



Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010

Public Act 2010 No 41
Date of assent 30 June 2010
Commencement see section 2

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**Financial Service Providers (Registration
and Dispute Resolution) Amendment
Act 2010**

2010 No 41

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act amended**
This Act amends the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
- 4 Purpose**
The purpose of this Act is to prepare for the effective and efficient implementation of the principal Act by making a number of necessary and desirable amendments to that Act.
- 5 Commencement**
Section 2 is amended by repealing subsection (1) and substituting the following subsection:
“(1) Part 2 and section 48 come into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more orders may be made that do either or both of the following:
“(a) bring different provisions into force on different dates:
“(b) bring provisions into force on different dates in respect of different types of financial service or financial service provider.”
- 6 Overview**
Section 3 is amended by repealing subsection (2) and substituting the following subsection:

- “(2) In order to be registered, financial service providers are generally required to be members of a dispute resolution scheme if they provide financial services to retail clients.”

7 Interpretation

- (1) The definitions of **insurance business** and **licensed service** in section 4 are repealed.
- (2) The definition of **person** in section 4 is amended by omitting “an unincorporated body, and a superannuation scheme as defined in section 2A of the Superannuation Schemes Act 1989” and substituting “and an unincorporated body”.
- (3) Section 4 is amended by inserting the following definitions in their appropriate alphabetical order:
 - “**broker** has the meaning given by section 77A of the Financial Advisers Act 2008
 - “**broking service** has the meaning given by section 77B of the Financial Advisers Act 2008
 - “**chartered accountant** has the same meaning as in section 2 of the Institute of Chartered Accountants of New Zealand Act 1996
 - “**contract of insurance**—
 - “(a) means every contract of insurance including a contract of life insurance (including endowment and annuity contracts) and reinsurance; but
 - “(b) does not include a class of contract declared not to be a contract of insurance by regulations
 - “**conveyancing practitioner** has the meaning given by section 6 of the Lawyers and Conveyancers Act 2006
 - “**incorporated law firm** has the meaning given by section 6 of the Lawyers and Conveyancers Act 2006
 - “**insurer** means a person by whom or on whose behalf the risk or part of the risk to which any contract of insurance relates is accepted
 - “**licensed** means licensed, registered, authorised, or otherwise approved by a licensing authority

“**licensed service** means a financial service in respect of which a licensing enactment requires a person to be licensed (or to be exempt from that requirement) to—

“(a) provide the service; or

“(b) hold out that the person provides the service

“**licensing enactment** means an enactment identified in Schedule 2

“**retail client** has the meaning set out in section 49

“**wholesale client** has the meaning set out in section 49”.

- (4) The definition of **financial adviser service** in section 4 is amended by omitting “sections 10 and 12” and substituting “section 9”.

8 Meaning of financial service

- (1) Section 5 is amended by inserting the following paragraph after paragraph (a):

“(ab) a broking service:”.

- (2) Section 5 is amended by repealing paragraph (i) and substituting the following paragraphs:

“(i) participating in an offer of securities to the public in either of the following capacities (within the meaning of those terms under section 2(1) of the Securities Act 1978):

“(i) as an issuer of the securities:

“(ii) as a promoter:

“(ia) acting in any of the following capacities (within the meaning of those terms under section 2(1) of the Securities Act 1978) in respect of securities offered to the public:

“(i) as a trustee:

“(ii) as a unit trustee:

“(iii) as a superannuation trustee:

“(iv) as a manager:”.

- (3) Section 5 is amended by repealing paragraph (m) and substituting the following paragraph:

“(m) acting as an insurer:”.

9 New section 7 substituted

Section 7 is repealed and the following section substituted:

“7 Application of Act

- “(1) This Act applies to persons who are in the business of providing a financial service.
- “(2) None of the following persons are in the business of providing a financial service for the purposes of this Act to the extent this subsection applies to them:
- “(a) a lawyer, incorporated law firm, conveyancing practitioner, chartered accountant, tax agent, or real estate agent providing a service in the ordinary course of business of the relevant kind:
 - “(b) a government department listed in Schedule 1 of the State Sector Act 1988:
 - “(c) the Reserve Bank of New Zealand (and any subsidiaries):
 - “(d) the statutory entities listed in Schedule 1 of the Crown Entities Act 2004:
 - “(e) a person engaged in terminating the business of a financial service provider after that provider has been deregistered:
 - “(f) a non-profit organisation in respect of free financial services:
 - “(g) an affiliated entity:
 - “(h) an executor, administrator, or trustee in respect of services provided in the administration of an estate or a trustee in respect of services provided to beneficiaries of a family trust:
 - “(i) a nominated representative (within the meaning of the Financial Advisers Act 2008) while acting in that capacity:
 - “(j) an employer while providing services to enable employees of the employer to obtain rights or benefits under a registered superannuation scheme (as defined in section 2(1) of the Superannuation Schemes Act 1989) or a KiwiSaver scheme (as defined in section 4(1) of the KiwiSaver Act 2006), being a scheme in which that employer participates for the benefit of its employees:

- “(k) any person exempted, under regulations made under this Act or by or under any other enactment, from the application of this Act or from the requirement to register under this Act (to the extent of the relevant exemption).
- “(3) If subsection (2) applies to a person (A), it applies equally to any controlling owner, director, employee, agent, or other person while acting in the course of, and for the purposes of, A’s business to the same extent as it applies to A.
- “(4) However, subsections (2) and (3) do not apply if, and to the extent that, any other enactment requires a person referred to in those subsections to be registered under this Act.”

10 New section 8A inserted

The following section is inserted after section 8:

“8A Territorial scope

This Act applies to a person who—

- “(a) is ordinarily resident in New Zealand (within the meaning of section 4 of the Crimes Act 1961) or has a place of business in New Zealand, regardless of where the financial service is provided; or
- “(b) is, or is required to be, a licensed provider under a licensing enactment.”

11 No being in business of providing financial service unless registered

Section 11(1) is amended by inserting “for that service” after “registered”.

12 No holding out that in business of providing financial service unless registered

Section 12 is amended by repealing subsection (1) and substituting the following subsection:

- “(1) A person to whom this Act applies must not—
- “(a) hold out that the person is registered under this Act unless that person is registered under this Part; or
- “(b) hold out that the person is registered in respect of a particular service or entitled, qualified, able, or willing to be in the business of providing a financial service

unless that person is registered for that service under this Part.”

13 Qualifications for registration as financial service provider

Section 13 is amended by repealing paragraph (c) and substituting the following paragraph:

“(c) if a licensing enactment requires the person to be a licensed provider, the person is, or will be (on and from commencing to be in the relevant business), a licensed provider.”

14 Application to be registered as financial service provider

(1) Section 15(1)(e) is amended by inserting “or levy” after “fee”.

(2) Section 15(2) is amended by omitting “prescribed information required” and substituting “information required, by or under the licensing enactment,”.

15 Registration of financial service provider

Section 16(1)(a) is amended by inserting the following subparagraph after subparagraph (ii):

“(iia) the type or types of financial service for which the provider is registered.”.

16 Duty to notify changes relating to financial service provider

Section 17(1) is amended by repealing paragraphs (a) and (b) and substituting the following paragraphs:

“(a) a financial service provider, if—
“(i) the provider knows that the provider is no longer qualified for registration in accordance with section 13; or
“(ii) the provider is in a business of providing a financial service for which the provider is not registered; or
“(iii) the provider knows that any details on the register are no longer correct:

“(b) the licensing authority, if the licensing authority knows that a financial service provider has ceased to be licensed.”.

17 Deregistration of financial service provider

(1) Section 18(1) is amended by repealing paragraph (b) and substituting the following paragraph:

“(b) is not in the business of providing a financial service (at any time after the expiry of 3 months after registration); or”.

(2) Section 18(1)(d) is amended by inserting “or levy” after “confirmation fee”.

18 Reregistration of financial service provider

Section 22(1)(b) is amended by inserting “or levy” after “confirmation fee”.

19 Purpose of register

Section 26(a)(ii) is amended by inserting the following subparagraph after subparagraph (B):

“(BA) the type or types of financial service for which a financial service provider is registered; and”.

20 Contents of register

Section 27 is amended by inserting the following paragraph after paragraph (b):

“(ba) the type or types of financial service for which the registered financial service provider is registered.”.

21 Annual confirmation

Section 28(2)(a) is amended by adding “and any levy payable by the provider”.

22 Registrar must amend register in certain circumstances

Section 29 is amended by repealing paragraph (e) and substituting the following paragraph:

“(e) regulations made under this Act require the Registrar to do so in circumstances specified by the regulations.”

23 Registrar’s inspection powers

Section 37(9)(a) is amended by inserting “or a particular financial service” after “financial service”.

24 Regulations under Part 1 and this Part

(1) Section 44(1) is amended by inserting “on the recommendation of the Minister” after “Order in Council”.

(2) Section 44(1) is amended by inserting the following paragraph above paragraph (a):

“(aa) declaring a class of contract to be a contract of insurance for the purposes of this Act.”

(3) Section 44(1) is amended by inserting the following paragraph after paragraph (a):

“(ab) exempting any service or person or class of service or persons from the application of this Act, and prescribing the terms and conditions (if any) of the exemption.”

(4) Section 44 is amended by inserting the following subsection after subsection (1):

“(1A) The Minister must, in relation to a recommendation under subsection (1)(ab),—

“(a) before making a recommendation, have regard to New Zealand’s obligations under the FATF Recommendations; and

“(b) not make the recommendation unless the Minister is satisfied that the costs of compliance with this Act would be unreasonable or not justified by the benefit of compliance.”

(5) Section 44(3) is amended by inserting “or levy” after “fee”.

25 Section 46 repealed

Section 46 is repealed.

26 Financial service provider must be member of dispute resolution scheme

- (1) Section 48(1) is amended by omitting “the public” and substituting “a retail client”.
- (2) Section 48 is amended by adding the following subsection:
 - “(3) However, this obligation does not apply—
 - “(a) to a financial service provider if—
 - “(i) it is in the business of providing financial services only because it is an issuer or promoter participating in 1 or more offers of securities to the public; and
 - “(ii) doing so is not its only or principal business; or
 - “(b) to a financial service provider if it is exempted from the obligation by or under any other Act or by regulations made under section 79.”

27 New sections 49 to 49G substituted

Section 49 is repealed and the following sections are substituted:

“49 Who are retail clients

- “(1) A retail client is any person who receives a financial service who is not a wholesale client.
- “(2) The following persons who receive a financial service are wholesale clients in respect of that financial service:
 - “(a) a person who is in the business of providing any financial service and receives the financial service in the course of that business;
 - “(b) a person whose principal business is the investment of money or who, in the course of and for the purposes of the person’s business, habitually invests money;
 - “(c) 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;

- “(d) a related body corporate (within the meaning of section 5B(2) of the Securities Markets Act 1988) of an entity to which paragraph (c) applies:
 - “(e) a local authority, a Crown entity, a State enterprise, the Reserve Bank of New Zealand, and the National Provident Fund (and a company appointed under clause 3(1)(b) of Schedule 4 of the National Provident Fund Restructuring Act 1990):
 - “(f) a person who falls within 1 or more of the categories listed in section 3(2), 5(2CB), or 5(2CBA) of the Securities Act 1978 if the service relates to securities that may be offered to that person, or that have been subscribed for by that person, in a private offer of securities:
 - “(g) an eligible investor under section 49A:
 - “(h) if the financial service is a financial adviser service or a broking service, a person who is a wholesale client in respect of that service under the Financial Advisers Act 2008.
- “(3) If subsection (2) 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.
- “(4) In this section,—
- “**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
- “**private offer of securities** means an offer of securities that—
- “(a) does not constitute an offer of securities to the public under section 3 of the Securities Act 1978; or
 - “(b) is exempt from Part 2 (other than sections 38B and 58) of that Act under section 5(2CB) or 5(2CBA) of that Act.”

“**49A Who are eligible investors**

- “(1) A client is an eligible investor if—

- “(a) the client certifies in writing that the client understands that, as a consequence of certifying himself, herself, or itself to be an eligible investor, the financial service provider 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 service provider signs a written acceptance of the certification in accordance with section 49B.
- “(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).

“49B Acceptance of certification

- “(1) A financial service provider 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 person providing the financial services to the client (but does not need to be).
- “(3) A financial service provider who accepts a certification without having complied with subsection (1) contravenes a whole-sale certification requirement.
- “(4) Contravention of this section may give rise to a pecuniary penalty order or compensatory order (*see* sections 79A and 79B).

“49C Revocation of certification

- “(1) A client who is an eligible investor may revoke a certification, in relation to a financial service provider to whom the certification has been given, by giving the financial service provider a signed notification to that effect.

“(2) A revocation is effective only in relation to services provided after it is given.

“49D How to opt out of being wholesale client

“(1) A person may opt out of being a wholesale client, in relation to a financial service provider, by giving the financial service provider 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 service provider to whom it is given.

“(3) A person may vary or revoke a notification in the same way as the notification may be given.

“(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.

“49E Giving revocation of certification or notification of opt out

“(1) A revocation of a certification under section 49C or a notification under section 49D is sufficiently given to a financial service provider if—

“(a) it is provided to the financial service provider; or

“(b) delivered or posted to the financial service provider at the person’s business address stated on the register 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.

“(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).

“49F Members of dispute resolution scheme must comply with rules and binding resolutions

- “(1) A member of an approved dispute resolution scheme or the reserve scheme must comply with the rules of the scheme.
- “(2) On the application of the person responsible for the scheme, a District Court may make an order requiring a member of the scheme to do either or both of the following:
- “(a) comply with the rules of the scheme:
 - “(b) comply with a resolution of a complaint that constitutes a binding resolution under those rules (a **binding settlement**).
- “(3) If a District Court is satisfied that the terms of a binding settlement of a complaint are manifestly unreasonable, the court’s order under subsection (2) may modify the terms of the binding settlement.
- “(4) If an order requiring a member to comply with a binding settlement includes a requirement that the member pay an amount of money to a person, that order (or part of the order) may be enforced as if it were a judgment by a District Court for the payment of a sum of money.

“49G Offence to fail to comply with District Court order

- “(1) A member of an approved dispute resolution scheme or the reserve scheme who, knowing that the member is subject to an order made under section 49F, fails to comply with the order, or fails to comply with the order within the time or in the manner required by the order, commits an offence and is liable on summary conviction to a fine not exceeding \$200,000.
- “(2) Nothing in this section applies to an order or part of an order of a District Court referred to in section 49F(4).”

28 Rules about approved dispute resolution scheme

Section 63 is amended by repealing paragraph (g) and substituting the following paragraph:

- “(g) that the scheme has jurisdiction in respect of a breach of contract, statutory obligation, or industry code, or any other matter provided for in the rules:”

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

Section 67 is amended by adding the following paragraph:

“(d) if there is a series of material complaints about a particular broker or class of broker, communicate that fact to the Securities Commission.”

30 Appointment of reserve scheme

Section 72(1) is amended by adding “; and” and also by adding the following paragraph:

“(c) prescribe rules about the funding of the reserve scheme (see section 72A).”

31 New section 72A inserted

The following section is inserted after section 72:

“72A Reserve scheme: rules about fees and charges

“(1) Rules made under section 72(1)(c) may—

“(a) provide for an applicant for membership, or for renewal of membership, to pay a fee in respect of the application:

“(b) require members to pay a membership fee:

“(c) if a complaint is made about a member, require the member to pay a charge in respect of the complaint in circumstances provided in the rules:

“(d) exempt a person or class of persons from liability to pay a fee or charge in whole or in part:

“(e) provide for the refund or waiver of a fee or charge, in whole or in part, for a person or class of persons:

“(f) provide for the termination of the membership of a member who fails to pay a fee or charge within the period provided in the rules.

“(2) The charge under subsection (1)(c) may be—

“(a) a fixed amount; or

“(b) an amount calculated by reference to the costs of investigating and determining the complaint; or

“(c) a combination of the amounts referred to in paragraphs (a) and (b).

“(3) Rules for the purposes of this section may make different provision for different classes of financial service provider.”

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

Section 76 is amended by adding the following paragraph:

“(d) if there is a series of material complaints about a particular broker or class of broker, communicate that fact to the Securities Commission.”

33 Section 77 and heading above section 77 repealed

Section 77 and the heading above section 77 are repealed.

34 New heading and new section 78A inserted

The following heading and section are inserted after section 78:

“Levy

“78A Levy

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations requiring registered financial service providers (or a prescribed class of financial service providers) to pay a levy to the Minister.
- “(2) The purpose of the levy is to meet, in whole or in part, the costs of—
- “(a) the Ministry’s functions under this Part (including the costs of collecting the levy); and
 - “(b) the reserve scheme (to the extent that these are not met by fees and charges imposed in rules made under section 72(1)(c)).
- “(3) Regulations under this section may—
- “(a) specify an amount payable as the levy or a method of calculating or ascertaining the levy (which may be based on the estimated costs);
 - “(b) include or provide for including in the levy any shortfall in recovering the actual costs;
 - “(c) refund or provide for refunds of any over-recovery of those actual costs;
 - “(d) specify the financial year or part financial year to which the levy applies, and apply the levy to that financial year and each subsequent financial year until the levy is revoked or repealed:

- “(e) for the first financial year to which the levy applies, include in the levy costs from 1 January 2009:
 - “(f) require payment of a levy for a financial year or part financial year irrespective of the fact that the regulations may be made after that financial year has commenced:
 - “(g) provide for the collection and payment of the levy, including the time by which the levy must be paid:
 - “(h) exempt a person or class of persons from liability to pay the levy, in whole or in part:
 - “(i) provide for a waiver or refund of the levy, in whole or in part, for a person or class of persons:
 - “(j) provide for interest to be paid if a person fails to pay the levy by the due date.
- “(4) Regulations under this section may make different provision for different classes of registered financial service providers including, without limitation, for—
- “(a) members of the reserve scheme:
 - “(b) members of approved dispute resolution schemes:
 - “(c) those who provide different types of financial service.
- “(5) The levy is recoverable as a debt due to the Crown.
- “(6) Before making a recommendation under subsection (1), the Minister must consult with persons or representatives of persons that the Minister considers are likely to be substantially affected by the proposed regulations.
- “(7) A failure to comply with subsection (6) does not affect the validity of the regulations.”

35 Regulations under this Part

- (1) Section 79(1) is amended by inserting “made on the recommendation of the Minister” after “by Order in Council”.
- (2) Section 79(1) is amended by repealing paragraph (a) and substituting the following paragraph:
 - “(a) exempting any person or class of persons from the obligation to be a member of either an approved dispute resolution scheme or the reserve scheme, and prescribing the terms and conditions (if any) of the exemption.”.
- (3) Section 79 is amended by inserting the following subsection after subsection (1):

- “(1A) The Minister must not recommend the making of regulations under subsection (1)(a), unless the Minister is satisfied that—
- “(a) the exemption is consistent with the purposes of this Act; and
 - “(b) the costs of compliance with the obligation would be unreasonable or not justified by the benefits of compliance.”

36 New sections 79A and 79B and heading inserted

The following sections and heading are inserted after section 79:

*“Pecuniary and compensatory orders
for contravening wholesale certification
requirement*

“79A Pecuniary order for contravening wholesale certification requirement

- “(1) The High Court may, on application by the Commission, 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 49B.
- “(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 the opportunity to make a complaint to an approved dispute resolution scheme or the reserve 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 service provider may not be liable to more than 1 pecuniary penalty in respect of the same conduct.
- “(5) Proceedings under this section may be commenced at any time within 3 years after the contravention occurred.

“**79B Compensation for contravention of wholesale certification requirement**

- “(1) If the Court orders a person to pay a pecuniary penalty under section 79A in respect of the contravention of a wholesale certification requirement, 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 Commission 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.”

37 Schedule 2 amended

Schedule 2 is amended by omitting the items relating to the Superannuation Schemes Act 1989 and the KiwiSaver Act 2006.

**Financial Service Providers (Registration
and Dispute Resolution) Amendment
Act 2010**

2010 No 41

Legislative history

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| 22 June 2010 | Divided from Financial Service Providers (Pre-Implementation Adjustments) Bill (Bill 109–2) by committee of the whole House, third reading |
| 30 June 2010 | Royal assent |

This Act is administered by the Ministry of Economic Development.
