

AUTUMN 2020

FINANCIAL SERVICES QUARTERLY

REVIEW OF CURRENT LEGAL ISSUES IN THE FINANCIAL SECTOR

ISSUE HIGHLIGHTS

- **Credit Contracts Legislation Amendment Act passed**
- **Farm Debt Mediation Act in force**
- **Financial advisers – transitional licence applications open**
- **National Anti-Money Laundering and Countering Financing of Terrorism Strategy**



IN THE COURTS



LEGISLATION /
IN PARLIAMENT



RECENT
DEVELOPMENTS

Also in this issue:



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IN THE COURTS

Financier selling repossessed motor vehicles required to register as a motor vehicle trader

A financier who sold repossessed motor vehicles was considered to be a motor vehicle trader for the purposes of the Motor Vehicle Sales Act 2003.



LEGISLATION / IN PARLIAMENT

Credit Contracts Legislation Amendment Act

The Credit Contracts Legislation Amendment Act, passed at the end of last year, introduces a number of additions to the Credit Contracts and Consumer Finance Act, including new provisions governing high-cost consumer credit contracts.

Farm Debt Mediation Act

The Farm Debt Mediation Act was enacted on 20 November 2019, and comes into effect in stages on 1 February 2020 and 1 July 2020.

Financial Markets (Conduct of Institutions) Amendment Bill

Following two joint reviews conducted by the Financial Markets Authority and the Reserve Bank, the government has introduced a new regulatory regime to govern conduct in the financial sector.

Financial advisers - transitional licence applications

The Financial Markets Authority started accepting transitional licence applications on 4 November 2019.

Review of the Reserve Bank of New Zealand Act

Changes to the Reserve Bank's legislative framework have been announced, with two separate Acts proposed to replace the existing Reserve Bank of New Zealand Act 1989 – an "Institutional Act" and a "Deposit Takers Act".

Financial Market Infrastructures

This Bill establishes a new regulatory regime for financial market infrastructures, and provides legal protections for settlement finality, netting, and the enforceability of rules.

Infrastructure Funding and Financing Bill

This is an omnibus bill aimed at providing "a funding and financing model to support the provision of infrastructure for housing and urban development that supports functioning urban land markets and reduces the impact of local authority financing and funding constraints".



RECENT DEVELOPMENTS

National Anti-Money Laundering and Countering Financing of Terrorism Strategy

The Ministry of Justice has released New Zealand's first National Anti-Money Laundering and Countering Financing of Terrorism Strategy.

New payment settlement system

The Reserve Bank has launched a new payment settlement system.

Financial advice regime fact sheets

The Ministry of Business, Innovation and Employment has now published five fact sheets in connection with the new financial advice regime.

Decisions on insurance law reform

The government has released its decisions for reform of New Zealand's insurance law.

NZX Listing Rules replaced

New Listing Rules have been in force since 1 January 2020.

LATEST FROM THE FINANCIAL MARKETS AUTHORITY

FMA funding and levies

The FMA has consulted on funding options and levies to enable it to regulate the new financial advice regime, and to respond to cost pressures.

FMA managed investment scheme custody review

In response to questions raised by the International Monetary Fund and its Financial Stability Assessment Programme, the FMA has reviewed custody arrangements in managed investment schemes in New Zealand.



IN THE COURTS

Financier selling repossessed motor vehicles required to register as a motor vehicle trader

A financier who sold repossessed motor vehicles was considered to be a motor vehicle trader for the purposes of the Motor Vehicle Sales Act 2003.

The financier sold approximately 100 repossessed motor vehicles per year.

He applied to the High Court for a declaration that he was not a motor vehicle trader for the purposes of the Motor Vehicle Sales Act 2003, seeking to avoid a number of requirements, including an annual registration fee, the requirement to provide a detailed consumer information notice to purchasers, and submission to the compulsory jurisdiction of the Motor Vehicle Disputes Tribunal.

When the High Court determined that he met the relevant statutory definition, he appealed to the Court of Appeal¹, which agreed with the High Court that he was required to register as a motor vehicle trader.

The financier's application for leave to appeal to the Supreme Court was dismissed.

Increased enforcement and tougher penalties for breaking the law

- Penalties of up to NZ\$600,000 can be imposed for irresponsible lending,
- borrowers will be able to claim statutory damages, and
- directors and senior managers of consumer credit lenders and mobile traders will be required to meet a "fit and proper person" test.

The Commerce Commission is seeking feedback on the proposed criteria it will use to assess whether lenders are "fit and proper". Submissions close on 18 March.

Click [here](#) for more information.

Responsible lending laws for mobile traders

The Act also introduces provisions to bring mobile trader sales under the CCCFA.

The amendments come into force in stages, but changes to the disclosure, enforcement and penalty regimes are already in force.

The Ministry of Business, Innovation and Employment has consulted on supporting regulations with the release of the draft Credit Contracts and Consumer Finance Amendment Regulations 2020 and an accompanying discussion paper.

Click [here](#) for more information.

Farm Debt Mediation Act

The Farm Debt Mediation Act 2019 (the Act) was enacted on 20 November 2019, and comes into effect in stages on 1 February 2020 and 1 July 2020.

Under the Act, it will be mandatory for secured creditors to offer mediation before taking any debt enforcement action against farmers and other eligible primary production businesses. In addition, farmers can ask for mediation at any time.

The scheme covers debts owed by businesses involved in primary production through agriculture, horticulture, aquaculture, or apiculture activities, and includes loans secured against:

- farmland,
- farm machinery and livestock, and
- harvested crops and wool.

The legislation doesn't apply to lifestyle farming, mining, wild harvest fishing or the hunting or trapping of animals.

Mediation organisations have been able to apply for approval since 1 February 2020, and farmers will be able to access the scheme from 1 July 2020.

Click [here](#) for more information.

LEGISLATION / IN PARLIAMENT

Credit Contracts Legislation Amendment Act

The Credit Contracts Legislation Amendment Act 2019 (the Act), passed at the end of last year, introduces a number of changes to the Credit Contracts and Consumer Finance Act 2003 (the CCCFA), including new provisions governing high-cost consumer credit contracts.

The changes include:

Introducing an interest rate and cost of credit cap on high-cost loans

The cost of borrowing can't exceed the loan advance, and interest and fees can't exceed 0.8% per day.

New prescriptive requirements when lenders assess the affordability and suitability of loans

Regulations will set minimum requirements for lenders' enquiries into borrowers' ability to repay loans, and to keep records to substantiate affordability of loans and reasonableness of fees.

¹ Kenny v Ministry of Business, Innovation and Employment [2019] NZCA 435



Financial Markets (Conduct of Institutions) Amendment Bill

Following two joint reviews conducted by the Financial Markets Authority and the Reserve Bank, the government has introduced a new regulatory regime to govern conduct in the financial sector.

The reviews identified issues with bank and insurer conduct, and gaps in how they are regulated.

The Financial Markets (Conduct of Institutions) Amendment Bill, which passed its first reading on 13 February, requires banks, insurers and other financial service providers to have the right systems in place to ensure customers are treated fairly. It will require them to:

- be licensed,
- treat consumers fairly, and establish and maintain effective programmes to do this,
- comply (and ensure compliance by their intermediaries) with their conduct programme, and
- comply (and ensure compliance by their intermediaries) with regulations that regulate incentives.

Submissions close on 26 March 2020.

Click [here](#) for more information.

Financial advisers - transitional licence applications

The Financial Markets Authority started accepting transitional licence applications on 4 November 2019.

The Financial Services Legislation Amendment Act 2019 introduces a new model setting out duties for financial advisers, and requires licensing by the Financial Markets Authority (the **FMA**).

The new regime comes into effect on 29 June 2020, with two phases of licensing - allowing advisers to operate under a transitional licence, with two years to obtain a full licence.

The FMA has imposed two standard conditions for transitional licences:

- record keeping (advisers must create and maintain adequate records of their financial advice service); and
- internal complaints process (advisers must have an internal process for resolving client complaints).

Click [here](#) for more information.

The FMA started accepting transitional licence applications on 4 November, and has uploaded a decision tool 'Explore your Options' to help advisers decide how they wish to operate under the new regime.

Transitional licences are valid for up to two years, and allow advisers to continue providing advice while they ready themselves for compliance with new regime requirements.

Click [here](#) for more information.

Review of the Reserve Bank of New Zealand Act

Changes to the Reserve Bank's legislative framework have been announced, with two separate Acts proposed to replace the existing Reserve Bank of New Zealand Act 1989 – an "Institutional Act" and a "Deposit Takers Act".

The Institutional Act will outline how the Reserve Bank is governed, and how it operates.

The Deposit Takers Act will govern the Reserve Bank's regulatory powers.

Click [here](#) for more information.

Financial Market Infrastructures Bill

This Bill establishes a new regulatory regime for financial market infrastructures, and provides legal protections for settlement finality, netting, and the enforceability of rules.

Click [here](#) for more information.

Infrastructure Funding and Financing Bill

This is an omnibus bill aimed at providing "a funding and financing model to support the provision of infrastructure for housing and urban development that supports functioning urban land markets and reduces the impact of local authority financing and funding constraints".

It has passed its first reading, and submissions are being accepted until 5 March 2020. The Bill enables special purpose vehicles that are companies, limited partnerships, Crown entities, or other persons to:

- be responsible for both financing and construction of infrastructure assets, and
- service the finance raised to cover the costs of infrastructure via the levy.

Click [here](#) for more information.



National Anti-Money Laundering and Countering Financing of Terrorism Strategy

The Ministry of Justice has released New Zealand's first National Anti-Money Laundering and Countering Financing of Terrorism Strategy.

The strategy is intended to “*co-ordinate efforts across Government and the private sector, and guide prioritisation of work to improve the system*”.

Click [here](#) for more information.

New payment settlement system

The Reserve Bank has launched a new payment settlement system.

The new system replaces New Zealand's 20-year old inter-bank settlement system and central securities depository.

Click [here](#) for more information.

Financial advice regime fact sheets

The Ministry of Business, Innovation and Employment has now published five fact sheets in connection with the new financial advice regime.

They are:

- [A new financial advice regime;](#)
- [Enforcement in the new financial advice regime;](#)
- [Liability in the new financial advice regime;](#)
- [Engaging individuals through 'interposed persons' to give financial advice;](#) and
- [Can financial advisers be engaged by multiple financial advice providers?](#)

Click [here](#) for more information.

Decisions on insurance law reform

The government has released its decisions for reform of New Zealand's insurance law.

The decisions follow extensive feedback from stakeholders.

Click [here](#) for more information.

NZX Listing rules replaced

New Listing Rules have been in force since 1 January 2020.

The new NZX Listing Rules are the first holistic rewrite of the Main Board/Debt Market Listing Rules since their introduction in 2003.

Click [here](#) for more information.

LATEST FROM THE FINANCIAL MARKETS AUTHORITY

FMA funding and levies

The Financial Markets Authority has consulted on funding options and levies to enable it to regulate the new financial advice regime, and to respond to cost pressures.

Proposed changes to levies will affect financial advice providers. The Ministry of Business, Innovation and Employment wants to “*find the right balance between ensuring the FMA has the resources it needs to continue delivering ... in the face of future demands, while setting levies that are fair and proportional*”.

Click [here](#) for more information.

FMA managed investment scheme custody review

In response to questions raised by the International Monetary Fund and its Financial Stability Assessment Programme, the Financial Markets Authority has reviewed custody arrangements in managed investment schemes (MIS) in New Zealand.

The review focussed on retail funds, and found most MIS assets are being held in custody appropriately. However, issues around the consistency and independence of custody arrangements were identified.

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



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For further details and more news visit the [publications section of our website](#).

- [Government calls for submissions on Fair Trading Amendment Bill](#)
- [The Big Picture: Climate Change – what lies ahead in 2020?](#)
- [Government aims to fast-track urban development](#)
- [The Big Picture: Overseas Investment – new waves of reform set the tone for the next decade](#)
- [Challenges ahead for the Construction Sector Investment Plan](#)



- [“Whistle while you work?” Government commits to strengthening whistleblowing laws](#)
- [GST update – proposed exemption for Bitcoin and other cryptocurrencies](#)
- [Projects and Real Estate News Issue No. 7](#)
- [Corporate Reporter Issue No. 63](#)



USEFUL WEB LINKS

[New Zealand Government](#)

[Consumer Protection](#)

[Inland Revenue Department](#)

[Ministry of Business, Innovation & Employment](#)

[Ministry of Foreign Affairs and Trade](#)

[New Zealand Government](#)

[NZ Treasury](#)

[Office of the Clerk of the House of Representatives \[New Zealand Parliament\]](#)

[Parliamentary Counsel Office](#)

NEW ZEALAND FINANCIAL AGENCIES AND ORGANISATIONS

[Commerce Commission](#)

[The Companies Register](#)

[Export Credit Office](#)

[NZ Law Commission](#)

[Office of the Banking Ombudsman – password required](#)

[Insurance and Financial Services Ombudsman](#)

[Privacy Commissioner](#)

[Personal Property Securities Register](#)

[Reserve Bank of New Zealand](#)

[Takeovers Panel](#)

[Financial Markets Authority](#)

NEW ZEALAND COMMERCIAL SITES

[NZFMA](#)

[ILANZ](#)

[Financial Services Federation](#)

[Chartered Accountants Australia and New Zealand](#)

[NZ Bankers' Association](#)

[NZ Institute of Economic Research](#)

[NZX](#)

[The New Zealand Initiative](#)

AUSTRALIAN GOVERNMENT SITES

[Banking Ombudsman](#)

AUSTRALIAN COMMERCIAL SITES

[Australian Financial Markets Association](#)

[Australian Securities and Investment Commission](#)

[Australian Stock Exchange](#)

INTERNATIONAL SITES

[Bank for International Settlements](#)

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