

CORPORATE REPORTER

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- New round of Cabinet decisions on the reform of the Reserve Bank Act
- Government calls for submissions on amendments to the Fair Trading Act
- Commerce Commission consults on a new CCCFA certification requirement
- The latest developments in the climate change sector
- The latest media releases from the New Zealand Commerce Commission and the Australian Competition and Consumer Commission

WELCOME

to issue No.63 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.



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BELL GULLY

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Submissions called for on new conduct bill for financial institutions

The Finance and Expenditure Committee has called for submissions on the [Financial Markets \(Conduct of Institutions\) Amendment Bill](#), which had its first reading shortly after Parliament resumed earlier this month. Submissions close on 26 March 2020.

This Bill creates a new regulatory regime for the general conduct of banks, insurers and non-bank deposit takers (NBDTs), and certain intermediaries, in respect of services and products provided to consumers. We have previously discussed the changes that had been signalled [here](#).

The consultation which preceded the introduction of the Bill last year received [85 submissions](#) from interested parties, and we would expect a similar level of participation in the select committee process given the importance of the Bill to the industry.

Key measures

The Bill is a response to the Financial Markets Authority (FMA) and the Reserve Bank's [joint conduct and culture reviews](#) into the sales and conduct practices within New Zealand banks and insurers following revelations emerging out of Australia's Hayne Royal Commission. These reviews identified that certain institutions, particularly banks and life insurers, lack focus on good outcomes for customers and have ineffective systems and controls to identify, manage, and remedy conduct issues. The measures in the Bill to address these issues include:

- **General conduct licence** - a requirement for banks, insurers and NBDTs (**financial institutions**) to be licensed by the FMA under Part 6 of the Financial Markets Conduct Act 2013 (**FMC Act**) in respect of their general conduct. Applications for conduct licences will be able to be made before the regime commences.
- **Compliance with a fair conduct principle** - The framework for the new regime is based on a requirement for financial institutions and certain "intermediaries" to comply with a fair conduct principle to treat consumers fairly, including by paying due regard to their interests. The principle applies to a broad range of financial services and associated products (in a range of circumstances, from early design of products and services to post-sale dealings). This includes consumer contracts of insurance and consumer credit contracts, as well as most other financial services referred to in the Financial Service Providers (Registration and Dispute Resolution) Act 2008 when those services are retail services. "Intermediaries" are people who are involved in providing the services or products (but a person is covered only if they are paid a commission or other benefit by the financial institution or another intermediary).
- **Fair conduct programme** - a requirement for financial institutions to establish, implement, and maintain an effective fair conduct programme. The programme is targeted at ensuring compliance with the fair conduct principle through the implementation of policies, processes, systems, and controls for every relevant part of a financial institution's business. The Bill sets out the minimum requirements for the conduct programme, which includes providing for the programmes to be made available to the public, with more specific requirements to be provided through regulations. Financial institutions will be required to take all reasonable steps to ensure that intermediaries also comply with their conduct programmes (so that institutions provide some oversight to ensuring that any intermediaries distributing their products or services are doing so responsibly), except to the extent that an intermediary is a financial institution in its own right, or a financial advice provider providing regulated financial advice.
- **Regulation of sale incentives** - a requirement for financial institutions and intermediaries to comply with regulations that regulate incentives. These regulations will be able to prohibit incentives that are based on volume or value sales targets (such as, overseas trips, bonuses for selling a certain number of financial products, leader boards, and performance management based on volume of sales).

Protection for whistleblowing

The Bill includes provisions to protect employees and agents of financial institutions and intermediaries who report a contravention of a provision of the FMC Act or of the fair conduct principle to the FMA.

Enforcement and penalties

The FMA has been given powers to monitor and enforce licensing obligations on an ongoing basis, including actions such as censure and the imposition of action plans. The Government has acknowledged that this will likely involve an increase in funding for the FMA.

Strong civil liability and pecuniary penalties will apply for contravention of the new licensing regime and any associated obligations, through the existing enforcement tools and maximum penalties available under the FMC Act.

Transitional arrangements

Regulations will allow licensing requirements to be applied to different classes of entities at different times - up to four years after the date on which the Bill receives the Royal assent. The Government has proposed that banks and insurers would be licensed first, with NBDTs following at a later date.

Other transitional arrangements in the Bill include:

- providing for how to deal with applications to act as a financial institution from existing banks, insurers, and NBDTs. In particular, a licence cannot be declined without the Reserve Bank's consent, and
- allowing new incentives regulations to apply to agreements entered into before the commencement of the regulations (but not to incentives that have already been earned before that commencement).

Next steps

The select committee has until 23 June 2020 to report back on the Bill, which is only a few sitting days before the House adjourns for the general election on 6 August. The Government has yet to signal whether it intends to pass the Bill in that time period, although the Bill has been given priority on the 2020 legislation programme which provides for it to be enacted by the end of 2020.

Regulations will also be necessary to support the operation of the Bill. This will mean that even if the Bill is passed before the House adjourns, there will be an additional period of time required for the regulations to be developed, following further policy and consultation processes.

Other factors that are likely to be relevant to the timing of the Bill's implementation include the regulatory changes that are currently taking place and the impact these changes will have on the industry. These changes include the new regime for financial advice under Financial Services Legislation Amendment Act 2019 (which comes into force on 29 June 2020), unconscionable conduct amendments in the Fair Trading Act 1986, amendments to the Credit Contracts and Consumer Finance Act 2003, the review of insurance contract law and the Reserve Bank Act review (discussed in the next item below).

New round of Cabinet decisions on the reform of the Reserve Bank Act

At the end of last year, the Government released in-principle decisions made by Cabinet on Phase 2 of the review of the Reserve Bank of New Zealand Act 1989.

The latest decisions relate to both the institutional form and governance of the Reserve Bank (which will be progressed through a new 'Institutional Act') and to the regulation of deposit takers (which will be progressed through a 'Deposit Takers Act'). Together, these will replace the current Reserve Bank of New Zealand Act.

The Government has indicated that the Institutional Act will be introduced within the current Parliamentary term.

Cabinet plans to make final policy decisions on the Deposit Takers Act in mid-2020 following further consultation.

Institutional Act

The key in-principle decisions for the new Institution Act include:

- **Objectives** – The Reserve Bank's high-level financial stability objective will be "protecting and promoting the stability of New Zealand's financial system".
- **Decision-making principles** – To ensure that financial stability is not pursued at all costs, the Reserve Bank will be subject to decision-making principles that it must have regard to in exercising its financial regulatory powers. These will include efficiency related considerations, as well as a principle that would require the Reserve Bank to have regard to long-term risks to financial stability, which would include risks associated with climate change (as discussed in our [earlier article](#)).

- **Governance** - the Reserve Bank is to adopt the board governance model already used by other Crown entities. As with the traditional corporate governance model, the board will oversee all decisions of the Reserve Bank (other than those on monetary policy). Management functions will be delegated to the Governor. The current process whereby the Minister of Finance appoints the Governor on the recommendation of the Board is to be retained. The Treasury will monitor the Reserve Bank, in a similar manner to which Crown entities are monitored.
- **New Financial Policy Remit** - the Minister of Finance will issue a Financial Policy Remit providing for matters that the Reserve Bank should have regard to when pursuing the financial stability objective. The empowering provisions for the new Remit will be designed to provide a balance between protecting the Bank's operational independence, and providing an appropriate level of democratic influence over the significant policy making functions that Parliament has delegated to the Bank in relation to financial stability.
- **Increasing information gathering powers** - the Bank's current information-gathering powers for its central banking functions are to be widened to enable the Bank to collect information from a broader set of individuals and entities as opposed to just 'financial institutions' (such as securities registries, financial service providers and other entities that support the financial sector).
- **Greater accountability** - accountability of the Reserve Bank will be enhanced through greater alignment of reporting and monitoring requirements with state sector practice. This includes legislative changes to end the current exemptions for the Bank from the Public Audit Act 2001 (which will allow the Auditor-General to conduct performance audits of the Bank) and the Ombudsmen Act 1975 (which will mean that the Office of the Ombudsman can investigate administrative conduct of the Reserve Bank where that conduct affects a person or a group of persons 'in their personal capacity').
- **Funding** - the Reserve Bank's funding will continue to be set through a funding agreement. A portion of the Reserve Bank's costs for regulatory functions will be able to be collected through levies charged to regulated entities.

Deposit Takers Act

In keeping with Cabinet's earlier decision to merge New Zealand's two existing prudential regimes for regulating banks and non-bank deposit takers into a single 'licensed deposit taker' framework, a new Deposit Takers Act will set out the Reserve Bank's prudential functions and powers in relation to deposit taking institutions. This will be a flexible framework to allow for the regulation and supervision of different types of deposit takers in a way that is proportionate to the risks entities pose to the financial system.

The new regime is expected to capture, at a minimum, all lenders that offer transactional, savings and term deposit accounts to the public. This perimeter would capture the existing banks, credit unions and building societies. Further consultation will be undertaken in early 2020 to address whether the perimeter should be widened to include finance companies who issue longer-dated secured debt, and whether it should be flexible enough to capture entities as a result of financial innovation and FinTech.

Further key in-principle decisions for the new Deposit Takers Act include:

- **Deposit insurance scheme** - the previously announced new deposit insurance scheme will provide for deposits at licensed deposit-takers to be insured up to a limit of \$50,000 per depositor, per institution. The scheme will be funded by levies on deposit-takers, with a guaranteed and prearranged funding backstop provided by the Government.
- **Prudential standards** - the Reserve Bank will retain a high degree of flexibility in designing the prudential regime and applying it to individual deposit takers, in line with best practice for prudential regulators internationally. Standards will be the primary regulatory instrument under the new framework, which will allow prudential rules to be disallowed by Parliament under the Legislation Act.
- **Director and executive accountability** - accountability requirements on directors will be significantly strengthened. Positive duties will be imposed on directors, although consultation is required for the specification of such duties. Further consultation also will be undertaken on whether the accountability framework will be extended beyond directors to certain senior employees.
- **Supervision and enforcement** - the Reserve Bank's supervision and enforcement tools will be strengthened, including with powers to undertake on-site inspections as part of its supervision activities.
- **Crisis resolution** - the Reserve Bank will be provided with a greater range of crisis resolution powers, and clarity about its role and objectives in using these powers. New safeguards available to creditors will also be established.

Further information on Cabinet's decisions on Phase 2 of the review are available [here](#).

Submissions called for on the Financial Market Infrastructures Bill

The Finance and Expenditure Committee has called for submissions on the [Financial Market Infrastructures Bill](#), which had its first reading shortly after Parliament resumed earlier this month. Submissions close on 26 March 2020.

The Bill establishes a new regulatory regime for financial market infrastructures (FMIs), those multilateral systems which provide trading, clearing, settlement, and reporting services in relation to payments, securities, derivatives, and other financial transactions.

It also provides certain FMIs with legal protections concerning settlement finality, netting, and the enforceability of their rules.

The Bill will replace Parts 5B and 5C of the Reserve Bank of New Zealand Act 1989.

We outlined the key parts of the Bill in an earlier article [here](#).

The Reserve Bank launches streamlined external whistleblowing policy

The Reserve Bank of New Zealand has streamlined its [external whistleblowing policy](#) for those employed by regulated entities.

Individuals currently or formerly employed by insurers, banks or non-bank deposit takers regulated by the Reserve Bank, who have witnessed or become aware of misconduct within their organisation, can now report this directly to the Reserve Bank via a designated email address and phone number.

Consultation on proposed GST exemption for cryptocurrencies

The New Zealand Government is proposing a GST exemption for "crypto assets", such as Bitcoin and Ethereum, and is seeking submissions from interested parties on an [issues paper](#) released by Inland Revenue.

The Inland Revenue paper also proposes changes to a number of other areas of GST law beyond cryptocurrency, including changes proposed to the GST aspects of fund manager and investment manager services.

To read more on these proposals see our earlier client update [here](#). Submissions close on 9 April 2020.

Changes ahead for funding of the FMA

As a response to cost pressures within the FMA's current regulatory remit and its expanding role under the new financial advice regime, the FMA and the Ministry of Business, Innovation and Employment have released a [joint consultation](#) on the FMA's operational funding requirements.

Submissions are being sought on three separate funding options, following an analysis of options presented by PwC in their recent [report](#) on FMA's efficiency and effectiveness.

The FMA's preferred option would provide an additional \$24.805 million of funding, increasing the FMA's current appropriation of \$36 million to \$60.805 million per annum. This would impact both the Crown and levy payers, but is seen as necessary to reduce regulatory risks and provide opportunities to bring about behavioural changes through more pro-active engagement across the industry. This would also provide for significant improvements above current capability and expertise and provide capacity to respond to new and emerging market developments.

The FMA's funding was last reviewed in 2016.

The consultation closes on 28 February 2020.

Report on review of MIS custody arrangements

The FMA has published the [summary findings](#) on a thematic review of managed investment schemes (MIS) custody practices, focusing on retail managed funds.

The review was undertaken by PwC in response to an IMF recommendation (in the IMF's 2017 Financial Stability Assessment Programme review of New Zealand's financial sector) to require the provision of custody services to be subject to licensing and supervision.

The review identified issues around the independence of custody arrangements, and inconsistency of custodial processes, procedures and controls.

The FMA concluded that there is more that supervisors can do to implement sufficient controls and oversight of custody arrangements within the current legislation of the Financial Markets Conduct Act 2013, but will assess options after industry engagement.

FMA information sheet published on “green bonds” for same class exclusion offers

The FMA has published an [information sheet](#) which explains the circumstances in which an issuer can make an offer of “green bonds” under the same class exclusion available under the Financial Markets Conduct Act (FMCA) regime.

The “same class exclusion” is found in clause 19 of Schedule 1 of the FMCA. It allows certain financial products (including green bonds) that are of the same class as existing quoted financial products to be offered without the offeror having to comply with the full disclosure requirements for regulated offers under the FMCA.

The information sheet includes discussion on whether green bonds should be considered as of the same class as standard (or “vanilla”) bonds.

Review of New Zealand's retirement income policies

A [final report](#) to Government on the 2019 Review of Retirement Income Policies was tabled in Parliament in January 2020.

The Retirement Commissioner is required by law to carry out a Review of Retirement Income Policies every three years. Their report responds to terms of reference set by the government of the day, and advises on options to ensure all New Zealanders have a good standard of living as they age, both now and in the future.

The report requires more work to be done across government to help people prepare for retirement, in areas of housing, work, KiwiSaver and enhancing New Zealanders' financial capability. Its recommendations for KiwiSaver include:

- introducing a ‘Small Steps’ employee contribution programme to KiwiSaver as the default for new members, and as an option for current members,
- phasing in employer contributions for KiwiSaver members aged over 65,
- phasing out the inclusion of KiwiSaver in total remuneration packages,
- auto-enrolling beneficiaries in KiwiSaver through a government contribution,
- excluding fixed fees from low-balance KiwiSaver accounts,
- making prescribed investor rates tax refundable,
- displaying fee projections on KiwiSaver members' annual statements, and including a comparison to the average fee projection for that type of fund, and
- mandating improved disclosure around share investing in KiwiSaver, further distinguishing between emerging vs established markets, as well as New Zealand vs Australian shares.

Contrary to the two previous reviews which called for a rise in the age of eligibility for New Zealand Superannuation (NZS), this report recommends that the Government make clear that NZS is valued and will be protected to continue to provide for New Zealanders in the future, on current settings. The latest Treasury projections show that the cost of NZS is sustainable for at least the next 30 years, and raising the age would do more harm than good.

Further details are available [here](#).

Reserve Bank shares data in the life insurance sector

An article in the Reserve Bank's January 2020 Bulletin provides a high-level overview of the life insurance sector in New Zealand and highlights issues in the sector.

It provides a range of indicators relating to New Zealand's life insurance sector, and where possible, compares them to international peers.

See [An overview of the life insurance sector in New Zealand](#).



MERGERS AND ACQUISITIONS

The Big Picture: Overseas Investment – new wave of reforms set the tone for the next decade

Bell Gully has released a report on the government's reform package for the second phase of its overseas investment regime changes, rounding out the most significant overhaul of the Overseas Investment Act in 15 years.

The focus of the report is a [Cabinet paper](#) released in the closing weeks of last year, setting out in detail what investors can expect from the overseas investment regime over the next decade.

Key changes include the implementation of a national interest test that will bring the Act into line with jurisdictions overseas and the simplification of the entire assessment process, including removing low risk transactions from the regime for which screening is unnecessary.

On the whole, the changes will be welcomed by the business community. They address some of the most long-standing and fundamental concerns about the current regime, which have made it a global outlier in terms of complexity and consent timeframes.

Click [here](#) for our full report.

Overseas Investment Office releases data for 2019

In 2019 the Overseas Investment Office made decisions on 145 applications from overseas people wanting to invest in New Zealand's sensitive land and significant business assets.

All applications to acquire significant business assets were approved in 2019, with an average processing time of 21 working days.

Most applications to acquire sensitive land were approved in the last 12 months, however six applications for sensitive rural land were declined. These applications were declined because the investment wasn't going to create a substantial and identifiable benefit.

Further details are available [here](#).

Takeovers Panel updates guidance for unlisted code companies

The Takeovers Panel has issued a new [guidance note](#) for unlisted code companies.

This follows a law change to the definition of "code company" in the Takeovers Act 1993, which came into effect on 13 January 2020 under the [Regulatory Systems \(Economic Development\) Amendment Act 2019](#). The Act amends the threshold at which the Takeovers Code applies to unlisted companies. In addition to more than 50 shareholders/share parcels, an unlisted company must now be at least "medium sized".

The guidance note replaces the 2016 Small Code Companies Guidance Note (see changes [here](#)), and includes the Panel's views on the two financial thresholds applicable to the "medium sized" definition as well as association issues that might arise under the Code.



Climate change – what lies ahead in 2020

Climate change response will become a reality for many New Zealand businesses in 2020, as an array of legislative changes shed more light on what a lower-carbon economy will mean for their own operations.

A new Bell Gully report “[The Big Picture: Climate change – what lies ahead in 2020](#)” provides insight on the year ahead, including discussion on the changes to the Climate Change Response Act, other required regulatory and policy changes, the new Climate Change Commission, the government established Green Investment Finance Limited (which has a NZ\$100 million green fund), the growth in climate lawsuits and the pressure for action on how international carbon markets would work.

End of consultation period for key NZ ETS and renewable energy regulations this month

February has been a critical month to engage on new regulations and policy changes aimed at accelerating New Zealand’s transition to a net zero carbon economy.

Submissions on the following consultations close on 28 February:

- the Ministry for the Environment’s consultation paper [Reforming the New Zealand Emissions Trading Scheme: Proposed Settings](#), which seeks feedback on the provisional regulatory settings to cap emissions, establish auctioning of NZ ETS units and set price controls in the New Zealand emissions trading scheme (NZ ETS), and
- the Ministry for Business, Innovation and Employment’s discussion paper [Accelerating renewable energy and energy efficiency](#), which seeks feedback on a range of options to encourage energy efficiency and accelerate renewable electricity generation and infrastructure.

For commentary on both of these consultation papers refer to our earlier update [here](#).

Productivity Commission releases draft report on technology adoption by firms

The New Zealand Productivity Commission released a draft report for consultation on its inquiry into how New Zealand can maximise the opportunities and manage the risks of disruptive technological change, and its impact on the future of work and the workforce.

This is the last of five draft reports that have been published on the inquiry. The other reports provide further analysis and advice on: [Educating New Zealand’s future workforce](#), [Training New Zealand’s workforce](#), [Employment, labour markets and income](#), and [New Zealand, technology and productivity](#).

This [draft report](#) addresses the following aspects of the inquiry’s terms of reference:

- What motivates firms to adopt new technologies?
- How do markets for land, labour, capital and other inputs affect technology adoption by firms? What else influences firm decision making?
- Firm and labour dynamics in a competitive business environment.
- How can governments better encourage technology uptake by firms to increase productivity growth?

The Commission will deliver a final report to the Government in March 2020.

New AML/CFT sector risk assessments released

The Department of Internal Affairs (DIA) has released two new Sector Risk Assessments (SRAs).

These are:

- The “[Designated Non-Financial Businesses and Professions and Casinos Sector Risk Assessment – December 2019](#)”. This is an update to the first anti-money laundering and countering financing of terrorism (AML/CFT) risk assessment undertaken by the DIA for reporting entities covered by the

definition of “Designated non-financial businesses or professions”, including lawyers, accountants, conveyancers and real estate agents. The updated SRA also now includes Trust and company service providers and casinos.

- The “[Financial Institutions Sector Risk Assessment – December 2019](#)”, which is an update to the AML/CFT risk assessment undertaken by the DIA for reporting entities determined to be Financial Institutions

Reporting entities should consider whether they need to review and update their own risk assessments and AML/CFT programmes in light of these SRAs, particularly with regard to their sector-specific assessment covering general risks and industry characteristics associated with money laundering and terrorism financing and the high risks and vulnerabilities impacting on their sector.

Cabinet agrees to a National AML/CFT Strategy

The Ministry of Justice has released a [Cabinet paper](#) detailing a proposal for New Zealand’s first National Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Strategy.

The national AML/CFT strategy (attached as an appendix to the Cabinet paper, together with an implementation plan) is aimed at setting the strategic direction for the AML/CFT regime over the next ten years, reaffirming the purpose of the regime, helping to coordinate actions; and guiding the prioritisation of efforts to improve the regime, including responding to the mutual evaluations undertaken by the Financial Action Task Force (FATF) for compliance with FATF technical recommendations.

The government has already committed to 12 short term actions over the next 12 months.

New Zealand is currently the subject of a mutual evaluation, with an onsite visit by FATF assessors expected to take place in March. New Zealand’s last mutual evaluation by the FATF was in 2009, with a follow up report issued in 2013 that resulted in New Zealand being removed from the regular follow-up process.



CORPORATE LAW

Changes to PPSR financing statement details required for registered overseas entities

Amendments to the Personal Property Securities Act 1999, which came into effect in January 2020, have resulted in changes for some Personal Property Securities Register (PPSR) users.

If the debtor organisation is registered as an overseas company on New Zealand’s Overseas Companies Register or is registered as an overseas limited partnership on New Zealand’s Overseas Limited Partnerships Register, the registration number assigned to the organisation on the New Zealand register must now be entered in the financing statement.

If the debtor organisation is incorporated but the above does not apply then the incorporation number (if any) assigned to the organisation in its place of incorporation must be entered in the financing statement.

Further details are available [here](#).



COMPETITION & CONSUMER LAW

Submissions called for on amendment bill for the Fair Trading Act

The Economic Development, Science and Innovation Committee has called for submissions on the [Fair Trading Amendment Bill](#), following its first reading on 12 February 2020.

The Bill has the potential to impact how many businesses operate, particularly those that engage in SME business-to-business contracts. It proposes a number of changes to the Fair Trading Act 1986, including:

- a new prohibition against unconscionable conduct in trade,

- extending the current protections against unfair contract terms in standard form consumer contracts to also apply to business-to-business contracts that form part of trading relationships with an actual or expected value below NZ\$250,000 per year, and
- strengthening the ability of consumers to require uninvited sellers to leave or not enter their premises, including through the use of 'Do Not Knock' stickers.

Submissions close on 27 March 2020.

For commentary on the Bill see our earlier article [here](#).

NZCC consults on certification criteria for a new CCCFA requirement

The Credit Contracts and Consumer Finance Act 2003 (CCCFA) was amended last year to provide a requirement for certain consumer credit providers (lenders) and mobile traders to be certified under the CCCFA by the NZCC as a condition of providing consumer credit or mobile trading services.

If lenders or mobile traders provide consumer credit or mobile trading services without certification they could be liable for penalties (up to \$200,000 for an individual, and in any other case up to NZ\$600,000). A lender or mobile trader also cannot be registered on the Financial Service Providers Register for providing those services without NZCC's certification.

In order to provide certification, the NZCC must be satisfied that the applicant's directors and senior managers are 'fit and proper' to hold their respective positions. As a result, the NZCC is consulting on its proposed criteria for assessing fitness and propriety. In addition, the NZCC is seeking feedback on when a certified lender or mobile trader should be required to notify the NZCC about a change in circumstances to its directors or senior managers that would require a reassessment of the 'fit and proper' certification. These 'change in circumstances' will be set out in regulations to the CCCFA that will be developed by the Ministry of Business, Innovation and Employment.

Details on the consultation, which closes on 18 March 2020, are available [here](#).

The new certification requirements will not come into force until 1 April 2021 to give market participants time to make the necessary changes for implementation of the new regime (with applications likely to be open for certification from September 2020).

The certification requirement does not apply to those lenders (or mobile traders) that are already licensed providers approved to provide a licensed service by the Financial Markets Authority or the Reserve Bank of New Zealand (as listed in Schedule 2 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008. This includes registered banks, licensed NBDTs, entities holding a market service licence under the Financial Market Conduct Act 2013 and licensed insurers.



NZCC MEDIA RELEASES

The New Zealand Commerce Commission (NZCC) has issued the following media releases:

Mergers and acquisitions

Statement of Preliminary Issues released for Elanco's application to acquire Bayer's animal health business

The NZCC has released a Statement of Preliminary Issues for Elanco's application to acquire Bayer's animal health business. In New Zealand, Elanco and Bayer overlap in the supply of a number of different products for the treatment of companion and production animals, including internal and external parasites and various viral and microbial conditions. The NZCC is scheduled to make a decision by 14 April 2020. The Statement of Preliminary Issues and a public version of the application can be found on the NZCC's [case register](#).

Statement of Preliminary Issues released for T&G application to acquire Freshmax

The NZCC has published a Statement of Preliminary Issues relating to an application from Turners & Growers to acquire 100% of the shares in Freshmax NZ. Turners & Growers and Freshmax are both involved in the supply of fruit and vegetables to retailers and other parties in New Zealand. The NZCC is scheduled to make a decision on the application by 7 April 2020. The Statement of Preliminary Issues and a public version of the application can be found on the NZCC's [case register](#).

Statement of Issues released for the Cengage / McGraw-Hill merger

The NZCC has published a Statement of Issues relating to an application from Cengage and McGraw-Hill seeking clearance to merge their global publishing businesses. In New Zealand, Cengage supplies textbooks and associated products to the primary, secondary and tertiary education sectors (i.e., universities and polytechnics), while McGraw-Hill predominantly supplies these products to the tertiary sector with a small volume supplied to the primary sector. The Statement of Issues and a public version of the clearance application can be found on the NZCC's [case register](#).

Verifone seeks clearance to acquire Smartpay

The NZCC has received a clearance application from Verifone New Zealand to acquire Smartpay's New Zealand assets. Verifone is a global manufacturer and supplier of terminals and payment processing services. Its subsidiary, Eftpos New Zealand, supplies terminals directly to merchants under the EFTPOS brand, payment terminals to resellers on a wholesale basis and payment processing services. Smartpay is also a supplier of payment terminals to merchants in New Zealand. A public version of the clearance application can be found on the NZCC's [case register](#).

Statement of Preliminary Issues released for Mylan N/V / Upjohn clearance application

The NZCC has published a Statement of Preliminary Issues relating to a clearance application from Mylan and Upjohn, who propose to merge their global pharmaceutical businesses. Both parties supply off-patent prescription medicines including cholesterol and triglyceride regulators, non-steroidal antirheumatics, antiepileptics and erectile dysfunction products in New Zealand. The Statement of Preliminary Issues and a public version of the application can be found on the NZCC's [case register](#).

Statement of Preliminary Issues released for Infocare / APT Childcare

The NZCC has published a Statement of Preliminary Issues relating to an application by Juice Technologies seeking clearance to acquire APT Business Solutions, trading as APT Childcare. Juice Technologies operates in New Zealand through its wholly owned subsidiary, Infocare Systems. The Statement of Preliminary Issues and a public version of the application can be found on the NZCC's [case register](#).

NZCC grants clearance for Property Brokers application to acquire Farmland's real estate business on the West Coast

The NZCC has granted clearance for Property Brokers to acquire the West Coast real estate and property management businesses of Farmlands Real Estate. The NZCC's consideration of the application focused on competition issues in markets for the supply of real estate and property management services in the West Coast region of the South Island. The NZCC considers that the presence of competing suppliers in the relevant markets with the ability to expand is likely to constrain the ability of Property Brokers to raise prices or reduce service quality, and is satisfied that coordination in the relevant markets is unlikely. A public version of the written reasons for the decision can be found [here](#).

NZCC grants clearance for Cardrona to acquire Treble Cone

The NZCC has granted clearance for Cardrona Alpine Resort to acquire either the shares of Treble Cone Investments or the assets it uses to operate the Treble Cone ski field. In considering Cardrona's application for clearance, the NZCC focussed on whether the price of single day, multi day and season ski passes would increase with the acquisition, including to skiers in the Wanaka region, and whether the acquisition would increase the likelihood of coordination on ski pass prices. The NZCC said it is satisfied that the acquisition is unlikely to substantially lessen competition in any relevant market, because the merged entity would be unable to successfully charge higher prices, or reduce the quality of the services offered, due to the high numbers of skiers from outside the region with alternative options. A public version of the written reasons for the decision will soon be available on the NZCC's [case register](#).

Consumer issues

Vodafone warned

Vodafone has been warned by the NZCC for misleading consumers about account credits and for representations made in a loyalty discount promotion. The NZCC alleges that despite telling customers it would apply certain credits to their accounts on a monthly basis, Vodafone issued invoices which did not include the agreed credits.

Telcos fined \$121,500 for billing customers after contracts finished

Retail telecommunications providers CallPlus Services (trading as Slingshot), Flip Services and Orcon have been fined a total of \$121,500 after pleading guilty to 13 charges under the FTA. The charges relate to false representations made in invoices the companies sent to their customers between 2 January 2012 and 1

March 2018. The companies' terms and conditions said charges for customers' internet and/or landline services would stop 1 month after they gave notice to terminate their contracts. However, the companies issued final invoices to nearly 6,000 customers which included charges for services beyond the 1-month notice period. In doing so, the companies misrepresented their rights to payments because their customers only owed payment for the services provided prior to the agreed termination date.

Budget Loans' Allan and Wayne Hawkins banned from company management

Management banning orders have been issued against Allan Hawkins and Wayne Hawkins, which each individual from being a director or being in any way concerned with the management of a company for 10 years and 8 years, respectively. Allan Hawkins and Wayne Hawkins were directors of Budget Loans and Evolution Finance at the time the company engaged in conduct that resulted in two convictions under the FTA breaches in the last 10 year period. In a written decision, District Court Judge Gibson said both men "represent a significant hazard to anyone dealing with any company they manage or control or are directors of. The public in general and borrowers in particular... are entitled to be protected from the respondents."

NZCC seeking feedback on 'fit and proper' criteria

The NZCC is seeking feedback on the proposed criteria it will use to assess whether a lender is 'fit and proper' as part of a new certification regime being introduced under changes to the Credit Contracts and Consumer Finance Act. From April 2021, the NZCC must be satisfied that all directors and senior managers of lenders and mobile traders are 'fit and proper' they can be registered on the Financial Service Providers Register. The criteria and the assessment focus on whether the individual is financially sound, honest, reputable, reliable and competent to do the job. Submissions are due by 18 March 2020. The consultation document can be found [here](#).

More toy safety fines and prosecutions

Cinevan International was fined \$81,000 in the Auckland District Court on 19 February 2020, having earlier pleaded guilty to five representative charges relating to supply of 2,337 units of five toys or toy sets between January and December 2018. The NZCC noted that the packaging on some of the toys carried labels or symbols indicating they were not suitable for children under three. The NZCC emphasised that the toys were clearly intended for use by young children, and that businesses cannot use such labels to avoid their legal responsibilities. The NZCC has four remaining toy safety prosecutions before the Courts, against Greenstar Holding, Feel So Good, Kent Sing Trading Company and Espoir Limited.

Online retailer Container Door fined \$54K over unsafe bikes

Online retailer, Container Door, has been fined \$54,000 following an NZCC investigation. Container Door earlier pleaded guilty to two representative charges under the FTA for supplying bikes that did not meet the mandatory product safety standard for pedal bicycles. Between 1 April and 23 November 2017, Container Door supplied 15 Huffy Cruiser bicycles that did not have a front brake installed and which were sold without required information. They were not marked with the manufacturer, importer or supplier's details, and the packaging did not include a warning recommending that the bicycle be assembled by a skilled mechanic, as required under the FTA.

Bachcare convicted and fined for misleading online reviews

Holiday rental management and accommodation company, Bachcare, has been fined \$117,000 for misleading consumers by altering and withholding publication of online reviews posted by users of its accommodation services. Between 1 June 2017 and 28 September 2018 Bachcare edited customer reviews which were published on its website, removing negative comments about the rental properties listed by the company, and/or Bachcare's maintenance and management of properties. Judge Singh considered that Bachcare's actions compromised the interests of the consumers, fair competition and an environment in which consumers and businesses participate confidently. A full version of Judge Singh's sentencing notes can be found [here](#).

Water filter developer fails to back up its claims

Kiwipure has been found guilty of making unsubstantiated claims about the benefits and effectiveness of its magnetic water filtration system, in what was the first defended case in New Zealand against a trader accused of making unsubstantiated representations. The NZCC alleged that Kiwipure did not have reasonable grounds for making certain marketing claims about its product. The case was heard in the Auckland District Court in May before Judge Gibson. Kiwipure was sentenced on 12 February 2020 and fined \$162,000. A full version of the judgment can be found [here](#).

PAK'nSAVE Mangere charged over alleged price discrepancies

Kennedy's Foodcentre trading as PAK'nSAVE Mangere faces 12 charges under the FTA for alleged discrepancies with prices advertised and charged. The NZCC alleges that on six dates during June and October 2018, PAK'nSAVE Mangere charged a higher price at the checkout for one or more items than the promotional price displayed or advertised on its website and/or at the supermarket shelf. Alleged price discrepancies identified by NZCC staff were raised with customer service staff at PAK'nSAVE Mangere immediately, and NZCC staff later returned to re-purchase those products. The NZCC alleges that, in some instances, there were still discrepancies between the price advertised and charged.

Campervan renters to be refunded over "\$0 liability" damage cover

Campervan rental company, Travellers Autobarn, will refund more than \$40,000 to affected consumers and provide better information about options for customers to reduce their liability in the event of damage, after signing court enforceable undertakings with the NZCC. The Australian-based business offered options for customers to cap their liability. However, a clause in the rental contract purported to exclude the cost of damage caused in several situations. The NZCC's investigation discovered several occasions where Travellers Autobarn used the exclusions to void consumers' limitations of liability and hold consumers liable for significant damage costs over the capped amount. The NZCC concluded that it was in the public interest to resolve this investigation by way of court enforceable undertakings provided by Travellers Autobarn.

Debt collector warned for likely harassment, coercion, misleading claims

Twenty Five Station (trading as Law Debt Collection), a debt collection company that is now in liquidation, and its Account Director, John Stuart Campbell, have been warned by the NZCC over information given to debtors and for conduct which the NZCC considers was likely to be harassment and/or coercion. The NZCC received a number of complaints about Twenty Five Station and its operations in South Auckland. In the NZCC's view, Mr Campbell and Twenty Five Station were likely to have breached the FTA by providing incorrect information to debtors in connection with debts and listings with credit reference agencies, and by engaging in conduct in relation to one person that was likely to be harassment and/or coercion.

Telecommunications

First geographic areas identified for transition away from copper telco services

The NZCC has published an interactive map showing its initial assessment of specified fibre areas (SFAs), the locations where Chorus will eventually be able to stop providing copper services, such as landlines and ADSL or VDSL broadband. The earliest Chorus can stop supplying these services is from mid-2020 and only in the areas where fibre is available to be installed in homes and once certain consumer protections are in place. The NZCC is developing the consumer protections to be included in a copper withdrawal code and will release a draft code for consultation early 2020. The initial assessment covers approximately 1.5 million households and businesses, mainly in major towns and cities across New Zealand. The NZCC is required to assess SFAs at least annually. More information on SFAs can be found [here](#) and the interactive map showing the initial SFAs can be found [here](#).

Fibre 100 broadband plans delivering great internet experience to customers in latest Measuring Broadband NZ results

The NZCC's latest Measuring Broadband New Zealand report, from independent testing partner SamKnows, shows that Fibre 100 broadband plans are offering high speeds and reliable internet performance across all tested providers and regions. "The report shows Fibre 100 plans are delivering 99% of advertised speeds with all reported providers performing well. Overall, Fibre 100 plans are delivering a great internet experience to consumers." The enhanced broadband monitoring programme is helping to build a picture of what broadband is best for different households. The latest report and more about the programme can be found [here](#).



ACCC MEDIA RELEASES

The Australian Competition and Consumer Commission (ACCC) has issued the following selected media releases:

Industry regulation and regulatory control

Consumer Data Right Rules made by ACCC

The ACCC has formally made the Competition and Consumer (Consumer Data Right) Rules, which it considers to be a key development in progressing the Consumer Data Right in banking. The Consumer Data Right will give consumers the right to safely access data about them, held by businesses, and direct

this information be transferred to trusted third parties of their choice. The four major banks (ANZ, Westpac, Commonwealth Bank and NAB) started sharing product reference data from July 2019 on a voluntarily basis. [The Rules](#) came into effect on 4 February 2020.

[New mandatory dairy code welcomed](#)

The ACCC welcomes the announcement of the introduction of a mandatory dairy industry code by the Minister for Agriculture, Sen. The Hon. Bridget McKenzie. A mandatory dairy code of conduct was a key recommendation of the ACCC's 2018 [dairy inquiry](#), which found significant imbalances in bargaining power at each level of the dairy supply chain. The ACCC will be responsible for enforcing the mandatory code, which came into effect on 1 January 2020. A review of the code's role, impact and operation will take place after 12 months.

[Mergers and Acquisitions](#)

[Bauer / Pacific Magazines deal raises preliminary competition concerns](#)

The ACCC has raised preliminary competition concerns about the proposed sale of Pacific Magazines to Bauer Media, in a deal that would combine Australia's two biggest magazine publishers. The ACCC is particularly concerned about the impact of the proposed acquisition on some key weekly magazine titles. Bauer's *Woman's Day* competes closely with *New Idea*, owned by Pacific Magazines, and Bauer's *Take 5* magazine competes strongly with Pacific Magazines' *That's Life*. The ACCC has published a statement of issues outlining its preliminary concerns. The ACCC's final decision is scheduled for 2 April 2020. Further information is available [here](#).

[Federal Court allows TPG / Vodafone merger](#)

The Federal Court has declared a proposed merger between TPG Telecom and Vodafone Hutchison Australia would not substantially lessen competition. The ACCC opposed the merger last year because it considered that, in the absence of the merger, TPG was likely to continue to roll out its own mobile network and become an innovative and disruptive competitor in Australia's concentrated mobile telecommunications market.

[Consumer Issues](#)

[Court orders Volkswagen to pay record \\$125 million in penalties](#)

The Federal Court has ordered Volkswagen to pay \$125 million in penalties, after it declared by consent that Volkswagen breached the Australian Consumer Law by making false representations about compliance with Australian diesel emissions standards. The \$125 million that Volkswagen has been ordered to pay is the highest total penalty order ever made by the Court for contraventions of the Australian Consumer Law. The ACCC said that Volkswagen's conduct undermined the integrity and functioning of Australia's vehicle import regulations which are designed to protect consumers.

[More than 250,000 vehicles with defective Takata airbags remaining for replacement](#)

About 3.56 million defective Takata airbags have now been replaced as part of a compulsory recall, but more than seven per cent remain outstanding and the ACCC is urging consumers not to ignore or delay responding to recall notices.

[Telecommunications](#)

[More bandwidth for NBN users as rollout progresses](#)

The NBN is now providing more than 6.6 million wholesale residential services across Australia, after more than 400,000 new services were activated during the three months to December 2019. The ACCC's latest quarterly Wholesale Market Indicators Report, released today, also shows a 6.5 per cent rise in the wholesale NBN bandwidth, or Connectivity Virtual Circuit, up from 1.80Mbps to 1.92Mbps when averaged across all users. This follows the increase in the number of wholesale access seekers taking up bundled plans from NBN Co that included a fixed amount of Connectivity Virtual Circuit per user.

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