

Financial Services Legislation Amendment Bill

Government Bill

As reported from the Economic Development, Science and Innovation
Committee

Commentary

Recommendation

The Economic Development, Science and Innovation Committee has examined the Financial Services Legislation Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The bill seeks to establish a new regulatory regime for financial advice and financial advisers in New Zealand, and to amend requirements for registration on the Financial Service Providers Register (the FSPR) to prevent its misuse. The bill is based upon a statutory review of the existing regulatory regime completed in 2016.

Part 1 of the bill would amend the Financial Markets Conduct Act 2013 (the FMC Act), and Part 2 would amend the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the FSP Act). The bill would also repeal the Financial Advisers Act 2008.

The key amendments proposed in the bill include:

- removing the requirement that only a natural person can give financial advice, to allow for the provision of online advice (“robo-advice”)
- expanding the minimum standards of competence, knowledge, and skill to all categories of people giving financial advice to retail clients
- requiring all people who give regulated financial advice to comply with standards of ethical behaviour, conduct, and client care
- adding a requirement that anyone who gives financial advice must put the interests of the client first and disclose prescribed information

- limiting who can give regulated financial advice
- simplifying the regime and its terminology, for example by removing the categories of Authorised Financial Advisers (AFAs), Registered Financial Advisers (RFAs) and Qualifying Financial Entities (QFEs)
- amending the requirements to be registered on the New Zealand FSPR to prevent its misuse.

Proposed amendments

We recommend amendments to clarify the policy intent of the bill. We aim to ensure that the regulatory regime can be applied in a practical and effective way.

This commentary covers the main amendments we recommend to the bill. We do not discuss minor or technical amendments.

Definitions of financial advice

Clause 27 of the bill would insert new subpart 5A into the FMC Act specifying the new regulatory regime. New section 431C includes definitions about financial advice for the purposes of the proposed new regime.

Other financial planning services

New section 431C provides that a person gives financial advice “if the person designs an investment plan for another person”. We consider this definition may be too narrow, and consider that if a person provides planning advice about other financial products, such as insurance, it may be that they should also be considered as providing financial advice.

However, we do not want to broaden the regime to cover all forms of financial planning advice. This could impose unnecessary burdens on other activities (such as budgeting services) that we agree should not be covered by the proposed regime.

We therefore recommend the insertion of a regulation-making power to allow the regime to be extended to other, specific financial planning services.

Switching between investment funds

One of the most common types of financial advice relates to switching KiwiSaver funds. We note that a decision to switch between funds within the same managed investment scheme is technically not a “renewal or variation of the terms or conditions of an existing financial advice product” (as specified in clause 5’s amended definition of financial advice product). Therefore, providing advice on switching funds could be excluded from the regime.

We consider that the regime should apply to advice on switching funds within KiwiSaver or other managed investment schemes. We recommend inserting paragraph (ab) in new section 431C(1) to this effect.

Subcontracting providers

New section 431D would define a person as providing a financial advice service when they give regulated financial advice on their own account, or engage one or more individuals to provide advice on their behalf.

We consider that this definition is too narrow. If a company were to give financial advice on behalf of another company, it would not be covered by the provision as a company is not considered an individual.

We therefore recommend amendments to proposed section 431D so that the regime would apply to entities giving advice on behalf of a financial advice provider, as well as individuals. We have also recommended various other amendments to clarify how the duties in the bill apply to the parties in a subcontracting arrangement.

Duty to give priority to the client's interests

Clause 27, new section 431J(2) of the FMC Act, would impose a duty on financial advice providers to take all reasonable steps to put the client's interests first.

We understand that this should stop advisers from recommending one product that might advance their own interest (for example by earning them a commission) over another that would better serve the client's interest.

However, we accept that providers should not have to consider every product on the market when making recommendations. We also accept that advisers should be able to give advice on a single product, provided the adviser says so and discloses and manages any conflicts of interest.

We accept that the requirement to give priority to the client's interests, including by taking all reasonable steps to manage conflicts of interest, could allow for an unnecessarily broad interpretation. To ease concerns that this could imply a requirement to take unreasonable steps, we recommend amending new section 431J.

Conduct of nominated representatives

Clause 27, new section 431E, would allow licensed financial advice providers (organisations) to engage financial advisers and nominated representatives to give advice on their behalf.

We accept that the scope of advice that could be offered by nominated representatives should be limited. The intent of the bill is that financial advice providers should ultimately be responsible for the conduct of their nominated representatives. Therefore, the activities of nominated representatives should be tightly controlled by the processes and systems of the provider.

We consider that the bill as introduced does not make clear the limits that are intended to apply to nominated representatives in exercising discretion compared with financial advisers. We therefore recommend amending proposed section 431Q to better meet the policy intent by making clear the limited discretion of nominated representatives.

Exclusions from regulated financial advice

Clause 58 and Schedule 2 of the bill would insert a new Schedule 5 into the FMC Act. Part 2 of the new schedule would set out certain exclusions from the bill's proposed regulatory regime.

In particular, in the bill as introduced, clauses 8(2) to 8(4) of new Schedule 5 provide that financial advice would not be regulated if it was given in the ordinary course of business or carrying on an occupation by a lawyer, conveyancer, accountant, journalist, real estate agent, valuer, or other excluded occupation.

We recognise that normal legal and accounting advice may sometimes technically fall under the bill's definition of financial advice. However we consider that lawyers and accountants should not be burdened with additional regulatory controls in the course of their ordinary business or occupation. Existing regulatory frameworks for the legal and accounting professions should suffice. We therefore consider the exclusion necessary to avoid unnecessary compliance requirements.

However, we consider that this exclusion should be limited. We consider that the status quo, where lawyers and accountants are not covered by the scheme if they provide financial advice within the scope of their ordinary business or occupation, is acceptable (subject to the clarification in the following paragraph).

We note that some individuals have written guides to managing money in newspaper columns and in online blogs. We consider that the scope of this advice is generally narrow enough that it should not be covered by the regulatory regime. Nonetheless, to avoid uncertainty and clarify the narrow scope of the exclusions, we recommend amending clause 8 in new Schedule 5 (inserted by Schedule 2 of the bill). The key amendment is a new requirement that giving the advice is an ancillary part of carrying on the relevant occupation.

Misuse of the Financial Service Providers Register

Part 2 of the bill would amend the FSP Act. Section 11 of that Act requires anyone providing financial services in New Zealand to register on the Financial Service Providers Register (FSPR). However, some offshore providers with tenuous links to New Zealand have also arranged to be registered. This has offered clients or overseas regulators the impression that these financial service providers are based and regulated in New Zealand, when in fact the provider may have very little connection with New Zealand.

Clause 64 of the bill would insert new section 7A into the Act, amending the requirements for entities wanting to register on the FSPR. It would remove the current "place of business test" for registration. Instead, it would require anyone wishing to register on the FSPR to provide financial services to persons in New Zealand, or to be licensed under other New Zealand legislation, or to be required by other New Zealand legislation to be registered on the FSPR.

We consider this requirement important. However, we accept that it may result in the loss of oversight of some providers that genuinely provide services from New Zea-

land to persons overseas. We accept that the Government needs to be aware of these providers to comply with international standards on money laundering and the financing of terrorism.

Additionally, clause 84, amending section 44, would allow regulations to require companies on the FSPR to inform clients or other persons that registration does not mean active regulation and oversight. Clause 72 would amend section 16 of the principal Act to allow the Registrar to obtain information about the extent to which a provider provides a service in New Zealand and to deregister companies that do not provide the information. Clause 74 would amend section 18 of the principal Act to enable the Registrar to deregister companies that misrepresent the extent of their involvement in New Zealand in breach of such regulations. We consider these measures sufficient to combat misuse of the FSPR.

We recommend amendments to new section 7A, inserted by clause 64, to ensure that all New Zealand financial service providers to which the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 applies are still required to register on the FSPR (subject to any exemption in the Act).

Reporting requirements for dispute resolution schemes

Clause 87 of the bill would replace section 67 of the FSP Act. It would require government-approved dispute resolution schemes to report certain complaints to the relevant regulator. This would occur when the person responsible for a scheme believes a member “has contravened, may have contravened, or is likely to contravene” relevant legislation “in a material respect” or if they receive a material complaint in relation to certain providers.

We consider that regulators should be informed of significant breaches of the law, even if discovered following a single complaint. However, we see no need for every single immaterial complaint to be referred to the Registrar as this would impose an unnecessary administrative burden.

We accept that the reporting requirement should only apply where there are reasonable grounds to believe that a participant has breached, or is likely to breach, the law. We therefore recommend amending section 67 to require dispute resolution schemes to consider evidence in determining whether a breach has occurred or is likely to occur. We also recommend amending clause 87A to insert a regulation-making power to allow regulations to prescribe additional instances in which information must be shared.

Transitional licensing regime

Clause 57 of the bill would insert new Part 6 into Schedule 4 of the FMC Act. Part 6 sets out the transitional provisions relating to the bill.

Applications for full licences

New clause 71 of new Part 6 of Schedule 4 would allow the Financial Markets Authority (FMA) to issue transitional licences to providers of financial advice services.

Under the FMC Act, the FMA would be required to have regard to whether applicants hold a transitional licence when considering full licence applications.

We consider that this requirement provides few benefits in assessing the capability of applicants for a full licence. Because the process for issuing transitional licences would be straightforward under the proposed regime, we consider the requirement unnecessary.

Therefore, we recommend inserting new clause 76(1A) to require the FMA to disregard transitional licences in considering applications for other licences.

Engaging nominated representatives on a transitional licence

New clause 75 in new Part 6 of Schedule 4 of the FMC Act would forbid persons, other than qualifying financial entities (QFEs) or members of QFE groups, from engaging nominated representatives under a transitional licence. At present, some non-QFE businesses provide class advice through non-registered staff.

We recommend amending new clause 75 so these providers could engage non-registered staff as nominated representatives through the transition period. This would allow providers to continue providing equivalent advice while subjecting them to the conduct and care duties of the new regime.

Appendix

Committee process

The Financial Services Legislation Amendment Bill was referred to the committee on 7 December 2017. The closing date for submissions was 23 February 2018. We received and considered submissions from 71 interested groups and individuals. We heard oral evidence from 34 submitters at hearings in Auckland and Wellington.

We received advice from the Ministry of Business, Innovation and Employment and the Financial Markets Authority.

Committee membership

Jonathan Young (Chairperson)

Tamati Coffey

Paul Eagle

Andrew Falloon

Hon Paul Goldsmith

Gareth Hughes

Melissa Lee

Clayton Mitchell

Hon Aupito William Sio

Lawrence Yule

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Kris Faafoi

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Schedule 1

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Schedule 2

New Schedule 5 inserted into Financial Markets Conduct Act 2013

Schedule 3

New Schedule 1AA inserted into Financial Service Providers (Registration and Dispute Resolution) Act 2008

Schedule 4

Consequential amendments

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Financial Services Legislation Amendment Act **2017**.

2 Commencement

- (1) **Sections 3, 6, 8, 20, 45 to 53, 54(1), 56, 57(1) to (3) and (5), 59, 62, 63(1) and (2), 64, 65, 67 to 70, 72(2), 74(1) and (2), 75, 77, 82, 84, 87, and 88 84, and 87A** come into force on the day after the date on which this Act receives the Royal assent. 5
- (2) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more orders may be made appointing different dates for different provisions and for different purposes. 10
- (3) To the extent that it is not previously brought into force under **subsection (1) or (2)**, the rest of this Act comes into force on 1 May 2020.

- (4) In this section, **provision** includes any item, or any part of an item, in any of the schedules.

Part 1

Amendments to Financial Markets Conduct Act 2013

- 3 Principal Act** 5
- This Part amends the Financial Markets Conduct Act 2013 (the **principal Act**).
- 4 Section 5 amended (Overview)**
- (1) In section 5(1)(f)(i), after “example,”, insert “providers of financial advice services,”.
- (2) After section 5(1)(f)(ii), insert: 10
- (ia) imposing other obligations on providers of financial advice services and persons who give financial advice:
 - (iib) providing for disclosure and conduct obligations for providers of client money or property services:
- (3) In section 5(1)(h)(iv), after “decisions”, insert “or (in the case of financial advisers) the disciplinary committee’s decisions”. 15
- 5 Section 6 amended (Interpretation)**
- (1) In section 6(1), repeal the definitions of **authorised body**, **authorised financial adviser**, **category 2 product**, **discretionary investment management service**, **QFE** or **qualifying financial entity**, and **QFE adviser**. 20
- (2) In section 6(1), insert the following definitions in their appropriate alphabetical order:
- authorised body**, in relation to a market services licence, means an entity that is authorised under section 400 to provide a market service under the licence
 - client**, in relation to a financial advice service or client money or property service, has the meaning set out in **clause 2 of Schedule 5** 25
 - client money or property service** has the meaning set out in **section 431V(1)**
 - code of conduct** or **code** means the code of professional conduct in force under **clause 39 of Schedule 5** 30
 - consumer credit contract** has the same meaning as in section 11 of the Credit Contracts and Consumer Finance Act 2003
 - contract of insurance** has the same meaning as in section 7 of the Insurance (Prudential Supervision) Act 2010
 - custodial service** has the meaning set out in **section 431V(2)** 35

DIMS facility means an agreement for the provision of a discretionary investment management service

disciplinary committee means the disciplinary committee established under **clause 49 of Schedule 5**

discretionary investment management service or **DIMS** has the meaning set out in **section 432A(1)** 5

engaged, in relation to a financial advice provider, has the meaning set out in **section 431DA**

financial advice has the meaning set out in **section 431C(1)**

financial advice product means— 10

- (a) a financial product (as defined in section 7); or
- (b) a DIMS facility; or
- (c) a contract of insurance; or
- (d) a consumer credit contract; or
- (e) any other product declared by the regulations to be a financial advice product; or 15
- (f) a renewal or variation of the terms or conditions of an existing financial advice product

financial advice provider means a person that provides a financial advice service (*see* **section 431D**) 20

financial advice service means the service of giving regulated financial advice as referred to in **section 431D**

financial adviser—

- (a) means an individual who is registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 in relation to a financial advice service; but 25
- (b) does not include a financial advice provider

nominated representative means an individual who is nominated by a financial advice provider under **section 431S**

product provider, in relation to a financial advice product, means— 30

- (a) for a financial product, the issuer:
- (b) for a DIMS facility, the person to whom the investment authority is granted:
- (c) for a contract of insurance, the insurer:
- (d) for a consumer credit contract, the creditor: 35
- (e) for any other financial advice product, the person specified in the regulations

- regulated client money or property service** has the meaning set out in **section 431V(4)**
- regulated financial advice** has the meaning set out in **section 431C(3)**
- retail client**, in relation to a financial advice service or a client money or property service, has the meaning set out in **clause 3 of Schedule 5** 5
- wholesale client**, in relation to a financial advice service or a client money or property service, has the meaning set out in **clause 4 of Schedule 5**
- (3) In section 6(1), definition of **acquire**, replace paragraph (c) with:
- (c) in relation to a derivative, a contract of insurance, a consumer credit contract, or a DIMS facility, includes entering into the legal relationship that constitutes the derivative, contract, or facility; and 10
- (d) in relation to a renewal or variation of the terms or conditions of an existing financial advice product, includes entering into the legal relationship that provides for the renewal or variation
- (4) In section 6(1), definition of **DIMS licensee**, replace “392” with “**432A(3)**”. 15
- (5) In section 6(1), definition of **disclosure document**, paragraph (d), after “sub-part 4”, insert “, **5A**, or **5B**”.
- (6) In section 6(1), definition of **dispose of**, paragraph (b), after “financial product”, insert “or other financial advice product”.
- (7) In section 6(1), definition of **dispose of**, after paragraph (b), insert: 20
- (ba) in relation to a renewal or variation of the terms or conditions of an existing financial advice product, includes withdrawing from or terminating the product or refusing to agree to the renewal or variation; and
- (8) In section 6(1), definition of **investment authority**, replace “392” with “**432A(3)**”. 25
- (9) In section 6(1), definition of **market service**, after paragraph (e), insert:
- (ea) acting as a provider of a financial advice service:
- (eb) providing a client money or property service:
- (10) In section 6(1), definition of **provider of a discretionary investment management service**, replace “392” with “**432A(3)**”. 30
- 6 Section 8 amended (Definitions relating to kinds of financial products)**
- In section 8(1)(b)(iii), after “option of the entity”, insert “or a redeemable share in an industrial and provident society”.
- 7 Section 9 amended (Definitions of financial benefit and of managed investment scheme)** 35
- Replace section 9(2)(b) with:
- (b) a discretionary investment management service supplied by a DIMS licensee:

8 New section 14A and cross-heading inserted

After section 14, insert:

Transitional, savings, and related provisions

14A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 4 have effect according to their terms.

9 Section 18 amended (Interpretation in this Part)

In section 18, definition of **financial product**, paragraph (b), replace “financial product (within the meaning of section 5 of the Financial Advisers Act 2008)” with “financial advice product”.

10 Section 28 amended (Certain conduct does not contravene various provisions)

In section 28(1) and (2), replace “or 427” with “427, **431O**, or **431X**”.

11 Section 34 amended (Prohibition of offers in course of unsolicited meetings with persons acting otherwise than in trade)

Replace section 34(2)(b) and (c) with:

- (b) the offer is through a financial advice provider that is acting in the ordinary course of business as a financial advice provider; or

12 Section 351 amended (Regulations modifying this Part or Part 7 for licensed markets)

In section 351(1)(ab), replace “451(d)” with “**451(1)(d)**”.

13 Section 386 amended (Overview)

After section 386(1)(e), insert:

- (ea) **subpart 5A** regulates the giving of financial advice and the provision of financial advice services:
- (eb) **subpart 5B** provides disclosure and conduct obligations for providers of client money or property services:

14 Section 387 amended (Territorial scope for licensing of certain market services)

(1) In the heading to section 387, after “**licensing**”, insert “**and other regulation**”.

(2) Replace section 387(1) with:

(1) This Part applies to the following services received by a client or an investor in New Zealand, regardless of where the person providing the service is resident, is incorporated, or carries on business:

- (a) a financial advice service:

	(b) a discretionary investment management service:	
	(c) a prescribed intermediary service:	
	(d) a client money or property service.	
15	New section 387A inserted (Other provisions relating to financial advice services and client money or property services)	5
	After section 387, insert:	
387A	Other provisions relating to financial advice services and client money or property services	
	The provisions set out in Schedule 5 have effect according to their terms.	
16	Section 388 amended (When provider of market services needs to be licensed)	10
	After section 388(b), insert:	
	(ba) acting as a provider of a financial advice service (<i>see</i> section 431D):	
17	Section 389 amended (Exemptions from need for market services licence)	
(1)	Before section 389(1), insert:	15
	<i>General exemptions</i>	
(2)	Replace section 389(2) with:	
	<i>Exemptions for financial advice service</i>	
(2)	A person is exempt from the licensing requirement under section 388(ba) in respect of a service (unless a declaration applies under subpart 3 of Part 9) to the extent that—	20
(a)	the service is not provided to any retail clients; or	
	Example	
	A service provider may provide a financial advice service to a number of clients. As long as the service provider has no retail clients for that service, the provider need not be licensed as a financial advice service provider.	25
(b)	the service is a prescribed exempt service.	
	<i>Exemptions for DIMS</i>	
(3)	A person is exempt from the licensing requirement under section 388(c) in respect of a service (unless a declaration applies under subpart 3 of Part 9) to the extent that—	30
(a)	the service is not a retail service (<i>see</i> clause 35 of Schedule 1); or	
	Example	
	A service provider may provide a discretionary investment management service to a number of investors using a model portfolio. As long as no retail	35

	investor is within the relevant class of investors, the provider need not be a DIMS licensee.	
	(b) the service is a prescribed exempt service.	
18	Section 392 repealed (Meaning of discretionary investment management service and related terms)	5
	Repeal section 392.	
19	Section 393 amended (Principles guiding the exercise of FMA powers)	
	In section 393(a), after “section 4”, insert “or, in the case of financial advice services, section 431B ”.	
20	Section 395 amended (Application for licence)	10
	After section 395(1), insert:	
(1A)	The FMA may—	
	(a) specify any of the matters referred to in section 548(1)(p)(i) to (iv); and	
	(b) specify different matters for different classes of applicant or other circumstances (including specifying time frames within which different classes of applicant must make an application for a licence); and	15
	(c) refuse to consider the application if the person does not apply for the licence in the specified manner.	
	Example	
	In order to facilitate the orderly and efficient processing of applications, the FMA specifies that if a particular type of provider wants a licence by a particular date or for a particular purpose, the provider must apply by some other date. A different date may apply to different classes of provider.	20
21	Section 397 amended (Procedural requirements)	
(1)	In section 397(1)(b), delete “or a member of a QFE group”.	25
(1A)	<u>In section 397(2), replace “limits or restrictions under section 403(3)(a)” with “limits, restrictions, or other conditions under section 403(3)(a) or (4)”.</u>	
(1B)	<u>In section 397(2)(a)(i), replace “limits or restrictions” with “limits, restrictions, or other conditions”.</u>	
(2)	Repeal section 397(3).	30
21A	Section 398 amended (Notice of decision)	
	<u>In section 398(2), replace “limits or restrictions under section 403(3)(a)” with “limits, restrictions, or other conditions under section 403(3)(a) or (4)”.</u>	

22 Section 400 amended (Licence may cover related bodies corporate as authorised bodies)

- (1) In the heading to section 400, delete “**related bodies corporate as**”.
- (2) After section 400(1), insert:
 - (1A) A licence may also, in its conditions, authorise 1 or more named entities to provide a financial advice service covered by the licence if the FMA is satisfied that—
 - (a) arrangements are or will be in place to ensure that the licensee will maintain appropriate control or supervision over the provision of that service by the entity under the licence; and
 - (b) the entity is capable of effectively providing that service (having regard to the proposed conditions of the licence); and
 - (c) there is no reason to believe that the entity is likely to contravene the market services licensee obligations; and
 - (d) the entity is, or will be, registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 on and from commencing to provide that service; and
 - (e) the entity meets the eligibility criteria and other requirements prescribed by the regulations for the purposes of this section (if any).
 - (1B) However, subsections (1) and (1A) do not apply if the licensee is an individual.
- (3) In section 400(2)(a) and (b), replace “subsection (1)” with “subsection (1) or **(1A)**”.

23 Section 403 amended (When FMA may impose permitted conditions)

- (1) In section 403(2), replace “subsection (3)” with “subsections (3) and (4)”.
- (2) In section 403(3)(a), replace “financial products, issuers, or investors, or classes of financial products, issuers, or investors,” with “financial products or other financial advice products, issuers, investors, or clients, or classes of financial products or other financial advice products, issuers, investors, or clients,”.

After section 403(3)(c), insert:

 - (d) ~~in the case of a provider of a financial advice service, state which types of financial advice may, or may not, be given by the following on behalf of the provider:~~
 - (i) ~~financial advisers in general, a class or classes of financial advisers, or 1 or more particular financial advisers:~~
 - (ii) ~~nominated representatives in general, a class or classes of nominated representatives, or 1 or more particular nominated representatives.~~
- (3) After section 403(3), insert:

- (4) In the case of a licence relating to a financial advice service, a condition referred to in subsection (1) may also—
- (a) state which types of financial advice may, or may not, be given by the following on behalf of the licensee or an authorised body:
 - (i) financial advisers in general, a class or classes of financial advisers, or 1 or more particular financial advisers: 5
 - (ii) nominated representatives in general, a class or classes of nominated representatives, or 1 or more particular nominated representatives:
 - (b) authorise the licensee or an authorised body (P) to do either or both of the following: 10
 - (i) engage an entity to give regulated financial advice to P's retail clients on P's behalf:
 - (ii) engage an individual through 1 or more interposed persons (as described in **section 431DA(b)**) to give advice to P's retail clients on P's behalf: 15
 - (c) if the licence includes an authorisation under **paragraph (b)**, impose limits or restrictions on that authorisation (including, for example, by requiring the entity or an interposed person to be authorised by a licence (whether as licensee or an authorised body) to provide a financial advice service, or to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008, or both). 20

23A New section 406A inserted (Effect of condition requiring giver of advice or interposed person to be authorised by licence or registered)

After section 406, insert:

406A Effect of condition requiring giver of advice or interposed person to be authorised by licence or registered

- (1) This section applies if, under **section 403(4)(b) and (c)**, a licence relating to a financial advice service—
- (a) authorises the licensee or an authorised body (P) to do either or both of the following: 30
 - (i) engage an entity (E) to give regulated financial advice to P's retail clients on P's behalf:
 - (ii) engage an individual through 1 or more interposed persons (F) to give advice to P's retail clients on P's behalf; and 35
 - (b) includes either or both of the following conditions:
 - (i) a condition requiring E or F to be authorised by a licence to provide a financial advice service (a **licensing condition**):

- (ii) a condition requiring E or F to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSP Act**) (a **registration condition**).
- (2) If the licence includes a licensing condition, for the purpose of enabling compliance with that condition, this Part applies,— 5
- (a) in relation to E, as if E, in giving regulated financial advice on behalf of P, were providing a financial advice service; and
- (b) in relation to F, as if F, in engaging individuals to give regulated financial advice on behalf of P, were providing a financial advice service.
- (3) If the licence includes a registration condition, for the purpose of enabling compliance with that condition, the FSP Act applies,— 10
- (a) in relation to E, as if E, in giving regulated financial advice on behalf of P, were providing a financial advice service; and
- (b) in relation to F, as if F, in engaging individuals to give regulated financial advice on behalf of P, were providing a financial advice service. 15
- (4) This section does not affect the application of this Part or the FSP Act to P.
- 24 Section 410 amended (Meaning of material change of circumstances)**
- Replace section 410(b) with:
- (b) a change that means that the requirements referred to in section 396(a) to (f) or 400(1)(a) to (e) or **(1A)(a) to (e)** are not, or are no longer, satisfied (where those provisions are applied with all necessary modifications as if references to the applicant or body corporate (or entity) were references to the licensee or authorised body respectively). 20
- 25 Section 414 amended (FMA's powers in case of contravention of market services licensee obligation, material change, etc)** 25
- Replace section 414(3)(b) with:
- (b) the licensee or an authorised body does not meet, or no longer meets, the requirements referred to in section 396(a) to (f) or 400(1)(a) to (e) or **(1A)(a) to (e)** (where those provisions are applied with all necessary modifications as if references to the applicant or body corporate (or entity) were references to the licensee or authorised body respectively). 30
- 26 Section 426 amended (Disclosure statement)**
- In section 426(1), delete “, the Financial Advisers Act 2008,”.
- 27 New subparts 5A and 5B of Part 6 inserted**
- After section 431, insert: 35

Subpart 5A—Additional regulation of financial advice and financial advice services

Preliminary matters

431A Overview of financial advice and financial advice services regime

- (1) This subpart and other parts of this Act regulate financial advice and financial advice services as follows: 5
- (a) ~~a person gives financial advice if the person makes a recommendation about acquiring or disposing of a financial advice product or designs an investment plan for a person, gives an opinion, or provides financial planning of a kind described in **section 431C(1)**. The advice is regulated financial advice if it is given in the ordinary course of a business and is not excluded under **clauses 8 to 18 of Schedule 5** (see **section 431C(3)**):~~ 10
 - (b) a person must not carry on a business of giving regulated financial advice unless the person is authorised by a market services licence or exempt from the licensing requirement (see **sections 388(ba), 389(2), and 431D**). A person may be authorised as a licensee or as an authorised body (see section 400): 15
 - (e) ~~a person must not give financial advice on behalf of a financial advice provider unless the person is a financial adviser or a nominated representative (see **section 431E**):~~ 20
 - (d) ~~to be a financial adviser, a person must be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (see section 6, definition of financial adviser):~~
 - (e) ~~to be a nominated representative, a person must be nominated by their financial advice provider (see **section 431S**):~~ 25
 - (c) there are limitations on who can give regulated financial advice on behalf of a financial advice provider to a retail client (see **section 431E**). This section is a Part 6 services provision, contravention of which may give rise to civil liability (see section 449): 30
 - (f) ~~conditions of a licence may state that certain types of financial advice may not be given by a nominated representative (see **section 403(3)(d)**). That advice would then need to be given by the provider itself or by a financial adviser:~~
 - (f) conditions of the provider's licence may also limit the types of advice that may be given by financial advisers or nominated representatives (see **sections 403(4)(a) and 546(1)(d)(iv)**): 35
 - (g) ~~people who give financial advice and, financial advice providers, and any interposed persons are subject to the duties set out in **sections 431H to 431Q**:~~ 40

(h)	section 431G sets out who is responsible if those duties are contravened and the nature of the person's liability. Sections 431H to 431Q are also Part 6 services provisions under section 449.	
(2)	This section is a guide only to the general scheme and effect of this Act in relation to financial advice and financial advice services.	5
431B Additional purpose of subpart		
(1)	This subpart has the additional purpose (in addition to those set out in sections 3 and 4) of regulating the giving of financial advice and provision of financial advice services with a view to ensuring—	
(a)	the availability of financial advice for persons seeking that advice; and	10
(b)	the quality of financial advice and financial advice services.	
(2)	This section does not limit section 3 or 4.	
<i>Interpretation</i>		
431C Meaning of financial advice and regulated financial advice		
(1)	A person gives financial advice if the person—	15
(a)	makes a recommendation or gives an opinion about acquiring or disposing of (or not acquiring or disposing of) a financial advice product; or	
(ab)	<u>makes a recommendation or gives an opinion about switching funds within a managed investment scheme; or</u>	
(b)	designs an investment plan for a person that—	20
(i)	purports to be based on—	
(A)	an analysis of the person's current and future overall financial situation (including investment needs); and	
(B)	the identification of the person's investment goals; and	
(ii)	includes 1 or more recommendations or opinions on how to realise 1 or more of those goals ; <u>goals; or</u>	25
(c)	<u>provides financial planning of a kind prescribed by the regulations.</u>	
(2)	However, a person does not give financial advice merely by doing 1 or more of the things set out in clause 7 of Schedule 5 .	
(3)	Financial advice is regulated financial advice if—	30
(a)	it is given in the ordinary course of a business; and	
(b)	it is not excluded under any of clauses 8 to 18 of Schedule 5 .	
(4)	Subsections (1) and (3) are subject to a declaration under section 562(1)(gb) .	

431D When financial advice service is provided

- (1) A person ~~(A)~~ **(P)** provides a **financial advice service** if, in the ordinary course of ~~A's~~ **P's** business,—
- (a) ~~A~~ **P** engages 1 or more ~~individuals~~ other persons to give regulated financial advice ~~on A's~~ to P's clients on P's behalf; or
 - (b) ~~A~~ **P** gives regulated financial advice ~~on A's~~ to P's clients on P's own account.
- (2) **Subsection (1)** is subject to a declaration under **section 562(1)(gc)**.

Example

ABC Limited (**ABC**) is a firm that gives a range of investment advice to its clients. Some of this advice is given through its employees. Some of this advice is given through its Internet site. ABC provides a financial advice service (and must be licensed or be an authorised body under a licence (see **section 388(ba)**)). ABC is also required to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **FSP Act**).

As part of ABC's business, Susan is employed by ABC to give financial advice ~~on its behalf to its clients~~ to ABC's clients on its behalf. Although Susan is giving advice, she is not giving it on her own account, so she is not providing a financial advice service (and does not need to hold a licence).

Under the conditions of ABC's licence, the type of service that Susan gives may not be given by a nominated representative. The type of service can only be given only by a financial adviser (that is, a person who is registered under the FSP Act in relation to a financial advice service). See section 22C of the FSP Act, which allows Susan to register even though, as an employee, she is not in the business of providing financial advice services.

If Susan were to leave ABC and set up business giving financial advice on her own account, she would be providing a financial advice service and would therefore be a financial advice provider (who must, therefore, hold a licence).

431DA Meaning of engaged

A person (A) is **engaged** by another person (P) if—

- (a) A is engaged directly by P (for example, if A is an employee or a contractor of P); or
- (b) A is engaged indirectly through 1 or more interposed persons (for example, if A is an employee of another person who is a contractor of P).

*Offences***431E Limitation on who can give regulated financial advice to retail clients on behalf of financial advice provider**

~~(1) A person must not give regulated financial advice on behalf of a financial advice provider unless the person is a financial adviser or a nominated representative.~~ 5

(1) A person (A) must not give regulated financial advice on behalf of a financial advice provider (P) to a retail client unless—

(a) both of the following apply:

(i) A is a financial adviser or a nominated representative nominated under **section 431S** by P; 10

(ii) A is engaged directly by P (as described in **section 431DA(a)**);
or

(b) all of the following apply:

(i) A is a financial adviser or a nominated representative nominated under **section 431S** by P; 15

(ii) A is engaged by P indirectly through 1 or more interposed persons (as described in **section 431DA(b)**);

(iii) the conditions on P's licence authorise P to engage A through those interposed persons to give the advice; or 20

(c) both of the following apply:

(i) A is an entity;

(ii) the conditions on P's licence authorise P to engage A to give the advice.

~~(2) A financial advice provider must not allow a person to give regulated financial advice on its behalf unless the person is a financial adviser or a nominated representative.~~ 25

(2) A financial advice provider or an interposed person must not allow a person engaged by the provider or person to give advice in contravention of **subsection (1)**. 30

(3) In this section, **P's licence** means the licence under which P is authorised (as licensee or an authorised body) to provide the financial advice service.

431F Prohibitions on holding out in relation to giving financial advice

A person must not hold out that the person, or another person,—

(a) is a financial advice provider, a financial adviser, or a nominated representative if that is not the case; or 35

(b) is lawfully able to do any of the following if that is not the case:

- (i) provide a financial advice service:
- (ii) provide a particular kind of financial advice service:
- (iii) give regulated financial advice:
- (iv) give a particular kind of regulated financial advice:
- (v) give regulated financial advice about a particular financial advice product or a particular kind of financial advice product: 5
- (vi) give regulated financial advice to retail clients, to wholesale clients, or to retail and wholesale clients:
- (vii) provide a financial advice service, or give regulated financial advice, in particular circumstances. 10

Duties on persons giving regulated financial advice

431G Liability for duties

- (1) **Sections 431H to 431O** (the **duty provisions**) impose duties on ~~financial advice providers, financial advisers, and nominated representatives~~ persons who give regulated financial advice. 15
- (2) **Sections 431P and 431Q** impose additional duties on financial advice providers ~~that engage financial advisers or nominated representatives and interposed persons that engage others to give regulated financial advice.~~
- (3) If a financial advice provider contravenes a duty provision or **section 431P or 431Q**, the provider— 20
 - (a) may be civilly liable for the contravention; ~~but~~
 - (b) is not liable to disciplinary action or a deregistration or suspension order; ~~;~~
 - (c) may face consequences under subpart 3 (which relates to enforcement of licences). 25
- (4) If a financial adviser contravenes a duty provision,—
 - (a) the financial adviser—
 - (i) ~~is not civilly liable for the contravention; but~~
 - (ii) may be subject to either or both of the following: 30
 - (A) disciplinary action:
 - (B) a deregistration or suspension order; and
 - (b) the financial advice provider on whose behalf the financial adviser was acting—
 - (i) ~~may be civilly liable for contravening the duty provision as a result of the operation of sections 535 and 536 (which relate to the attribution of conduct and state of mind), (but see also sec-~~ 35

	tion 431T , which limits when pecuniary penalty orders may be made); and	
	(ii) may be liable for contravening section 431P .	
(5)	If a nominated representative contravenes a duty provision,—	
	(a) the nominated representative—	5
	(i) is not civilly liable for the contravention; and	
	(ii) is not liable to disciplinary action or a deregistration or suspension order; and	
	(b) the financial advice provider on whose behalf the representative was acting—	10
	(i) may be civilly liable for contravening the duty provision as a result of the operation of sections 535 and 536 (which relate to the attribution of conduct and state of mind); and	
	(ii) may be liable for contravening section 431P .	
(4)	If a person (A) who gives advice on behalf of a financial advice provider (P) contravenes a duty provision, liability is as follows:	15
	(a) if A is a financial adviser, A—	
	(i) is not civilly liable for the contravention; but	
	(ii) may be subject to either or both of the following:	
	(A) disciplinary action:	20
	(B) a deregistration or suspension order:	
	(b) if A is an individual but not a financial adviser, A is not civilly liable for the contravention:	
	(c) if A is an entity, A may be civilly liable for the contravention:	
	(d) P—	25
	(i) may be civilly liable for contravening the duty provision as a result of the operation of sections 535 and 536 (which relate to the attribution of state of mind and conduct) (but <i>see also section 431T</i> , which limits when pecuniary penalty orders may be made); and	30
	(ii) may be liable for contravening section 431P .	
	(e) if A was engaged by P indirectly through 1 or more interposed persons (as described in section 431DA(b)), each interposed person—	
	(i) may be civilly liable for contravening the duty provision as a result of the operation of sections 535 and 536 (which relate to the attribution of state of mind and conduct); and	35
	(ii) may be liable for contravening section 431P .	

(4A) If an interposed person (as described in section 431DA(b)), contravenes section 431P or 431Q , that person—	
(a) may be civilly liable for the contravention:	
(b) is not liable to disciplinary action or a deregistration or suspension order:	
(c) if they are a licensee or an authorised body, may face consequences under subpart 3 (which relates to enforcement of licences).	5
(5) The fact that an interposed person may be liable under subsection (4)(e) or (4A) does not affect the liability of any other interposed person or of the provider.	
(6) This section—	10
(a) does not affect any liability that a person may have for a contravention as a person who is involved in the contravention (<i>see</i> section 533); and	
(b) does not affect any criminal liability that a person may have for a contravention (for example, under section 511 for contravening section 431O); and	15
(c) does not limit the exercise by the FMA or a court of any of its powers under Part 8 other than subpart 3.	
(7) In this section,—	
civil liability , in relation to the contravention of a provision that is a Part 6 service services provision (<i>see</i> section 449), means civil liability under subpart 3 of Part 8 for contravention of that section <u>that contravention</u>	20
deregistration or suspension order means an order under section 469(2) in relation to a person's registration under the Financial Service Providers (Registration and Dispute Resolution) Act 2008	
disciplinary action , in relation to a contravention of a provision, means disciplinary action under Part 5 of Schedule 5 for the conduct constituting the contravention.	25
431H Duty to meet standards of competence, knowledge, and skill	
A person must not give regulated financial advice to a retail client unless the person meets—	30
(a) the standards of competence, knowledge, and skill (including any continuing professional training development requirements) provided in the code of conduct for giving the advice; and	
(b) any prescribed eligibility criteria in relation to the giving of the advice.	
431I Duty to ensure client understands nature and scope of advice	35
A person must not give regulated financial advice to a retail client unless the person has taken reasonable steps to ensure that the client understands the	

nature and scope of the advice being given, including any limitations on the nature and scope of the advice.

431J Duty to give priority to client's interests

- (1) This section applies if a person who gives regulated financial advice (A) knows, or ought reasonably to know, that there is a conflict between— 5
- (a) the interests of the person to whom the advice is given ~~(B) (C)~~; and
 - (b) A's own interests or the interests of a person ~~associated with A~~ connected with the giving of the advice.
- (2) In giving the advice, A must give priority to ~~B's interests, including C's interests~~ by taking all reasonable steps to ensure that the advice is not materially influenced by any of the following: 10
- (a) A's own interests;
 - (b) the interests of a person ~~associated with A~~ connected with the giving of the advice.
 - (c) if A is a financial adviser or nominated representative,— 15
 - (i) ~~the interests of the financial advice provider on whose behalf A is acting (C)~~;
 - (ii) ~~the interests of a person associated with C~~.
- (3) In this section, each of the following is a person **connected with the giving of the advice**: 20
- (a) a person associated with A:
 - (b) if A gives the advice on behalf of a financial advice provider,—
 - (i) the financial advice provider;
 - (ii) a person associated with the financial advice provider;
 - (iii) if A is engaged by the provider through 1 or more interposed persons— 25
 - (A) an interposed person;
 - (B) a person associated with an interposed person.

431K Duty to exercise care, diligence, and skill

A person who gives regulated financial advice must exercise the care, diligence, and skill that a prudent person engaged in the ~~business profession~~ of giving regulated financial advice would exercise in the same circumstances. 30

Compare: 2008 No 91 s 33

431L Duty to comply with code of conduct

A person who gives regulated financial advice to a retail client must comply with the standards of ethical behaviour, conduct, and client care required by the code of conduct.

Compare: 2008 No 91 s 37

5

431M Duty relating to offer that contravenes Act or regulations

(1) A person who gives regulated financial advice (A) to another person—~~(B)~~ (C) must not recommend that ~~B~~ C acquire a financial product if—

- (a) the product is a contravening product; and
- (b) A knows, or ought reasonably to know, that the product is a contravening product.

10

(2) A financial product is a **contravening product**—

- (a) if the product is being offered under a regulated offer and that offer contravenes this Act or the regulations; or
- (b) if,—
 - (i) when the product was offered, the offer was a regulated offer and contravened this Act or the regulations; and
 - (ii) the contravention has not been remedied.

15

431N Duty to make ~~available~~ prescribed information available

~~(1) A person who gives regulated financial advice must, at the request of a prescribed person or at the prescribed times or on the occurrence of the prescribed events, make available to a prescribed person the information that is required to be made available under this section by the regulations.~~

20

~~(2) The information must be made available in the prescribed manner.~~

(1) A person who gives regulated financial advice must make the prescribed information available in the prescribed manner when required to do so by the regulations.

25

(2) The regulations may (without limitation) require information to be made available—

- (a) at the request of a prescribed person, at prescribed times, or when a prescribed event occurs;
- (b) to a particular person or persons or to the public.

30

Examples

ABC Limited (**ABC**) provides investment advice to a client (**C**).

ABC must (if required by the regulations) provide information to C when the service is first provided (for example, about fees, material interests, relationships and associations, the type of advice, dispute resolution arrangements, and other matters relevant to the performance of the service).

35

ABC must also (if required by the regulations) provide ongoing information to C.

Compare: 2008 No 91 ss 21–31

431O False or misleading statements and omissions

- (1) A person must not make ~~available~~ information available under **section 431N** if—
 - (a) there is—
 - (i) a statement in the information that is false or misleading or is likely to mislead; or
 - (ii) an omission from the information that is required by the regulations; and
 - (b) the statement or omission is materially adverse from the point of view of the client.
- (2) For the purposes of this section, information about a future matter (including the doing, or not doing, of an act) is misleading if the person making the statement does not have reasonable grounds for making it.
- (3) **Subsection (2)** does not limit the meaning of a reference to a misleading statement.
- (4) This section does not limit **section 431N**.
- (5) *See section 511 (offence to knowingly or recklessly contravene this section).*

Compare: 2008 No 91 s 34

Additional duties on financial advice providers that engage financial advisers or nominated representatives and interposed persons that engage others to give advice

431P ~~Financial advice provider must ensure compliance with duties~~

~~A financial advice provider that engages 1 or more financial advisers or nominated representatives to give regulated financial advice must take all reasonable steps to ensure that each of its financial advisers and nominated representatives complies with **sections 431H to 431O**.~~

431P Persons engaging others to give advice must ensure compliance with duties

- (1) A financial advice provider that engages another person (A) to give regulated financial advice must take all reasonable steps to ensure that A complies with **sections 431H to 431O**.
- (2) If A is engaged by the provider indirectly through 1 or more interposed persons (as described in **section 431DA(b)**), each of those interposed persons must also take all reasonable steps to ensure that A complies with **sections 431H to 431O**.

431Q Duties of financial advice providers in relation to persons who engage nominated representatives

- (1) ~~A financial advice provider that engages 1 or more nominated representatives to give regulated financial advice—~~
- ~~(a) must have in place clear and effective processes, controls, and limitations relating to the financial advice that may be given by its nominated representatives; and~~ 5
 - ~~(b) must not give, or offer to give, to any of its nominated representatives any kind of payment or other incentive that is intended to encourage, or is likely to have the effect of encouraging, a nominated representative to engage in conduct that contravenes any duty under **sections 431H to 431O**.~~ 10
- (1) A financial advice provider (P) that engages 1 or more nominated representatives to give regulated financial advice on P's behalf must have in place processes and controls that— 15
- (a) limit the nature and scope of the advice that the nominated representatives give; and
 - (b) allow P to regulate what advice is given and the circumstances in which it is given.
- (2) The processes and controls must ensure that the advice given by a nominated representative is commensurate with their competence, knowledge, and skill. 20
- (3) P and any interposed person through whom any of the nominated representatives are engaged must—
- (a) ensure that the nominated representatives comply with P's processes and controls; and 25
 - (b) monitor the nominated representatives and the advice they give to ensure that—
 - (i) those processes and controls are effective and are complied with; and
 - (ii) the nominated representatives comply with their duties under this subpart. 30
- (4) Neither the provider nor any interposed person may give, or offer to give, to any of its nominated representatives any kind of payment or other incentive that is intended to encourage, or is likely to have the effect of encouraging, a nominated representative to engage in conduct that contravenes any duty under **sections 431H to 431O**. 35

*Miscellaneous provisions***431R Protection of financial adviser or nominated representative reporting individual who reports breach**

- (1) This section applies if ~~a financial adviser or nominated representative~~ an individual who gives regulated financial advice (A)— 5
- (a) reasonably believes that a person has contravened a provision of this Act that relates to the giving of financial advice or the provision of a financial advice service; and
 - (b) reports that belief to the FMA.
- (2) If A makes the report in good faith,— 10
- (a) no civil, criminal, or disciplinary proceedings may be brought against A as a result of A having made the report; and
 - (b) no person may terminate A's employment or appointment as a result of A having made the report; and
 - (c) no tribunal, body, or authority that has jurisdiction in respect of A's professional conduct may make an order against, or do any act in relation to, A as a result of A having made the report. 15

431S Nomination of nominated representatives

- (1) A financial advice provider ~~(A)~~ (P) may nominate an individual ~~(B)~~ (A) as a nominated representative of ~~A~~ P if— 20
- (a) ~~A~~ P holds, or is authorised to provide a service under, a licence that covers financial advice services; and
 - (b) ~~BA~~—
 - (i) is engaged ~~(whether as an employee or otherwise)~~ by ~~A~~ by P to give financial advice on ~~A's~~ P's behalf; and 25
 - (ii) is not a financial adviser; and
 - (iii) is not a nominated representative of any other financial advice provider ~~(unless the other provider is authorised to provide a financial advice service under the same licence as A).~~—
 - (A) the other provider is authorised to provide a financial advice service under the same licence as P; or 30
 - (B) the other provider is authorised to do so by a licence condition related to an arrangement referred to in **section 403(4)(b)(ii).**
- (2) A nomination must be made in the manner ~~(if any)~~ specified by the FMA. 35
- (3) A nomination—
- (a) takes effect on the date it is made or any later date specified in it; and

- (b) remains in force until the first to occur of the following:
 - (i) A-P revokes the nomination by giving written notice to B-A;
 - (ii) A-P ceases to comply with **subsection (1)(a)**;
 - (iii) B-A ceases to comply with **subsection (1)(b)**.
- (4) A financial advice provider must keep an up-to-date record of its nominated representatives in the prescribed manner. 5

431T Limitation on pecuniary penalty orders against financial advice providers

- (1) This section applies if—
 - (a) a financial adviser contravenes a duty provision (as defined in **section 431G(1)**); and 10
 - (b) the financial advice provider on whose behalf the financial adviser was acting is civilly liable for the contravention of a duty provision (as described in **section 431G(4)(b)(ii)(d)(i)**); and
 - (c) the financial advice provider took all reasonable steps to ensure that the financial adviser did not contravene the duty provision. 15
- (2) A pecuniary penalty order may not be made under section 489 against the financial advice provider in relation to the contravention of the duty provision.

Subpart 5B—Regulation of client money or property services

Interpretation

431U Overview of client money or property services regime 20

- (1) This subpart and other legislation regulate client money or property services as follows:
 - (a) to be in the business of providing the service, a person must be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (and must be a member of an approved dispute resolution scheme). The provider is not required to hold a market services licence: 25
 - (b) a person who provides the service must—
 - (i) disclose information to retail clients under **section 431W**; and
 - (ii) exercise care, diligence, and skill under **section 431Z**; and 30
 - (iii) handle client money and property in accordance with **sections 431ZB to 431ZG**, including holding the money or property on trust (if those duties apply under **section 431Y(2)**);
 - (c) **section 431ZH** sets out who is responsible if those duties are contravened. 35

- (2) This section is a guide only to the general scheme and effect of this subpart and other legislation in relation to client money or property services.

431V Meaning of client money or property service and certain other terms

- (1) A **client money or property service**—
- (a) is the receipt of client money or client property by a person and the holding, payment, or transfer of that client money or client property; and 5
 - (b) includes a custodial service.
- (2) A **custodial service** is the holding of client money or client property by a person (A) in trust for, or on behalf of, a client (C), or another person nominated by C, under an agreement between A and C or between A and another person with whom C has an agreement (whether or not there are also other parties to the agreement). 10
- (3) The mere transmission of a non-transferable instrument payable to another person is not a client money or property service.
- (4) A client money or property service is a **regulated client money or property service** if it is not excluded under any of **clauses 19 to 23 of Schedule 5**. 15
- (5) In this subpart,—
- client money** means money—
- (a) received in connection with acquiring, holding, or disposing of a financial advice product or otherwise in connection with a financial advice product; and 20
 - (b) received from, or on account of, a client by a person (A) (and not on A's own account)
- client property** means property (other than money) to which the following ~~applies~~ apply: 25
- (a) the property is a financial advice product, is a beneficial interest in a financial advice product, or is received in connection with a financial advice product; and
 - (b) the property is received from, or on account of, the client by a person (A) (and not on A's own account) 30
- provider** means a provider of client money or property services.

Compare: 2008 No 91 s 77B

Disclosure obligations for services for retail clients

431W Provider must make disclosure before receiving client money or client property from retail client 35

A person who provides a regulated client money or property service to a retail client must, in the prescribed manner, disclose the prescribed information to the retail client—

- (a) before receiving client money or client property from or on behalf of the client; or
- (b) if not practicable before, as soon as practicable after receiving client money or client property from or on behalf of the client.

Compare: 2008 No 91 s 77E

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431X False or misleading statements and omissions

- (1) A person must not provide information under **section 431W** if—
 - (a) there is—
 - (i) a statement in the information that is false or misleading or is likely to mislead; or
 - (ii) an omission from the information that is required by the regulations; and
 - (b) the statement or omission is materially adverse from the point of view of a client.
- (2) For the purposes of this section, information about a future matter (including the doing, or not doing, of an act) is misleading if the person making the statement does not have reasonable grounds for making it.
- (3) **Subsection (2)** does not limit the meaning of a reference to a misleading statement.
- (4) This section does not limit **section 431W**.
- (5) *See* section 511 (offence to knowingly or recklessly contravene this section).

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Conduct obligations

431Y Application of conduct obligations

- (1) **Sections 431Z and 431ZA** apply to all regulated client money or property services.
- (2) **Sections 431ZB to 431ZG**—
 - (a) apply to regulated client money or property services provided to a retail client; and
 - (b) apply to custodial and other regulated client money or property services provided to every investor under a retail service of a DIMS licensee (as provided by section 446); and
 - (c) otherwise apply to client money or property services provided to a wholesale client only if provided by the regulations; and
 - (d) do not apply to a broker within the meaning of the Insurance Intermediaries Act 1994 in relation to any money to which section 14 or 15 of that Act applies.

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Compare: 2008 No 91 s 77J

431Z Provider must exercise care, diligence, and skill

A provider must, when providing a regulated client money or property service, exercise the care, diligence, and skill that a prudent person engaged in the business of providing the service would exercise in the same circumstances.

Compare: 2008 No 91 s 77K

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431ZA Provider must not receive client money if offer contravenes Act or regulations

(1) A provider must not receive client money or client property from a person for the acquisition of a financial product if—

- (a) the product is a contravening product; and
- (b) the provider knows, or ought reasonably to know, that the product is a contravening product.

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(2) A financial product is a **contravening product**—

- (a) if the product is being offered under a regulated offer and that offer contravenes this Act or the regulations; or
- (b) if,—
 - (i) when the product was offered, the offer was a regulated offer and contravened this Act or the regulations; and
 - (ii) the contravention has not been remedied.

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Compare: 2008 No 91 s 77O

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*Obligations for handling client money and client property***431ZB Provider must pay client money into separate trust account and hold client property on trust**

(1) A provider who receives client money or client property, as part of a client money or property service,—

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- (a) must hold the client money or client property, or ensure the client money or client property is held, on trust for the client; and
- (b) must ensure that the client money is paid promptly into a bank in New Zealand (or into any other prescribed entity) to—
 - (i) a trust account of the provider or of a related body corporate specified in the regulations; or
 - (ii) if section 445 applies, a trust account of a person permitted to hold the money under that section.

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(2) A provider must ensure that the client money and client property are held separate from money or property held by or for the provider, or other person referred to in **subsection (1)(b)(i) or (ii)**, on its own account.

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(3) However,—

- (a) **subsection (2)** does not apply in the prescribed circumstances; and
 - (b) money or property that is not held separate from client money or client property—
 - (i) must be treated as client money or client property for all or any purposes if the regulations so provide: 5
 - (ii) must be separated from client money or client property if required by the regulations or may be so separated if permitted by the regulations.
- (4) A provider must comply with any prescribed duties and other requirements in relation to the client money and client property held on trust under this section. 10
- Compare: 2008 No 91 s 77P
- 431ZC Provider must account for client money and client property**
- A provider who receives or holds client money or client property on trust for a client must account properly, or ensure that account is properly made, to the client for that client money or client property. 15
- Compare: 2008 No 91 s 77Q
- 431ZD Provider must keep records of client money and client property**
- (1) A provider who receives or holds client money on trust for a client must keep, or ensure that there are kept, trust account records that disclose clearly the position of the client money in the trust account. 20
- (2) A provider who receives or holds client property on trust for a client must keep, or ensure that there are kept, records that—
- (a) identify the client property; and
 - (b) show the date when the client property was received; and
 - (c) if the client property has been disposed of, show when the client property was disposed of and to whom. 25
- (3) A provider must also keep all other prescribed records.
- (4) A provider must—
- (a) keep the records required by this section, or ensure that they are kept, in a manner that enables those records to be conveniently and properly audited, reviewed, or inspected; and 30
 - (b) comply with the prescribed requirements (if any) relating to those records and their audit, review, or inspection.
- Compare: 2008 No 91 s 77R
- 431ZE Provider must report on client money and client property** 35
- (1) A provider must, in the prescribed circumstances, provide confirmation information to a client or other prescribed persons in respect of client money or client property received or held on behalf of the client.

- (2) The confirmation information must be provided in the prescribed manner.
- (3) In this section, **confirmation information** means the information relating to the client money or client property, or transactions relating to it, that is prescribed.

Compare: 2008 No 91 s 77RA

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431ZF Restrictions on use of client money and client property

A person must not use or apply client money or client property received or held on trust for a client by a provider in any way except—

- (a) as expressly directed by the client (either generally or specifically); or
- (b) in accordance with **section 431ZB** (which relates to payment of client money into a trust account).

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Compare: 2008 No 91 s 77S

431ZG Protection of client money and client property held on trust

- (1) The client money or client property that is received or held by a provider on trust for a client—

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- (a) is not available for the payment of the debts owing to any other creditor of the provider; and
- (b) is not liable to be attached or taken in execution under the order or process of any court at the instance of another creditor of the provider.

- (2) Nothing in **section 431ZF** or this section takes away or affects any lawful lien or claim that a provider who holds client money or client property has against the client money or client property.

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Compare: 2008 No 91 s 77T

Persons acting in course of business of employers or principals

431ZH Who is responsible for obligations

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- (1) If a client money or property service is provided by a person (**A**) on behalf of the business of another person (**B**), B (and not A) is treated as the provider of the service having the obligations under this subpart.
- (2) This section does not affect the liability of A or B under any other Act or rule of law for A's actions.

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Compare: 2008 No 91 s 77U

28 New section 432A inserted (Meaning of discretionary investment management service and related terms)

After section 432, insert:

432A Meaning of discretionary investment management service and related terms

(1) In this Act, a person (**A**) provides a **discretionary investment management service** (a DIMS) if—

- (a) A—
 - (i) decides which financial products to acquire or dispose of on behalf of an investor (**B**); and
 - (ii) in doing so, is acting under an authority granted to A to manage some or all of B's holdings of financial products; or
- (b) A gives financial advice in the ordinary course of, and incidentally to, providing a discretionary investment management service under **paragraph (a)** (for example, as to the appropriate scope of an investment authority).

(2) In determining whether A has an authority under **subsection (1)(a)(ii)**, it does not matter if B has the right to be consulted on, or to countermand, A's decisions.

(3) In this Act,—

DIMS licensee means a person that acts as a provider of a discretionary investment management service under a licence under this Part

investment authority means, in relation to a discretionary investment management service, the authority granted by an investor to manage some or all of an investor's holdings of financial products under the service

provider of a discretionary investment management service means a person who is in the business of providing a discretionary investment management service.

29 Section 446 replaced (Certain broker obligations of Financial Advisers Act 2008 may be enforced also under this Act)

Replace section 446 with:

446 Certain client money or property service obligations under subpart 5B apply

(1) A DIMS licensee, and a custodian of investor money or investor property under the service, must provide the custodial and other client money or property services under the service to every investor in accordance with **sections 431ZB to 431ZG**.

(2) Those sections apply as if every reference to a client were to the investor and every reference to client money or client property were to investor money or investor property.

(3) This section does not limit the application of those sections to a DIMS licensee or a custodian as a provider of a client money or property service.

30 Section 449 amended (Part 6 services provisions)

- (1) After section 449(3)(e), insert:

(ea) **section 431O**, to the extent that a ~~financial advice provider~~ person may be civilly liable for a contravention of the provision under **section 431G** (false or misleading statements and omissions):

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(eb) **section 431X** (false or misleading statements and omissions):

- (2) Replace section 449(3)(g) with:

(g) **section 446** (certain client money or property service obligations under **subpart 5B** apply to DIMS licensees and custodians).

- (3) After section 449(4)(g)(ga), insert:

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(gagb) **section 431E** (limitation on who can give regulated financial advice to retail clients on behalf of financial advice provider):

(gbgc) **section 431F** (prohibitions on holding out in relation to giving financial advice):

(gegd) **sections 431H to 431N**, to the extent that a ~~financial advice provider~~ person may be civilly liable for a contravention of the provision under **section 431G** (duties on persons giving regulated financial advice):

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(gedge) **sections 431P and 431Q** (additional duties on financial advice providers ~~that engage financial advisers or nominated representatives and interposed persons that engage others to give advice~~):

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(gegf) **section 431W** (client money or property service disclosure obligations):

(gefge) **sections 431Z and 431ZA** (client money or property service conduct obligations):

(geggh) **sections 431ZB to 431ZG** (obligations for handling client money and client property):

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31 Section 451 amended (Meaning of FMC reporting entity)

- (1) In section 451(b), after “scheme”, insert “or a person referred to in **subsection (2)**”.

- (2) In section 451, insert as subsection (2):

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- (2) Despite **subsection (1)(b)**, a person who holds a licence under Part 6 is not an FMC reporting entity if—

(a) the licence only covers a financial advice service; and

(b) the person is not a person referred to in **subsection (1)(a) or (c) to (k)**.

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32 Section 452 amended (Company that issues equity securities not FMC reporting entity if fewer than 50 shareholders)

In section 452(1), replace “451(a)” with “**451(1)(a)**”.

33 Section 462 amended (When FMA may make stop orders)

(1) Replace section 462(1)(g) with:

(g) disclosure relating to financial products under subpart 4 of Part 3, or a disclosure document relating to market services under subpart 4, **5A**, or **5B** of Part 6,—

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(i) is false or misleading, or is likely to mislead or confuse, in a material particular; or

(ii) contains any material misdescription or material error or any material matter that is not clearly legible; or

(iii) does not comply with this Act or the regulations; or

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(2) In section 462(1)(h), replace “or 423” with “, 423, or **431F**”.

34 Section 469 amended (Terms of direction orders)

In section 469, insert as subsection (2):

(2) If the FMA is satisfied that the relevant person (A) is a financial adviser who, by engaging in any conduct, has contravened, or is likely to contravene, any of **sections 431H to 431O**, a direction order may do 1 or more of the following (whether or not in addition to an order under **subsection (1)**):

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(a) direct the Registrar to deregister A under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **FSP Act**):

(b) direct the Registrar to—

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(i) deregister A under the FSP Act; and

(ii) prevent A for a specified period from being reregistered for a financial advice service under the FSP Act:

(c) direct the Registrar to suspend A’s registration under the FSP Act for a period of no more than 12 months or until A meets specified conditions relating to the registration (but, in any case, not for a period of more than 12 months).

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35 Section 475 amended (FMA must follow steps before making orders)

After section 475(2), insert:

(3) In the case of a direction order under **section 469(2)**, the financial adviser that is the subject of the order is the person referred to in subsection (1)(a) and (d) and section 477(1)(a).

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36 Section 489 amended (When court may make pecuniary penalty orders)

In section 489(3)(b), after “section”, insert “**431T** or”.

37 Section 499 amended (General defences for person in contravention)

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In section 499(3), replace “or 427(2) or (6)” with “427(2) or (6), **431O**, or **431X**”.

38	Section 500 amended (Disclosure defences for person in contravention)	
	In section 500(1) and (2), replace “or 427(2) or (6)” with “427(2) or (6), 431O , or 431X ”.	
39	Section 501 amended (Additional disclosure or financial reporting defence for directors who are treated as contravening)	5
	In section 501(2), delete “and proper”.	
40	Section 503 amended (General defences for person involved in contravention)	
(1)	In section 503(2)(b), delete “and proper”.	
(2)	In section 503(4), replace “and 427” with “427, 431O , and 431X ”.	10
41	Section 507 amended (No pecuniary penalty and fine for same conduct)	
	In section 507, replace “Financial Advisers Act 2008” with “Financial Service Providers (Registration and Dispute Resolution) Act 2008”.	
42	Section 511 amended (Offence of knowingly or recklessly contravening other provisions relating to defective disclosure)	15
(1)	In section 511(1) and (2), replace “section 99 or 427 or clause 27 of Schedule 1” with “a relevant provision”.	
(2)	In section 511(1)(a) and (2)(b)(i), replace “section 99(1)(a)(i) or 427(1)(a)(i) or clause 27(1)(a)(i) of Schedule 1 (as the case may be)” with “subsection or subclause (1)(a)(i) of the relevant provision”.	20
(3)	In section 511(1)(b) and (2)(b)(ii), replace “section 99(1)(a)(ii) or 427(1)(a)(ii) or clause 27(1)(a)(ii) of Schedule 1 (as the case may be)” with “subsection or subclause (1)(a)(ii) of the relevant provision”.	
(4)	Replace section 511(4) with:	
(4)	In this section,—	25
	relevant act means,—	
(a)	in relation to section 99, the act of providing or making available the ongoing disclosure:	
(b)	in relation to section 427, the act of providing the disclosure statement to a person or supplying the service to a person who was required to be provided, or has been provided, with the disclosure statement:	30
(c)	in relation to section 431O or 431X , the act of making the information available to a person:	
(d)	in relation to clause 27 of Schedule 1, the act of providing the disclosure document to a person	35
	relevant provision means section 99, 427, 431O , or 431X or clause 27 of Schedule 1.	

42 Section 511 amended (Offence of knowingly or recklessly contravening other provisions relating to defective disclosure)

- (1) In section 511(1) and (2), replace “section 99 or 427(2) or (6) or clause 27 of Schedule 1” with “a disclosure provision”.
- (2) In section 511(1)(a) and (2)(b)(i), replace “statement referred to in section 99(1)(a)(i) or 427(1)(a)(i) or (6)(a)(i) or clause 27(1)(a)(i) of Schedule 1 (as the case may be)” with “relevant statement”.
- (3) In section 511(1)(b) and (2)(b)(ii), replace “an omission as referred to in section 99(1)(a)(ii) or 427(1)(a)(ii) or (6)(a)(ii) or clause 27(1)(a)(ii) of Schedule 1 (as the case may be)” with “a relevant omission”.
- (4) Replace section 511(4) with:
- (4) In this section,—
- disclosure provision** means section 99, 427(2) or (6), **431O, or 431X** or clause 27 of Schedule 1
- relevant act** means,—
- (a) in relation to section 99, the act of providing or making available the ongoing disclosure:
- (b) in relation to section 427(2), the act of providing the disclosure statement to a person:
- (c) in relation to section 427(6), the act of providing or making available the further disclosure:
- (d) in relation to **section 431O or 431X**, the act of making the information available to a person:
- (e) in relation to clause 27 of Schedule 1, the act of providing the limited disclosure document to a person
- relevant omission** means an omission as referred to in section 99(1)(a)(ii), 427(1)(a)(ii) or (6)(a)(ii), **431O(1)(a)(ii), or 431X(1)(a)(ii)** or clause 27(1)(a)(ii) of Schedule 1 (as the case may be)
- relevant statement** means the statement referred to in section 99(1)(a)(i), 427(1)(a)(i) or (6)(a)(i), **431O(1)(a)(i), or 431X(1)(a)(i)** or clause 27(1)(a)(i) of Schedule 1 (as the case may be).

43 Section 518 amended (Terms of banning orders)

Replace section 518(1)(b) with:

- (b) providing financial advice services or client money or property services, or contributing, as employee or agent, to the provision of those services.

44 New sections 532A to 532C inserted

After section 532, insert:

532A Appeals against decisions of disciplinary committee

- (1) A person may appeal to the District Court against a decision of the disciplinary committee to take any action referred to in **clause 46 of Schedule 5** against the person.
- (2) The decision of the District Court on an appeal under this section is final, except as provided in **section 532C**.

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532B Orders as to publication of names

- (1) On an appeal under **section 532A**, the District Court may, if in its opinion it is proper to do so, prohibit the publication of the name or particulars of the affairs of a financial adviser or any other person.
- (2) In deciding whether to make an order, the court must have regard to—
 - (a) the interests of any person (including, without limitation, the privacy of any complainant); and
 - (b) the public interest.

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Compare: 2008 No 91 s 145

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532C Appeal on question of law

A party to an appeal under **section 532A** may appeal to the High Court against a decision of the District Court on a question of law only.

Compare: 2008 No 91 s 146

45 Section 543 amended (Regulations for purposes of Part 3 (Disclosure of offers of financial products))

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Replace section 543(1)(l) with:

- (l) prescribing kinds of financial products or currency forwards for the purposes of **clause 21(a)**, (c), or (d) or **38(4)(a)** of Schedule 1:

46 Section 546 amended (Regulations for purposes of Part 6 (market services))

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- (1) In section 546(1)(a)(i), after “related body corporate”, insert “or an entity referred to in **section 400(1A)**”.

- (2) Replace section 546(1)(c) with:

- (c) exempting (on terms and conditions, if any) services from the licensing requirement for providers of financial advice services for the purposes of **section 389(2)(b)**:

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- (ca) exempting (on terms and conditions, if any) services from the licensing requirement for providers of discretionary investment management services for the purposes of **section 389(3)(b)**:

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- (3) After section 546(1)(d)(iii), insert:

(iv) ~~in the case of a provider of financial advice services, a condition specifying or limiting the types of financial advice that may be provided on behalf of the provider by financial advisers in general or a class or classes of financial advisers or by nominated representatives in general or a class or classes of nominated representatives:~~

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(iv) in the case of a licence relating to a financial advice service, conditions of a kind described in **section 403(4)**:

(4) After section 546(1)(m), insert:

Financial advice services and client money or property services

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(maa) prescribing kinds of financial planning for the purposes of **section 431C(1)(c)**:

(ma) prescribing eligibility criteria for the purposes of **section 431H**:

(mb) prescribing the information that must be made available under **section 431N**, ~~who may request it, and when, to whom,~~ and the manner in which it must be made available:

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(mc) prescribing the information that must be disclosed under **section 431W** and the manner in which it must be disclosed (including prescribing the manner in which the information is to be presented, calculated, or prepared):

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(md) prescribing documents or information the giving of which does not constitute the giving of financial advice under **clause 7(f) of Schedule 5**:

(me) prescribing activities for the purposes of **clause 7(g) of Schedule 5** (activities that are not giving financial advice):

(mf) prescribing occupations for the purposes of **clause 8(3) or 19(1) of Schedule 5**:

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(mg) prescribing circumstances in which financial advice is not regulated financial advice for the purposes of **clause 17 of Schedule 5**:

(mh) prescribing circumstances in which a client money or property service is not a regulated client money or property service for the purposes of **clause 22 of Schedule 5**:

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(mi) providing for any or all of **sections 431ZB to 431ZG** to apply to wholesale clients and the extent to which and the circumstances in which they so apply:

(mj) prescribing the duties and obligations of providers of client money or property services in relation to client money and client property:

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(mk) prescribing entities for the purposes of **section 431ZB**:

(ml) specifying who may be a related body corporate for the purposes of **section 431ZB**:

(mm) prescribing circumstances for the purposes of **section 431ZB(3)(a)**:

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- (mn) providing for the matters referred to in **section 431ZB(3)(b)**:
- (mo) regulating the establishment and operation of a trust account under **sub-part 5B of Part 6** and the receipt, handling, and application of client money and client property by a provider of client money or property services (including prescribing requirements relating to the investment of money that is held in trust and providing for how interest or other income from that investment is to be paid, retained, or otherwise dealt with): 5
- (mp) regulating the keeping, retention, reconciliation, inspection, and audit or review of trust account records and other records and procedures of providers of client money or property services: 10
- (mq) prescribing any other requirements necessary or desirable to ensure that trust accounts are duly kept and that persons on whose behalf client money and client property are held by providers are informed of the client money and client property held and of the transactions made in connection with it (including prescribing what confirmation information must be made available and any other matters for the purposes of **section 431ZE**): 15
- (mr) prescribing matters to regulate the delivery of client money or client property to the person on whose behalf they are held, and other steps to be taken or provisions to apply, in connection with the termination of any client money or property service: 20
- (5) Before section 546(1)(p), insert:
 - (oa) prescribing the procedure of the code committee:
 - (ob) prescribing the procedure of the disciplinary committee: 25
- (6) In section 546(2), after “(c),”, insert “**(ca), (md), (me), (mf), (mg), (mh), (mm)**,”.
- 47 Section 548 amended (Other regulations)**
- (1) In section 548(1)(a), replace “financial products (within the meaning of section 5 of the Financial Advisers Act 2008)” with “financial advice products”. 30
- (2) After section 548(1)(d)(i), insert:
 - (ia) declaring products to be financial advice products:
- (3) After section 548(1)(d)(iv), insert:
 - (iva) specifying persons as product providers for the purposes of the definition of product provider in section 6(1): 35
- (4) After section 548(1)(j), insert:
 - (ja) prescribing criteria, requirements, or both for the purposes of **clause 2(1)(b)(iv)** of Schedule 3:

48 Section 550 amended (Procedural requirements for regulations relating to exemptions, exclusions, and definitions)

- (1) In section 550(1)(c), after “(d),”, insert “**(da), (db)**”.
- (2) In section 550(2)(d), replace “and (c)” with “, (c), and **(ca)**”.
- (3) After section 550(2)(d), insert:
 - (da) **section 546(1)(md), (me), (mf), (mg), and (mh)** (regulations may prescribe matters in relation to exclusions from definitions of financial advice, regulated financial advice, and regulated client money or property service):
 - (db) **section 546(1)(~~ml~~)(mm)** (regulations may prescribe circumstances in which requirements do not apply):

49 Section 562 amended (FMA’s designation power)

- (1) In section 562(1)(g), replace “type” with “class”.
- (2) Replace section 562(1)(h) with:
 - (ga) declare that a person or class of person that would otherwise be a wholesale investor or a wholesale client is, or is to become, a retail investor or a retail client:
 - (gb) declare that advice—
 - (i) that would not otherwise be financial advice is financial advice; or
 - (ii) that would otherwise be financial advice is not financial advice; or
 - (iii) that would not otherwise be regulated financial advice is regulated financial advice; or
 - (iv) that would otherwise be regulated financial advice is not regulated financial advice:
 - (gc) declare that a service—
 - (i) that would not otherwise be a financial advice service is a financial advice service; or
 - (ii) that would otherwise be a financial advice service is not a financial advice service:
 - (h) declare a person, service, or conduct to be not exempt under any exemption that would otherwise apply under any of the following provisions (and accordingly the licensing requirement under this Act applies):
 - (i) **section 389(2):**
 - (ii) **section 389(3):**

50 Section 563 amended (Procedural requirements)

After section 563(1)(c), insert:

(ca) in the case of **section 562(1)(gb), (gc), or (h)(i)**, it is satisfied that the declaration is necessary or desirable in order to promote the additional purpose specified in **section 431B**; and

51 New section 571A inserted (Deferral of obligations to publish, notify, and make available non-class exemptions)

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After section 571, insert:

571A Deferral of obligations to publish, notify, and make available non-class exemptions

The FMA may defer complying with section 571(3) in relation to an exemption granted under subpart 2 if the FMA is satisfied on reasonable grounds that it is proper to do so on the ground of commercial confidentiality.

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52 Heading to subpart 8 of Part 9 amended

In the heading to subpart 8 of Part 9, replace “Transitional and miscellaneous” with “Miscellaneous”.

53 Section 597 repealed (Transitional provisions)

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Repeal section 597.

54 Schedule 1 amended

(1) In Schedule 1, replace clause 19(1)(e) with:

(e) in the case of an offer by way of sale, the offeror has reasonable grounds to believe that the financial products will, immediately after sale, be quoted; and

20

(2) In Schedule 1, in the heading to clause 21, replace “**category 2 products**” with “**prescribed financial products**”.

(3) In Schedule 1, replace clause 21(a) with:

(a) financial products of a kind prescribed for the purposes of this paragraph that are issued by a registered bank; or

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(4) In Schedule 1, clause 21(c), replace “category 2” with “financial”.

(5) In Schedule 1, replace clause 37(1)(a)(iii) and (iv) with:

(iii) providing a financial advice service; or
(iv) providing a client money or property service; or

30

(6) In Schedule 1, replace clause 37(1)(g) with:

(g) a financial adviser.

(7) In Schedule 1, replace clause 38(4)(a) with:

(a) financial products of a kind prescribed for the purposes of this paragraph:

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(8) In Schedule 1, clause 41(1)(a)(i), after “subclause (2)”, insert “or **(2A)**”.

- (9) In Schedule 1, clause 41(1)(c), replace “an authorised financial adviser” with “a financial adviser”.
- (10) In Schedule 1, after clause 41(2), insert:
- (2A) In relation to the supply of a financial advice service or a client money or property service (or a class of those services), A must certify that A has previous experience in acquiring or disposing of financial advice products that allows A to assess— 5
- (a) the merits of the service or services to be provided (including assessing their value and the risks involved); and
 - (b) A’s own information needs in relation to the service or services; and 10
 - (c) the adequacy of the information provided by any person involved in the service or services.
- (11) In Schedule 1, after clause 41(5), insert:
- (6) In relation to the supply of a financial advice service or client money or property service (or a class of those services), the certification under sub-clause (1)(a)(ii) must include a certificate that A understands that the competency standards and requirements of the code of conduct will not be applicable (if relevant) and that the financial adviser or provider may not be a member of an approved dispute resolution scheme. 15
- (12) In Schedule 1, clause 42(1), after “41(2),”, insert “**(2A)**,”. 20
- (13) In Schedule 1, clause 42(2)(a) and (b), replace “authorised financial adviser” with “financial adviser”.
- (14) In Schedule 1, clause 43(1), replace “An authorised financial adviser” with “A financial adviser”.
- (15) In Schedule 1, clause 49(1), definition of **relevant person**, after paragraph (a), insert: 25
- (ab) the supply of a financial advice service or a client money or property service to a person, means the provider of the service:
- (16) In Schedule 1, clause 49(1), definition of **relevant time**, after paragraph (b), insert: 30
- (ba) the supply of a financial advice service or a client money or property service to a person, means immediately before the service is supplied:
- (17) In Schedule 1, clause 49(1), definition of **relevant transaction**, after paragraph (a), insert: 35
- (ab) the supply of a financial advice service or client money or property service; or

55 Schedule 2 amended

In Schedule 2, clause 2(d), replace “perform a financial adviser service (within the meaning of the Financial Advisers Act 2008)” with “give financial advice”.

56 Schedule 3 amended

- (1) In Schedule 3, replace clause 2(b)(iii) with:

- (iii) the trustees have contravened the trust deed; or
- (iv) the trustees apply for the approval to be withdrawn and the FMA is satisfied that the prescribed criteria and requirements (if any) are satisfied.

5

- (2) In Schedule 3, clause 2, insert as subclause (2):

- (2) If a Schedule 3 scheme is wound up, the approval of the scheme must be treated as withdrawn as soon as the distribution of assets has been completed.

- (3) In Schedule 3, replace clause 4 with:

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4 Procedure for exercising powers

The FMA must not exercise a power under **clause 2(1)(b)(i) to (iii)**, or refuse an application for approval to be withdrawn, unless—

- (a) the FMA gives the trustees no less than 10 working days' written notice of the following matters before it exercises the power:
 - (i) that the FMA may exercise the power or refuse the application; and
 - (ii) the reasons why it may do so; and
- (b) the FMA gives the trustees or the trustees' representative an opportunity to make written submissions on the matter within that notice period.

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- (4) In Schedule 3, clause 5(1), replace “2(b)” with “**2(1)(b)**”.

57 Schedule 4 amended

- (1) In the heading to Schedule 4, replace “s 597” with “**s 14A**”.

- (2) In the heading to Schedule 4, after “**Transitional**”, insert “, **savings, and related**”.

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- (3) In Schedule 4, after clause 1(1)(e), insert:

- (f) **Part 6** provides for transitional provisions relating to the Financial Services Legislation Amendment Act **2017**.

- (4) In Schedule 4, clause 20(2A), replace “451(a)” with “**451(1)(a)**”.

- (5) In Schedule 4, after clause 70, insert the **Part 6** set out in **Part 1 of Schedule 1** of this Act.

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- (6) In Schedule 4, after **clause 77** (as inserted by **subsection (5)**), insert the **subpart 3 of Part 6** set out in **Part 2 of Schedule 1** of this Act.

58 New Schedule 5 inserted

After Schedule 4, insert the **Schedule 5** set out in **Schedule 2** of this Act.

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Part 2

Amendments to Financial Service Providers (Registration and Dispute Resolution) Act 2008

59 Principal Act

This Part amends the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **principal Act**). 5

60 Section 4 amended (Interpretation)

- (1) In section 4, repeal the definitions of **broker**, **broking service**, and **financial adviser service**.
- (2) In section 4, insert in their appropriate alphabetical order: 10

~~**client money or property service**~~ has the same meaning as in ~~**section 431V**~~ of the Financial Markets Conduct Act 2013

disciplinary committee means the disciplinary committee established under **Part 5 of Schedule 5** of the Financial Markets Conduct Act 2013

engaged, in relation to a financial advice provider, has the meaning given by **section 431DA** of the Financial Markets Conduct Act 2013 15

~~**financial advice**~~ has the same meaning as in ~~**section 431C**~~ of the Financial Markets Conduct Act 2013

financial advice provider has the same meaning as in meaning given by section 6(1) of the Financial Markets Conduct Act 2013 20

~~**financial advice service**~~ has the same meaning as in meaning given by section 6(1) of the Financial Markets Conduct Act 2013

regulated client money or property service has the meaning given by **section 431V(4)** of the Financial Markets Conduct Act 2013

regulated financial advice has the meaning given by **section 431C(3)** of the Financial Markets Conduct Act 2013 25
- (3) In section 4, replace the definition of **licensed provider** with:

licensed provider means a person identified in Schedule 2 that is licensed, registered, authorised, or otherwise approved by a licensing authority

61 Section 5 amended (Meaning of financial service) 30

- (1) Replace section 5(1)(a) to (c) with:

- (a) a financial advice service:
 - (b) a regulated client money or property service (including a custodial service):
 - (c) being a licensed provider (*see* Schedule 2, which refers to licensed providers including registered banks, operators of financial product markets, 35

	licensed insurers, supervisors, and NBDTs, and persons who hold, or are authorised bodies under, a market services licence):	
	(ca) a service—	
	(i) that is the same, or substantially the same, as that provided by licensed providers; but	5
	(ii) in respect of which the provider is not required to be a licensed provider because of an exemption granted or issued by a licensing authority or because the service is a wholesale service or provided only to wholesale clients or wholesale investors (as defined in any licensing enactment):	10
(1A)	Replace section 5(1)(g) with:	
	(g) <u>issuing or managing the means of payment (for example, credit or debit cards, cheques, travellers' cheques, money orders, bankers' drafts, or electronic money):</u>	
(2)	Repeal section 5(1)(i) and , (ia)(ii), and (id).	15
(3)	Replace section 5(1)(ib) with:	
	(ib) acting as an offeror of financial products offered under an FMC offer:	
(4)	After section 5(1), insert:	
(1A)	If regulations made under this Act define 2 or more subcategories of a financial service referred to in subsection (1), each of those subcategories must be treated as being a financial service for the purposes of applying this Act.	20
	Example	
	Section 11 provides that a person in the business of providing a financial service must be registered for that service.	
	Regulations may define acting as a derivatives issuer in respect of a regulated offer as being a subcategory of being a licensed provider.	25
	If those regulations are made, ABC Limited cannot be in the business of acting as a derivatives issuer in respect of a regulated offer unless it is registered for that service.	
62	Section 6 amended (Meaning of in the business of providing a financial service)	30
	In section 6, delete “or offering to provide”.	
63	Section 7 amended (Application of Act)	
(1)	Replace the heading to section 7 with “ Persons who are not in business of providing financial service ”.	35
(2)	Repeal section 7(1).	
(3)	Replace section 7(2)(i) with:	

- (i) a nominated representative (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) while acting in that capacity on behalf of the financial advice provider that nominated the person:

64 New section 7A inserted (Application of Act)

After section 7, insert:

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7A Application of Act

- (1) This Act applies to every person (A) who is in the business of providing a financial service if—
 - (a) A's financial services are provided to persons in New Zealand by or on behalf of A; or 10
 - (b) A is, or is required to be, a licensed provider under a licensing enactment; or
 - (c) A is required to be registered under this Act by any other enactment; or
 - (d) A provides the service in the prescribed circumstances; or
 - (e) A is a reporting entity to which the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 applies. 15
- (2) The following apply for the purposes of **subsection (1)(a)**:
 - (a) the paragraph does not apply merely because A's financial services are accessible by persons in New Zealand;
 - (b) the paragraph does not apply if A— 20
 - (i) does not have a place of business in New Zealand; and
 - (ii) does not provide the service to any retail client in New Zealand;
 - (c) the paragraph does not apply if the extent to which the financial service is provided to persons in New Zealand is less than any prescribed threshold: 25
 - (d) the paragraph applies regardless of where the financial service is provided from.
- (2A) **Subsection (2)(c)** does not apply in the prescribed circumstances.
- (3) This Act may also apply to a person who registers for financial advice services under **section 22C** (even though the person is not in the business of providing a financial service). 30
- (4) *See **section 12(1A)***, which applies section 12 to a person even if this Act would not otherwise apply to the person under this section.

65 Section 8A replaced (Territorial scope)

Replace section 8A with:

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8A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

66 Section 10 amended (Registration and deregistration)

After section 10(3), insert:

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- (4) This section is subject to **section 22B** (suspension of registration).

67 Heading to subpart 1 of Part 2 replaced

Replace the heading to subpart 1 of Part 2 with:

Subpart 1—Requirements for registration and being member of approved dispute resolution scheme and prohibition against holding out

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68 Section 11 amended (No being in business of providing financial service unless registered and member of approved dispute resolution scheme)

- (1) Replace the heading to section 11 with “**Person in business of providing financial service must be registered and member of approved dispute resolution scheme**”.

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- (2) Replace section 11(1) with:

- (1) A person to whom this Act applies who is in the business of providing a financial service must—

- (a) be registered for that service under this Part; and
- (b) if required by section 48, be a member of an approved dispute resolution scheme.

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69 Section 12 amended (No holding out that in business of providing financial service unless registered and member of approved dispute resolution scheme)

Replace section 12(1) with:

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- (1) A person must not—

- (a) hold out that the person is registered under this Act unless that person—
 - (i) is registered under this Part; and
 - (ii) is, if required by section 48, a member of an approved dispute resolution scheme; or

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- (b) hold out that the person is registered under this Act in respect of a particular service or entitled, qualified, able, or willing to be in the business of providing a financial service in New Zealand unless that person—

- (i) is registered for that service under this Part; and
 - (ii) is, if required by section 48, a member of an approved dispute resolution scheme.

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(1A) This section applies to a person even if this Act would otherwise not apply to the person under **section 7A**.

70 Section 14 amended (Disqualified person)

(1) Replace section 14(2)(a) with:

(a) an undischarged bankrupt, or a person who has a substantially similar status in a country, State, or territory outside New Zealand:

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(2) After section 14(2)(d), insert:

(da) a person who, within the past year, has been deregistered, or been a director or senior manager of an entity that has been deregistered, under **section 18(1)(ca)**:

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(3) Replace section 14(2)(ea) with:

(ea) a person who has been convicted within the past 5 years, in a country, State, or territory outside New Zealand, of an offence that is substantially similar to an offence specified in paragraph (e):

(4) Replace section 14(2)(g) with:

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(g) a person who is subject to a forfeiture order under the Criminal Proceeds (Recovery) Act 2009 or to a substantially similar order in a country, State, or territory outside New Zealand.

71 Section 15 amended (Application to be registered as financial service provider)

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After section 15(1)(a), insert:

(ab) if the applicant is applying to be registered under **section 22C**, state whether the applicant is engaged by a financial advice provider (**B**) to give regulated financial advice on B's behalf and, if so, B's name and business address; and

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72 Section 16 amended (Registration of financial service provider)

(1) After section 16(1)(a)(iii), insert:

(iiia) if the provider (**A**) is registered under **section 22C**, a statement as to whether A is engaged by a financial advice provider (**B**) to give regulated financial advice on B's behalf and, if so, B's name and business address; and

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(2) After section 16(1), insert:

(1A) ~~The Registrar may require a person to provide prescribed information in the prescribed manner for the purpose of ascertaining whether the person is in the business of providing a financial service to persons in New Zealand.~~

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(1B) ~~The Registrar may treat **section 18(1)(b)** as satisfied (and may, accordingly, deregister a provider under that paragraph) if the provider does not comply with a requirement under **subsection (1A)**.~~

(2) After section 16(1), insert:

(1A) The Registrar may, at any time, require a person to provide prescribed information in the prescribed manner for the purpose of ascertaining whether—

(a) the person is in the business of providing a financial service to persons in New Zealand; or

(b) any other matter referred to in **section 7A** applies in respect of the person.

(1B) The Registrar may treat **section 18(1)(b)** as satisfied (and may, accordingly, deregister a provider under that paragraph) if the provider does not comply with a requirement under **subsection (1A)**.

73 Section 17 amended (Duty to notify changes relating to financial service provider)

(1) After section 17(1)(c), insert:

(d) a financial advice provider, if the provider engages a financial adviser:

(e) a financial advice provider that is recorded on the register as having engaged a financial adviser, if the financial adviser is no longer engaged by the provider.

(2) In section 17(4), replace “(1)(c)” with “(1)(c), **(d), or (e)**”.

74 Section 18 amended (Deregistration of financial service provider)

(1) Replace section 18(1)(b) with:

(b) at any time after the expiry of 3 months after registration, is not in the business of providing a financial service or is otherwise no longer required to be registered under section 11; or

(2) Replace section 18(1)(c) with:

(c) has made a representation to the Registrar or the FMA that is false or misleading in any material particular in connection with obtaining or maintaining its registration under this Act or any other matter relating to this Act (for example, false information about the extent to which the person is in the business of providing a financial service); or

(ca) has failed to comply with a duty provided for under regulations made under **section 44(1)(bb) and (bc)** or has otherwise failed to provide any material information that it is required to provide by or under this Act, and the Registrar is satisfied that the failure is serious after having regard to the matters set out in **subsection (1AB)**; or

(2A) After section 18(1AA), insert:

(1AB) In considering whether a failure is serious under **subsection (1)(ca)**, the Registrar—

(a) must have regard to—

- (i) the nature and extent of the failure; and
- (ii) the circumstances in which the failure occurred; and
- (iii) whether the provider has previously failed to comply with the duty referred to in that paragraph or has otherwise previously failed to provide any material information that it is required to provide by or under this Act; and 5
- (b) may have regard to any other matters that the Registrar thinks relevant.
- (3) Replace section 18(1B) with:
- (1B) The Registrar must deregister a financial service provider if—
- (a) the FMA gives a direction under section 18B(3)(c)(i); or 10
- (b) the FMA gives a direction under **section 469(2)(a) or (b)** of the Financial Markets Conduct Act 2013; or
- (c) the disciplinary committee gives a direction under **clause 46(3)(a) or (b) of Schedule 5** of the Financial Markets Conduct Act 2013.
- (1C) Deregistration under **subsection (1B)(c)** relates only to the provider's registration for a financial advice service. 15
- 75 Section 20 amended (Objection to proposed deregistration of financial service provider)**
- After section 20(2), insert:
- (3) In the case of **section 16(1B)**, the only valid objection to the proposed deregistration is that the provider complied with the requirement under **section 16(1A)**. 20
- 76 Section 21 amended (Notification of deregistration of financial service provider)**
- In section 21, insert as subsection (2): 25
- (2) In the case of a deregistration in accordance with a direction referred to in **section 18(1B)(b) or (c)**, the notice under subsection (1)(a) must refer to an appeal under subpart 9 of Part 8 of the Financial Markets Conduct Act 2013 (rather than an appeal under section 42).
- 77 Section 22 amended (Reregistration of financial service provider)** 30
- (1) Replace section 22(1)(a) with:
- (a) on the grounds set out in **section 18(1)(b)** if the Registrar is satisfied that, at the time of deregistration, the financial service provider was in the business of providing a financial service and was required to be registered under section 11; or 35
- (2) After section 22(3), insert:

- (4) A financial service provider may not apply to be reregistered under this section after the date that is 60 days after the date of deregistration.
- (5) This section does not prevent a person from making a new application for registration under section 15.

78 New sections 22A to 22C and cross-headings inserted

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After section 22, insert:

22A Registrar must not reregister financial adviser if direction has been made

The Registrar must not reregister a person (A) in respect of a financial advice service during a period if the Registrar has received a direction under **section 469(2)(b)(ii)** or **clause 46(3)(b)(ii) of Schedule 5** of the Financial Markets Conduct Act 2013 to prevent A from being reregistered during that period.

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Suspension of registration

22B Suspension of registration

- (1) The Registrar must suspend the registration of a person (A) if the Registrar has received a direction under **section 469(2)(c)** or **clause 46(3)(c) of Schedule 5** of the Financial Markets Conduct Act 2013.
- (2) The suspension is in effect—
- for the period specified in the direction; or
 - until A meets the conditions specified in the direction (but, in any case, not for a period of more than 12 months).
- (3) A person whose registration is suspended is taken not to have that registration while it is suspended.
- (4) However, the FMA or the disciplinary committee may specify in the direction that **subsection (3)** does not apply for specified purposes.

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Registration of financial advisers

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22C Registration of financial advisers

- (1) An individual (A) who is not disqualified under section 14 may be registered as a financial service provider for financial advice services even though A is not in the business of providing that service.

Example

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Susan is employed by ABC Limited (**ABC**) to give regulated financial advice to ABC's clients.

ABC is required to be licensed under **section 388(ba)** of the Financial Markets Conduct Act 2013 and registered under this Act. Under **section 431D** of that Act, ABC is the entity that is providing the financial advice service. Susan is not providing the service because she is not in business and is only giving the advice on behalf of ABC to ABC's clients.

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- However, under the conditions of ABC's market service licence, the type of service that Susan gives may not be given by a nominated representative. That type of service can be given only by a financial adviser (that is, a person who is registered under this Act). **Subsection (1)** allows Susan to register even though, as an employee, she is not in the business of providing a financial advice service. 5
- (2) Sections 15 and 16 apply with all necessary modifications for the purposes of registration under this section.
- (3) If A becomes registered under this section, this Act (and the rules of an approved dispute resolution scheme) apply with all necessary modifications to A as if A were in the business of providing a financial advice service and A were registered under section 16. 10
- (4) However, after the expiry of 3 months after registration under this section, A must not be treated as being in the business of providing a financial advice service (and, accordingly, may be deregistered under **section 18(1)(b)**) if the Registrar is satisfied that— A is not engaged by a financial advice provider to give regulated financial advice on the provider's behalf. 15
- (a) ~~A is not engaged by a financial advice provider to give financial advice on the provider's behalf; and~~
- (b) ~~A is not in the business of providing financial advice to wholesale clients.~~ 20
- (5) For the purposes of Part 3, A must be treated as providing a financial advice service to a client (C) if—
- (a) A is engaged by a financial advice provider to give regulated financial advice on the provider's behalf; and
- (b) C is a client of that provider; and 25
- (c) A gives financial advice to C.
- (6) *See **section 48A***, which provides for when financial advisers are exempt from being members of an approved dispute resolution scheme.
- 79 Section 27 amended (Contents of register)** 30
- After section 27(1)(c), insert:
- (ca) if the provider (A) is registered under **section 22C**, a statement as to whether A is engaged by a financial advice provider (B) to give regulated financial advice on B's behalf and, if so, B's name and business address:
- 80 Section 29 amended (Registrar must amend register in certain circumstances)** 35
- After section 29(c), insert:
- (ca) a financial advice provider notifies the Registrar of a change under **section 17(1)(d) or (e)**; or

- 81 Section 34 amended (Sharing information with other persons or bodies)**
- After section 34(4)(d), insert:
- (da) the disciplinary committee:
- 82 Section 37 amended (Registrar's inspection powers)**
- (1) Before section 37(1)(a), insert: 5
- (aaa) provides a financial service to persons in New Zealand as referred to in **section 7A(1)(a)**; or
- (2) After section 37(2), insert:
- (2A) The Registrar, or a person authorised by the Registrar, may, under subsection (1), require a person (A) to do either or both of the following under subsection (2)(a) or (ab) (without limiting subsection (1) or (2)): 10
- (a) produce a relevant document relating to another person; or
- (b) confirm that information provided by another person is correct, or correct that information, if A is reasonably able to give that confirmation or to make that correction. 15
- Example**
- A is a director of ABC Limited.
- A may be required to produce a document relating to ABC Limited's business or to confirm information provided by ABC Limited.
- (3) Replace section 37(6) with: 20
- (6) If a registered financial service provider, or a director of such a provider, does not comply with a requirement made under subsection (2)(a) or (ab) in relation to the provider (including compliance with the specifications in subsection (2)(ac)) within 20 working days from the date the requirement was notified to the provider or director, the Registrar may assume that the provider is no longer in the business of providing a financial service and sections 18 to 20 apply. 25
- (4) Before section 37(9)(a), insert:
- (aaa) provides a financial service to persons in New Zealand as referred to in **section 7A(1)(a)**; or
- 83 Section 42 amended (Appeals from Registrar's decisions and FMA directions)** 30
- Replace section 42(1) with:
- (1) A person (A) who is not satisfied with any of the following decisions of the Registrar may appeal to the High Court:
- (a) a decision not to register A as a financial service provider under section 16 or **22C**: 35
- (b) a decision to deregister A under section 18:

- (c) a decision of the Registrar or a person authorised by the Registrar under section 37 to require A to do something.
- (1B) This section does not apply to a decision that may be appealed under subpart 9 of Part 8 of the Financial Markets Conduct Act 2013.

84 Section 44 amended (Regulations under Part 1 and this Part)

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- (1) After section 44(1)(a), insert:

- (aaa) defining 2 or more subcategories of a financial service referred to in section 5(1):
- (aab) prescribing circumstances for the purposes of **section 7A(1)(d)**:
- (aac) prescribing a threshold or thresholds for the purposes of **section 7A(2)(c)** and the circumstances in which that paragraph does not apply:

10

- (2) After section 44(1)(b), insert:

- (ba) prescribing information to be provided under **section 16(1A)**, the time or times at which that information must be provided, and other matters relating to the manner in which the information is provided:
- (bb) specifying warnings or other information about, or in connection with, the registration of a financial service provider that must be included in advertising for the service, or in information or documents provided to persons who receive or may receive the service, or otherwise in information or documents of the classes specified in the regulations (for example, a warning that registration does not mean that the provider is subject to active regulation or oversight):
- (bc) prescribing the circumstances in which the duty referred to in **paragraph (bb)** applies and the manner in which the duty must be carried out:

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- (3) After section 44(1), insert:

- (1AA) The Minister must, before making a recommendation under **subsection (1)(aab)**, be satisfied that the regulations are necessary or desirable—
- (a) in order to promote 1 or more of the purposes of this Act as specified in section 2A, 9, or 47; and
- (b) to protect, or prevent damage to, the integrity or reputation of—
- (i) New Zealand's financial markets; or
- (ii) New Zealand's law or regulatory arrangements for regulating those markets.

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85 New section 48A inserted (When financial adviser is exempt from being member)

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After section 48, insert:

48A When financial adviser is exempt from being member

- (1) An individual who is registered under **section 22C (A)** and who is engaged by a financial advice provider (**B**) to give regulated financial advice on B's behalf is exempt from the obligation under section 48 to be a member of an approved dispute resolution scheme if B is a member of an approved dispute resolution scheme. 5
- (2) The exemption applies to the extent that A's obligation to be a member of an approved dispute resolution scheme arises only because of the regulated financial advice given on B's behalf.

86 Section 49 amended (Who are retail clients)

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- (1) Repeal section 49(2)(c) and (d).
- (2) Replace section 49(2)(h) with:
- (h) if the financial service is a financial advice service or a regulated client money or property service, a person who is a wholesale client in respect of that service under **clause 4 of Schedule 5** of the Financial Markets Conduct Act 2013. 15

87 Section 67 replaced (Duty to co-operate and communicate information in certain circumstances)

Replace section 67 with:

67 Duty to co-operate and communicate information in certain circumstances

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- (1) The person responsible for an approved dispute resolution scheme (**A**) must—
- (a) co-operate with other approved dispute resolution schemes if a complaint involves members of those other schemes (for example, by disclosing personal information in accordance with the Privacy Act 1993 and protecting information that is subject to an obligation of confidence); and 25
- (b) co-operate with the Registrar, including by communicating information to the Registrar in accordance with sections 17 and 34; and
- (c) if A ~~believes~~ has reasonable grounds to believe that a member that is a registered bank, a licensed insurer, or a licensed NBDT has contravened, ~~may have contravened~~, or is likely to contravene any of the following Acts in a material respect, communicate that fact to the Reserve Bank: 30
- (i) the Reserve Bank of New Zealand Act 1989;
- (ii) the Insurance (Prudential Supervision) Act 2010;
- (iii) the Non-bank Deposit Takers Act 2013; and 35
- (d) if A ~~believes~~ has reasonable grounds to believe that a member that is a financial markets participant has contravened, ~~may have contravened~~, or

- is likely to contravene any financial markets legislation in a material respect, communicate that fact to the FMA; and
- (e) if A ~~believes~~ has reasonable grounds to believe that a member that is a creditor under a consumer credit contract has ~~contravened, may have contravened,~~ or is likely to contravene the Credit Contracts and Consumer Finance Act 2003 in a material respect, communicate that fact to the Commerce Commission; and 5
- (f) if there is a material complaint about—
- (i) ~~a particular licensed provider or class of licensed provider, communicate that fact to the relevant licensing authority;~~ 10
 - (ii) ~~a particular creditor under a consumer credit contract or class of such creditors, communicate that fact to the Commerce Commission;~~
 - (iii) ~~a particular financial adviser or class of financial adviser, communicate that fact to the FMA;~~ 15
 - (iv) ~~a particular provider of a client money or property service or class of those providers, communicate that fact to the FMA.~~
- (f) otherwise provide information to a prescribed person in the prescribed manner if required to do so by regulations made under this Act. 20
- (2) **~~Subsection (1)(f)~~** does not apply to complaints about matters to which **~~sub-section (1)(c) to (e)~~** relates. 20
- (3) In this section,—
- consumer credit contract**—
- (a) has the same meaning as in section 11 of the Credit Contracts and Consumer Finance Act 2003; and 25
 - (b) includes a credit contract to which Part 3A of that Act applies
- financial markets legislation** has the same meaning as in section 4 of the Financial Markets Authority Act 2011
- financial markets participant** has the same meaning as in section 4 of the Financial Markets Authority Act 2011. 30

87A Section 79 amended (Regulations under this Part)

After section 79(1)(d), insert:

- (da) prescribing matters for the purposes of **section 67(1)(f)**, including the circumstances in which information must be provided under that paragraph, the information that must be provided, and to whom and the manner in which it must be provided; 35

88 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in **Schedule 3** of this Act as the first schedule to appear after the last section of the principal Act.

89 Schedule 2 amended

- (1) In Schedule 2, replace paragraph (b) with: 5

(b) persons that are licensed providers; and

- (2) In Schedule 2, ~~delete~~ replace the item relating to the Financial Advisers Act 2008: with:

<u>Financial Markets Authority</u>	<u>Persons that operate a financial product market that is licensed under Part 5 of the Financial Markets Conduct Act 2013</u>	<u>Financial Markets Conduct Act 2013</u>
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Part 3**Repeals and amendments to other Acts**

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90 Repeals and revocations

- (1) The Financial Advisers Act 2008 (2008 No 91) is repealed.
- (2) The following regulations are revoked:
- (a) Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014 (LI 2014/48): 15
 - (b) Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Regulations 2011 (SR 2011/50):
 - (c) Financial Advisers (Disclosure) Regulations 2010 (SR 2010/378):
 - (d) Financial Advisers (Fees) Regulations 2010 (SR 2010/234):
 - (e) Financial Advisers (Personalised DIMS) Regulations 2014 (LI 2014/333). 20
- (3) The following notices are revoked:
- (a) Financial Advisers (Australian Licensees) Exemption Notice 2011 (SR 2011/238):
 - (b) Financial Advisers (NZX Brokers—Client Money and Client Property) Exemption Notice 2015 (SR 2015/298): 25
 - (c) Financial Advisers (Overseas Custodians—Assurance Engagement) Exemption Notice 2017 (LI 2017/23):
 - (ca) Financial Advisers (Non-NZX Brokers—Client Money) Exemption Notice 2017 (LI 2017/169): 30
 - (cb) Financial Advisers (Overseas Custodians—Assurance Engagement) Exemption Notice 2018 (LI 2018/8):

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- (cc) Financial Advisers (Personalised Digital Advice) Exemption Notice 2018 (LI 2018/67):
 - (cd) every other notice made under section 148 of the Financial Advisers Act 2008 that is in force on the commencement of this section:
 - (d) Financial Markets Conduct (Offers of Financial Products Through Authorised Financial Advisers Supplying Personalised DIMS) Exemption Notice 2015 (LI 2015/254). 5

91 Consequential amendments

Amend the enactments specified in **Schedule 4** as set out in that schedule.

Schedule 1
New Part 6 inserted into Schedule 4 of Financial Markets Conduct
Act 2013

s 57(5), (6)

Part 1
Transitional provisions that come into force on day after Royal
assent

5

Part 6
Transitional provisions relating to Financial Services Legislation
Amendment Act 2017

10

Subpart 1—Transitional licences

71 FMA may issue transitional licence

- (1) The FMA may issue a transitional licence that covers the service of acting as a provider of a financial advice service.
- (2) A transitional licence must be treated as being a licence issued under subpart 2 of Part 6 of this Act (subject to the provisions of this subpart).
- (3) Section 395(1), **(1A)**, and (3) (application for licence) apply to a transitional licence ~~(but a licensee may not cover another type of market service)~~.

15

(3A) However,—

- (a) an application for a transitional licence must be made before the commencement of **section 16** of the Financial Services Legislation Amendment Act **2017** (which amends section 388 to make acting as a provider of a financial advice service a market service for which a licence is required); and

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- (b) a transitional licence may not cover a type of market service other than a financial advice service.

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(3B) **Subsection (3A)(a)** does not limit **section 395(1A)** (which allows the FMA to specify time frames within which applications must be made).

- (4) This clause does not prevent a licensee from holding both a transitional licence and 1 or more other licences that cover the service referred to in **subclause (1)** (but *see clause 72(2)*).

30

72 Duration and coverage of transitional licence

- (1) A transitional licence continues in force until the close of the date that is 2 years after the commencement of **section 16** of the Financial Services Legis-

	lation Amendment Act 2017 (which amends section 388 of this Act) unless it is sooner cancelled.	
(2)	However, a transitional licence is no longer in force <u>no longer covers a type of regulated financial advice</u> if—	
	(a) another licence is issued to the licensee under subpart 2 of Part 6 of this Act; and	5
	(b) that other licence covers all of the types of regulated financial advice that the licensee will provide under a licence <u>that type of regulated financial advice</u> .	
(3)	Subclause (2) —	10
	(a) applies regardless of what conditions are imposed on the other licence (for example, new limits or restrictions on the services <u>regulated financial advice</u> that may be provided);	
	(b) does not limit the FMA's power under section 408.	
73	When transitional licence must be issued	15
	The FMA must, after receiving an application for a transitional licence, issue the licence if the FMA is satisfied that—	
	(a) the eligibility criteria (if any) that are prescribed by the regulations for transitional licences are satisfied; and	
	(b) the applicant's directors and senior managers are fit and proper persons to hold their respective positions and otherwise satisfy the requirements that are prescribed by the regulations for transitional licences (if any); and	20
	(c) there is no reason to believe that the applicant is likely to contravene the market services licensee obligations; and	25
	(d) the applicant is, or will be, registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 on and from commencing to provide the service.	
74	Licence may cover authorised bodies	
(1)	A transitional licence may, in its conditions, authorise 1 or more named entities to provide the market service covered by the licence if the FMA is satisfied that—	30
	(a) arrangements are or will be in place to ensure that the licensee will maintain appropriate control or supervision over the provision of that service by the entity under the licence; and	35
	(b) there is no reason to believe that the entity is likely to contravene the market services licensee obligations; and	

	(c) the entity is, or will be, registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 on and from commencing to provide that service; and (d) the entity meets the eligibility criteria and other requirements prescribed by the regulations for the purposes of this clause (if any).	5
(2)	The entity must be treated as being an authorised body that is authorised under section 400(1A) .	
75	Certain transitional licence holders may not engage nominated representatives	
	A transitional licence is subject to a condition that the licensee or an authorised body may nominate an individual as a nominated representative of the licensee or body under section 431S only if the licensee or body (as the case may be) was a qualifying financial entity (QFE) or a member of a QFE group under the Financial Advisers Act 2008 immediately before the commencement of this clause.	10 15
(1)	<u>A transitional licence is subject to a condition that the licensee or an authorised body may nominate an individual as a nominated representative of the licensee or body under section 431S only if, immediately before the commencement of this clause, the licensee or body (as the case may be) was any of the following:</u>	20
(a)	<u>a qualifying financial entity (QFE) or a member of a QFE group under the Financial Advisers Act 2008;</u>	
(b)	<u>an entity that—</u>	
(i)	<u>is registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 in respect of a financial adviser service; and</u>	25
(ii)	<u>engages 1 or more individuals, who are not registered under that Act, to provide on its behalf a class service (within the meaning of section 5 of the Financial Advisers Act 2008 as in force before its repeal).</u>	30
(2)	<u>If the licensee or authorised body (as the case may be) is an entity referred to in subclause (1)(b) (and is not a person referred to in subclause (1)(a)), the transitional licence is also subject to a condition that a nominated representative must not provide, on behalf of the licensee or body, a personalised service (within the meaning of section 5 of the Financial Advisers Act 2008 as in force before its repeal).</u>	35
75A	<u>Transitional licence may authorise entity to be engaged</u>	
(1)	<u>This clause applies if—</u>	
(a)	<u>a person (P) is a licensee or an authorised body under a transitional licence (P's licence); and</u>	40

- (b) another person (E) holds a transitional licence or is an authorised body under P's licence; and
- (c) immediately before the commencement of this clause, P and E are parties to an agreement under which either or both of the following occurs:
- (i) P engages E to give financial advice to P's retail clients on P's behalf;
- (ii) P engages E, who engages 1 or more individuals to give financial advice to P's retail clients on P's behalf.
- (2) P's licence is subject to a condition that authorises P and E to continue the conduct that is the subject of the agreement referred to in **subclause (1)(c)** (see **section 431E(1)(b)**).
- (3) This clause is subject to any other conditions on P's licence (which may, for example, impose limits or restrictions on the type of advice that may be given).
- 76 Application of Part 6 of Act, etc**
- (1) Part 6 of this Act applies in relation to transitional licences with all necessary modifications including the following:
- (a) references in sections 397 and 398 to a decision under section 396 must be treated as references to a decision under **clause 73**;
- (b) sections 396, 397(1)(b) and (c), 399, 403(3)(c), and 407 do not apply;
- (c) references to the requirements of section 396 or 400 in section 403(3)(b) or subpart 3 of Part 6 of this Act must be treated as references to the requirements of **clause 73 or 74**.
- Example**
- Subpart 3 of Part 6 provides for certain consequences if the licensing requirements in section 396 are not, or are no longer, satisfied. These include a duty for the licence holder to report matters to the FMA (see section 412) and the FMA could suspend or cancel the licence (see section 414(3)).
- ABC Limited satisfies the licensing requirements in **clause 73** and is granted a transitional licence. However, a change occurs that means that ABC Limited no longer satisfies a requirement.
- Under **paragraph (c)**, the ordinary monitoring and enforcement consequences apply to the transitional licence as if the references to licensing requirements in section 396 were references to the licensing requirements in **clause 73**.
- ABC Limited must, therefore, report the matter to the FMA and the FMA may exercise a power under subpart 3 of Part 6.
- (1A) However, a transitional licence must be disregarded for the purposes of section 397(1)(b) when the FMA is considering an application for another licence.

- (2) Matters may be prescribed under section 546(1)(a) for the purposes of **clauses 73(a) and (b) and 74(1)(d)**.

Subpart 1A—Renewal of financial adviser authorisation and QFE status not required in transitional period

76A Renewal of financial adviser authorisation and QFE status not required in transitional period

- (1) This clause applies to a person (A) if,—
- (a) immediately before the commencement of this clause, the person is an authorised financial adviser or has QFE status (within the meaning of the Financial Advisers Act 2008); but
 - (b) A's period of authorisation or period of a grant of QFE status would, but for this clause, terminate under section 57(1)(a) or 75A(1)(a) of that Act after that commencement.
- (2) Despite sections 57(1)(a) and 75A(1)(a) of the Financial Advisers Act 2008, A's authorisation or QFE status must be treated as continuing until the commencement of **section 90(1)** of the Financial Services Legislation Amendment Act **2017** (which repeals the Financial Advisers Act 2008).
- (3) However, **subclause (2)** ceases to apply if—
- (a) A's authorisation or QFE status terminates under section 57(1)(b) to (d) or 75A(1)(b) to (d) of the Financial Advisers Act 2008; or
 - (b) an application for the renewal of A's authorisation or QFE status is made before the commencement of this clause but is declined by the FMA after that commencement.

Subpart 2—Preparation of code

77 **Code may be prepared before commencement**

- (1) Any action taken by or on behalf of the body of persons appointed by the Minister and known as the code working group before the commencement of this clause in preparing the code of conduct must be treated as having been validly taken by the code committee under, and for the purposes of, **clauses 32 to 39 of Schedule 5**.
- (2) For the purposes of **subclause (1)**, a reference in **clauses 32 to 39 of Schedule 5** to the code committee includes a reference to the code working group.
- (3) The Minister may exercise or perform a power or duty under **Schedule 5** before that schedule comes into force.
- (4) **Subclauses (1) and (3)** apply regardless of whether the action is taken before or after the Financial Services Legislation Amendment Act **2017** is enacted.

- (5) The Minister must ensure that the code comes into force no later than the date on which **subpart 5A of Part 6** comes into force.

Subpart 4—Transitional and savings regulations

86 Transitional and savings regulations

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister made in accordance with section 549, make regulations for any of the following purposes:
- (a) providing that, subject to any conditions stated in the regulations, transitional or savings provisions prescribed by the regulations that relate to the implementation of the amending Act (in addition to, or in substitution for, any provisions in this Part or **Part 1 of Schedule 1AA** of the Financial Service Providers (Registration and Dispute Resolution) Act 2008) apply during the whole or any part of the period ending on the 3-year date: 10
 - (b) providing that, during the whole or any part of the period ending on the 3-year date and subject to any conditions stated in the regulations, specified provisions of ~~the amending this Act, of the Financial Service Providers (Registration and Dispute Resolution) Act 2008, or provisions of~~ other enactments amended, revoked, or repealed by the amending Act— 15
 - (i) do not apply; or 20
 - (ii) continue to apply; or
 - (iii) apply with modifications or additions, or both.
- (2) The Minister must not recommend the making of regulations under this clause unless the Minister is satisfied that the regulations— 25
- (a) are necessary or desirable for the orderly implementation of the amending Act; and
 - (b) are consistent with the purposes of this Act and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 as amended by the amending Act.
- (3) This clause is repealed on the close of the 3-year date. 30
- (4) Any regulations made under this clause that are in force on the 3-year date are revoked on the close of that day.
- (5) In this clause,— 35
- 3-year date** means the date that is 3 years after the commencement of **section 16** of the amending Act
- amending Act** means the Financial Services Legislation Amendment Act **2017**.

Part 2

Other transitional provisions

Subpart 3—Miscellaneous transitional provisions

- 78 New competency requirements do not prevent certain persons from continuing to give certain advice** 5
- (1) This clause applies to a person (A) if,—
- (a) immediately before the commencement of this clause, A is—
- (i) an authorised financial adviser (within the meaning of the Financial Advisers Act 2008); or
- (ii) an individual who is registered under the FSP Act in respect of a financial adviser service; or 10
- (iii) a qualifying financial entity (within the meaning of the Financial Advisers Act 2008) or an entity that is registered under the FSP Act in respect of a financial adviser service; and
- (b) in the case of— 15
- (i) ~~paragraph (a)(i) or (ii)~~, A is engaged (whether as an employee or otherwise) by a financial advice provider (B) to give financial advice as a financial adviser on B's behalf; or
- (i) **paragraph (a)(i) or (ii),—**
- (A) A is engaged by a financial advice provider (P) to give regulated financial advice as a financial adviser on P's behalf; or 20
- (B) A holds a transitional licence, or a licence issued under subpart 2 of Part 6 of this Act, that covers the service of acting as a provider of a financial advice service; or 25
- (ii) **paragraph (a)(iii)**, A is a financial advice provider that is registered under the FSP Act in respect of a financial advice service.
- (2) **Section 431H** (duty to meet standards of competence) does not prevent A from giving regulated financial advice about a particular matter or in particular circumstances if, immediately before the commencement of this clause, A would have been permitted to provide that advice under the Financial Advisers Act 2008. 30
- (3) Accordingly, ~~B~~ P is not required to ensure compliance with **section 431H** (and is not otherwise liable in relation to that section) to the extent that A is permitted to act under **subclause (2)**. 35
- (4) In the case of ~~subclause (1)(a)(i) and (ii) (1)(b)(i)(A)~~, **subclause (2)** applies only if the advice is given on ~~B's~~ P's behalf.

- (5) This clause is subject to the conditions on ~~B's~~ A's licence or P's licence (which may, for example, impose limits or restrictions on the services that are covered by the licence).
- (6) In this clause,—
financial adviser service has the same meaning as in the Financial Advisers Act 2008 (as in force before its repeal) 5
FSP Act means the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
- (7) This clause ceases to apply on the close of the date that is 2 years after the commencement of this clause. 10
- 79 Former QFE advisers not prevented from providing certain services**
- (1) This clause applies to an individual (**A**)—
- (a) who, immediately before the commencement of this clause, is a QFE adviser (within the meaning of the Financial Advisers Act 2008); and
 - (b) who, after the commencement of this clause, has become a financial adviser; and 15
 - (c) who is engaged ~~(whether as an employee or otherwise)~~ by a financial advice provider (**BP**) to give regulated financial advice on ~~B's~~ P's behalf.
- (2) **Section 431H** (duty to meet standards of competence) does not prevent **A** from providing, on behalf of ~~B~~ P,— 20
- (a) a personalised service in relation to ~~B's~~ P's category 1 products (but only if, immediately before the commencement of this clause, ~~B~~ P was a QFE or member of a QFE group that engaged **A**); or
 - (b) a personalised service in relation to category 2 products; or 25
 - (c) a class service in relation to category 1 products or category 2 products.
- (3) Accordingly, ~~B~~ P is not required to ensure compliance with **section 431H** (and is not otherwise liable in relation to that section) to the extent that **A** is permitted to act under **subclause (2)**.
- (4) This clause is subject to the conditions on ~~B's~~ P's licence (which may, for example, impose limits or restrictions on the services that are covered by the licence). 30
- (5) In this clause and **clause 80**, **category 1 product**, **category 2 product**, **class service**, **personalised service**, **QFE**, and **QFE group** have the same meanings as in section 5 of the Financial Advisers Act 2008 as in force before its repeal. 35
- (6) This clause ceases to apply on the close of the date that is 2 years after the commencement of this clause.

80 Nominated representatives not prevented from providing certain services

- (1) This clause applies to an individual (A)—
- (a) who becomes a nominated representative in accordance with **clause 75**; and
 - (b) who is engaged ~~(whether as an employee or otherwise)~~ by a financial advice provider ~~(B)~~ (P) to give regulated financial advice on ~~B's~~ P's behalf.
- (2) **Section 431H** (duty to meet standards of competence) does not prevent A from providing, on behalf of ~~B~~ P,—
- (a) a personalised service in relation to ~~B's~~ P's category 1 products; or
 - (b) a personalised service in relation to category 2 products; or
 - (c) a class service in relation to category 1 products or category 2 products.
- (3) Accordingly, ~~B~~ P is not required to ensure compliance with **section 431H** (and is not otherwise liable in relation to that section) to the extent that A is permitted to act under **subclause (2)**.
- (4) This clause ceases to apply on the close of the date that is 2 years after the commencement of this clause.

81 Financial advisers treated as holding DIMS licence

- (1) This clause applies to a person (A) who, immediately before the commencement of this clause,—
- (a) is permitted to provide a discretionary investment management service under section 18(1)(d) of the Financial Advisers Act 2008; and
 - (b) provides that service to 1 or more retail clients (as defined in that Act).
- (2) A must, on and after the commencement of this clause, be treated as holding a market services licence that—
- (a) covers the service of acting as a provider of a discretionary investment management service; and
 - (b) is subject to a condition that the service that A can provide under the licence is limited to the discretionary investment management service that A could provide immediately before the commencement of this clause; and
 - (c) is subject to the conditions, limitations, or restrictions that, immediately before the commencement of this clause, were imposed by or under the Financial Advisers Act 2008 on A's authorisation under that Act, except standard conditions as defined in section 5 of that Act (and those conditions, limitations, or restrictions that the licence is subject to must be treated as conditions of the licence for the purposes of this Act); and
 - (d) has an expiry date that is the earliest of the following:

- (i) the date that A is issued with another licence that covers the service; and
 - (ii) the date that the licence is cancelled; and
 - (iii) the date that, but for the repeal of the Financial Advisers Act 2008, would have been the last day of the period of A's authorisation to provide a discretionary investment management service under that Act. 5
 - (3) However, **subclause (2)** does not apply if, before the commencement of this clause, A has given written notification to the FMA that A does not want **subclause (2)** to apply. 10
 - (4) Nothing in this clause—
 - (a) prevents the FMA from exercising any power in relation to the licence; or
 - (b) limits the conditions that the licence is subject to under section 402 (for example, conditions imposed by regulations). 15
- 81A How service disclosure statement for existing DIMS is made available to existing clients**
- (1) This clause applies if—
 - (a) a person (A)—
 - (i) is a person referred to in **clause 81(1)**; and 20
 - (ii) provides a DIMS under the licence referred to in **clause 81(2)**; and
 - (b) A is providing a DIMS to an investor (C) under an investment authority that was granted before the commencement of this clause.
 - (2) The requirement in sections 423 and 424 to provide an SDS relating to the DIMS to C does not apply. 25
 - (3) However, **subclause (2)** ceases to apply on the specified date unless A, before the specified date, has sent a written notice that contains, or is accompanied by, the following information to C at C's last known address:
 - (a) a statement to the effect that the requirements of this Act apply to the DIMS on and after a date that is referred to in the statement (being the date on which **clause 81** comes into force); 30
 - (b) the names and addresses of A and the custodian (if any);
 - (c) either—
 - (i) a copy of the SDS relating to the DIMS (being an SDS that complies with regulation 205 of the 2014 regulations but subject to **subclause (4)(b)** of this clause); or 35
 - (ii) a statement to the effect that C may obtain a copy of that SDS on request to A and also by electronic means, and a statement as to

- how C may obtain a copy of that SDS by electronic means (for example, from a specified Internet site address).
- (4) If **subclause (2)** applies,—
- (a) regulation 206 of the 2014 regulations (investment proposal must be provided to investors) does not apply in relation to the DIMS provided by A to C; and 5
- (b) the SDS that is made available to C under **subclause (3)(c)**—
- (i) is not required to refer to the investment proposal; but
- (ii) must state that information about the investment strategy applying to the investor, and about the returns, fees, and expenses of that strategy, will be made available to the investor by way of regular reports; and 10
- (c) regulation 226(1)(a) of the 2014 regulations does not apply to the client agreement in respect of the DIMS provided to C.
- (5) However, **subclause (4)(c)** ceases to apply on the specified date unless the SDS that is made available to C under **subclause (3)(c)** provides adequately for the matters in regulation 226(1)(a)(i) to (iv) of the 2014 regulations. 15
- (6) Section 437(2) to (4) does not apply to an investment authority referred to in **subclause (1)(b)**.
- (7) However,— 20
- (a) **subclause (6)** ceases to apply on the specified date unless A, before the specified date, has sent a written notice that discloses the scope of the investment authority to C at C's last known address, including the matters referred to in section 437(2)(a) to (c); and
- (b) if there are no limits on the investment authority on a matter referred to in section 437(2)(a) or (b) or if the matter is capable of change without the prior written consent of C, the written notice under **paragraph (a)** must clearly disclose that fact. 25
- (8) This clause does not apply to an investment authority granted after the licence referred to in **subclause (1)** is issued. 30
- (9) In this clause,—
- 2014 regulations** means the Financial Markets Conduct Regulations 2014
- SDS** or **service disclosure statement**, in relation to the DIMS, means a disclosure statement under section 423 for the DIMS
- specified date** means the first anniversary of the date on which this clause comes into force. 35
- 82 Code working group continues as code committee**
- (1) The body of persons appointed by the Minister and known as the code working group, its chairperson, and its other members immediately before the com-

	mencement of this clause must be treated as being the code committee, its chairperson, and its members under clauses 24 and 26 to 28 of Schedule 5 (with the chairperson and other members having the same period of appointment as they respectively have as members of the code working group).	
(2)	This clause does not limit clauses 26(1)(b), (2), and (4) and 28(2) and (3) of Schedule 5 .	5
83	Certification for eligible investors under Financial Advisers Act 2008 continues under this Act	
(1)	A certification given under section 5D(1) of the Financial Advisers Act 2008 that is in effect immediately before the repeal of that Act remains in effect after the repeal as if it were a certificate given under clause 41(1) and (2A) of Schedule 1 of this Act.	10
(2)	Subclause (1) is subject to clause 42 of Schedule 1.	
84	Disciplinary committee continues	
(1)	The disciplinary committee established under section 103 of the Financial Advisers Act 2008 must be treated as being the disciplinary committee established under clause 49 of Schedule 5 .	15
(2)	A person who, immediately before the commencement of this clause, is the chairperson or another member of the disciplinary committee established under section 103 of the Financial Advisers Act 2008 must be treated as being the chairperson or another member of the disciplinary committee established under clause 49 of Schedule 5 .	20
(3)	A person's period of appointment under subclause (2) ends on the same date that the person's appointment would have ended under the Financial Advisers Act 2008.	25
(4)	Subclauses (2) and (3) do not limit clause 52 of Schedule 5 .	
85	Continuation of pending investigations and disciplinary proceedings	
(1)	All investigations and disciplinary proceedings under subpart 2 of Part 4 of the Financial Advisers Act 2008 that have been commenced before the commencement of this clause and that have not been completed before that commencement are to be continued and completed as if the Financial Services Legislation Amendment Act 2017 had not been enacted (with the disciplinary committee established under clause 49 of Schedule 5 acting as the disciplinary committee).	30
(2)	However, the disciplinary committee may exercise a power under clause 46 of Schedule 5 in relation to any of those proceedings if the committee is satisfied that the person who is the subject of the complaint to which the proceedings relate has breached the code of conduct under the Financial Advisers Act 2008.	35

Schedule 2
New Schedule 5 inserted into Financial Markets Conduct Act 2013

s 58

Schedule 5		
Other provisions relating to financial advice services and client money or property services		5
ss 6, 387A, 431C, 431V		
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1 Overview

- (1) This schedule provides for matters relating to—
 - (a) financial advice services (*see* **subpart 5A** of Part 6 of this Act); and
 - (b) client money or property services (*see* **subpart 5B** of Part 6 of this Act). 5
- (2) In particular,—
 - (a) **Part 1** identifies when a client is a retail client or a wholesale client. This determines whether a financial advice provider needs to be licensed and whether certain duties apply:
 - (b) **Part 2** sets out situations when financial advice is not provided and when financial advice services are not regulated under this Act: 10
 - (c) **Part 3** sets out situations when client money or property services are not regulated under this Act:
 - (d) **Part 4** provides for a code of professional conduct for financial advice services and for the establishment and operation of a code committee: 15
 - (e) **Part 5** provides for complaints and disciplinary proceedings against financial advisers.
- (3) This clause is only a guide to the general scheme and effect of this schedule.

Part 1

Retail and wholesale financial advice or client money or property service clients

2 Who are clients

In this Act, a **client**,—

- (a) in relation to a financial advice service, means a person who receives the service (whether or not on payment of a charge); and
- (b) in relation to a client money or property service, means the person on whose behalf the client money or client property is received, held, paid, or transferred under the service (but excludes the product provider); but
- (c) does not include a person who receives the financial advice or client money or property service from another person if the service is both provided and received in the course of, and for the purposes of,—
 - (i) the same business; or
 - (ii) the businesses of related bodies corporate; or
 - (iii) the businesses of a group of entities that consists of a licensee and its authorised bodies.

Example

If a company employee (**A**) gives financial advice to the board of directors on investments to be made by the company, the directors are not clients of A. However, if A, in the course of business, gives that same financial advice to another employee (**B**) in relation to B's own investments, B is a client of A for the purposes of this Act.

Compare: 2008 No 91 s 5A

3 Who are retail clients

A **retail client**, in respect of a financial advice service or a client money or property service, is a client of a provider of that service who is not a wholesale client.

Compare: 2008 No 91 s 5B

4 Who are wholesale clients

- (1) A person is a **wholesale client**, in relation to a financial advice service or a client money or property service (unless the person has opted out from being a wholesale client under **clause 5**) if—

- (a) the person is an investment business under clause 37 of Schedule 1; or
- (b) the person meets the investment activity criteria specified in clause 38 of Schedule 1; or
- (c) the person is large under clause 39 of Schedule 1; or

	(d) the person is a government agency under clause 40 of Schedule 1; or	
	(e) the person is in the business of being a product provider and receives the financial advice service or client money or property service in the course of that business; or	
	(f) the person is an eligible investor in relation to the service under clause 41 of Schedule 1.	5
(2)	The relevant time , for the purposes of applying Schedule 1 under subclause (1) , is the time immediately before the service is supplied to the person.	
(3)	<u>If subclause (1) applies to a person (C), it applies equally to any entity controlled by C to the same extent as it applies to C (where controlled has a meaning that corresponds to the definition of control in clause 48 of Schedule 1).</u>	10
	Compare: 2008 No 91 s 5C	
5	How to opt out of being wholesale client	
(1)	A person may opt out of being a wholesale client, in relation to a financial advice provider or CMPS provider, by giving the financial advice provider or CMPS provider a signed notification to that effect.	15
(2)	A notification may be specific to a particular service, or class of services, or may be general for all services provided by the financial advice provider or CMPS provider to whom it is given.	
(3)	A person may vary or revoke a notification in the same way as the notification may be given.	20
(4)	A notification (or variation or revocation of a notification) under this clause is effective only in relation to services provided after it is given.	
(5)	This clause does not apply if a person is a wholesale client by reason of being an eligible investor under clause 41 of Schedule 1.	25
(6)	In this clause and clause 6 , CMPS provider means a provider of a client money or property service.	
	Compare: 2008 No 91 s 5G	
6	Giving notification of opt out	
(1)	A notification under clause 5 is sufficiently given to a financial advice provider or CMPS provider if it is—	30
	(a) provided to the financial advice provider or CMPS provider; or	
	(b) delivered or posted to the financial advice provider or CMPS provider at the person's business address stated on the register under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 or the person's last known place of business in New Zealand; or	35
	(c) sent by email to the person's email address stated on the register under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.	

- (2) The notification is treated as received by the person no later than 7 days after it is posted or 2 days after it is emailed, unless the person to whom it is posted or sent proves that it was not received (otherwise than through fault on the person's part).

Compare: 2008 No 91 s 5H

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Part 2

Financial advice exclusions

7 Exclusions from definition of financial advice

A person does not give financial advice merely by doing 1 or more of the following:

10

- (a) providing factual information (for example, information about the cost or terms and conditions of a financial advice product, or about the procedure for acquiring or disposing of a financial advice product):
- (b) carrying out an instruction from a person to acquire or dispose of, or not to acquire or dispose of, a financial advice product for that person:
- (c) making a recommendation or giving an opinion about a kind of financial advice product in general rather than a particular financial advice product (for example, an opinion about shares generally rather than shares of a particular company):
- (d) recommending that a person obtain financial advice:
- (e) passing on financial advice given by another person (unless the person holds out that the financial advice is the person's own advice):
- (f) giving or making available any of the following:
 - (i) a disclosure document:
 - (ii) information from a register entry:
 - (iii) an advertisement referred to in section 89:
 - (iv) any other document or information that the person is required by law to give or make available:
 - (v) a document or information prescribed by the regulations:
- (g) carrying out a prescribed activity.

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Compare: 2008 No 91 ss 10(3), 14(1)(o)

Exclusions from regulated financial advice

8 Ancillary services and other occupations

- (1) ~~Financial advice is not regulated financial advice if it is given only as an ancillary part of a business the principal activity of which is not the provision of a financial service.~~

35

- (2) Financial advice is not regulated financial advice if it is given by an incorporated law firm (as defined in section 6 of the Lawyers and Conveyancers Act 2006) ~~in the ordinary course of its business, 2006) —~~
- (a) in the ordinary course of its business; and
- (b) as an ancillary part of providing legal services or conveyancing services 5
(as defined in section 6 of that Act).
- (3) Financial advice is not regulated financial advice if the person giving the advice—
- (a) carries on one of the following occupations:
- (i) conveyancing practitioner (as defined in section 6 of the Lawyers and Conveyancers Act 2006): 10
- (ii) journalist:
- (iii) lawyer:
- (iv) lecturer (being a person employed by an institution (as defined in section 159 of the Education Act 1989) to teach or instruct students of the institution): 15
- (v) qualified statutory accountant:
- (vi) real estate agent (being an agent as defined in section 4(1) of the Real Estate Agents Act 2008):
- (vii) registered legal executive (being a member of the New Zealand Institute of Legal Executives Incorporated who holds a current annual registration certificate issued by that body): 20
- (viii) registered valuer (as defined in section 2 of the Valuers Act 1948):
- (ix) tax agent (as defined in section 3(1) of the Tax Administration Act 1994): 25
- (x) teacher (being a person who holds a teaching position as defined in section 348 of the Education Act 1989):
- (xi) an occupation prescribed by the regulations; and
- ~~(b) gives the advice in the ordinary course of carrying on that occupation.~~
- (b) gives the advice— 30
- (i) in the ordinary course of carrying on that occupation; and
- (ii) as an ancillary part of carrying on the principal activity of that occupation, being an activity that is not the provision of a financial service.
- (3A) Financial advice is not regulated financial advice if— 35
- (a) it is given by a person who is not an incorporated law firm and is not carrying on an occupation referred to in **subclause (3)(a)**; and

	(b) <u>it is given only as an ancillary part of a business whose principal activity is not the provision of a financial service.</u>	
(4)	Financial advice is not regulated financial advice if it is given by a director of an entity in the person's capacity as a director. Compare: 2008 No 91 ss 13(1), 14(1)(a), (d), (i)	5
9	Incidental to provision of credit by business not providing financial service	
(1)	Financial advice is not regulated financial advice if— (a) it is given in connection with providing credit under a credit contract; and	
	(b) the credit is provided, and the advice is given, as an incidental part of a business the principal activity of which is not the provision of a financial service.	10
(2)	In this clause, something is an incidental part of a business if it is carried on to facilitate the carrying out of the business or is otherwise ancillary to the business. Compare: 2008 No 91 s 13(2)	15
10	Advice given for purpose of complying with lender responsibilities	
(1)	Financial advice is not regulated financial advice if— (a) the advice is given—	
	(i) by a lender to a borrower; and	20
	(ii) in relation to a consumer credit contract or relevant insurance contract (the agreement); and	
	(iii) for the purpose of complying with the lender's lender responsibilities set out in section 9C(3)(a) to (e) of the CCCF Act in relation to the agreement; and	25
	(iii) <u>either—</u> (A) <u>in order to comply with the lender's lender responsibilities;</u> <u>or</u> (B) <u>as a reasonably incidental consequence of complying with the lender's lender responsibilities; and</u>	30
	(b) the lender has taken reasonable steps to ensure that the borrower understands that the advice is not regulated financial advice and the implications of that.	
(2)	A lender is taken to have complied with subclause (1)(b) if the lender gives the borrower a statement in the prescribed manner.	35
(3)	In this clause,— borrower has the same meaning as in section 9B(1) of the CCCF Act CCCF Act means the Credit Contracts and Consumer Finance Act 2003	

	lender has the same meaning as in section 9B(1) of the CCCF Act	
	lender responsibilities means the lender responsibilities set out in section 9C(3)(a) to (e) and 9C(5) of the CCCF Act	
	relevant insurance contract has the same meaning as in section 9B(1) of the CCCF Act.	5
11	Crown-related entities	
(1)	Financial advice is not regulated financial advice if it is given in the ordinary course of the business of one of the following:	
(a)	a Crown entity under section 7 of the Crown Entities Act 2004, other than Public Trust:	10
(b)	a department named in Schedule 1 of the State Sector Act 1988:	
(c)	a government-related organisation as defined in section 4 of the Crown Organisations (Criminal Liability) Act 2002:	
(d)	the Reserve Bank; <u>Bank</u> .	
(e)	the New Zealand Security Intelligence Service.	15
(2)	Financial advice is not regulated financial advice if the person giving the advice—	
(a)	is one of the following:	
(i)	a Minister of the Crown:	
(ii)	a member of Parliament:	20
(iii)	an employee (as defined in section 2 of the State Sector Act 1988):	
(iv)	a chief executive in any part of the State services (as defined in section 2 of the State Sector Act 1988):	
(v)	the holder of, or a person performing the duties of, an office established by an enactment (other than the Māori Trustee):	25
(vi)	a person performing duties that are expressly conferred on him or her by virtue of his or her office by an enactment; and	
(b)	gives the advice in the ordinary course of carrying on that occupation, or exercising the powers or performing the functions of that office or position.	30
	Compare: 2008 No 91 s 14(1)(a), (b), (c), (e)	
12	Trustee corporations	
(1)	Financial advice is not regulated financial advice if it is given in the ordinary course of the business of a trustee corporation providing—	35
(a)	legal or financial services in relation to the preparation of a will; or	

	(b) estate management and administration services (and associated legal, financial, and other services carried out under the Act governing the corporation).	
(2)	In this clause, trustee corporation means one of the following:	
	(a) Public Trust:	5
	(b) the Māori Trustee:	
	(c) a corporation that is authorised by an Act to administer the estates of deceased persons and other trust estates:	
	(d) a wholly owned subsidiary of a corporation referred to in paragraph (c) that is guaranteed by the corporation.	10
	Compare: 2008 No 91 s 14(1)(h)	
13	Non-financial not-for-profit organisation	
(1)	Financial advice is not regulated financial advice if it is given—	
	(a) in the ordinary course of the business of a non-financial not-for-profit organisation; and	15
	(b) for no charge.	
(2)	In this clause, non-financial not-for-profit organisation means an organisation—	
	(a) that operates other than for the purposes of profit or gain to an owner, a member, or a shareholder; and	20
	(b) that is not the product provider (or related to the product provider) of a financial advice product.	
	Compare: 2008 No 91 s 14(1)(f)	
14	Workplace financial products	
	Financial advice is not regulated financial advice if it is given—	25
	(a) by or for an employer; and	
	(b) to an employee of the employer; and	
	(c) in relation to a financial advice product that is made available through the employee's workplace.	
	Compare: 2008 No 91 s 14(1)(g)	30
15	Advice to product provider	
	Financial advice is not regulated financial advice if it is given—	
	(a) in connection with a financial advice product; and	
	(b) to the provider of the financial advice product; and	
	(c) by a person engaged by the provider to give the advice.	35
	Compare: 2008 No 91 s 14(1)(p)	

16	Activities governed by other regulatory frameworks	
(1)	Financial advice is not regulated financial advice if—	
(a)	the advice is given as part of a discretionary investment management service; and	
(b)	the provision of that service is—	5
(i)	covered by a market services licence; or	
(ii)	exempted from the licensing requirement under section 389.	
(2)	Financial advice is not regulated financial advice if it is given—	
(a)	in the <u>ordinary</u> course of a business carried on by a rating agency approved under section 86 of the Non-bank Deposit Takers Act 2013 or section 62 of the Insurance (Prudential Supervision) Act 2010; and	10
(b)	in connection with a rating given or to be given by the agency.	
(3)	Financial advice given to a person (A) is not regulated financial advice if—	
(a)	the advice is given—	
(i)	in connection with an offer of a financial product; and	15
(ii)	by or on behalf of the offeror; and	
(b)	the offer to A does not require disclosure under Part 3 because of any 1 or more of clauses 3 to 5 of Schedule 1.	
(4)	Financial advice is not regulated financial advice if it is given—	
(a)	by an offeror or a target company in the course of a takeover offer <u>that is regulated</u> under the Takeovers Code; or	20
(b)	by an independent adviser in the course of exercising his or her functions under the Takeovers Code.	
	Compare: 2008 No 91 s 14(1)(j)–(m)	
17	Prescribed circumstances	25
	Financial advice is not regulated financial advice if it is given in prescribed circumstances.	
	Compare: 2008 No 91 s 14(1)(q)	
18	Controlling owners, directors, etc	
	If an exclusion under clauses 8 to 17 applies to a person (A), it applies equally to any controlling owner, director, employee, agent, or other person acting in the course of, and for the purposes of, A's business to the same extent as it applies to A.	30
	Compare: 2008 No 91 s 14(2)	

Part 3

Client money or property service exclusions

19 Service given in course of carrying out other occupations

- (1) A client money or property service is not a regulated client money or property service if the person giving the service— 5
- (a) carries on one of the following occupations:
 - (i) conveyancing practitioner (as defined in section 6 of the Lawyers and Conveyancers Act 2006):
 - (ii) lawyer: 10
 - (iii) qualified statutory accountant: 10
 - (iv) real estate agent (being an agent as defined in section 4(1) of the Real Estate Agents Act 2008):
 - (v) registered legal executive (being a member of the New Zealand Institute of Legal Executives Incorporated who holds a current annual registration certificate issued by that body): 15
 - (vi) tax agent (as defined in section 3(1) of the Tax Administration Act 1994):
 - (vii) an occupation prescribed by the regulations; and
 - (b) ~~gives the service in the ordinary course of carrying on that occupation.~~
 - (b) gives the service— 20
 - (i) in the ordinary course of carrying on that occupation; and
 - (ii) as an ancillary part of carrying on the principal activity of that occupation, being an activity that is not the provision of a financial service.
- (2) A client money or property service is not a regulated client money or property service if it is given by an incorporated law firm (as defined in section 6 of the Lawyers and Conveyancers Act 2006) ~~in the ordinary course of its business.~~ 25
~~2006)—~~
- (a) in the ordinary course of its business; and
 - (b) as an ancillary part of providing legal services or conveyancing services (as defined in section 6 of that Act). 30

Compare: 2008 No 91 s 77C(1)(a)

20 Crown-related entities

- (1) A client money or property service is not a regulated client money or property service if it is given in the ordinary course of the business of one of the following: 35

	(a) a Crown entity under section 7 of the Crown Entities Act 2004, other than Public Trust:	
	(b) a department named in Schedule 1 of the State Sector Act 1988:	
	(c) a government-related organisation as defined in section 4 of the Crown Organisations (Criminal Liability) Act 2002:	5
	(d) the Reserve Bank:	
	(e) the New Zealand Security Intelligence Service.	
(2)	A client money or property service is not a regulated client money or property service if the person giving the service—	
	(a) is one of the following:	10
	(i) an employee (as defined in section 2 of the State Sector Act 1988):	
	(ii) a chief executive in any part of the State services (as defined in section 2 of the State Sector Act 1988):	
	(iii) the holder of, or a person performing the duties of, an office established by an enactment:	15
	(iv) a person performing duties that are expressly conferred on him or her by virtue of his or her office by an enactment; and	
	(b) gives the service in the ordinary course of carrying on that occupation, or exercising the powers or performing the functions of that office or position.	20
	Compare: 2008 No 91 s 77C(1)(b)	
21	Other exclusions	
	A client money or property service is not a regulated client money or property service if—	25
	(a) the person giving the service is an operator of a designated settlement system under section 156N of the Reserve Bank of New Zealand Act 1989 and the service is provided by the receipt, holding, payment, or transfer of money or property in accordance with the rules of that settlement system; or	30
	(b) the service is provided by a derivatives issuer in the ordinary course of acting as a derivatives issuer under a licence under Part 6; or	
	(c) the service is provided by an employer to an employee in connection with a financial product made available through the person's workplace.	
	Compare: 2008 No 91 s 77C(1)(c)–(e)	35

22	Prescribed circumstances	
	A client money or property service is not a regulated client money or property service if it is given in prescribed circumstances.	
	Compare: 2008 No 91 s 77C(1)(f)	
23	Controlling owners, directors, etc	5
	If an exemption under clauses 19 to 22 applies to a person (A), it applies equally to any controlling owner, director, employee, agent, or other person acting in the course of, and for the purposes of, A's business to the same extent as it applies to A.	
	Compare: 2008 No 91 s 77C(2)	10
	Part 4	
	Code of professional conduct and code committee	
	<i>Code committee</i>	
24	Establishment of code committee	
	The code committee is established.	15
	Compare: 2008 No 91 s 81	
25	Functions of code committee	
(1)	The functions of the code committee are—	
	(a) to produce a draft code for approval by the Minister; and	
	(b) to review the code from time to time; and	20
	(c) to recommend to the Minister changes to the code as the code committee thinks fit; and	
	(d) to liaise from time to time with the following about the development, review, and implementation of the code:	
	(i) the Minister:	25
	(ii) the FMA:	
	(iii) persons that the committee reasonably considers to be representative of the financial advice industry:	
	(iv) persons that the committee reasonably considers to be representative of consumers of financial advice.	30
(2)	See clause 77 of Schedule 4 (which provides for the code to be prepared before the commencement of clauses 32 to 39).	
	Compare: 2008 No 91 s 82	
26	Membership of code committee	
(1)	The Minister may at any time—	35

- (a) appoint a member of the code committee; or
- (b) discharge a member of the code committee (and the Minister may exercise this power entirely at his or her discretion).
- (2) The appointment of a member of the code committee must be for a specified period, but a member may be discharged under **subclause (1)(b)** before his or her period of appointment has expired. 5
- (3) The code committee must have not less than 7 members and not more than 11 members, and the Minister must ensure that the number of current members does not fall below 7.
- (4) A member of the code committee may resign by notice in writing to the Minister. 10
- Compare: 2008 No 91 s 83(1)–(3), (5)
- 27 Who Minister must appoint**
- The Minister must appoint as members of the code committee—
- (a) 2 persons who, in the Minister’s opinion, are each qualified for appointment because of their knowledge of, and skills and experience in relation to, consumer affairs or dispute resolution; and 15
- (b) other persons who, in the Minister’s opinion, are each qualified for appointment because of—
- (i) their individual knowledge of, and skills and experience in relation to, the provision of financial services; or 20
- (ii) any other appropriate knowledge, skills, and experience that will assist the code committee to perform its functions.
- Compare: 2008 No 91 s 83(4)
- 28 Chairperson** 25
- (1) The Minister must appoint one of the members of the code committee as the chairperson of the code committee.
- (2) The Minister may, at any time and entirely at his or her discretion, discharge the chairperson from that office (whether or not the Minister also discharges the chairperson as a member of the code committee). 30
- (3) The chairperson may, without resigning as a member of the code committee, resign from that office by notice in writing to the Minister.
- Compare: 2008 No 91 s 84(2)
- 29 Proceedings of code committee**
- (1) Meetings of the code committee must be held at the times and places as the code committee or the chairperson from time to time decides. 35
- (2) The quorum for a meeting of the code committee is 5 members.

- (3) Every question before the code committee must be determined by a majority of the votes of the members present or otherwise.
- (4) The chairperson of the code committee has a deliberative vote and, in the case of an equality of votes, a casting vote.
- (5) The code committee may regulate its own procedure. 5
- (6) **Subclause (5)** applies except as provided in this clause and in any regulations.
- Compare: 2008 No 91 s 84
- 30 Certain provisions of Crown Entities Act 2004 apply to members of code committee** 10
- Clause 15 of Schedule 5 of the Crown Entities Act 2004 applies as if the code committee were a committee appointed under clause 14 of that schedule and with all other necessary modifications.
- Compare: 2008 No 91 s 85
- 31 Funding of code committee** 15
- The FMA must fund the code committee.
- Compare: 2008 No 91 s 85A
- Code of professional conduct for financial advice services*
- 32 Content of code**
- (1) The code must provide for minimum standards of professional conduct that must be demonstrated ~~when regulated financial advice is given by persons who give regulated financial advice~~, including minimum standards— 20
- (a) of general competence, knowledge, and skills that apply to all persons that give financial advice; and
- (b) of particular competence, knowledge, and skills that apply in respect of different types of financial advice, financial advice products, or other circumstances; and 25
- (c) of ethical behaviour; and
- (d) of conduct and client care.
- (2) However, the code must not include limits on the types of financial advice that may be given by a person because the person is a nominated representative. 30
- (3) The code—
- (a) must identify different types of financial advice, financial advice products, or other circumstances for the purposes of **subclause (1)(b)**; and
- (b) may specify different standards under **subclause (1)**, or other matters under **subclause (4)**, in respect of different types of financial advice, financial advice products, or other circumstances. 35

(4)	The code must also provide for— (a) continuing professional training development for persons that give financial advice, including specification of minimum requirements that a person must meet for the purpose of continuing professional training development <u>development</u>; (b) the way or ways in which a financial advice provider or financial adviser person may demonstrate the provider's or adviser's <u>their</u> competence, knowledge, and skill.	5
(5)	The code may limit or modify standards, or provide for separate standards, for the duration of 1 or more periods of transition. Compare: 2008 No 91 s 86	10
33	Code committee must prepare code	
(1)	The code committee must prepare a draft code.	
(2)	In preparing the draft code, the code committee must—	
(a)	have regard to— (i) the main and additional purposes of this Act specified in sections 3 and 4 and the additional purpose set out in section 431B; and (ii) New Zealand's international obligations that are relevant to financial markets or financial advice services; and	15
(b)	prepare an impact analysis document that describes how the proposed standards may contribute to, or detract from, the matters referred to in paragraph (a) (including a description of any trade-offs between those impacts); and	20
(c)	consult the FMA; and	
(d)	consult any persons that it reasonably considers to be representative of the financial advice industry; and	25
(e)	consult any persons that it reasonably considers to be representative of consumers of financial advice; and	
(f)	allow an opportunity for any person affected by the code to make submissions to the code committee.	30
(3)	The code committee must publish, on an Internet site maintained by or on behalf of the committee,— (a) the impact analysis document prepared under subclause (2)(b); and (b) a summary of the submissions made to the committee; and (c) a brief response to those submissions. Compare: 2008 No 91 s 87	35

34 Minister's approval of draft code

- (1) After receiving the draft code prepared by the code committee, the Minister must—
- (a) approve it; or
 - (b) decline to approve it. 5
- (2) The Minister must approve the draft code prepared by the code committee if the Minister is satisfied that—
- (a) a majority of the code committee has approved the draft code; and
 - (b) the code committee has complied with its obligations under **clause 33(2)**; and 10
 - (c) the draft code is consistent with this Act.
- (3) A failure by the code committee to comply with its obligations under **clause 33(2) or (3)** does not affect the validity of the code.
- (4) This clause is subject to **clause 35**. 15
- Compare: 2008 No 91 s 88

35 Minister may require revision or consultation

- (1) If the Minister is not satisfied as to a matter specified in **clause 34(2)**,—
- (a) the Minister must direct the code committee to revise the draft code or undertake further consultation or receive submissions, as necessary; and
 - (b) the code committee must as soon as practicable comply with the Minister's direction. 20
- (2) If the Minister considers that the draft code is not consistent with this Act, the Minister must, in directing the code committee to revise the draft code, state in what respects the Minister considers that the draft code is not consistent. 25
- Compare: 2008 No 91 s 89

36 Minister's approval of revised draft code

- (1) After receiving a revised draft code, the Minister must—
- (a) approve the revised draft code; or
 - (b) if the Minister considers that the draft code requires further amendment to be consistent with this Act,— 30
 - (i) make any amendments to the draft code that the Minister considers necessary; and
 - (ii) approve the draft code as amended.
- (2) Before making any amendment to the draft code under this clause, the Minister must— 35
- (a) advise the code committee of the Minister's intention to do so; and

	(b) give the code committee a reasonable opportunity to make submissions on the matter; and (c) consider those submissions. Compare: 2008 No 91 s 90	
37	Consultation with FMA The Minister must consult the FMA before exercising a power under clauses 34 to 36.	5
38	Deadline for Minister's approval of draft code The Minister must approve the draft code within 90 days after receiving the draft code or, if clause 35 applies, within 90 days after receiving the revised draft code. Compare: 2008 No 91 s 91	10
39	Code comes into force by <i>Gazette</i> notice (1) After the Minister has approved the draft code or after the 90-day deadline for approval specified in clause 38 has expired, the Minister must give notice in the <i>Gazette</i> of the date or dates on which the provisions of the code come into force. (2) The notice may state different dates for different provisions, but no date may be before the 28th day after the date on which the notice is published in the <i>Gazette</i>. (3) Each provision in the code comes into force on the date stated in the notice that applies to the provision. (4) The code and the notice are each disallowable instruments, but not legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. (5) The code must be published on an Internet site maintained by, or on behalf of, the code committee. Compare: 2008 No 91 s 94	15 20 25
	<i>Changes to code</i>	
40	Changes to code (1) A change to the code may be proposed by— (a) the code committee; or (b) the FMA; or (c) the Minister. (2) The procedure for changing the code is the same as the procedure set out in clause 32 to 39 for the preparation and approval of the draft code.	30 35

- (3) However, the code committee must, in relation to a proposed change,—
- (a) prepare an impact analysis document that describes how the proposed change may contribute to, or detract from, the matters referred to in **clause 33(2)(a)** (including a description of any trade-offs between those impacts); and
 - (b) publish the document on an Internet site maintained by or on behalf of the code committee.

Compare: 2008 No 91 s 95

Part 5

Complaints and disciplinary proceedings

Who deals with complaints

41 Complaint about financial adviser

- (1) Any person may complain to the FMA about the conduct of another person (A) in A's capacity as a financial adviser.
- (2) The FMA may initiate a complaint.

Compare: 2008 No 91 s 96

42 Investigation by FMA

- (1) After receiving or initiating a complaint, the FMA may investigate the complaint if it is practicable to do so having regard to—
 - (a) the nature and number of complaints to be investigated; and
 - (b) the FMA's regulatory priorities as reflected in its statement of intent; and
 - (c) the FMA's available resources.
- (2) The FMA need not investigate a complaint if it is satisfied that—
 - (a) the complaint is vexatious; or
 - (b) the complaint is not sufficiently serious to warrant investigation.

Compare: 2008 No 91 s 97

Complaint about financial adviser

43 FMA may refer complaint to disciplinary committee

When the FMA has, under **clause 42**, investigated a complaint about a financial adviser, it may refer the complaint to the disciplinary committee if, in the FMA's opinion, the conduct complained of amounts to a contravention of a provision of **subpart 5A of Part 6** (for example, a contravention of the code).

Compare: 2008 No 91 s 98

44 Disciplinary committee must give notice of complaint

The disciplinary committee must serve a written notice of the complaint on a financial adviser if—

- (a) the FMA refers a complaint about the financial adviser to the disciplinary committee; and
- (b) the disciplinary committee considers that a hearing is necessary to deal with the complaint.

Compare: 2008 No 91 s 99

45 Content of notice of complaint

The disciplinary committee's notice of complaint to the financial adviser concerned (**A**) must—

- (a) state that the disciplinary committee considers that there is reason to believe that **A** may have contravened a provision of **subpart 5A of Part 6**; and
- (b) contain the particulars that are reasonably necessary to clearly inform **A** of the nature of the contravention; and
- (c) specify a date, which must not be sooner than 20 working days after the date of service of the notice, on which the disciplinary committee intends to hear the matter.

Compare: 2008 No 91 s 100

46 Disciplinary committee may discipline financial adviser

- (1) In this clause,—

A is the person who is the subject of the complaint

FSP Act means the Financial Service Providers (Registration and Dispute Resolution) Act 2008

Registrar means the Registrar of Financial Service Providers.

- (2) The disciplinary committee may take any of the actions referred to in **sub-clause (3)** if it is satisfied that **A** has contravened a provision of **subpart 5A of Part 6**.

- (3) The disciplinary committee may do 1 or more of the following:

- (a) direct the Registrar to deregister **A** under the FSP Act;
- (b) direct the Registrar to—
 - (i) deregister **A** under the FSP Act; and
 - (ii) prevent **A** from being reregistered for a financial advice service under the FSP Act for a specified period;
- (c) direct the Registrar to suspend **A**'s registration under the FSP Act for a period of no more than 12 months or until **A** meets specified conditions

	relating to the registration (but, in any case, not for a period of more than 12 months):	
	(d) censure A:	
	(e) order that A may, for a period not exceeding 3 years, give <u>regulated</u> financial advice for the purposes of a financial advice service only subject to any conditions as to employment, engagement, supervision, or otherwise that the disciplinary committee may specify in the order:	5
	(f) order that A undertake training specified in the order:	
	(g) order that A must pay a fine not exceeding \$10,000:	
	(h) take no action.	10
(4)	Deregistration or suspension of A's registration under the FSP Act under sub-clause (3) relates only to A's registration for a financial advice service.	
(5)	See sections 532A to 532C , which provide for an appeal from a decision under this clause.	
	Compare: 2008 No 91 s 101(1)–(3)	15
47	Other matters relating to discipline	
(1)	No fine may be imposed under clause 46(3)(g) in relation to an act or omission that constitutes—	
	(a) an offence for which A has been convicted by a court; or	
	(b) a contravention, or an involvement in a contravention, for which A has been found liable <u>ordered</u> to pay a pecuniary penalty.	20
(2)	In any case to which clause 46(2) applies, the disciplinary committee may order that A must pay costs and expenses of, and incidental to, the investigation by the FMA and the disciplinary committee's proceeding.	
(3)	The disciplinary committee may publicly notify the action in any way that it thinks fit.	25
(4)	Clause 46 and this clause apply whether or not A is a financial adviser at the time of the complaint, the investigation, or the disciplinary proceeding.	
	Compare: 2008 No 91 s 101(4)–(7)	
48	Reasonable opportunity to be heard	30
	The disciplinary committee must not take any of the actions specified in clause 46(3) unless it has first—	
	(a) informed the person concerned <u>A</u> in writing as to why it may take any of those actions; and	
	(b) given that person <u>A</u> or his or her representative a reasonable opportunity to make written submissions and be heard on the question.	35
	Compare: 2008 No 91 s 102	

*Disciplinary committee***49 Minister must establish disciplinary committee**

The Minister must establish a disciplinary committee.

Compare: 2008 No 91 s 103

50 Functions of disciplinary committee

The functions of the disciplinary committee are to—

- (a) conduct disciplinary proceedings arising out of complaints regarding financial advisers referred to it by the FMA; and
- (b) take any of the actions referred to in **clause 46(3)** as a result of disciplinary proceedings.

Compare: 2008 No 91 s 104

51 Membership of disciplinary committee

- (1) The Minister may at any time appoint a member of the disciplinary committee.
- (2) The appointment of a member of the disciplinary committee must be for a specified period.
- (3) The Minister must appoint one of the members of the disciplinary committee as the chairperson of the disciplinary committee.
- (4) The disciplinary committee must have not less than 4 members and not more than 6 members including the chairperson, and the Minister must ensure that the number of current members does not fall below 4.
- (5) Apart from the chairperson, the Minister must appoint as members of the disciplinary committee—
 - (a) at least 1 member who works or has worked in the financial advice industry; and
 - (b) at least 1 member who is independent of the financial advice industry; and
 - (c) at least 1 member who is a lawyer with not less than 7 years' legal experience.

Compare: 2008 No 91 s 105

52 Ceasing to be member of disciplinary committee

- (1) A person ceases to be a member of the disciplinary committee if—
 - (a) the person is convicted by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 3 months or longer; or
 - (b) the person dies or is, under the Insolvency Act 2006, adjudged bankrupt; or
 - (c) the Minister, by notice to the person, removes the person from the committee on the grounds of inability to perform the functions of the office,

- or for neglect of duty, or misconduct, proved to the satisfaction of the Minister; or
- (d) the person resigns by notice in writing to the Minister.
- (2) A person who ceases to be a member of the disciplinary committee is not entitled to compensation. 5
- (3) A member continues in office despite the expiry of his or her period of appointment until—
- (a) the member is reappointed; or
- (b) the member's successor is appointed; or
- (c) the member is notified that a replacement member will not be appointed; or 10
- (d) the member vacates or is removed from office.
- (4) A member who continues in office for any period under **subclause (3)**, unless he or she was removed from office, may act as a member during that period for the purpose of— 15
- (a) completing any proceedings partly heard by the committee before the expiry of his or her period of appointment:
- (b) hearing any other proceedings.
- (5) A member who has resigned, or whose successor is appointed or who will not be replaced (unless he or she was removed from office), may continue in office for the purpose of completing any proceedings that are partly or wholly heard. 20
- 53 Delegation by chairperson of disciplinary committee**
- (1) The chairperson of the disciplinary committee may delegate any of the chairperson's functions, duties, and powers to a member of the disciplinary committee who the chairperson is satisfied has the necessary capability, skills, and experience to perform or exercise those functions, duties, and powers. 25
- (2) A delegation—
- (a) must be in writing; and
- (b) must be to a named person; and
- (c) is revocable at any time, in writing; and 30
- (d) does not prevent the performance or exercise of a function, duty, or power by the chairperson.
- (3) A person to whom any functions, duties, or powers are delegated may perform or exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation. 35
- (4) A person who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.

54 Proceedings of disciplinary committee

- (1) Meetings of the disciplinary committee must be held at the times and places as the disciplinary committee or the chairperson from time to time decides.
- (2) The quorum for a meeting of the disciplinary committee is 3 members.
- (3) Every question before the disciplinary committee must be determined by a majority of the votes of the members present at the meeting. 5
- (4) The chairperson of the disciplinary committee has a deliberative vote and, in the case of an equality of votes, a casting vote.
- (5) The disciplinary committee may regulate its own procedure.
- (6) **Subclause (5)** applies except as provided in this clause and in any regulations. 10

Compare: 2008 No 91 s 106

55 Disciplinary committee may hear evidence in disciplinary proceeding

- (1) In a disciplinary proceeding, the disciplinary committee may—
 - (a) receive evidence on oath (and for that purpose a member of the disciplinary committee may administer an oath): 15
 - (b) permit a person appearing as a witness before it to give evidence by tendering a written statement and verifying that statement by oath, statutory declaration, or otherwise.
- (2) A hearing before the disciplinary committee in a disciplinary proceeding is a judicial proceeding for the purposes of sections 108 and 109 of the Crimes Act 1961. 20

Compare: 2008 No 91 s 107

56 Determining proceeding on papers

- (1) Despite anything in this Act to the contrary, the disciplinary committee may determine a disciplinary proceeding on the papers if the committee considers it appropriate. 25
- (2) Before doing so, the disciplinary committee must give the parties a reasonable opportunity to comment on whether the proceeding should be dealt with in that manner. 30

57 Issuing of summons by disciplinary committee

- (1) For the purposes of any matter before the disciplinary committee, the committee may, on the application of any party to a proceeding, or on the committee's own initiative, issue a summons to any person requiring that person to attend a hearing before the disciplinary committee and to do all or any of the following: 35
 - (a) give evidence:
 - (b) give evidence under oath:

- (c) produce documents, things, or information, or any specified documents, things, or information, in the possession or control of that person, that are relevant to the hearing.
- (2) The summons must be in writing, be signed by a relevant person, and state—
- (a) the date and time when, and the place where, the person must attend; and 5
 - (b) the documents, things, or information that the person is required to bring and produce to the disciplinary committee; and
 - (c) the entitlement to be tendered or paid a sum in respect of witnesses' fees, allowances, and expenses; and
 - (d) the penalty for failing to attend. 10
- (3) In **subclause (2), relevant person** means—
- (a) the chairperson of the disciplinary committee; or
 - (b) any officer of the disciplinary committee purporting to act by the direction or with the authority of the chairperson.
- (4) The disciplinary committee may require that any documents, things, or information produced under this clause be verified by oath, statutory declaration, or otherwise. 15
- Compare: 2008 No 91 s 109
- 58 Serving of summons**
- (1) A summons may be served— 20
- (a) by delivering it personally to the person summoned; or
 - (b) by posting it to the person summoned at that person's usual place of ~~residence~~ residence; or
 - (c) by emailing it to the person summoned at an email address that is used by the person. 25
- (2) A summons must,—
- (a) if it is to be served under **subclause (1)(a)**, be served at least 48 hours before the attendance of the witness is required;
 - (b) if it is to be served under **subclause (1)(b) or (c)**, be served at least 10 days before the attendance of the witness is required. 30
- (3) A summons that is posted is treated as having been served when it would have been delivered in the ordinary course of post.
- (4) In the absence of proof to the contrary, a summons that is emailed to a person must be treated as served on the person on the second working day after the date on which it is emailed, and, in proving that the summons was emailed, it is sufficient to prove that the summons was properly addressed and sent to the email address. 35
- Compare: 2008 No 91 s 110

59 Failure to comply with summons to attend disciplinary committee hearing

(1) A person summoned under **clause 57** commits an offence if he or she, without reasonable excuse,—

- (a) fails to attend in accordance with the summons; or
- (b) does not give evidence when required to do so; or
- (c) does not give evidence under oath when required to do so; or
- (d) does not answer any question that is lawfully asked by the disciplinary committee; or
- (e) does not provide any documents, things, or information that the summons requires the person to provide.

5

10

(2) A person who commits an offence under this clause is liable on conviction to a fine not exceeding \$5,000.

(3) A person must not be convicted of an offence under this clause if witnesses' fees, allowances, and expenses to which the person is entitled under **clause 60** have not been paid or tendered to him or her.

15

Compare: 2008 No 91 s 137

60 Witnesses' fees, allowances, and expenses

(1) A witness appearing before the disciplinary committee under a summons is entitled to be paid witnesses' fees, allowances, and expenses in accordance with the scales prescribed by regulations under the Criminal Procedure Act 2011.

20

(2) The person requiring attendance of the witness must pay or tender to the witness the fees, allowances, and expenses at the time the summons is served or at some other reasonable time before the hearing.

Compare: 2008 No 91 s 111

25

61 Protection for witnesses and counsel in disciplinary proceeding

(1) Every person who does the following things has the same privileges as witnesses have in a court:

- (a) provides documents, things, or information to the disciplinary committee in relation to a disciplinary matter; or
- (b) gives evidence or answers questions at a hearing of the disciplinary committee in relation to a disciplinary matter.

30

(2) Every counsel appearing before the disciplinary committee in relation to a disciplinary matter has the same privileges and immunities as counsel in a court.

Compare: 2008 No 91 s 112

35

62 Contempt of disciplinary committee

(1) Every person commits an offence and is liable on conviction to a fine not exceeding \$5,000 who—

	(a) assaults, threatens, intimidates, or wilfully insults any person, being a member of the disciplinary committee, an officer of the disciplinary committee, or any witness, during that person's sitting or attendance in the disciplinary committee, or in going to or returning from the disciplinary committee; or	5
	(b) wilfully interrupts or obstructs a proceeding of the disciplinary committee or otherwise misbehaves in the disciplinary committee; or	
	(c) wilfully and without lawful excuse disobeys any order or direction of the disciplinary committee in the course of the hearing of any proceeding; or	
	(d) contravenes a condition of an order made by the disciplinary committee under clause 46(3)(e) .	10
62	(2) A member of the disciplinary committee may order the exclusion from a sitting of the disciplinary committee of any person whose behaviour, in that member's opinion, constitutes an offence against subclause (1) , whether or not that person is charged with the offence.	15
	(3) Any constable may take the steps that are reasonably necessary to enforce the exclusion.	
63	Certain provisions of Crown Entities Act 2004 apply to members of disciplinary committee	
	Clause 15 of Schedule 5 of the Crown Entities Act 2004 applies as if the disciplinary committee were a committee appointed under clause 14 of that schedule and with all other necessary modifications. Compare: 2008 No 91 s 113	20
64	Funding of disciplinary committee	
	The FMA must fund the disciplinary committee. Compare: 2008 No 91 s 113A	25

Schedule 3
New Schedule 1AA inserted into Financial Service Providers
(Registration and Dispute Resolution) Act 2008

s 88

Schedule 1AA
Transitional, savings, and related provisions

5

s 8A

Part 1
Provisions relating to Financial Services Legislation Amendment
Act 2017

10

1 Change of financial service descriptions does not result in breach

(1) This clause applies if, immediately before the commencement of **section 61** of the Financial Services Legislation Amendment Act **2017** (which amends section 5),—

- (a) a person is in the business of providing a financial service; and 15
- (b) the person is registered under Part 2 of this Act for that service; and
- (c) the description of that service is amended, repealed, or replaced by that section.

(2) Despite the change referred to in **subclause (1)(b)(c)**, the person does not breach section 11-~~or~~, 12, or 17 because of that change (and, for that purpose, the person may continue to rely on section 5 as in force before the commencement of **section 61** of the Financial Services Legislation Amendment Act **2017**). 20

(3) This clause ceases to apply at the close of the date that is 3 months after the date on which **section 61** of the Financial Services Legislation Amendment Act **2017** comes into force. 25

2 Certain persons not required to be registered merely because of new application provisions

(1) This clause applies to a person (A) if,—

- (a) immediately before the commencement of **section 7A**, this Act does not apply to A; but 30
- (b) this Act applies to A on that commencement.

(2) A is not required to be registered under this Act, or to be a member of an approved dispute resolution scheme, if A would not have been so required before the commencement of **section 7A**. 35

-
- (3) This clause ceases to apply at the close of ~~the~~ a date appointed by the Governor-General by an Order in Council (which must be a date at least that is 6 months after the date on which **section 7A** comes into force).

Schedule 4

Consequential amendments

s 91

Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35)

5

Repeal section 48(b)(ii).

In section 137(4) and (5), replace “, the Financial Markets Conduct Act 2013, and the Financial Advisers Act 2008” with “and the Financial Markets Conduct Act 2013”.

Replace section 130(1A)(a)(i) with:

(i) **section 5(1)(a), (b), (c), (ca),** (d), or (ia) to (ic) of that Act; or

10

Repeal section ~~140(2)(d)~~ 140(2)(e).

Credit Contracts and Consumer Finance Act 2003 (2003 No 52)

In section 9C(3)(f), replace “the Financial Advisers Act 2008” with “**subpart 5A** of Part 6 of the Financial Markets Conduct Act 2013”.

Financial Markets Authority Act 2011 (2011 No 5)

15

In Schedule 1, repeal the item relating to the Financial Advisers Act 2008.

KiwiSaver Act 2006 (2006 No 40)

In section 41(e), replace “professional financial adviser” with “financial advice provider”.

In the heading to section 162, replace “**adviser**” with “**advice**”.

20

In section 162, replace “perform a financial adviser service for the purposes of the Financial Advisers Act 2008” with “provide a financial advice service for the purposes of the Financial Markets Conduct Act 2013”.

In Schedule 1, clause 4A(3)(b), replace “a financial adviser, or for financial adviser services” with “a financial advice provider, or for financial advice services”.

25

Veterans’ Support Act 2014 (2014 No 56)

In section 157(2), replace “an authorised financial adviser under the Financial Advisers Act 2008” with “a financial advice provider under the Financial Markets Conduct Act 2013”.

In section 157(4), replace “an authorised financial adviser” with “a financial advice provider”.

30

Financial Services Legislation Amendment Bill

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