



BELL GULLY

Financial Services Quarterly

SUMMER 2011/2012



BELL GULLY

financial services quarterly

Welcome to the Summer 2011/2012 issue of *Financial Services Quarterly*, a review of current legal issues in the financial sector.

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

In the courts
Legislation/In Parliament
Recent developments
Bell Gully news
Useful Web links

In this issue:

- Significant changes proposed for New Zealand's financial reporting statutory framework
- Proposed tougher consumer credit laws target loan sharks
- Priority determined by meaning of "accounts receivable" in Schedule 7 to Companies Act
- MED provides helping hand for reviewing the Financial Markets Conduct Bill
- FMA publishes its enforcement policy

Need more information?

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.

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.

In the courts

Nathans Finance directors sentenced

The High Court has handed down its decision on the penalties to be imposed on three of the directors of Nathans Finance Limited.

Priority determined by meaning of "accounts receivable" in Schedule 7 to Companies Act

The expression "accounts receivable" in Schedule 7 to the Companies Act 1993 includes all "monetary obligations" and is only limited by the exclusions contained in the definition of accounts receivable and in section 23 of the Personal Property Securities Act.

Deed of priority only applies to forced sale

The Court of Appeal has clarified that a deed of priority only regulates entitlements of lenders where there is a forced sale, and does not apply where a mortgagor voluntarily sells the secured property.

Interpretation of trustee limitation clause clears guarantor of personal liability

The High Court has interpreted a trustee limitation clause to exclude personal liability for a trustee guarantor who was also recorded as a guarantor in his personal capacity.

Mortgage broker not bank's agent

The High Court has determined that a mortgage broker was not an agent of a bank when it gave an assurance to a borrower.

Legislation/In Parliament

Significant changes proposed for New Zealand's financial reporting statutory framework

The Government has released its remaining policy decisions on its 2009/2010 review of the statutory framework for financial reporting, announcing its intention to introduce a Financial Reporting Amendment Bill to Parliament in the first quarter of 2012.

Trustees and Statutory Supervisors Act in force

Trustees and statutory supervisors are now regulated under new rules overseen by the Financial Markets Authority.

Proposed tougher consumer credit laws target loan sharks

The Government plans to overhaul consumer credit laws to protect consumers from unscrupulous credit companies.

Companies and Limited Partnerships Amendment Bill 2011 introduced

In the final days of the 49th Parliament, outgoing Commerce Minister Hon Simon Power introduced the Companies and Limited Partnerships Amendment Bill.

Proposal to criminalise directors' duties

The Companies and Limited Partnerships Amendment Bill amends the Companies Act to introduce new offences in relation to serious breaches of two existing directors' duties.

Recent developments

MED provides helping hand for reviewing the Financial Markets Conduct Bill

The Ministry of Economic Development has collated a table of the 73 submissions it received on the exposure draft of the Financial Markets Conduct Bill.

New council to support close co-operation between financial regulators

A new Council of Financial Regulators has been established to foster co-operation between financial and prudential regulators in New Zealand.

FMA publishes its enforcement policy

The Financial Markets Authority has published its enforcement policy.

FMA signals its intention to provide guidance on the use of alternative performance measures for issuers

The FMA has announced that it will release a draft regulatory guide for public consultation on the use of alternative performance measures by financial market issuers in public communications.

Commerce Committee's report on finance company failures released

In October, the Commerce Select Committee released a report on their inquiry into finance company failures during the global financial crisis and its aftermath.

In the courts

Nathans Finance directors sentenced

The High Court has handed down its decision¹ on the penalties to be imposed on three of the directors of Nathans Finance Limited.

In an earlier decision, the High Court found that the directors had contravened section 58 of the Securities Act 1978 on several counts associated with the distribution of prospectuses and advertisements containing untrue statements about Nathans' business and its actual financial position.

In summary, Justice Heath sentenced:

- Mr Young, who the judge regarded as the least culpable of the four directors, to a period of 9 months home detention, 300 hours community work and payment of reparation in the sum of \$310,000;
- Mr Moses, chairman of Nathans Finance, to a term of imprisonment of 2 years and 2 months, and payment of reparation in the sum of \$425,000; and
- Mr Doolan, whose culpability was considered by the judge to be slightly greater than that of Mr Moses, given his oversight of the management committee, company finances and his more direct involvement in the day-to-day management and operations of the companies, to 2 years 4 months imprisonment, together with a reparation order of \$150,000.

The key factors Justice Heath took into account in considering the penalties included the seriousness of the offences (which Justice Heath concluded fell within the gross negligence category) and the need for general deterrence.

In the course of extensive reasons for his decision, Justice Heath observed that the following aspects of the directors' performance were particularly troubling to him:

- their failure to consider, in any meaningful way, whether the prospectus and investment statements conveyed materially accurate information to investors that was required for the investor to make a proper decision about investment risks;
- their undue reliance on professionals and senior management personnel, to the extent that their functions and responsibilities of directors in determining whether the prospectus and investment statement conveyed accurate information was seemingly abdicated; and
- their apparent belief that there was nothing wrong in using moneys solicited from members of the public for the purpose of Nathans Finance' business being diverted to the parent company to allow it to honour a guarantee given to another VTL Group Limited finance company (although this did not form part of the charges that came to light during evidence).

In an earlier decision the fourth director, John Hotchin, was sentenced to 11 months home detention, ordered to do 200 hours community work and pay \$200,000 reparation after pleading guilty to the charges against him.

The Court of Appeal has dismissed both Mr Moses' and Mr Doolan's appeals from their sentences.

¹ *R v Moses* High Court, Auckland, CRI-2009-004-1388, 2 September 2011

Priority determined by meaning of "accounts receivable" in Schedule 7 to Companies Act

The expression "accounts receivable" in Schedule 7 to the Companies Act 1993 includes all "monetary obligations" and is only limited by the exclusions contained in the definition of accounts receivable and in section 23 of the Personal Property Securities Act.

The case¹ was an application in the High Court by the liquidators of a failed property development company, for directions under s 284 (1)(a) of the Companies Act as to the proper characterisation of certain funds held by the liquidators on behalf of the company.

The funds in question included:

- refunds to the company from the council of:
 - payments made earlier by the company to the council for development contributions \$450,000; and
 - bonds paid earlier by the company to the council of \$3,000;
- a GST refund of \$169,000 released by the Commissioner of Inland Revenue to the company in error; and
- funds of \$158,000 held by the company's solicitors relating to the earlier property development.

The first respondent, the Commissioner of Inland Revenue, was the only preferential creditor of the company, and the second respondent, a finance company in receivership, was the only remaining secured creditor. Both the Commissioner and the finance company sought, after payment of the liquidators' costs, payment of the balance of the collected funds.

Whether the funds were payable to the Commissioner or to the finance company turned on the meaning of "accounts receivable" in Schedule 7 to the Companies Act, a defined term in the Personal Property Securities Act (**PPSA**).

The Commissioner and the finance company both claimed that Schedule 7 gave them priority.

The primary issue, relating to all the categories of collected funds, raised the question whether the liquidators were required to pay these amounts to the Commissioner as a preferential claimant under section 312 of the Companies Act rather than to the finance company as a secured creditor holding a general security interest over the company's assets.

Clause (2) of Schedule 7 gives preferential creditors priority over the claims of any person under a security interest to the extent that the security interest is over all or part of the company's accounts receivable and must be paid out of any "accounts receivable" subject to that security interest.

The finance company argued that Parliament's intention was for "accounts receivable", as mentioned in clause (2), to mean "book debts" of the company.

The Commissioner argued for the broader definition of "accounts receivable" as defined in the PPSA - that it is to be a "monetary obligation" that is not evidenced by chattel paper, an investment security, or by a negotiable instrument.

¹ *Burns v The Commissioner of Inland Revenue*, HC Auckland, 10 August 2011 CIV-2010-404-7387

The court found that the term "accounts receivable" is not limited to book debts. A book debt is a subset of accounts receivable, in so far as it is a monetary obligation. The only limits on "monetary obligation" are the exclusions contained in the definition of accounts receivable, and those contained in section 23 of the PPSA.

The Court found that each category of the collected funds held by the liquidator constituted a "monetary obligation" in terms of section 16 of the PPSA and were thereby an "account receivable" in terms of Schedule 7 of the Companies Act. Accordingly, the Commissioner's claim to those collected funds had priority pursuant to the statutory preference regime.

The liquidators were directed under s 284 (1) of the Companies Act to pay the collected funds to the Commissioner as a preferential creditor of the company in priority to the finance company as secured creditor.

Deed of priority only applies to forced sale

The Court of Appeal has clarified that a deed of priority only regulates entitlements of lenders where there is a forced sale, and does not apply where a mortgagor voluntarily sells the secured property.

In this case¹, a trust owned property mortgaged to a bank and another financier. A deed of priority recorded that the bank had first priority, up to an agreed amount. When the trust sold the property, it paid the deposit, and subsequently the balance of the sale proceeds, to the bank.

The financier obtained summary judgement in the High Court against the bank for the amount of the deposit. This was on the basis that the bank's entitlement under the deed of priority had to be reduced by the amount already received.

On appeal, the Court of Appeal agreed with the bank's argument that the deed of priority did not apply where the sale was voluntary. By entering into the deed of priority, the mortgagor did not acquire a right to have either mortgage discharged by payment of less than the full amount owed.

Accordingly, the bank was entitled to all proceeds until its debt was repaid in full. Any surplus would have been payable to the financier.

This case related to the NZBA standard form deed of priority. Lenders should take care to review the specific terms of any deed of priority they are asked to execute to ensure they reflect what is intended. It is quite common for deeds of priority to require that all proceeds of sale are applied by the way of the reduction of a priority amount, regardless of whether a sale is forced or voluntary.

¹ *ASB Bank Limited v South Canterbury Finance Limited* [2011] NZCA 368

Interpretation of trustee limitation clause clears guarantor of personal liability

The High Court has interpreted a trustee limitation clause to exclude personal liability for a trustee guarantor who was also recorded as a guarantor in his personal capacity.

The case¹ was brought by a bank seeking summary judgment against a guarantor in his personal capacity.

The guarantee recorded the defendant's name four times – once on its own, and three times as trustee of three separate trusts. The defendant executed the guarantee on four different pages, three of which made it clear he was executing in his capacity as trustee of the various trusts.

When the bank claimed the amount guaranteed from the defendant, he argued that he had not committed himself personally as guarantor. He relied on the trustee limitation of liability clause, arguing that as he had executed as an independent trustee, he was not personally liable.

The bank argued that the trustee limitation clause was only intended to apply if the guarantor had executed the guarantee in his capacity as independent trustee only, and not personally as well.

The case turned on the specific wording of the trustee limitation clause. Because in this instance, the defendant was not a beneficiary of the trusts, the clause was interpreted to absolve him from personal liability.

It is important to consider the wording of trustee limitation clauses as they apply in each particular set of circumstances. This case is a reminder that, where it is intended that an individual be liable both personally and as trustee, any trustee limitation clause must be drafted to ensure personal liability is retained.

¹ *Westpac New Zealand Limited v Chahil* HC Auckland, 22 August 2011 CIV-2011-404-1612

Mortgage broker not bank's agent

The High Court has determined¹ that a mortgage broker was not an agent of a bank when it gave an assurance to a borrower.

At the time a mortgage broker arranged finance for an individual to purchase a section, an assurance was given that the bank would favourably consider advancing additional funds for construction purposes. When the bank did not agree to advance the additional funds, the borrower claimed that the broker was acting as the bank's agent when it gave the assurance.

The court held that *"the law is quite clear that in this situation the broker's fundamental role is to apply on behalf of the borrower to the bank as lender for approval of a loan"*.

Accordingly, the broker could not be considered an agent of the bank.

¹ *Fung v Westpac New Zealand Limited* HC Auckland 7 September 2011 CIV 2011-404-2498

Legislation/In Parliament

Significant changes proposed for New Zealand's financial reporting statutory framework

The Government has released its remaining policy decisions on its 2009/2010 review of the statutory framework for financial reporting, announcing its intention to introduce a Financial Reporting Amendment Bill to Parliament in the first quarter of 2012.

The new Cabinet approved legislative framework for financial reporting will involve a number of significant changes from the status quo. The changes will reduce the number of companies required to prepare general purpose financial reporting from 460,000 to less than 10,000, with an expectation that business compliance costs will be cut by \$90 million a year. However, the current financial reporting requirements for issuers are to be retained (as modified by the Auditor Regulation Act 2011).

For more detailed information, [click here](#).

In addition, the External Reporting Board (**XRB**) has released three discussion documents outlining proposals for a new Accounting Standards Framework. They are:

- A Position Paper entitled: *Accounting Standards Framework: A Multi Standards Approach*;
- A Consultation Paper entitled: *Accounting Standards Framework for General Purpose Financial Reporting by For-Profit Entities*; and
- A Consultation Paper entitled: *Accounting Standards Framework for General Purpose Financial Reporting by Public Benefit Entities*.

The consultation papers outline specific proposals for the number of tiers, the criteria for allocating entities to tiers, the accounting standards that will apply to each tier, and the process and timing for adopting the new frameworks in each sector.

The closing date for submissions on both the consultation papers is 16 December 2011. For further information visit the [XRB website](#).

Trustees and Statutory Supervisors Act in force

Trustees and statutory supervisors are now regulated under new rules overseen by the Financial Markets Authority.

The Securities Trustees and Statutory Supervisors Act 2011 was developed as part of the Government's regulatory reform agenda to address concerns around the quality of supervision provided by some trustees and supervisors in the past.

Elaine Campbell, FMA's Head of Compliance Monitoring, said that implementation of the new legislation "*marks the beginning of the road to higher standards of conduct. Over the next 12 months, FMA will carefully review applications for licences. We will be looking for evidence of competence and capability, independence and accountability. In particular, we will be looking for a proactive approach to supervision, not just a 'ticking the boxes' mentality*".

Existing trustees and supervisors will be granted a temporary licence so that they can continue operating, but will need to make a full licence application. Once licensed, trustees will be required to report any serious actual or potential breaches of trust deeds or governing documents to the FMA.

For more information, visit the [FMA website](#).

Proposed tougher consumer credit laws target loan sharks

The Government plans to overhaul consumer credit laws to protect consumers from unscrupulous credit companies.

According to Finance Minister Bill English, "credit providers remain largely unregulated and have no conduct requirements, leading some to exploit vulnerable people, resulting in severe financial hardship and spiralling debt".

Cabinet has approved a package of changes including:

- Strengthening the Credit Contracts and Consumer Finance Act (**CCCFA**) by adding new responsible lending requirements that:
 - the borrower must be reasonably expected to repay the loan without substantial hardship; and
 - the lender must be honest and transparent in dealing with the borrower.
- Creating a Code of Responsible Lending that sets out the types of practices accepted as meeting the principles of responsible lending.
- Giving the Financial Markets Authority the power to issue formal warnings and to cancel financial service provider registrations.
- Providing that borrowers are not liable for the costs of interest or fees if their lender is not registered as a Financial Service Provider.
- Amending the CCCFA to stipulate that advertising must not be misleading, deceptive, or confusing, and must comply with the code.
- Protecting important goods, such as tools of trade, necessary household items, and motor vehicles with a value of up to \$5000, from being used as security against a loan (unless the loan is to purchase such an item).
- Extending the 'cooling-off period', where a consumer has the right to cancel a credit contract, from three to five working days.
- Improving disclosure requirements, including that disclosure of key information must occur before the contract is made (presently this can happen up to five days after).
- Increasing consumer protection around oppressive credit contract provisions and hardship applications.

The Government intends to release draft legislation for consultation on the proposed changes before it introduces final legislation to Parliament.

The introduction of a requirement for lenders to ensure borrowers must be reasonably able to repay loans without substantial hardship will be a significant change in New Zealand law. While comparable requirements exist in Australia and the United Kingdom, New Zealand laws do not currently require this.

This approach also conflicts with the recent decision of the Supreme Court in the *Bartle* case¹, where the court found in favour of the lender, relying on the fact that the borrowers were independently advised, and noting that lenders should not have to "investigate the affairs of the borrower to determine whether there is anything that renders the transaction liable to re-opening".

This decision was consistent with the general principle of New Zealand's lending laws that lenders do not assume responsibility for the actions of borrowers.

Introduction of the proposed changes would have the opposite effect, so we'll be following progress of the legislation, and will keep you up to date in future issues of *Financial Services Quarterly*.

¹ *GE Custodians Limited v Bartle* [2010] NZSC 146

Companies and Limited Partnerships Amendment Bill 2011 introduced

In the final days of the 49th Parliament, outgoing Commerce Minister Hon Simon Power introduced the Companies and Limited Partnerships Amendment Bill.

This is an omnibus bill that covers a number of proposed reforms which were agreed by Cabinet and publicised earlier in the year, including:

- tightening requirements around company registration and company directors to protect New Zealand's company registration process against criminal activity from overseas jurisdictions (and applying similar measures for limited partnerships);
- criminalising the breach of certain director's duties (which was part of the securities law reforms agreed to by Cabinet); and
- prohibiting "code companies" (covered by the Takeovers Code) from long-form amalgamations under Part 13 of the Companies Act and providing more rigorous voting thresholds and additional judicial oversight for court-approved schemes of arrangement, amalgamation, or compromise under Part 15 of that Act.

The Ministry of Economic Development has indicated that it expects this Bill to have its first reading early next year, and to have the parliamentary process finished by the end of 2012.

For more detailed information, [click here](#).

Proposal to criminalise directors' duties

The Companies and Limited Partnerships Amendment Bill amends the Companies Act 1993 to introduce new offences in relation to serious breaches of two existing directors' duties.

The impetus for this change largely arose from the aftermath of the recent finance company failures, which raised concerns that regulators do not have appropriate powers to take action against directors for reckless or dishonest conduct, or for the intentional breach of directors' duties.

The proposed new offences first appeared in the August 2011 exposure draft of the Financial Markets Conduct Bill. However, it was indicated that they may be introduced in another bill.

The two new offences relate to serious breaches of the:

- duty of directors to act in good faith and in the best interests of the company (section 131 of the Companies Act); and
- duty of directors not to agree to, or to cause or allow, company business to be carried on in a manner likely to create a substantial risk of serious loss to the company's creditors (section 135 of the Companies Act).

Both offences require actual knowledge for criminal liability. In the case of a breach of section 131, this requires knowledge that *"the act or omission is seriously detrimental to the interests of the company"*. In the case of a breach of section 135, this requires knowledge that *"the act or omission will result in serious loss to the company's creditors"*.

The proposed penalty for both offences is imprisonment for a term not exceeding 5 years, or a fine not exceeding \$200,000.

Recent developments

MED provides helping hand for reviewing the Financial Markets Conduct Bill

*The Ministry of Economic Development (**MED**) has collated a table of the 73 submissions it received on the exposure draft of the Financial Markets Conduct Bill (**FMC Bill**).*

In brief, the FMC Bill:

- regulates the offer of financial products for issue (and some offers for sale);
- provides general prohibitions on misleading and deceptive conduct to apply to financial markets;
- makes wide-ranging changes to the governance of financial products and services. These include additional requirements for specific types of managed investment schemes;
- regulates financial product markets and activity on them; and
- makes changes to the liability regime for contraventions of securities law.

The FMC Bill will replace the Securities Act 1978, the Securities Markets Act 1988, the Securities Transfer Act 1991, the Unit Trusts Act 1960, the Superannuation Schemes Act 1989, and parts of the KiwiSaver Act 2006. However, much of this legislation will continue to apply for a period after the commencement of the FMC Bill under transitional provisions set out in Part 9 of the Bill.

The table includes brief MED comments indicating where a change to the exposure draft has or has not been made in response to the submissions, or where further consideration is required. To view a copy of the table, [click here](#).

The MED has also released an unofficial compare version of the FMC Bill, which shows changes between the exposure draft and the introduction version. [Click here](#) to view the compare version.

Both of these documents will advance your review of the FMC Bill considerably. For further background material released by the MED on the FMC Bill and its review of New Zealand's securities legislation, [click here](#).

There will be an opportunity to make submissions on the FMC Bill during the select committee process. If the current Government's timeline is kept, this is likely to be in the first quarter of 2012, with a view to the Bill being passed by the end of 2012.

In addition, MED has said that it will continue to consult informally on the FMC Bill over the coming months.

Would you like help with your review of the FMC Bill?

Bell Gully has been actively involved from the beginning of the securities law review and we will continue to be involved in the review of the FMC Bill and any accompanying regulations.

We will provide further updates as we consider the FMC Bill in detail. In the meantime, if you have any questions or would like assistance with preparing your submissions for the select committee, please contact your usual Bell Gully adviser.

New council to support close co-operation between financial regulators

A new Council of Financial Regulators has been established to foster co-operation between financial and prudential regulators in New Zealand.

The permanent members of the Council are the Reserve Bank and the FMA, and associate members are the Treasury and the Ministry of Economic Development.

The Council's objectives include the sharing of information, identifying important trends and issues and coordinating responses to those issues, and ensuring appropriate co-ordination arrangements are in place to respond to events and developments. The regulators expect that the arrangement will enable them to identify and respond more quickly to emerging common concerns in the financial system.

For further details click [here](#).

FMA publishes its enforcement policy

The Financial Markets Authority (FMA) has published its enforcement policy.

Rather than be an exhaustive or legally-binding document, the policy is intended to guide and inform financial market participants. It will be revised from time to time as the FMA's regulatory objectives and priorities change.

The FMA is committed to enforcement action targeting conduct that harms, or presents the greatest likelihood of harm to, the function of open, transparent and efficient capital markets. The FMA has indicated that it does not intend to pursue every breach that comes to its attention.

Some early enforcement priorities that have been highlighted include:

- compliance with new legislation (such as the licensing of financial advisors and trustees and statutory supervisors);
- misconduct in KiwiSaver sales and distribution practices;
- conduct in traded securities markets; and
- policies and procedures that credit and financial institutions will use to assess and manage the risks of money laundering and terrorist financing from 30 June 2013.

The enforcement policy also sets out the FMA's approach to:

- the use of its formal functions and powers;
- third party accountability;
- the publication of enforcement action;
- early intervention to prevent market failure;
- pursuing civil and criminal sanctions; and
- its use of section 34 of the FMA Act 2011, which allows the FMA to 'stand in the shoes' of another person's right to take action against a third party.

In addition to this enforcement policy, the FMA intends to issue a model litigant policy that outlines its intended approach to litigation, and a policy on its intended approach to conducting investigations.

For a copy of the FMA's Enforcement Policy, click [here](#).

FMA signals its intention to provide guidance on the use of alternative performance measures for issuers

The FMA has announced that it will release a draft regulatory guide for public consultation on the use of alternative performance measures (such as "underlying profit" or "normalised profit") by financial market issuers in public communications.

This follows on from concerns that financial information prepared and presented other than in accordance with accounting standards (non-conforming financial information, or **NCFI**) has the potential to be misleading, and can lead to inaccurate comparisons of performance in different entities.

The types of public communications which have commonly contained NCFI (in recent times) include:

- annual reports;
- documents accompanying annual reports (e.g. market announcements and presentations to investors); and
- transaction documents, such as prospectuses.

For more information, [click here](#).

Commerce Committee's report on finance company failures released

In October, the Commerce Select Committee released a report on their inquiry into finance company failures during the global financial crisis and its aftermath.

The inquiry, which was initiated in August 2009 in response to concerns for investors, in part has been superseded by a number of legislative developments. In 2008 prudential regulation of non-bank deposit takers by the Reserve Bank of New Zealand was introduced, as well as new licensing and dispute resolution regimes for financial advisers. These measures were followed in 2010 and 2011 by new licensing and supervision regimes for trustees and auditors, and the establishment of a new consolidated regulator for the finance sector, the Financial Markets Authority (**FMA**).

These developments are acknowledged by the committee in its report, which includes a detailed outline of the regulatory measures that have been taken to address the underlying causes of the finance company failures listed in Appendix C to the Report. In particular, the committee highlights the following achievements:

- Finance companies' governance rules have been strengthened. They must now have independent directors and minimum levels of capital and liquidity, and must limit their exposure to related parties.
- Financial advisers are now subject to stricter training, registration, and conduct standards, and must belong to approved dispute resolution schemes.
- Regulatory lines of responsibility have been clarified, and the FMA established as a new consolidated regulator with robust powers (including the power to undertake civil actions on behalf of investors when this is in the public interest) and funding.
- Trustees and auditors are now subject to stronger accountability requirements.
- Disclosure is being standardised and made subject to auditing.

The report also notes that measures proposed in the exposure draft of the Financial Markets Conduct Bill (which has since been introduced to Parliament) will go some way to addressing many of the issues raised in relation to investors' information about investment proposals. This includes:

- introducing a requirement based on the principle that an advertisement of investment products must not contain any matter likely to deceive, mislead or confuse and giving the FMA jurisdiction over all breaches;
- refining the disclosure requirements for offers of financial products, while recognising a need for balance to ensure the compliance burden on issuers does not stifle business development;
- providing different forms of product disclosure statement for different types of investment products; and
- providing the FMA with the power to issue "frameworks" and "methodologies" regarding the way information to be made publicly available is presented. The committee hopes that this new power will be used to establish a framework for companies' presentation of their profitability results.

The committee also emphasises in the report that it considers it vital that investors be helped to compare investment options using a standardised set of information, which is audited and kept up-to-date. In this regard, the report cautions that regulations prescribing the content of a product disclosure statement will need to ensure that information is readily understandable and meshes appropriately with the requirements of the Reserve Bank's non-bank deposit takers regime. The report also notes that care will be needed in designing the new online securities offer register so that its format is accessible to investors, while providing detailed information for those who want it.

The committee recommends several further improvements, which include:

- investigating the possibility of banning conflicted remuneration structures for financial advisers;
- introducing legislation to allow class actions;
- ensuring that resources are available to regulators to ensure that enforcement is both timely and effective;
- stating the duties to be imposed on directors "clearly and forcefully in legislation, according to the principles set out in the February 2011 Cabinet paper" and

- accelerating work on means of penetrating trusts to recover assets for creditors.

However, their strongest recommendation is that serious efforts be made to improve ordinary New Zealanders' understanding of financial issues.

To read the full report, [click here](#).

Bell Gully news

Private sector: a decline in wage increases and collective coverage

Late payment fees - are you causing IRD significant fiscal risk?

New law for sleepover workers

D&O Insurance Policies: Will your defence costs be covered?

A different ball game! Assessing the counterfactual in New Zealand and Australia

Environment in Focus

Bell Gully's regular update of resource management legal issues, designed to keep you informed on regulatory developments, legislation and cases of interest

Authority applies "could" justification test to dismiss

Bigger, bus is it better? The Financial Markets Conduct Bill

Bell Gully tax team retains top-tier ranking

Bell Gully lawyers lead independent international rankings

Back to the start for starting price adjustments?

MED provides helping hand for reviewing the Financial Markets Conduct Bill

Inland Revenue's secrecy obligations: The new general exception

Qantas industrial action grounded

Bell Gully leads New Zealand law firms in Asia Pacific rankings

Preventing illegal internet downloads – an employer's guide

Stories from New Zealand fashion icon Denise L'Estrange-Corbet

Commerce (Cartels and Other Matters) Amendment Bill

Employer acted reasonably in refusing union access

Bell Gully partner authors employment chapter in international guide

Collective bargaining – Court of Appeal disallows BPA provision requiring mediation before strike action

Bell Gully authors chapters on key environmental issues

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

Useful Web links

New Zealand Government

- [Consumer Affairs](#)
- [Inland Revenue Department](#)
- [Ministry of Economic Development](#)
- [Ministry of Foreign Affairs and Trade](#)
- [New Zealand Government](#)
- [NZ Government E-Commerce Information](#)
- [NZ Treasury](#)
- [Office of the Clerk of the House of Representatives](#)
- [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](#)
- [Office of Insurance and Savings Ombudsman](#)
- [Office of the Privacy Commissioner](#)
- [Personal Property Securities Register](#)
- [Reserve Bank of New Zealand](#)
- [Securities Commission](#)
- [Takeovers Panel](#)
- [Financial Markets Authority](#)

New Zealand commercial sites

- [CLANZ](#)
- [Financial Services Federation](#)
- [Institute of Chartered Accountants](#)
- [NZ Bankers' Association](#)
- [NZ Business Roundtable](#)
- [NZ Institute of Economic Research](#)
- [NZ Exchange](#)

Australian Government sites

- [Banking Ombudsman](#)
- [National Office for the Information Economy](#)

Australian commercial sites

- [Australian Financial Markets Association](#)
- [Australian Securities and Investment Commission](#)
- [Australian Stock Exchange](#)

International sites

- [Bank for International Settlements](#)
- [Global Banking Law Database](#)
- [International Monetary Fund](#)
- [International Swaps and Derivatives Association](#)
- [NASDAQ](#)
- [New York Stock Exchange](#)
- [United States Securities and Exchange Commission](#)
- [World Bank](#)