

July 2010

LG Law

Football Fever - Rugby World Cup

The FIFA World Cup provides a reminder that the Rugby World Cup (**RWC**) is to kick off in September next year and is taking place in our backyard. It is timely to consider the recently introduced Rugby World Cup 2011 (Empowering) Bill (**Bill**) that will enable fast track consents and regulatory approvals for temporary activities and facilities related to the RWC and other rules that apply in our back yard.

RUGBY WORLD CUP 2011 (EMPOWERING) BILL

The Bill has been referred to the Government Administration Select Committee and public submissions close 16 July 2010. We expect the Bill will be considered under urgency and become law shortly after submissions close.

The Bill establishes the RWC Authority (**Authority**) with the power to hear and determine applications for approvals and declarations (as a permitted activity) for any activities or facilities reasonably necessary for the RWC. Approvals, declarations, or 'test' applications in respect of test events (as defined) are limited in duration applying only during the RWC period and avoid the need for resource consents under District and Regional Plans, and other consents or permits required under other statutory planning instruments such as bylaws, codes, rules and conservation management plans. Only the relevant statutory person or body can seek declarations. 'Test' applications allow further limited approval to test the adequacy and appropriateness of an activity or facility for its intended RWC, or associated, purpose by holding an earlier 'test event'.

The Bill does not apply to approvals or permits required under the Biosecurity Act 1993, Hazardous Substances and New Organisms Act 1996, the Food Act 1981 or the Health Act 1956. Further the Authority does not have the power to grant approvals or declarations in respect of the Building Act 2004, the Gambling Act 2003 or transport legislation. However under the urgency mechanisms (discussed below) the Minister would appear to have that power.

Involvement of Local Authorities

Despite approval or declaration processes, enforcement of approvals and declarations will remain with the relevant statutory body and its duly appointed officers as if the approvals were given under the pre-existing legislation. The Bill also prescribes that each territorial authority, where an activity is to take place or a facility is being constructed, must provide premises for and administrative support to the Authority for the duration of its activities. This will require affected Councils to establish an administrative secretariat which will be required to receive and register applications, forward applications to the Authority and perform other functions requested by the Authority.

Provision has also been included to allow approvals granted by the Authority to continue to enable an applicant to seek consideration from the relevant statutory body for appropriate consents to continue the activity after the end of the RWC.

Urgency

If an activity or facility is necessary for the proper conduct of the RWC, and approval cannot be granted in time, the Bill proposes urgency mechanisms that have the effect of overriding any rule of law, enactment and or statutory

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planning instrument. If urgency applies an application can be made to the Authority to recommend to the Minister for the RWC that he or she either:

- declare the activity or class of activity as a permitted activity (by Order in Council); or
- grant an urgent approval subject to a further assessment of whether an activity or facility is necessary to secure public safety, avoid seriously compromising the conduct of the RWC or support the delivery of services by or through Rugby New Zealand 2011 Limited.

Liquor Licences

The Bill also proposes a temporary alternative licensing process to the process under the Sale of Liquor Act 1989 (**SLA**). Applications for RWC liquor licences (**licences**) are made to and determined by the Authority. Licences are limited in duration applying only during the RWC period. Applications are only open to persons eligible to hold an on-licence and applicants must meet the requirements set out in the Bill. The Authority is required to consider reports from the Police, the district Medical Health Officer and the DLA Inspector in respect of each application, publicly notify the application and must hold a hearing if the application is opposed. Otherwise it may determine the application on the papers.

Inspectors retain their powers of entry under the SLA and the Police also retain their powers of inspection, closure of premises, demand for information and seizure. An Inspector or Police constable can apply to the Authority to vary, suspend or cancel licences and/or suspend or cancel manager's certificates. A licensee can be fined up to \$5,000 for failing to appoint a manager or ensuring compliance with the licence and the Bill and the other penalties in the SLA may also apply for a breach.

MAJOR EVENT STATUS PREVENTS FREE FOR ALL

The RWC was declared a Major Event¹ under the Major Events Management Act 2007 (**Act**). The Act provides protection to the RWC brands, slogans and emblems² to maximise the benefits to New Zealand of attracting such events, and to prevent unauthorised commercial exploitation of the event at the expense of the organisers and event sponsors.

The key measures in the Act to achieve those objectives:

- Prohibit representations that suggest persons, brands, goods or services have an association with a major event when they do not;
- Prohibit advertising intruding on a major event activity and the attention of the associated audience; and
- Prohibit ticket scalping and pitch invasion.

Representations

The prohibition on representations does not apply of course if you have written authorisation from the event organiser. The prohibition does not apply to the personal opinions of natural persons made for no commercial gain, or to news reporting, criticism or review of the event. The prohibition will not apply to other honest industrial or commercial practices such as use of pre-existing registered trademarks. However if you are trading in goods and services or are holding events to celebrate the RWC and you use or propose to use emblems or words listed in the **Major Events Emblems and Words (Rugby World Cup 2011) Order 2008** you may wish to seek advice as to whether you should obtain an authorisation from the event organisers.

¹ Major Events Management (Rugby World Cup 2011) Order 2007.

² Major Events Emblems and Words (Rugby World Cup 2011) Order 2008.

Intrusive advertising

The prohibition on intrusive advertising could see 'clean zones' and 'clean transport routes' set up. In 'clean zones' street trading and advertising are prohibited without authorisation from the event organisers. In addition advertising visible from a clean zone such as banners dragged by aircraft or signage visible from the zone is prohibited. 'Clean transport zones' apply to transport corridors and can be created to cover an area of up to 5 kilometres from the closest boundary of a 'clean zone' to a motorway, state highway or railway line. However the prohibition in respect of 'clean transport zones' is narrow and applies only to advertising without authorisation within those zones.

The prohibitions apply to billboards erected on private property but businesses that exist within the clean zone or clean transport zone are exempt from the prohibition if the business is carrying out its ordinary activities. For example the prohibition would not apply to the name on a building or a pre-existing billboard advertising the services of the organisation. The prohibitions do not apply to the attire of members of the public or magazines, newspapers or electronic devices unless the attire or objects are intended to intrude upon the major event activity or its audience. For example you would be in breach of the Act if without authority you wore a t-shirt for the local pizza shop and/or your ipod advertised the pizza shop as you wore it and these actions were intended to advertise the pizza shop to the audience in the clean zone.

Penalties

The Police, and enforcement officers appointed under the Act, have significant powers to seize or cover up things in clean zones, issue warnings and obtain search warrants to enter private premises. The event organiser and the major event sponsor (with permission from the organiser) may seek injunctive relief to prevent breaches, pursue damages, seek an account of profits and/or erasure of the advertising or representation where a person is in breach of those prohibitions. Criminal proceedings can also be commenced for a breach of the prohibitions including ticket scalping and pitch invasion.

Both civil and criminal proceedings can be brought up to three years after the date the breach was discovered or ought to have been discovered. This affords event organisers and sponsors the opportunity to view all video footage from the event and from clean zones (if any) and commence proceedings for any breaches of the Act.

If you have any queries in relation to this **LGLaw** please contact one of our Local Government partners.

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