

AUTUMN 2019

FINANCIAL SERVICES QUARTERLY

REVIEW OF CURRENT LEGAL ISSUES IN THE FINANCIAL SECTOR

ISSUE HIGHLIGHTS

- **Priority lost by seriously misleading financing statement**
- **Proposed new financial markets law shows strength of foreign influences**
- **Reserve Bank establishes Charter for working with banks**

Each quarter, we summarise recent issues and preview upcoming developments in these areas:



IN THE COURTS



LEGISLATION / IN PARLIAMENT



RECENT DEVELOPMENTS

Also in this issue:



BELL GULLY NEWS



USEFUL WEB LINKS

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.

For more information on any of the cases, articles and features in *Financial Services Quarterly*, please email rachel.gowing@bellgully.com or call on 64 9 916 8825.



IN THE COURTS

Priority lost by seriously misleading financing statement

In a recent High Court case, a finance company's security interest over a bulldozer was defeated by a subsequently registered financing statement.

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.

LEGISLATION / IN PARLIAMENT

CGT: no Government commitment for now

The Final Report of the Tax Working Group has been released, ending months of speculation about its recommendations.

Proposed new financial markets law shows strength of foreign influences

The Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Bill has been introduced into Parliament, evidencing the tension between New Zealand's legislative sovereignty and its need to be a player on the world stage.

New amendments to the Insolvency Practitioners Bill

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

Securitisation tax changes close to a reality

Proposed tax rules for securitisation vehicles remain on track for enactment in the first half of 2019.

Reserve Bank Act focus on employment

The Reserve Bank of New Zealand (Monetary Policy) Amendment Bill passed by Parliament late last year introduces a focus on employment outcomes into the Reserve Bank Act.

RECENT DEVELOPMENTS

Deadline extended for feedback on review of capital adequacy framework for registered banks

The Reserve Bank has released background papers relating to its ongoing review of the minimum amount of capital that banks must hold, and extended the deadline for submissions to 3 May 2019.

Reserve Bank establishes Charter for working with banks

The Reserve Bank has established a Relationship Charter for working effectively with banks, in a step towards achieving the best "regulator-related" relationships.

Report on life insurance conduct and culture

The Reserve Bank of New Zealand and the Financial Markets Authority have released their joint review of 16 New Zealand life insurers.

LATEST FROM THE FINANCIAL MARKETS AUTHORITY

NZX & FMA to review New Zealand's capital markets

The Reserve Bank has released background papers relating to its ongoing review of the minimum amount of capital that banks must hold, and extended the deadline for submissions to 3 May 2019.

Same class offers exempt from disclosure and governance requirements of FMCA

The FMA has used its exemption powers to facilitate offers of financial products of the same class as ASX quoted financial products in cases where the issuer has a secondary listing with NZX.

Report on survey of consumers' experience of providers' conduct

The FMA has reported that consumers want financial providers to do more to explain fees and help them understand why their products are right for them.



IN THE COURTS

Priority lost by seriously misleading financing statement

In a recent High Court case¹, a finance company's security interest over a bulldozer was defeated by a subsequently registered financing statement.

The Court found that, because the first registered financing statement recorded the bulldozer as "goods – other" and not "goods – motor vehicles", it was seriously misleading. This was because a search using the appropriate collateral type for the bulldozer would not disclose the registration.

The question arose as to whether a searcher who has found a security interest can nonetheless take advantage of a defect in the registration. Referencing an earlier decision determining that "it is unnecessary ... to establish that anyone was in fact misled. It is the capacity or potential to mislead that is crucial", the Court held that such knowledge does not relieve the consequences of a seriously misleading registration.

Financiers and lessors of "yellow goods" (construction, earth moving and quarrying equipment, forklift trucks and the like) are encouraged to review their registration practices to ensure their financing statements are not potentially seriously misleading.

Priority 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.

LEGISLATION / IN PARLIAMENT

CGT: no Government commitment for now

The Final Report of the Tax Working Group has been released, ending months of speculation about its recommendations.

Click [here](#) for more information.

Proposed new financial markets law shows strength of foreign influences

The Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Bill has been introduced into Parliament.

Nowhere is the tension between New Zealand's legislative sovereignty and its need to be a player on the world stage more evident than in our financial markets laws.

Anyone remaining of the view that we dictate our own rules need look no further than three proposed legislative reforms:

- a substantial extension and re-write of the laws governing financial market infrastructures;
- changes to insolvency laws to accommodate foreign margin requirements for OTC derivatives; and
- a new licensing regime for administrators of financial benchmarks.

In each case, the proposed reform has been prompted by either the direct effect of foreign law on New Zealand businesses or the recommendations of offshore standard setting organisations.

Click [here](#) for more information.

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.

Securitisation tax changes close to a reality

The proposed tax rules for securitisation vehicles remain on track for enactment in the first half of 2019.

Recent tweaks to the proposed rules will clarify their operation and, most significantly, will extend the rules to existing securitisation structures as well as newly formed structures.

Click [here](#) for more information.

Reserve Bank Act focus on employment

The Reserve Bank of New Zealand (Monetary Policy) Amendment Bill passed by Parliament late last year introduces a focus on employment outcomes into the Reserve Bank Act.

According to Finance Minister Grant Robertson, "The Reserve Bank now has a dual mandate, similar to central banks in other advanced economies including Australia, the U.S. and

¹ Partners Finance and Lease Limited v Richmond [2019] NZHC 34



Norway. Alongside price stability, the Bank has also now been tasked with supporting maximum sustainable employment”.

Click [here](#) to read the Final Report of the Finance and Expenditure Committee.



Deadline extended for feedback on review of capital adequacy framework for registered banks

The Reserve Bank has released background papers relating to its ongoing review of the minimum amount of capital that banks must hold, and extended the deadline for submissions to 3 May 2019.

It has also published a summary of why it proposes to alter requirements for bank capital and the impact of its proposals, along with presentation slides used for a media briefing and a bank forum:

[Summary explanation](#)

[Media briefing presentation slides](#)

[Bank forum presentation slides](#)

Click [here](#) for more information.

Reserve Bank establishes Charter for working with banks

The Reserve Bank has established a Relationship Charter (the Charter) for working effectively with banks, in a step towards achieving the best “regulator-related” relationships possible.

The Charter will also be discussed with insurers and non-bank deposit takers in the future.

Reserve Bank Governor Adrian Orr noted “Writing it was the easy part. Operating consistently with the conduct principles is the challenge. We will regularly mutually review behaviours within the industry. Appropriate conduct is critical to the trust and wellbeing of New Zealand’s financial system...”.

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

Report on life insurance conduct and culture

The Reserve Bank of New Zealand (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.

NZX & FMA 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”.

Click [here](#) for more information.

Same class offers exempt from disclosure and governance requirements of FMCA

The FMA has used its exemption powers to facilitate offers of financial products of the same class as ASX quoted financial products, in cases where the issuer has a secondary listing with NZX.

Click [here](#) to read the exemption notice.

Report on survey of consumers’ experience of providers’ conduct

The FMA has reported that consumers want financial providers to do more to explain fees and help them understand why their products are right for them.

The survey, outlined in A guide to the FMA’s view of conduct, focussed on the “five C’s for good conduct”:

- capability;
- conflict;
- culture;
- control; and
- communication.

Click [here](#) for more information.



BELL GULLY NEWS

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

[Mainzeal directors liable for reckless trading](#)

[NZ businesses need to consider climate change impacts now, suggests new report](#)

[Professional negligence claims: loss of a chance, or all-or-nothing?](#)

[CGT: no Government commitment for now](#)

[Expert Advisory Panel for Electricity Price Review releases Options Paper](#)

[High Court dismisses the Commerce Commission's application for an interim injunction against Viagogo](#)

[Proposed new financial markets law shows strength of foreign influences](#)

[A completely genuine ticket to Court - Commerce Commission v Viagogo AG](#)

[Proposed Australian class action reform - the implications for New Zealand](#)

[The interpretation of contracts](#)

[What can New Zealand learn from the strawberry tampering crisis?](#)

[The long-reach of international data laws](#)

[Buckle up – the “Year of Privacy” begins](#)

[Sweeping changes recommended as Fair Pay Agreement agenda takes shape](#)

[New amendments to the Insolvency Practitioners Bill](#)

[Securitisation tax changes close to a reality](#)

[Parent company liability for subsidiary's negligence](#)

[Tax - what's in store for 2019?](#)

[Further reforms relating to unfair commercial practices on the agenda for 2019](#)

[Mental health risks in performance management: an important discussion for employers](#)

[The past restored - Employment Relations Amendment Bill 2018](#)

[FMA investigation casts spotlight on disclosure change that may catch directors](#)



USEFUL WEB LINKS

NEW ZEALAND GOVERNMENT

[Consumer Affairs](#)

[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 Office](#)

[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](#)

[International Monetary Fund](#)

[International Swaps and Derivatives Association](#)

[NASDAQ](#)

[New York Stock Exchange](#)

[United States Securities and Exchange Commission](#)

[World Bank](#)

AUCKLAND VERO CENTRE, 48 SHORTLAND STREET
PO BOX 4199, AUCKLAND 1140, NEW ZEALAND, DX CP20509
TEL 64 9 916 8800 FAX 64 9 916 8801

WELLINGTON 171 FEATHERSTON STREET
PO BOX 1291, WELLINGTON 6140, NEW ZEALAND, DX SX11164
TEL 64 4 915 6800 FAX 64 4 915 6810