Commercial eSpeaking

MIKE LUCAS LAW FIRM
BARRISTERS AND SOLICITORS

164 Great South Road, Manurewa, PO Box 75 144 Manurewa 2243,
DX EP76006 | **T** 09 269 2844 | **F** 09 269 2847
reception@mikelucaslaw.co.nz | www.mikelucaslaw.co.nz

ISSUE 70 | Winter **2025**

Welcome to the Winter edition of *Commercial eSpeaking*.

Our lead story is a commentary on the government's Budget delivered by the Minister of Finance on 22 May. As indicated earlier by the minister, this Budget is more 'business-friendly' than those of previous years. In particular, the Investment Boost and the establishment of Invest New Zealand will help increase GDP and wages.

Having said that, the New Zealand economy is nowhere near being out of the woods. In particular, the country is significantly vulnerable to global economic and political uncertainties.

To talk further with us on any of the topics covered in this e-newsletter, or indeed on any other legal matter, please don't hesitate to contact us. Our details are on the top right.

NZ LAW
Stronger Together.

Budget 2025

'Fiscally conservative'?

Over the past few years, New Zealand has experienced an extended period of high inflation, high interest rates and low growth. With this 2025 Budget, and despite worldwide geopolitical and geoeconomic tensions, the minister has indicated New Zealand's fiscal outlook will gradually recover, despite an initial period of retraction. The government now expects what the minister has called 'a modest surplus' by 2028–29.

There is, however, some good news for business with Investment Boost with increased write offs of the value of productive new assets, and the creation of Invest New Zealand.

PAGE 2 ▶

Major changes ahead for New Zealand's financial landscape

Credit Contracts and Consumer Finance Amendment Bill

In late March, the government introduced a package to make major changes to New Zealand's financial services landscape. Included is a Bill to amend the CCCFA to reform the regulation of credit markets to make them fairer, more efficient and transparent.

The overall intent of the CCCFA is to protect you when you borrow money, or buy products or services on credit.

PAGE 3 ▶

Business briefs

Misleading and deceptive conduct

The Commerce Commission has filed criminal charges against HelloFresh New Zealand, alleging that it misled former customers when reactivating cancelled subscriptions.

Whakaari Management Limited conviction overturned

Earlier this year, the High Court overturned WML's conviction for failing to ensure the safety of tourists visiting Whakaari/White Island. Central to this decision was the interpretation of 'management or control of the workplace.'

RMA to be replaced with two new acts

The government recently announced that the Resource Management Act 1991 will be replaced by two new acts: the Planning Act and the Natural Environment Act.

PAGE 4 ▶

RETURN TO FRONT PAGE

Budget 2025

'Fiscally conservative'?

On 22 May, the Minister of Finance, the Hon Nicola Willis, presented what she had termed a 'No BS Budget.' It is officially entitled 'The Growth Budget.'

Described by the minister as being 'fiscally conservative,' public expectations were not high for a lolly scramble of funding for new initiatives.

In the weeks leading up to the Budget, the minister drip-fed announcements of about $1.9 billion of new spending and, amongst others, a significant 'restructure' to the pay equity regime. As a result, it was anticipated that on Budget Day, there would be what the minister has called 'reprioritising of spending.'

Over the past few years, New Zealand has experienced an extended period of high inflation, high interest rates and low growth. With this 2025 Budget and despite worldwide geopolitical and geoeconomic tensions, the minister has indicated New Zealand's fiscal outlook will gradually recover, despite an initial period of retraction. The government now expects what the minister has called 'a modest surplus' by 2028–29.

Good news for business

Called Investment Boost, businesses can now write off 20% of the value of productive new assets such as machinery, tools and equipment from that year's taxable income – in addition to regular depreciation rates. By encouraging investment, the government expects a 1% increase in GDP and wages by 1.5% over the next 20 years, with half of these gains being in the next five years.

Greeted positively by the business sector, these new rules came into force on 22 May, passed under urgency after the Budget was presented.

Intended to attract foreign investment to this country, the government has created a new agency, Invest New Zealand. The agency's objective is to create a vibrant investment market in this country. Initially collaborating with New Zealand Trade and Enterprise, Invest New Zealand has a clear direction to attract international capital, ideas and expertise in order to lift wages and grow the country's economy.

Additionally, the government says it will be easier for startups to compete for talent by changing how employee share schemes are taxed.

Supporting New Zealand's strong position in the film industry, screen production rebates will be renewed.

Government cuts contributions to KiwiSaver

The government's contribution to KiwiSaver accounts is to be halved. Until now, KiwiSaver account holders have received $521 a year from the government; this is to be cut to $260.72.

In addition, the threshold for the minimum 'default' rate of employee and matching employer KiwiSaver contributions is to be increased from 3% to 4%; this is to be a two-step process over the next three years. This will be optional; KiwiSaver account holders may opt to stay at 3%.

With many KiwiSaver balances 'modest,' the minister says this change should encourage New Zealanders to save more for their retirement.

More positive news for New Zealand's younger taxpayers is that 16 and 17-year-olds will start to receive government contributions to their KiwiSaver from July (currently there is no contribution). Requirements for employers to match these deposits will start in 2026.

Benefits

Jobseeker and emergency benefits to be means tested: Not anticipated by pundits, 18 and 19-year-olds will have their Jobseeker and emergency benefits tested against their parents' incomes, although there are some exemptions. The threshold against which these benefits will be measured is yet to be decided.

Medicine prescriptions: The length of a prescription is to be extended from three months to 12 months.

Working for Families: Targeted at low to middle-income families with children, the family income threshold and abatement rate will increase by an average of $14/fortnight. The additional cost for this will be funded by extending the income

CONTINUE TO PAGE 5

RETURN TO FRONT PAGE

Major changes ahead for New Zealand's financial landscape

Credit Contracts and Consumer Finance Amendment Bill

On 31 March 2025, the government introduced into Parliament a reform package making major changes to New Zealand's financial services landscape. Included in the reform package is the Credit Contracts and Consumer Finance Amendment Bill which proposes to reform the regulation of credit markets to make them fairer, more efficient and transparent.

The overall intent of the Credit Contracts and Consumer Finance Act 2003 (CCCFA) is to protect consumers when borrowing money, or buying products or services on credit. The bill proposes significant changes to the CCCFA to modernise and improve the regulation of financial services, benefitting both consumers and lenders.

Key proposals and Implications

The bill proposes several key changes to the CCCFA. These aim to simplify and streamline compliance obligations for consumer credit providers (ie: businesses or individuals that offer credit, such as loans or credit cards) and, in some ways, reduce the risk of CCCFA breaches. We summarise the key changes.

FMA oversight

One of the most significant changes proposed is the shift in regulatory responsibility. The bill proposes to transfer the responsibility of enforcing the CCCFA from the Commerce Commission (CC) to the Financial Markets Authority (FMA).

The shift is intended to align consumer credit regulation with broader finance markets regulation under the Financial Markets Conduct Act 2013 (FMCA). This will result in the FMA becoming the sole conduct regulator for financial markets in New Zealand. By centralising regulatory oversight, the bill aims to create a more cohesive and efficient regulatory environment.

FMA licencing

The bill introduces a licensing regime for lenders, whereby lenders will need to be licensed under the FMA. This will replace the current certification system, where lenders must be certified by the CC (unless they are already exempt). For those already certified under the CC, there won't be an immediate impact as they will be deemed to be licensed under the FMCA.

This change ensures that only qualified and responsible lenders operate in the market. The new licensing process will involve more stringent checks and ongoing compliance requirements that are intended to improve the overall quality and reliability of lenders.

Consequences of disclosure breaches

Another important aspect of the bill is the proposed amendment of disclosure requirements. The revision aims to avoid disproportionate consequences from minor or technical disclosure breaches.

The change will limit situations where a lender's failure to make required initial or variation disclosures results in the debtor not being liable for the costs of borrowing. This change aims to balance the need for transparency with the practicalities of compliance, ensuring that consumers are adequately informed without imposing disproportionate burdens on lenders.

Other changes

The bill also includes some other changes for lenders that are intended to simplify and streamline the regulation of financial services. The key benefits include:

- Revoking the due diligence duty for directors and senior managers
- Repealing the annual reporting requirements, reducing ongoing compliance costs for lenders (ie: not required to prepare annual reports)
- Wider exemptions for loans to borrowers who are trustees (previously this exemption only applied to family trusts, but the bill extends this to any category of trust), and

CONTINUE TO PAGE 5

Business briefs

Misleading and deceptive conduct

The Commerce Commission has filed criminal charges against HelloFresh New Zealand, alleging that the meal-kit delivery company misled former customers when reactivating cancelled subscriptions.

The charges relate to conduct where customers were allegedly offered discount vouchers via cold calls without being clearly informed that accepting the voucher would reactivate their subscriptions and result in charges to their account.

Commerce Commission Deputy Chair, Anne Callinan, stated that the alleged conduct may have breached the Fair Trading Act 1986, which prohibits misleading and deceptive practices. Given the prevalent use of subscription-based services, the Commerce Commission is focused on tackling 'subscription traps,' where consumers may be unwittingly signed up for ongoing service contracts.

While the allegations have yet to be tested in court, the case serves as a reminder for businesses to ensure their sales practices are clear and transparent, and for consumers to remain vigilant.

Misleading or deceptive conduct, even if unintentional, can result in significant penalties and reputational damage. The Commerce Commission has signalled that enforcing fair trading laws in the online subscription space is a priority.

Whakaari Management Limited conviction overturned

In previous editions of *Commercial eSpeaking*, we have reported on the conviction and sentencing of Whakaari Management Limited (WML). The District Court convicted WML under section 37 of the Health and Safety at Work Act 2015 for failing to ensure the safety of tourists visiting Whakaari/White Island following its December 2019 eruption that killed 22 people and severely injured 25 more.

Section 37 imposes a duty on those who manage or control a workplace to ensure, so far as is reasonably practicable, that their workplace is without risks to the health and safety of any person.

The High Court has since overturned WML's conviction.[1] Central to this decision was the interpretation of 'management or control of the workplace.' WML's role was limited to granting access to Whakaari – it did not actively direct or oversee activities on the island. This lack of operational control meant WML did not manage or control the workplace in the sense contemplated by section 37.

The High Court found that the risk of people being on Whakaari during an eruption stemmed from the work activity controlled by the tour operators, not WML's business operations. WML had imposed health and safety obligations on the tour operators and relied on regulatory guidance in respect of the risk. As a result, the High Court was satisfied that, even if section 37 had been triggered, WML had taken all reasonable steps to discharge such a duty.

Although this decision may be a relief to many business owners, we urge continued caution. Neglecting to exercise power or control does not exempt a business from its duty under section 37. A practical and fact-specific exercise should be undertaken to assess whether the business can actively control or manage the workplace. Businesses must continue to identify circumstances where a duty may be owed and ensure appropriate steps are taken to discharge this.

1 *Whakaari Management Ltd v WorkSafe New Zealand* [2025] NZHC 288.

The Resource Management Act 1991 to be replaced with two new acts

The government recently announced that the Resource Management Act 1991 (RMA) will be replaced by two new acts: the Planning Act and the Natural Environment Act. This is the final stage of the government's three-phase resource management reform. It follows the repeal of the Labour government's RMA replacement legislation, amendments to the RMA and implementation of the Fast-Track Approvals Act 2024.

The dual act approach aims to minimise duplication between laws and regulations, and to provide a more concise framework for managing the effects on the natural environment. The Planning Act will focus on land-use planning and regulation, while the Natural Environment Act will address the use, protection and enhancement of the natural environment.

Key proposed changes include:

- **Nationally standardised land use zones**: the new resource management system will have one combined plan per region. Each plan will include environmental, spatial planning and planning chapters
- **Resource consent**: resource consents will still be required. However, with the new nationally standardised land use zones, there will be more permitted activities, leading to fewer resource consents being required, and

CONTINUE TO PAGE 5

RETURN TO FRONT PAGE

CONTINUED FROM PAGE 2

Budget 2025

testing for the Best Start tax credit to include the first year after having a child, as well as the current situation of means testing for the second and third years. Payments will cease when a family's income reaches $97,000 a year.

SuperGold card: A rise in the income threshold will allow a rates rebate for 66,000 additional lower income households with a SuperGold cardholder.

Disability Support Allowance: $760 million has been allocated to support the disability sector. The government has called this a 'seismic shift' in funding.

More . . .

Already announced and included in Thursday's Budget is more funding for health, education, law and order, and other frontline public services. This includes:

- Significant additional funding for the education sector for children with additional learning needs, schools/early childhood education and tertiary operational grants; additional help with maths skills; and lifting school attendance,
- Nelson Hospital is to undergo a much-publicised need for redevelopment, together with Wellington's emergency department. Auckland hospitals are to be upgraded,
- After decades of underinvestment, the country's rail will receive a $460 million upgrade to the metro and regional rail networks, and
- The Defence Force will receive significantly more investment to boost New Zealand's capabilities for the army, navy and air force, and in cyberspace.

To read the Budget in more detail, click here for the minister's Budget speech.

If you would like to discuss the implications of the government's business incentives, please don't hesitate to contact us. +

CONTINUED FROM PAGE 3

Major changes ahead for New Zealand's financial landscape

- Lenders no longer being required to provide continuing disclosure if the borrower's unpaid balance is available on the lender's website, offering a more flexible approach to meeting disclosure requirements.

Next steps

It will be crucial for businesses to either engage, or keep up to date, with the consultation process for the reform package and to proactively adapt to the proposed changes.

Given the FMA's additional role, lenders should evaluate their compliance practices to meet regulatory expectations under the licensing regime, and familiarise themselves with the additional obligations for licenced entities under the FMCA.

Being proactive and understanding how these changes will impact your business, especially lenders unfamiliar with FMCA licensing, will help ensure a smoother transition and improved compliance once the changes are fully implemented.

Although the government has not indicated when this legislation will pass, it is expected before the end of the year. If you need assistance preparing your business for these proposed changes, please contact us. We are here to help. +

CONTINUED FROM PAGE 4

Business briefs

- **Compliance and enforcement**: a national compliance and enforcement regulator will be established to ensure consistency and reduce variability in compliance and enforcement activities. This will be done in a separate legislative process.

The government has indicated that it intends to introduce the new legislation to Parliament by the end of 2025, put it before the select committee in 2026, and pass it into law before the general election at the end of 2026. +

NZ LAW Stronger Together.

DISCLAIMER: All the information published in *Commercial eSpeaking* is true and accurate to the best of the authors' knowledge. It should not be a substitute for legal advice. No liability is assumed by the authors or publisher for losses suffered by any person or organisation relying directly or indirectly on this newsletter. Views expressed are those of individual authors, and do not necessarily reflect the view of this firm. Articles appearing in *Commercial eSpeaking* may be reproduced with prior approval from the editor and credit given to the source.

©NZ LAW Limited, 2025.. Editor: Adrienne Olsen, Adroite Communications. E: adrienne@adroite.co.nz. M: 029 286 3650.

The next edition of *Commercial eSpeaking* will be published in **mid-September**.

Click here to **Unsubscribe**.