

**Reprint  
as at 15 March 2021**



## **Financial Advisers Act 2008**

Public Act      2008 No 91  
Date of assent    27 September 2008  
Commencement    see section 2

Financial Advisers Act 2008: repealed, on 15 March 2021, by section 97(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

### **Contents**

	Page
1      Title	12
2      Commencement	12

#### **Part 1**

#### **Preliminary provisions**

3      Purpose of Act	13
4      Overview of Act	14
5      Interpretation	14
5A     Who are clients	27
5B     Who are retail clients	28
5C     Who are wholesale clients	28
5D     Who are eligible investors	29
5E     Acceptance of certification	30
5F     Revocation of certification	31
5G     How to opt out of being wholesale client	31
5H     Giving revocation of certification or notification of opt out	31
5I     Meaning of acting on behalf of B's business and acting through A	32

---

#### **Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Business, Innovation, and Employment.**

6	Act binds the Crown	32
	<b>Part 2</b>	
	<b>Financial advisers and their disclosure and conduct obligations</b>	
7	Outline	32
	Subpart 1—Key definitions for financial adviser services	
	<i>What are financial adviser services</i>	
8	Who is financial adviser	33
9	What is financial adviser service	33
10	When person gives financial advice	33
11	When person provides investment planning service	34
12	When person provides discretionary investment management service	34
13	Exemption for incidental service	35
14	Other exemptions	35
	<i>When financial adviser service is personalised service or class service</i>	
15	When financial adviser service is personalised service or class service	38
	Subpart 1A—Restrictions on providing financial adviser services	
16	Types of financial adviser	39
	<i>Restrictions on providing financial adviser services</i>	
17	Who may provide financial adviser service	39
18	Who is permitted to provide personalised service to retail clients	40
19	Who is permitted to provide class service to retail clients	40
20	Who is permitted to provide financial adviser service to wholesale clients	41
	<i>Restrictions on holding out</i>	
20A	Who may hold themselves out as authorised financial adviser	41
20B	Who may hold themselves out as financial planner or investment planner	41
20C	Who may hold themselves out as QFE or having QFE status	42
	<i>Persons acting in course of business of employers and principals</i>	
20D	Application of FSP Act to employees, etc	42
20E	Who must be member of dispute resolution scheme	42
20F	Who is responsible for financial adviser obligations	43
	Subpart 2—Financial advisers' disclosure and conduct obligations	
	<i>Disclosure obligations for personalised services for retail clients</i>	
21	What is disclosure obligation and when does it apply	43

22	Financial adviser must make disclosure before providing personalised service to retail client	43
23	What financial adviser must disclose	44
24	Disclosure statement	45
25	QFE must make disclosure before personalised service provided to retail client	45
26	Disclosure by qualifying financial entity <i>[Repealed]</i>	46
27	Disclosure must not be misleading, deceptive, or confusing	46
28	Disclosure of additional information	46
29	No compliance with disclosure obligations if disclosure out of date	46
29A	Further prescribed information to be made available to clients of discretionary investment management service	47
30	Advertisement advertising financial adviser services by authorised financial adviser must refer to disclosure statement	47
31	Disclosure by 2 or more financial advisers in joint disclosure statement	47
	<i>Conduct obligations</i>	
32	What is conduct obligation and when does it apply	48
	<i>Conduct obligations that apply to all financial advisers [Repealed]</i>	
33	Financial adviser must exercise care, diligence, and skill	48
34	Financial adviser must not engage in misleading or deceptive conduct	49
35	Advertisement by financial adviser must not be misleading, deceptive, or confusing	49
36	Regulations may impose specific conduct obligations for class services to retail clients	49
	<i>Conduct obligations that apply to authorised financial advisers only</i>	
37	Authorised financial adviser must comply with code	50
38	Authorised financial adviser must not recommend acquisition of FMCA financial products if offer contravenes financial markets legislation	50
39	Duties when providing discretionary investment management service to retail clients	50
40	Duty to comply with professional standard of care in providing discretionary investment management service to retail clients	50
41	Need for client agreement with retail client for discretionary investment management services	51
42	Contents, form, and effect of client agreement	51
43	Requirement for agreed investment authority with retail client	51

44	Custodial duties under discretionary investment management service provided to retail client	52
45	Authorised financial adviser must comply with terms and conditions of his or her authorisation	52
45A	Authorised financial adviser may report breach of Act to FMA	52
	<i>Conduct obligations related to QFEs</i>	
46	QFE must comply with terms and conditions of grant of QFE status	53
47	QFE or member of QFE group must not engage in misleading or deceptive conduct in relation to financial adviser service by employee, agent, or nominated representative	54
48	Advertisement by QFE or member of QFE group in relation to financial adviser service must not be misleading, deceptive, or confusing	54
	<i>FMA's direction in respect of breach of disclosure or conduct obligation</i>	
49	FMA may give financial adviser direction in respect of breach of disclosure or conduct obligation	54
	<b>Part 3</b>	
	<b>Authorised financial advisers and qualifying financial entities</b>	
50	Outline of this Part	55
	Subpart 1—Authorised financial advisers	
51	Who is authorised financial adviser	55
52	Who may apply to be authorised	56
53	Application to be authorised	56
54	Eligibility to be authorised	56
55	FMA must approve or decline application for authorisation	57
55A	Variation of terms and conditions and period of authorisation	58
56	FMA must notify Registrar of authorisation	59
57	Termination of authorisation	59
58	Renewal of authorisation	60
	<i>FMA's powers in relation to default by authorised financial adviser</i>	
59	FMA's powers in relation to default by authorised financial adviser	61
60	Reasonable opportunity to be heard	62
61	FMA may give authorised financial adviser direction	62
62	Other provisions concerning FMA's powers in relation to default by authorised financial adviser	63
	Subpart 2—Qualifying financial entities	
63	What is qualifying financial entity (QFE)	63
64	Who may apply for QFE status	64
65	Application for QFE status	64

66	Eligibility for QFE status	64
67	FMA must approve or decline application for QFE status	65
67A	Associated entities may be subject to special terms and conditions in certain cases	66
68	Determination of application	67
69	Name of QFE group	67
70	FMA must notify Registrar of grant of QFE status	68
	<i>Commission's powers in relation to default by QFE</i>	
	<i>[Repealed]</i>	
71	Addition of associated entities	68
72	Termination of status of associated entity	69
73	Certification of QFE group	69
74	Nominated representatives of QFEs or partner entities	69
	<i>Liability of employee or agent</i>	
	<i>[Repealed]</i>	
75	Variation of terms and conditions and period of grant of QFE status	70
75A	Termination of QFE status	71
75B	FMA may designate certain QFE products as beyond scope of QFE advisers	72
75C	Renewal of QFE status	72
	<i>FMA's powers in relation to default by QFE or by members of QFE group</i>	
75D	FMA's powers in relation to QFE default	73
75E	Reasonable opportunity to be heard	74
75F	FMA may give QFE direction	75
75G	Other provisions concerning FMA's powers in relation to QFE default	76
	<i>QFE's obligations</i>	
76	Ongoing obligations of QFEs and of partner entities	76
77	QFE must provide annual report to FMA	77

### **Part 3A**

#### **Brokers' disclosure and conduct obligations**

##### *Who is broker and what is broking service*

77A	Who is broker	78
77B	What is broking service	78
77C	Other exemptions	79
	<i>Disclosure obligations for services for retail clients</i>	
77D	What is disclosure obligation and when does it apply	80
77E	Broker must make disclosure before receiving client money or client property from retail client	80

77F	What broker must disclose and form of disclosure	81
77G	Disclosure must not be misleading, deceptive, or confusing	81
77H	Disclosure of additional information	81
77I	No compliance with disclosure obligation if disclosure out of date	82
	<i>Brokers' conduct obligations</i>	
77J	What is conduct obligation and when does it apply	82
77K	Broker must exercise care, diligence, and skill	83
77L	Broker must not engage in misleading or deceptive conduct	83
77M	Advertisement of broking services must not be misleading, deceptive, or confusing	83
77N	Restriction on use of term sharebroker <i>[Repealed]</i>	83
77O	Broker must not receive client money if offer contravenes financial markets legislation	83
	<i>Obligations for handling client money and client property</i>	
77P	Broker must pay client money into separate trust account and hold client property on trust	84
77Q	Broker must account for client money and client property	85
77R	Broker must keep records of client money and client property	85
77RA	Broker must report on client money and client property	86
77S	Restrictions on use of client money and client property	86
77T	Protection of client money and client property held on trust	86
	<i>Application of Trusts Act 2019</i>	
77TA	Application of Trusts Act 2019	87
	<i>Persons acting in course of business of employers or principals</i>	
77U	Who is responsible for broker obligations	87
	<i>FMA's direction in respect of breach of disclosure or conduct obligation</i>	
77V	FMA may give broker direction in respect of breach of disclosure or conduct obligation	88
	<b>Part 4</b>	
	<b>How financial advisers and brokers are regulated</b>	
78	Outline of this Part	89
	Subpart 1—Code of professional conduct and code committee	
	<i>Commissioner for Financial Advisers</i>	
	<i>[Repealed]</i>	
79	Commissioner for Financial Advisers <i>[Repealed]</i>	89
80	Functions of Commissioner <i>[Repealed]</i>	89
	<i>Code committee</i>	
81	Establishment of code committee	89

82	Functions of code committee	90
83	Membership of code committee	90
84	Proceedings of code committee	91
85	Certain provisions of Crown Entities Act 2004 apply to members of code committee	91
85A	Funding of code committee	91
	<i>Code of professional conduct for authorised financial advisers</i>	
86	Content of code	91
87	Code committee must prepare code	92
88	FMA's approval of draft code	92
89	FMA may require revision or consultation	93
90	FMA's approval of revised draft code	93
91	Deadline for FMA's approval of draft code	94
92	Minister's approval required	94
93	Deadline for Minister's approval of draft code	94
94	Code comes into force by <i>Gazette</i> notice	95
	<i>Changes to code</i>	
95	Changes to code	95
	Subpart 2—Complaints and disciplinary proceedings	
	<i>Who deals with complaints</i>	
96	Complaint about financial adviser	95
97	Investigation by FMA	96
	<i>Complaint about authorised financial adviser</i>	
98	Reference of complaint to disciplinary committee	96
99	Disciplinary committee must give notice of complaint to financial adviser concerned	97
100	Content of disciplinary committee's notice of complaint	97
101	Disciplinary committee may discipline authorised financial adviser for breach of code	97
102	Reasonable opportunity to be heard	98
	<i>Disciplinary committee</i>	
103	Minister must establish disciplinary committee	98
104	Functions of disciplinary committee	98
105	Membership of disciplinary committee	99
106	Proceedings of disciplinary committee	99
107	Disciplinary committee may hear evidence in disciplinary proceeding	99
108	District Court may authorise disciplinary committee to summon witnesses on disciplinary matters	100
109	Issuing of summons by disciplinary committee	100
110	Serving of summons	101

111	Witnesses' fees, allowances, and expenses	101
112	Protection for witnesses and counsel in disciplinary proceeding	102
113	Certain provisions of Crown Entities Act 2004 apply to members of disciplinary committee	102
113A	Funding of disciplinary committee	102
Subpart 3—Offences		
<i>Offences: Restrictions on providing services and holding out</i>		
114	Offence of providing financial adviser service without being permitted to do so	102
115	Offence of holding out as authorised financial adviser, financial planner, investment planner, or QFE	103
116	Offences in relation to employer or principal failing to maintain registration <i>[Repealed]</i>	103
<i>Disclosure offences: Financial advisers, QFEs, and brokers</i>		
117	Failure to make disclosure under or in accordance with disclosure obligation	103
<i>Conduct offences: Financial advisers and brokers</i>		
118	Offence of misleading or deceptive conduct by financial adviser or broker	104
119	Offence of misleading, deceptive, or confusing advertisement by financial adviser or broker	104
120	Offence of contravening restrictions on use of term sharebroker <i>[Repealed]</i>	104
<i>Offences: Authorised financial advisers only</i>		
121	Offence of recommending offer that contravenes financial markets legislation	104
122	Offence of contravening requirement that authorised financial adviser pay client's money into separate trust account <i>[Repealed]</i>	105
123	Offence of failing to account for client's money or other property <i>[Repealed]</i>	105
124	Offence in relation to records of client's money or property <i>[Repealed]</i>	105
125	Offence of breaching restrictions on use of client's money or property <i>[Repealed]</i>	105
126	Offence of failing to comply with terms and conditions of authorisation	105
127	Offence of failing to comply with FMA's direction	105
128	Offence of contravening condition of disciplinary committee's order	105



<i>Offences: QFEs and QFE groups only</i>		
129	Offence of failing to comply with terms and conditions of QFE status	106
130	Offence of misleading or deceptive conduct in relation to financial adviser service by employee, agent, or nominated representative	106
131	Offence of misleading, etc, advertisement of financial adviser service by employee, agent, or nominated representative	107
132	Offence of failing to comply with FMA's direction	107
133	Offence of failing to comply with obligations in relation to authorised financial advisers	107
134	Offence of failing to provide annual report	108
134A	Defence to offences relating to entities in QFE groups	108
<i>Offences: Broking services only</i>		
134B	Offence of receiving client money if offer contravenes financial markets legislation	108
134C	Offence of contravening requirement to pay client money into separate trust account and hold client property on trust	109
134D	Offence of failing to account for client money and client property	109
134E	Offence in relation to records of client money and client property	109
134EA	Offence of failing to report on client money and client property	109
134F	Offence of breaching restrictions on use of client money and client property	110
134G	Offence of failing to comply with FMA's direction	110
<i>Miscellaneous offences</i>		
135	Offence of failing to comply with FMA's direction in respect of breach of disclosure or conduct obligation	110
<i>Miscellaneous offences</i>		
<i>[Repealed]</i>		
136	Offence of false declaration, etc, in support of application for authorisation or grant of QFE status	111
137	Failure to comply with summons to attend disciplinary committee hearing	111
Subpart 4—Injunctions and other remedies		
<i>Injunctions</i>		
137A	Injunctions against contraventions	112
137B	Undertaking as to damages not required by FMA	113
137C	When court may make banning order <i>[Repealed]</i>	113
137D	Terms of banning orders <i>[Repealed]</i>	113
137E	Offence of contravening banning order <i>[Repealed]</i>	113

*Orders to preserve assets to satisfy claims**[Repealed]*

137F	When High Court may prohibit payment or transfer of money, securities, or other property <i>[Repealed]</i>	114
137G	What orders may be made <i>[Repealed]</i>	114
137H	Interim orders <i>[Repealed]</i>	114
137I	Relationship with other law <i>[Repealed]</i>	114
137J	Offence of breaching orders <i>[Repealed]</i>	114

*Pecuniary and compensatory orders for contravening wholesale certification requirement or conduct obligations related to discretionary investment management service*

137K	Pecuniary order for contravening wholesale certification requirement or conduct obligations related to discretionary investment management service	114
137L	Compensation for contravention of wholesale certification requirement	115

*Temporary banning orders against financial adviser and broker*

137M	When FMA may make temporary banning orders for financial adviser services or broking services	116
137N	Terms of temporary banning order	116

*Process for FMA's orders*

137O	FMA must follow steps before making orders	117
137P	FMA may shorten steps for specified orders	118
137Q	FMA must give notice after making orders	118
137R	General provisions on temporary banning orders	119
137S	Offence of failing to comply with FMA's orders	119

**Part 5****General provisions***Appeal of decisions*

138	Right of appeal	120
139	Notice of right of appeal	120
140	Decision to have effect pending determination of appeal	121
141	Procedure on appeal	121
142	Court's decision final	121
143	Court may refer matter back for reconsideration	121
144	Orders as to costs	122
145	Orders as to publication of names	122
146	Appeal on question of law	122

*Securities Commission: General powers*

*[Repealed]*

147	Commission may exercise powers under Securities Act 1978 <i>[Repealed]</i>	122
	<i>Standard conditions for incorporation in authorisation and grants</i>	
147A	Approval of standard conditions for incorporation in authorisations and grants of QFE status	123
147B	Requirement to consult on proposal to incorporate material by reference	124
147C	Variation or revocation of standard conditions	125
147D	When standard conditions come into force	125
147E	Incorporation of changed standard conditions into existing authorisations or grants	125

*Exemptions*

148	FMA may grant exemptions	125
148A	FMA may vary or revoke exemption	126
148B	Status of exemptions, variations, or revocations	127
149	FMA must notify reasons for exemption other than class exemption	127
150	Implied provisions	128

*Information sharing*

151	Information sharing	128
-----	---------------------	-----

*Fees*

152	FMA's fees, charges, and costs	129
153	Levy <i>[Repealed]</i>	129

*Regulations*

154	General regulations	130
155	Regulations relating to fees, charges, and costs	134

*Other matters*

156	No contracting out	134
157	Territorial scope	134
158	Breach of exemption conditions	135
159	Exemption or regulation in respect of specified overseas jurisdictions <i>[Repealed]</i>	135
160	Time for filing charging document	135
161	Ministry must review and report on operation of Act	135

*Other legislation affected*

161A	Financial Service Providers (Registration and Dispute Resolution) Act 2008 amended <i>[Repealed]</i>	135
162	KiwiSaver Act 2006 amended	136

163	Securities Act 1978 amended	136
164	Securities Markets Act 1988 amended	136
165	Sharebrokers Act 1908 repealed	137
166	Securities Markets (Investment Advisers and Brokers) Regulations 2007 revoked	137
<i>Transitional provisions</i>		
167	Transitional provisions for existing offences and contravention under Securities Markets Act 1988	137
168	Grant of authorisations in transitional period without prior inquiry into convictions	137

## 1 Title

This Act is the Financial Advisers Act 2008.

## 2 Commencement

- (1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council.
- (2) One or more Orders in Council may be made appointing different dates for the commencement of different provisions.
- (3) Despite subsection (1), sections 8 to 15 (as enacted by the Financial Advisers Amendment Act 2010) come into force on the day after the date on which the Financial Advisers Amendment Act 2010 receives the Royal assent.

Section 2(2): Part 1 and sections 7–13, 78–95, 152–155, and 163(1)–(6) brought into force, on 5 December 2008, by clause 2 of the Financial Advisers Act Commencement Order 2008 (SR 2008/412).

Section 2(2): sections 16, 20D–20F, Part 3 (except sections 59–62 and 75D–77), sections 77A–77C, 103–113, 136, 137K, 137L, and Part 5 (except sections 152–155, 161, 163(1)–(6), 164–166, and 167) brought into force, on 16 August 2010, by clause 2 of the Financial Advisers Act Commencement Order 2010 (SR 2010/232).

Section 2(2): sections 20A, 20C, 32–35, 37, 45–49, 59–62, 75D–77, 77J–77M, 77P–77V, 96–102, and those sections of subpart 3 of Part 4 not already in force (except sections 114, 117, 120, 121, and 134B), and those sections of subpart 4 of Part 4 not already in force (except sections 137C–137E, and 137M–137S) brought into force, on 1 December 2010, by clause 3 of the Financial Advisers Act Commencement Order 2010 (SR 2010/232).

Section 2(2): the rest of this Act brought into force, on 1 July 2011, by clause 4 of the Financial Advisers Act Commencement Order 2010 (SR 2010/232).

Section 2(3): added, on 1 July 2010, by section 5 of the Financial Advisers Amendment Act 2010 (2010 No 40).

## Part 1

### Preliminary provisions

#### 3 Purpose of Act

- (1) The purpose of this Act is to promote the sound and efficient delivery of financial adviser and broking services, and to encourage public confidence in the professionalism and integrity of financial advisers and brokers.
  - (a) *[Repealed]*
  - (b) *[Repealed]*
  - (c) *[Repealed]*
- (1A) That purpose is additional to the purposes of the Financial Markets Conduct Act 2013 set out in sections 3 and 4 of that Act (and those purposes apply to this Act also).
- (2) To those ends, this Act (without limitation)—
  - (a) requires financial advisers and brokers to take an appropriate degree of care in providing services to investors and consumers and prohibits certain conduct by financial advisers and brokers; and
  - (b) in addition,—
    - (i) requires disclosure by financial advisers and brokers to retail clients, so ensuring that clients can make informed decisions about whether to use the financial adviser or broker and, in the case of an adviser, whether to follow a financial adviser's advice; and
    - (ii) imposes competency requirements on certain financial advisers who deal with retail clients, so ensuring that there are available to retail clients financial advisers who have the experience, expertise, and integrity to match effectively a person to a financial product that best meets that person's need and risk profile; and
    - (ia) ensures that appropriate governance arrangements apply to services to allow for effective monitoring and reduce governance risks; and
    - (iii) ensures that financial advisers are held accountable for the services that they give to retail clients and that there are incentives for financial advisers to manage conflicts of interest appropriately.

Section 3(1): amended, on 1 July 2010, by section 6(1)(a) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 3(1): amended, on 1 July 2010, by section 6(1)(b) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 3(1)(a): repealed, on 1 July 2010, by section 6(1)(c) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 3(1)(b): repealed, on 1 July 2010, by section 6(1)(c) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 3(1)(c): repealed, on 1 July 2010, by section 6(1)(c) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 3(1A): inserted, on 1 April 2014, by section 11(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 3(2): added, on 1 July 2010, by section 6(2) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 3(2): amended, on 1 April 2014, by section 11(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 3(2)(b)(ia): inserted, on 1 April 2014, by section 11(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

#### 4 Overview of Act

This Act is divided into 6 Parts, which are—

- (a) Part 1 (Preliminary provisions):
- (b) Part 2 (Financial advisers and their disclosure and conduct obligations):
- (c) Part 3 (Authorised financial advisers and qualifying financial entities):
- (ca) Part 3A (Brokers' disclosure and conduct obligations):
- (d) Part 4 (How financial advisers are regulated):
- (e) Part 5 (General provisions).

Section 4: amended, on 1 July 2010, by section 7(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 4(ca): inserted, on 1 July 2010, by section 7(2) of the Financial Advisers Amendment Act 2010 (2010 No 40).

#### 5 Interpretation

In this Act, unless the context otherwise requires,—

**acting through** has the meaning set out in section 5I(2)

**acquire** includes obtain by buying, subscribing, entering into the relevant legal relationship, or taking an assignment of

**advertisement** means a form of communication that is to be, or has been, distributed to a person and—

- (a) in relation to a financial adviser service,—
  - (i) refers to a financial adviser or financial adviser service or is reasonably likely to induce persons to seek a financial adviser service; and
  - (ii) is authorised or instigated by, or on behalf of, a financial adviser, a QFE, or a member of a QFE group, or prepared with the co-operation of, or by arrangement with, a financial adviser, a QFE, or a member of a QFE group; and
- (b) in relation to a broker service,—
  - (i) refers to a broker or broking service or is reasonably likely to induce persons to seek a broking service; and

- (ii) is authorised or instigated by, or on behalf of, a broker or prepared with the co-operation of, or by arrangement with, a broker

**approved dispute resolution scheme** has the same meaning as in section 4 of the FSP Act

**approved rating agency** means a rating agency nominated or approved under the Non-bank Deposit Takers Act 2013 or section 62 of the Insurance (Prudential Supervision) Act 2010

**associated entity**, in relation to a QFE, means an entity that, under an approval given under section 67(4) or 71, is an associated entity of that QFE

**authorised** means authorised by the FMA under section 55

**authorised financial adviser** means a person described in section 51

**bank in New Zealand** means a registered bank that carries on in New Zealand the business of banking

**bank term deposit** means a fixed term deposit product offered by a registered bank in New Zealand

**bonus bond** means a unit in an approved unit trust within the meaning of section 3(1) of the Finance Act (No 2) 1990

**broker** has the meaning set out in section 77A

**broker obligation** means an obligation of a broker under this Act or the regulations

**broking service** has the meaning set out in section 77B

**building society** has the same meaning as in section 2(1) of the Building Societies Act 1965

**business** includes any profession, trade, or undertaking, whether or not carried on with the intention of making a profit

**call building society share** means a share issued by a building society under which—

- (a) the shareholder has a right to demand repayment of the value of the share in full at any time; and
- (b) the building society has an obligation to repay the value of the share in full not later than 1 working day after the demand is made; and
- (c) the rate of dividend or interest payable or any other benefit provided does not alter as a result of the demand being made; and
- (d) no fee or other amount is payable as a result of the principal sum not having been held by the building society for a particular period of time

**call credit union share** means a share referred to in section 107 of the Friendly Societies and Credit Unions Act 1982, and issued by a credit union, under which—

- (a) the member has a right to demand repayment of the value of the share in full at any time; and
- (b) the credit union has an obligation to repay the value of the share in full in accordance with section 107(4) of the Friendly Societies and Credit Unions Act 1982; and
- (c) the rate of dividend or interest payable or any other benefit provided does not alter as a result of the demand being made; and
- (d) no fee or other amount is payable as a result of the principal sum not having been held by the credit union for a particular period of time

**call debt security** means a debt security under which—

- (a) the security holder has a right to demand repayment of the principal sum in full at any time; and
- (b) the issuer has an obligation to repay the principal sum in full not later than 1 working day after the demand is made; and
- (c) the rate of interest payable or any other benefit provided does not alter as a result of the demand being made; and
- (d) no fee or other amount is payable as a result of the principal sum not having been held by the issuer for a particular period of time

**category 1 product** means—

- (a) an FMCA financial product (other than a product that is a category 2 product); or
- (b) a DIMS facility (other than a facility that is a category 2 product); or
- (c) an investment-linked contract of insurance; or
- (d) any other product specified by the regulations; or
- (e) a renewal or variation of the terms or conditions of an existing category 1 product

**category 2 product** means any of the following products:

- (a) a bank term deposit; or
- (b) a bonus bond; or
- (c) a call building society share; or
- (d) a call credit union share; or
- (e) a call debt security; or
- (f) a share in a co-operative company (as defined in section 2(1) of the Co-operative Companies Act 1996); or



- (g) a unit in a cash or term portfolio investment entity (as defined in the regulations); or
- (h) a consumer credit contract within the meaning of the Credit Contracts and Consumer Finance Act 2003; or
- (i) a contract of insurance (other than an investment-linked contract of insurance); or
- (j) a life insurance policy (within the meaning of section 2(1) of the Securities Act 1978) issued before 1 January 2009; or
- (ja) a DIMS facility, if the investment authority covers only category 2 products; or
- (k) any other product specified by the regulations; or
- (l) a renewal or variation of the terms or conditions of any existing category 2 product

**class of financial products** means a group of financial products with similar characteristics

**class service** has the meaning set out in section 15(3)

**client** has the meaning set out in section 5A

**client money** has the meaning set out in section 77B

**client property** has the meaning set out in section 77B

**code** means the code of professional conduct brought into force under section 94

**conduct obligation** means,—

- (a) in relation to a financial adviser, a QFE, or a member of a QFE group, an obligation described in section 32:
- (b) in relation to a broker, an obligation described in section 77J

**controlling owner** has the meaning set out in section 4 of the FSP Act

**conveyancing practitioner** has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006

**credit union** has the meaning set out in section 2 of the Friendly Societies and Credit Unions Act 1982

**Crown organisation** has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006

**custodial service** has the meaning set out in section 77B

**DIMS facility** means an agreement, arrangement, or understanding for the provision of a discretionary investment management service under an investment authority

**DIMS licensee** has the same meaning as in section 392(3) of the Financial Markets Conduct Act 2013

**director** means a director as defined in section 126 of the Companies Act 1993

**disclosure obligation** means,—

- (a) in relation to a financial adviser, a QFE, or a member of a QFE group, an obligation described in section 21;
- (b) in relation to a broker, an obligation described in section 77D

**discretionary investment management service** has the meaning set out in section 12

**dispose of** includes—

- (a) dispose of by allotting, withdrawing from, or terminating; and
- (b) agree to dispose of

**document** means—

- (a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and figures), images, or sounds from which symbols, images, or sounds can be derived, and includes—
  - (i) a label, marking, or other writing that identifies or describes a thing of which it forms part, or to which it is attached;
  - (ii) a book, map, plan, graph, or drawing;
  - (iii) a photograph, film, or negative; or
- (b) information electronically recorded or stored, and information derived from that information

**entity**—

- (a) includes a body corporate and an unincorporated body (including partners in a partnership, members of a joint venture, or the trustees of a trust) and the sole trustee of a trust acting in his, her, or its capacity as trustee of that trust; but
- (b) does not include an individual

**exempt provider** means—

- (a) a person to whom both of the following 2 subparagraphs apply (an **overseas financial adviser**):
  - (i) the person is not ordinarily resident in New Zealand (within the meaning of section 4 of the Crimes Act 1961) and does not have a place of business in New Zealand; and
  - (ii) no financial adviser services provided by the person are received by retail clients in New Zealand; and
- (b) a person who is exempted under section 148 of this Act or the regulations from the obligation to register by virtue of providing financial adviser services; and

- (c) a person who is excluded from the application of the FSP Act under section 7(2) and (3) of that Act or who is exempted, under the FSP Act, from the obligation to register (unless the exclusion or exemption is limited so that it does not apply in respect of financial adviser services)

**financial adviser** has the meaning set out in section 8

**financial adviser obligation** means an obligation of a financial adviser under this Act, the regulations, or the code

**financial adviser service** has the meaning set out in section 9

**financial markets legislation** has the same meaning as in section 4 of the Financial Markets Authority Act 2011

**financial product** means a category 1 product or a category 2 product

**financial service** means a financial service as defined in section 5 of the FSP Act (but excluding financial services provided by a person to whom section 7(2) or (3) of that Act applies)

**FMA** means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

**FMCA financial product** means each of the following within the meaning of the Financial Markets Conduct Act 2013:

- (a) an equity security:
- (b) a debt security:
- (c) a managed investment product:
- (d) a derivative

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

**incorporated law firm** has the meaning given by section 6 of the Lawyers and Conveyancers Act 2006

**individual** means a natural person

**information** includes a document

**investment authority** has the meaning set out in section 12(3)

**investment-linked contract of insurance** has the meaning set out in the regulations

**investment planning service** has the meaning set out in section 11

**issuer** has the same meaning as in section 11(1)(b) of the Financial Markets Conduct Act 2013

**lawyer** has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006

**lecturer** means a person who is employed by a university, Te Pūkenga—New Zealand Institute of Skills and Technology, or a Te Pūkenga—New Zealand

Institute of Skills and Technology subsidiary to teach or instruct students of the university, institute, or subsidiary

**licensed market** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

**licensed service** has the same meaning as in section 4 of the FSP Act

**local authority** has the same meaning as in section 5(1) of the Local Government Act 2002

**member of a QFE group** means a partner entity or an associated entity

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**nominated representative** means an individual who has been nominated by a QFE or by a partner entity in accordance with section 74 and whose nomination has not been terminated under that section

**non-profit organisation** means any organisation, whether incorporated or not, that is carried on other than for the purposes of profit or gain to an owner, member, or shareholder

**offeror** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

**on behalf of the business of another person or on behalf of another person's business** has the meaning set out in section 5I(1)

**overseas regulator** means a body in another country with functions corresponding to those of the FMA under this Act

**partner entity**, in relation to a QFE, means an entity that is part of the QFE

**personalised DIMS** has the meaning set out in section 15

**personalised service** has the meaning set out in section 15

**prescribed** means prescribed by regulations made under this Act

**principal officer** means a director or a person who occupies a position equivalent to that of a director (such as a trustee or partner)

**product disclosure statement** or **PDS** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

**product provider** means—

- (a) the issuer, in the case of an FMCA financial product:
- (b) the creditor, in the case of a consumer credit contract (within the meaning of the Credit Contracts and Consumer Finance Act 2003):

- (c) the insurer, in the case of a contract of insurance (other than an investment-linked contract of insurance):
- (ca) the person to whom the investment authority is granted, in the case of a DIMS facility:
- (d) the person specified by regulations, in any other case

**promoter** means, in relation to an FMCA financial product, a person who is instrumental in the formulation of a plan or programme pursuant to which the product is offered

**QFE** or **qualifying financial entity** means an entity described in section 63(1)(a) or a number of partner entities described in section 63(1)(b)

**QFE adviser** means an individual who is not an authorised financial adviser and who is—

- (a) an employee of a QFE or any member of a QFE group; or
- (b) a nominated representative of a QFE or a partner entity

**QFE group** means a group of entities that consists of—

- (a) the partner entities that are part of a QFE and the associated entities of that QFE, if any; or
- (b) in the case of a QFE that does not come within paragraph (a), that QFE and its associated entities

**qualified statutory accountant** has the same meaning as in section 5(1) of the Financial Reporting Act 2013

**real estate agent** means a person who is a licensee under the Real Estate Agents Act 2008

**record** includes—

- (a) any file, register, ledger, book of account, or passbook, and any reproduction or copy of them or any entry in any of them; and
- (b) any apparatus or equipment in or on which information is recorded, stored, or embodied in any form so as to be capable of being retrieved, reproduced, or processed by any means; and
- (c) any material by means of which information is supplied to, or derived from, any such apparatus or equipment

**register** means the register of financial service providers maintained under the FSP Act

**registered** means registered under the FSP Act in respect of a financial adviser service, and **registration** has a corresponding meaning

**registered bank** has the same meaning as in section 2(1) of the Reserve Bank of New Zealand Act 1989

**registered legal executive** means a person who is a member of the New Zealand Institute of Legal Executives Incorporated and holds a current annual registration certificate issued by that body

**registered valuer** has the same meaning as in section 2 of the Valuers Act 1948

**Registrar** means the Registrar of Financial Service Providers

**regulated offer** has the same meaning as in section 41 of the Financial Markets Conduct Act 2013

**regulations** means regulations made under this Act

**related**, in relation to a body corporate, has the same meaning as in section 12(2) of the Financial Markets Conduct Act 2013

**relevant service** has the meaning set out in section 14(3)

**retail client** has the meaning set out in section 5B

**standard conditions** means standard terms and conditions for the time being approved by the FMA under section 147A or 147C and in force under section 147D

**State services** has the meaning given to it in section 5 of the Public Service Act 2020

**State services employee** means an employee or chief executive in any part of the State services, whether paid by salary, wages, or otherwise

**statutory officer** means a person—

- (a) holding or performing the duties of an office established by an enactment; or
- (b) performing duties expressly conferred on that person by virtue of his or her office by an enactment; or
- (c) holding office as the chief executive of a Crown organisation

**Takeovers Code** means the takeovers code in force under the Takeovers Act 1993

**tax agent** has the same meaning as in section 3(1) of the Tax Administration Act 1994 and, for the purposes of this Act, includes a representative and nominated person as those terms are defined in section 3(1) of the Tax Administration Act 1994

**teacher** means a person in a teaching position in the general education system

**teaching position** has the same meaning as in section 10(1) of the Education and Training Act 2020

**trust account records**—

- (a) means records relating to a trust account; and

- (b) includes any information that relates to a trust account and that is recorded or stored by means of any tape recorder, computer, or other device, and any material subsequently derived from information so recorded or stored

**trustee corporation** means Public Trust, the Māori Trustee, or any corporation authorised by an Act to administer the estates of deceased persons and other trust estates (and any wholly owned subsidiary of that corporation that is guaranteed by the corporation)

**university** has the same meaning as in section 10(1) of the Education and Training Act 2020

**wholesale client** has the meaning set out in section 5C.

Section 5 **acting through**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **acquire**: inserted, on 1 December 2014, by section 12(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **advertisement**: substituted, on 1 July 2010, by section 8(2) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **approved dispute resolution scheme**: substituted, on 1 July 2010, by section 8(2) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **approved dispute resolution scheme**: amended, on 1 July 2014, by section 47 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 5 **approved rating agency**: substituted, on 1 February 2011, by section 241(2) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

Section 5 **approved rating agency**: amended, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Section 5 **associated entity**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **authorised**: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 5 **authorised advertisement**: repealed, on 1 July 2010, by section 8(3) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **bonus bond**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **broker**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **broker obligation**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **broking service**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **building society**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **call building society share**: inserted, on 1 December 2014, by section 12(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **call building society share** or **call credit union share**: repealed, on 1 December 2014, by section 12(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **call credit union share**: inserted, on 1 December 2014, by section 12(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **call debt security**: substituted, on 1 July 2010, by section 8(2) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **category 1 product**: replaced, on 1 December 2014, by section 12(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **category 2 product**: substituted, on 1 July 2010, by section 8(2) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **category 2 product** paragraph (ja): inserted, on 1 December 2014, by section 12(4) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **chartered accountant**: repealed, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Section 5 **class of financial products**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **class service**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **client**: substituted, on 1 July 2010, by section 8(2) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **client money**: replaced, on 1 December 2014, by section 12(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **client property**: replaced, on 1 December 2014, by section 12(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **college of education**: repealed, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Section 5 **Commission**: repealed, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 5 **Commissioner for Financial Advisers** or **Commissioner**: repealed, on 1 May 2011, by section 5 of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 5 **conduct obligation**: substituted, on 1 July 2010, by section 8(2) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **controlling owner**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **conveyancing practitioner**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **credit union**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **custodial service**: inserted, on 1 December 2014, by section 12(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **DIMS facility**: inserted, on 1 December 2014, by section 12(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **DIMS licensee**: inserted, on 1 December 2014, by section 12(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **disclosure obligation**: substituted, on 1 July 2010, by section 8(2) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **discretionary investment management service**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **entity**: substituted, on 1 July 2010, by section 8(2) of the Financial Advisers Amendment Act 2010 (2010 No 40).



Section 5 **exempt provider**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **financial adviser service**: substituted, on 1 July 2010, by section 8(2) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **financial markets legislation**: inserted, on 1 December 2014, by section 12(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **financial planning service**: repealed, on 1 July 2010, by section 8(3) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **financial service**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **FMA**: inserted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 5 **FMCA financial product**: inserted, on 1 December 2014, by section 12(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **futures contract**: repealed, on 1 December 2014, by section 12(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **general education system**: repealed, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Section 5 **incorporated law firm**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **information**: inserted, on 1 December 2014, by section 12(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **investment authority**: inserted, on 1 December 2014, by section 12(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **investment-linked contract of insurance**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **investment planning service**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **investment statement**: repealed, on 1 December 2014, by section 12(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **investment transaction**: repealed, on 1 July 2010, by section 8(3) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **issuer**: replaced, on 1 December 2014, by section 12(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **lecturer**: replaced, on 25 September 2020, by clause 4(2) of the Education (Name Change for NZIST) Order 2020 (LI 2020/260).

Section 5 **licensed market**: inserted, on 1 December 2014, by section 12(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **life insurance policy**: repealed, on 1 July 2010, by section 8(3) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **local authority**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **member of a QFE group**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **nominated representative**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **non-profit organisation**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **NZIST**: repealed, on 25 September 2020, by clause 4(2) of the Education (Name Change for NZIST) Order 2020 (LI 2020/260).

Section 5 **offeror**: inserted, on 1 December 2014, by section 12(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **on behalf of the business of another person or on behalf of another person's business**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **overseas regulator**: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 5 **partner entity**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **personalised DIMS**: inserted, on 1 December 2014, by section 12(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **personalised service**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **polytechnic**: repealed, on 1 April 2020, by section 78(1) of the Education (Vocational Education and Training Reform) Amendment Act 2020 (2020 No 1).

Section 5 **product disclosure statement or PDS**: inserted, on 1 December 2014, by section 12(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **product provider**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **product provider** paragraph (a): replaced, on 1 December 2014, by section 12(5) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **product provider** paragraph (ca): inserted, on 1 December 2014, by section 12(6) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **promoter**: replaced, on 1 December 2014, by section 12(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **prospectus**: repealed, on 1 December 2014, by section 12(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **QFE or qualifying financial entity**: substituted, on 1 July 2010, by section 8(2) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **QFE adviser**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **QFE group**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **qualified statutory accountant**: inserted, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Section 5 **registered**: substituted, on 1 July 2010, by section 8(2) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **registered exchange**: repealed, on 1 December 2014, by section 12(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **registered legal executive**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **regulated offer**: inserted, on 1 December 2014, by section 12(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **related**: inserted, on 1 December 2014, by section 12(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **related body corporate**: repealed, on 1 December 2014, by section 12(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **related company**: repealed, on 1 July 2010, by section 8(3) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **relevant service**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **retail client**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **security**: repealed, on 1 December 2014, by section 12(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5 **standard conditions**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **standard conditions**: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 5 **State services**: amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 5 **statutory officer**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **tax agent**: amended, on 18 March 2019, by section 367 of the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019 (2019 No 5).

Section 5 **teaching position**: amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Section 5 **trust account**: repealed, on 1 July 2010, by section 8(3) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **trustee corporation**: inserted, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5 **university**: amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Section 5 **wholesale client**: added, on 1 July 2010, by section 8(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

## 5A Who are clients

- (1) For the purposes of this Act, a **client**—
- (a) means a person who receives a service (whether or not on payment of a charge); and
  - (b) in relation to a broking 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 any 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 members of a QFE group.

---

**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 would be a client of A for the purposes of this Act.

---

- (2) Subsection (1) applies whether the person providing or receiving the service is the person carrying on the business, a controlling owner, a director, an agent, or any other person.

Section 5A: inserted, on 1 July 2010, by section 9 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5A(1)(b): amended, on 1 April 2014, by section 13 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**5B Who are retail clients**

A **retail client** is a client of a financial adviser or broker who is not a wholesale client.

Section 5B: inserted, on 1 July 2010, by section 9 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**5C Who are wholesale clients**

- (1) The following clients of a financial adviser or broker are **wholesale clients** in respect of a financial adviser service or a broking service (unless the person has opted out from being a wholesale client under section 5G):

- (a) any other financial adviser or broker who receives the service in the course of business as a financial adviser or broker:
- (b) a person who is in the business of providing any other financial service and receives the financial adviser service or broking service in the course of that business:
- (c) *[Repealed]*
- (d) (except in respect of a discretionary investment management service) an entity to which at least 1 of the following applied at the end of each of the last 2 completed accounting periods:
  - (i) at the balance date, the net assets of the entity exceeded \$1 million:
  - (ii) the turnover of the entity for the accounting period exceeded \$1 million:
- (e) a related body corporate of an entity to which paragraph (d) applies:
- (f) a person who is a wholesale investor within the meaning of clause 3(2) of Schedule 1 of the Financial Markets Conduct Act 2013 (*see* subsection (3)):

- (g) a person who is, in relation to an offer of FMCA financial products, a wholesale investor within the meaning of clause 3 of Schedule 1 of the Financial Markets Conduct Act 2013 if the service relates to that offer or to FMCA financial products that have been acquired by that person under that offer:
  - (ga) a person who is, in relation to an offer of FMCA financial products, a close business associate of the offeror, or a relative of the offeror or of a director of the offeror, within the meaning of clauses 4 and 5 of Schedule 1 of the Financial Markets Conduct Act 2013 if the service relates to that offer or to FMCA financial products that have been acquired by that person under that offer:
  - (gb) a person who is, in relation to a DIMS facility provided by a DIMS licensee, a wholesale investor under clause 36(b) of Schedule 1 of the Financial Markets Conduct Act 2013 if the service relates to that DIMS facility:
  - (h) an eligible investor under section 5D.
- (2) If subsection (1) 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.
- (3) The relevant time, for the purposes of applying Schedule 1 of the Financial Markets Conduct Act 2013 under subsection (1)(f), must be treated as the time immediately before the service is received by the client.

Section 5C: inserted, on 1 July 2010, by section 9 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5C(1)(c): repealed, on 1 December 2014, by section 14(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5C(1)(d): amended, on 1 December 2014, by section 14(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5C(1)(f): replaced, on 1 December 2014, by section 14(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5C(1)(g): replaced, on 1 December 2014, by section 14(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5C(1)(ga): inserted, on 1 December 2014, by section 14(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5C(1)(gb): inserted, on 1 December 2014, by section 14(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5C(3): replaced, on 1 December 2014, by section 14(4) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

## **5D Who are eligible investors**

- (1) A client is an eligible investor if—
- (a) the client certifies in writing that—
    - (i) the client has sufficient knowledge, skills, or experience in financial matters to assess the value and risks of financial products; and

- (ia) the client has sufficient knowledge, skills, or experience in financial matters to assess the merits of the service or services to be provided (including to assess its value and the risks involved); and
  - (ii) the client understands the consequences of certifying himself, herself, or itself to be an eligible investor (including that the competency standards and requirements of the code will not be applicable (if relevant) and that the financial adviser or broker may not be a member of an approved dispute resolution scheme); and
  - (b) the client states the reasons for this certification; and
  - (c) a financial adviser, a QFE, or a broker signs a written acceptance of the certification in accordance with section 5E.
- (2) A certification may be specific to a particular service or class of services or may be general (but is effective only in relation to services provided after all of the requirements of subsection (1)(a) to (c) are met).
- (3) A certification relating only to a discretionary investment management service or a broking service (or both) does not need to certify as to the matters referred to in subsection (1)(a)(i).

Section 5D: inserted, on 1 July 2010, by section 9 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5D(1)(a)(i): replaced, on 1 December 2014, by section 15 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5D(1)(a)(ia): inserted, on 1 December 2014, by section 15 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### **5E Acceptance of certification**

- (1) A financial adviser, a QFE, or a broker must not accept a certification unless he, she, or it, having considered the client's reasons for the certification,—
- (a) is satisfied that the client has been sufficiently advised of the consequences of the certification; and
  - (b) has no reason to believe that the certification is incorrect or that further information or investigation is required as to whether or not the certification is correct.
- (2) The person who accepts the certification of a client may be the financial adviser or broker for the client (but does not need to be).
- (3) A financial adviser (other than an authorised financial adviser or QFE) or broker who accepts a certification without having complied with subsection (1) contravenes a wholesale certification requirement.
- (4) Contravention of this section may give rise to a pecuniary penalty order or compensatory order (*see* sections 137K and 137L).

Section 5E: inserted, on 1 July 2010, by section 9 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**5F Revocation of certification**

- (1) A client who is an eligible investor may revoke a certification, in relation to a financial adviser or broker to whom the certification has been given, by giving the financial adviser or broker a signed notification to that effect.
- (2) A revocation is effective only in relation to services provided after it is given.

Section 5F: inserted, on 1 July 2010, by section 9 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**5G How to opt out of being wholesale client**

- (1) A person may opt out of being a wholesale client, in relation to a financial adviser or broker, by giving the financial adviser or broker a signed notification to that effect.
- (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 adviser or broker to whom it is given.
- (3) A person may vary or revoke a notification in the same way as the notification may be given.
- (4) A notification (or variation or revocation of a notification) under this section is effective only in relation to services provided after it is given.
- (5) This section does not apply if a person is a wholesale client by reason of being an eligible investor under section 5D.

Section 5G: inserted, on 1 July 2010, by section 9 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 5G(5): amended, on 1 December 2014, by section 16 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**5H Giving revocation of certification or notification of opt out**

- (1) A revocation of a certification under section 5F or a notification under section 5G is sufficiently given to a financial adviser or broker if—
  - (a) provided to the financial adviser or broker; or
  - (b) delivered or posted to the financial adviser or broker at the person's business address stated on the register under the FSP Act or (if not registered) the person's last known place of business in New Zealand; or
  - (c) sent by fax or email to the person's fax number or email address stated on the register under the FSP Act.
- (2) The revocation or notification is treated as received by the person no later than 7 days after it is posted or 2 days after it is faxed or 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).

Section 5H: inserted, on 1 July 2010, by section 9 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**5I Meaning of acting on behalf of B's business and acting through A**

- (1) In this Act, a person (A) provides services acting **on behalf of the business of another person (B)** or **on behalf of B's business** if—
- (a) A is a director, an employee, or an agent (including a nominated representative or a contractor) of B and is acting within the scope of his or her actual or apparent authority; or
  - (b) A is acting at the direction or with the consent or agreement (whether express or implied) of—
    - (i) B; or
    - (ii) a director, an employee, or an agent (including a nominated representative or a contractor) of B and the direction, consent, or agreement given is within the scope of the actual or apparent authority of the director, employee, or agent.
- (2) If A is providing services on behalf of B's business, then B is **acting through A** to provide those services.

Section 5I: inserted, on 1 July 2010, by section 9 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**6 Act binds the Crown**

This Act binds the Crown.

**Part 2****Financial advisers and their disclosure and conduct obligations****7 Outline**

- (1) This Part is divided into 3 subparts.
- (2) Subpart 1 defines what a financial adviser service is and what financial advice is, and other key related definitions.
- (3) Subpart 1A sets out the restrictions on providing financial adviser services and the restrictions on persons holding themselves out as certain kinds of advisers.
- (4) Subpart 2 describes the disclosure and conduct obligations of a financial adviser under this Act and when they apply.

Section 7: substituted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).



## Subpart 1—Key definitions for financial adviser services

Subpart 1: substituted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

### *What are financial adviser services*

Heading: inserted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

#### **8 Who is financial adviser**

- (1) A financial adviser is a person who provides a financial adviser service.
- (2) *See* section 16 for the types of financial advisers and sections 20D to 20F for how the Act's requirements apply in the case of a person who provides a financial adviser service on behalf of another person's business.

Section 8: substituted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

#### **9 What is financial adviser service**

- (1) A person (A) provides a financial adviser service if, in the ordinary course of a business, A provides any of the services listed in subsection (3) to a client.
- (2) A person (A) also provides a financial adviser service if, in the course of business of a financial service provider registered under the FSP Act, A provides any of the services in subsection (3) to a client.
- (3) The services are—
  - (a) giving financial advice (*see* section 10):
  - (b) providing an investment planning service (*see* section 11):
  - (c) providing a discretionary investment management service (*see* section 12).
- (4) A person does not provide a financial adviser service for the purposes of this Act if exempted under section 13, 14, or 148 or in the regulations.

Section 9: substituted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

#### **10 When person gives financial advice**

- (1) A person (A) gives financial advice if A makes a recommendation or gives an opinion in relation to acquiring or disposing of (including refraining from acquiring or disposing of) a financial product.
- (2) Whether or not advice is financial advice for the purposes of this Act is not affected by how the advice is given or communicated.
- (3) However, a person does not give financial advice for the purposes of this Act merely by—
  - (a) providing information (for example, the cost or terms and conditions of a financial product); or

- (b) making a recommendation or giving an opinion relating to a class of financial products; or
- (c) making a recommendation or giving an opinion about the procedure for acquiring or disposing of a financial product; or
- (d) transmitting the financial advice of another person (unless A gives A's own financial advice in doing so or holds out the transmitted financial advice as A's own financial advice); or
- (e) recommending that a person consult a financial adviser.

Section 10: substituted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

## 11 When person provides investment planning service

- (1) A person (A) provides an investment planning service if A designs, or offers to design, a plan for an individual that—
  - (a) is based on, or purports to be based on, an analysis of the individual's current and future overall financial situation (which must include his or her investment needs) and identification of the individual's investment goals; and
  - (b) includes 1 or more recommendations or opinions on how to realise those goals (or 1 or more of them).
- (2) A service may be an investment planning service regardless of whether the analysis and identification is of the individual's particular financial situation and goals or of the financial situations and goals attributable to the class of persons that the individual is identified as coming within.

Section 11: substituted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

## 12 When person provides discretionary investment management service

- (1) A person (A) provides a discretionary investment management service if A—
  - (a) decides which FMCA financial products to acquire or dispose of on behalf of a client (B); and
  - (b) in doing so is acting under an authority granted to A (or A's employer or principal) to manage some or all of B's holdings of FMCA financial products.
- (2) In determining whether A has that authority, it does not matter if B has the right to be consulted on, or to countermand, A's decisions.
- (3) For the purposes of this Act, the authority referred to in subsection (1)(b) is the **investment authority**.

Section 12: substituted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 12(1)(a): amended, on 1 December 2014, by section 17(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 12(1)(b): amended, on 1 December 2014, by section 17(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 12(3): inserted, on 1 December 2014, by section 17(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### 13 Exemption for incidental service

- (1) A service is not a financial adviser service for the purposes of this Act if the service is provided only as an incidental part of another business that is not otherwise a financial service or does not have, as its principal activity, the provision of another financial service.
- (2) In addition, a service is not a financial adviser service if—
  - (a) it is provided in connection with providing credit under a credit contract; and
  - (b) both the service and the credit are provided as an incidental part of another business that is not otherwise a financial service or does not have, as its principal activity, the provision of another financial service.
- (3) In this section, a service is **incidental** to another business if it is carried on to facilitate the carrying out of another business, or is ancillary to another business.
- (4) Regulations may declare a class of service provided in the course of a class of business to be incidental, or that a class of business is not a financial service, for the purposes of subsection (1).

Section 13: substituted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

### 14 Other exemptions

- (1) None of the following is a financial adviser service for the purposes of this Act:

*Other occupations*

  - (a) a teacher, lecturer, journalist, or State services employee providing a relevant service in the course of that occupation;
  - (b) a Minister of the Crown providing a relevant service in the course of his or her duties as a Minister of the Crown;
  - (c) a member of Parliament providing a relevant service in the course of his or her duties as a member of Parliament;
  - (d) a lawyer, incorporated law firm, conveyancing practitioner, qualified statutory accountant, tax agent, real estate agent, registered legal executive, registered valuer, or any other exempted class of service provider (as specified in the regulations) providing a relevant service in the ordinary course of business of that kind:

*Crown-related organisations and other statutory officers and organisations*

- (e) a statutory officer, a Crown organisation (other than Public Trust), or the Reserve Bank of New Zealand—
  - (i) discharging any duties or exercising any powers of the statutory officer, the Crown organisation, or the Reserve Bank of New Zealand under any enactment; or
  - (ii) doing anything that is incidental to the discharge of the functions of the statutory officer, the Crown organisation, or the Reserve Bank of New Zealand under any enactment:

*Non-profit organisations, workplace financial products, and trustee corporations*

- (f) a non-profit organisation providing a relevant service if the relevant service is provided, without charge, in the course of the organisation's activities:
- (g) an employer providing a relevant service to an employee in connection with a financial product made available through the employee's workplace:
- (h) a trustee corporation providing a relevant service in the ordinary course of providing—
  - (i) legal or financial services relating to the preparation or drafting of a will; and
  - (ii) estate management and administration services (and associated legal, financial, and other services carried out under the relevant enactment governing the trustee corporation):

*Activities governed by other regulatory frameworks*

- (i) a principal officer of any entity providing a relevant service in the person's capacity as a principal officer:
- (j) the offeror or target company providing a relevant service in the course of a takeover offer under the Takeovers Code:
- (k) an independent adviser providing a relevant service in the course of that person's functions under the Takeovers Code:
- (ka) a person providing a relevant service that is—
  - (i) covered by a market services licence for discretionary investment management services under the Financial Markets Conduct Act 2013; or
  - (ii) exempted, by section 389 (other than by section 389(2)(b)) of that Act or otherwise by or under that Act, from the licensing requirement under section 388(c) of that Act:

- (l) an approved rating agency providing a relevant service in connection with a rating given or to be given by it:
  - (m) any form of communication made by or on behalf of an issuer or offeror to a person that is contained in, or given in connection with, an offer of FMCA financial products to that person that does not require disclosure under Part 3 of the Financial Markets Conduct Act 2013 because of any 1 or more of clauses 3 to 5 of Schedule 1 of that Act:
  - (n) *[Repealed]*  
*Documents required by law*
  - (o) providing or making available to a person any of the following documents or information:
    - (i) a product disclosure statement, a disclosure document under clause 26 of Schedule 1 of the Financial Markets Conduct Act 2013, information from a register entry (within the meaning of that Act), information under subpart 4 of Part 3 of that Act, or an advertisement referred to in section 89 of that Act:
    - (ii) a document or information that is required by law to be provided or made available (for example, an annual report of a company), whether directly or as a condition of carrying out any activity or as a condition of an exemption from any enactment:
    - (iii) any other exempted document or information (as specified in the regulations):  
*Services provided to product provider*
  - (p) a person providing a relevant service to a product provider in connection with a financial product of that provider in the course of an appointment by, or under a contract for services with, the product provider:  
*Other exemptions in regulations*
  - (q) any other person providing a relevant service in circumstances exempted under the regulations.
- (2) If subsection (1) 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.
- (2A) However, subsections (1)(ka) and (2) do not limit the application of the terms and conditions of authorisation or the code to an authorised financial adviser (*see* sections 55(2) and 86(6)).
- (3) In this section, **relevant service** means a service that, but for subsection (1), would be a financial adviser service.

Section 14: substituted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 14(1)(d): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Section 14(1)(ka): inserted, on 1 December 2014, by section 18(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 14(1)(m): replaced, on 1 December 2014, by section 18(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 14(1)(n): repealed, on 1 December 2014, by section 18(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 14(1)(o)(i): replaced, on 1 December 2014, by section 18(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 14(2A): inserted, on 1 December 2014, by section 18(4) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

*When financial adviser service is personalised service or class service*

Heading: inserted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**15 When financial adviser service is personalised service or class service**

- (1) A financial adviser service is a **personalised service** if—
- (a) it is given to, or in respect of, a named client or a client that is otherwise readily identifiable by the financial adviser; and
  - (b) either—
    - (i) the financial adviser has taken into account the client’s particular financial situation or goals (or any 1 or more of them) in providing the service; or
    - (ii) a client would, in the circumstances in which the service is provided, reasonably expect the financial adviser to take into account the client’s particular financial situation or goals (or any 1 or more of them).
- (2) A service is not personalised merely because the client comes within a class of persons having predefined characteristics and the financial adviser takes the fact that the client comes within that class into account.
- (2A) Subsection (1) does not apply to a discretionary investment management service and, in this case, the service is a **personalised service** or a **personalised DIMS** if—
- (a) the service is provided to a named client or a client who is otherwise readily identifiable by the financial adviser exercising the investment authority under that service; and
  - (b) the investment strategy implemented in, or to be applied under, the investment authority has been designed to take account of the client’s particular financial situation and goals or any 1 or more of them (rather than merely being customised from an investment strategy that applies to a class of clients, for example, by selecting options or by making minor changes to the class strategy or authority).
- (3) A financial adviser service is a **class service** if it is not a personalised service.

Section 15: substituted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 15(2A): inserted, on 1 December 2014, by section 19 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### Subpart 1A—Restrictions on providing financial adviser services

Subpart 1A: inserted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

## 16 Types of financial adviser

Under this Act, there are the following types of financial adviser:

- (a) an authorised financial adviser:
- (b) an individual who is registered but not authorised:
- (c) a QFE adviser:
- (d) a QFE or any other entity that is registered but does not have QFE status:
- (e) any other person (whether an individual or an entity) who is an exempt provider.

Section 16: substituted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

### *Restrictions on providing financial adviser services*

Heading: inserted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

## 17 Who may provide financial adviser service

- (1) A person must not provide a financial adviser service unless—
  - (a) the person is permitted to provide that service under sections 18 to 20; or
  - (b) the person is—
    - (i) registered or an exempt provider; and
    - (ii) acting through a person to whom paragraph (a) applies (other than a QFE adviser); or
  - (c) the person is a QFE or a member of a QFE group acting through a QFE adviser to whom paragraph (a) applies.
- (1A) Sections 18 to 20 only permit a person to provide a service to the extent that the service is within the scope of the person's authorisation, registration, or grant of QFE status (including, in the case of a QFE adviser, taking into account any limitation imposed under section 67A or 75B(4)).
- (2) Contraventions of this section may give rise to an offence (*see* section 114).

Section 17: substituted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 17(1A): inserted, on 1 December 2014, by section 20 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**18 Who is permitted to provide personalised service to retail clients**

- (1) The following individuals are permitted to provide a personalised service to a retail client:
- (a) if giving financial advice in relation to a category 1 product,—
    - (i) an authorised financial adviser:
    - (ii) a QFE adviser (but only if the QFE or a member of the QFE group is the product provider (or, in the case of an FMCA financial product, a promoter) of the relevant category 1 product):
  - (b) if providing an investment planning service, an authorised financial adviser:
  - (c) if giving financial advice in relation to a category 2 product,—
    - (i) an authorised financial adviser:
    - (ii) a registered individual:
    - (iii) a QFE adviser:
  - (d) if providing a discretionary investment management service, an authorised financial adviser.

(2) *[Repealed]*

Section 18: substituted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 18(1)(a): amended, on 1 December 2014, by section 21(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 18(1)(a)(ii): replaced, on 1 December 2014, by section 21(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 18(1)(c): amended, on 1 December 2014, by section 21(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 18(1)(d): inserted, on 1 December 2014, by section 21(4) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 18(2): repealed, on 1 December 2014, by section 21(5) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**19 Who is permitted to provide class service to retail clients**

- (1) The following persons are permitted to provide a class service to a retail client:
- (a) an authorised financial adviser:
  - (b) a QFE adviser:
  - (c) a registered person (whether an individual or an entity):
  - (d) an exempt provider (whether an individual or an entity), other than an overseas financial adviser (*see* paragraph (a) of the definition of exempt provider in section 5).
- (2) However,—



- (a) subsection (1) does not permit a person to provide a class service that is a discretionary investment management service; and
- (b) *see* Part 6 of the Financial Markets Conduct Act 2013 under which persons may be licensed as DIMS licensees or services may be exempted.

Section 19: substituted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 19(2): inserted, on 1 December 2014, by section 22 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

## **20 Who is permitted to provide financial adviser service to wholesale clients**

The following persons are permitted to provide a financial adviser service to a wholesale client:

- (a) an authorised financial adviser:
- (b) a QFE adviser:
- (c) a registered person (whether an individual or an entity):
- (d) an exempt provider (whether an individual or an entity).

Section 20: substituted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

### *Restrictions on holding out*

Heading: inserted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

## **20A Who may hold themselves out as authorised financial adviser**

- (1) A person (**A**) must not hold out (whether directly or indirectly) that A or any other person (**B**) is an authorised financial adviser unless A or B (as applicable) is an authorised financial adviser.
- (1A) A person (**A**) must not hold out (whether directly or indirectly) that A, or any other person (**B**), is authorised for any financial adviser service unless that service is within the scope of A's or B's (as applicable) authorisation.
- (2) Contraventions of this section may give rise to an offence (*see* section 115).

Section 20A: inserted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 20A(1A): inserted, on 1 December 2014, by section 23 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

## **20B Who may hold themselves out as financial planner or investment planner**

- (1) A person (**A**) must not hold out (whether directly or indirectly) that A or any other person (**B**) is—
  - (a) a financial planner or an investment planner unless A or B (as applicable) is an authorised financial adviser who is authorised to provide investment planning services under section 55:

- (b) offering a financial or an investment planning service unless A or B (as applicable) is—
  - (i) an authorised financial adviser who is authorised to provide investment planning services under section 55; or
  - (ii) acting through an authorised financial adviser who is so authorised.
- (2) Contraventions of this section may give rise to an offence (*see* section 115).

Section 20B: inserted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

### **20C Who may hold themselves out as QFE or having QFE status**

- (1) A person (A) must not hold out (whether directly or indirectly) that A or any other person (B) is a QFE or has QFE status unless A or B (as applicable) is a QFE or a partner entity.
- (2) Contraventions of this section may give rise to an offence (*see* section 115).

Section 20C: inserted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

#### *Persons acting in course of business of employers and principals*

Heading: inserted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

### **20D Application of FSP Act to employees, etc**

Any person required, by this Act, to register to provide a financial adviser service must be treated, under the FSP Act, as being in the business of providing a financial service for the purposes of that Act (even if the person does not carry on that business).

Section 20D: inserted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

### **20E Who must be member of dispute resolution scheme**

A person (A) who provides a financial adviser service on behalf of the business of another person (B) is exempt from the obligation under section 48 of the FSP Act to be a member of an approved dispute resolution scheme for the purposes of registration if—

- (a) B is a member of an approved dispute resolution scheme; and
- (b) A's obligation to be a member of an approved dispute resolution scheme arises only by virtue of the financial adviser services provided on behalf of B's business.

Section 20E: inserted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**20F Who is responsible for financial adviser obligations**

- (1) If a financial adviser service is provided by a person (A) on behalf of the business of another person (B), the following persons are treated as the financial adviser having the financial adviser obligation under this Act:
  - (a) if it is a personalised service provided to a retail client (unless paragraph (b) applies), both A and B;
  - (b) if A is a QFE adviser and B is the QFE or a member of a QFE group, B only;
  - (c) in any other case, B only.
- (2) If B has a financial adviser obligation under subsection (1),—
  - (a) any act or omission by A is also treated as being done by B; and
  - (b) if it is necessary to show the state of mind of B, it is sufficient to show that A had that state of mind.
- (3) However, subsection (1) does not apply to the financial adviser obligations in sections 37 and 45 (which apply to A only).
- (4) Subsections (1) to (3) do not affect the liability of A or B under any other Act or rule of law for A's actions.

Section 20F: inserted, on 1 July 2010, by section 10 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**Subpart 2—Financial advisers' disclosure and conduct obligations**

*Disclosure obligations for personalised services for retail clients*

Heading: substituted, on 1 July 2010, by section 11 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**21 What is disclosure obligation and when does it apply**

- (1) A disclosure obligation under this Part is an obligation to make disclosure under or in accordance with sections 22 to 31.
- (2) A disclosure obligation applies only to a personalised service provided to a retail client.
- (3) Contravention of a disclosure obligation may give rise to an offence (*see* section 117).

Section 21: substituted, on 1 July 2010, by section 11 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**22 Financial adviser must make disclosure before providing personalised service to retail client**

- (1) A financial adviser who provides a personalised service to a retail client must disclose prescribed information to the client, in accordance with this Act and the regulations,—
  - (a) before providing the service; or

- (b) if not practicable before, as soon as practicable after providing the service.
- (1A) However, an authorised financial adviser who provides a personalised DIMS to a retail client must instead disclose prescribed information to the client, in accordance with this Act and the regulations,—
  - (a) both—
    - (i) before the investment authority is granted; and
    - (ii) before any exercise of the investment authority (unless there has been previous disclosure that is not out of date under section 29);  
or
  - (b) if not practicable before, as soon as practicable after the time applying under paragraph (a).
- (2) Subsection (1) does not apply to a QFE adviser acting in that capacity.

Section 22: substituted, on 1 July 2010, by section 11 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 22(1A): inserted, on 1 December 2014, by section 24 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

## 23 What financial adviser must disclose

- (1) Regulations for the purposes of prescribing disclosure for financial advisers under section 22 may require disclosure,—
  - (a) for authorised financial advisers, in relation to any or all of the matters referred to in subsection (2).
  - (b) for other financial advisers, in relation to any or all of the matters referred to in subsection (2)(a) to (g).
- (2) The matters are—
  - (a) contact details:
  - (b) the type of financial adviser:
  - (c) financial adviser services provided (including financial products in relation to which a financial adviser service is provided):
  - (ca) information relating to any discretionary investment management service or any broking service provided:
  - (d) fees:
  - (e) material interests, relationships, or associations:
  - (f) remuneration:
  - (g) dispute resolution arrangements:
  - (h) professional or business experience relevant to performance of a financial adviser service:
  - (i) criminal convictions:

- (j) disciplinary proceedings:
- (k) adverse findings by a court or the FMA:
- (l) bankruptcy or other insolvency proceedings:
- (m) indemnity insurance:
- (n) matters required to be disclosed by the authorised financial adviser's terms and conditions of authorisation.

Section 23: substituted, on 1 July 2010, by section 11 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 23(2)(ca): inserted, on 1 December 2014, by section 25 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 23(2)(k): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

## **24 Disclosure statement**

- (1) Disclosure under section 22(1) must be made by 1 or more disclosure statements in accordance with the regulations.
- (2) A disclosure statement must—
  - (a) be in writing; and
  - (b) state when it was prepared; and
  - (c) state the name, address, trading name (if any), telephone number, fax number, and email address of the financial adviser; and
  - (d) be—
    - (i) provided to the client; or
    - (ii) delivered or sent to the client at the client's last known address or an address (including an electronic address) specified by the client for that purpose.
- (3) Regulations may provide for the form that a disclosure statement must take.

Section 24: substituted, on 1 July 2010, by section 11 of the Financial Advisers Amendment Act 2010 (2010 No 40).

## **25 QFE must make disclosure before personalised service provided to retail client**

- (1) A QFE or a member of a QFE group that, acting through a QFE adviser, provides a personalised service to a retail client must ensure that prescribed information is disclosed to the client, in accordance with this Act and the regulations,—
  - (a) before the service is provided; or
  - (b) if not practicable before, as soon as practicable after the service is provided.
- (2) Regulations for the purposes of this section may require disclosure in relation to any or all of the following matters:

- (a) contact details:
  - (b) the type of financial adviser:
  - (c) dispute resolution arrangements:
  - (d) matters required to be disclosed by the QFE's terms and conditions of a grant of QFE status:
  - (e) whether the QFE or member of the QFE group provides any other licensed service.
- (3) Regulations may provide for the form that the disclosure must take.
- Section 25: substituted, on 1 July 2010, by section 11 of the Financial Advisers Amendment Act 2010 (2010 No 40).

## **26 Disclosure by qualifying financial entity**

*[Repealed]*

Section 26: repealed, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

## **27 Disclosure must not be misleading, deceptive, or confusing**

Disclosure under a disclosure obligation must not be misleading, deceptive, or confusing at the time that the disclosure is made.

## **28 Disclosure of additional information**

- (1) Disclosure of the matters that must be disclosed under a disclosure obligation may be accompanied by disclosure of additional information.
- (2) Additional disclosure that accompanies disclosure under a disclosure obligation must not be deceptive, misleading, or confusing at the time that it is made.

## **29 No compliance with disclosure obligations if disclosure out of date**

- (1) Previous disclosure does not discharge a person's disclosure obligation if the previous disclosure is out of date when the financial adviser service is performed or, in the case of a discretionary investment management service, the investment authority is exercised.
- (2) The previous disclosure is out of date if—
  - (a) since the date of the disclosure there has been a material change in any matter that must be disclosed; and
  - (b) a reasonable person in the position of the person for whom the financial adviser service is performed (**A**) would consider that the change would materially affect any of the following decisions by **A**:
    - (i) to proceed with a financial adviser service by the financial adviser in question (**B**):
    - (ii) to proceed with financial advice already given by **B**:
    - (iii) about the weight that **A** gives to financial advice by **B**:

- (iv) to postpone or countermand the performance of a financial adviser service or, in the case of a discretionary investment management service, change any instruction in relation to the service.
- (3) Subsection (1) does not apply if—
  - (a) the previous disclosure was by way of a disclosure statement; and
  - (b) before the financial adviser service is performed, B gives A—
    - (i) a new disclosure statement that is up to date; or
    - (ii) additional written information that, when read with the original disclosure statement, updates the disclosure statement.

Section 29(1): amended, on 1 December 2014, by section 26(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 29(2)(b)(iv): amended, on 1 December 2014, by section 26(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### **29A Further prescribed information to be made available to clients of discretionary investment management service**

- (1) An authorised financial adviser who provides a personalised DIMS to a retail client must, at the request of the client or at the prescribed times or on the occurrence of the prescribed events, make available to the client the information that is required to be made available under this section by the regulations.
- (2) The information must be made available in the prescribed manner.
- (3) The information must, if required by the regulations, be presented, calculated, or prepared in accordance with the frameworks and methodologies specified in notices issued by the FMA under subpart 4 of Part 9 of the Financial Markets Conduct Act 2013 (if any).

Section 29A: inserted, on 1 December 2014, by section 27 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### **30 Advertisement advertising financial adviser services by authorised financial adviser must refer to disclosure statement**

Any advertisement advertising financial adviser services by an authorised financial adviser must state that a disclosure statement is available, on request and free of charge.

### **31 Disclosure by 2 or more financial advisers in joint disclosure statement**

- (1) Subject to regulations being made under subsection (3), disclosure may be made by 2 or more financial advisers in a joint disclosure statement.
- (2) A joint disclosure statement must—
  - (a) comply with section 24(2)(a) to (c); and
  - (b) comply with regulations prescribing the form of the joint disclosure statement; and
  - (c) be—

- (i) provided to the client; or
  - (ii) delivered or sent to the client at the client's last known address or an address (including an electronic address) specified by the client for that purpose.
- (3) Regulations may prescribe—
- (a) when, and subject to what terms and conditions, disclosure may be made in a joint disclosure statement; and
  - (b) the form of a joint disclosure statement.

Section 31(2)(c): substituted, on 1 July 2010, by section 12 of the Financial Advisers Amendment Act 2010 (2010 No 40).

### *Conduct obligations*

#### **32 What is conduct obligation and when does it apply**

- (1) A conduct obligation under this Part is an obligation under sections 33 to 48.
- (2) The conduct obligations in—
  - (a) sections 33 to 35 apply to all financial adviser services:
  - (b) section 36 applies to a class service provided to a retail client:
  - (c) sections 37 to 45A apply to an authorised financial adviser:
  - (d) sections 46 to 48 apply to a QFE and (in some cases) members of a QFE group, irrespective of the type of service.

Section 32: substituted, on 1 July 2010, by section 13 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 32(2)(c): replaced, on 1 December 2014, by section 28 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

#### *Conduct obligations that apply to all financial advisers*

*[Repealed]*

Heading: repealed, on 1 July 2010, by section 13 of the Financial Advisers Amendment Act 2010 (2010 No 40).

#### **33 Financial adviser must exercise care, diligence, and skill**

- (1) A financial adviser, when providing a financial adviser service, must exercise the care, diligence, and skill that a reasonable financial adviser would exercise in the same circumstances.
- (2) In determining the degree of care, diligence, and skill that a reasonable financial adviser would exercise, the following matters must be taken into account (without limitation):
  - (a) the nature and requirements of the financial adviser's client or (if it is a class service) of the clients intended to receive the service; and
  - (b) the nature of the service provided and the circumstances in which the service is provided; and



(c) the type of financial adviser.

- (3) This section does not apply to a service to the extent that section 40 (which relates to discretionary investment management services) applies to the service.

Section 33: substituted, on 1 July 2010, by section 13 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 33(3): inserted, on 1 December 2014, by section 29 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### **34 Financial adviser must not engage in misleading or deceptive conduct**

- (1) A financial adviser must not engage in conduct in relation to the provision of a financial adviser service that is misleading or deceptive or likely to mislead or deceive.

- (2) A person who knowingly or recklessly contravenes subsection (1) commits an offence (*see* section 118).

Compare: 1988 No 234 s 13(1)

Section 34(1): amended, on 1 July 2010, by section 14 of the Financial Advisers Amendment Act 2010 (2010 No 40).

### **35 Advertisement by financial adviser must not be misleading, deceptive, or confusing**

- (1) A financial adviser must not advertise a financial adviser service in a way that is misleading, deceptive, or confusing.

- (2) A person who knowingly or recklessly contravenes subsection (1) commits an offence (*see* section 119).

### **36 Regulations may impose specific conduct obligations for class services to retail clients**

A financial adviser must, when providing a class service to a retail client, comply with any 1 or more of the following requirements that apply under the regulations (if any):

- (a) ensure that the prescribed warning is given in the prescribed manner that the class service is not personalised:
- (b) ensure compliance with the prescribed requirements relating to the competency of, or the use of adequate care, diligence, and skill by, the persons involved in providing the service (for example, a requirement to obtain a certificate from the principal officers of the adviser or a requirement to obtain the approval of financial advice by an authorised financial adviser or individual registered financial adviser):
- (c) comply with any prescribed record-keeping or procedural requirements relating to those matters.

Section 36: substituted, on 1 July 2010, by section 15 of the Financial Advisers Amendment Act 2010 (2010 No 40).

*Conduct obligations that apply to authorised financial advisers only*

**37 Authorised financial adviser must comply with code**

An authorised financial adviser must comply with the code.

**38 Authorised financial adviser must not recommend acquisition of FMCA financial products if offer contravenes financial markets legislation**

- (1) An authorised financial adviser (A) must not recommend to a person that that person acquire FMCA financial products if,—
- (a) when the FMCA financial products were or are offered under a regulated offer, the offer contravened or contravenes any financial markets legislation; and
  - (b) the contravention has not been remedied; and
  - (c) A knows or ought to know that, when the FMCA financial products were or are offered, the offer contravened or contravenes any financial markets legislation.
- (2) A person who contravenes subsection (1) commits an offence (*see* section 121).

Compare: 1988 No 234 s 41S

Section 38: replaced, on 1 December 2014, by section 30 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**39 Duties when providing discretionary investment management service to retail clients**

An authorised financial adviser, when providing a personalised DIMS to a retail client, must—

- (a) act honestly in providing that service; and
- (b) in exercising any powers under or performing any duties under the client agreement or investment authority for the service, act in the best interest of the client; and
- (c) not make use of information acquired through providing that service in order to—
  - (i) gain an improper advantage for the adviser or any other person; or
  - (ii) cause detriment to the client.

Section 39: replaced, on 1 December 2014, by section 31 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**40 Duty to comply with professional standard of care in providing discretionary investment management service to retail clients**

An authorised financial adviser who provides a personalised DIMS to a retail client must, in exercising any power or performing any duties under the client agreement or investment authority for the service, exercise the care, diligence,

and skill that a prudent person engaged in that profession would exercise in the same circumstances.

Section 40: replaced, on 1 December 2014, by section 31 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

#### **41 Need for client agreement with retail client for discretionary investment management services**

- (1) An authorised financial adviser must ensure that there is a client agreement governing a personalised DIMS provided to a retail client.
- (2) The client agreement must be entered into at the same time as or before the investment authority is granted by the client.
- (3) The authorised financial adviser must provide the discretionary investment management service to the client in accordance with that client agreement and an investment authority that complies with section 43.

Section 41: replaced, on 1 December 2014, by section 31 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

#### **42 Contents, form, and effect of client agreement**

- (1) A client agreement required by section 41 must provide adequately for the matters prescribed by regulations.
- (2) The client agreement is treated as containing any provision that is implied into it by or under this Act.
- (3) The client agreement must be in writing and be contained in 1 or more documents that are legally enforceable as between the retail client and the authorised financial adviser (or the business on whose behalf the authorised financial adviser is providing the service).
- (4) The client agreement has no effect to the extent that it contravenes, or is inconsistent with, this Act or any term implied into it by or under this Act.

Section 42: replaced, on 1 December 2014, by section 31 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

#### **43 Requirement for agreed investment authority with retail client**

- (1) An authorised financial adviser must ensure that there is a written investment authority granted by the client for a personalised DIMS provided to a retail client.
- (2) The authorised financial adviser must ensure that the investment authority—
  - (a) clearly discloses the scope of the investment authority, including any limits on the nature or type of investments and on the proportion of each type of asset invested in; or
  - (b) if there are no limits on any of the matters referred to in paragraph (a), or the authority can be changed without the prior written consent of the client, clearly discloses that fact.

- (3) The investment authority must provide for the matters set out in this section in accordance with the frameworks and methodologies specified in notices issued by the FMA under subpart 4 of Part 9 of the Financial Markets Conduct Act 2013 (if any).

Section 43: replaced, on 1 December 2014, by section 31 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

#### **44 Custodial duties under discretionary investment management service provided to retail client**

- (1) An authorised financial adviser who provides a personalised DIMS to a retail client must ensure that the client money and client property that is held under the service is held on behalf of the client by 1 or more persons that meet the custodianship requirements set out in subsection (2).
- (2) A custodian of the client money and client property—
- (a) must be a separate body corporate that the financial adviser believes, on reasonable grounds, to be appropriate to hold, and safeguard, the money or property; and
  - (b) may be an associated person of the financial adviser (or the business on whose behalf the financial adviser is providing the service), other than by virtue of the custodianship, only if—
    - (i) that is permitted by conditions of the authorisation of the authorised financial adviser; and
    - (ii) those conditions are observed.
- (3) This section does not apply—
- (a) to the extent that money or property is held directly by the client;
  - (b) in the prescribed circumstances.

Section 44: replaced, on 1 December 2014, by section 31 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

#### **45 Authorised financial adviser must comply with terms and conditions of his or her authorisation**

- (1) An authorised financial adviser must comply with the terms and conditions of his or her authorisation.
- (2) A person who contravenes subsection (1) commits an offence (*see* section 126).

#### **45A Authorised financial adviser may report breach of Act to FMA**

- (1) If an authorised financial adviser (A) reasonably believes that a person has breached this Act or an obligation imposed under this Act (including the code) in a material respect, A may, as soon as practicable, report the breach to the FMA.
- (2) If A makes a report under subsection (1) in good faith,—

- (a) no civil, criminal, or disciplinary proceedings may be brought against A in respect of the report:
  - (b) no person may terminate the appointment or employment of A by reason of the report:
  - (c) no tribunal, body, or authority that has jurisdiction in respect of the professional conduct of A may make an order against, or do any act in relation to, A in respect of the report:
  - (d) the FMA must not disclose information that might identify A unless—
    - (i) A consents in writing to the disclosure of the information; or
    - (ii) the FMA believes that disclosure of the information is essential to the effective investigation of the alleged breach or is otherwise essential, having regard to the principles of natural justice.
- (3) If A makes a report under subsection (1) (whether or not in good faith), the FMA must not disclose information that might identify a client of A unless—
- (a) the client consents in writing to the disclosure of the information; or
  - (b) the FMA believes that disclosure of the information is essential to the effective investigation of the alleged breach or is otherwise essential, having regard to the principles of natural justice.

Section 45A: inserted, on 1 July 2010, by section 18 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 45A heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 45A(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 45A(2)(d): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 45A(2)(d)(ii): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 45A(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 45A(3)(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### *Conduct obligations related to QFEs*

Heading: substituted, on 1 July 2010, by section 19 of the Financial Advisers Amendment Act 2010 (2010 No 40).

#### **46 QFE must comply with terms and conditions of grant of QFE status**

- (1) Every QFE and every partner entity of a QFE must comply with the terms and conditions of the QFE's grant of QFE status.
- (2) Contraventions of this section give rise to the offences described in section 129.

Section 46: substituted, on 1 July 2010, by section 19 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**47 QFE or member of QFE group must not engage in misleading or deceptive conduct in relation to financial adviser service by employee, agent, or nominated representative**

- (1) A QFE or a member of a QFE group must not, in acting through an employee, agent, or nominated representative, engage in conduct in relation to a financial adviser service that is misleading or deceptive or likely to mislead or deceive.
- (2) Contraventions of this section give rise to the offences described in section 130.

Section 47: substituted, on 1 July 2010, by section 19 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**48 Advertisement by QFE or member of QFE group in relation to financial adviser service must not be misleading, deceptive, or confusing**

- (1) A QFE or a member of a QFE group must not advertise a financial adviser service in a way that is misleading, deceptive, or confusing.
- (2) Contraventions of this section give rise to the offences described in section 131.

Section 48: substituted, on 1 July 2010, by section 19 of the Financial Advisers Amendment Act 2010 (2010 No 40).

*FMA's direction in respect of breach of disclosure or conduct obligation*

Heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

**49 FMA may give financial adviser direction in respect of breach of disclosure or conduct obligation**

- (1) This section applies if the FMA has reason to believe that a financial adviser is in breach of a disclosure or conduct obligation.
- (2) The FMA may give the financial adviser notice of his or her alleged breach and, if the FMA does give a notice of breach, the FMA must also give the financial adviser a reasonable opportunity to respond.
- (3) If the FMA concludes, after considering the financial adviser's response, that the financial adviser is in breach, the FMA may give the financial adviser a direction in writing.
- (4) The direction may—
  - (a) direct the financial adviser to comply with the conduct or disclosure obligation:
  - (b) stipulate any steps that the financial adviser must take in order to comply with the obligation:

- (c) require the financial adviser to report to the FMA within 28 days of the date of the direction stating how and when the FMA's direction will be implemented.
- (5) A financial adviser who fails to comply with a direction by the FMA commits an offence (*see* section 135).
- (6) Nothing in this section precludes the FMA from exercising any of its other powers under this Act against a financial adviser.

Section 49 heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 49(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 49(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 49(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 49(4)(c): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 49(4)(c): amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 49(5): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 49(6): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

## Part 3

### Authorised financial advisers and qualifying financial entities

#### 50 Outline of this Part

- (1) This Part is divided into 2 subparts.
- (2) Subpart 1 describes who is an authorised financial adviser, how a person is authorised, and the powers of the FMA in relation to an authorised financial adviser.
- (3) Subpart 2 describes what is a qualifying financial entity (a **QFE**), how an entity achieves QFE status, and the powers of the FMA in relation to a QFE.

Section 50(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 50(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

#### Subpart 1—Authorised financial advisers

#### 51 Who is authorised financial adviser

An authorised financial adviser is an individual who is—

- (a) registered; and

- (b) authorised.

## 52 Who may apply to be authorised

Any individual may apply to the FMA to be authorised.

Section 52: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

## 53 Application to be authorised

An application to be authorised must be—

- (a) in the prescribed form (if any); and
- (b) accompanied by the prescribed fee (if any).

## 54 Eligibility to be authorised

A person (A) is eligible to be authorised for a financial adviser service if—

- (a) the FMA is satisfied that—
  - (i) A is registered or complies with section 13(a) and (b) of the FSP Act; and
  - (ii) A is a person of good character; and
  - (iii) A meets the levels of competency, knowledge, and skills specified in the code for an authorised financial adviser; and
  - (iiia) A meets the eligibility criteria (if any) that are prescribed by the regulations for that kind of financial adviser service; and
  - (iv) A is not debarred from applying for authorisation; and
- (b) the FMA—
  - (i) is not aware, after making any inquiries that it considers appropriate, that A has been convicted by a court in New Zealand or elsewhere of an offence punishable by imprisonment for a term of 6 months or more; or
  - (ii) if the FMA is so aware, is satisfied that the commission of the offence does not reflect adversely on A's fitness to act as an authorised financial adviser.

Section 54: amended, on 1 December 2014, by section 32(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 54(a): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 54(a)(iiia): inserted, on 1 December 2014, by section 32(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 54(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 54(b)(i): amended, on 1 July 2010, by section 20 of the Financial Advisers Amendment Act 2010 (2010 No 40).



Section 54(b)(ii): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**55 FMA must approve or decline application for authorisation**

- (1) If an applicant for authorisation is eligible, the FMA must authorise that person in respect of 1 or more of the following for a specified period:
  - (a) providing any financial adviser service, or specified kinds of financial adviser services, in relation to any category 1 product, specified category 1 products, or specified classes of category 1 product:
  - (b) providing a personalised DIMS, generally or in specified cases, in relation to any category 1 product, specified category 1 products, or specified classes of category 1 product:
  - (c) providing investment planning services generally or in specified cases:
  - (d) providing, in any case that is specified in the regulations for the purposes of this paragraph, services of the kind referred to in paragraph (a) or (b) or both, but in relation to any category 2 product, specified category 2 products, or specified classes of category 2 products.
- (1A) If the scope of discretionary investment management services that may be authorised under this Act is limited by the regulations, a new or renewed authorisation for that service under subsection (1)(b) must not exceed that prescribed scope.
- (2) The authorisation may be subject to terms and conditions relating to financial adviser services or broking services or to both (and may apply to services provided by an authorised financial adviser even if the adviser is providing that service as, or on behalf of the business of, a DIMS licensee under the Financial Markets Conduct Act 2013).
- (3) If the FMA approves the application, the FMA must notify the applicant in writing of—
  - (a) the authorisation; and
  - (b) the terms and conditions (if any); and
  - (c) the period of authorisation.
- (4) The FMA may incorporate, with any modifications it considers appropriate, the standard conditions.
- (5) If an applicant for authorisation is not eligible, the FMA must—
  - (a) decline the application (in whole or in part); and
  - (b) notify the applicant in writing of—
    - (i) the decision and the reasons for it; and
    - (ii) the applicant's right of appeal against the decision.
- (6) Subsection (1)(d) does not limit or affect anything in section 18.

Section 55: substituted, on 1 July 2010, by section 21 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 55 heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 55(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 55(1)(b): amended, on 1 December 2014, by section 33(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 55(1A): inserted, on 1 December 2014, by section 33(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 55(2): amended, on 1 December 2014, by section 33(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 55(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 55(4): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 55(5): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 55(5)(a): amended, on 1 December 2014, by section 33(4) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### **55A Variation of terms and conditions and period of authorisation**

- (1) An authorised financial adviser may apply to the FMA for a variation of the terms and conditions of the adviser's authorisation.
- (2) The FMA may grant or decline the application.
- (3) The FMA may, by notice to an authorised financial adviser, propose a variation of the terms and conditions of the adviser's authorisation or the period of the adviser's authorisation, or both, on either or both of the following grounds:
  - (a) the business of the adviser has changed in a way that poses a material risk to consumers:
  - (b) the adviser has been involved in market practices that are, in material respects, inconsistent with the purpose of this Act.
- (4) The FMA must specify in the notice a reasonable period for the adviser to respond in writing.
- (5) After considering any response received within the period specified in the notice, the FMA may, by notice to the adviser, vary the terms and conditions of the adviser's authorisation or the period of the adviser's authorisation, or both.
- (6) The FMA may, in the notice under subsection (5), vary terms and conditions on a provisional basis and, if it does so, must, in the light of any changes in risk posed by the adviser's business or market practices, review those terms and conditions by a date stated in the notice.
- (7) On completion of the review, the FMA may do any of the following:
  - (a) confirm 1 or more of the variations effected by subsection (5):

- (b) cancel 1 or more of the variations effected by subsection (5):
  - (c) propose further terms and conditions by giving the authorised financial adviser a notice under subsection (3).
- (8) The FMA must give the authorised financial adviser notice of any decision taken under subsection (7)(a) or (b).

Section 55A: inserted, on 1 July 2010, by section 21 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 55A(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 55A(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 55A(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 55A(4): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 55A(5): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 55A(6): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 55A(7): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 55A(8): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

## **56 FMA must notify Registrar of authorisation**

- (1) If the FMA authorises the applicant, the FMA must notify the Registrar in writing of—
- (a) the name and business address of the applicant; and
  - (b) the terms and conditions (if any) of the authorisation; and
  - (c) the period of authorisation.
- (2) The FMA may publicly notify the authorisation and the other matters referred to in subsection (1) as it thinks fit.

Section 56 heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 56(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 56(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

## **57 Termination of authorisation**

- (1) A person's authorisation as an authorised financial adviser terminates when—
- (a) the period of authorisation (including any extension under section 58(5)) expires; or

- (b) the FMA receives a written request from the person requesting the FMA to cancel his or her authorisation; or
  - (c) the person ceases to be registered; or
  - (d) the FMA cancels his or her authorisation under section 59(2).
- (2) The FMA must notify the Registrar in writing of termination of authorisation under subsection (1)(a), (b), or (d).

Section 57(1)(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 57(1)(d): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 57(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

## **58 Renewal of authorisation**

- (1) An authorised financial adviser may apply for renewal of authorisation.
- (2) An application for renewal of authorisation must be—
- (a) made in the prescribed form (if any); and
  - (b) accompanied by the prescribed fee (if any).
- (3) Subject to subsection (4), sections 52 to 56 apply, with any necessary modifications, to an application for renewal of authorisation.
- (4) In addition to the matters specified in section 54, the FMA must be satisfied that—
- (a) the applicant for renewal of authorisation has complied with the Act, the terms and conditions of authorisation, and the minimum professional standards for authorised financial advisers prescribed by the code; or
  - (b) any failure, on the part of the applicant, to comply is not sufficiently serious or recent to preclude the renewal of the applicant's authorisation.
- (5) If an application for renewal of authorisation has been made but not determined before the date on which the authorisation is due to expire, the authorisation continues in force until the application is determined.
- (6) The renewal of authorisation takes effect from the date of expiry of the previous authorisation.

Section 58(4): substituted, on 1 July 2010, by section 22 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 58(4): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

*FMA's powers in relation to default by authorised financial adviser*

Heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

**59 FMA's powers in relation to default by authorised financial adviser**

- (1) This section applies if the FMA is satisfied that an authorised financial adviser (A)—
- (a) has ceased to be eligible for authorisation; or
  - (b) has breached or is in breach of this Act (excluding section 37) or the regulations; or
  - (c) has breached or is in breach of a term or condition of his or her authorisation; or
  - (d) is the subject of a recommendation by the disciplinary committee under section 101(3)(a), (b), or (c); or
  - (e) has failed to pay a fee as required by this Act or the regulations or a levy as required by section 68 of the Financial Markets Authority Act 2011 or regulations made under that section.
- (2) In any case to which this section applies, the FMA may, after following the procedure set out in section 60 and subject to subsection (3),—
- (a) cancel the authorisation; or
  - (b) cancel the authorisation and debar A for a specified period from re-applying for authorisation; or
  - (c) suspend the authorisation for a specified period or until A does any thing that the FMA may specify; or
  - (d) amend the terms and conditions of the authorisation; or
  - (e) make no order.
- (3) The FMA may only take 1 of the actions specified in subsection (2).
- (4) If the FMA cancels or suspends the authorisation of an authorised financial adviser, the FMA must notify the Registrar in writing of the cancellation or suspension, and, in the case of suspension, the period of suspension.
- (5) The FMA may publicly notify the action it takes under subsection (2) as it sees fit.
- (6) The FMA may act under this section in respect of the authorisation in whole or in part.

Section 59 heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 59(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 59(1)(e): substituted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 59(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 59(2)(c): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 59(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 59(4): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 59(5): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 59(6): inserted, on 1 December 2014, by section 34 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

## **60 Reasonable opportunity to be heard**

The FMA must not take any of the actions specified in section 59(2) unless it has first—

- (a) informed the person concerned in writing as to why it may take any of those actions; and
- (b) given that person or his or her representative a reasonable opportunity to make written submissions and be heard on the question.

Section 60: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

## **61 FMA may give authorised financial adviser direction**

- (1) This section applies if the FMA has reason to believe that an authorised financial adviser is in breach of the terms and conditions of his or her authorisation (the **terms and conditions**).
- (2) The FMA may give the financial adviser notice of his or her alleged breach and, if the FMA does give a notice of breach, the FMA must also give the financial adviser a reasonable opportunity to respond.
- (3) If the FMA concludes, after considering the financial adviser's response, that the financial adviser is in breach, the FMA may give the financial adviser a direction in writing.
- (4) The direction may—
  - (a) direct the financial adviser to comply with the terms and conditions;
  - (b) stipulate any steps that the financial adviser must take in order to comply with the terms and conditions;
  - (c) require the financial adviser to report to the FMA within 28 days of the date of the direction stating how and by when the FMA's direction will be implemented.
- (5) An authorised financial adviser who fails to comply with a direction by the FMA commits an offence (*see* section 127).

- (6) Nothing in this section precludes the FMA from exercising any of its other powers under this Act against an authorised financial adviser.

Section 61 heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 61(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 61(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 61(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 61(4)(c): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 61(4)(c): amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 61(5): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 61(6): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

## **62 Other provisions concerning FMA's powers in relation to default by authorised financial adviser**

- (1) At the end of a period of suspension of authorisation, the person's authorisation is immediately revived, unless his or her authorisation has been further suspended or has been cancelled.
- (2) Suspension or cancellation under section 59(2) is effective when a written notice of the suspension or cancellation is sent to the person concerned by the FMA.

Section 62 heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 62(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

## Subpart 2—Qualifying financial entities

### **63 What is qualifying financial entity (QFE)**

- (1) A QFE is—
- (a) an entity that is registered and has QFE status; or
  - (b) a number of partner entities that are each registered and jointly have QFE status.
- (2) For the purposes of any powers or rights conferred, or obligations or liabilities imposed, on QFEs by this Act, a QFE described in subsection (1)(b) is taken to be a separate entity and a person.
- (3) Subsection (2) does not limit any obligation or liability imposed on a partner entity.

Section 63: substituted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

#### **64 Who may apply for QFE status**

An application may be made to the FMA by—

- (a) a single entity for QFE status; or
- (b) 2 or more related bodies corporate for joint QFE status.

Section 64: substituted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 64: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

#### **65 Application for QFE status**

- (1) An application for QFE status must—
  - (a) be in the prescribed form (if any); and
  - (b) be accompanied by the prescribed fee (if any).
- (2) If the applicant or applicants seek to have 1 or more entities approved as associated entities of the proposed QFE, the application must state the name of each entity sought to be approved as an associated entity and how that entity is connected to the applicant or applicants.
- (3) The application must set out the procedures that the applicant or applicants have for—
  - (a) training employees and nominated representatives; and
  - (b) setting standards for employees and nominated representatives; and
  - (c) monitoring those standards.

Section 65: substituted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

#### **66 Eligibility for QFE status**

- (1) The FMA may confer QFE status on a single entity applying under section 64(a) or on 2 or more entities applying under section 64(b) if it is satisfied that—
  - (a) each entity is registered or is entitled to be registered; and
  - (b) no entity is debarred from applying for QFE status; and
  - (c) on the grant of QFE status and at all times while a QFE, the single entity that will be the QFE has, or the partner entities that will be the QFE together have, the capacity to, and will,—
    - (i) discharge its or their ongoing compliance obligations under section 76 and all other obligations on it under this Act or the regulations (other than any broker obligations); and



- (ii) comply with the terms and conditions (if any) of the grant of QFE status; and
  - (iii) maintain procedures to ensure that retail clients of the QFE receive adequate consumer protection.
- (2) In determining under subsection (1)(c) whether clients receive adequate consumer protection, the FMA must, in relation to QFE advisers who provide personalised services that relate to category 1 products,—
  - (a) consider whether the clients will receive protection of a similar standard to that provided by advisers who are subject to the code; and
  - (b) in doing so, take into account the scope of category 1 products in respect of which those QFE advisers provide financial adviser services.

Section 66: substituted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 66(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 66(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

#### **67 FMA must approve or decline application for QFE status**

- (1) If an applicant under section 64(a) is eligible, or if applicants under section 64(b) are eligible, for QFE status, the FMA must approve the application and grant the applicant or the applicants QFE status.
- (2) The grant of QFE status is subject to the terms and conditions specified or incorporated in the grant.
- (3) The FMA may incorporate, with any modifications it considers appropriate, the standard conditions.
- (4) If the application also asks for the approval of 1 or more entities as associated entities of the QFE, the FMA may approve an entity as an associated entity of the QFE if that entity—
  - (a) is registered or is entitled to be registered; or
  - (b) is, under the FSP Act, an affiliated entity of one of the applicants; or
  - (c) is an exempt provider.
- (5) Even though an entity is eligible under subsection (4), the FMA may decline to approve the entity for any reason, including, without limitation,—
  - (a) the absence of a direct connection between the entity and the QFE or any of its partner entities; or
  - (b) concerns specified under section 67A(2) that cannot be adequately addressed by the imposition of terms and conditions under section 67A(4).

- (6) The FMA is not precluded from approving an entity as an associated entity of a QFE merely because the entity is, or is proposed to be, the associated entity of another QFE.

Section 67: substituted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 67 heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 67(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 67(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 67(4): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 67(5): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 67(6): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**67A Associated entities may be subject to special terms and conditions in certain cases**

- (1) This section applies if—
- (a) an application for QFE status asks for the approval of an entity as an associated entity; but
  - (b) the FMA has concerns about the provision of personalised services in relation to certain category 1 products by individuals who would, following the approval of the entity, be the entity's QFE advisers.
- (2) The FMA may specify its concerns in a notice to the applicant or applicants.
- (3) The FMA must specify in the notice a reasonable period for the applicant or applicants to respond in writing and must ask the applicant or applicants to satisfy the FMA that the QFE advisers of the proposed associated entity are able to, and will, provide financial adviser services in relation to the category 1 product concerned with the appropriate level of professionalism and competence.
- (4) After considering the entity's response, the FMA may make its approval of the entity as an associated entity subject to special terms and conditions, which form part of the terms and conditions specified under section 67(2).
- (5) The terms and conditions referred to in subsection (4) may, without limitation, relate to—
- (a) the kinds of financial adviser services that may be provided by or on behalf of the associated entity;
  - (b) any conditions and restrictions that are to apply to the provision of those services;
  - (c) the way in which the QFE is to supervise the associated entity.

Section 67A: inserted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 67A(1)(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 67A(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 67A(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 67A(4): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

## **68 Determination of application**

- (1) If the FMA approves an application for a grant of QFE status, the FMA must notify the entity or entities in writing of—
  - (a) the grant of QFE status; and
  - (b) the terms and conditions; and
  - (c) the period for which QFE status has been granted.
- (2) If an applicant under section 64(a) is not, or 1 or more of the applicants under section 64(b) are not, eligible for QFE status, the FMA must—
  - (a) decline the application; and
  - (b) notify the entity or entities of—
    - (i) the decision and the reasons for it; and
    - (ii) the right of an applicant under section 64(a) to appeal, and the right of applicants under section 64(b) jointly to appeal, against the decision.

Section 68: substituted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 68(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 68(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

## **69 Name of QFE group**

- (1) A QFE group has the name that is approved by the FMA and chosen by the applicant or applicants for QFE status that results in the formation of the group.
- (2) Every application for QFE status that would, if approved, result in the formation of a QFE group must submit a name for the proposed group.
- (3) The FMA may ask the applicant or applicants to submit another name.

Section 69: substituted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 69(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 69(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

## **70 FMA must notify Registrar of grant of QFE status**

- (1) If the FMA grants an entity or entities QFE status, the FMA must notify the Registrar in writing of—
  - (a) the name of the entity, or the names of the partner entities, granted QFE status;
  - (b) the period for which QFE status has been granted;
  - (c) if a QFE group has been formed, the name of the group;
  - (d) if associated entities of the QFE have been approved, the names of those entities.
- (2) The FMA may publicly notify the grant of QFE status and the other matters referred to in subsection (1) as it thinks fit.

Section 70: substituted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 70 heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 70(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 70(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### *Commission's powers in relation to default by QFE*

*[Repealed]*

Heading: repealed, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

## **71 Addition of associated entities**

- (1) The QFE of a QFE group may apply to the FMA to approve the addition of 1 or more entities as associated entities of the QFE.
- (2) The application must—
  - (a) be in the prescribed form (if any); and
  - (b) be accompanied by the prescribed fee (if any); and
  - (c) name the entities sought to be added as associated entities.
- (3) Sections 67(3) to (5) and 67A apply with any necessary modifications.
- (4) The QFE may withdraw the application at any time before it is determined.
- (5) If the FMA approves an entity as an associated entity under this section, the FMA—
  - (a) must notify the Registrar in writing of the name of the entity; and

- (b) may publicly notify the inclusion of the associated entity in the QFE group as it thinks fit.

Section 71: substituted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 71(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 71(5): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

## **72 Termination of status of associated entity**

The status of an associated entity terminates when—

- (a) the entity ceases to be registered; or
- (b) the FMA receives a written request from the entity or from the relevant QFE or any partner entity to cancel its status as associated entity; or
- (c) the QFE status of the relevant QFE is terminated.

Section 72: substituted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 72(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

## **73 Certification of QFE group**

- (1) The FMA may issue a certificate stating that named entities are, as at the date of the certificate, a QFE group or that named entities were, during a specified period, a QFE group.
- (2) A certificate issued under subsection (1) is, in the absence of proof to the contrary, evidence of its contents.

Section 73: substituted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 73(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

## **74 Nominated representatives of QFEs or partner entities**

- (1) A QFE or a partner entity may nominate an individual as one of its nominated representatives by—
  - (a) complying with the method (if any) prescribed for that purpose in the terms and conditions of the relevant grant of QFE status; or
  - (b) if those terms and conditions do not prescribe a method for that purpose, recording the nomination in a written instrument that—
    - (i) nominates the individual as a nominated representative of the QFE or of the partner entity; and
    - (ii) is dated and, if the nomination is to take effect on a later date, specifies that later date.

- (2) An individual may not be the nominated representative of 2 or more entities unless the entities are related bodies corporate.
- (3) The nomination of an individual as nominated representative is terminated if the entity that nominated the individual—
  - (a) gives written notice to the individual and to the FMA to that effect; or
  - (b) as a result of the termination of QFE status, ceases to be a QFE or part of a QFE.
- (4) Every QFE must keep an up-to-date record of its nominated representatives.

Section 74: substituted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 74(3)(a): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

*Liability of employee or agent*

*[Repealed]*

Heading: repealed, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**75 Variation of terms and conditions and period of grant of QFE status**

- (1) A QFE may apply to the FMA for a variation of the terms and conditions of the grant of QFE status.
- (2) The FMA may grant or decline the application.
- (3) The FMA may, by notice to a QFE, propose a variation of the terms and conditions of the QFE's grant of QFE status or the period of the grant on either or both of the following grounds:
  - (a) the business of the QFE or of the QFE group has changed in a way that poses a material risk to consumers:
  - (b) the QFE or any member of the QFE group has been involved in market practices that are, in material respects, inconsistent with the purpose of this Act.
- (4) The FMA must specify in the notice a reasonable period for the QFE to respond in writing.
- (5) After considering any response received within the period specified in the notice, the FMA may, by notice to the QFE, vary the terms and conditions of the QFE's grant of QFE status or the period of the grant, or both.
- (6) The FMA may, in the notice under subsection (5), vary terms and conditions on a provisional basis and, if it does so, the FMA must, in the light of any changes in risk posed by the business or market practices of the QFE or any member of the QFE group, review those terms and conditions by a date stated in the notice.
- (7) On completing the review, the FMA may do any of the following:

- (a) confirm 1 or more of the variations effected by subsection (5):
- (b) cancel 1 or more of the variations effected by subsection (5):
- (c) propose new terms and conditions or a new period of grant by giving the QFE a further notice under subsection (3).

Section 75: substituted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 75(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75(4): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75(5): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75(6): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75(7): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

#### **75A Termination of QFE status**

- (1) The QFE status of an entity or of partner entities terminates when—
  - (a) the period of a grant of QFE status expires and the QFE fails for 60 clear days after that expiry to apply for renewal of QFE status; or
  - (b) the FMA receives a written request from the QFE or from any partner entity requesting the FMA to cancel the QFE status; or
  - (c) the entity that forms, or any of the partner entities that jointly form, the QFE ceases to be registered; or
  - (d) the FMA cancels its QFE status under section 75D(2).
- (2) The FMA must notify the Registrar in writing of the termination of QFE status under subsection (1)(a), (b), or (d).

Section 75A: inserted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 75A(1)(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75A(1)(d): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75A(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**75B FMA may designate certain QFE products as beyond scope of QFE advisers**

- (1) If, because of the complexity of a particular category 1 product, the FMA has concerns about the provision of personalised services in relation to that product by QFE advisers, the FMA may specify those concerns in a notice to the QFE or the partner entity whose QFE advisers provide those services.
- (2) A notice under subsection (1) may be given only in exceptional circumstances.
- (3) The FMA must specify in the notice a reasonable period for the relevant entity to respond in writing and must ask the entity to satisfy the FMA that the QFE advisers are able to, and will, provide financial adviser services in relation to the category 1 product concerned with the appropriate level of professionalism and competence.
- (4) After considering the entity's response, the FMA may, by notice to the entity, determine that the QFE advisers may not provide personalised services to retail clients in relation to the specified category 1 product.
- (5) A determination under subsection (4) has effect according to its tenor despite anything in section 18.
- (6) The FMA may at any time, by notice to the entity, revoke a determination under subsection (4).

Section 75B: inserted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 75B heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75B(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75B(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75B(4): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75B(6): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**75C Renewal of QFE status**

- (1) A QFE may apply for renewal of QFE status.
- (2) An application for renewal of QFE status must be—
  - (a) made in the prescribed form (if any); and
  - (b) accompanied by the prescribed fee (if any).
- (3) Sections 64 to 70 apply, with any necessary modifications, to an application for renewal of QFE status.
- (4) If an application for renewal of QFE status has been made but not determined before the close of the 60th day after the date on which the period for which



QFE status has been granted expires, the QFE status continues until the application is determined.

- (5) The renewal of QFE status takes effect from the date of expiry of the previous grant of QFE status.

Section 75C: inserted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

*FMA's powers in relation to default by QFE or by members of QFE group*

Heading: inserted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

**75D FMA's powers in relation to QFE default**

- (1) This section applies if the FMA is satisfied that—
- (a) a QFE or any partner entity of a QFE has ceased to be eligible for QFE status; or
  - (b) the QFE or any member of the QFE group has breached or is in breach of this Act or the regulations; or
  - (c) the QFE or any member of the QFE group is in breach of a term or condition of the grant of QFE status; or
  - (d) the QFE or any partner entity of the QFE has failed to comply with a direction given to it by the FMA under section 75F; or
  - (e) the QFE or any partner entity of the QFE has failed to pay a fee as required by this Act or the regulations or a levy as required by section 68 of the Financial Markets Authority Act 2011 or regulations made under that section.
- (2) In any case to which this section applies, the FMA may, after following the procedure set out in section 75E and subject to subsections (3) and (4),—
- (a) cancel the QFE's status; or
  - (b) cancel the QFE's status and debar, for a specified period, the entity, any partner entity, and any associated entity of the former QFE from re-applying for QFE status; or
  - (c) suspend the QFE's status for a specified period or until the suspended QFE or any partner entity, or any associated entity of the suspended QFE, does any thing that the FMA requires; or
  - (d) amend the terms and conditions of the QFE's grant of status; or
  - (e) order that the QFE pay a fine not exceeding \$50,000; or
  - (f) censure the QFE; or
  - (g) take no further action.

- (3) The FMA may take only 1 of the actions specified in subsection (2), except that it may order the QFE to pay a fine not exceeding \$50,000 in addition to taking an action under subsection (2)(d) or (f).
- (4) All partner entities of a QFE are jointly and severally liable for the payment of a fine that the QFE is ordered to pay under subsection (2)(e).
- (5) The FMA must not order the QFE to pay a fine in relation to an act or omission that constitutes an offence for which the QFE or any partner entity of the QFE has been convicted by a court.
- (6) If the FMA cancels or suspends the QFE status of an entity, the FMA must notify the Registrar in writing of the cancellation or suspension, and, in the case of suspension, the period of suspension.
- (7) The FMA may publicly notify the action it takes under subsection (2) as it sees fit.

Section 75D: inserted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 75D heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75D(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75D(1)(d): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75D(1)(e): substituted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75D(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75D(2)(c): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75D(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75D(5): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75D(6): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75D(7): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### **75E Reasonable opportunity to be heard**

The FMA must not take any of the actions specified in section 75D(2) unless it has first—

- (a) informed the QFE and any partner entities of the QFE in writing of the reasons for taking any of those actions; and
- (b) given the QFE and any partner entities of the QFE or their representatives a reasonable opportunity to make written submissions and be heard on the question.

Section 75E: inserted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 75E: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### **75F FMA may give QFE direction**

- (1) This section applies if the FMA has reason to believe that a QFE is in breach of a disclosure or conduct obligation or any obligation under section 76 or 77 (the **obligation**).
- (2) The FMA may give the QFE, and every partner entity of the QFE, notice of its alleged breach and, if the FMA does give a notice of breach, the FMA must also give the QFE a reasonable opportunity to respond.
- (3) If the FMA concludes, after considering the QFE's response, that the QFE is in breach, the FMA may give the QFE a direction in writing.
- (4) The direction may—
  - (a) direct the QFE or any partner entity, or both, to comply with the obligation:
  - (b) stipulate any steps that the QFE or any partner entity, or both, must take in order to comply with the obligation:
  - (c) require the QFE to report to the FMA within 28 days of the date of the direction stating how and by when the FMA's direction will be implemented.
- (5) A QFE or a partner entity that fails to comply with a direction by the FMA commits an offence (*see* section 132).
- (6) Nothing in this section precludes the FMA from exercising any of its other powers under this Act against a QFE.

Section 75F: inserted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 75F heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75F(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75F(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75F(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75F(4)(c): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75F(4)(c): amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75F(5): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75F(6): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**75G Other provisions concerning FMA's powers in relation to QFE default**

- (1) A fine imposed by the FMA under section 75D(2)(e) is recoverable in any court as a debt due to the FMA.
- (2) At the end of a period of suspension of QFE status, a QFE's status is immediately revived, unless its QFE status has been further suspended or has been cancelled.
- (3) Suspension or cancellation is effective when a written notice of the suspension or cancellation is sent to the QFE by the FMA.

Section 75G: inserted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 75G heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75G(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75G(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

*QFE's obligations***76 Ongoing obligations of QFEs and of partner entities**

- (1) A QFE, and every partner entity of a QFE, must—
  - (a) ensure compliance by the QFE and, where the QFE is part of a QFE group, by every member of that group, and by each employee and nominated representative of the QFE and of every member of that group, with the terms and conditions of the grant of QFE status; and
  - (b) where an associated entity is the associated entity not only of the QFE but also of another QFE, ensure compliance by the associated entity and by each employee of the associated entity with the terms and conditions of the grant of QFE status of that other QFE; and
  - (c) in relation to QFE advisers who are employees of the QFE or of a member of the QFE group, ensure compliance by each of those persons with his or her financial adviser obligations; and
  - (d) in relation to QFE advisers who are nominated representatives of the QFE or of a partner entity, ensure compliance by each of those persons with his or her financial adviser obligations, whether or not the nominated representative acts for the QFE or for the partner entity or for any related body corporate of the QFE or the partner entity; and
  - (e) in relation to advisers of the QFE or of a member of the QFE group who perform a financial adviser service that, by virtue of sections 17 and 18 only an authorised financial adviser is permitted to perform, ensure that each of those persons is authorised; and
  - (f) provide the FMA, whenever reasonably required by the FMA and in any case in accordance with any requirements specified in the terms and con-

ditions of its grant of QFE status, with an up-to-date list of the names of—

- (i) the authorised financial advisers of the QFE and of any members of the QFE group; and
  - (ii) the nominated representatives of the QFE and of any partner entity; and
  - (g) provide an annual report to the FMA in accordance with section 77; and
  - (h) comply with a direction by the FMA given under section 75F; and
  - (i) comply with its other obligations under this Act and the regulations.
- (2) A contravention of subsection (1)(e) gives rise to the offences described in section 133.

Section 76: substituted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 76(1)(f): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 76(1)(g): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 76(1)(h): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

## 77 QFE must provide annual report to FMA

- (1) Within 5 months after the end of its financial year, a QFE must send to the FMA a written report in respect of that year (the **reporting year**)—
- (a) certifying that the QFE and every member of the QFE group has complied with its obligations under this Act and the regulations, and with the terms and conditions of the grant of QFE status; and
  - (b) if the QFE or any member of the QFE group has not complied with its obligations under this Act and the regulations, and with the terms and conditions of the grant of QFE status, stating those respects in which it has failed to comply; and
  - (c) if the QFE is aware of any breach of a financial adviser obligation by an employee, agent, or nominated representative of the QFE or of a member of the QFE group, stating—
    - (i) the name of that person; and
    - (ii) the nature of that person's breach or breaches; and
  - (d) containing any other information required by the regulations; and
  - (e) containing the information (if any) that is required to be contained in the report by the terms and conditions of the grant of QFE status.
- (2) The report may be submitted by any partner entity of the QFE.
- (3) The report must be signed by either—

- (a) a principal officer of the QFE; or
  - (b) a principal officer of a partner entity of the QFE.
- (4) Contraventions of subsection (1) give rise to the offences described in section 134.

Section 77: substituted, on 1 July 2010, by section 23 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 77 heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 77(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

## Part 3A

### Brokers' disclosure and conduct obligations

Part 3A: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

#### *Who is broker and what is broking service*

Heading: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

#### **77A Who is broker**

- (1) A **broker** is an individual or an entity who carries on a business of providing or offering to provide a broking service to a client (whether or not the business is the provider's only business or the provider's principal business).
- (2) *See* section 77U for how the Act's requirements apply in the case of a person who provides a broking service on behalf of another person's business.

Section 77A: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

#### **77B What is broking service**

- (1) A **broking 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
  - (b) includes 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 arrangement between A and C or between A and another person with whom C has an arrangement (whether or not there are also other parties to any such arrangement).
- (2) In this Act,—
 

**client money** means money—

  - (a) received in connection with acquiring, holding, or disposing of a financial product or otherwise in connection with a financial product; and

- (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:

- (a) the property is a financial product, is a beneficial interest in a financial product, or is received in connection with a financial 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)

**custodial service** means the type of broking service referred to in subsection (1)(b).

- (3) The mere transmission of a non-transferable instrument payable to another person is not a broking service.

Compare: Corporations Act 2001 s 766E(1) (Aust)

Section 77B: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 77B(1): replaced, on 1 April 2014, by section 35(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 77B(2): replaced, on 1 April 2014, by section 35(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 77B compare note: inserted, on 1 April 2014, by section 35(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### 77C Other exemptions

- (1) None of the following is a broking service for the purposes of this Act:
  - (a) a lawyer, incorporated law firm, conveyancing practitioner, qualified statutory accountant, tax agent, real estate agent, registered legal executive, or other exempted class of service provider (as specified in the regulations) providing a relevant service in the ordinary course of business of that kind:
  - (b) a statutory officer, a Crown organisation (other than Public Trust), or the Reserve Bank of New Zealand—
    - (i) discharging any duties or exercising any powers of the statutory officer, the Crown organisation, or the Reserve Bank of New Zealand under any enactment; or
    - (ii) doing anything that is incidental to the discharge of the functions of the statutory officer, the Crown organisation, or the Reserve Bank of New Zealand under any enactment:
  - (c) an operator of a designated settlement system under section 156N of the Reserve Bank of New Zealand Act 1989 providing a relevant service by the receipt, holding, payment, or transfer of money or property in accordance with the rules of that settlement system:

- (d) a person providing a relevant service in the course of acting as a derivatives issuer under a licence under Part 6 of the Financial Markets Conduct Act 2013;
  - (e) an employer providing a relevant service to an employee in connection with a financial product made available through the person's workplace;
  - (f) any other person providing a relevant service in circumstances exempted under the regulations.
- (2) If subsection (1) 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.
- (3) In this section, **relevant service** means a service that, but for subsection (1), would be a broking service.

Section 77C: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 77C(1)(a): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Section 77C(1)(d): replaced, on 1 December 2014, by section 36 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

#### *Disclosure obligations for services for retail clients*

Heading: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

#### **77D What is disclosure obligation and when does it apply**

- (1) A disclosure obligation under this Part is an obligation to make disclosure under or in accordance with sections 77E to 77I.
- (2) A disclosure obligation applies only to a broking service provided for a retail client.
- (3) Contravention of a disclosure obligation may give rise to an offence (*see* section 117).

Section 77D: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

#### **77E Broker must make disclosure before receiving client money or client property from retail client**

A broker must disclose prescribed information to a retail client, in accordance with this Act and the regulations,—

- (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.

Section 77E: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).



**77F What broker must disclose and form of disclosure**

- (1) Regulations for the purposes of prescribing disclosure for brokers under section 77E may require disclosure in relation to any or all of the following matters:
  - (a) contact details:
  - (b) fees:
  - (c) material interests, relationships, or associations:
  - (d) remuneration:
  - (e) dispute resolution arrangements:
  - (f) in relation to the broker and, if the broker is an entity, each principal officer,—
    - (i) criminal convictions:
    - (ii) disciplinary proceedings:
    - (iii) adverse findings by a court or the FMA:
    - (iv) bankruptcy or other insolvency proceedings:
  - (g) information relating to the broking service provided:
  - (h) indemnity insurance.
- (2) Regulations for the purposes of this section may provide for the form that the disclosure must take.

Section 77F: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 77F(1)(f)(iii): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 77F(1)(g): replaced, on 1 April 2014, by section 37 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**77G Disclosure must not be misleading, deceptive, or confusing**

Disclosure under a disclosure obligation must not be misleading, deceptive, or confusing at the time that the disclosure is made.

Section 77G: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**77H Disclosure of additional information**

- (1) Disclosure of the matters that must be disclosed under a disclosure obligation may be accompanied by disclosure of additional information.
- (2) Additional disclosure that accompanies disclosure under a disclosure obligation must not be misleading, deceptive, or confusing at the time it is made.

Section 77H: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**77I No compliance with disclosure obligation if disclosure out of date**

- (1) Previous disclosure does not discharge a broker from a disclosure obligation if the previous disclosure is out of date when the client money or client property is received by the broker.
- (2) The previous disclosure is out of date if,—
  - (a) since the date of the disclosure, there has been a material change in any matter that must be disclosed; and
  - (b) a reasonable person in the position of the client would consider that the change would materially affect any of the following decisions by the client:
    - (i) to proceed with the broking service by the broker in question (**B**):
    - (ii) to postpone or countermand the performance of a broking service by B.

Section 77I: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

*Brokers' conduct obligations*

Heading: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**77J What is conduct obligation and when does it apply**

- (1) A conduct obligation under this Part is an obligation under sections 77K to 77T.
- (2) The conduct obligations in sections 77K to 77O apply to all broking services.
- (3) The conduct obligations in sections 77P to 77T—
  - (a) apply to broking services provided to a retail client; and
  - (ab) apply to custodial and other broking services provided to every investor under a retail service of a DIMS licensee (as provided by section 446 of the Financial Markets Conduct Act 2013); and
  - (ac) otherwise apply to broking services provided to a wholesale client only if provided by the regulations; and
  - (b) 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.

Section 77J: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 77J(3)(a): replaced, on 1 April 2014, by section 38 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 77J(3)(ab): inserted, on 1 April 2014, by section 38 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 77J(3)(ac): inserted, on 1 April 2014, by section 38 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**77K Broker must exercise care, diligence, and skill**

- (1) A broker must, when providing a broking service, exercise the care, diligence, and skill that a reasonable broker would exercise in the same circumstances.
- (2) In determining the degree of care, diligence, and skill that a reasonable broker would exercise, the following matters must be taken into account (without limitation):
  - (a) the nature and requirements of the broker's client; and
  - (b) the nature of the service provided and the circumstances in which the service is provided.

Section 77K: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**77L Broker must not engage in misleading or deceptive conduct**

- (1) A broker must not engage in conduct in relation to the provision of a broking service that is misleading or deceptive or likely to mislead or deceive.
- (2) Contravention of this section may give rise to an offence (*see* section 118).

Section 77L: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**77M Advertisement of broking services must not be misleading, deceptive, or confusing**

- (1) A broker must not advertise a broking service in a way that is misleading, deceptive, or confusing.
- (2) Contravention of this section may give rise to an offence (*see* section 119).

Section 77M: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**77N Restriction on use of term sharebroker**

*[Repealed]*

Section 77N: repealed, on 1 April 2014, by section 39 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**77O Broker must not receive client money if offer contravenes financial markets legislation**

- (1) A broker (A) must not receive client money or client property from a person for the acquisition of FMCA financial products if,—
  - (a) when the FMCA financial products were or are offered under a regulated offer, the offer contravened or contravenes any financial markets legislation; and
  - (b) the contravention has not been remedied; and

- (c) A knows or ought to know that, when the FMCA financial products were or are offered, the offer contravened or contravenes any financial markets legislation.
- (2) Contravention of this section may give rise to an offence (*see* section 134B).
- Section 77O: replaced, on 1 December 2014, by section 40 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

*Obligations for handling client money and client property*

Heading: replaced, on 1 April 2014, by section 41 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**77P Broker must pay client money into separate trust account and hold client property on trust**

- (1) A broker who receives client money or client property, in his, her, or its capacity as a broker for a client,—
- (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 broker or of a related person or entity specified in the regulations; or
- (ii) (if section 44 of this Act or section 445 of the Financial Markets Conduct Act 2013 applies) a trust account of a person permitted to hold the money under that section.
- (1A) A broker must ensure that the client money and client property are held separate from money or property held by or for the broker, or other person referred to in subsection (1)(b)(i) or (ii), on its own account.
- (1B) A broker must comply with any prescribed duties and other requirements in relation to the client money and client property held on trust under this section.
- (2) Contravention of this section may give rise to an offence (*see* section 134C).

Section 77P: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 77P heading: amended, on 1 April 2014, by section 42(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 77P(1): amended, on 1 April 2014, by section 42(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 77P(1)(b): replaced, on 1 April 2014, by section 42(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 77P(1A): inserted, on 1 December 2014, by section 42(4) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 77P(1B): inserted, on 1 April 2014, by section 42(4) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**77Q Broker must account for client money and client property**

(1) A broker who receives or holds client money and 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.

(2) Contravention of this section may give rise to an offence (*see* section 134D).

Section 77Q: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 77Q(1): amended, on 1 April 2014, by section 43 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**77R Broker must keep records of client money and client property**

(1) A broker 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.

(2) A broker 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.

(2A) The broker must also keep all other prescribed records.

(3) The broker 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

(b) comply with the prescribed requirements (if any) relating to those records and their audit, review, or inspection.

(4) Contravention of any of subsections (1) to (3) may give rise to an offence (*see* section 134E).

Section 77R: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 77R(1): amended, on 1 April 2014, by section 44(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 77R(2): amended, on 1 April 2014, by section 44(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 77R(2)(c): amended, on 1 April 2014, by section 44(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 77R(2A): inserted, on 1 April 2014, by section 44(4) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 77R(3): replaced, on 1 April 2014, by section 44(5) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**77RA Broker must report on client money and client property**

- (1) A broker 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.

Section 77RA: inserted, on 1 April 2014, by section 45 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**77S Restrictions on use of client money and client property**

- (1) A person must not use or apply client money or client property received or held on trust for a client by a broker in any way except—
  - (a) as expressly directed by the client (either generally or specifically); or
  - (b) in accordance with section 77P (which relates to payment of client money into a trust account).
- (2) Contravention of this section may give rise to an offence (*see* section 134F).

Section 77S: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 77S(1): amended, on 1 April 2014, by section 46 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**77T Protection of client money and client property held on trust**

- (1) The client money or client property that is received or held by a broker on trust for a client—
  - (a) is not available for the payment of the debts of any other creditor of the broker; 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 broker.
- (2) Nothing in section 77S or this section takes away or affects any lawful lien or claim that a broker who holds client money or client property has against the client money or client property.

Section 77T: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 77T(1): amended, on 1 April 2014, by section 47 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

*Application of Trusts Act 2019*

Heading: inserted, on 30 January 2021, by section 177 of the Trusts Act 2019 (2019 No 38).

**77TA Application of Trusts Act 2019**

- (1) This section applies to a trust constituted (or to be constituted) for the purposes of section 77P.
- (2) The following provisions of the Trusts Act 2019 do not apply to a trust referred to in subsection (1):
  - (a) section 29 (general duty of care):
  - (b) section 39 (adviser must alert settlor to modification or exclusion of default duty):
  - (c) sections 45 to 48 (documents to be kept by trustees):
  - (d) sections 49 to 55 (giving information to beneficiaries):
  - (e) section 56 (general powers of trustee):
  - (f) section 72 (trustee's liability for acts of delegate limited):
  - (g) sections 81 to 85 (trustees' indemnities):
  - (h) sections 142 to 148 (alternative dispute resolution):
  - (i) sections 153 to 158 (investigation of condition and accounts of certain trust property).

Section 77TA: inserted, on 30 January 2021, by section 177 of the Trusts Act 2019 (2019 No 38).

*Persons acting in course of business of employers or principals*

Heading: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**77U Who is responsible for broker obligations**

- (1) If a broking service is provided by a person (**A**) on behalf of the business of another person (**B**), B (and not A) is treated as the broker having the broker obligations under this Act.
- (2) If B has a broker obligation under subsection (1)—
  - (a) any act or omission by A is also treated as being done by B; and
  - (b) if it is necessary to show the state of mind of B, it is sufficient to show that A had that state of mind.
- (3) Subsections (1) and (2) do not affect the liability of A or B under any other Act or rule of law for A's actions.

Section 77U: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

*FMA's direction in respect of breach of disclosure or conduct obligation*

Heading: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

**77V FMA may give broker direction in respect of breach of disclosure or conduct obligation**

- (1) This section applies if the FMA has reason to believe that a broker is in breach of a disclosure or conduct obligation under this Part.
- (2) The FMA may give the broker notice of his, her, or its alleged breach and, if the FMA does give a notice of breach, the FMA must also give the broker a reasonable opportunity to respond.
- (3) If the FMA concludes, after considering the broker's response, that the broker is in breach, the FMA may give the broker a direction in writing.
- (4) The direction may—
  - (a) direct the broker to comply with the disclosure or conduct obligation:
  - (b) stipulate any steps that the broker must take in order to comply with the obligation:
  - (c) require the broker to report to the FMA within 28 days of the date of the direction stating how and when the FMA's direction will be implemented.
- (5) A broker who fails to comply with a direction by the FMA commits an offence (*see* section 134G).
- (6) Nothing in this section precludes the FMA from exercising any of its other powers under this Act against a broker.

Section 77V: inserted, on 1 July 2010, by section 24 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 77V heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 77V(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 77V(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 77V(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 77V(4)(c): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 77V(4)(c): amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 77V(5): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 77V(6): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).



## Part 4

### How financial advisers and brokers are regulated

Part 4 heading: amended, on 1 July 2010, by section 25 of the Financial Advisers Amendment Act 2010 (2010 No 40).

#### 78 Outline of this Part

- (1) This Part is divided into 3 subparts.
- (2) Subpart 1 deals with—
  - (a) *[Repealed]*
  - (b) the establishment of a code of professional conduct for authorised financial advisers; and
  - (c) the establishment and functions of a code committee.
- (3) Subpart 2 deals with—
  - (a) the procedure for dealing with complaints in relation to an authorised financial adviser; and
  - (b) the establishment of a disciplinary committee.
- (4) Subpart 3 deals with offences under this Act.

Section 78(2)(a): repealed, on 1 May 2011, by section 6 of the Financial Advisers Amendment Act 2011 (2011 No 9).

#### Subpart 1—Code of professional conduct and code committee

Subpart 1 heading: amended, on 1 May 2011, by section 7 of the Financial Advisers Amendment Act 2011 (2011 No 9).

#### *Commissioner for Financial Advisers*

*[Repealed]*

Heading: repealed, on 1 May 2011, by section 8 of the Financial Advisers Amendment Act 2011 (2011 No 9).

#### 79 Commissioner for Financial Advisers

*[Repealed]*

Section 79: repealed, on 1 May 2011, by section 8 of the Financial Advisers Amendment Act 2011 (2011 No 9).

#### 80 Functions of Commissioner

*[Repealed]*

Section 80: repealed, on 1 May 2011, by section 8 of the Financial Advisers Amendment Act 2011 (2011 No 9).

#### *Code committee*

#### 81 Establishment of code committee

The code committee is established.

Section 81: substituted, on 1 May 2011, by section 9 of the Financial Advisers Amendment Act 2011 (2011 No 9).

## **82 Functions of code committee**

The functions of the code committee are—

- (a) first, to produce a draft code for approval by the FMA; and
- (b) subsequently, to review the code from time to time; and
- (c) to recommend to the FMA changes to the code as the code committee thinks fit.

Section 82(a): amended, on 1 May 2011, by section 12(1) of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 82(c): amended, on 1 May 2011, by section 12(1) of the Financial Advisers Amendment Act 2011 (2011 No 9).

## **83 Membership of code committee**

- (1) The FMA may at any time—
  - (a) appoint a member of the code committee; or
  - (b) discharge a member of the code committee.
- (2) The appointment of a member of the code committee must be for a specified period, but a member may be discharged under subsection (1)(b) before his or her period of appointment has expired.
- (3) The code committee must have not less than 7 members and not more than 11 members, and the FMA must ensure that the number of current members does not fall below 7.
- (4) The FMA must appoint as members of the code committee—
  - (a) 1 person who, in the FMA's opinion, is qualified for appointment by virtue of his or her knowledge of, and experience and competency in relation to, consumer affairs; and
  - (b) other persons who, in the FMA's opinion, are each qualified for appointment by virtue of their individual knowledge of, and experience and competency in relation to, the financial adviser industry.
- (5) A member of the code committee may resign by notice in writing to the FMA.

Section 83(1): amended, on 1 May 2011, by section 12(1) of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 83(3): amended, on 1 May 2011, by section 12(1) of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 83(4): amended, on 1 May 2011, by section 12(1) of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 83(4)(a): amended, on 1 May 2011, by section 12(2) of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 83(4)(b): amended, on 1 May 2011, by section 12(2) of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 83(5): amended, on 1 May 2011, by section 12(1) of the Financial Advisers Amendment Act 2011 (2011 No 9).

#### **84 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.
- (2) The code committee must elect 1 of its members as chairperson.
- (3) The quorum for a meeting of the code committee is 5 members.
- (4) Every question before the code committee must be determined by a majority of the votes of the members present or otherwise.
- (5) The chairperson of the code committee has a deliberative vote and, in the case of an equality of votes, a casting vote.
- (6) Except as provided in this section and in any regulations made under this Act, the code committee may regulate its own procedure.

Compare: 2006 No 60 s 56

#### **85 Certain provisions of Crown Entities Act 2004 apply to members of code committee**

Clause 15 of Schedule 5 of the Crown Entities Act 2004 (**Schedule 5**) applies as if the code committee were a committee appointed by the FMA under clause 14 of Schedule 5 and with all other necessary modifications.

Section 85: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

#### **85A Funding of code committee**

The FMA must fund the code committee.

Section 85A: inserted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

#### *Code of professional conduct for authorised financial advisers*

#### **86 Content of code**

- (1) The code must provide for minimum standards of professional conduct that must be demonstrated by authorised financial advisers, including minimum standards—
  - (a) of competence; and
  - (b) of knowledge and skills; and
  - (c) of ethical behaviour; and
  - (d) of client care.
- (2) The code must also provide for continuing professional training for authorised financial advisers, including specification of minimum requirements that an

authorised financial adviser must meet for the purpose of continuing professional training.

- (3) The code may specify different standards for different classes of authorised financial adviser.
- (4) The code may limit or modify standards, or provide for separate standards, for the duration of 1 or more periods of transition.
- (5) Despite subsection (1), the code may provide for different minimum standards for individuals training to be authorised financial advisers.
- (6) The code may specify that minimum standards apply to services provided by an authorised financial adviser even if the adviser is providing that service as, or on behalf of the business of, a DIMS licensee under the Financial Markets Conduct Act 2013.

Section 86(4): added, on 1 July 2010, by section 26 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 86(5): added, on 1 July 2010, by section 26 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 86(6): inserted, on 1 December 2014, by section 48 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### **87 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) consult any persons that it reasonably considers to be representative of the financial adviser industry; and
  - (b) consult with interest groups within the financial adviser industry; and
  - (c) allow an opportunity for any person affected by the code to make submissions to the code committee.

### **88 FMA's approval of draft code**

- (1) After receiving the draft code prepared by the code committee, the FMA must—
  - (a) approve it; or
  - (b) decline to approve it.
- (2) The FMA must approve the draft code prepared by the code committee if the FMA 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 section 87(2); and
  - (c) the draft code is consistent with this Act.
- (3) A failure by the code committee to comply with its obligations under section 87(2) does not affect the validity of the code.

(4) This section is subject to section 89.

Section 88 heading: amended, on 1 May 2011, by section 12(2) of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 88(1): amended, on 1 May 2011, by section 12(1) of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 88(2): amended, on 1 May 2011, by section 12(1) of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 88(3): amended, on 28 July 2009, by section 9 of the Financial Advisers Amendment Act 2009 (2009 No 24).

**89 FMA may require revision or consultation**

(1) If the FMA is not satisfied as to a matter specified in section 88(2),—

- (a) the FMA 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 FMA's direction.

(2) If the FMA considers that the draft code is not consistent with this Act, the FMA must, in directing the code committee to revise the draft code, state in what respects it considers that the draft code is not consistent.

Section 89 heading: amended, on 1 May 2011, by section 12(1) of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 89(1): amended, on 1 May 2011, by section 12(1) of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 89(1)(b): amended, on 1 May 2011, by section 12(2) of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 89(2): amended, on 1 May 2011, by section 12(1) of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 89(2): amended, on 1 May 2011, by section 12(3) of the Financial Advisers Amendment Act 2011 (2011 No 9).

**90 FMA's approval of revised draft code**

(1) After receiving a revised draft code, the FMA must—

- (a) approve the revised draft code; or
- (b) if the FMA considers that the draft code requires further amendment to be consistent with this Act,—
  - (i) make any amendments to the draft code that the FMA considers necessary; and
  - (ii) approve the draft code as amended.

(2) Before making any amendment to the draft code under this section, the FMA must—

- (a) advise the code committee of the FMA'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.

Section 90 heading: amended, on 1 May 2011, by section 12(2) of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 90(1): amended, on 1 May 2011, by section 12(1) of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 90(1)(b): amended, on 1 May 2011, by section 12(1) of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 90(1)(b)(i): amended, on 1 May 2011, by section 12(1) of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 90(2): amended, on 1 May 2011, by section 12(1) of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 90(2)(a): amended, on 1 May 2011, by section 12(2) of the Financial Advisers Amendment Act 2011 (2011 No 9).

## **91 Deadline for FMA's approval of draft code**

The FMA must approve the draft code within 90 days of receiving the draft code or, if section 89 applies, within 90 days of receiving the revised draft code.

Section 91 heading: amended, on 1 May 2011, by section 12(2) of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 91: amended, on 1 May 2011, by section 12(1) of the Financial Advisers Amendment Act 2011 (2011 No 9).

## **92 Minister's approval required**

- (1) After approving the draft code or after the 90-day deadline for approval specified in section 91 has expired, the FMA must forward the draft code to the Minister for the Minister's approval.
- (2) The Minister must approve the draft code unless the Minister considers that it is not consistent with this Act.
- (3) If the Minister is not satisfied that the draft code is consistent with this Act, the Minister must implement the procedure set out in sections 89 and 90 with necessary modifications.
- (4) For the purposes of subsection (3), a reference in sections 89 and 90 to the FMA must be read as a reference to the Minister.

Section 92(1): amended, on 1 May 2011, by section 12(1) of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 92(4): amended, on 1 May 2011, by section 12(1) of the Financial Advisers Amendment Act 2011 (2011 No 9).

## **93 Deadline for Minister's approval of draft code**

The Minister must approve the draft code within 90 days of receiving the draft code or, if section 92(3) applies, within 90 days of receiving the revised draft code.

**94 Code comes into force by *Gazette* notice**

- (1) After the Minister has approved the draft code or after the 90-day deadline for approval specified in section 93 has expired, the FMA must give notice in the *Gazette* 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 *Gazette*.
- (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.

Section 94: substituted, on 1 July 2010, by section 27 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 94(1): amended, on 1 May 2011, by section 12(1) of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 94(4): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

*Changes to code*

**95 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 sections 87 to 94 for the preparation and approval of the draft code.

Section 95(1)(b): amended, on 1 May 2011, by section 12(1) of the Financial Advisers Amendment Act 2011 (2011 No 9).

**Subpart 2—Complaints and disciplinary proceedings**

*Who deals with complaints*

**96 Complaint about financial adviser**

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

Section 96(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 96(2): amended, on 1 May 2011, by section 12(1) of the Financial Advisers Amendment Act 2011 (2011 No 9).

## **97 Investigation by FMA**

- (1) After receiving a complaint, the FMA must 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.

Section 97 heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 97(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 97(1)(b): amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 97(1)(c): amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 97(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 97(2): amended, on 28 July 2009, by section 10 of the Financial Advisers Amendment Act 2009 (2009 No 24).

### *Complaint about authorised financial adviser*

## **98 Reference of complaint to disciplinary committee**

When the FMA has, under section 97, investigated a complaint about an authorised financial adviser, it must refer the complaint to the disciplinary committee if, in the FMA's opinion, the conduct complained of amounts to a breach of the code.

Section 98: substituted, on 1 July 2010, by section 28 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 98: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 98: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 98: amended, on 28 July 2009, by section 10 of the Financial Advisers Amendment Act 2009 (2009 No 24).



**99 Disciplinary committee must give notice of complaint to financial adviser concerned**

If the FMA refers a complaint about an authorised financial adviser to the disciplinary committee, and the disciplinary committee considers that a hearing is necessary to deal with the complaint, the disciplinary committee must serve a written notice of the complaint on the financial adviser.

Section 99: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**100 Content of disciplinary committee's 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 breached the code; 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.

Section 100: amended, on 28 July 2009, by section 11 of the Financial Advisers Amendment Act 2009 (2009 No 24).

**101 Disciplinary committee may discipline authorised financial adviser for breach of code**

- (1) In this section, A is the person who is the subject of the complaint.
- (2) The disciplinary committee may take any of the actions referred to in subclause (3) if it is satisfied that A has breached the code.
- (3) In any case to which subsection (2) applies, the disciplinary committee may—
  - (a) recommend that the FMA cancels A's authorisation:
  - (b) recommend that the FMA—
    - (i) cancels A's authorisation; and
    - (ii) debars A for a specified period from applying to be re-authorised:
  - (c) recommend that the FMA suspends A's authorisation for a period of no more than 12 months or until A meets specified conditions relating to the authorisation (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, perform a financial adviser service only subject to any conditions as to employment, supervision, or otherwise that the disciplinary committee may specify in the order:
  - (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.
- (4) No fine may be imposed under subsection (3)(g) in relation to an act or omission that constitutes an offence for which A has been convicted by a court.
- (4A) A fine imposed under subsection (3)(g) is recoverable in any court as a debt due to the FMA.
- (5) In any case to which subsection (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.
- (6) The disciplinary committee may publicly notify the action in any way that it thinks fit.
- (7) This section applies whether or not A is an authorised financial adviser at the time of the complaint, the investigation, or the disciplinary proceeding.

Section 101(3)(a): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 101(3)(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 101(3)(c): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 101(4A): inserted, on 30 May 2017, by section 43 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 101(5): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

## **102 Reasonable opportunity to be heard**

The disciplinary committee must not take any of the actions specified in section 101(3) unless it has first—

- (a) informed the person concerned in writing as to why it may take any of those actions; and
- (b) given that person or his or her representative a reasonable opportunity to make written submissions and be heard on the question.

### *Disciplinary committee*

## **103 Minister must establish disciplinary committee**

The Minister must establish a disciplinary committee.

## **104 Functions of disciplinary committee**

The functions of the disciplinary committee are to—

- (a) conduct disciplinary proceedings arising out of complaints regarding authorised financial advisers referred to it by the FMA; and

- (b) take any of the actions referred to in section 101(3) as a result of disciplinary proceedings.

Section 104(a): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### **105 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 between 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 adviser industry; and
  - (b) at least 1 member who is independent of the financial adviser industry; and
  - (c) at least 1 member who is a lawyer with not less than 7 years' legal experience.
- (6) A member of the disciplinary committee may resign by notice in writing to the Minister.

Section 105(3): amended, on 1 May 2011, by section 10 of the Financial Advisers Amendment Act 2011 (2011 No 9).

### **106 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.
- (4) The chairperson of the disciplinary committee has a deliberative vote and, in the case of an equality of votes, a casting vote.
- (5) Except as provided for in this Act and in any regulations made under this Act, the disciplinary committee may regulate its own procedure.

Compare: 2006 No 60 s 56

### **107 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):
  - (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.

Compare: 2005 No 38 s 30

**108 District Court may authorise disciplinary committee to summon witnesses on disciplinary matters**

- (1) A District Court Judge may, on the application of the disciplinary committee or the person to whom the proceedings relate, give a certificate authorising the disciplinary committee to issue a summons under section 109.
- (2) A District Court Judge must not give a certificate under subsection (1) unless satisfied that—
- (a) the evidence of the witness is or may be material to the hearing of a disciplinary matter by the disciplinary committee; and
  - (b) it is necessary or desirable that the summons be issued to compel the attendance of the witness at the hearing.

Compare: 2005 No 38 s 31

**109 Issuing of summons by disciplinary committee**

- (1) The disciplinary committee must, on production of a certificate referred to in section 108, issue a summons to a person requiring that person to attend a hearing before the disciplinary committee and to do all or any of the following:
- (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 the chairperson of the disciplinary committee, and state—
- (a) the date and time when, and the place where, the person must attend; and
  - (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.

- (3) The disciplinary committee may require that any documents, things, or information produced under this section be verified by oath, statutory declaration, or otherwise.

Compare: 2005 No 38 s 32

### **110 Serving of summons**

- (1) A summons may be served—
- (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; or
  - (c) by emailing it to the person summoned at an email address that is used by the person summoned.
- (2) A summons must,—
- (a) if it is to be served under subsection (1)(a), be served at least 48 hours before the attendance of the witness is required;
  - (b) if it is to be served under subsection (1)(b) or (c), be served at least 10 days before the attendance of the witness is required.
- (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.

Compare: 2005 No 38 s 33

Section 110(1)(b): amended, on 16 December 2017, by section 66(1) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 110(1)(c): inserted, on 16 December 2017, by section 66(2) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 110(2)(b): amended, on 16 December 2017, by section 66(3) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 110(4): inserted, on 16 December 2017, by section 66(4) of the Electronic Interactions Reform Act 2017 (2017 No 50).

### **111 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.

- (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: 2005 No 38 s 34

Section 111(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **112 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.

- (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: 2005 No 38 s 36

### **113 Certain provisions of Crown Entities Act 2004 apply to members of disciplinary committee**

Clause 15 of Schedule 5 of the Crown Entities Act 2004 (**Schedule 5**) applies as if the disciplinary committee were a committee appointed by the FMA under clause 14 of Schedule 5 and with all other necessary modifications.

Section 113: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### **113A Funding of disciplinary committee**

The FMA must fund the disciplinary committee.

Section 113A: inserted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

## Subpart 3—Offences

### *Offences: Restrictions on providing services and holding out*

Heading: substituted, on 1 July 2010, by section 29 of the Financial Advisers Amendment Act 2010 (2010 No 40).

### **114 Offence of providing financial adviser service without being permitted to do so**

- (1) A person who provides a financial adviser service set out in section 18 when not permitted to do so under that section and section 17 commits an offence and is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$10,000;
  - (b) in the case of an entity, to a fine not exceeding \$50,000.

- (2) A person who provides a financial adviser service set out in section 19 or 20 when not permitted to do so under those sections and section 17 commits an offence and is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$5,000:
  - (b) in the case of an entity, to a fine not exceeding \$10,000.
- (3) A person (A) has a defence to a charge under subsection (1) or (2) if A proves on the balance of probabilities that A did not know, and ought not reasonably to have known, that A did not come within the requirements of the relevant section or sections.

Section 114: substituted, on 1 July 2010, by section 29 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 114(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 114(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **115 Offence of holding out as authorised financial adviser, financial planner, investment planner, or QFE**

A person who knowingly or recklessly contravenes section 20A, 20B, or 20C commits an offence and is liable on conviction,—

- (a) in the case of an individual, to a fine not exceeding \$10,000:
- (b) in the case of an entity, to a fine not exceeding \$50,000.

Section 115: substituted, on 1 July 2010, by section 29 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 115: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **116 Offences in relation to employer or principal failing to maintain registration**

*[Repealed]*

Section 116: repealed (without coming into force), on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

#### *Disclosure offences: Financial advisers, QFEs, and brokers*

Heading: amended, on 1 July 2010, by section 30 of the Financial Advisers Amendment Act 2010 (2010 No 40).

#### **117 Failure to make disclosure under or in accordance with disclosure obligation**

A person who knowingly or recklessly contravenes a disclosure obligation commits an offence and is liable on conviction to a fine,—

- (a) in the case of an individual, not exceeding \$100,000:
- (b) in the case of an entity, not exceeding \$300,000.

Section 117: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 117(b): amended, on 1 July 2010, by section 31 of the Financial Advisers Amendment Act 2010 (2010 No 40).

*Conduct offences: Financial advisers and brokers*

Heading: amended, on 1 July 2010, by section 32 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**118 Offence of misleading or deceptive conduct by financial adviser or broker**

A person who knowingly or recklessly contravenes section 34(1) or section 77L commits an offence and is liable on conviction to a fine,—

- (a) in the case of an individual, not exceeding \$100,000:
- (b) in the case of an entity, not exceeding \$300,000.

Section 118: substituted, on 1 July 2010, by section 33 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 118: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**119 Offence of misleading, deceptive, or confusing advertisement by financial adviser or broker**

A person who knowingly or recklessly contravenes section 35(1) or section 77M commits an offence and is liable on conviction to a fine,—

- (a) in the case of an individual, not exceeding \$100,000:
- (b) in the case of an entity, not exceeding \$300,000.

Section 119: substituted, on 1 July 2010, by section 33 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 119: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**120 Offence of contravening restrictions on use of term sharebroker**

*[Repealed]*

Section 120: repealed, on 1 April 2014, by section 49 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

*Offences: Authorised financial advisers only*

**121 Offence of recommending offer that contravenes financial markets legislation**

A person who contravenes section 38(1) commits an offence and is liable on conviction to a fine not exceeding \$100,000.

Section 121 heading: amended, on 1 December 2014, by section 50 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 121 heading: amended, on 1 July 2010, by section 34 of the Financial Advisers Amendment Act 2010 (2010 No 40).



Section 121: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**122 Offence of contravening requirement that authorised financial adviser pay client's money into separate trust account**

*[Repealed]*

Section 122: repealed, on 1 July 2010, by section 35 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**123 Offence of failing to account for client's money or other property**

*[Repealed]*

Section 123: repealed, on 1 July 2010, by section 35 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**124 Offence in relation to records of client's money or property**

*[Repealed]*

Section 124: repealed, on 1 July 2010, by section 35 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**125 Offence of breaching restrictions on use of client's money or property**

*[Repealed]*

Section 125: repealed, on 1 July 2010, by section 35 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**126 Offence of failing to comply with terms and conditions of authorisation**

A person who contravenes section 45(1) commits an offence and is liable on conviction to a fine not exceeding \$5,000.

Section 126: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**127 Offence of failing to comply with FMA's direction**

A person who fails to comply with a direction of the FMA given under section 61(3) commits an offence and is liable on conviction to a fine not exceeding \$5,000.

Section 127 heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 127: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 127: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**128 Offence of contravening condition of disciplinary committee's order**

A person who contravenes a condition of an order made by the disciplinary committee under section 101(3)(e) commits an offence and is liable on conviction to a fine not exceeding \$5,000.

Section 128: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

*Offences: QFEs and QFE groups only*

Heading: substituted, on 1 July 2010, by section 36 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**129 Offence of failing to comply with terms and conditions of QFE status**

- (1) If a QFE contravenes section 46(1), each of the following persons commits an offence and is liable on conviction to a fine not exceeding \$25,000:
  - (a) the QFE:
  - (b) every partner entity of the QFE.
- (2) If a partner entity of a QFE contravenes section 46(1), every partner entity of the QFE commits an offence and is liable on conviction to a fine not exceeding \$25,000.

Section 129: substituted, on 1 July 2010, by section 36 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 129(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 129(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**130 Offence of misleading or deceptive conduct in relation to financial adviser service by employee, agent, or nominated representative**

- (1) If a QFE knowingly or recklessly contravenes section 47(1), each of the following persons commits an offence and is liable on conviction to a fine not exceeding \$300,000:
  - (a) the QFE:
  - (b) every partner entity of the QFE.
- (2) If an associated entity of a QFE knowingly or recklessly contravenes section 47(1), each of the following persons commits an offence and is liable on conviction to a fine not exceeding \$300,000:
  - (a) the associated entity of the QFE:
  - (b) the QFE:
  - (c) every partner entity of the QFE.

Section 130: substituted, on 1 July 2010, by section 36 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 130(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 130(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**131 Offence of misleading, etc, advertisement of financial adviser service by employee, agent, or nominated representative**

- (1) If a QFE knowingly or recklessly contravenes section 48(1), each of the following persons commits an offence and is liable on conviction to a fine not exceeding \$300,000:
- (a) the QFE:
  - (b) every partner entity of the QFE.
- (2) If an associated entity of a QFE knowingly or recklessly contravenes section 48(1), each of the following persons commits an offence and is liable on conviction to a fine not exceeding \$300,000:
- (a) the associated entity of the QFE:
  - (b) the QFE:
  - (c) every partner entity of the QFE.

Section 131: substituted, on 1 July 2010, by section 36 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 131(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 131(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**132 Offence of failing to comply with FMA's direction**

If a QFE fails to comply with a direction of the FMA given under section 75F(3), each of the following persons commits an offence and is liable on conviction to a fine not exceeding \$25,000:

- (a) the QFE:
- (b) every partner entity of the QFE.

Section 132: substituted, on 1 July 2010, by section 36 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 132 heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 132: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 132: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**133 Offence of failing to comply with obligations in relation to authorised financial advisers**

If a QFE or a partner entity contravenes section 76(1)(e), each of the following persons commits an offence and is liable on conviction to a fine not exceeding \$50,000:

- (a) the QFE:
- (b) every partner entity of the QFE.

Section 133: substituted, on 1 July 2010, by section 36 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 133: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **134 Offence of failing to provide annual report**

If a QFE contravenes section 77(1), each of the following persons commits an offence and is liable on conviction to a fine not exceeding \$25,000:

- (a) the QFE;
- (b) every partner entity of the QFE.

Section 134: substituted, on 1 July 2010, by section 36 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 134: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **134A Defence to offences relating to entities in QFE groups**

An entity, being the QFE of a QFE group or a partner entity, has a defence to an offence under any of sections 129 to 134 if the entity proves that the entity—

- (a) was not involved in the contravention that constitutes the offence; and
- (b) took all reasonable steps to ensure that the members of the QFE group complied with the requirements of this Act.

Section 134A: inserted, on 1 July 2010, by section 36 of the Financial Advisers Amendment Act 2010 (2010 No 40).

#### *Offences: Broking services only*

Heading: inserted, on 1 July 2010, by section 37 of the Financial Advisers Amendment Act 2010 (2010 No 40).

### **134B Offence of receiving client money if offer contravenes financial markets legislation**

A person who contravenes section 77O commits an offence and is liable on conviction to a fine,—

- (a) in the case of an individual, not exceeding \$100,000;
- (b) in the case of an entity, not exceeding \$300,000.

Section 134B: inserted, on 1 July 2010, by section 37 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 134B heading: amended, on 1 December 2014, by section 51 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 134B: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**134C Offence of contravening requirement to pay client money into separate trust account and hold client property on trust**

A person who contravenes section 77P commits an offence and is liable on conviction to a fine,—

- (a) in the case of an individual, not exceeding \$5,000:
- (b) in the case of an entity, not exceeding \$25,000.

Section 134C: inserted, on 1 July 2010, by section 37 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 134C heading: amended, on 1 April 2014, by section 52 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 134C: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**134D Offence of failing to account for client money and client property**

A person who contravenes section 77Q commits an offence and is liable on conviction to a fine,—

- (a) in the case of an individual, not exceeding \$5,000:
- (b) in the case of an entity, not exceeding \$25,000.

Section 134D: inserted, on 1 July 2010, by section 37 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 134D: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**134E Offence in relation to records of client money and client property**

A person who contravenes any of section 77R(1) to (3) commits an offence and is liable on conviction to a fine,—

- (a) in the case of an individual, not exceeding \$5,000:
- (b) in the case of an entity, not exceeding \$25,000.

Section 134E: inserted, on 1 July 2010, by section 37 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 134E: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**134EA Offence of failing to report on client money and client property**

A person who contravenes section 77RA commits an offence and is liable on conviction to a fine,—

- (a) in the case of an individual, not exceeding \$5,000:
- (b) in the case of an entity, not exceeding \$25,000.

Section 134EA: inserted, on 1 April 2014, by section 53 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**134F Offence of breaching restrictions on use of client money and client property**

A person who contravenes section 77S commits an offence and is liable on conviction to a fine,—

- (a) in the case of an individual, not exceeding \$5,000:
- (b) in the case of an entity, not exceeding \$25,000.

Section 134F: inserted, on 1 July 2010, by section 37 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 134F: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**134G Offence of failing to comply with FMA's direction**

A person who fails to comply with a direction of the FMA given under section 77V commits an offence and is liable on conviction to a fine,—

- (a) in the case of an individual, not exceeding \$5,000:
- (b) in the case of an entity, not exceeding \$25,000.

Section 134G: inserted, on 1 July 2010, by section 37 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 134G heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 134G: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 134G: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

*Miscellaneous offences*

Heading: inserted, on 1 July 2010, by section 38(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

**135 Offence of failing to comply with FMA's direction in respect of breach of disclosure or conduct obligation**

A person who fails to comply with a direction of the FMA given under section 49(3) commits an offence and is liable on conviction to a fine not exceeding \$5,000.

Section 135 heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 135: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 135: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

*Miscellaneous offences*

*[Repealed]*

Heading: repealed, on 1 July 2010, by section 38(2) of the Financial Advisers Amendment Act 2010 (2010 No 40).

**136 Offence of false declaration, etc, in support of application for authorisation or grant of QFE status**

- (1) A person (A) commits an offence if A has, for the purpose of obtaining authorisation or the grant of QFE status, either for A or for any other person,—
  - (a) either orally or in writing, made any declaration or representation knowing it to be false or misleading in a material particular; or
  - (b) produced to the FMA or made use of any document knowing it to contain a declaration or representation referred to in paragraph (a); or
  - (c) produced to the FMA or made use of any document knowing that it was not genuine.
- (2) A person who commits an offence under this section is liable on conviction to a fine,—
  - (a) in the case of an individual, not exceeding \$100,000;
  - (b) in the case of an entity, not exceeding \$300,000.

Section 136(1)(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 136(1)(c): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 136(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**137 Failure to comply with summons to attend disciplinary committee hearing**

- (1) A person summoned under section 109 commits an offence if he or she, without sufficient cause,—
  - (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.
- (2) A person who commits an offence under this section is liable on conviction to a fine not exceeding \$5,000.

- (3) A person must not be convicted of an offence under this section if witnesses' fees, allowances, and expenses to which the person is entitled under section 111 have not been paid or tendered to him or her.

Compare: 2005 No 38 s 35

Section 137 heading: amended, on 1 May 2011, by section 11 of the Financial Advisers Amendment Act 2011 (2011 No 9).

Section 137(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### Subpart 4—Injunctions and other remedies

Subpart 4: inserted, on 1 July 2010, by section 39 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Subpart 4 heading: amended, on 1 December 2014, by section 54 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

#### *Injunctions*

Heading: inserted, on 1 July 2010, by section 39 of the Financial Advisers Amendment Act 2010 (2010 No 40).

#### **137A Injunctions against contraventions**

- (1) The High Court may, on application by the FMA, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute a contravention of a provision of this Act if—
- (a) the court is satisfied that the person has engaged in conduct of that kind; or
  - (b) it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind.
- (2) In subsection (1), **contravention** includes aiding, abetting, counselling, or procuring the contravention.
- (3) The court may grant an interim injunction restraining a person from engaging in conduct of a particular kind if in its opinion it is desirable to do so.
- (4) Subsections (1)(a) and (3) apply whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind.
- (5) Subsections (1)(b) and (3) apply whether or not the person has previously engaged in conduct of that kind or there is an imminent danger of substantial damage to any other person if that person engages in conduct of that kind.
- (6) In this section, **engaging in conduct** means doing or refusing to do an act, and includes—
- (a) omitting to do an act; or
  - (b) making it known that an act will or will not be done.

Compare: 1988 No 234 ss 2, 42K, 42L



Section 137A: inserted, on 1 July 2010, by section 39 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 137A(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### **137B Undertaking as to damages not required by FMA**

- (1) If the FMA applies to the High Court for the grant of an interim injunction under section 137A, the court must not, as a condition of granting an interim injunction, require the FMA to give an undertaking as to damages.
- (2) However, in determining the FMA's application for the grant of an interim injunction, the court must not take into account that the FMA is not required to give an undertaking as to damages.

Compare: 1988 No 234 s 42M

Section 137B: inserted, on 1 July 2010, by section 39 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 137B heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 137B(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 137B(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 137B(2): amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

### **137C When court may make banning order**

*[Repealed]*

Section 137C: repealed, on 1 December 2014, by section 55 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### **137D Terms of banning orders**

*[Repealed]*

Section 137D: repealed, on 1 December 2014, by section 55 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### **137E Offence of contravening banning order**

*[Repealed]*

Section 137E: repealed, on 1 December 2014, by section 55 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

*Orders to preserve assets to satisfy claims**[Repealed]*

Heading: repealed, on 1 December 2014, by section 55 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**137F When High Court may prohibit payment or transfer of money, securities, or other property***[Repealed]*

Section 137F: repealed, on 1 December 2014, by section 55 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**137G What orders may be made***[Repealed]*

Section 137G: repealed, on 1 December 2014, by section 55 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**137H Interim orders***[Repealed]*

Section 137H: repealed, on 1 December 2014, by section 55 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**137I Relationship with other law***[Repealed]*

Section 137I: repealed, on 1 December 2014, by section 55 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**137J Offence of breaching orders***[Repealed]*

Section 137J: repealed, on 1 December 2014, by section 55 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

*Pecuniary and compensatory orders for contravening wholesale certification requirement or conduct obligations related to discretionary investment management service*

Heading: inserted, on 1 July 2010, by section 39 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Heading: amended, on 1 December 2014, by section 56(4) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**137K Pecuniary order for contravening wholesale certification requirement or conduct obligations related to discretionary investment management service**

- (1) The High Court may, on application by the FMA, order a person to pay a pecuniary penalty to the Crown if the court is satisfied that the person has, without

reasonable excuse, contravened a wholesale certification requirement under section 5E or a conduct obligation under any of sections 39 to 44.

- (2) The amount of the pecuniary penalty must not, in respect of each act or omission, exceed \$100,000 in the case of an individual or \$300,000 in the case of an entity.
- (3) In setting the amount of the pecuniary penalty, the court must take into account all of the following matters:
  - (a) the nature and extent of the contravention:
  - (b) the nature and extent of any loss or damage suffered by a person as a result of the contravention, including the effect on a person of the loss of an opportunity to make a complaint to an approved dispute resolution scheme:
  - (c) the circumstances in which the contravention took place (including whether the contravention was intentional, inadvertent, or caused by negligence):
  - (d) whether the person has previously been found by the court in proceedings under this Act to have engaged in similar conduct.
- (4) A financial adviser or broker may not be liable to more than 1 pecuniary penalty in respect of the same conduct.
- (5) *[Repealed]*

Section 137K: inserted, on 1 July 2010, by section 39 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 137K heading: amended, on 1 December 2014, by section 56(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 137K(1): amended, on 1 December 2014, by section 56(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 137K(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 137K(5): repealed, on 1 December 2014, by section 56(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### **137L Compensation for contravention of wholesale certification requirement**

- (1) If the court orders a person to pay a pecuniary penalty under section 137K in respect of the contravention of a wholesale certification requirement or a conduct obligation related to a discretionary investment management service, the court may, in addition, order a person to pay compensation to any person who has suffered, or is likely to suffer, loss or damage as a result of the contravention (the **aggrieved person**).
- (2) An application for orders under this section may be made by the FMA or any aggrieved person.
- (3) The application must be made within 1 year of the date of the pecuniary penalty order.

- (4) The court may make an order under this section whether or not any aggrieved person is a party to the proceedings.
- (5) In proceedings under this section, the court may make such orders as it thinks fit.

Section 137L: inserted, on 1 July 2010, by section 39 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 137L(1): amended, on 1 December 2014, by section 56(5) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 137L(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

#### *Temporary banning orders against financial adviser and broker*

Heading: inserted, on 1 July 2010, by section 39 of the Financial Advisers Amendment Act 2010 (2010 No 40).

### **137M When FMA may make temporary banning orders for financial adviser services or broking services**

The FMA may make an order (a **temporary banning order**) against a person in accordance with sections 137N to 137R if the FMA is satisfied that—

- (a) the person has persistently contravened this Act or the Financial Markets Conduct Act 2013; or
- (b) the person has been prohibited in an overseas jurisdiction from carrying on activities that the FMA is satisfied are substantially similar to any of the activities referred to in section 137N.

Compare: 1988 No 234 s 42D

Section 137M: inserted, on 1 July 2010, by section 39 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 137M heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 137M: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 137M(a): amended, on 1 December 2014, by section 57 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 137M(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### **137N Terms of temporary banning order**

A temporary banning order may prohibit or restrict a person from doing all or any of the following things, without the leave of the FMA, for a period stated in the order of 14 days or less:

- (a) providing financial adviser services or broking services;
- (b) being a director or promoter of, or in any way, whether directly or indirectly, being concerned or taking part in the management of, any incorporated or unincorporated body that provides financial adviser services or

broking services (other than an overseas company, or an incorporated or unincorporated body, that does not carry on business in New Zealand):

- (c) contributing, as employee or agent, to the provision of financial adviser services or broking services.

Compare: 1988 No 234 s 42E

Section 137N: inserted, on 1 July 2010, by section 39 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 137N: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### *Process for FMA's orders*

Heading: inserted, on 1 July 2010, by section 39 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

## **137O FMA must follow steps before making orders**

- (1) Unless section 137P applies, the FMA may make a temporary banning order only if it first takes the following steps:
  - (a) gives the person to whom the order is directed written notice of—
    - (i) the nature of the alleged contravention; and
    - (ii) the proposed terms of the order; and
    - (iii) the reasons for the proposed order; and
  - (b) gives that notice at least 24 hours before the FMA makes the order; and
  - (c) gives the person or the person's representative an opportunity to make written submissions and to be heard on the matter within that notice period.
  - (d) *[Repealed]*
- (2) However, the FMA may shorten these steps in accordance with section 137P in the circumstances specified in that section.

Compare: 1988 No 234 s 42F

Section 137O: inserted, on 1 July 2010, by section 39 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 137O heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 137O(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 137O(1)(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 137O(1)(c): substituted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 137O(1)(d): repealed, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 137O(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### **137P FMA may shorten steps for specified orders**

- (1) If the FMA thinks it necessary or desirable in the public interest for a temporary banning order to be made more urgently than section 137O permits, it—
  - (a) may give less than 24 hours' notice before it makes the order, and the notice may be oral, not written; and
  - (b) may give persons an opportunity to make only oral submissions, not written, to a member, officer, or employee of the FMA (as the FMA determines).
- (2) However, the FMA must include in the notice under section 137O the reasons for acting urgently and must otherwise comply with the steps set out in that section.

Compare: 1988 No 234 s 42G

Section 137P: inserted, on 1 July 2010, by section 39 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 137P heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 137P(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 137P(1)(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 137P(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### **137Q FMA must give notice after making orders**

- (1) If the FMA makes a temporary banning order, the FMA—
  - (a) must, as soon as is reasonably practicable, give written notice to the person to whom the order is directed of—
    - (i) the terms of the order; and
    - (ii) the reasons for the order; and
  - (b) may also give notice to any other person of those matters.
- (2) The FMA must also, as soon as practicable after making the temporary banning order, give notice on an Internet site maintained by or on behalf of the FMA (and may give public notice by any other means also) of the name of the person against whom the order is made and the period or dates for which the ban applies.

Compare: 1988 No 234 s 42H

Section 137Q: inserted, on 1 July 2010, by section 39 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 137Q heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 137Q(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 137Q(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### **137R General provisions on temporary banning orders**

- (1) The FMA may make a temporary banning order on the terms and conditions that the FMA thinks fit.
- (2) The FMA may vary a temporary banning order in the same way as it makes such an order under section 137O to 137Q.
- (3) The FMA may revoke a temporary banning order or suspend it on the terms and conditions it thinks fit.
- (4) A person that considers that a decision of the FMA in respect of a temporary banning order is wrong in law may appeal against the decision to the High Court on a question of law only.

Compare: 1988 No 234 s 42I

Section 137R: inserted, on 1 July 2010, by section 39 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 137R(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 137R(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 137R(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 137R(4): substituted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

### **137S Offence of failing to comply with FMA's orders**

- (1) A person who contravenes a temporary banning order commits an offence and is liable on conviction to a fine not exceeding \$30,000.
- (2) No person may be convicted of an offence against subsection (1) if—
  - (a) the person proves that the contravention occurred without the person's knowledge or without the person's knowledge of the order; or
  - (b) the contravention was in respect of matters that, in the court's opinion, were immaterial; or
  - (c) the court thinks that the contravention, in the circumstances of the case, ought reasonably to be excused.

Compare: 1988 No 234 s 42J

Section 137S: inserted, on 1 July 2010, by section 39 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 137S heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 137S(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## Part 5

### General provisions

#### *Appeal of decisions*

#### **138 Right of appeal**

- (1) A person affected may appeal to the District Court against any decision of—
- (a) the FMA to—
    - (i) decline authorisation under section 55(4); or
    - (ii) decline QFE status under section 67(4); or
    - (iii) take any action referred to in section 59(2) or 75D(2); or
    - (iv) give a direction under section 49, 61, 75F, or 77V; or
  - (b) the disciplinary committee to take any action referred to in section 101(3) or (5).
- (2) An appeal—
- (a) must be brought to the District Court by way of notice of appeal in accordance with the rules of court; and
  - (b) must be lodged within 20 working days after notice of the decision is communicated to the appellant, or within any further time a District Court Judge allows on application made before or after the period expires.

Compare: 2005 No 38 s 38

Section 138(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 138(1)(a): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 138(1)(a)(ii): amended, on 28 July 2009, by section 13 of the Financial Advisers Amendment Act 2009 (2009 No 24).

Section 138(1)(a)(iv): amended, on 1 July 2010, by section 40 of the Financial Advisers Amendment Act 2010 (2010 No 40).

#### **139 Notice of right of appeal**

When notifying a person under this Act of any decision against which section 138 gives him or her a right of appeal, the FMA or the disciplinary committee must also notify the person in writing of the right of appeal and the time within which an appeal must be lodged.

Compare: 2005 No 38 s 39

Section 139: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).



**140 Decision to have effect pending determination of appeal**

A decision against which an appeal is lodged under this Part continues in force unless the District Court orders otherwise.

Compare: 2005 No 38 s 40

**141 Procedure on appeal**

- (1) An appeal under this Part must be heard as soon as is reasonably practicable after it is lodged.
- (2) An appeal under this Part is by way of rehearing.
- (3) On hearing the appeal, the District Court—
  - (a) may confirm, reverse, or modify the decision appealed against; and
  - (b) may make any other decision that the person or body that made the decision appealed against could have made.
- (4) The court must not review—
  - (a) any part of a decision not appealed against; or
  - (b) any decision not appealed against at all.

Compare: 2005 No 38 s 41

**142 Court's decision final**

Except as provided in section 146, the decision of the District Court on an appeal under this Part is final.

Compare: 2005 No 38 s 42

**143 Court may refer matter back for reconsideration**

- (1) Instead of determining an appeal under this Part, the District Court may direct the person or body whose decision is under appeal to reconsider, either generally or in respect of any specified aspect, the whole or any part of the decision.
- (2) In giving a direction under subsection (1), the court—
  - (a) must state its reasons for the direction; and
  - (b) may give any other directions it thinks just in relation to the matter referred back for reconsideration.
- (3) Upon being directed to reconsider a matter, the person or body whose decision is under appeal—
  - (a) must reconsider the matter; and
  - (b) in doing so, must—
    - (i) take the court's reasons into account; and
    - (ii) give effect to the court's directions.

Compare: 2005 No 38 s 43

**144 Orders as to costs**

On an appeal under this Part, the District Court may order any party to the appeal to pay to any other party to the appeal any or all of the costs incurred by the other party in respect of the appeal.

Compare: 2005 No 38 s 44

**145 Orders as to publication of names**

- (1) On any appeal under this Part, 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 under subsection (1), 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.

Compare: 2005 No 38 s 45(1), (2)

**146 Appeal on question of law**

- (1) A party to an appeal under this Part may appeal to the High Court against any determination of law arising in the appeal.
- (2) The appeal must be heard and determined in accordance with the appropriate rules of court.
- (3) Part 6 of the Criminal Procedure Act 2011 applies to the appeal—
  - (a) so far as it is applicable and with all necessary modifications; but
  - (b) only so far as it relates to appeals on questions of law.
- (4) Subsection (3) overrides subsection (2).

Compare: 2005 No 38 s 46

Section 146(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

*Securities Commission: General powers*

*[Repealed]*

Heading: repealed, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

**147 Commission may exercise powers under Securities Act 1978**

*[Repealed]*

Section 147: repealed, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

*Standard conditions for incorporation in authorisation and grants*

Heading: inserted, on 1 July 2010, by section 41 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**147A Approval of standard conditions for incorporation in authorisations and grants of QFE status**

- (1) The FMA may, by notice in the *Gazette*,—
  - (a) approve standard conditions for incorporation in authorisations of financial advisers under section 55;
  - (b) approve standard conditions for incorporation in grants of QFE status under section 67.
- (2) The notice may state a date in relation to any specified standard condition on which the standard condition is incorporated into the authorisations of financial advisers or into the grants of QFE status.
- (3) However, if a standard condition proposed to be approved does not relate to a reporting or accounting requirement, a date may be stated under subsection (2) in relation to that standard condition only if that standard condition—
  - (a) will, in the opinion of the FMA, have little or no effect on authorised financial advisers or, as the case requires, on QFEs, or will be solely beneficial; or
  - (b) is made in response to an emergency; or
  - (c) is necessary to comply with statutory or international obligations; or
  - (d) is necessary to avoid an unfair commercial advantage being taken; or
  - (e) is necessary to avoid the defeat of the purpose of this Act; or
  - (f) is necessary or desirable in order to ensure timely and consistent implementation of changes to standard conditions for discretionary investment management services in connection with the commencement or implementation of the Financial Markets (Repeals and Amendments) Act 2013.
- (4) The notice in the *Gazette* need not set out the standard conditions, but those conditions must be—
  - (a) published on an Internet site maintained by or on behalf of the FMA; and
  - (b) made available in printed form for purchase on request by members of the public.

Section 147A: inserted, on 1 July 2010, by section 41 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 147A(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 147A(3)(a): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 147A(3)(e): amended, on 1 April 2014, by section 58 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 147A(3)(f): inserted, on 1 April 2014, by section 58 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 147A(4)(a): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### **147B Requirement to consult on proposal to incorporate material by reference**

- (1) Before the FMA approves standard conditions under section 147A, the FMA must—
  - (a) make copies of the proposed standard conditions available for inspection during working hours for a reasonable period, free of charge; and
  - (b) state where copies of the proposed standard conditions are available for purchase; and
  - (c) make copies of the proposed standard conditions available on an Internet site maintained by or on behalf of the FMA; and
  - (d) give notice in the *Gazette*—
    - (i) stating how the proposed standard conditions can be inspected, purchased, or accessed on the Internet site address; and
    - (ii) specifying a period within which any person may make a written submission to the FMA on the proposed standard conditions and, if applicable, on the date on which the standard condition is to be incorporated.
- (2) If the FMA proposes that any standard condition should be incorporated on a specified date, the notice given under subsection (1)(d) must also state why the FMA considers that the standard condition should apply to current authorisations of financial advisers or to current grants of QFE status ahead of the renewal of those authorisations or grants.
- (3) The FMA must consider any submissions received within the period specified under subsection (1)(d)(ii).

Section 147B: inserted, on 1 July 2010, by section 41 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 147B(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 147B(1)(c): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 147B(1)(d)(ii): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 147B(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 147B(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### **147C Variation or revocation of standard conditions**

- (1) The FMA may approve variations or revocations of any standard conditions under section 147A in the same way as standard conditions are approved under that section.
- (2) Section 147A and 147B apply to any proposed approval of variation or revocation of standard conditions, with any necessary modifications.

Section 147C: inserted, on 1 July 2010, by section 41 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 147C(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### **147D When standard conditions come into force**

The approval of standard conditions, or of variation or revocation of standard conditions, comes into force on the 28th day after the date on which the approval is notified in the *Gazette*.

Section 147D: inserted, on 1 July 2010, by section 41 of the Financial Advisers Amendment Act 2010 (2010 No 40).

### **147E Incorporation of changed standard conditions into existing authorisations or grants**

A standard condition, or a variation or revocation of a standard condition, that has come into force is incorporated into the authorisation of an authorised financial adviser or into the grant of QFE status of a QFE—

- (a) if the notice approving the condition, variation, or revocation states a date under section 147A(2), on that date; and
- (b) in any other case, when, and to the extent that, the condition is incorporated on the renewal of the authorisation or grant under section 58 or 75C.

Section 147E: inserted, on 1 July 2010, by section 41 of the Financial Advisers Amendment Act 2010 (2010 No 40).

## *Exemptions*

### **148 FMA may grant exemptions**

- (1) The FMA may, in its discretion and on any terms and conditions as it thinks fit, exempt any person or class of persons, service or class of service, or any transaction or class of transactions from—
  - (a) compliance with any obligation under this Act, the regulations, or the code;
  - (b) the obligation to register under the FSP Act by virtue of providing financial adviser services or broking services.

- (1A) To avoid doubt, an exemption may extend to exempt from compliance with any obligation under any provision that is implied into an agreement by the regulations.
- (2) The FMA must be satisfied, before it grants an exemption (except as provided in subsection (3)), that—
- (a) the costs of compliance with the relevant obligation—
    - (i) would be unreasonable; or
    - (ii) would not be justified by the benefit of compliance; or
  - (b) the relevant person, service, or transaction is subject to the regulations of an overseas jurisdiction and the FMA is satisfied that, in the circumstances, the protection of the New Zealand public is unlikely to be prejudiced.
- (3) If a proposed exemption would exempt a person applying to be an authorised financial adviser from obligations imposed by the code in respect of competence, the FMA must be satisfied that the exemption would not undermine consumer protection and that—
- (a) the applicant has qualifications that are comparable to standards required by the code; or
  - (b) the costs of compliance with the obligation would be—
    - (i) unreasonable; or
    - (ii) not justified by the benefit of compliance.

Section 148: substituted, on 1 July 2010, by section 42 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 148 heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 148(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 148(1A): inserted, on 1 December 2014, by section 59 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 148(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 148(2)(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 148(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

#### **148A FMA may vary or revoke exemption**

- (1) The FMA may vary the exemption in the same way as it may grant the exemption under section 148.
- (2) The FMA may revoke the exemption.

Section 148A: inserted, on 1 July 2010, by section 42 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 148A heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 148A(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 148A(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### **148B Status of exemptions, variations, or revocations**

- (1) For the purposes of the Legislation Act 2012, an exemption under section 148, or a variation or revocation of an exemption under section 148A,—
  - (a) is a disallowable instrument and must be presented to the House of Representatives under section 41 of that Act; and
  - (b) is a legislative instrument only if it is a class exemption.
- (2) An exemption that is not a class exemption must, as soon as practicable after being granted, be—
  - (a) published on an Internet site maintained by or on behalf of the FMA; and
  - (b) notified in the *Gazette*; and
  - (c) made available in printed form for purchase on request by members of the public.
- (3) In this section and in section 149, **class exemption** means an exemption that—
  - (a) is not an exemption from the code; and
  - (b) applies to a class of persons or transactions; but
  - (c) does not include an exemption granted in relation to a particular person, service, or transaction.

Section 148B: inserted, on 1 July 2010, by section 42 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 148B(1): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 148B(2)(a): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### **149 FMA must notify reasons for exemption other than class exemption**

- (1) When the FMA grants an exemption other than a class exemption, the FMA must notify the reasons for granting the exemption (including why the exemption is appropriate) in the *Gazette*.
- (2) However, the FMA may defer notifying or not notify the reasons for granting an exemption if the FMA is satisfied that it is proper to do so on the ground of commercial confidentiality.

Compare: 1988 No 234 s 48A

Section 149 heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 149 heading: amended, on 1 July 2010, by section 43(1) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 149(1): substituted, on 1 July 2010, by section 43(2) of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 149(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 149(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

## 150 Implied provisions

A provision that is implied into an agreement by the regulations—

- (a) applies despite anything to the contrary in the agreement; and
- (b) is enforceable by the parties or by any person on whom the provision confers, or purports to confer, a benefit; but
- (c) applies subject to any exemption granted by the FMA under section 148.

Section 150: replaced, on 1 December 2014, by section 60 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### *Information sharing*

## 151 Information sharing

- (1) The FMA may communicate to any of the agencies referred to in subsection (4) any information that the FMA—
  - (a) holds in relation to the exercise of the FMA's powers, or the performance of its functions and duties, under this Act; and
  - (b) considers may assist the agency in the exercise of its powers or the performance of its functions and duties.
- (2) The FMA may use any information communicated to it by an agency referred to in subsection (4) in the exercise of the FMA's powers, or the performance of its functions and duties, under this Act.
- (3) This section applies no matter what any enactment, contract, deed, or document may say.
- (4) The agencies to which this section applies are the following:
  - (a) the Registrar;
  - (b) the Commerce Commission;
  - (c) the New Zealand Police;
  - (d) an approved dispute resolution scheme;
  - (e) a licensing authority listed in Schedule 2 of the FSP Act;
  - (f) an overseas regulator.



- (5) The FMA may impose any conditions in relation to communicating information to an agency to which this section applies, including (without limitation) conditions relating to—
- (a) maintaining the confidentiality of the information (in particular, information that is personal information within the meaning of the Privacy Act 2020):
  - (b) the storing of, use of, or access to the information:
  - (c) the copying, returning, or disposing of the information:
  - (d) payment of the costs incurred by the FMA in communicating the information.

Section 151(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 151(1)(a): amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 151(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 151(2): amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 151(5): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 151(5)(a): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

Section 151(5)(d): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### *Fees*

Heading: amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

## **152 FMA's fees, charges, and costs**

- (1) Regulations may be made under section 155 for the payment to the FMA of fees, charges, and costs.
- (2) If regulations have been made under section 155(2) authorising the FMA to do so, the FMA may require payment of any costs incurred by the FMA.

Section 152 heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 152(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 152(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

## **153 Levy**

*[Repealed]*

Section 153: repealed, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

*Regulations***154 General regulations**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with subsections (4) to (8), make regulations—
  - (a) exempting any person, service, document, information, or product or class of persons, services, documents, information, or products from all or any of the provisions of this Act or the regulations, and prescribing the terms and conditions (if any) of the exemption:
  - (b) specifying the person that is the product provider in relation to a financial product other than an FMCA financial product, consumer credit contract, or contract of insurance:
  - (c) specifying a product as a category 1 product:
  - (d) specifying a product as a category 2 product:
  - (e) defining investment-linked contract of insurance, land investment product, and cash or term portfolio investment entity:
  - (f) providing for disclosure by financial advisers under sections 22 to 24 and for QFEs under section 25:
  - (g) prescribing the form of disclosure that (in addition to the matters set out in subsection (2)) may include a maximum length of a form and that some or all of the information that must be disclosed must be included in 1 disclosure statement:
  - (ga) prescribing the information that must be made available under section 29A, the time or events referred to in that section, and the manner of making the information available (including prescribing the manner in which the information is to be presented, calculated, or prepared):
  - (gb) prescribing the matters that must be contained in a client agreement required for the purposes of section 41 and prescribing provisions to be implied in a client agreement (which may, without limitation, specify duties under the client agreement, including by supplementing, or adding to, any duties prescribed by this Act):
  - (gc) prescribing circumstances for the purposes of section 44:
  - (gd) prescribing eligibility criteria for authorisation for a service (including any preconditions or requirements that apply, or could be imposed by regulations, in relation to an application for a licence under subpart 2 of Part 6 of the Financial Markets Conduct Act 2013 if the service was a market service):
  - (h) specifying, for the purposes of section 55(1)(d), cases in which an authorisation under that paragraph may be granted and, for the purposes of section 55(1A), limits on the scope of discretionary investment management services (whether by funds under management, number of cli-

ents, nature of services, or other matters) that may be authorised under this Act:

- (i) providing for disclosure by brokers under sections 77E and 77F:
- (j) prescribing when, and subject to what terms and conditions, disclosure may be made in a joint disclosure document (whether by financial advisers or by brokers jointly, or by 1 or more persons in different capacities) and the form of a joint disclosure document:
- (k) prescribing requirements relating to class services provided to retail clients for the purposes of section 36:
- (l) prescribing the following matters in relation to Part 3A:
  - (i) that any or all of sections 77P to 77T to apply to wholesale clients and the extent to which and the circumstances in which they so apply:
  - (ia) the duties and obligations of brokers in relation to client money and client property, provisions specifying who may be a related person or entity for the purposes of section 77P and what entities are prescribed for the purposes of the trust account, and other provisions regulating the establishment and operation of the trust account and the receipt, handling, and application of client money and client property by a broker (including 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):
  - (ii) provisions regulating the keeping, retention, reconciliation, inspection, and audit or review of trust account records and other records and procedures of brokers:
  - (iii) 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 brokers 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 to whom, when, where, and how it must be provided, and any other matters for the purposes of section 77RA):
  - (iv) provisions regulating 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 broking service:
- (la) providing that specified provisions of the Trusts Act 2019 do not apply to a trust, or class of trusts, that are or will be regulated by or under this Act:

- (m) prescribing the form of an application for authorisation:
  - (n) prescribing the form of an application for the grant of QFE status:
  - (o) prescribing information that must be contained in a QFE's annual report:
  - (p) prescribing the procedure of the code committee:
  - (q) prescribing the procedure of the disciplinary committee:
  - (r) *[Repealed]*
  - (s) *[Repealed]*
  - (t) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) In subsection (1), **prescribing the form** includes specifying additional content, means of communication, or any other requirement of form without necessarily specifying the use of a particular form.
- (3) Regulations for the purposes of subsection (1) may make different provision for different classes of financial adviser or broker, financial adviser service or broking service, and client, and for different circumstances in which a financial adviser service or broking service is provided.
- (4) The Minister must consult with the FMA before making a recommendation under subsection (1).
- (5) The Minister must not recommend the making of regulations under subsection (1)(a) or (gc) unless the Minister is satisfied that—
- (a) the regulations are consistent with the purposes of the Act; and
  - (b) the costs of compliance with the provision or provisions to which the regulations relate would be unreasonable or not justified by the benefit of compliance; and
  - (c) the extent of the exemption, or the extent to which requirements are dis-applied, under the regulations is not broader than what is reasonably necessary to address the matters that gave rise to the regulations.
- (5A) The Minister must not recommend the making of regulations under subsection (1)(la) unless the Minister has had regard to the purpose of the Trusts Act 2019 and is satisfied that—
- (a) the regulations are consistent with the purposes of this Act; and
  - (b) the extent to which the Trusts Act 2019 is dis-applied is not broader than is reasonably necessary to address the matters that gave rise to the regulations.
- (6) The Minister must not recommend the making of regulations under paragraph (r) or (s) of subsection (1) unless the Minister is satisfied that the regulations—
- (a) are necessary or desirable for the orderly implementation of this Act or the Financial Service Providers (Registration and Dispute Resolution) Act 2008; and

- (b) are consistent with the purposes of this Act or of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
- (7) Paragraphs (r) and (s) of subsection (1) expire, and are repealed, on the close of 30 June 2013.
- (8) Any regulations made under paragraph (r) or (s) of subsection (1) that are in force on 30 June 2013 expire, and are revoked, on the close of that day.

Section 154: substituted, on 1 July 2010, by section 46 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Section 154(1)(b): amended, on 1 December 2014, by section 61(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 154(1)(ga): inserted, on 1 April 2014, by section 61(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 154(1)(gb): inserted, on 1 April 2014, by section 61(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 154(1)(gc): inserted, on 1 April 2014, by section 61(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 154(1)(gd): inserted, on 1 April 2014, by section 61(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 154(1)(h): amended, on 1 April 2014, by section 61(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 154(1)(l)(i): replaced, on 1 April 2014, by section 61(4) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 154(1)(l)(ia): inserted, on 1 April 2014, by section 61(4) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 154(1)(l)(ii): replaced, on 1 April 2014, by section 61(4) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 154(1)(l)(iii): amended, on 1 April 2014, by section 61(5) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 154(1)(l)(iv): inserted, on 1 April 2014, by section 61(6) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 154(1)(la): inserted, on 30 January 2021, by section 178(1) of the Trusts Act 2019 (2019 No 38).

Section 154(1)(r): repealed, on 1 July 2013, by section 154(7).

Section 154(1)(s): repealed, on 1 July 2013, by section 154(7).

Section 154(4): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 154(5): amended, on 1 April 2014, by section 61(7) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 154(5)(a): amended, on 1 April 2014, by section 61(8) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 154(5)(b): amended, on 1 April 2014, by section 61(9) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 154(5)(c): replaced, on 1 April 2014, by section 61(10) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 154(5A): inserted, on 30 January 2021, by section 178(2) of the Trusts Act 2019 (2019 No 38).

**155 Regulations relating to fees, charges, and costs**

- (1) The Governor-General may from time to time, by Order in Council, make regulations—
- (a) requiring the payment to the FMA of fees and charges—
    - (i) in connection with the performance by the FMA of any function or duty, or the exercise of any power, under this Act; or
    - (ii) on an application to the FMA to perform any function or duty, or exercise any power, under this Act; and
  - (b) prescribing the amounts of the fees and charges payable to the FMA; and
  - (c) prescribing the amount of any other fee required to be paid under this Act.
- (2) The Governor-General may from time to time, by Order in Council, make regulations authorising the FMA to require payment to it of any costs incurred by the FMA in the performance by the FMA of any function or duty, or the exercise of any power, under this Act.

Section 155(1)(a): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 155(1)(a)(i): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 155(1)(a)(ii): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 155(1)(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 155(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

*Other matters***156 No contracting out**

The provisions of this Act have effect no matter what any agreement may say.

Compare: 1988 No 234 s 41V

**157 Territorial scope**

- (1) This Act applies to a financial adviser service or broking service received by a client in New Zealand, regardless of where the person providing the service is resident, is incorporated, or carries on business.
- (2) Sections 33, 34, 49, 77K, 77L, 77V, and 118 also extend to any financial adviser service or broking service received by a client outside New Zealand if it is provided by a person who is ordinarily resident in New Zealand (within the meaning of section 4 of the Crimes Act 1961) or is incorporated or has a place of business in New Zealand.

Section 157: substituted, on 1 July 2010, by section 47 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**158 Breach of exemption conditions**

The breach of a term or condition of an exemption provided by regulations made under this Act or by notice under section 148 is a breach of the obligation to which the exemption applies.

Compare: 1988 No 234 s 49E

**159 Exemption or regulation in respect of specified overseas jurisdictions**

*[Repealed]*

Section 159: repealed, on 1 July 2010, by section 48 of the Financial Advisers Amendment Act 2010 (2010 No 40).

**160 Time for filing charging document**

- (1) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011,—
- (a) a charging document may be filed at any time in respect of an offence against section 137E or 137J of this Act; and
  - (b) the limitation period in respect of an offence against section 114, 115, 116, 120, 126, 127, 128, 134C, 134D, 134E, 134F, 134G, 135, or 137 of this Act ends on the date that is 3 years after the date on which the offence was committed.

- (2) Nothing in subsection (1) affects the application of section 25 of the Criminal Procedure Act 2011 in relation to any offence not mentioned in that subsection.

Section 160: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**161 Ministry must review and report on operation of Act**

- (1) The Ministry must, not later than 5 years after the commencement of this section,—
- (a) review the operation of this Act since the commencement of this section; and
  - (b) prepare a report on the review for the Minister.
- (2) The report on the review must include recommendations to the Minister on whether any amendments to the Act are necessary or desirable.
- (3) As soon as practicable after receiving the report, the Minister must present a copy of that report to the House of Representatives.

*Other legislation affected*

**161A Financial Service Providers (Registration and Dispute Resolution) Act 2008 amended**

*[Repealed]*

Section 161A: repealed (without coming into force), on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

**162 KiwiSaver Act 2006 amended**

- (1) This section amends the KiwiSaver Act 2006.
- (2) The heading to section 206 is amended by omitting “**investment advice**” and substituting “**financial adviser service**”.
- (3) Section 206 is amended by omitting “give investment advice and is not an investment broker or a broker, for the purposes of the Investment Advisers (Disclosure) Act 1996” and substituting “perform a financial adviser service for the purposes of the Financial Advisers Act 2008”.

**163 Securities Act 1978 amended**

- (1) This section amends the Securities Act 1978.
- (2) Section 10(1)(b) is amended by inserting “financial advisers,” after “securities,” in the first place where it appears.
- (3) Section 10(1)(c) is amended by inserting “and financial advisers” after “securities”.
- (4) Section 10(1)(d) is amended by inserting “and the law and practice relating to financial advisers” after “securities”.
- (5) Section 11(1) is amended by omitting “10” and substituting “11”.
- (6) Section 11 is amended by inserting the following subsection after subsection (3B):
- (3C) One of the members must be appointed by the Governor-General as Commissioner for Financial Advisers under section 79(3) of the Financial Advisers Act 2008.
- (7) Schedule 1 is amended by omitting the item “Securities Markets Act 1988 Part 4” and substituting the item “Financial Advisers Act 2008”.

**164 Securities Markets Act 1988 amended**

- (1) This section amends the Securities Markets Act 1988.
- (2) Section 2(1) is amended by repealing the following definitions: **advertisement**, **advice advertisement**, **broker advertisement**, **investment advice** and **advice**, **investment adviser** and **adviser**, **investment advisers’ disclosure obligations** and **investment advisers’ obligations**, **investment broker** and **broker**, **investment brokers’ disclosure obligations** and **investment brokers’ obligations**, **investment brokers’ service**, **investment money** and **money**, and **investment property** and **property**.
- (3) Paragraph (e) of the definition of **security** in section 2(1) is repealed.
- (4) Part 4 is repealed.
- (5) Sections 42B(d), 42D, 42E, 42G(3)(b), 42N(b), 42P(c), 42S(f), 42T(2)(b), 42ZC, 42ZD, 43D, 43E(1)(a), 43E(3)(a) and (b), and 43K to 43N are repealed.
- (6) *[Repealed]*



- (7) Sections 48(1)(c) and 49C are repealed.

Section 164(6): repealed (without coming into force), on 28 July 2009, by section 16 of the Financial Advisers Amendment Act 2009 (2009 No 24).

**165 Sharebrokers Act 1908 repealed**

The Sharebrokers Act 1908 (1908 No 176) is repealed.

**166 Securities Markets (Investment Advisers and Brokers) Regulations 2007 revoked**

The Securities Markets (Investment Advisers and Brokers) Regulations 2007 (SR 2007/374) are revoked.

*Transitional provisions*

**167 Transitional provisions for existing offences and contravention under Securities Markets Act 1988**

- (1) This section applies to an offence committed under, or a contravention of, the Securities Markets Act 1988 before section 164 comes into force.
- (2) The Securities Markets Act 1988 continues to have effect as if it had not been amended by this Act for the purpose of—
- (a) investigating an offence or contravention to which this section applies:
  - (b) commencing or completing proceedings for an offence or contravention to which this section applies:
  - (c) imposing a penalty or other remedy, or making an order, in relation to an offence or contravention to which this section applies.

**168 Grant of authorisations in transitional period without prior inquiry into convictions**

- (1) In this section, **transitional period** means the period that commences on the commencement of section 55 and ends on the commencement of section 17.
- (2) In the transitional period, the Commission may authorise a person under section 55 even though it has not yet undertaken or completed its inquiries in relation to section 54(b).
- (3) An authorisation granted in reliance on subsection (2) is subject to the condition that it ceases to have effect if, before the expiry of the transitional period, the Commission notifies the applicant for authorisation that he or she is, given section 54(b), ineligible to be authorised.
- (4) If, at any time after the expiry of the transitional period, the Commission is satisfied that an authorised financial adviser is, given section 54(b), ineligible to be authorised, but that the adviser has been granted authorisation in reliance on subsection (2), section 59(1)(a) applies to that adviser as if he or she had ceased to be eligible for authorisation.

Section 168: added, on 1 July 2010, by section 49 of the Financial Advisers Amendment Act 2010 (2010 No 40).

## Financial Advisers Amendment Act 2011

Public Act	2011 No 9
Date of assent	18 April 2011
Commencement	see section 2

### 1 Title

This Act is the Financial Advisers Amendment Act 2011.

### 2 Commencement

This Act comes into force on 1 May 2011.

### 3 Principal Act amended

This Act amends the Financial Advisers Act 2008.

#### *Transitional provisions*

### 13 Transitional provisions for general transfer of functions of Commissioner for Financial Advisers to FMA

On and from the date on which this Act comes into force, (except as specified in section 14),—

- (a) all information and documents held by the Commissioner for Financial Advisers are held by the FMA (and this transfer does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993); and
- (b) anything done or omitted to be done or that is to be done by, or in relation to, the Commissioner for Financial Advisers must be treated as having been done or omitted or to be done by, or in relation to, the FMA; and
- (c) the FMA may complete any matter or thing that would, but for this Act, have been completed by the Commissioner for Financial Advisers; and
- (d) any reference in an enactment (other than this Act), proceedings, or other thing (whether express or implied) to the Commissioner for Financial Advisers must be read as a reference to the FMA (unless the context otherwise requires).

### 14 Functions of Commissioner for Financial Advisers as chair of disciplinary committee continue to reside with chair

- (1) Section 13 does not apply to any information or documents held by, any act or omission by, any matter or thing uncompleted by, or any reference to the Commissioner for Financial Advisers in his or her capacity as chairperson of the disciplinary committee.

- (2) The matters referred to in subsection (1) continue to reside with the chairperson of the disciplinary committee for the time being.

## Reprints notes

### 1 *General*

This is a reprint of the Financial Advisers Act 2008 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Education (Name Change for NZIST) Order 2020 (LI 2020/260): clause 4(2)

Public Service Act 2020 (2020 No 40): section 135

Education and Training Act 2020 (2020 No 38): section 668

Privacy Act 2020 (2020 No 31): section 217

Education (Vocational Education and Training Reform) Amendment Act 2020 (2020 No 1): section 78(1)

Trusts Act 2019 (2019 No 38): Part 9 subpart 3

Financial Services Legislation Amendment Act 2019 (2019 No 8): section 97(1)

Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019 (2019 No 5): section 367

Electronic Interactions Reform Act 2017 (2017 No 50): Part 3 subpart 7

Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12): section 43

District Court Act 2016 (2016 No 49): section 261

Financial Reporting Amendment Act 2014 (2014 No 64): section 17

Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34): section 47

Non-bank Deposit Takers Act 2013 (2013 No 104): section 92(2)

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): sections 11–61

Legislation Act 2012 (2012 No 119): section 77(3)

Criminal Procedure Act 2011: (2011 No 81): section 413

Financial Advisers Amendment Act 2011 (2011 No 9)

Financial Markets Authority Act 2011 (2011 No 5): sections 82, 84(3), (5)

Insurance (Prudential Supervision) Act 2010 (2010 No 111): section 241(2)

---

Financial Advisers Act Commencement Order 2010 (SR 2010/232)  
New Zealand Institute of Chartered Accountants Amendment Act 2010 (2010 No 74): section 10  
Financial Advisers Amendment Act 2010 (2010 No 40)  
Financial Advisers Amendment Act 2009 (2009 No 24)  
Financial Advisers Act Commencement Order 2008 (SR 2008/412)  
Financial Advisers Act 2008 (2008 No 91): section 154(7)