



HAND HELD CELLPHONE BAN

January 2010

From 1 November 2009, a change to the Road Rules means that motorists are no longer able to text or talk on a hand-held cell phone while driving. This change is seen by many as a welcome relief and a good step towards making New Zealand roads a safer place. New Zealand joins at least 50 other countries who have bans or partial bans on the use of hand-held phones by drivers.

Drivers must not use a cellphone while driving unless one of the following exceptions applies:-

1. A Police Officer on duty is making a call.
2. The driver is making an emergency 111 or *555 call and it is unsafe or impractical to stop.
3. The phone does not require the driver to hold and manipulate it to make, receive or terminate the call (through the use of an appropriate hands-free device)
4. The phone is secured in a mounting fixed to the vehicle and the driver manipulates the phone infrequently and briefly.

A "mobile phone" by definition under the rule does not include CB radio, or any other kind of two way radio, or an earpiece or mouthpiece connected (physically or otherwise) to a mobile phone to allow the driver to use the phone without holding or manipulating it.

The change will see drivers using hand-held cell phones behind the wheel incurring an \$80 fine along with 20 demerit points. The Sunday Star Times recently noted that there are over 9,000 drivers in New Zealand with over 80 demerit points. Drivers accumulating over 100 demerit points will lose their licence. It will be possible to apply for limited licences but only where the applicant can establish that the loss of their licence brings undue hardship to another party (say an employer) or extreme hardship to oneself - a very hard threshold test to pass.

If you are an employer, we suggest an amendment to your employment agreements to provide that employees operating motor vehicles as part of their employment must comply with the new law. Employers requiring employees to make mobile phone calls from their vehicles in employment will have a responsibility to provide a hands free solution, or advise the employee in writing that they are not to make mobile phone calls in a company vehicle.

For more information, please contact one of our offices.

This article is provided for general information purposes only and not as legal advice.

