

Corporate Reporter

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WELCOME

to Issue No. 57 of Corporate Reporter, Bell Gully's regular round-up of corporate and general commercial matters, designed to keep you informed on regulatory developments, legislation and cases of interest.

For more information on any of the cases, articles and features in Corporate Reporter, please email diane.graham@bellgully.com or call 64 9 916 9949.

IN BRIEF

Items in this issue include:

- **Final changes to the Financial Services Legislation Amendment Bill,**
- **Cabinet decisions on the disclosure regulations for the new financial advice regime,**
- **Regulatory fixes for the Companies Act, Takeovers Act, Fair Trading Act, the CCCFA and other commercial statutes,**
- **Review of section 36 of the Commerce Act and other matters, and**
- **The latest media releases from the New Zealand Commerce Commission and the Australian Competition and Consumer Commission.**

Disclaimer: This publication is necessarily brief and general in nature. You should seek professional advice before taking any action in relation to the matters dealt with in this publication.

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CAPITAL MARKETS

Legislative developments

Final changes to the Financial Services Legislation Amendment Bill

The [Financial Services Legislation Amendment Bill](#), which introduces a new regulatory regime for financial advice, is expected to be enacted in early April when Parliament resumes for business, and come into force around mid - 2020. It is being fast-tracked by the Government as the Bill responds to some of the issues recently identified by the Financial Markets Authority (FMA) and the Reserve Bank of New Zealand in their conduct and culture reviews of the banking and life insurance sectors.

Further amendments

The Government has made further amendments to the Bill through a [Supplementary Order Paper \(SOP\)](#). The SOP largely contains changes aimed at improving clarity and workability. One change, however, required Cabinet approval to address concerns recently raised about “multiple provider arrangements”. This has resulted in a new provision in the Bill for licence conditions to specify circumstances where a financial advice provider cannot engage an individual financial adviser that is also engaged by another financial advice provider. In practice, this will allow the Ministry of Business, Innovation and Employment (MBIE) and/or the FMA to consider whether it would be appropriate to use licence conditions to prohibit particular types of arrangements if concerns arise, including consumer confusion or lack of clarity as to which provider would be liable for misconduct by the individual adviser. MBIE has clarified [here](#) that the new provision:

- is not a ban on individual advisers working for more than one financial advice provider; and
- does not limit a financial adviser’s ability to give advice about multiple products from multiple product providers while acting on behalf of a single financial advice provider.

Other changes made by the SOP include:

- clarifying that the financial advice duty provisions do not apply where advice is given internally within a business in the course of, and for the purpose of, that business;
- aligning the expiry of deemed discretionary investment management service licences with the end of the transitional period for the new regime;
- for the purposes of the Financial Service Providers (Registration and Dispute Resolution) Act 2008, removing the concept of subcategories of financial services to improve the workability of the register, and allowing regulations to prescribe that providers do not need to register for more than one category of financial service in certain instances where there are overlaps between different services;
- extending the date by which all provisions in the Bill must come into force from 1 May 2020 to 1 May 2021 to ensure there is no need to go back to Parliament if there is an unforeseen delay in commencement of the Bill.

Next steps

After the Bill is enacted, the next step will be for the new code of conduct for financial advice to be published. A draft code is currently with the Minister of Commerce and Consumer Affairs for approval. From then, there will be at least nine months before the Act, supporting regulations and the code come into force, enabling participants to make any changes that they need to comply with the new regime. There will also be a further two-year transition period, during which there will be a competency safe harbour for existing industry participants and financial advice providers will be able to operate under a transitional licence.

Additional information on the new regime

The FMA has published an [infographic](#) to illustrate the different pathways for providing financial advice to retail clients under the new regime. It has also released the first two of a series of fact sheets to assist financial advisers navigate the new licensing regime to be introduced under the Bill. The first [fact sheet](#) explains who needs a licence. The second [fact sheet](#) explains a licensed financial advice provider's obligations.

Cabinet Paper on disclosure regulations for new financial advice regime released

The Cabinet has made [policy decisions](#) on the disclosure requirements that will apply in the new financial advice regime. Commerce and Consumer Affairs Minister Kris Faafoi says "these requirements will significantly improve the level of transparency in the financial advice sector".

The key disclosures for those who give regulated financial advice to retail clients will include:

- the licence they are operating under, and the conduct and client care duties they are subject to;
- the types of financial advice that they can provide, and whether they can only advise on a limited suite of products;
- any commissions, incentives or conflicts of interest that could be perceived by a client to materially impact the advice;
- any fees or other costs associated with the advice;
- recent enforcement action, including action taken by Financial Advice Disciplinary Committee which have been publicly notified, relevant civil liability findings, relevant criminal convictions, and whether they have been subject to recent bankruptcy proceedings; and
- the complaints handling and dispute resolution arrangements.

This information is to be given when it becomes relevant to the retail client at prescribed points in the advice process, rather than continuing with the current approach of providing all information up-front to the client. The disclosure requirements also will be flexible in terms of how disclosure must be provided by allowing for verbal, electronic and written disclosures.

The Ministry of Business, Innovation and Employment has released a fact sheet of the disclosure requirements that will apply [here](#). A consultation on draft disclosure regulations is expected take place in April/May 2019.

Consultation on fees and levies in the new financial advice regime

The Ministry of Business, Innovation and Employment recently consulted on proposed licensing fees and the Financial Markets Authority (FMA) levy that will apply in the new regulatory regime for financial advice. This includes:

- fees that will be charged to applicants for a financial advice provider licence;
- changes to the FMA levy that will be payable by financial advice providers and financial advisers; and
- changes to how authorised bodies are levied for all Market Services Licensees under the Financial Markets Conduct Act 2013.

The discussion paper is available [here](#).

New financial markets law introduced for compliance with international rules

Legislative amendments have been introduced under the [Financial Markets \(Derivatives Margin and Benchmarking\) Reform Amendment Bill](#) to enable New Zealand financial market participants to comply with international rules. This includes amending the following Acts to remove impediments to compliance with foreign margin requirements for over-the-counter derivatives:

- the Reserve Bank of New Zealand Act 1989;
- the Corporations (Investigations and Management) Act 1989;
- the Companies Act 1993; and
- the Personal Property Securities Act 1999.

The Bill also establishes a new opt-in licensing regime for administrators of financial benchmarks (which are often referenced in derivatives) under Part 6 of the Financial Markets Conduct Act 2013. This regime is being introduced in response to new regulations developed by the European Union (EU) in relation to the generation and operation of financial benchmarks, and will ensure continued acceptance of New Zealand benchmarks in EU financial markets.

The Bill has had its first reading and is now with the Finance and Expenditure Committee who have called for submissions. The closing date for submissions is 4 April 2019.

For Bell Gully commentary on the Bill, see our earlier update: [Proposed new financial markets law shows strength of foreign influences](#).

Asia Region Funds Passport is live

Japan, Thailand and Australia are now able to process applications from local and foreign funds under the Asia Region Funds Passport (**Passport**). The Passport allows a managed fund based in one country to be offered more easily to investors in other participating countries. New Zealand and Korea are also participating countries, but they have not yet completed the necessary regulatory requirements for implementation. For further information click [here](#).

Financial Markets Authority (FMA)

FMA removes expiry dates on all FMC Act licences

The FMA has revisited its initial imposition of a five-year term on all licences issued under the Financial Markets Conduct Act 2013, and has decided to remove the expiry dates. Open-ended terms will apply to all new and existing licences, unless an expiry date is specified on a case by case basis. Current licence holders will not have to apply to be relicensed before the expiry date of their licence.

Further details are available [here](#).

FMA & NZX to review New Zealand's capital markets

The FMA's announcement of the review describes "Capital Markets 2029" as having been "designed to deliver a ten-year vision and growth agenda for the sector", which will "consider the current framework and broader ecosystem of New Zealand's capital markets and outline recommendations for the creation of wider, more active participation and increased diversity of product".

Members of the Capital Markets 2029 Steering Committee are detailed [here](#).

A report is scheduled to be released in third quarter of 2019. Click [here](#) for more information.

FMA reviews ASX 24 derivatives market

The FMA has published the [findings](#) of its obligations review of the ASX 24 derivatives market for the period 1 July 2016 to 30 June 2018. The review did not identify any significant issues.

The Australian Securities Exchange Limited (which is primarily regulated by the Australian Securities and Investments Commission) is licensed to operate the ASX 24 derivatives market in New Zealand. The FMA's review was based largely on ASIC's oversight of ASX 24 and its view of ASX 24's compliance.

Disclose Register

Smart Investor launched

Recently a new site for investors [Smart Investor](#) was launched by three government agencies – MBIE, the FMA and the Commission for Financial Capability (which runs Sorted). The site enables investors to search and compare New Zealand investments such as KiwiSaver, other managed funds, shares and bonds.

The information the site provides is pulled from the Disclose Register. Accordingly, care should be taken when naming documents to be uploaded on the Disclose Register, or filling in description fields on the Disclose Register, to ensure that financial products are displayed in Smart Investor correctly.

NZX Limited (NZX)

NZX Ruling on notices of meetings for amendments to governing documents

The new NZX Listing Rules which came into effect on 1 January 2019 no longer require NZX to review governing documents or issue a written confirmation of non-objection to those documents. However, NZX is required to provide written confirmation that it does not object to the circulation of a notice of meeting to consider amendments to a governing document. NZX Regulation has indicated it will amend the Listing Rules to remove this unintended requirement in due course.

In the meantime, NZX Regulation has granted a [Ruling](#) which deems an issuer to have received NZX's written confirmation that it does not object to a notice of meeting to consider amendments to a governing document under the NZX Listing Rules, and accordingly may circulate, execute or otherwise give effect to that document. The Ruling only applies on the condition that the relevant notice of meeting would not otherwise require written confirmation from NZX under the NZX Listing Rules.

NZX 2019 Oversight and Engagement Report

The third NZX Oversight and Engagement Report published by NZX Regulation is available [here](#). The report provides insight into the work undertaken by NZX Regulation to ensure compliance with NZX's obligations as a licensed market operator under the Financial Markets Conduct Act 2013. This includes investigating possible breaches of the market rules, real-time surveillance of announcements and trading activities, prudential monitoring of brokers, assessing and reviewing regulated transactions, as well as providing guidance and support to issuers, participants and their advisers on structuring and executing corporate transactions.

Mandatory voice recording for NZX Trading Participants

The NZX Participant Rules have been amended through the [Financial Markets Conduct \(NZX Participant Rules\) Approval of Rule Change Notice 2019](#) to facilitate mandatory voice recording for Trading Participants. The Rule amendments will not take effect until 1 January 2020 to provide adequate time for Participants to update their technologies and systems.

The amendments to the Rules introduce mandatory recording of electronic communications and voice recording for Trading Participants in respect of all communications by or with the Market Participant's institutional sales and trading desk and/or principal desk (including communications regarding proprietary and facilitation trading). Records must be kept in a retrievable form for six months.

A marked-up copy of the amendments to the Rules is available [here](#).

Reserve Bank of New Zealand (RBNZ)

Report on life insurance conduct and culture

The RBNZ and the Financial Markets Authority (**FMA**) have released their joint review of 16 New Zealand life insurers.

According to the FMA's Chief Executive Rob Everett "overall the report shows the life insurance sector in a poor light. Life insurers have been complacent about considering conduct risk, too slow to make changes following previous FMA reviews and not sufficiently focussed on developing a culture that balances the interests of shareholders with those of customers".

Key findings include:

- limited evidence of products being designed and sold with good customer outcomes in mind;
- some insurers did little or nothing to assess a product's ongoing suitability for customers;
- sales incentives structures risk sales being prioritised over good customer outcome; and
- remediation of contract issues is generally very poor, with insurers slow to respond to issues and in some cases not sufficiently remediating them.

Click [here](#) to read the report.

MERGERS & ACQUISITIONS

Recent developments

Overseas Investment (CPTPP-Viet Nam) Amendment Regulations 2018

These [regulations](#) amend Part 5 of the Overseas Investment Regulations 2005, which sets out alternative monetary thresholds for the purpose of implementing New Zealand's obligations under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (**CPTPP**) Agreement.

The regulations bring Viet Nam into the same overseas investment position (from 14 January 2019) as countries for which the CPTPP Agreement had already entered into force (click [here](#) for details). The monetary thresholds apply to overseas investments in "significant business assets", and have been increased from NZ\$100 million to NZ\$200 million for non-government investors from those countries (although Australia continues to be subject to a larger threshold (currently NZ\$530 million) under the Australian CER Investment Protocol).

Changes ahead for “code companies” under the takeovers regime

The omnibus [Regulatory Systems \(Economic Development\) Amendment \(No 2\) Bill](#) includes provisions which address some of the [recommendations](#) made by the Takeovers Panel in March 2017.

The key change is aimed at removing unnecessary compliance and cost burdens for smaller unlisted companies with 50 or more shareholders (and 50 or more share parcels) currently subject to the regime. The Bill addresses this by altering the definition of a “code company” in the Takeovers Act 1993 to include an additional limb requiring such unlisted companies also to be “at least medium-sized”.

An unlisted company is “at least medium-sized” if:

- the company has completed one or more accounting periods and either or both of the following are true:
 - (i) on the last day of the company’s most recently completed accounting period, the total assets of the company and its subsidiaries (if any) are at least \$30 million;
 - (ii) in the most recently completed accounting period, the total revenue of the company and its subsidiaries (if any) is at least \$15 million; or
- the company has not completed its first accounting period and on the last day of the most recently completed month the total assets of the company and its subsidiaries (if any) are at least \$30 million.

This change goes further than the [Takeovers Code \(Small Code Companies\) Exemption Notice 2016](#) which allows unlisted companies with total assets of \$20 million or less to opt out of Code compliance where a person increases their holding or control of voting rights (i.e., their share ownership) as a result of an allotment, acquisition or buyback of voting securities by the code company.

The Takeovers Code (Small Code Companies) Exemption Notice 2016 will be revoked as a consequence of these amendments.

The Bill also amends the Takeovers Act to clarify that Code regulated transactions which result in a person becoming a dominant owner of the company (that is, holding or controlling 90% or more of the voting rights in the company) must be completed under the Code’s Part 7 compulsory acquisition procedure.

Takeovers Panel publishes new Code Word and updated Guidance Notes

The [latest issue](#) of the Takeovers Panel’s newsletter CodeWord includes discussion on:

- the Panel’s view on whether the Takeovers Code permits a partial offer to successfully close with an offeror having acquired less than the specified percentage set out in the offer document;
 - its [updated Guidance Notes](#) on independent advisers, costs recovery, and offer documents and variations;
 - the extension of the six-month top-up and sell-down periods in clauses 5 to 10 of the [Class Exemptions Notice](#) to 12 months (under the [Takeovers Code \(Class Exemptions\) Notice \(No 2\) 2001 Amendment Notice 2019](#));
 - the appointment of Anna Buchly (Bell Gully Chair and Partner) and Martin Stearne (corporate consultant) as new Board members of the Takeovers Panel.
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COMMERCIAL

Recent developments

Select Committee reports back on Privacy Bill

The Justice Select Committee has released its [report](#) on the Privacy Bill, following consultation with submitters.

The committee is recommending a number of amendments to the Bill, but these are largely moderate and do not represent a major shift from the Bill as it was introduced.

For Bell Gully commentary on the committee's recommendations click [here](#).

New anti-encryption law in Australia may extend to New Zealand organisations

New search and surveillance powers have come into force in Australia which may have extra-territorial reach to some New Zealand organisations:

- using cloud services with servers or end-users located in Australia;
- using any other services that involve the transfer to or storage of data in Australia; or
- providing services to end-users located in Australia.

See our earlier update "[The long-reach of international data laws](#)" for details.

New Zealand joins international copyright treaties as part of its CPTPPA obligations

New Zealand has joined three international treaties to complete New Zealand's intellectual property obligations under the Comprehensive and Progressive Trans-Pacific Partnership Agreement (**CPTPPA**).

The treaties are:

- the World Intellectual Property Organization's Copyright Treaty and Performers and Phonograms Treaty which are intended to ensure greater protection of works and the rights of their authors, producers and performers in the digital environment; and
- the 1971 Paris Act of the Berne Convention for the Protection of Literary and Artistic Works, which provides creators such as authors, musicians, poets and painters with the means to control how their works are used, by whom, and on what terms.

Further information on these treaties is available [here](#).

Emissions Trading Scheme revisions announced

At the end of 2018, the Government [announced](#) the first of two planned tranches of revisions to the New Zealand Emissions Trading Scheme (**NZ ETS**). A further tranche of announcements will occur later this year and a bill amending the Climate Change Response Act 2002 (**CCRA**) is expected to be introduced in the second half of this year.

One of the most significant changes proposed will enable a cap to be placed on emissions covered by the ETS through:

- introducing Government auctioning of New Zealand Units (**NZUs**) in a way that aligns the supply of NZUs in the NZ ETS to New Zealand's emission reduction targets;
- retaining the ability to limit international units if a decision is made to introduce the use of international units;
- replacing the current price ceiling (the \$25 fixed price option) with a "cost containment reserve" through auctioning, and investigating introducing a price floor, including the option of setting a reserve price in auctions;
- providing the framework for making unit supply settings in the NZ ETS over a five-year rolling period.

Other changes will include setting up an infringement offence regime to deter low-level non-compliance with the ETS rules, and taking steps to improve market governance.

Further details of the proposed changes are available on the Ministry for the Environment's website [here](#).

Bell Gully has published a new report "[The Big Picture: Climate Change](#)" which includes discussion on the proposed changes to the NZ ETS and provides an analysis of the challenges that lie ahead for New Zealand businesses dealing with climate change risks.

New amendments to the Insolvency Practitioners Bill

Nearly nine years after it was first introduced, the Insolvency Practitioners Bill 2010 has again been reported back from the Select Committee.

The Committee adopted most of the changes proposed last year, while also clarifying some provisions and changing others yet again.

Click [here](#) for more information.

Charities Act to undergo modernisation

The Department of Internal Affairs (**DIA**) has released a [discussion document](#), "Modernising the Charities Act 2005", outlining some of the key issues which need to be addressed to ensure the Act is fit for purpose and suits the different needs of New Zealand's diverse charities. The discussion document asks specific questions to help members of the public share their experiences and provides examples of how charities currently operate under the Charities Act 2005.

The consultation is open until 30 April 2019. Further details are available [here](#).

Changes made to NZBN Primary Business Data requirements

The New Zealand Business Number Act 2016 has been amended by an Order in Council ([New Zealand Business Number \(Primary Business Data\) Order 2018](#)), with effect from 30 March 2019. This follows on from a consultation undertaken last year to determine whether any improvements should be made to the New Zealand Business Number (**NZBN**) Register now that it has been in operation for a few years.

The amendments replace the information that the NZBN Register:

- must contain as the public primary business data (**PBD**) for every NZBN entity (set out in Schedule 3 of the Act); and
- may contain as other primary business data in various other circumstances (set out in Schedule 4 of the Act),

Notable changes include:

- adding, for each of the PBD items, a purpose description to clarify what the PBD item specifically refers to and why it's included in the NZBN Register; and
- changing the default for some PBD items from other PBD (i.e., private) to public PBD.

In addition, some new PBD items have been added to improve the utility of the NZBN, and items that were seen as having little utility have been removed.

COMPANIES AND LIMITED PARTNERSHIPS

Recent developments

Parent companies could be liable for subsidiaries' negligence

In the first New Zealand case of its kind, [James Hardie Industries Plc v White \[2018\] NZCA 580](#), the Court of Appeal has held that parent companies could owe duties of care in tort in connection with the acts or omissions of their operating subsidiaries. This decision brings focus on the potential liability of parent companies in relation to New Zealand operating subsidiaries:

- where the parent has taken over the running of the relevant part of the subsidiary's business;
- where the parent has superior knowledge of the relevant part of the subsidiary's business, the subsidiary relied upon that knowledge of its parent, and the parent knew or ought to have foreseen the alleged deficiency in the process or product; or
- where the parent has assumed responsibility (irrespective of knowledge or skill) for the policy or advice that is linked to the wrongful act or omission.

Click [here](#) for more information.

Mainzeal directors liable for reckless trading

The High Court has ruled that the former directors of Mainzeal Property and Construction Limited (in liquidation) were liable for breach of their directors' duties by engaging in reckless trading, and ordered them to pay compensation totalling \$36 million.

The Court ruled that, despite Mainzeal's poor financial trading performance, the directors continued to trade while Mainzeal was balance sheet insolvent, and that this contributed to a substantial risk of serious loss to creditors.

Click [here](#) for more information.

Further tidy-ups for the Companies Act and the Limited Partnerships Act

The omnibus [Regulatory Systems \(Economic Development\) Amendment \(No 2\) Bill](#) makes a number of changes to the Companies Act 1993 and the Limited Partnerships Act 2008 to clarify and update provisions.

The proposed changes for the Companies Act include:

- allowing documents to be sent by email to overseas companies and bodies corporates;
- allowing the notice for a meeting to extend the deadline in which electronic votes and proxies must be received;
- amending the disqualification criteria for directors to include where the Court has prohibited a discharged bankrupt from being a director or being concerned in the management of a company; and
- adding some additional serious dishonesty offences to the criteria that prohibit people from managing companies or being appointed as a liquidator.

The proposed changes for the Limited Partnerships Act include:

- prohibiting a bankrupt from directly or indirectly being concerned or taking part in the management of a company;
- providing that section 328(3)(a) of the Companies Act applies to give public notice of the restoration of limited partnerships to the register; and
- amending the information requirements on general partners who are resident in an enforcement country.

The Bill has had its first reading and is now with the Economic Development, Science and Innovation Committee. The committee has called for submissions which will remain open until 28 April 2019.

Administrative reminder from the Companies Office

The Companies Office has issued a reminder that directors must provide their full names for the Companies Register. Names should be provided as they might appear on a passport or driver's licence and must match exactly (down to abbreviated middle names, for example, Jane A. Smith). Click [here](#) for more.

COMPETITION AND CONSUMER LAW

Recent developments

Review of section 36 of the Commerce Act and other matters

The Ministry of Business, Innovation and Employment (**MBIE**) is consulting on proposed changes to the law relating to misuse of market power in section 36 of the Commerce Act 1986, along with other minor changes.

MBIE is proposing to:

- bring section 36 in line with Australia's recent law changes in this area and the generally accepted approach taken in other developed economies, by introducing a legal test that examines the effects of a firm's conduct;

- repeal sections of the Commerce Act that shield some intellectual property arrangements (such as licensing) from competition law; and
- make technical changes to the treatment of covenants under the Act.

The discussion paper is available [here](#). Submissions close on 1 April 2019.

MBIE consults on ticket reselling in New Zealand

The Ministry of Business, Innovation and Employment (**MBIE**) has released a [consultation document](#) on the regulation of ticket selling in response to growing concerns about some ticket reselling practices and the negative impact these practices may be having on consumers.

The paper outlines MBIE's initial examination of the issues and a number of potential options for discussion, including:

- imposing a price cap on resale tickets;
- introducing information disclosure requirements to the secondary ticket market (and also the primary market) to inform consumers so that they can better transact with confidence;
- banning the use of automated software to purchase large quantities of tickets (ticket-buying bots), with penalties imposed on persons who are found to be using ticket-buying bots; and
- undertaking joint industry-government action to raise awareness of the issues and make commitments to improve the ticketing system.

Submissions close on 18 April 2019. Further details are available on MBIE's website [here](#).

Regulatory fixes for the Fair Trading Act and the CCCFA

The omnibus [Regulatory Systems \(Economic Development\) Amendment \(No 2\) Bill](#) makes a number of changes to the Fair Trading Act 1986 and the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) to clarify provisions and address some regulatory gaps.

The Bill amends the Fair Trading Act to better reflect the nature and purpose of product safety standards, by clarifying that it is "goods" that must comply with a standard (before a person can supply the goods), rather than requiring the person supplying the goods to comply. This is consistent with the interpretation of the existing provisions by the courts.

The changes to the CCCFA include:

- clarifying that the overarching lender responsibilities in section 9C(2) of the Act apply to "relevant insurance contracts";
- adding offences and infringement offences for breach of certain requirements for the publication of standard form contract terms (section 9J) and publication of costs of borrowing (section 9K);
- allowing lenders to opt-in to the new repossession scheme introduced by the Credit Contracts and Consumer Finance Amendment Act 2014 for all loans which they administer; and
- providing that the Act's repossession regime does not apply to goods owned by companies or where a business declaration has been signed.

The Bill has had its first reading and is now with the Economic Development, Science and Innovation Committee. The committee has called for submissions which will remain open until 28 April 2019.

Electricity Price Review – options paper

Last year the Government commissioned an electricity price review led by an independent Expert Advisory Panel to investigate whether the electricity market, as it exists at present, is delivering a fair and equitable price to end-consumers. The Panel released its [First Report for Discussion](#) in September 2018 and has now released an [options paper](#) setting out the Panel's early ideas on how to improve New Zealand's electricity sector, to address the problems discussed in the first report.

The paper contains 41 options across seven themes: strengthening the consumer voice, reducing energy hardship, increasing retail competition, reinforcing wholesale market competition, improving transmission and distribution, improving the regulatory system, and preparing for a low-carbon future.

Submissions on the options paper are open until 22 March 2019. For Bell Gully commentary on the options paper see our earlier client update: [Expert Advisory Panel for Electricity Price Review releases Options Paper](#)

New Zealand Commerce Commission (NZCC)

Media releases

The NZCC has issued the following media releases:

Industry regulation and regulatory control

[NZCC releases preliminary issues paper for fuel market study](#)

The NZCC has released a preliminary issues paper for the retail fuel market study.

[NZCC declines Vector's request to relax reliability standards](#)

The NZCC has declined Vector's request to relax the reliability standards that apply to its electricity network.

[NZCC releases final report on Fonterra's 2018/19 Milk Price Manual](#)

The NZCC has released its final report on its annual review of Fonterra's Milk Price Manual for the 2018/19 dairy season.

[NZCC releases findings from fibre services study](#)

The NZCC has published the findings from its study of telecommunications fibre services in New Zealand.

[Home fibre broadband performing below potential](#)

The NZCC's first report from its enhanced broadband monitoring programme reveals fibre broadband services are consistently delivering less than 75% of the maximum speeds available.

[NZCC seeks input on Transpower's proposed price-quality path](#)

The NZCC has released a consultation paper seeking feedback on the key issues it will be considering when resetting Transpower's individual price-quality path.

[Alpine Energy warned over excessive network outages](#)

The NZCC has issued South Canterbury electricity lines company Alpine Energy with a formal warning for breaching its regulated quality standard in 2016.

Mergers and acquisitions

[NZCC seeks input into updated merger guidelines and clearance application form](#)

The NZCC released updated draft guidance on the process it will follow in investigating merger clearance applications and non-notified mergers under the Commerce Act. The NZCC also released an updated clearance application form and sought submissions on both documents.

[Mainland Print seeks clearance to acquire Inkwise](#)

The NZCC has received a clearance application from Mainland Print Limited to acquire the heatset and coldset web offset printing assets of Inkwise Limited.

[NZCC grants clearance to Thales subject to a divestment](#)

The NZCC has granted clearance for Thales S.A. to acquire Gemalto N.V. subject to a divestment undertaking requiring Thales to divest its entire general-purpose hardware security module business.

[NZCC grants clearance for Siemens to combine its rail industry supply business with Alstom](#)

The NZCC has granted clearance for Siemens AG to combine its rail industry supply business with Alstom S.A. as it relates to New Zealand.

[NZCC authorises Tennex's acquisition of San-i-pak](#)

The NZCC has granted authorisation to Tennex to acquire the assets of competing Canterbury-based waste firm San-i-Pak.

[Ixom formally withdraws merger application for Oji's Tasman chemical plant](#)

Ixom Operations Pty Limited has formally withdrawn its application to acquire chemical manufacturing assets in Kawerau (the Tasman chemical plant) from Oji Fibre Solutions (NZ) Limited.

[Statement of Preliminary Issues released for Knauf/USG](#)

The NZCC has published a statement of preliminary issues relating to an application by Gebr. Knauf KG and USG Corporation seeking clearance to merge. Both Knauf and USG are manufacturers and suppliers of building materials.

[NZCC grants clearance to DLF Seeds to acquire PGG Wrightson Seeds](#)

The NZCC has granted clearance to global seed producer DLF Seeds A/S to acquire PGG Wrightson Seeds. In considering the acquisition, the NZCC focused primarily on the effects on the production and supply of ryegrass seeds, in particular those containing novel endophytes.

[NZCC grants clearance for Fletcher Building to acquire Waikato Aggregates](#)

The NZCC has granted clearance for Fletcher Building Limited to acquire the business of Waikato Aggregates.

[Statement of Preliminary Issues released for GSK's application to acquire Pfizer's consumer healthcare business](#)

The NZCC received a [clearance application](#) from GlaxoSmithKline plc seeking clearance to acquire the consumer healthcare business of Pfizer Inc., and has published a statement of preliminary issues relating to the application.

[Investigation opened into Bondor's acquisition of Long Group](#)

The NZCC has opened an investigation into Bondor New Zealand Limited's acquisition of the business and assets of Long Holdings Limited, The Insulation Panel & Door Co Limited and Long Panel Limited.

Market behaviour

[First Gas to pay \\$3.4 million for anti-competitive conduct](#)

The Wellington High Court has ordered First Gas Limited to pay penalties regarding its acquisition of the Bay of Plenty gas distribution assets of GasNet Limited.

Consumer issues

[Noel Leeming fined \\$200,000 for misleading consumers](#)

Retailer Noel Leeming Group Limited has been fined \$200,000 for misleading consumers about their rights under the Consumer Guarantees Act, following a NZCC prosecution.

[GO Healthy charged for misleading 'New Zealand Made' supplements claim](#)

Health supplements seller GO Healthy New Zealand Ltd has been charged, following a NZCC investigation, with allegedly misleading consumers by claiming its supplements were “made in New Zealand”, when the key ingredients in the majority of its products were imported.

[2 Cheap Cars charged over ad claims and “warranty waivers”](#)

Vehicle retailer 2 Cheap Cars Limited faces 10 charges under the Fair Trading Act 1986 over its “must liquidate” and “84% off” advertising claims and its use of “warranty waiver” documents, following a NZCC investigation.

[Mosgiel and Auckland car dealer warned over sales claims](#)

The NZCC has issued a warning to Mosgiel-based motor vehicle trader Taieri Motor Court Limited, for likely breaching the Fair Trading Act 1986 during its sale of two motor vehicles.

[NZCC urges consumer caution following Viagogo decision](#)

The High Court dismissed the NZCC’s application for an interim injunction against online ticket seller Viagogo on procedural grounds.

[High Court dismisses Budget Loans appeal - notes “cynical and extortive” conduct](#)

The High Court at Auckland has dismissed Budget Loans Limited’s appeal against the sentence imposed on it and Evolution Finance Limited. In dismissing Budget Loans’ appeal Justice Moore said the offending was “among the most serious of its kind”.

[Nearly \\$600K to be returned to borrowers following NZCC action](#)

Thousands of borrowers from two finance companies will receive about \$590,000 in refunds following settlement agreements with the NZCC.

Telecommunications

[Annual Telecommunications Monitoring Report shows fibre broadband hot on the heels of copper](#)

The NZCC has released its 12th Annual Telecommunications Monitoring Report, which reveals that fibre is poised to overtake copper as the main way kiwi households access the internet.

[Final decision on contributions to \\$50 million telecommunications development levy](#)

The NZCC released its final determination on how much 17 telecommunications providers will each pay towards the Government’s \$50 million Telecommunications Development Levy for 2017/18.

Australian Competition and Consumer Commission (ACCC)

Selected ACCC media releases

The ACCC has issued the following media releases:

Mergers and Acquisitions

[Bingo’s acquisition of Dial-a-Dump not opposed, subject to divestiture undertaking](#)

The ACCC will not oppose Bingo’s proposed acquisition of Dial-a-Dump after accepting a court-enforceable undertaking from Bingo to divest its Banksmeadow processing facility. While the transaction raised a number of significant concerns, ultimately the ACCC concluded that the proposed acquisition, taking into consideration the divestiture undertaking, would be unlikely to substantially lessen competition in any market.

[ACCC will not oppose Thales-Gemalto deal](#)

The ACCC has decided not to oppose Thales S.A.’s proposed acquisition of Gemalto N.V, after accepting a court-enforceable undertaking from Thales to divest part of its business.

[DLF Seeds’ acquisition of PGG Wrightson Seeds not opposed](#)

The ACCC has decided that it will not oppose DLF Seeds’ proposed acquisition of PGG Wrightson Seeds. The ACCC found that it was unlikely that the proposed acquisition would result in a substantial lessening of competition in any market.

Market Behaviour

[Country Care cartel case committed for trial in Federal Court](#)

The Country Care Group Pty Ltd, its Managing Director, Robert Hogan, and a former employee, have been committed to stand trial in the Federal Court of Australia on all of the cartel charges laid against them. This follows a committal hearing held before the Magistrates' Court of Victoria in Melbourne from 4 to 13 March 2019.

[Cryosite to pay \\$1.05m for 'gun jumping' cartel conduct](#)

The Federal Court has ordered Cryosite Limited to pay \$1.05 million in penalties for engaging in cartel conduct in its asset sale agreement with Cell Care Australia Pty Ltd.

Consumer Issues

[Ultra Tune to pay \\$2.6 million penalty](#)

The Federal Court has imposed a \$2,604,000 penalty against Ultra Tune Australia Pty Ltd for breaching both the Franchising Code of Conduct and the Australian Consumer Law.

[Optus penalised \\$10 million for misleading customers over digital purchases](#)

The Federal Court has ordered Optus pay a \$10 million penalty for its treatment of customers who unknowingly purchased games, ringtones and other digital content through its third-party billing service, following action by the ACCC.

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