephones, computers, cameras or other technology are used to deliberately inflict harm on another person. Instant communication methods and the ease by which an offender is able to torment their victim, have led to increasingly severe consequences for those preyed upon. For example, photographs can be published and circulated across global jurisdictions in a matter of minutes via the internet. In such circumstances, it is often very difficult to contain the multiplication of the photographs, and their permanent removal from cyber-space is almost impossible. Our society's growing dependence on technology has led many to question whether our laws have been able to keep up with evolving methods of this type of offending.



In October 2010, the Law Commission undertook a study that assessed the effectiveness of criminal and civil remedies for defamation, harassment, breach of confidence and privacy in the digital media environment. The year long study identified the existence of significant potential harm, particularly for young people whose lives continue to become entrenched in social media. It also noted that the current processes were too cumbersome and financially demanding for many victims of cyber-bullying to pursue a prosecution or civil remedy. In recognising these challenges, the Law Commission proposes numerous changes to our legislative scheme to ensure that serious harm caused from digital communication is covered by appropriate offences. The proposals put forward by the Law Commission include:

- Ensuring all provisions imposing controls on communication are expressed widely enough to cover all forms of communication in the digital environment, by reviewing and amending current statutes,
- Creation of a new offence that makes the malicious impersonation of another person a criminal offence,
- Creation of a new offence for inciting or encouraging a person to commit suicide, and

- Creation of a new offence that makes it illegal to publish intimate photographs of a person without their informed consent.

The Law Commission further proposes the establishment of a ‘Communications Tribunal’ that would operate at a lower level than the court system. Its purpose would be to administer prompt, efficient and relatively inexpensive justice to those significantly affected by unlawful communications. The Tribunal's jurisdiction would be limited to cases where it considers the threshold for a breach of the law has been reached. Remedies available to the Tribunal include financial compensation to be made to the victim, an apology or a correction on relevant media networks.

Alternatively, it is proposed that a Communications Commissioner be appointed either as an independent body or as an extension of the Human Rights Commission. The role of the Communications Commissioner would be to provide information, and where possible, assist in resolving problems informally through mediation. The Commissioner would also make recommendations to relevant authorities and individuals where appropriate.

The Law Commission's proposals have been commended by Netsafe Executive Director Martin Cocker who stated *“it gets to the heart of the problem with all of this which is that it's very easy to offend against somebody in these ways but very difficult for people to take action to remedy that.”*

Public submissions are currently being sought on the Law Commission's proposals. For more information on the proposals, or to make a submission, please visit www.lawcom.govt.nz/project/review-regulatory-gaps-and-new-media. Submissions are due to close on Monday 12 March 2012. For more information on cyber-bullying and cyber-safety, please visit www.cyberbullying.org.nz and www.netsafe.org.nz.

CHANGES TO ROAD & DRIVING LAWS

The Land Transport (Road Safety and Other Matters) Amendment Act 2011 ('the Act') was implemented last year as a response to public demands for better protection for young drivers. Calls for legal reform were motivated by the over-representation of young drivers in crash statistics.



The 2010 Ministry of Transport 'Young Driver Crash Facts' document reported that drivers aged 15-24 were involved in 112 fatal crashes, 755 serious injury crashes and 3617 minor injury crashes for the year ending 31 December 2009.

The Act introduces significant changes to our road laws such as the blood alcohol concentration level for drivers aged 20 or younger being decreased from 0.03 to zero. The minimum age for obtaining a driver's licence has been increased from 15 to 16 years, along with further restrictions on the eligibility criteria for applying for licences in each category. As of 1 August 2011, the minimum criteria for obtaining a licence are as follows:

Learner licence	16 years old.
Restricted licence	16½ years old. Must have held a learner licence for at least six months.
Full licence (option 1)	18 years old. Must have held a restricted licence for at least 18 months.
Full licence (option 2)	17½ years old. Must have held a restricted licence for at least 12 months, and have completed an approved advanced driving course.

FURTHER CHANGES

Stricter impositions on restricted licences are expected to come into force in mid February of this year. These include making the practical driving tests more challenging. Learner drivers will also be encouraged to gain at least 120 hours of supervised driving experience

FINANCIAL MARKETS AUTHORITY

The apparent failure of past regulatory regimes to provide adequate management of financial markets leading up to the recent global financial crisis ('the crisis'), has led to a revamp of New Zealand's 30 year old securities law. The issues encountered during the crisis highlighted the need for better enforcement and an overarching regulatory body to better preserve the integrity of our financial markets. The Financial Markets Authority ('FMA') was thus established as the 'catch-all' government agency responsible for financial regulation, consumer protection and enforcement.

before attempting their restricted licence tests. Although no proof is necessary, the challenging practical tests are designed to allow only those with sufficient driving experience to be successful.

TRANSITIONAL PROVISIONS

The Act provides transitional provisions for drivers who entered the application process prior to the changes taking effect on 1 August 2011.

EXEMPTIONS

A driver may be granted an exemption to obtain a restricted licence at an age younger than 16½ if they:

- are at least 16 years old,
- have held a learner licence for at least 6 months, and
- have a clean driving record.

A driver may be granted an exemption to obtain a full licence at an age younger than 18 if they:

- are at least 16 years old,
- have held a restricted licence for at least 18 months (reduced to 12 months if they have successfully completed an approved advanced driving course), and
- have a clean driving record.

CHANGES TO 'GIVE-WAY RULES'

Major changes are also set to take place in March this year in relation to our give-way rules. From 25 March 2012 at 5:00 am, all traffic turning right will be required to give way to a vehicle coming from the opposite direction and turning left at cross-roads, T-intersections and driveways where:



- both vehicles are facing each other with no signs or signals,
- both vehicles are facing give way signs,
- both vehicles are facing stop signs, or
- both vehicles are facing green traffic signals.

For further information on this matter, please visit www.nzta.govt.nz/traffic/around-nz/road-user-rule.html.

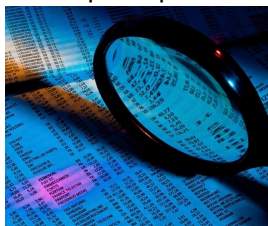
The FMA came into force on 1 May 2011 and is governed by the Financial Markets Authority Act 2011 ('the Act'). Upon implementation of the Act, the FMA usurped all functions and duties of the Securities Commission and Crown Actuary, which have since been disestablished.

FUNCTIONS OF THE FMA

The demise of a number of finance companies during the crisis significantly damaged the confidence of investors in our financial markets. As such, a key objective of the FMA is to rebuild confidence through the promotion and *"development of fair, efficient and transparent financial*

markets.” Other key functions of the FMA (as provided for in Section 9 of the Act) include:

- to promote confident and informed participation in financial markets,
- to monitor compliance and investigate conduct that constitutes or may constitute a contravention of the Act,
- to monitor and conduct enquiries and investigations in relation to any matter concerning the financial markets or its participants, and
- to keep under review all law and practices relating to financial markets.



The FMA has also been granted a greater range of enforcement powers than its predecessors. One such power (conferred pursuant to Section 29 of the Act) grants the FMA “power to enter and search a place, vehicle or thing” including computer files and systems for the purpose of investigating misconduct.

Another key purpose of the FMA is the provision of advice to the Government on financial policy matters that form the basis of new legislation. As well as ensuring compliance with all financial market-related legislation,

SNIPPETS

LICENCE TO MARRY

‘Tis the season to get married! So be sure to have your marriage licence sorted ahead of time to ensure everything goes smoothly – legally at least. To get a licence, one of the parties to the marriage needs to complete a ‘Notice of Intended Marriage’ application form at least three days before the intended date of the wedding. As part of completing the application form, the applicants will need to personally make a statutory declaration in the presence of the Registrar of Marriages confirming that:



- there is no lawful impediment to the marriage (i.e. no legal reason that the couple cannot be married),
- that the details given are true,
- that the bride and groom are not within the "prohibited degrees of relationship" (refer to Schedule 2 of the Marriage Act 1955 about what constitutes a prohibited relationship), and
- that consent has been given (where relevant).

For more information on the legal requirements for marriages in New Zealand, contact the Department of Labour or visit www.dia.govt.nz/Births-deaths-and-marriages.

the FMA also possesses the power to grant exemptions from the law in certain circumstances.

OTHER CHANGES

The enactment of the Auditor Regulation Act 2011 means that auditors will also soon be falling under the FMA's regulatory umbrella (at a date yet to be appointed by the Governor-General). The FMA is due to take over responsibility for the following:

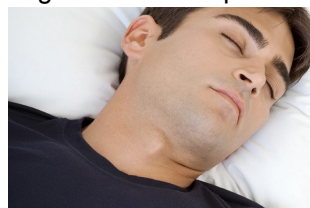
- accreditation of professional accounting bodies,
- quality review of auditor practices,
- setting minimum licensing standards, and
- enforcement functions.

The Financial Markets Conduct Bill is also a significant development in the reformation of New Zealand's securities laws. It was introduced to Parliament in October 2011 and is expected to become law by 2013. The functions of this bill are largely consistent with the FMA's main objectives. The Bill also incorporates elements of the Fair Trading Act 1986 by prohibiting misleading or deceptive conduct in relation to financial products. Enforcement of these provisions will be the responsibility of the FMA as opposed to the Commerce Commission. For more information on the FMA please visit www.fma.govt.nz.

PAID SLEEP-OVERS

The Sleepover Wages (Settlement) Act 2011 (‘the Act’) came into force on 18 October 2011 as a result of the Court of Appeal decision in *Idea Services Ltd v Phillip Dickson*.

The Court of Appeal unanimously held that sleep-overs by workers constituted “work” under the Minimum Wage Act 1983. As such, the Act obliges employers to compensate workers for “back-wages” at the minimum wage rate for sleep-over work performed from the period



1 July 2005 to 30 June 2011. Employers are required to contribute 50% towards the liability for each sleep-over falling within this timeframe with the Crown funding the remaining 50%. Employers

are also required to pay 8% annual leave for the time incurred while an employee is employed during a sleep-over. To be eligible for a back-pay of sleep-over wages, employees must have lodged a claim with the Employment Relations Authority by 2 September 2011.

For more detailed information on this matter, please visit www.ihc.org.nz/newsevents/sleepover-updates.

If you have any questions about the newsletter items, please contact us, we are here to help.