

Welcome

Welcome to the 2011 **Winter** edition of the Low Down. In this edition we cover some critical **Law Changes** in force and **In the Works**. We also **Celebrate the Success** of more of our clients and update you as to **Our People**.

LJ NEWS

Rick Shera was recently interviewed by Computerworld for its Q&A series (you can read the interviews here):

- Part 1 "File sharing, fair use and the Trans-Pacific Partnership free trade agreement" at <http://tiny.cc/p9c1o>; and
- Part 2 "Risk taking and social networking in the new broadband era" at <http://tiny.cc/xm1tj>.

CLIENT SUCCESS

Caldera Health Limited

Lowndes Jordan congratulates client Caldera Health Limited on recently completing a successful second round of capital raising through a combination of existing shareholders and a number of new investors coming on board.

Caldera Health Limited is led by internationally renowned New Zealand scientists Jim Watson and Richard Forster and is developing a diagnostic platform to enable the early detection of prostate cancer using biomarkers i.e. substances that indicate the presence of the disease. Caldera believes that the biomarkers it has identified will produce more accurate results in diagnosing prostate cancer than the current approach, a blood test that has proven to be unreliable.



Lowndes Jordan – Shining Star Supporter of KidsCan Charitable Trust



Lowndes Jordan – Proud Supporter of NetSafe Inc.



DEVELOPMENTS IN THE LAW

Financial advisers regulation

The new financial adviser regulations come into full effect from 1 July. From this date onwards it will be an offence for financial advisers to provide retail clients with personalised investment planning services and financial advice on investment products without the necessary authorisations. The Financial Markets Authority (FMA) has stated that it will be checking advisers who have applied for authorisation but haven't made the deadline to complete their competency assessments, and will be taking action against anyone who incorrectly holds themselves out as authorised after 1 July. A cabinet paper was released in June seeking policy approval for the drafting of regulations to re-categorise certain financial products and exempt retirement village operators from certain provisions of the regime. A copy of the cabinet paper can be found at <http://tiny.cc/w45ox>. For more information please contact **Michael Busch** [mwb@lojo.co.nz], **Andrew Wallace** [ajw@lojo.co.nz] or **Melinda Whyte** [maw@lojo.co.nz].

Securities Act 1978

Issuers and advisers are reminded that a number of changes to the Securities Act became effective on 1 May. Key changes from a practical perspective include:

- the new prospectus registration regime;
- the move from a pre-registration vetting regime to post-registration review by the FMA over a specified period (generally five working days); and
- the requirement for issuers to publicise the registration of a prospectus online.

As mentioned in the previous edition of the Low Down, substantial further reform has been proposed for New Zealand's securities laws. Officials are completing their policy work in a number of areas, and are still on track to release an exposure draft of the bill in August for public consultation. Should you have any queries in the meantime please contact **Michael Busch** [mwb@lojo.co.nz], **Andrew Wallace** [ajw@lojo.co.nz] or **Melinda Whyte** [maw@lojo.co.nz].

KiwiSaver

In the May 2011 Budget, the Government announced a number of changes to KiwiSaver:

- From 1 April 2012, the tax-free status of employer contributions to KiwiSaver will end. A tax will be levied on employer contributions at the employee's marginal tax rate.
- For the year ending 30 June 2012, the Member Tax Credit Amount will be halved from \$1 to 50c for every \$1 contributed by members, up to a maximum of \$10 per week or \$521.43 per year.
- From 1 April 2013, both the minimum member and the minimum employer contributions rate will rise from 2% to 3% (for both new and existing members). This will also be the default contribution rate. Members will still be able to select the higher rates of 4% or 8%.

New members will continue to receive the \$1,000 Kick-Start payment. For more information contact **Michael Busch** [mwb@lojo.co.nz] or **Melinda Whyte** [maw@lojo.co.nz].

Copyright (Infringing File Sharing) Amendment Act 2011

In April the Copyright (Infringing File Sharing) Amendment Act was passed, introducing a 'three strikes' regime in an attempt to curb illegal file-sharing over the internet. The regime comes into effect on 1 September 2011, and applies to mobile phone networks from August 2013. Copyright owners (or their agent) may notify an internet service provider (IPAP) that someone is illegally downloading material (e.g. films or music) through 'file sharing' (e.g. via peer to peer). The IPAP will then send an infringement notice to the internet account holder. After three warnings (at least 28 days apart), the copyright owner can take a claim to the Copyright Tribunal, which can impose a penalty up to \$15,000 on the internet account holder. Penalties can be imposed whether or not the account holder knows its account is being used to infringe. For more information contact **Rick Shera** [rjs@lojo.co.nz].

Trustees and statutory supervisors regulation

The Securities Trustees and Statutory Supervisors Act 2011 comes into force on 1 October. The Act requires securities trustees and statutory supervisors to be licensed by the FMA (and in doing so removes the statutory rights to perform these roles held by the existing trustee corporations, opening the door for others to enter the market), and to comply with ongoing monitoring and reporting obligations. For further information please contact **Michael Busch** [mwb@lojo.co.nz], **Andrew Wallace** [ajw@lojo.co.nz] or **Melinda Whyte** [maw@lojo.co.nz].

DEVELOPMENTS IN THE LAW Contd

Sports Charities

We regularly assist entities who wish to obtain charitable status through registration with the Charities Commission under the Charities Act 2005. In recent times the law, and the approach taken by the Charities Commission, have been refined and one particular area of focus has been "sports charities". These might include, for example, charitable trusts established to benefit youth development in sport or sporting clubs seeking charitable status so as to assist with fund-raising. The Act requires that, to be charitable, an entity must be "established and maintained exclusively for charitable purposes". "Charitable purpose" can include any "matter beneficial to the community". In assessing an entity the Commission is required to focus not only on the entity's founding document but also its current and proposed activities, and any other information the Commission considers relevant. To summarise numerous court decisions, and the approach currently applied by the Charities Commission, an entity with a focus on sporting activity will generally qualify as charitable where the following apply:

- The entity's primary object is not the promotion of the sporting activity itself, but rather the advancement or promotion of health or education, such object to be achieved through participation in the sporting activity – a fine distinction but an important one.
- Any non-charitable activities must be ancillary to charitable activities, and not themselves primary activities of the entity.
- The benefits provided by the entity are not limited to an exclusive group but are available to the wider public.
- The entity's activities create a genuine public benefit.

It has been our experience that the Commission will, in good faith, consider numerous rounds of submissions, and it is well worth persevering with an application that has initially failed or been challenged by the Commission. For more information contact **Ben Morrison** [brm@lojo.co.nz] or **Rick Shera** [rjs@lojo.co.nz].

IN THE WORKS

As at **30 June 2011**, you can still make submissions on the following:

- **MED fee proposals** - The MED has released a discussion document that considers a wide range of potential changes to the fees and levies that fund the FMA, External Reporting Board (which will replace the Accounting Standards Review Board from 1 July), Companies Office and Insolvency and Trustee Service. A copy of the discussion document can be found <http://tiny.cc/rwmyi>. Submissions due by **8 July 2011**.
- **Review of the Incorporated Societies Act 1908** - The Law Commission is seeking public submissions on the legal structures and rules which govern incorporated societies and a range of issues and options for reform in its submissions paper which you can find here: <http://tiny.cc/kg3lh>. Submissions due by **30 September 2011**.

Please contact us if you require further information in respect of any of these reviews, or if you would like assistance in drafting submissions.

OUR PEOPLE New additions

ANDREW WALLACE, SENIOR SOLICITOR



Lowndes Jordan is pleased to announce that Andrew Wallace has joined the firm's commercial team. Andrew is a securities and corporate law specialist experienced in advising private and public entities on a range of securities offerings, acquisitions, divestitures, restructurings and joint ventures, as well as general corporate and commercial advisory matters.

Prior to joining the firm Andrew was a senior associate at a leading national New Zealand firm, where he worked for a number of years in addition to a stint in the US at a leading New York firm. Andrew is admitted to practice in New Zealand and New York, and is a member of the Institute of Directors and INFENZ.

Cecil Priest

Cecil Priest previously worked for Canterbury Chambers in Christchurch and before that worked as a solicitor for a leading South Island law firm. She has experience in a range of commercial litigation.

:: Contact

Graham Jordan, Partner
gcj@lojo.co.nz

Rick Shera, Partner
rjs@lojo.co.nz

Michael Busch, Partner
mwb@lojo.co.nz

Michael Morrison, Partner
mhm@lojo.co.nz

Karl Stolberger, Partner
kfs@lojo.co.nz

Ben Morrison, Partner
brm@lojo.co.nz

Barbara Versfelt, Special Counsel
bcv@lojo.co.nz

SOLICITORS

Andrew Wallace	ajw@lojo.co.nz
Angela Beros	alb@lojo.co.nz
Cecil Priest	cmp@lojo.co.nz
Kerry Puddle	kdp@lojo.co.nz
Melinda Whyte	msw@lojo.co.nz
Rachael Johnson	rtj@lojo.co.nz
Sheena Kirkland	smk@lojo.co.nz
Siobhan O'Shea	sjo@lojo.co.nz
Stephanie Nicolson	sjn@lojo.co.nz

LEGAL EXECUTIVE

Joss Orum jco@lojo.co.nz

LOWNDES JORDAN

Level 22, ANZ Centre
23-29 Albert Street, Auckland
PO Box 5966, Auckland 1141
New Zealand
Ph: +64 9 309 2500
Fax: +64 9 309 1445
Email: mail@lojo.co.nz
Web: www.lojo.co.nz

If your colleagues want to subscribe to, or you want to unsubscribe from, the Low Down, contact mail@lojo.co.nz