

The Bell Gully *Regulator Report* lists recent changes, decisions and developments at the main New Zealand and Australian corporate, commercial and competition regulatory bodies for the period to 6 June 2007. For further details on any matter in this report, just click on the hyperlink below each item. Should you have any questions regarding the contents of the Bell Gully *Regulator Report* please call your usual contact at Bell Gully or contact a member of the Bell Gully [Corporate Team](#) or the [Competition Team](#). For past editions of the Bell Gully *Regulator Report* please [click here](#).

A companion publication, *Commercial Quarterly*, Bell Gully's digest of current corporate and commercial law issues, is published every quarter. For the Autumn issue of *Commercial Quarterly* please [click here](#). For all other Bell Gully publications please [click here](#).

<p>New Zealand Exchange (NZX)</p>	<ul style="list-style-type: none"> <p>Listing Rule changes for annual reports and half-yearly reports finalised</p> <p>Following the Government's lead to reduce compliance costs associated with providing companies' annual reports to shareholders, NZX is amending the NZSX, NZDX and NZAX Listing Rules to allow annual reports and half-yearly reports to be sent out in line with the new section 209 Companies Act provisions. The final draft amendments to the Listing Rules were sent to the Minister of Commerce for approval on 9 May 2007.</p> <p>Click here to view the NZSX/NZDX Listing Rule amendments Click here to view the NZAX Listing Rule Amendments</p> <p>To read a summary of these NZX Listing Rule amendments see the Autumn issue of <i>Commercial Quarterly</i> or click here</p> <p>Market insight</p> <p>NZX has published the May 2007 edition of its monthly newsletter, "Market insight", which contains details of the latest news and events at NZX.</p> <p>Click here to access the May Market Insight</p>
<p>Securities Commission</p>	<ul style="list-style-type: none"> <p>Nearzero Inc. – Interim liquidators appointed</p> <p>On 9 May 2007 the Securities Commission, having formed the view that the securities offered by NearZero Inc. (a company incorporated in the State of Nevada, USA) were offered in breach of the Securities Act 1978, banned all advertisements for the offer. Interim liquidators have been appointed for the New Zealand assets of NearZero Inc.</p> <p>Click here for more</p> <p>Publication: Review of financial reporting by issuers – cycle 4</p> <p>The Securities Commission has completed the fourth cycle of its financial reporting surveillance programme. Cycle 4 findings were similar to the results of previous cycles where the Commission noted few serious problems, but thought that a number of issuers should raise the standard of their financial reporting. Findings from issuers applying NZ IFRS are available for the first time since the Commission started the financial reporting surveillance programme in 2005. The Commission considers that the level of compliance with NZ IFRS for the early adopters was generally good. However, it did find a number of common non-disclosures by many of the NZ IFRS issuers. These relate primarily to disclosures required by NZ IAS 1 Presentation of Financial Statements.</p> <p>Click here to access this publication Click here to access the Security Commission's press release</p>

<p>Securities Commission continued</p>	<ul style="list-style-type: none"> • <i>New securities law to come into force later this year</i> The Securities Commission has announced (on its new securities law website) that there is still no indication of when the remaining provisions of the new securities legislation, passed in October last year, will come into force. The date originally given was mid-2007. However, regulations which are required for the legislation to take effect are still being finalised and will come into force in a phased approach. In the meantime, the Securities Commission is preparing a guide to the new securities law for investment advisers and market participants. Click here to register for a free copy of the Security Commission's guide to new securities law • <i>Securities Act Exemption Notices</i> The following Securities Act exemption notices have been published: <ul style="list-style-type: none"> ➤ <i>Securities Act (New Zealand Post Limited Stamp Collectors) Exemption Amendment Notice 2007/103</i> This notice extends the expiry date of the Securities Act (New Zealand Post Limited Stamp Collectors) Exemption Notice 2002 (the principal notice) from 31 May 2007 to 31 May 2012. The principal notice exempts New Zealand Post Limited (New Zealand Post), subject to conditions, from sections 33(2), 37A(1)(c), and 52(1) and (3) of the Securities Act 1978 and clauses 7, 8, 13, 15 to 32, 35, and 36 of Schedule 2 of the Securities Regulations 1983 in respect of stamp collector customer accounts issued by New Zealand Post. ➤ <i>Securities Act (Financial Institutions) Exemption Notice 2007/113</i> This notice, which expires on 30 April 2012, is virtually identical to the Securities Act (Financial Institutions) Exemption Notice 2006, except that this notice provides for compliance with New Zealand Equivalent to International Financial Reporting Standard 7 (Financial Instruments: Disclosures). The exemptions allow financial institutions to use in their prospectuses, to the greatest extent practical, financial statements and related information that comply with financial reporting standards rather than with the requirements prescribed in the Securities Regulations 1983. ➤ <i>Securities Act (Strategic Finance Limited) Exemption Notice (No 2) 2007/127 and Securities Act (Tasman Capital Limited) Exemption Notice 2007/128</i> These notices, which expire on 31 May 2008, exempt Strategic Finance Limited (Strategic) and Tasman Capital Limited (Tasman), respectively, and every person acting on their behalf, subject to conditions, from clause 10(1)(c) of Schedule 1 of the Securities Regulations 1983 in respect of equity securities to be offered by Strategic and Tasman, which is the requirement that the registered prospectus must provide a prospective statement of cash flows. ➤ <i>Securities Act (Overseas Employee Share Purchase Schemes) Exemption Amendment Notice (No 2)/141</i> This notice amends the Securities Act (Overseas Employee Share Purchase Schemes) Exemption Notice 2002 (the principal notice) to name ABN AMRO Australia Holdings Pty Limited (AAAH) as a specified overseas issuer for the purposes of that notice. The effect of this amendment is that, subject to conditions, AAAH is exempted from the prospectus and investment statement requirements, participation deed, statutory supervisor requirements, and certain other requirements of the Securities Act 1978 and from the Securities Regulations 1983 (except regulation 8) in respect of securities offered under its employee share purchase scheme.
<p>Takeovers Panel</p>	<ul style="list-style-type: none"> • <i>Takeovers Panel issues "Code Word" on the Takeovers Code Approval Amendment Regulations 2007</i> The Takeovers Code Approval Amendment Regulations 2007 were passed on 21 May 2007 and will come into force on 1 July 2007. The Regulations make a number of technical amendments to the Takeovers Code, largely to assist in the "smoother" practical operation of the Code's requirements but some rights and obligations are also changed by the Regulations. The amendments apply to any takeover made under a takeover notice that is sent to a target company on or after 1 July 2007, or any shareholder meeting held under rule 7(c) or 7(d) if the notice of meeting was sent to shareholders on or after 1 July 2007. <p>The technical amendments arose out of discussion papers issued by the Takeovers Panel and recommendations it made to the Minister of Commerce in the period from 2003 to 2005 and include:</p> <ul style="list-style-type: none"> ○ some changes relating to shareholder meetings for approving acquisitions or allotments; ○ changes in the area of compulsory acquisition under Part 7 of the Code including requirements about the consideration payable under a compulsory acquisition and the threshold for having to pay cash consideration certified as being fair and reasonable by an independent adviser under rule 57; ○ clarification of extensions available for offers that have conditions as to the level of acceptances; ○ changes requiring the rule 22 report to be sent to offerees with the target company statement and rule 21 report on the merits of the offer to ensure that shareholders are fully informed when making a decision as to acceptance or not of an offer, and are not misled by a report on the fairness between classes; and

<p>Takeovers Panel continued</p>	<ul style="list-style-type: none"> ○ clarification of the notification obligations of the target company and the offeror to the Panel and others. The Takeovers Panel's Code Word No. 20 explains the amendments and is intended as a broad guide to the changes. The unofficial version of the Takeovers Code on the Panel's website has been updated to incorporate the technical amendments. To access a copy of Code Word No. 20 click here ● Takeovers Code Exemption Notices The following Takeovers Code exemption notices have been published: <ul style="list-style-type: none"> ➤ Takeovers Code (Talleys Fisheries Limited) Exemption Notice 2007/114 This notice applies to acts or omissions occurring on or after 10 May 2007. Dairy Trust Limited intends to make a scrip full takeover offer (offer) for ordinary shares in Open Country Cheese Company Limited (OCC). It is likely that Dairy Trust Limited will become a code company as a consequence of the offer. If Talleys accepts the offer it will increase its holding of voting rights in Dairy Trust Limited. Following that increase, Talleys and its associate AFFCO, will hold or control more than 20% of the voting rights in Dairy Trust Limited. Accordingly, the Takeovers Panel has granted Talleys an exemption from rule 6(1) of the Code in respect of any increase in the holding or control by Talleys of voting rights in Dairy Trust Limited resulting from the allotment of Dairy Trust Limited shares to Talleys under the offer. ➤ Takeovers Code (Pike River Coal Limited) Exemption Notice 2007/145 This notice, which applies to acts or omissions occurring on or after 22 May 2007, expires on 31 July 2009. Pike River Coal Limited (Pike River) is intending to make an initial public offer (IPO). Pike River will become a code company as a result of entering into a listing agreement with New Zealand Exchange Limited in connection with the IPO. The Takeovers Panel has granted exemptions, subject to conditions, from rule 6(1) of the Takeovers Code to various companies in respect of any increase in their voting control in Pike River. As a condition of the exemption granted, Pike River is required to disclose certain details of the subscription agreement options in both the prospectus and the investment statement relating to the IPO.
<p>Ministry of Economic Development (MED)</p>	<ul style="list-style-type: none"> ● Snapshot of KiwiSaver In the 2007 Budget, the Government has significantly enhanced the incentives to save through KiwiSaver. These incentives include the provision of a member tax credit by the Government and increased employer participation in KiwiSaver schemes. Further information about Kiwisaver is available on the MED's website. Click here to access the MED's snapshot of KiwiSaver ● Review of the clearance and authorisation provisions under the Commerce Act 1986: discussion document Commerce Minister Lianne Dalziel has released a discussion document reviewing the authorisation and clearance provisions contained in Part 5 of the Commerce Act. Part 5 allows the Commerce Commission to clear a merger if it considers that the merger is not anti-competitive or authorise a merger or trade practice on the grounds that it is of benefit to the public. This discussion document aims to test whether some possible changes could improve the effectiveness and efficiency of these authorisation and clearance systems. Submissions are sought from all interested parties and are due on 10 August 2007. Click here to access this discussion document ● Arrangements for facilitating trans-Tasman government institutional co-operation In 2006, the New Zealand State Services Commission and the Australian Department of Prime Minister and Cabinet commissioned a joint project to give policy makers on both sides of the Tasman a framework to support efficient and effective decisions on options for regulatory and institutional co-operation while recognising our respective national interest considerations. The MED and the Australian Department of Finance and Administration have been tasked to lead a working group of officials to produce this framework. They have now concluded phase 1 of the project and have produced a paper setting out options to support trans-Tasman government co-operation. Click here for more Click here to access this paper

<p>MED continued</p>	<ul style="list-style-type: none"> • <i>Trans-Tasman Mutual Recognition (Special Exemptions Extension) Order 2007</i> The Trans-Tasman Mutual Recognition (Special Exemptions Extension) Order 2007 came into force on 1 May 2007. This order extends, for 12 months, the exemptions from all the laws listed in Schedule 3 of the Trans-Tasman Mutual Recognition Act 1997. The exemptions would otherwise have expired on the close of 30 April 2007. Click here for more • <i>Regulatory Impact Analysis</i> Government agencies are now required to produce a Regulatory Impact Analysis (RIA) for all significant policy proposals from the discussion document stage, through to policy consultation and general analysis. Except in a limited number of cases, the RIA requirements apply to all policy proposals submitted to Cabinet which result in government bills or statutory regulations, as well as Cabinet papers proposing that the Government support or adopt a Member's Bill as a Government Bill. Click here for more
<p>Companies Office</p>	<ul style="list-style-type: none"> • <i>Clarification of new section 19 of the Financial Reporting Act</i> MED has clarified an article published in its February issue of <i>Business Update</i> discussing the requirement to register financial statements under the new 2006 amendments to section 19 of the Financial Reporting Act 1993. It notes that the exception from filing for companies that are not "large" is only for use in connection with companies under the new section 19(1)(b). It has no application to New Zealand incorporated subsidiary companies under the new section 19(1)(c). Click here for more • <i>Commencement dates given for new Companies Act provisions</i> The Companies Act Amendment Regulations 2007/107 and the Companies Amendment Act (No. 2) 2006 Commencement Order 2007/108 have been passed. The order brings into effect the remaining provisions of the Companies Amendment Act passed as part of the Business Law Reform Bill last year. Provisions which will come into effect on 18 June 2007 include: <ul style="list-style-type: none"> ➤ the changes to the requirements for sending hard copies of annual reports to shareholders; and ➤ the new directors' qualification provisions. The new provisions which allow the Registrar of Companies to exempt an overseas company from the requirement to give information or a document under Part 18 of the Act will not come into force until 1 September 2007. Click here for more on directors' qualifications To read a Bell Gully article on the new annual report provisions click here

- **Speech by Telecommunications Commissioner – TUANZ Telecommunications Day**

Douglas Webb, Telecommunications Commissioner spoke at the recent TUANZ Telecommunications Day. In this speech, the Commissioner addressed:

- gains made in the telecommunications industry in recent years through regulation;
- current regulatory activity around local loop unbundling and mobile market entry; and
- fixed network investment.

[Click here to access a transcript of this speech](#)

- **NZCC media releases**

The NZCC has issued the following media releases:

- The NZCC has accepted an administrative settlement offer from Unison Networks Limited (Unison). In September 2005 the NZCC announced its intention to declare control of Unison's electricity distribution services, on the basis that the company was earning excess profits. As part of the settlement, Unison voluntarily reduced its average electricity line charges on 1 December last year, and has rebalanced its charges to consumers in different regions so that charges reflect the cost of supplying customers.
[Click here for more](#)
- The NZCC has authorised the New Zealand Rugby Union to vary the salary cap rules for provincial unions competing in the Air New Zealand Cup. The variation applies only to the 2007 year.
[Click here for more](#)
- Kiwibank has become the fifth major bank to plead guilty to breaching the Fair Trading Act by failing to properly disclose currency conversion fees paid by its MasterCard cardholders. New Zealand banks have now paid out over \$22 million in relation to the hidden fees.
[Click here for more](#)
- The High Court has granted the NZCC leave to serve proceedings against three European companies (French companies Alstom Holdings SA and Schneider Electric Industries SA, and German company Siemens AG) for an alleged global cartel that affected the New Zealand electricity industry. The NZCC alleges that between 1988 and 2004 the companies gave effect and conspired to give effect in New Zealand to a global cartel for the supply of gas insulated switchgear.
[Click here for more](#)
- The NZCC has granted Top Energy Limited a limited exemption under the Electricity Industry Reform Act to expand its geothermal generation plant at Ngawha Springs, Northland. The expansion is to occur by way of Top Energy's wholly owned subsidiary Ngawha Generation Limited.
[Click here for more](#)
- New Zealand victims of the SkyBiz global pyramid scheme have been sent compensation from a US\$20 million fund set up to compensate victims worldwide.
[Click here for more](#)
- A further extension has been agreed to the due date for two clearance decisions relating to The Warehouse:
 - the three Foodstuffs co-operatives, seeking clearance to acquire up to 100% of the ordinary shares in The Warehouse Group Limited; and
 - Woolworths Limited, seeking clearance to acquire up to 100% of the shares in, or assets, of The Warehouse Group Limited.The due date for both decisions is now 8 June 2007.
[Click here for more](#)
- The partners of Auckland car finance business Dolbak Finance have been fined \$100,000 over car loan contracts. David Dolbel and Anthony Baker admitted breaching the Credit Contracts and Consumer Finance Act (**CCCF Act**) by failing to properly disclose fees and charges and also the Fair Trading Act by threatening to enforce the loan contracts when they did not comply with the CCCF Act.
[Click here for more](#)
- In an out-of-Court settlement reached with the NZCC, Auckland company Club Finance has agreed to refund \$788,000 to borrowers who were required to insure their car loans against the risk of redundancy, despite being unemployed at the time they took out the loans. In requiring these borrowers to take out redundancy insurance Club Finance breached the CCCF Act, which explicitly states that lenders may only require borrowers to take out insurance that is 'reasonably necessary'.
[Click here for more](#)

<p>NZCC continued</p>	<ul style="list-style-type: none"> ➤ The NZCC has declined to grant clearance for Transpacific Industries to acquire the South Island assets and businesses of EnviroWaste Services and up to 50% of the shares in Manawatu Waste. Click here for more ➤ The Supreme Court has affirmed the NZCC's view on the way that Fonterra should calculate the default milk price. The default milk price is the price at which independent dairy processors can require Fonterra to supply raw milk. Click here for more ➤ The NZCC has received an application from Vector Limited, seeking exemption from section 17 of the Electricity Industry Reform Act 1998 in relation to its involvement in the proposed development of the Te Rere Hau wind farm situated on the Tararua Ranges near Palmerston North. Click here for more ➤ The company Probitas Limited has been fined \$200,000 in the Tauranga District Court for misleading the public, in relation to a fertiliser it sold under the brand name Probitas, which did not offer the benefits claimed. The man who sold the fertiliser was fined \$60,000. They have also been ordered to pay \$12,499 in costs. Click here for more
<p>Australian Competition and Consumer Commission (ACCC)</p>	<ul style="list-style-type: none"> • ACCC media releases The ACCC has issued the following media releases: <ul style="list-style-type: none"> ➤ In an action taken by the ACCC, the Federal Court has declared that a cancer cure and other claims promoted by several NuEra companies under The RANA System breached the Trade Practices Act 1974. Click here for more ➤ The ACCC has commenced a public inquiry under subsection 152AL of the Trade Practices Act 1974 to determine whether it should vary the declared unconditioned local loop service description. Click here for more ➤ The ACCC has welcomed a decision by the Australian Competition Tribunal to comprehensively reject Telstra's proposed price for the Unconditioned Local Loop Service. The Tribunal rejected Telstra's appeal on the price for its fixed network on seven major grounds and affirmed the ACCC's decision of 25 August 2006 to reject Telstra's price undertakings. Click here for more ➤ The ACCC has issued draft notices proposing to revoke the third line forcing notifications lodged by the Seal-A-Fridge franchisors. Under the notified conduct, Seal-A-Fridge franchisors are proposing to require franchisees to acquire the two goods used in the manufacture of refrigeration seals from Seal-A-Fridge Pty Limited and/or nominated approved suppliers. Click here for more ➤ The ACCC has received a revised access arrangement for the Principal Transmission System from GasNet Australia (Operations) Pty Limited for approval under the National Third Party Access Code for Natural Gas Pipeline Systems. The access arrangement describes the terms and conditions under which GasNet Australia as owner of the PTS proposes to offer third parties access to the Principal Transmission System. Click here for more ➤ Virgin Blue Airlines Pty Limited has withdrawn its notification of an access dispute with Sydney Airport Corporation Limited under the access arbitration provisions in Part IIIA of the Trade Practices Act 1974. The dispute related to the level of, and the methodology for, calculating the price SAACL was charging Virgin Blue for the use of airside services at Sydney airport. Click here for more ➤ The ACCC has published interim determinations, together with the statements of reasons, in two telecommunications arbitrations regarding the supply of the Local Carriage Service and Wholesale Line Rental Service from Telstra Corporation Ltd to Primus Telecommunications Pty Ltd. Click here for more ➤ The ACCC has lodged a submission to the Productivity Commission's inquiry into Australia's consumer policy framework. Click here for more

<p>ACCC continued</p>	<ul style="list-style-type: none"> ➤ The ACCC has announced that it is disappointed by the Federal Court decision on allegations of price fixing in the Geelong petrol market in 1999-2000. The ACCC originally instituted proceedings against 18 respondents alleging that they fixed the retail price of petrol in the Geelong area, in contravention of the Trade Practices Act 1974. Click here for more ➤ FANOC Pty Limited, a company formed by the G9 Consortium of telecommunications companies, has lodged a special access undertaking with the ACCC under section 152CBA of the Trade Practices Act 1974. The special access undertaking relates to the terms and conditions of access to FANOC's prospective fibre-to-the-node Broadband Access Service. Click here for more ➤ Telstra Corporation Limited has notified the ACCC of two access disputes under Part XIC of the Trade Practices Act 1974. The disputes are with Vodafone Network Pty Limited and Hutchison 3G Australia Pty Limited (as access providers). They relate to the price paid by Telstra to the access providers for the Domestic Mobile Terminating Access Service. Click here for more
<p>Bell Gully News</p>	<ul style="list-style-type: none"> • <i>Bell Gully competition practice named New Zealand's best</i> Bell Gully's competition lawyers have been praised as the standout practitioners in a report on competition law in New Zealand. Specialist publisher Global Competition Review, in an article titled 'Looking up, down under', describes New Zealand's competition lawyers as "busier than ever, thanks to the country's expanding economy and an increasingly aggressive competition commission". For this and other reasons, writes commentator David Vascott, competition specialists are fundamental to any serious law firm in New Zealand. He says the country's leading competition practice belongs to Bell Gully, the only New Zealand firm to feature in this year's GCR 100, a listing of the top 100 global competition practices. Click here for more • <i>Bell Gully advises on Ngawha Springs Expansion</i> Bell Gully has advised Top Energy Limited on the expansion of generating capacity at its Ngawha Springs geothermal site in Northland. Partner Peter Castle advised on engineering procurement and construction, supply, steamfield development, drilling contracts, land access and well ownership arrangements, and exemptions under the Electricity Industry Reform Act. Click here for more • <i>Key ruling on cancelling open-ended contracts</i> There was a ripple of concern among some New Zealand businesses in 2004 when the High Court found that eight years was a reasonable notice period for the termination of a long-term oral contract between two companies in the waste paper business. In this article, Bell Gully senior associate Sally Fitzgerald reviews the Supreme Court's judgment released last month on this lengthy legal saga and offers some practical advice for businesses to follow to avoid being caught up in a similar litigious battle. Click here to access this Bell Gully article • <i>Depth of New Zealand in-house legal talent recognised</i> New Zealand's talented young in-house lawyers have been recognised in the annual CLANZ-Bell Gully Young Corporate Lawyer of the Year awards. A record number of nominations were received for the award which recognises an in-house lawyer who has made an outstanding contribution in their role and has demonstrated potential as a leading member of the in-house legal profession in New Zealand. Click here for more
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