



## INSIDE THIS EDITION

<b>Making building more affordable</b> .....	1
<b>Improvements to enable more remote participation in courts</b> .....	2
<b>Divorce law amended for victims of family violence</b> .....	3
<b>Regulatory Systems (Immigration and Workforce) Amendment Bill</b> .....	3
<b>Snippets</b> .....	4
<i>Roadside drug driver testing</i> .....	4
<i>Trusts - The big picture</i> .....	4



*All information in this newsletter is to the best of the authors' knowledge true and accurate. No liability is assumed by the authors, or publishers, for any losses suffered by any person relying directly or indirectly upon this newsletter. It is recommended that clients should consult a senior representative of the firm before acting upon this information.*

## Making building more affordable

As part of the Government's commitment to increase the supply of affordable housing, the Building (Overseas Building Products, Standards, and Certification Schemes) Amendment Bill (Bill) was introduced to Parliament. Its purpose being to remove barriers to new building materials entering our market, resulting in more competitively priced products and greater resilience to supply disruptions.



This follows on from a Commerce Commission market study (2022) into residential building supplies, which found a lack of competition in the supply and acquisition of key building supplies. Part of the supply issue relates to the difficulty in new building materials and products systems being accepted for general use by building consent authorities; which in turn impacts on designers and builders having the confidence to use them. The Bill would amend the Building Act 2004, targeting each level of the building product assurance system (standards, certification schemes, and compliance pathways).

The Bill would allow for building materials and product systems that meet international standards equivalent to those of New Zealand to be approved here. The Minister for Building and Construction would be able to recognise, in whole or in part, overseas standards or groups of standards or overseas standards certification schemes by notice. This would remove the need for designers, builders and building consent authorities to verify the adequacy of a standard or robustness of a standards certification scheme.

The Bill would provide for a new regulatory instrument (the building product specification) to be published. This would streamline the citing of international standards that can be used with the Ministry of Business, Innovation and Employment (MBIE) acceptable solutions and verification

methods, to demonstrate compliance with the Building Code. As long as an overseas product complied with an equivalent standard for its specific purpose, the building would comply with the acceptable solutions and verification methods, and must be accepted by building consent authorities. This change is expected to reduce the process to recognise overseas building products standards or specifications, from 2 years to 3 - 8 months.

Building consent authorities would still need to assess proposed building work for compliance with the Building Code to ensure that products are being used for their stated purpose. Building consent authorities would not be liable for reliance in good faith on the building product specification.

The Bill also proposes to mandate the acceptance of products certified overseas. Currently the Building Act allows the chief executive of MBIE to recognise

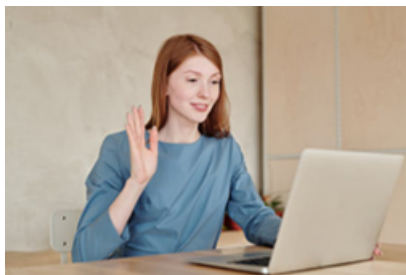
overseas certification of building products. However, due to certain requirements, the chief executive has limited ability to proactively recognise schemes. To address this the Bill provides that the chief executive may, by notice, recognise 1 or more, or 1 or more groups of, building products or building methods certified under an overseas product certification scheme.

This would require building consent authorities to accept recognised overseas products as establishing compliance with the Building Code. This change would increase the range of products that can be used in New Zealand. A Government press release gave the example that recognising Australia's WaterMark scheme would open the New Zealand market to over 200,000 plumbing products.

The Bill is with the Transport and Infrastructure Committee with their report due back 26 March 2025.

## Improvements to enable more remote participation in courts

In September this year the Courts (Remote Participation) Amendment Bill was passed by Parliament. As an omnibus Bill it made changes to two Acts, with two amendments to the Courts (Remote Participation) Act (CRPA) and one to the Criminal Procedure Act. The purpose of the amendments is to clarify and improve the law governing remote participation to enable more remote participation in court proceedings using both audio-only links (audio link) and audiovisual technology.



The changes to the CRPA are expected to increase the efficiency and timeliness of the court system, thereby reducing delays in justice, as well as to ease other barriers to participation including the cost, time and stress involved in traveling. For the victim, remote participation can help mitigate the harm of them being retraumatised by being in the same room as the perpetrator.

The two amendments to the CRPA are as follows. Firstly, a new section has been added which creates a "presumption" (allows the court to assume) that a victim of an offence and their support person are entitled to observe all or part of the trial and sentencing for the offence, by the use of audiovisual or audio link; unless a judicial officer or a Registrar determines that the use of this technology is not in the interests of justice. This amendment also preserves the ability of the court to control how the proceedings are conducted, enabling them to impose conditions to protect the integrity of the court process; for example, requiring victims to not share access links or record proceedings.

Secondly, the use of audio links, such as telephone conference calls, has been authorised for criminal proceedings where the defendant is not required to attend. This attendance criteria takes into account that judges need to see the defendant to assess their credibility and comprehension of the proceedings. Audio links can also be used for civil and Family Court proceedings, provided the judicial officer or Registrar is satisfied that the parties will be able to effectively comprehend and participate in the proceeding.

The use of audio links will enable those who do not have access to audiovisual technology to have the option to participate remotely. For those in more isolated areas, avoiding the cost and effort of traveling to court will be a welcome benefit.

The third amendment enacted has been to the Criminal Procedure Act, to make permanent a temporary change made during the COVID-19 pandemic. This clarifies that in criminal proceedings, remote participation by the media and the public is consistent with the principles of open justice - that the courts are transparent and open to scrutiny.

Submissions received by the Justice Committee included concerns around the use of audio links. Situations were envisaged where participants could be pressured by people not visible to the court, or have access to material without the court's permission. However, the Justice Committee proposed no changes and the legislation was unanimously supported by Parliament.

## Divorce law amended for victims of family violence

In another display of cross-party agreement, the Family Proceedings (Dissolution of Marriage or Civil Union for Family Violence) Amendment Act (Amendment Act) was passed into law in October this year, and will come into force in October 2025.



The purpose of this legislation is to reduce the harm caused by family violence in marriage or civil union relationships. It amends the Family Proceedings Act 1980 to allow for a marriage or civil union to be dissolved where a party in the relationship has been the victim of family violence.

The increasing trend in family harm statistics in New Zealand paints a concerning picture. The NZ Police Annual Report 2022/23 stated “Family harm remains a significant issue in New Zealand. We have one of the highest rates of family harm in the OECD. In 2022/23 there were 177,452 family harm investigations recorded – a 49% increase from 2017.”

Prior to the Amendment Act changes the only grounds for dissolving a marriage or civil union was that the relationship had broken down irreconcilably, with the means for establishing this being that the parties in the relationship had been living apart for two years.

Statements from the legislation’s first reading in Parliament described victims of family violence as feeling bound to their abuser and unable to move on with their life, in what for them was two years of being in limbo.

The Amendment Act provides that a marriage or civil union may be dissolved on the ground that the applicant is a protected person under a protection order made against their spouse or civil union partner. The two-year separation requirement for dissolution is also removed, and the parties do not

need to be living apart at the time an application for dissolution is made.

Protection orders include final protection orders made under the Family Violence Act 2018 or the Sentencing Act 2002, and a registered foreign protection order.

For an application for dissolution to be granted, a Registrar, or Family Court, must be satisfied that the ground of family violence is established. Any appeal rights in respect of the protection order must also have been exhausted or have expired. This addresses points raised by submissions to the select committee regarding temporary protection orders, whereby a respondent who has been served a protection order ‘without notice’, could have their marriage or civil union dissolved without having been able to defend the order.

The changes have been given 12 months, from Royal assent, before coming into force. This is to give the Family Court, legal profession, and advocacy groups time to prepare for the change, and for secondary legislation and the courts management system to be updated.

## Regulatory Systems (Immigration and Workforce) Amendment Bill

In an effort to keep legislation up to date and fit for purpose, Regulatory Systems Amendment Bills (RSAB) are used by government agencies to amend the legislation they administer. RSABs bring together multiple pieces of amendment legislation, typically minor in nature, and by processing them together optimize the use of parliamentary time.

The Regulatory Systems (Immigration and Workforce) Amendment Bill (Bill), which passed its first reading in July this year, is an RSAB covering legislation administered by the Ministry for Business, Innovation and Employment (MBIE). Below are key points from four of the seven Acts for which amendments have been proposed.

Amendments to Immigration Advisers Licensing Act 2007 (IALA):

- The Bill would allow for an immigration advisers licence to be suspended, before the Immigration

Advisers Complaints and Disciplinary Tribunal has completed its investigation, if it considers it necessary or advisable to do so in the interest of the public.

- The disciplinary sanctions that can be imposed on a person would be amended to increase the maximum time period they can be prevented from reapplying for a licence, from two years to a longer specified period or an indefinite ban.
- To reduce the barriers to complaints, complainants would only need to describe their grievances; (giving the relevant dates, places, and times), instead of having to refer to the specific sections of the IALA that apply.

Amendments to Employment Relations Act 2000 (ERA):

- The Bill clarifies for employers their obligation to retain a copy of individual employment agreements, so that the employee does not hold the only copy, and that it is easily accessible.
- A new infringement offence would be created for employers not providing written employment agreements. Also strengthened is the required form and content of the employment agreement - that it must comply with the minimum requirements as set out in the ERA.

#### Amendments to Health & Safety at Work Act 2015:

- The definition of a notifiable incident would be broadened to include any unplanned or uncontrolled incident in a workplace that 'could' expose a person to serious risk to their health or safety.
- The Bill clarifies that WorkSafe NZ may recover costs for enforceable undertakings, and can refuse to accept an enforceable undertaking that does not provide for their reimbursement.

#### Amendments to Parental Leave and Employment Protection Act 1987:

- The Bill addresses the situation where an employed person unexpectedly becomes a primary carer, or a person soon after receiving custody realise they need to stop work to care for the child. Currently, these people would not be eligible as they did not stop working on becoming a primary carer. The Bill would amend this, entitling them to parental leave payments provided they stop work within a reasonable period after becoming the primary carer.
- The Bill also makes changes to the duration of primary carer leave with respect to pre-term births, providing that pre-term baby payments are in addition to the duration of (must not be counted as part of) extended leave or parental leave payments.

The Bill is with the Education and Workforce Committee, with their report due 23 January 2025.

## Snippets

### Roadside drug driver testing



Roadside testing to deter drug driving looks to be back on again with the Government's Land Transport (Drug Driving) Amendment Bill (Bill) passing its first reading in August. Underlining the

need for a workable solution, the Bill's explanatory note reveals that between 2019-2022, on average 30% of road deaths each year involved crashes where drivers had consumed impairing drugs.

The previous government passed legislation in 2022 to enable police to carry out roadside oral fluid test (OFT) for drugs. However, no OFT device was found that met the criteria (in the legislation) to be used as the evidential basis for taking action at the roadside. To resolve the issues with the current OFT regime the Bill would amend the Land Transport Act 1998 to introduce new device approval criteria for their use as a screening tool, as opposed to evidentiary testing.

With OFT devices used as a screening tool, drivers who return a positive test for a specific qualifying drug will then need to undergo a second test. Where two positive roadside tests are returned, the driver will be prohibited from driving for 12 hours. A positive test will require a sample of the oral fluid to be laboratory tested before any infringement notices can be issued. Drivers refusing to take a screening test will be issued

with an infringement fee and demerit points on the roadside, and prohibited from driving for 12 hours.

Oral fluid testing for drug driving is used overseas, including in Australia, and the Government's stated intention is to bring us into line with Australian legislation. The findings of the select committee report are due back on 20 December 2024.

## Trusts - The big picture

For some, the increase in the trust tax rate from 33% to 39% has prompted them to ask the question – should we wind up our trust?



Rather than looking at the purpose of having a trust with a narrow tax lens, it may be of benefit to consider your circumstances more broadly and ask whether it is time to actually alter and even increase the role of your trust.

A trust provides a number of benefits such as asset and relationship property protection, succession and a way to manage complex family relationships. So instead, it may be worth asking:

- Do you have the right trustees, both now and on your passing.
- What happens on your death (is your will up to date), should the trustees change if you pass away.
- Who should benefit under the trust, in what proportions and is that recorded.
- If you make a distribution to your adult children and their relationship breaks down what happens – are risks mitigated.
- In what circumstances should the trust be wound up.

A will sets out how your assets should be dealt with in the event you pass away. A trust can survive beyond your death, hence it is important that they continue to function and operate as you intend - and it is better to sort this while you're here.

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