

**Reprint
as at 15 March 2021**



Financial Advisers Amendment Act 2010

Public Act 2010 No 40
Date of assent 30 June 2010
Commencement see section 2

Financial Advisers Amendment Act 2010: repealed, on 15 March 2021, pursuant to section 97(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

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This Act is administered by the Ministry of Economic Development.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Financial Advisers Amendment Act 2010.

2 Commencement

- (1) Section 50 and the Schedule come into force on the commencement of section 164(4) of the Financial Advisers Act 2008.

- (2) The rest of 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 Advisers 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 adding the following subsection:

- (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.

6 Purpose of Act

- (1) Section 3 is amended by—

- (a) omitting “financial advice,” in the first place where it appears and substituting “financial adviser and broking services”;
- (b) omitting “, by—” and substituting “and brokers”;
- (c) repealing paragraphs (a) to (c).

- (2) Section 3 is amended by adding the following subsection as subsection (2):

- (2) To this end, the Act—

- (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
 - (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.

7 Overview of Act

- (1) Section 4 is amended by omitting “5 Parts” and inserting “6 Parts”.
- (2) Section 4 is amended by inserting the following paragraph after paragraph (c):
 - (ca) Part 3A (Brokers’ disclosure and conduct obligations):

8 Interpretation

- (1) Section 5 is amended by inserting the following definitions in their appropriate alphabetical order:

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

approved rating agency means a rating agency nominated or approved under the Reserve Bank of New Zealand Act 1989 or section 17 of the Insurance Companies (Ratings and Inspections) Act 1994

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

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

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

- (a) the shareholder, in the case of a building society, or member, in the case of a credit union, has a right to demand repayment of the value of the share in full at any time; and
- (b) the building society or credit union 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 or credit union for a particular period of time

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 money means money received from, or on account of, a client in relation to acquiring, holding, or disposing of a financial product

client property means property received from, or on account of, a client in relation to acquiring, holding, or disposing of a financial product

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

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

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 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)

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

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

investment planning service has the meaning set out in section 11

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

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

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)

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

personalised service has the meaning set out in section 15

product provider means—

- (a) the issuer, in the case of a security:
- (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):
- (d) the person specified by regulations, in any other case

promoter has the same meaning as in section 2(1) of the Securities Act 1978

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

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

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

related body corporate has the meaning set out in section 5B(2) of the Securities Markets Act 1988

retail client has the meaning set out in section 5B

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

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

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)

wholesale client has the meaning set out in section 5C

- (2) Section 5 is amended by repealing the definitions of **advertisement**, **approved dispute resolution scheme**, **call debt security**, **category 1 product**, **category 2 product**, **client**, **conduct obligation**, **disclosure obligation**, **entity**, **financial adviser service**, **qualifying financial entity**, **registered**, and **security** and inserting the following definitions in their appropriate alphabetical order:

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, but also includes the reserve scheme within the meaning of section 71 of the FSP Act

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 any of the following products (other than a product that is a category 2 product):

- (a) a security; or
- (b) a land investment product (as defined in the regulations); or
- (c) a futures contract; or
- (d) an investment-linked contract of insurance; or
- (e) any other product specified by the regulations; or
- (f) 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
- (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

client has the meaning set out in section 5A

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

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

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

financial adviser service has the meaning set out in section 9

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)

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

security—

- (a) means—
 - (i) any interest in, or right to participate in, any capital, assets, earnings, royalties, or other property of any person;
 - (ii) any interest in, or right to be paid, money that is, or is to be, deposited with, lent to, or otherwise owing by any person (whether or not the interest or right is secured by a charge over any property); but
- (b) does not include—
 - (i) a security exempted from Part 2 of the Securities Act 1978 under any of paragraphs (b) to (h) of section 5(1) of that Act; or
 - (ii) an investment-linked contract of insurance; or
 - (iii) a life insurance policy (within the meaning of section 2(1) of the Securities Act 1978) issued before 1 January 2009

- (3) Section 5 is amended by repealing the definitions of **authorised advertisement**, **financial planning service**, **investment transaction**, **life insurance policy**, **related company**, and **trust account**.

9 New sections 5A to 5I inserted

The following sections are inserted after section 5:

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 financial product is acquired or disposed of or the client money or client property is held (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.

5B Who are retail clients

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

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) 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:
 - (d) 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 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):
 - (g) 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:
 - (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) In this section, a **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.

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 the merits of the service or services to be provided; 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).

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).

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.

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.

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).

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.

10 New section 7 and subparts 1 and 1A of Part 2 substituted

Section 7 and subpart 1 of Part 2 are repealed and the following section and subparts substituted:

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.

Subpart 1—Key definitions for financial adviser services

What are financial adviser services

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.

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.

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.

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.

12 When person provides discretionary investment management service

- (1) A person (A) provides a discretionary investment management service if A—
 - (a) decides which 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 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.

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).

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, chartered 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:
- (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 that is contained in, or given in connection with, an offer of securities that—
 - (i) does not constitute an offer of securities to the public under section 3 of the Securities Act 1978; or
 - (ii) is exempt from Part 2 (other than sections 38B and 58) of that Act under section 5(2CB) or 5(2CBA) of that Act:
- (n) a person providing a relevant service in the course of carrying on a business of dealing in futures contracts within the scope of an authorisation under section 38(1)(a) of the Securities Markets Act 1988 or an approval under section 38(1)(b) of that Act:

Documents required by law

- (o) providing or making available to a person any of the following documents or information:
 - (i) a prospectus, an investment statement, or an advertisement within the meaning of section 2A of the Securities Act 1978:
 - (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.
- (3) In this section, **relevant service** means a service that, but for subsection (1), would be a financial adviser service.

*When financial adviser service is personalised service or class service***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.
- (3) A financial adviser service is a **class service** if it is not a personalised service.

Subpart 1A—Restrictions on providing financial adviser services**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.

Restrictions on providing financial adviser services

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.
- (2) Contraventions of this section may give rise to an offence (*see* section 114).

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 or providing a discretionary investment management service 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 a security, a promoter) of the relevant category 1 product);
 - (b) if providing an investment planning service, an authorised financial adviser;
 - (c) if giving financial advice or providing a discretionary investment management service in relation to a category 2 product,—
 - (i) an authorised financial adviser;
 - (ii) a registered individual;
 - (iii) a QFE adviser.
- (2) Subsection (1)(a)(ii) is subject to any limitation on the scope of services that may be provided by the QFE adviser under the terms and conditions for the QFE under section 67A or a determination under section 75B(4).

19 Who is permitted to provide class service to retail clients

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).

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).

Restrictions on holding out

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.
- (2) Contraventions of this section may give rise to an offence (*see* section 115).

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).

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).

Persons acting in course of business of employers and principals

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).

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.

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.

11 New heading and sections 21 to 25 substituted

The heading before section 21 and sections 21 to 25 are repealed and the following heading and sections substituted:

*Disclosure obligations for personalised services for retail clients***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).

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.
- (2) Subsection (1) does not apply to a QFE adviser acting in that capacity.

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):
 - (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 Commission:
- (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.

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.

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.

12 Disclosure by 2 or more financial advisers in joint disclosure statement

Section 31(2)(c) is repealed and the following paragraph substituted:

- (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.

13 New sections 32 and 33 substituted

Sections 32 and 33 and the heading above section 33 are repealed and the following sections substituted:

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, 38, 45, and 45A apply to an authorised financial adviser, irrespective of the type of service;
 - (d) sections 46 to 48 apply to a QFE and (in some cases) members of a QFE group, irrespective of the type of service.

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.

14 Financial adviser must not engage in misleading or deceptive conduct

Section 34(1) is amended by omitting “the performance of” and substituting “the provision of”.

15 New section 36 substituted

Section 36 is repealed and the following section substituted:

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.

16 Authorised financial adviser must not recommend or receive money for acquisition of securities if offer for subscription illegal

- (1) The heading to section 38 is amended by omitting “or receive money for”.
- (2) Section 38(1) is amended by omitting “, and must not receive money from a person in respect of the acquisition of securities,”.

17 Sections 39 to 44 repealed

Sections 39 to 44 are repealed.

18 New section 45A inserted

The following section is inserted after section 45:

45A Authorised financial adviser may report breach of Act to Commission

- (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 Commission.
- (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 Commission must not disclose information that might identify A unless—
 - (i) A consents in writing to the disclosure of the information; or
 - (ii) the Commission 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 Commission 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 Commission 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.

19 New heading and sections 46 to 48 substituted

The heading above section 46 and sections 46 to 48 are repealed and the following heading and sections substituted:

Conduct obligations related to QFEs

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.

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.

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.

20 Eligibility to be authorised

Section 54(b)(i) is amended by omitting “due inquiry” and substituting “making any inquiries that it considers appropriate”.

21 New sections 55 and 55A substituted

Section 55 is repealed and the following sections are substituted:

55 Commission must approve or decline application for authorisation

- (1) If an applicant for authorisation is eligible, the Commission 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 discretionary investment management service on behalf of clients, 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.
- (2) The authorisation may be subject to terms and conditions relating to financial adviser services or broking services or to both.
- (3) If the Commission approves the application, the Commission 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 Commission may incorporate, with any modifications it considers appropriate, the standard conditions.
- (5) If an applicant for authorisation is not eligible, the Commission must—
 - (a) decline the application; 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.

55A Variation of terms and conditions and period of authorisation

- (1) An authorised financial adviser may apply to the Commission for a variation of the terms and conditions of the adviser's authorisation.
- (2) The Commission may grant or decline the application.
- (3) The Commission 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 Commission 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 Commission 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 Commission 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 Commission 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 Commission must give the authorised financial adviser notice of any decision taken under subsection (7)(a) or (b).

22 Renewal of authorisation

Section 58 is amended by repealing subsection (4) and substituting the following subsection:

- (4) In addition to the matters specified in section 54, the Commission 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.

23 New sections 63 to 77 substituted

Sections 63 to 77 are repealed and the following sections substituted:

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.

64 Who may apply for QFE status

An application may be made to the Commission by—

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

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.

66 Eligibility for QFE status

- (1) The Commission 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 Commission 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.

67 Commission 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 Commission 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 Commission 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 Commission 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 Commission 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 Commission 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.

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 Commission 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 Commission may specify its concerns in a notice to the applicant or applicants.
- (3) The Commission 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 Commission 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 Commission 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.

68 Determination of application

- (1) If the Commission approves an application for a grant of QFE status, the Commission 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 Commission 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.

69 Name of QFE group

- (1) A QFE group has the name that is approved by the Commission 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 Commission may ask the applicant or applicants to submit another name.

70 Commission must notify Registrar of grant of QFE status

- (1) If the Commission grants an entity or entities QFE status, the Commission 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 Commission may publicly notify the grant of QFE status and the other matters referred to in subsection (1) as it thinks fit.

71 Addition of associated entities

- (1) The QFE of a QFE group may apply to the Commission 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 Commission approves an entity as an associated entity under this section, the Commission—
- (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.

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 Commission 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.

73 Certification of QFE group

- (1) The Commission 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.

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 Commission 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.

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

- (1) A QFE may apply to the Commission for a variation of the terms and conditions of the grant of QFE status.
- (2) The Commission may grant or decline the application.
- (3) The Commission 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 Commission 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 Commission 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 Commission may, in the notice under subsection (5), vary terms and conditions on a provisional basis and, if it does so, the Commission 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 Commission 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).

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 Commission receives a written request from the QFE or from any partner entity requesting the Commission 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 Commission cancels its QFE status under section 75D(2).

- (2) The Commission must notify the Registrar in writing of the termination of QFE status under subsection (1)(a), (b), or (d).

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

- (1) If, because of the complexity of a particular category 1 product, the Commission has concerns about the provision of personalised services in relation to that product by QFE advisers, the Commission 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 Commission must specify in the notice a reasonable period for the relevant entity to respond in writing and must ask the entity to satisfy the Commission 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 Commission 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 Commission may at any time, by notice to the entity, revoke a determination under subsection (4).

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.

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

75D Commission's powers in relation to QFE default

- (1) This section applies if the Commission 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 Commission under section 75F; or
 - (e) the QFE or any partner entity of the QFE has failed to pay a fee or levy as required by this Act or the regulations.
- (2) In any case to which this section applies, the Commission 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 Commission 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 Commission 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 Commission 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 Commission cancels or suspends the QFE status of an entity, the Commission must notify the Registrar in writing of the cancellation or suspension, and, in the case of suspension, the period of suspension.

- (7) The Commission may publicly notify the action it takes under subsection (2) as it sees fit.

75E Reasonable opportunity to be heard

The Commission 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.

75F Commission may give QFE direction

- (1) This section applies if the Commission 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 Commission may give the QFE, and every partner entity of the QFE, notice of its alleged breach and, if the Commission does give a notice of breach, the Commission must also give the QFE a reasonable opportunity to respond.
- (3) If the Commission concludes, after considering the QFE's response, that the QFE is in breach, the Commission 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 Commission within 28 days of the date of the direction stating how and by when the Commission's direction will be implemented.
- (5) A QFE or a partner entity that fails to comply with a direction by the Commission commits an offence (*see* section 132).
- (6) Nothing in this section precludes the Commission from exercising any of its other powers under this Act against a QFE.

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

- (1) A fine imposed by the Commission under section 75D(2)(e) is recoverable in any court as a debt due to the Commission.

- (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 Commission.

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 Commission, whenever reasonably required by the Commission and in any case in accordance with any requirements specified in the terms and conditions 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 Commission in accordance with section 77; and

- (h) comply with a direction by the Commission 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.

77 QFE must provide annual report to Commission

- (1) Within 5 months after the end of its financial year, a QFE must send to the Commission 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.

24 New Part 3A inserted

The following Part is inserted after Part 3:

Part 3A

Brokers' disclosure and conduct obligations

Who is broker and what is broking service

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.

77B What is broking service

- (1) A **broking service** is the receipt, holding, payment, or transfer of client money or client property by a person acting as an intermediary for a client.
- (2) A person acts as an intermediary if the person does not receive, hold, pay, or transfer the money or property on the person's own account.
- (3) The mere transmission of a non-transferable instrument payable to another person is not a broking service.

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, chartered 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 carrying on the business of dealing in futures contracts within the scope of an authorisa-

tion under section 38(1)(a) of the Securities Markets Act 1988 or an approval under section 38(1)(b) of that Act:

- (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.

Disclosure obligations for services for retail clients

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).

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.

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 Commission:
 - (iv) bankruptcy or other insolvency proceedings:
 - (g) procedures for handling client money or client property:
 - (h) indemnity insurance.
- (2) Regulations for the purposes of this section may provide for the form that the disclosure must take.

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.

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.

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.

Brokers' conduct obligations

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 only to broking services provided for a retail client; 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.

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.

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).

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).

77N Restriction on use of term sharebroker

- (1) In any advertising or promotional material, the term sharebroker must not be used in connection with a person unless the person, or the person's employer, is a member of a registered exchange.
- (2) Contravention of this section may give rise to an offence (*see* section 120).

77O Broker must not receive client money if offer for subscription illegal

- (1) A broker (A) must not receive client money or client property from a person for the acquisition of securities if—
 - (a) when the securities were or are offered for subscription, the offer was or is illegal; and
 - (b) the illegality has not been remedied; and
 - (c) A knows or ought to know that, when the securities were or are offered for subscription, the offer was or is illegal.
- (2) Contravention of this section may give rise to an offence (*see* section 134B).

*Trust accounting obligations for services for retail clients***77P Broker must pay client money into separate trust account**

- (1) A broker who receives client money or client property, in his, her, or its capacity as a broker for a retail 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 a trust account of the broker or of a related person or entity specified in the regulations.
- (2) Contravention of this section may give rise to an offence (*see* section 134C).

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 retail 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).

77R Broker must keep records of client money and client property

- (1) A broker who receives or holds client money on trust for a retail 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 retail 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 where the client property was disposed of and to whom.
- (3) A broker must 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 or inspected.
- (4) Contravention of any of subsections (1) to (3) may give rise to an offence (*see* section 134E).

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 retail 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).

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 retail 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.

Persons acting in course of business of employers or principals

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.

Commission's direction in respect of breach of disclosure or conduct obligation

77V Commission may give broker direction in respect of breach of disclosure or conduct obligation

- (1) This section applies if the Commission has reason to believe that a broker is in breach of a disclosure or conduct obligation under this Part.
- (2) The Commission may give the broker notice of his, her, or its alleged breach and, if the Commission does give a notice of breach, the Commission must also give the broker a reasonable opportunity to respond.
- (3) If the Commission concludes, after considering the broker's response, that the broker is in breach, the Commission 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 Commission within 28 days of the date of the direction stating how and when the Commission's direction will be implemented.
- (5) A broker who fails to comply with a direction by the Commission commits an offence (*see* section 134G).
- (6) Nothing in this section precludes the Commission from exercising any of its other powers under this Act against a broker.

25 **Heading to Part 4 amended**

The heading to Part 4 is amended by inserting “**and brokers**” after “**financial advisers**”.

26 **Content of code**

Section 86 is amended by adding the following subsections:

- (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.

27 **New section 94 substituted**

Section 94 is repealed and the following section substituted:

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 Commissioner 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 regulations for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989.

28 **New section 98 substituted**

Section 98 is repealed and the following section substituted:

98 Reference of complaint to disciplinary committee

When the Commission has, under section 97, investigated a complaint about an authorised financial adviser, it must refer the complaint to the disciplinary com-

mitted if, in the Commission's opinion, the conduct complained of amounts to a breach of the code.

29 New heading and sections 114 and 115 substituted

Sections 114 and 115 and the heading before section 114 are repealed and the following heading and sections substituted:

Offences: restrictions on providing services and holding out

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 summary 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 summary 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.

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 summary 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.

30 Heading above section 117 amended

The heading above section 117 is amended by omitting “*and QFEs*” and substituting “, *QFEs, and brokers*”.

31 Failure to make disclosure under or in accordance with disclosure obligation

Section 117(b) is amended by omitting “a QFE” and substituting “an entity”.

32 Heading above section 118 amended

The heading above section 118 is amended by adding “*and brokers*”.

33 New sections 118 to 120 substituted

Sections 118, 119, and 120 are repealed and the following sections substituted:

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 summary 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.

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 summary 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.

120 Offence of contravening restrictions on use of term sharebroker

A person who knowingly or recklessly contravenes section 77N commits an offence and is liable on summary conviction to a fine,—

- (a) in the case of an individual, not exceeding \$10,000;
- (b) in the case of an entity, not exceeding \$50,000.

34 Offence of recommending or receiving money in connection with offer of securities when subscription illegal

The heading to section 121 is amended by omitting “**or receiving money in connection with**”.

35 Sections 122 to 125 repealed

Sections 122 to 125 are repealed.

36 New heading and sections 129 to 134A substituted

The heading above section 129 and sections 129 to 134 are repealed and the following heading and sections substituted:

Offences: QFEs and QFE groups only

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 summary 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 summary conviction to a fine not exceeding \$25,000.

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 summary 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 summary 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.

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 summary 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 summary 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.

132 Offence of failing to comply with Commission's direction

If a QFE fails to comply with a direction of the Commission given under section 75F(3), each of the following persons commits an offence and is liable on summary conviction to a fine not exceeding \$25,000:

- (a) the QFE;
- (b) every partner entity of the QFE.

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 summary conviction to a fine not exceeding \$50,000:

- (a) the QFE:
- (b) every partner entity of the QFE.

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 summary conviction to a fine not exceeding \$25,000:

- (a) the QFE:
- (b) every partner entity of the QFE.

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.

37 New heading and sections 134B to 134G inserted

The following heading and sections are inserted after section 134:

Offences: broking services only

134B Offence of receiving client money if offer for subscription illegal

A person who contravenes section 77O commits an offence and is liable on summary 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.

134C Offence of contravening requirement to pay client money into separate trust account

A person who contravenes section 77P commits an offence and is liable on summary 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.

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 summary 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.

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 summary 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.

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 summary 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.

134G Offence of failing to comply with Commission's direction

A person who fails to comply with a direction of the Commission given under section 77V commits an offence and is liable on summary 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.

38 New heading inserted

- (1) The following heading is inserted above section 135:

Miscellaneous offences

- (2) The heading above section 136 is repealed.

39 New headings and sections 137A to 137S inserted

The following headings and sections are inserted after section 137:

Subpart 4—Injunctions, banning orders, and other remedies

Injunctions

137A Injunctions against contraventions

- (1) The High Court may, on application by the Commission, 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

137B Undertaking as to damages not required by Commission

- (1) If the Commission 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 Commission to give an undertaking as to damages.
- (2) However, in determining the Commission's application for the grant of an interim injunction, the Court must not take into account that the Commission is not required to give an undertaking as to damages.

Compare: 1988 No 234 s 42M

137C When Court may make banning order

The High Court may, on application by the Commission, make an order (a **banning order**) against a person if the Court is satisfied that—

- (a) the person has been convicted of an offence against any of the following sections:
 - (i) section 118 (misleading or deceptive conduct by financial adviser or broker):
 - (ii) section 119 (misleading, deceptive, or confusing advertisement by financial adviser or broker):
 - (iii) section 134B (receiving client money if offer for subscription illegal); or
- (b) the person has been convicted of an offence against any of sections 58, 59, and 59A of the Securities Act 1978 or a pecuniary penalty order has been made against the person under that Act; or
- (c) the person has been convicted of a crime involving dishonesty as defined in section 2(1) of the Crimes Act 1961; or
- (d) the person has persistently contravened this Act or the Securities Act 1978; or
- (e) the person has been prohibited in an overseas jurisdiction from carrying on activities that the Court is satisfied are substantially similar to any of the activities referred to in section 137D.

Compare: 1988 No 234 s 43K

137D Terms of banning orders

A banning order may prohibit or restrict the person against whom it is made from doing all or any of the following things, without the leave of the High Court, for a period stated in the order of 10 years 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 43L

137E Offence of contravening banning order

A person who acts in contravention of a banning order commits an offence and is liable on conviction on indictment,—

- (a) in the case of an individual, to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$100,000, or to both:
- (b) in the case of a body corporate, to a fine not exceeding \$300,000.

Compare: 1988 No 234 ss 43E(2), 43M

*Orders to preserve assets to satisfy claims***137F When High Court may prohibit payment or transfer of money, securities, or other property**

- (1) This section applies if—
 - (a) an investigation is being carried out under the Securities Act 1978 in relation to an act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act; or
 - (b) a prosecution has begun against a person for a contravention of this Act.
- (2) The High Court may, on application by the Commission or by an aggrieved person, make 1 or more of the orders listed in section 137G if the court considers it necessary or desirable to do so for the purpose of protecting the interests of an aggrieved person.
- (3) In this section and section 137G,—

aggrieved person means any person to whom a relevant person is liable

associated person has the same meaning as in section 2(2) of the Securities Markets Act 1988

liable means liable, or may be or become liable, to pay money (whether in respect of a debt, by way of damages or compensation, or otherwise) or to account for securities or other property

relevant person means a person referred to in subsection (1).

Compare: 1988 No 234 s 43P

137G What orders may be made

- (1) The orders that may be made under section 137F are—
 - (a) an order prohibiting the relevant person from transferring, charging, or otherwise dealing with money, securities, or other property held or controlled by the relevant person:
 - (b) an order prohibiting a person who is indebted to the relevant person or to an associated person of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed:
 - (c) an order prohibiting a person holding money, securities, or other property, on behalf of the relevant person, or on behalf of an associated person of the relevant person, from paying all or any of the money, or transferring, or otherwise parting with possession of, the securities or other property, to, or to another person at the direction or request of, the person on whose behalf the money, securities, or other property, is or are held:

- (d) an order prohibiting the taking or sending out of New Zealand by a person of money of the relevant person or of an associated person of the relevant person:
 - (e) an order prohibiting the taking, sending, or transfer by a person of securities or other property of the relevant person, or of an associated person of the relevant person, from a place in New Zealand to a place outside New Zealand (including the transfer of securities from a register in New Zealand to a register outside New Zealand):
 - (f) an order requiring the relevant person, or any person holding money, securities, or other property on behalf of the relevant person or an associated person of the relevant person, to pay or transfer money, securities, or other property to a specified person to be held on trust pending determination of the investigation or prosecution:
 - (g) an order appointing,—
 - (i) if the relevant person is a natural person, a receiver or trustee, having any powers that the court orders, of the property or of part of the property of that person; or
 - (ii) if the relevant person is a body corporate, a receiver or receiver and manager, having any powers that the court orders, of the property or of part of the property of that person:
 - (h) if the relevant person is a natural person, an order requiring that person to deliver up to the court his or her passport and any other documents that the court thinks fit:
 - (i) if the relevant person is a natural person, an order prohibiting that person from leaving New Zealand, without the consent of the court.
- (2) A reference in subsection (1)(e) or (g) to property of a person includes a reference to property that the person holds otherwise than as sole beneficial owner, for example,—
- (a) as trustee for, as nominee for, or otherwise on behalf of or on account of, another person; or
 - (b) in a fiduciary capacity.
- (3) An order may be expressed to operate for a specified period or until the order is discharged by a further order under this section.

Compare: 1988 No 234 s 43Q

137H Interim orders

- (1) If an application is made to the High Court for an order under section 137F, the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

- (2) The Court must not require the applicant or any other person, as a condition of granting an interim order under this section, to give an undertaking as to damages.
- (3) In determining an application for the grant of an interim order, the Court must not take into account that the applicant is not required to give an undertaking as to damages.

Compare: 1988 No 234 s 43R

137I Relationship with other law

- (1) Nothing in sections 137G and 137H affects the powers that the Court has apart from those sections.
- (2) This section has effect subject to the Insolvency Act 2006.

Compare: 1988 No 234 s 43S

137J Offence of breaching orders

A person commits an offence who contravenes an order by the Court under section 137G or 137H that is applicable to the person and is liable on conviction on indictment,—

- (a) in the case of an individual, to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$100,000, or to both:
- (b) in the case of a body corporate, to a fine not exceeding \$300,000.

Compare: 1988 no 234 s 43T

Pecuniary and compensatory orders for contravening wholesale certification requirement

137K 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 5E.
- (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) Proceedings under this section may be commenced at any time within 3 years after the contravention occurred.

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, 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.

Temporary banning orders against financial adviser and broker

137M When Commission may make temporary banning orders for financial adviser services or broking services

The Commission may make an order (a **temporary banning order**) against a person in accordance with sections 137N to 137R if the Commission is satisfied that—

- (a) the person has persistently contravened this Act or the Securities Act 1978; or
- (b) the person has been prohibited in an overseas jurisdiction from carrying on activities that the Commission is satisfied are substantially similar to any of the activities referred to in section 137N.

Compare: 1988 No 234 s 42D

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 Commission, 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

*Process for Commission's orders***137O Commission must follow steps before making orders**

- (1) Unless section 137P applies, the Commission 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 Commission makes the order; and
 - (c) gives the person an opportunity to make written submissions within that notice period; and
 - (d) has regard to any written submissions made to it within that notice period and (if applicable) written or oral submissions made at a meeting of the Commission.
- (2) However, the Commission may shorten these steps in accordance with section 137P in the circumstances specified in that section.

Compare: 1988 No 234 s 42F

137P Commission may shorten steps for specified orders

- (1) If the Commission 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 Commission (as the Commission determines).
- (2) However, the Commission 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

137Q Commission must give notice after making orders

- (1) If the Commission makes a temporary banning order, the Commission—
 - (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 Commission 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 Commission (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

137R General provisions on temporary banning orders

- (1) The Commission may make a temporary banning order on the terms and conditions that the Commission thinks fit.
- (2) The Commission may vary a temporary banning order in the same way as it makes such an order under sections 137O to 137Q.
- (3) The Commission may revoke a temporary banning order or suspend it on the terms and conditions it thinks fit.
- (4) A temporary banning order is subject to appeal only in accordance with section 69P of the Securities Act 1978.

Compare: 1988 No 234 s 42I

137S Offence of failing to comply with Commission's orders

- (1) A person who contravenes a temporary banning order commits an offence and is liable on summary 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

40 Right of appeal

Section 138(1)(a)(iv) is amended by omitting “section 61 or 73” and substituting “section 49, 61, 75F, or 77V”.

41 New heading and sections 147A to 147E inserted

The following heading and sections are inserted after section 147:

Standard conditions for incorporation in authorisation and grants

147A Approval of standard conditions for incorporation in authorisations and grants of QFE status

- (1) The Commission 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 Commission, 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.
- (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 Commission; and
 - (b) made available in printed form for purchase on request by members of the public.

147B Requirement to consult on proposal to incorporate material by reference

- (1) Before the Commission approves standard conditions under section 147A, the Commission 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 Commission; and
 - (d) give notice in the *Gazette* stating—
 - (i) 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 Commission on the proposed standard conditions and, if applicable, on the date on which the standard condition is to be incorporated.
- (2) If the Commission proposes that any standard condition should be incorporated on a specified date, the notice given under subsection (1)(d) must also state why the Commission 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 Commission must consider any submissions received within the period specified under subsection (1)(d)(ii).

147C Variation or revocation of standard conditions

- (1) The Commission 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) Sections 147A and 147B apply to any proposed approval of variation or revocation of standard conditions, with any necessary modifications.

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*.

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.

42 New sections 148 to 148B substituted

Section 148 is repealed and the following sections substituted:

148 Commission may grant exemptions

- (1) The Commission 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.
- (2) The Commission 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 Commission 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 Commission 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.

148A Commission may vary or revoke exemption

- (1) The Commission may vary the exemption in the same way as it may grant the exemption under section 148.
- (2) The Commission may revoke the exemption.

148B Status of exemptions, variations, or revocations

- (1) An exemption under section 148, or a variation or revocation of an exemption under section 148A, is a regulation for the purposes of the Regulations Disallowance Act 1989, but is not a regulation for the purposes of the Acts and Regulations Publication Act 1989 unless 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 Commission; 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.

43 Commission must notify reasons for exemption

- (1) The heading to section 149 is amended by adding “**other than class exemption**”.
- (2) Section 149 is amended by repealing subsection (1) and substituting the following subsection:
 - (1) When the Commission grants an exemption other than a class exemption, the Commission must notify the reasons for granting the exemption (including why the exemption is appropriate) in the *Gazette*.

44 Section 150 repealed

Section 150 is consequentially repealed.

45 New section 153 substituted

Section 153 is repealed and the following section substituted:

153 Levy

- (1) The Governor-General may, by Order in Council made on the recommendation of the Commission, make regulations requiring authorised financial advisers and QFEs to pay a levy to the Commission.
- (2) The purpose of the levy is to meet, in whole or in part, the costs of the Commission, the Commissioner, the code committee, and the disciplinary committee in performing their functions and duties under this Act (and the costs of collecting the levy).

- (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 or part 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:
 - (k) provide for the cancellation of authorisation of an authorised financial adviser who fails to pay the levy by the due date:
 - (l) provide for the cancellation of QFE status of a QFE who fails to pay the levy by the due date.
- (4) Regulations under this section may make different provision for authorised financial advisers and QFEs and for different classes of authorised financial adviser and QFE.
- (5) The levy is recoverable as a debt due to the Commission.

46 New section 154 substituted

Section 154 is repealed and the following section substituted:

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 a security, 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:
- (h) specifying, for the purposes of section 55(1)(d), cases in which an authorisation under that paragraph may be granted:
- (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) the duties of brokers in relation to their trust accounts (including 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 their establishment and use:
 - (ii) provisions regulating the keeping, inspection, and audit of trust account records or other records in connection with the receipt, holding, payment, and transfer of client money and client property, and prescribing the duties in relation to those records:
 - (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:
- (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) providing that, subject to any conditions stated in the regulations, transitional or savings provisions prescribed by the regulations that relate to the implementation of this Act or the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (in addition to any other transitional provisions in those Acts) apply during the whole or any part of the transitional implementation period ending on 30 June 2013:
 - (s) providing that, subject to any conditions stated in the regulations, specified provisions of this Act or the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (including definitions), or provisions of other Acts amended by this Act or the Financial Service Providers (Registration and Dispute Resolution) Act 2008, do not apply, or apply with modifications or additions, or both, during the whole or any part of the transitional implementation period ending on 30 June 2013:
 - (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 Commission before making a recommendation under subsection (1).
- (5) 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 the Act; and
 - (b) the costs of compliance with the provision or provisions to which the exemption relates would be unreasonable or not justified by the benefit of compliance; and
 - (c) the extent of the exemption is not broader than what is reasonably necessary to address the matters that gave rise to the exemption.
- (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.

47 New section 157 substituted

Section 157 is repealed and the following section substituted:

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.

48 Section 159 repealed

Section 159 is consequentially repealed.

49 New section 168 added

The following section is added:

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.

50 Enactments amended consequential on principal Act

The enactments specified in the Schedule are amended in the manner indicated in that schedule.

Schedule
Enactments consequentially amended

s 50

Securities Markets Act 1988 (1988 No 234)

Section 17: repeal.

Summary Proceedings Act 1957 (1957 No 87)

Part 2 of Schedule 1: insert in its appropriate alphabetical order:

Financial Advisers Act 2008	137E	Contravening banning order
	137J	Breaching orders

Takeovers Act 1993 (1993 No 107)

Section 44D: repeal.

Takeovers Code Approval Order 2000 (SR 2000/210)

Rule 65 of the Schedule: revoke.

Reprints notes

1 *General*

This is a reprint of the Financial Advisers Amendment Act 2010 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*

Financial Services Legislation Amendment Act 2019 (2019 No 8): section 97(1)