



Financial Markets Authority Act 2011

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Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Financial Markets Authority Act 2011.

2 Commencement

This Act comes into force on 1 May 2011.

Part 1

Preliminary provisions

3 Purpose of this Act

The purpose of this Act is to—

- (a) establish the Financial Markets Authority as an independent Crown entity for the purposes of section 7 of the Crown Entities Act 2004; and
- (b) state the Financial Markets Authority's main objective and its functions; and
- (c) provide for the Financial Markets Authority to have certain general information-gathering and enforcement powers; and
- (d) provide for the disestablishment of the Securities Commission and of the office of the Government Actuary.

4 Interpretation

In this Act, unless the context otherwise requires,—

associate member means a member appointed under section 11(1)

chairperson means the chairperson of the board of the FMA

dealings in securities has the same meaning as in section 2(1) of the Securities Markets Act 1988

document has the same meaning as in section 4 of the Evidence Act 2006

financial markets—

- (a) means the financial markets in New Zealand; and
- (b) includes—
 - (i) markets in New Zealand for the provision of financial services; and

- (ii) the capital markets in New Zealand

financial markets legislation means the Acts listed in Schedule 1 and the enactments made under those Acts

financial markets participant—

- (a) means a person who is, or is required to be, registered, licensed, appointed, or authorised under, or for the purposes of, any of the Acts listed in Part 1 of Schedule 1 or any of the enactments made under those Acts (or would be required to be so registered, licensed, appointed, or authorised but for an exemption granted or provided by or under any of those Acts); and
- (b) includes any of the following:
 - (i) a person who participates in an offer of securities to the public as an issuer or a promoter (within the meaning of those terms in section 2(1) of the Securities Act 1978):
 - (ii) a person who acts, in respect of securities offered to the public, as a trustee, a unit trustee, a superannuation trustee, a statutory supervisor, a manager, an expert, or a qualified auditor (within the meaning of those terms in section 2(1) of the Securities Act 1978):
 - (iii) a public issuer (within the meaning of section 2(1) of the Securities Markets Act 1988):
 - (iv) an issuer (within the meaning of section 4 of the Financial Reporting Act 1993); and
- (c) also includes any of the following:
 - (i) a body corporate that is related to a person referred to in paragraph (a) or (b) (within the meaning of section 5B(2) of the Securities Markets Act 1988); or
 - (ii) a director or senior manager of a person referred to in paragraph (a) or (b) (within the meaning of those terms in section 4 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 but applied even if the person referred to in those paragraphs is not a financial service provider); or

- (iii) a person who was previously a person referred to in any of paragraphs (a), (b), or (c)(i) or (ii), in respect of any action, event, or circumstance while the person was such a person; but
- (d) does not include any class or classes of persons declared by the Governor-General by Order in Council not to be financial markets participants

financial service has the same meaning as in section 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008

FMA means the Financial Markets Authority established by Part 2

law enforcement or regulatory agency means any of the following:

- (a) any department of State that, with the authority of the Prime Minister, is responsible for the administration of any part of the financial markets legislation:
- (b) the Commerce Commission:
- (c) the Director of the Serious Fraud Office:
- (d) the New Zealand Police:
- (e) the Registrar of Companies:
- (f) the Registrar of Financial Service Providers:
- (g) the Reserve Bank of New Zealand:
- (h) the Takeovers Panel

member—

- (a) means a member of the board of the FMA referred to in section 10; and
- (b) in the circumstances set out in section 12, includes an associate member

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

overseas regulator means a body in another country that performs functions that correspond with, or are similar to, any of those conferred on the FMA

securities has the same meaning as in section 2D of the Securities Act 1978.

- 5 Act binds the Crown**
This Act binds the Crown.

Part 2

Financial Markets Authority

Establishment of FMA

- 6 Financial Markets Authority established**
This section establishes the Financial Markets Authority.

- 7 FMA is Crown entity**
- (1) The FMA is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
 - (2) The Crown Entities Act 2004 applies to the FMA except to the extent that this Act expressly provides otherwise.

FMA's main objective and functions

- 8 FMA's main objective**
The FMA's main objective is to promote and facilitate the development of fair, efficient, and transparent financial markets.

- 9 FMA's functions**
- (1) The FMA's functions are as follows:
 - (a) to promote the confident and informed participation of businesses, investors, and consumers in the financial markets, including (without limitation) by—
 - (i) collecting and disseminating information or research about any matter relating to those markets:
 - (ii) issuing warnings, reports, or guidelines, or making comments, about any matter relating to those markets, financial markets participants, or other persons engaged in conduct relating to those markets (including in relation to 1 or more particular persons):
 - (iii) providing information about its functions, powers, and duties under this Act and other enactments (including promoting awareness by investors that all investments involve risks and

- that it is not the role of the FMA to remove those risks):
- (iv) providing, or facilitating the provision of, public information and education about any matter relating to those markets:
 - (b) to perform and exercise the functions, powers, and duties conferred or imposed on it by or under the financial markets legislation and any other enactments:
 - (c) to monitor compliance with, investigate conduct that constitutes or may constitute a contravention of, and enforce—
 - (i) the Acts referred to in Part 1 of Schedule 1 (and the enactments made under those Acts); and
 - (ii) the Acts referred to in Part 2 of Schedule 1 (and the enactments made under those Acts) to the extent that those Acts or other enactments apply, or otherwise relate, to financial markets participants:
 - (d) to monitor, and conduct inquiries and investigations into any matter relating to, financial markets or the activities of financial markets participants or of other persons engaged in conduct relating to those markets:
 - (e) to keep under review the law and practices relating to financial markets, financial markets participants, and other persons engaged in conduct relating to those markets:
 - (f) to co-operate with—
 - (i) any other law enforcement or regulatory agency (including under section 30):
 - (ii) overseas regulators (including under section 30 or 31).
- (2) Subsection (1)(b) and (c) do not limit the functions, powers, and duties conferred or imposed on any other person in respect of financial markets legislation.
- (3) The fact that some other person has functions, powers, and duties in respect of financial markets legislation does not limit or restrict the FMA's functions, powers, and duties in respect of that legislation.

- (4) Except as expressly provided otherwise in this or any other Act, the FMA must act independently in performing its statutory functions and duties, and exercising its statutory powers, under—
- (a) this Act; and
 - (b) any other Act that expressly provides for the functions, powers, or duties of the FMA (other than the Crown Entities Act 2004).

Compare: 1978 No 103 s 10

Membership of board of FMA

10 Membership of board of FMA

The board of the FMA consists of not fewer than 5, and not more than 9, members.

Compare: 1978 No 103 s 11(1)

11 Associate members

- (1) The Minister may appoint any person to be an associate member of the board of the FMA after consulting the chairperson.
- (2) The Minister may appoint no more than 5 associate members.
- (3) Subsection (1) applies despite section 28(1)(b) of the Crown Entities Act 2004.
- (4) An associate member may be appointed only in relation to a matter or a class of matters to be specified in the member's notice of appointment, and for the period, not exceeding 5 years, that is specified in that instrument.
- (5) An associate member may not be appointed as chairperson, deputy chairperson, or a temporary deputy chairperson under clause 5 of Schedule 5 of the Crown Entities Act 2004.

Compare: 1986 No 5 s 11(1)–(2), (6)

12 Associate member treated as member of board

- (1) An associate member must be treated as being a member of the board of the FMA for the purposes of the performance or exercise of any function, duty, or power of a member of the board of the FMA under this Act or any other enactment.
- (2) Despite subsection (1), an associate member may attend and vote only at a meeting of the FMA relating to the matter or

class of matters specified in that member's notice of appointment (including a meeting relating to matters incidental to the matter or class of matters so specified).

- (3) Except where section 11, this section, or the context otherwise requires, a reference in this Act or in any other enactment to a member of the FMA must be construed as including a reference to an associate member.

Compare: 1986 No 5 s 11(3), (4)

13 Removal of associate members

- (1) The Minister may remove any associate member from office on the same grounds and in the same manner as the Governor-General may remove a member under section 39 of the Crown Entities Act 2004.
- (2) Subsection (1) applies despite section 39(1) of the Crown Entities Act 2004.

Compare: 1986 No 5 s 13(2), (3)

Provisions relating to divisions

14 FMA may act by divisions

- (1) The FMA or chairperson may determine that the powers of the FMA in relation to any matter or class of matters may be exercised by separate divisions of the FMA.
- (2) The FMA or chairperson may revoke or amend a determination made under subsection (1).
- (3) Every determination (or revocation or amendment of a determination) must be recorded in writing and signed by 3 members or the chairperson.
- (4) The powers in this section are an exception to clause 14 of Schedule 5 of the Crown Entities Act 2004.
- (5) This section does not limit the power of the board of the FMA to delegate any of the functions or powers of the FMA or the board under section 73 of the Crown Entities Act 2004.

Compare: 1978 No 103 s 14B

15 Membership, chairperson, meetings, and resolutions of division

- (1) Each division consists of the members who are assigned to it for the time being by the FMA or chairperson.
- (2) Each division must have at least 3 members.
- (3) If the members assigned to a division do not include the chairperson, the FMA or chairperson must nominate 1 of those members as chairperson of the division.

Compare: 1978 No 103 s 14C

16 Powers of division

- (1) For the purposes of determining any matter or class of matters specified in a determination under section 14,—
 - (a) the FMA consists of the division of the FMA specified in the determination; and
 - (b) the powers of that division are not affected by any changes or vacancies in its membership.
- (2) A division of the FMA may exercise powers of the FMA even though another division of the FMA is exercising powers of the FMA at the same time.

Compare: 1978 No 103 s 14D

*Provisions relating to meetings of FMA***17 Quorum for meetings of FMA**

- (1) At any meeting of the FMA, the quorum necessary for the transaction of business is 3 members.
- (2) This section and section 18 apply despite clause 9(1) of Schedule 5 of the Crown Entities Act 2004.

Compare: 1978 No 103 s 15(5), (6)

18 Completion of proceedings where member unable to attend meeting

- (1) This section applies if—
 - (a) a meeting of the FMA with 3 or more members commences any proceeding, inquiry, investigation, or the transaction of other business; and
 - (b) the number of those members able to attend any subsequent meeting is reduced to 2 as a result of illness,

accident, or other unavoidable cause, or the expiration of a member's term, or the resignation or removal from office of a member.

- (2) Despite section 17(1), the remaining 2 members of the FMA constitute a quorum for the purposes of completing the proceeding, inquiry, investigation, or transaction of business.
- (3) At a meeting of the FMA at which those 2 members are present, each of those members has a deliberative vote and, in the event of an equality of votes, the presiding member has a casting vote.
- (4) This section applies whether or not a division of the FMA is acting.

Compare: 1978 No 103 s 15A

19 Assent to resolution without meeting

- (1) A resolution in writing signed, or assented to in writing (whether sent by post, delivery, or electronic communication), by 3 members of the FMA is as valid and effectual as if it had been passed at a meeting of the FMA duly called and constituted.
- (2) This section applies despite clause 13(1) of Schedule 5 of the Crown Entities Act 2004.

Compare: 1978 No 103 s 16

Miscellaneous matters

20 Minister may request that FMA inquire and report

The Minister may, by notice to the FMA, request that the FMA inquire into, and report on, any matter relating to the financial markets, financial markets participants, or other persons engaged in conduct relating to those markets.

21 Provisions relating to Government Superannuation Fund

- (1) Despite anything in this Act, any person who, immediately before becoming a member or an employee of the FMA, is a contributor to the Government Superannuation Fund under Part 2 of the Government Superannuation Fund Act 1956 must be treated, for the purposes of that Act, as being employed in

the Government service so long as he or she continues to be a member or an employee of the FMA.

- (2) The Government Superannuation Fund Act 1956 applies to a person referred to in subsection (1) in all respects as if his or her service as a member or an employee of the FMA were Government service.
- (3) Nothing in this section entitles any person referred to in subsection (1) to become a contributor to the Government Superannuation Fund after he or she has once ceased to be a contributor.
- (4) Subsection (3) is subject to the Government Superannuation Fund Act 1956.
- (5) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with this section, to a person who is in the service of the FMA (whether as a member or an employee) and who is a contributor to the Government Superannuation Fund, **controlling authority**, in relation to the person, means the FMA.

Compare: 1978 No 103 s 22(2)–(4)

22 Protection from liability for FMA and members and employees

- (1) The FMA is not liable for anything it may do or fail to do in the course of the performance or exercise or intended performance or exercise of its functions, powers, or duties, unless it is shown that it acted in bad faith or without reasonable care.
- (2) No member or employee of the FMA, nor any delegate of the FMA, is liable for anything that person may do or say or fail to do or say in the course of the operations of the FMA, unless it is shown that the person acted in bad faith.
- (3) Nothing in subsections (1) and (2) applies in respect of proceedings for—
 - (a) an offence against section 78, 78A(1), 105, 105A, or 105B of the Crimes Act 1961; or
 - (b) the offence of conspiring to commit an offence against any of those sections of the Crimes Act 1961; or
 - (c) the offence of attempting to commit an offence against any of those sections of the Crimes Act 1961.

- (4) Sections 122 to 126 of the Crown Entities Act 2004 apply as if the conduct for which a person may be indemnified or insured under those sections were conduct that is covered by the protection from liability in this section.
- (5) This section contains an exception to section 121 of the Crown Entities Act 2004.
- (6) This section is subject to clauses 39 and 40 of Schedule 2 (which provide for immunities in respect of entry or search powers).

Compare: 1978 No 103 s 28(1)–(5B)

23 FMA’s warnings, reports, guidelines, or comments protected by qualified privilege

For the purposes of clause 3 of Part 2 of Schedule 1 of the Defamation Act 1992, any warning, report, guideline, or comment issued or made by the FMA in the course of the performance or intended performance of its functions must be treated as an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.

Compare: 1978 No 103 s 28(7); 1986 No 5 s 106(10)

24 Evidence of orders and decisions of FMA

In any proceeding under this Act or any other enactment, a certificate purporting to be signed by the chairperson and certifying that an order or a decision described in, or a copy of which is attached to, the certificate was made by the FMA on a date specified in the certificate is sufficient evidence, until the contrary is proved, that the order or decision was so made by the FMA.

Compare: 1978 No 103 s 29

Part 3
**General information-gathering and
enforcement powers**

Subpart 1—General information-gathering
powers

*Power to obtain information, documents, and
evidence*

- 25 FMA may require person to supply information, produce documents, or give evidence**
- (1) If the FMA considers it necessary or desirable for the purposes of performing or exercising its functions, powers, or duties under this Act or any provision of the financial markets legislation, the FMA may, by written notice served on any person, require the person—
 - (a) to supply to the FMA, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or
 - (b) to produce to the FMA, or to a person specified in the notice acting on its behalf in accordance with the notice, any document or class of documents specified in the notice (within the time and in the manner specified in the notice); or
 - (c) if necessary, to reproduce, or assist in reproducing, in usable form, information recorded or stored in any document or class of documents specified in the notice (within the time and in the manner specified in the notice); or
 - (d) to appear before the FMA, or a specified person, at a time and place specified in the notice to give evidence, either orally or in writing, and produce any document or class of documents specified in the notice.
 - (2) The FMA may also exercise its powers under subsection (1) for the purposes of complying with the request of an overseas regulator under section 31 or otherwise co-operating with an overseas regulator.
 - (3) Information supplied in response to a notice under subsection (1)(a) must be—
 - (a) given in writing; and

- (b) signed in the manner specified in the notice.
- (4) If a document is produced in response to a notice under subsection (1), the FMA, or the person to whom the document is produced, may—
 - (a) inspect and make records of that document; and
 - (b) take copies of the document or extracts from the document.
- (5) In this section and sections 26 and 27, **specified person** means—
 - (a) a member or an employee of the FMA; or
 - (b) another person to whom the board of the FMA has delegated the power to receive the relevant evidence (being a person that the FMA is satisfied is suitably qualified or trained, or is a member of a class of persons who are suitably qualified or trained, to exercise the power).
- (6) Subpart 5 contains miscellaneous provisions relating to the powers in this subpart.

Compare: 1978 No 103 ss 67, 68, 69D; 1986 No 5 s 98

26 Powers of FMA to receive evidence

- (1) The FMA may receive evidence through a specified person, or any 2 or more specified persons.
- (2) The FMA may receive in evidence, whether admissible in a court of law or not, any statement, document, information, or matter that,—
 - (a) in the opinion of the FMA or the specified person who is receiving it, may assist the FMA in dealing effectively with any matter before it; or
 - (b) the FMA may receive under section 31.

Compare: 1978 No 103 ss 69B(1), 69BA

27 How evidence may be given

- (1) The FMA may receive evidence—
 - (a) given on oath;
 - (b) not given on oath;
 - (c) if the specified person who is receiving the evidence permits it, given by a written statement:

- (d) if the specified person who is receiving the evidence permits it, given by a written statement verified on oath:
 - (e) given by audio-visual communication, if the FMA and the person giving the evidence agree.
- (2) A specified person may administer an oath for the purpose of a person giving evidence on oath.
- Compare: 1978 No 103 s 69C; 1986 No 5 s 99(2)–(4)

28 Witnesses' expenses

- (1) If a person has appeared as a witness (whether or not under a notice under section 25), the FMA may, if it thinks fit, order any sum to be paid to that witness for his or her expenses.
- (2) That sum must not exceed the amount that would be payable to the witness if his or her attendance had been as a witness for the Crown in a criminal case in accordance with regulations for the time being in force for the payment of witnesses for the Crown in criminal cases.

Compare: 1978 No 103 s 69E; 1986 No 5 s 99(5)

Power to enter and search place, vehicle, or other thing

29 Power to enter and search place, vehicle, or other thing

- (1) The FMA may authorise a specified person to enter and search a place, vehicle, or other thing for the purpose of ascertaining whether a person has engaged in or is engaging in conduct that constitutes or may constitute a contravention of any provision of the financial markets legislation if the FMA is satisfied that there are reasonable grounds—
- (a) to suspect that person has engaged in or is engaging in conduct that constitutes or may constitute such a contravention; and
 - (b) to believe that the search will find evidential material in or on or part of the place, vehicle, or thing.
- (2) A specified person authorised under subsection (1) may enter and search the place, vehicle, or other thing if—
- (a) the occupier of the place consents or the person in charge of the vehicle or thing consents (as the case may be); or

- (b) the specified person obtains a warrant under subsection (3).
- (3) A Judge of the High Court or a District Court Judge may issue a search warrant in relation to a place, vehicle, or other thing, on application by a specified person authorised under subsection (1), if the Judge is satisfied that there are reasonable grounds to—
- (a) suspect that a person has engaged in or is engaging in conduct that constitutes or may constitute a contravention of any provision of the financial markets legislation; and
- (b) believe that the search will find evidential material in or on or part of the place, vehicle, or thing specified in the application.
- (4) In this section and Schedule 2,—
- evidential material** means evidence or any other item, tangible or intangible, of relevance to the purpose referred to in subsection (1)
- specified person** means—
- (a) an employee of the FMA; or
- (b) any other person that the FMA is satisfied is suitably qualified or trained, or is a member of a class of persons who are suitably qualified or trained, to act under this section
- thing** includes an intangible thing (for example, an email address or access information to an Internet data storage facility)
- vehicle** means any conveyance that is capable of being moved under a person's control, whether or not the conveyance is used for the carriage of persons or goods, and includes a motor vehicle, aircraft, train, ship, or bicycle.
- (5) Schedule 2 applies for the purposes of this section.

Subpart 2—Sharing information and documents

Power to share information and documents with other law enforcement or regulatory agencies and overseas regulators

30 Sharing of information and documents with law enforcement or regulatory agencies and overseas regulators

- (1) The FMA may provide to a law enforcement or regulatory agency or an overseas regulator any information, or a copy of any document, that the FMA—
 - (a) holds in relation to the performance or exercise of the FMA's functions, powers, or duties under this Act or any other enactment; and
 - (b) considers may assist, as the case may be,—
 - (i) the law enforcement or regulatory agency in the performance or exercise of the law enforcement or regulatory agency's functions, powers, or duties under any enactment; or
 - (ii) the overseas regulator in the performance or exercise of the overseas regulator's functions, powers, or duties under foreign law.
- (2) However, the FMA may provide information, or a copy of a document, to an overseas regulator under this section only if the FMA is satisfied that appropriate protections are or will be in place for the purpose of maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993).
- (3) The FMA may use any information, or a copy of any document, provided to it by a law enforcement or regulatory agency under any enactment, or by an overseas regulator, in the FMA's performance or exercise of its functions, powers, or duties under this Act or any other enactment.
- (4) This section applies despite anything to the contrary in any contract, deed, or document.

Compare: 1978 No 103 ss 17A, 17B

Power to act on requests of overseas regulators

31 Power of FMA to act on requests of overseas regulators

- (1) An overseas regulator may request the FMA to inquire into any matter related to the functions of that overseas regulator.
- (2) The FMA may obtain information, documents, or evidence that, in the FMA's opinion, is likely to assist the FMA in complying with that request by—
 - (a) exercising its powers under section 25 or authorising a person under section 52 to exercise powers under section 25(1)(a) to (c); or
 - (b) exercising its powers to receive evidence.
- (3) If the powers under section 25 are exercised for the purposes of complying with that request, or otherwise co-operating with an overseas regulator, that fact must be specified in the notice that is served under section 25.
- (4) The FMA may transmit the information, documents, or evidence obtained by it to the overseas regulator in the manner that the FMA thinks fit.

Compare: 1978 No 103 s 69F

32 FMA's consideration of requests

- (1) The FMA may comply with a request under section 31 only if the FMA is satisfied that—
 - (a) compliance will not substantially affect the performance of its other functions; and
 - (b) appropriate protections are or will be in place for the purpose of maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993); and
 - (c) it is appropriate to do so after taking into account any matters the FMA thinks relevant.
- (2) The matters the FMA may take into account under subsection (1) include, without limitation,—
 - (a) whether the FMA is likely to be able to obtain the requested information, documents, or evidence:
 - (b) the cost to the FMA of complying with the request:

- (c) whether the overseas regulator could more conveniently have the request satisfied by another source:
- (d) the extent to which the functions of the overseas regulator correspond with the functions of the FMA:
- (e) whether the overseas regulator would be likely to comply with a similar request made by the FMA and whether any arrangement with the overseas regulator to that effect exists:
- (f) whether, in the FMA's opinion, it would be more appropriate for the request to be dealt with under the Mutual Assistance in Criminal Matters Act 1992.

Compare: 1978 No 103 s 69G

Conditions

33 Conditions that may be imposed on providing information, documents, or evidence to other agencies or regulators

- (1) The FMA may impose any conditions in relation to providing information, documents, or evidence to a law enforcement or regulatory agency or an overseas regulator (whether in compliance with a request or otherwise).
- (2) The FMA must, in considering what conditions to impose, have regard to whether conditions are necessary or desirable in order to protect the privacy of any individual.
- (3) Conditions imposed under subsection (1) may include, without limitation, conditions relating to—
 - (a) maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993):
 - (b) the storing of, the use of, or access to anything provided:
 - (c) the copying, returning, or disposing of copies of documents provided:
 - (d) payment of the costs incurred by the FMA in providing anything or in generally complying with a request.

Compare: 1978 No 103 s 69H

Subpart 3—FMA may exercise person's right of action

34 FMA may exercise person's right of action

- (1) If, as a result of an inquiry or investigation carried out by the FMA, the FMA considers that it is in the public interest for it to do so, the FMA may, in accordance with this subpart,—
 - (a) exercise the right of action that a person (**person A**) has against a person who is or has been a financial markets participant by commencing and controlling specified proceedings against the person who is or has been a financial markets participant; or
 - (b) take over specified proceedings that have been commenced by a person (**person A**) against a person who is or has been a financial markets participant for the purpose of continuing the proceedings.
- (2) In this subpart, **specified proceedings** means any of the following kinds of proceedings:
 - (a) proceedings under, or in respect of, any financial markets legislation (other than criminal proceedings):
 - (b) proceedings seeking damages or other relief for fraud, negligence, default, breach of duty, or other misconduct, committed in connection with a matter to which the inquiry or investigation referred to in subsection (1) related.
- (3) In exercising a power under this section, the FMA must act in the public interest, but (subject to that duty) may take into account the interests of—
 - (a) person A; and
 - (b) the shareholders, members, and creditors of person A; and
 - (c) if person A is an issuer, any security holders of securities issued by person A.
- (4) In subsection (3)(c), **issuer** and **security holders** have the same meaning as in section 2(1) of the Securities Act 1978.
- (5) The FMA must, when considering whether exercising a power under this section is in the public interest, have regard to—
 - (a) its main objective under section 8; and

- (b) the likely effect of the proceedings on the future conduct of financial markets participants in connection with the financial markets; and
- (c) whether exercising the powers is an efficient and effective use of the FMA's resources; and
- (d) the extent to which the proceedings involve matters of general commercial significance or importance to the financial markets; and
- (e) the likelihood of person A commencing the proceedings (if those proceedings have not yet been commenced) and diligently continuing the proceedings; and
- (f) any other matters it considers relevant.

35 Requirements for FMA exercising person's right of action

- (1) The FMA may commence proceedings under section 34(1)(a) without the leave of the High Court only if—
 - (a) person A has not yet commenced proceedings in respect of the matter; and
 - (b) the FMA serves written notice on person A of its intention to commence proceedings; and
 - (c) within 30 working days of the FMA giving that notice, person A does not—
 - (i) commence proceedings; or
 - (ii) give written notice to the FMA that it objects to the FMA commencing the proceedings.
- (2) However, the FMA may commence proceedings under section 34(1)(a) before the 30-working-day period referred to in subsection (1)(c) expires (without the leave of the High Court) if person A gives written notice to the FMA that he, she, or it consents to the FMA commencing the proceedings.
- (3) The FMA may exercise a power under section 34(1)(b) only if—
 - (a) person A gives written notice to the FMA that he, she, or it consents to the FMA taking over the proceedings (in which case the High Court may, on an application from the FMA, make an order under section 38 to facilitate the takeover); or
 - (b) the leave of the High Court is given under section 36.

36 High Court may grant leave in certain circumstances

- (1) The FMA may, with the leave of the High Court,—
 - (a) commence proceedings under section 34(1)(a) if person A objects under section 35(1)(c)(ii); or
 - (b) take over proceedings under section 34(1)(b) if proceedings have been commenced by person A.
- (2) The High Court must give leave if it is satisfied that it is in the public interest for—
 - (a) the FMA to exercise a power under section 34(1)(a) or (b) (as the case may be); and
 - (b) the FMA, rather than person A, to control the conduct of the proceedings.
- (3) Despite subsections (1) and (2), if person A is an individual, this section does not apply (and, accordingly, the High Court may not give leave under this section).
- (4) The High Court must, when considering whether to give leave, have regard to—
 - (a) whether person A intends to commence or diligently continue the proceedings (as the case may be); and
 - (b) the interests of the persons referred to in section 34(3); and
 - (c) any other matters it considers relevant.

37 Procedural requirements for leave to exercise person's right of action

- (1) The FMA must serve notice of an application for leave under section 36 on person A (unless the High Court orders otherwise).
- (2) In relation to that application for leave, person A—
 - (a) may appear and be heard; and
 - (b) must, if person A appears, inform the High Court whether person A intends to commence or continue proceedings.

38 Powers of High Court for proceedings exercising person's right of action

- (1) The High Court may, on the application of the FMA, make any order it thinks fit in relation to proceedings commenced

or taken over, or to be commenced or taken over, under this subpart, including (without limitation) an order—

- (a) authorising the FMA to control the conduct of the proceedings:
 - (b) giving directions for the conduct of the proceedings:
 - (c) requiring person A or the directors of person A to provide information or assistance in relation to the proceedings:
 - (d) directing that any amount ordered to be paid by a defendant in the proceedings must be applied first to pay, in whole or in part, the FMA's actual costs in commencing or taking over the proceedings under this subpart and in conducting those proceedings:
 - (e) subject to paragraph (d), directing that any amount ordered to be paid by a defendant in the proceedings must be paid, in whole or part, to any persons referred to in section 34(3)(b) or (c) instead of to person A.
- (2) If the FMA proposes to exercise a power under this subpart, the High Court may grant interim relief on the application of the FMA, whether or not the FMA has given the required notice, obtained leave, or satisfied any other requirements for its exercise of a power under this subpart.
 - (3) The High Court may grant that interim relief on the conditions it thinks fit, including (without limitation) conditions as to the giving of notice or making of an application for leave.

39 Representative actions

- (1) If the FMA commences or takes over proceedings under this subpart in respect of person A, and other persons have the same or substantially the same interest in relation to the subject-matter of the proceedings as person A, the High Court may appoint the FMA to represent all or some of the persons having the same or substantially the same interest.
- (2) The High Court may, for the purpose referred to in subsection (1), make any order that it thinks fit, including (without limitation) an order—
 - (a) as to the control and conduct of the proceedings:
 - (b) as to the costs of the proceedings:

- (c) directing the distribution of any amount ordered to be paid by a defendant in the proceedings among the persons represented.

40 FMA must consult person A

- (1) The FMA must, after commencing or taking over proceedings under this subpart in respect of person A, consult with person A as to the conduct of those proceedings—
 - (a) as the FMA considers appropriate; or
 - (b) as otherwise directed by the High Court.
- (2) However, the FMA is not required to consult with person A, and the High Court must not direct the FMA to do so, if the FMA considers that consultation would materially prejudice the FMA in its ability to efficiently or effectively conduct the proceedings.

41 Proceedings must not be settled, compromised, or discontinued without approval

No proceedings commenced or taken over under this subpart may be settled, compromised, or discontinued without the approval of the High Court.

42 Special limitation provision

If the FMA applies for the leave of the High Court to commence proceedings under section 34(1)(a), the date on which that application for leave is filed must, for the purposes of—

- (a) the Limitation Act 2010, be treated as being the date on which the claim is filed in relation to those proceedings;
- (b) the Limitation Act 1950 (as applied under section 59 of the Limitation Act 2010), be treated as being the date on which the proceedings are brought.

43 Transitional provisions

- (1) The FMA may exercise a power under section 34 regardless of whether the date on which the relevant claim accrued, or the date of the act or omission on which the relevant claim is based, was before or after the commencement of this section.

- (2) In subsection (1), **claim** has the same meaning as in section 4 of the Limitation Act 2010.
- (3) To avoid doubt, if a person ceased to be a financial markets participant before the commencement of this section, the person must still be treated as being a person who has been a financial markets participant as referred to in section 34.
- (4) The FMA may exercise the power to take over specified proceedings under section 34(1)(b) regardless of whether those proceedings were commenced before or after the commencement of this section.

Subpart 4—Other powers

Power to make confidentiality orders

44 Power to make confidentiality orders

- (1) The FMA may, on its own initiative or on the application of any person, make an order prohibiting the publication or communication of any information, document, or evidence that is provided or obtained in connection with any inquiry, investigation, or other proceeding of the FMA under this Act or any other enactment.
- (2) The FMA may make an order under subsection (1) on the terms and conditions (if any) that it thinks fit.
- (3) An order under subsection (1) may be expressed to have effect—
 - (a) from the commencement of any inquiry, investigation, or other proceeding of the FMA to the end of that inquiry, investigation, or proceeding; or
 - (b) for any shorter period.
- (4) At the end of the inquiry, investigation, or proceeding, the Official Information Act 1982 and the Privacy Act 1993 apply to any information or document or evidence that was the subject of the order under subsection (1).

Compare: 1978 No 103 s 69N

45 Publication or disclosure with FMA's consent

- (1) An order under section 44 does not prohibit the publication or disclosure of any information, document, or evidence by

a person if the publication or disclosure is with the FMA's consent.

- (2) For the purposes of subsection (1), the FMA's consent must not be unreasonably withheld.
- (3) It is reasonable for the FMA to withhold its consent if it considers that the publication or disclosure of any information, document, or evidence would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of contraventions of the financial markets legislation.
- (4) Subsection (3) does not limit the circumstances in which it may be reasonable for the FMA to withhold its consent.

Power to accept undertakings

46 FMA may accept undertakings

- (1) The FMA may accept a written undertaking given by, or on behalf of, a person in connection with a matter in relation to which the FMA is performing or exercising any of its functions, powers, or duties for the purposes of this Act or any other enactment.
- (2) The person may withdraw or vary the undertaking with the consent of the FMA.

Compare: 1978 No 103 s 69J

47 Enforcement of undertakings

- (1) If the FMA considers that a person who has given an undertaking under section 46 has breached a term of that undertaking, the FMA may apply to the High Court for an order under subsection (2).
- (2) The High Court may make any of the following orders if it is satisfied that the person has breached a term of the undertaking:
 - (a) an order directing the person to comply with that term:
 - (b) an order directing the person to pay to the Crown an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach:

- (c) any order that the court thinks appropriate directing the person to compensate any other person who has suffered loss, injury, or damage as a result of the breach:
 - (d) an order for any consequential relief that the court thinks appropriate.
- (3) The High Court must, before making an order under subsection (2), take into account—
- (a) the nature and extent of the breach of the term of the undertaking; and
 - (b) the nature and extent of any loss, injury, or damage suffered by a person as a result of the breach of the term of the undertaking; and
 - (c) the circumstances in which the breach of the term of the undertaking took place (including whether the breach was intentional, inadvertent, or caused by negligence); and
 - (d) any other matters that it considers relevant.
- Compare: 1978 No 103 s 69K

Power to state case for opinion of High Court

48 FMA may state case for opinion of High Court

- (1) The FMA may, at any time, state a case for the opinion of the High Court on a question of law arising in a matter before it under this Act or any other enactment.
- (2) The High Court may order the removal into the Court of Appeal of a case stated for the opinion of the High Court under this section.
- (3) The High Court or the Court of Appeal, as the case may be, must hear and determine the question, and remit the case with its opinion to the FMA.

Compare: 1978 No 103 s 69O

Power to require warning to be disclosed

49 FMA may require its warning to be disclosed

- (1) If the FMA has issued a warning about any matter relating to a relevant person, the FMA may, by written notice served on the relevant person, order the relevant person, or all or any

associated persons of the relevant person, or both to do 1 or more of the following:

- (a) prominently disclose a copy of the warning on 1 or more Internet sites maintained by or on behalf of the relevant person or any of those associated persons:
 - (b) in the case of a relevant person that is an issuer, ensure that—
 - (i) a registered prospectus specified in the order is promptly amended so that it contains a copy of the warning in a prominent position:
 - (ii) every investment statement of the kind that is specified in the order and that is distributed by or on behalf of the issuer contains a copy of the warning in a prominent position or is accompanied by a copy of the warning:
 - (c) ensure that any offer document of the kind that is specified in the order contains, or is amended to contain, a copy of the warning in a prominent position or is accompanied by a copy of the warning:
 - (d) ensure that any document of the kind that is specified in the order and that is required by any provision of the financial markets legislation to be given by the relevant person, or any of those associated persons, to another person contains, or is amended to contain, a copy of the warning in a prominent position or is accompanied by a copy of the warning.
- (2) The FMA may make an order under subsection (1) on the terms and conditions (if any) that it thinks fit.
 - (3) If an order under subsection (1) extends to associated persons of the relevant person, the order may require—
 - (a) all, or any specified class or classes, of the associated persons to comply with the order (including associated persons that may be incorporated or formed after the date of the order); and
 - (b) the relevant person to provide a copy of the order to all or any of those associated persons.
 - (4) For the purpose of subsection (3), the order is not required to refer to the associated persons by name.
 - (5) The FMA may exercise a power under subsection (1) only if—

- (a) the FMA has had regard to whether exercising the power contributes to its function of promoting the confident and informed participation of businesses, investors, and consumers in the financial markets; and
 - (b) the FMA gives the relevant person at least 3 working days' written notice of the following matters before the FMA exercises the power:
 - (i) that the FMA may make an order under subsection (1); and
 - (ii) the reasons why it is considering exercising that power; and
 - (c) the FMA gives the relevant person or the relevant person's representative an opportunity to make written submissions and to be heard on the matter within that notice period.
- (6) The FMA may—
- (a) vary an order made under subsection (1) in the same way as it may make the order:
 - (b) revoke an order made under subsection (1) if it is satisfied that it should not continue in force.
- (7) In this section and section 51,—
- (a) **relevant person** means—
 - (i) a person who is or has been a financial markets participant; or
 - (ii) a person who is or has engaged in conduct that involves dealings in securities:
 - (b) a person (A) is an **associated person** of a relevant person if—
 - (i) A and the relevant person are associated persons within the meaning of section 2(1) of the Securities Act 1978; or
 - (ii) A and the relevant person are acting jointly or in concert; or
 - (iii) A acts, or is accustomed to act, in accordance with the wishes of the relevant person; or
 - (iv) the relevant person is a director or senior manager of A (within the meaning of those terms in section 4 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008

but applied even if A is not a financial service provider); or

- (v) A and the relevant person are related bodies corporate (within the meaning of section 5B(2) of the Securities Markets Act 1988):
- (c) **offer document** means a document that contains or refers to an offer to acquire or dispose of securities:
- (d) **issuer, registered prospectus, investment statement, offer, and distributed** have the same meaning as in section 2(1) of the Securities Act 1978.

50 FMA must give notice of orders

- (1) If the FMA makes an order under section 49,—
 - (a) it must, immediately after exercising the power, give notice on its Internet site of—
 - (i) the reasons for making the order; and
 - (ii) the terms and conditions of the order (if any); and
 - (iii) any other information the FMA thinks relevant in the circumstances; and
 - (b) it may give public notice by any other means of the matters in paragraph (a); and
 - (c) it may notify any other person of the matters in paragraph (a).
- (2) If the FMA varies or revokes an order under section 49,—
 - (a) it must, immediately after exercising the power, give notice on its Internet site of—
 - (i) the reasons for the variation or revocation; and
 - (ii) the terms and conditions of the variation (if any); and
 - (iii) any other information the FMA thinks relevant in the circumstances; and
 - (b) it may give public notice by any other means of the matters in paragraph (a); and
 - (c) it may notify any other person of the matters in paragraph (a).

51 Offence of failing to comply with order

- (1) Every relevant person to whom an order under section 49 applies commits an offence if the relevant person refuses or fails, without reasonable excuse, to comply with the order.
- (2) If an order under section 49 applies to an associated person of a relevant person, the associated person commits an offence if the associated person—
 - (a) knew, or ought reasonably to have known, that the order applied to the associated person; and
 - (b) refuses or fails, without reasonable excuse, to comply with the order.
- (3) Every person who commits an offence against subsection (1) or (2) is liable on summary conviction to a fine not exceeding \$300,000.

**Subpart 5—Miscellaneous provisions
relating to powers***FMA may authorise person to obtain
information or documents***52 Power to authorise person to obtain information or documents**

- (1) The FMA may, in accordance with section 53, authorise any person to exercise any of the powers under section 25(1)(a) to (c) if exercising that power is for the purpose of—
 - (a) this Act or any Act listed in Schedule 1 or any enactment made under any of those Acts; or
 - (b) complying with the request of an overseas regulator under section 31 or otherwise co-operating with an overseas regulator.
- (2) An authorisation under subsection (1) may relate to a particular case, or a class or classes of cases, specified by the FMA.
- (3) For the purposes of subsection (1), a notice served under section 25(1)(a) to (c) may require the information or documents (as the case may be) to be supplied or produced to a person authorised under subsection (1) (rather than to the FMA).
- (4) The fact that any person authorised by the FMA exercises, or attempts to exercise, any of the powers in section 25(1)(a) to (c) is sufficient evidence that the exercise of the power has

been authorised by the FMA unless there is evidence to the contrary.

- (5) Section 73 of the Crown Entities Act 2004 does not limit this section.

Compare: 1978 No 103 ss 67A, 68

53 Requirements for persons authorised to obtain information or documents

- (1) The FMA must not authorise a person under section 52 unless the FMA is satisfied that the person is suitably qualified or trained, or the person is a member of a class of persons who are suitably qualified or trained, to exercise a power under section 25(1)(a) to (c).
- (2) A person authorised by the FMA to exercise a power under section 25(1)(a) to (c) must, if requested at the time of exercising the power, produce evidence of that person's authority to exercise the power.

Compare: 1978 No 103 s 68A

54 Non-disclosure of information or documents from exercise of powers under section 25 except in certain circumstances

- (1) A person authorised under section 52 must not publish or disclose to any other person any information or documents acquired in the course of exercising powers under section 25 except—
- (a) to the FMA; or
 - (b) as directed by the FMA in accordance with section 59(3); or
 - (c) in accordance with the Official Information Act 1982 or the Privacy Act 1993.
- (2) A person authorised under section 52 who wilfully contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$200,000.

55 Protection from liability for persons exercising powers

Without limiting any other statutory protection from liability, no person is liable for any act done or omitted to be done by

the person in the exercise or intended exercise of the person's powers under section 25 or 54 unless the person acts in bad faith.

Compare: 1978 No 103 s 68F

Privileges

56 Witnesses and counsel to have privileges of witnesses and counsel in court

- (1) Every person has the same privileges in relation to providing information and documents to, and answering questions before, the FMA, a member or an employee or a delegate of the FMA, or a person authorised under section 52, as witnesses have in proceedings before a court.
- (2) If a power under section 25 or the FMA's power to receive evidence is exercised for the purposes of complying with a request from an overseas regulator under section 31 or otherwise co-operating with an overseas regulator, the person in respect of whom the power is exercised has the privilege against self-incrimination referred to in section 60 of the Evidence Act 2006 applied with all necessary modifications as if the reference to an offence under New Zealand law were a reference to an offence under foreign law.
- (3) Subsection (2) does not limit any other privilege that the person may have.
- (4) Every person appearing as counsel before the FMA, or a member or an employee or a delegate of the FMA, has the same privileges as counsel have in proceedings before a court.

Compare: 1978 No 103 s 69S

Effect of proceedings on exercise of powers

57 Effect of proceedings

- (1) If a person commences a proceeding in any court in respect of the exercise of any powers conferred by section 25, until a final decision in relation to the proceeding is given,—
 - (a) the powers may be, or may continue to be, exercised as if the proceeding had not been commenced; and
 - (b) no person is excused from fulfilling his or her obligations under that section by reason of the proceeding.

- (2) However, an interim order may be made by the High Court overriding the effect of subsection (1), but only if the High Court is satisfied that—
- (a) the applicant has established a prima facie case that the exercise of the power in question is unlawful; and
 - (b) the applicant would suffer substantial harm from the exercise or discharge of the power or obligation; and
 - (c) if the power or obligation is exercised or discharged before a final decision is made in the proceeding, none of the remedies specified in subsection (3), or any combination of those remedies, could subsequently provide an adequate remedy for that harm; and
 - (d) the terms of that order do not unduly hinder or restrict the FMA in performing or exercising its functions, powers, or duties under this Act or any provision of the financial markets legislation.
- (3) The remedies are as follows:
- (a) any remedy that the High Court may grant in making a final decision in relation to the proceeding (for example, a declaration);
 - (b) any damages that the applicant may be able to claim in concurrent or subsequent proceedings;
 - (c) any opportunity that the applicant may have, as defendant in a proceeding, to challenge the admissibility of any evidence obtained as a result of the exercise or discharge of the power or obligation.

Compare: 1978 No 103 s 68I

58 Effect of final decision that exercise of powers under section 25 unlawful

- (1) This section applies in any case where it is declared, in a final decision given in any proceedings in respect of the exercise of any powers conferred by section 25, that the exercise of any powers conferred by that section is unlawful.
- (2) If this section applies, to the extent to which the exercise of those powers is declared unlawful, the FMA must ensure that, immediately after the decision of the court is given,—

- (a) any information obtained as a consequence of the exercise of powers declared to be unlawful and any record of that information are destroyed; and
 - (b) any documents, or extracts from documents, obtained as a consequence of the exercise of powers declared to be unlawful are returned to the person previously having possession of them, or previously having them under his or her control, and any copies of those documents or extracts are destroyed; and
 - (c) any information derived from or based on such information, documents, or extracts is destroyed.
- (3) However, the court may, in the court's discretion, order that any information, record, or copy of any document or extract from a document may, instead of being destroyed, be retained by the FMA subject to any terms and conditions that the court imposes.
- (4) No information, and no documents or extracts from documents, obtained as a consequence of the exercise of any powers declared to be unlawful, and no record of any such information or document,—
- (a) are admissible as evidence in any civil proceedings unless the court hearing the proceedings in which the evidence is sought to be adduced is satisfied that there was no unfairness in obtaining the evidence:
 - (b) are admissible as evidence in any criminal proceedings if the evidence is excluded under section 30 of the Evidence Act 2006:
 - (c) may otherwise be used in connection with the exercise of any power conferred by this Act or any provision of the financial markets legislation unless the court that declared the exercise of the powers to be unlawful is satisfied that there was no unfairness in obtaining the evidence.

Confidentiality

59 Confidentiality of information and documents

- (1) This section applies to the following information and documents:

- (a) information and documents supplied or disclosed to, or obtained by, the FMA under this Act or any financial markets legislation:
 - (b) information and documents supplied or disclosed to, or obtained by, a person authorised under section 52 (an **authorised person**) under subpart 1:
 - (c) information derived from information and documents referred to in paragraph (a) or (b).
- (2) However, this section does not apply to information and documents to which section 23 of the Corporations (Investigation and Management) Act 1989 applies.
- (3) The FMA must not publish or disclose, or direct an authorised person to publish or disclose, any information or document to which this section applies unless—
- (a) the information or document is available to the public under any enactment or is otherwise publicly available; or
 - (b) the information is in a statistical or summary form; or
 - (c) the publication or disclosure of the information or document is for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed on the FMA by this Act or any other enactment; or
 - (d) the publication or disclosure of the information or document is to a law enforcement or regulatory agency under subpart 2; or
 - (e) the publication or disclosure of the information or document is to an overseas regulator under subpart 2 or otherwise for the purpose of assisting the FMA to co-operate with an overseas regulator; or
 - (f) the publication or disclosure of the information or document is to a person who the FMA is satisfied has a proper interest in receiving the information or document; or
 - (g) the publication or disclosure of the information or document is with the consent of the person to whom the information or document relates or of the person to whom the information or document is confidential.

- (4) The FMA must not publish or disclose, or direct an authorised person to publish or disclose, any information or document under subsection (3)(f) unless the FMA is satisfied that appropriate protections are or will be in place for the purpose of maintaining the confidentiality of the information or document (in particular, information that is personal information within the meaning of the Privacy Act 1993).

60 Conditions relating to publication or disclosure of information or documents

- (1) The FMA may, by written notice to a person to whom any information or document is published or disclosed under section 59(3)(c), (f), or (g), impose any conditions in relation to the publication, disclosure, or use of the information or document by the person.
- (2) The FMA must, in considering what conditions to impose, have regard to whether conditions are necessary or desirable in order to protect the privacy of any individual.
- (3) Conditions imposed under subsection (1) may include, without limitation, conditions relating to—
- (a) maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993):
 - (b) the storing of, the use of, or access to anything provided:
 - (c) the copying, returning, or disposing of copies of documents provided.
- (4) A person who refuses or fails, without reasonable excuse, to comply with any conditions commits an offence and is liable on summary conviction to a fine not exceeding \$200,000.

Other offences

61 Criminal liability for obstructing exercise of powers

- (1) Every person commits an offence who—
- (a) refuses or fails, without reasonable excuse, to comply with a notice under section 25; or
 - (b) in purported compliance with a notice under section 25, supplies information, or produces a document, or gives evidence, knowing it to be false or misleading; or

- (c) resists, obstructs, or delays a person acting under a warrant issued under section 29; or
 - (d) having been required under a notice under section 25(1)(d) to appear before the FMA or a specified person referred to in that paragraph, for the purposes of any matter, without reasonable excuse—
 - (i) refuses or fails to appear; or
 - (ii) refuses to take an oath or affirmation as a witness; or
 - (iii) refuses to answer any question; or
 - (iv) refuses or fails to provide any document or information that the person is required to provide; or
 - (e) deceives or attempts to deceive or knowingly misleads the FMA or a specified person referred to in section 25(5) in providing evidence to either of them; or
 - (f) wilfully acts in contravention of any order made by the FMA under section 44.
- (2) A body corporate commits an offence under subsection (1)(d) if it is required to appear under section 25(1)(d) and, without reasonable excuse, an authorised representative on its behalf refuses or fails to appear, refuses to take an oath or affirmation as a witness, refuses to answer any question, or refuses or fails to provide any document or information that the body corporate is required to provide.
- (3) Every person who commits an offence against subsection (1) is liable on summary conviction to a fine not exceeding \$300,000.

Compare: 1978 No 103 s 59A

Other miscellaneous provisions

62 Notices

- (1) A notice served by the FMA for the purposes of this Part is sufficiently served if it is—
- (a) in writing; and
 - (b) signed by 1 or more of the members or by any person purporting to act with the authority of the FMA; and
 - (c) served in accordance with section 63.

- (2) All documents purporting to be signed by or on behalf of the FMA must, in all courts and in all proceedings under this Act, be treated as having been so signed with due authority unless the contrary is proved.

Compare: 1986 No 5 s 101

63 Service of notices

- (1) Any notice or other document required or authorised to be served on any person for the purposes of this Part may—
- (a) be served on an individual—
 - (i) by delivering it personally or by an agent (such as a courier) to the person; or
 - (ii) by sending it by post addressed to the person at the person's usual or last known place of residence or business; or
 - (iii) by sending it by fax or email to the person's fax number or email address provided by the person for the purpose; or
 - (iv) in any other manner a District Court Judge directs:
 - (b) be served on a company, within the meaning of the Companies Act 1993, in a manner provided for in section 388 of that Act:
 - (c) be served on an overseas company in a manner provided for in section 390 of the Companies Act 1993:
 - (d) be served on any other body corporate in a manner in which it could be served if the body corporate were a company within the meaning of the Companies Act 1993.
- (2) In the absence of proof to the contrary, a notice, document, or notification sent to a person in accordance with—
- (a) subsection (1)(a)(ii) must be treated as having been served on the person when it would have been delivered in the ordinary course of post; and, in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted:
 - (b) subsection (1)(a)(iii) must be treated as having been served on the person on the second working day after the day on which it is sent.

- (3) Section 392 of the Companies Act 1993 applies for the purposes of subsection (1)(b) to (d).
- (4) If a person is absent from New Zealand, a notice served on the person's agent in New Zealand in accordance with subsection (1) must be treated as having been served on the person.
- (5) If a person has died, the notice may be served, in accordance with subsection (1), on his or her personal representative.

64 Powers not limited

This Part does not limit any power that the FMA or any other person has under any other enactment.

Compare: 1978 No 103 s 68C

65 Limitation on disclosure of information obtained in FMA's operations

- (1) No court or other person may require a member or an employee of the FMA, any delegate of the FMA, any expert appointed by the FMA, any person authorised under section 52, or any other person present at a meeting of the FMA to—
 - (a) give evidence in court or in any proceedings of a judicial nature of anything coming to his or her knowledge in connection with the operations of the FMA; or
 - (b) make discovery of a document or produce a document for inspection in court or in any proceedings of a judicial nature if the document was provided or obtained in connection with the operations of the FMA.
- (2) Subsection (1) does not apply to—
 - (a) proceedings in respect of the falsity of any testimony; or
 - (b) proceedings to which the FMA is a party (including where the FMA is acting under subpart 3); or
 - (c) proceedings in respect of—
 - (i) an offence under section 51 or 61; or
 - (ii) an offence against section 78, 78A(1), 105, 105A, or 105B of the Crimes Act 1961; or
 - (iii) the offence of conspiring to commit an offence against any of those sections of the Crimes Act 1961; or

- (iv) the offence of attempting to commit an offence against any of those sections of the Crimes Act 1961.
- (3) This section does not limit the application of the Official Information Act 1982.
Compare: 1978 No 103 s 69V

- 66 Part does not limit Privacy Act 1993**
Nothing in this Part limits the Privacy Act 1993.

Part 4

Miscellaneous provisions

Subpart 1—Fees, charges, costs, and levies

- 67 Regulations relating to fees, charges, and costs**
- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
 - (a) requiring the payment to the FMA of fees and charges—
 - (i) by financial markets participants in connection with the performance or exercise by the FMA of any function, power, or duty under this Act or any other enactment:
 - (ii) on an application or a request to the FMA to perform or exercise any function, power, or duty under this Act or any other enactment:
 - (b) prescribing the amounts of those fees and charges or the manner in which those fees and charges are to be calculated:
 - (c) authorising the FMA to require payment of any costs incurred by the FMA in connection with an application or a request referred to in paragraph (a)(ii).
 - (2) Any Order in Council made under subsection (1) may authorise the FMA to refund or waive, in whole or in part and on any conditions as may be prescribed, payment of any fee, charge, or cost payable in relation to any person or class of persons.
 - (3) The FMA may refuse to perform or exercise a function, power, or duty until the prescribed fee, charge, or cost is paid.

- (4) Any fee, charge, or cost payable to the FMA is recoverable by the FMA in any court of competent jurisdiction as a debt due to the FMA.

68 Levy of financial markets participants and other persons registered or incorporated under Acts referred to in Schedule 1

- (1) Every person that is included in a prescribed class of specified persons must pay to the Crown, or a prescribed person on behalf of the Crown, a levy prescribed by regulations.
- (2) In this section and section 69, **specified persons** means—
- (a) financial markets participants; and
 - (b) every other person registered or incorporated, or who makes an application for the registration or incorporation of a person, under an Act referred to in Part 2 of Schedule 1.
- (3) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the levies.
- (4) Levies must be prescribed on the basis that the following costs should be met fully out of the levies:
- (a) a portion of the costs of the FMA in performing or exercising its functions, powers, and duties under this Act and any other enactment, where the size of the portion to be met by levies under this Act is determined by the Minister; and
 - (b) the costs of collecting the levy money.
- (5) Levies may be prescribed on the basis that any actual cost that could have been, but has not been, recovered as a levy shortfall for a year may be recovered (along with any financing charge) over any period of up to 5 years.
- (6) The regulations may—
- (a) specify the class or classes of specified persons that are required to pay a levy;
 - (b) specify the amount of levies, or method of calculating or ascertaining the amount of levies;
 - (c) include in levies, or provide for the inclusion in levies of, any shortfall in recovering the actual costs:

- (d) refund, or provide for refunds of, any over-recovery of the actual costs:
 - (e) provide for the payment and collection of levies:
 - (f) provide different levies for different classes of specified persons:
 - (g) specify the financial year or part financial year to which a levy applies, and apply that levy to that financial year or part financial year and each subsequent financial year until the levy is revoked or replaced:
 - (h) for the first financial year to which a levy applies, include in a levy amount or method the costs relating to establishing the FMA, disestablishing the Securities Commission, and the FMA performing or exercising its functions, duties, and powers under any enactment:
 - (i) 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:
 - (j) provide for waivers or refunds of the whole or any part of a levy for any case or class of cases.
- (7) If a person is in 2 or more classes of specified persons in respect of which different levies have been prescribed, the person must pay each of those levies (unless the regulations provide otherwise).
- (8) A levy for a financial year that starts after the FMA begins to carry out any additional function under any enactment may recover the costs of performing that additional function, irrespective of the fact that the regulations may be made and come into effect after the start of the financial year.
- (9) The amount of any unpaid levy is recoverable in any court of competent jurisdiction as a debt due to the FMA, or to any other person prescribed for the purposes of this subsection, on behalf of the Crown.
- (10) The FMA, or any other person prescribed for the purposes of this subsection, must ensure that each levy payment is paid into a Crown Bank Account and is separately accounted for.

69 FMA must consult about request for appropriation

- (1) The FMA must, before submitting a request to the Minister seeking an appropriation of public money for the following

- year, or any change to an appropriation for the current year, that relates to costs that are intended to be recovered by way of levies under section 68, consult about that request with—
- (a) the persons or organisations that the FMA considers are able to represent the views of those specified persons who are liable to pay a levy under that section; and
 - (b) any other representatives of persons whom the FMA believes to be significantly affected by a levy.
- (2) Consultation under subsection (1) must include consultation relating to the portion of the costs of the FMA that should be met by the levies.
 - (3) The FMA must, at the time when the request is submitted, report to the Minister on the outcome of that consultation.
 - (4) This section applies to requests in respect of the financial year beginning on 1 July 2013 and later financial years.
 - (5) A failure to comply with this section does not affect the validity of any regulations made under section 68.

Subpart 2—Transitional provisions

70 Interpretation

In this subpart, unless the context otherwise requires,—

commencement date means the date on which this section comes into force

Commission means the Securities Commission established under the Securities Act 1978

property—

- (a) means every type of property; and
- (b) includes money, and every type of estate and interest in property

successor, in respect of a function, duty, or power of the Government Actuary under an enactment, means the person who replaces the Government Actuary in respect of that function, duty, or power in accordance with sections 82 and 85 and Schedules 3 and 4

suitable alternative position, in relation to an employee, means a position—

- (a) for which the employee has the appropriate skills and experience; and
- (b) the pay and conditions of which are, in their overall effect, no less favourable to the employee than those applying to the employee immediately before the date of the employee's transfer to that position

transferred employee means a person who,—

- (a) immediately before the commencement date, is employed by the Commission; and
- (b) is transferred to the FMA under section 72(1)(f).

Disestablishment of Securities Commission

71 Securities Commission disestablished

- (1) The Commission is disestablished.
- (2) The members of the Commission cease to hold office at the close of the day before the commencement date.
- (3) For the purpose of completing or deciding any inquiry, application, or matter that has been heard or considered (in whole or in part) before the commencement date, the board of the FMA may delegate any of the functions or powers of the FMA or the board in accordance with sections 73 to 76 of the Crown Entities Act 2004 to 1 or more former members of the Commission as if those former members were referred to in section 73(1) of that Act.
- (4) Subsection (3) does not limit the power of the board of the FMA to make any other delegation in accordance with sections 73 to 76 of the Crown Entities Act 2004.

72 Consequences of disestablishment

- (1) On the commencement date,—
 - (a) the functions, duties, and powers of the Commission under any enactment vest in the FMA, except as specifically provided otherwise in this Act, but only to the extent that those functions, duties, and powers are consistent with the functions, duties, and powers of the FMA

- under this Act and any other enactment (subject to subsection (4)); and
- (b) all property belonging to the Commission vests in the FMA; and
 - (c) all information and documents held by the Commission are held by the FMA; and
 - (d) all money payable to or by the Commission becomes payable to or by the FMA; and
 - (e) all rights, liabilities, contracts, entitlements, and engagements of the Commission become the rights, liabilities, contracts, entitlements, and engagements of the FMA; and
 - (f) subject to section 74, every employee of the Commission becomes an employee of the FMA on the same terms and conditions as applied immediately before he or she became an employee of the FMA; and
 - (g) anything done, or omitted to be done, or that is to be done, by or in relation to the Commission is to be treated as having been done, or having been omitted to be done, or to be done, by or in relation to the FMA; and
 - (h) the commencement, continuation, or enforcement of proceedings by or against the Commission may instead be commenced, continued, or enforced by or against the FMA without amendment to the proceedings; and
 - (i) the completion of a matter or thing that would, but for this section, have been completed by the Commission may be completed by the FMA.
- (2) The transfer of information from the Commission to the FMA under subsection (1)(c) does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993.
- (3) The disestablishment of the Commission does not, by itself, affect any of the following matters:
- (a) any decision made, or anything done or omitted to be done, by the Commission in relation to the performance or exercise of its functions, powers, or duties under any enactment;
 - (b) any proceedings commenced by or against the Commission:

- (c) any other matter or thing arising out of the Commission's performance or exercise, or purported performance or exercise, of its functions, powers, or duties under any enactment.
- (4) Despite subsection (1)(a), it is a function of the FMA to perform or exercise any functions, powers, or duties of the Commission that are necessary or desirable for it to perform or exercise, on a temporary basis, for the purpose of effectively managing the transition of functions from the Commission to the FMA.

73 References to Securities Commission

- (1) A reference (express or implied) to the Commission in any enactment (other than this Act), or in any instrument, register, record, notice, security, document, or communication made, given, passed, or executed before or on the commencement date, must be read as a reference to the FMA.
- (2) A reference (express or implied) to an officer or employee of the Commission in any enactment, or in any instrument, register, record, notice, security, document, or communication made, given, passed, or executed before or on the commencement date must be read as a reference to—
 - (a) the corresponding employee of the FMA; or
 - (b) if there is no corresponding employee, any other employee of the FMA as the FMA thinks fit.
- (3) This section—
 - (a) applies unless the context otherwise requires; and
 - (b) is subject to subpart 3 and the Securities Amendment Act 2011.

74 Transfer of employees

- (1) The terms and conditions of employment of a transferred employee immediately before the commencement date continue to apply in relation to that employee until—
 - (a) those terms and conditions are varied by agreement between the transferred employee and the FMA; or
 - (b) the transferred employee accepts a subsequent appointment with the FMA.

- (2) For the purposes of every enactment, law, determination, contract, and agreement relating to the employment of a transferred employee,—
 - (a) the employment agreement of that employee is to be treated as unbroken; and
 - (b) the employee's period of service with the Commission, and every other period of service of that employee that is recognised by the Commission as continuous service, is to be treated as a period of service with the FMA.
- (3) To avoid doubt, the employment of a transferred employee by the FMA does not constitute new employment for the purposes of the KiwiSaver Act 2006.
- (4) A transferred employee is not entitled to receive any payment or benefit from the Commission or the FMA on the grounds that the person's position in the Commission has ceased to exist or the person has ceased to be an employee of the Commission as a result of the transfer to the FMA.
- (5) This section overrides Part 6A of the Employment Relations Act 2000.

75 Effect of Act

Nothing effected or authorised by sections 71 to 74—

- (a) places the Commission, the FMA, or any other person in breach of contract or confidence, or makes any of them liable for a civil wrong; or
- (b) entitles a person to terminate or cancel a contract or an arrangement, or to accelerate the performance of an obligation, or to impose a penalty or an increased charge; or
- (c) places the Commission, the FMA, or any other person in breach of an enactment, a rule of law, or a provision of a contract that prohibits, restricts, or regulates the assignment or transfer of property or the disclosure of information; or
- (d) releases a surety from an obligation; or
- (e) invalidates or discharges a contract or surety.

76 Registers

- (1) The Registrar-General of Land or any other person charged with keeping books or registers is not required to change the name of the Commission to the FMA in the books or registers, or in a document, solely because of the provisions of this Act.
- (2) If the FMA presents an instrument referred to in subsection (3) to a Registrar or another person, the presentation of that instrument by the FMA is, in the absence of proof to the contrary, sufficient evidence that the property is vested in the FMA.
- (3) For the purposes of this section, the instrument need not be an instrument of transfer, but must—
 - (a) be executed or purport to be executed by the FMA; and
 - (b) relate to a property held by the Commission immediately before the commencement date; and
 - (c) be accompanied by a certificate by the FMA that the property became vested in the FMA by virtue of the provisions of this Act.

*Disestablishment of office of Government
Actuary*

77 Office of Government Actuary disestablished

- (1) The office of the Government Actuary is disestablished.
- (2) This section is subject to section 80.

78 Consequences of disestablishment

- (1) On the commencement date, in respect of any function, duty, or power of the Government Actuary under any enactment for which the FMA is the successor,—
 - (a) all information and documents held by the Government Actuary are held by the FMA; and
 - (b) anything done, or omitted to be done, or that is to be done, by or in relation to the Government Actuary is to be treated as having been done, or having been omitted to be done, or to be done, by or in relation to the FMA; and
 - (c) the commencement, continuation, or enforcement of proceedings by or against the Government Actuary may instead be commenced, continued, or enforced by or

- against the FMA without amendment to the proceedings; and
- (d) the completion of a matter or thing that would, but for this section, have been completed by the Government Actuary may be completed by the FMA.
- (2) On the commencement date, in respect of any function, duty, or power of the Government Actuary under any enactment for which the FMA is not the successor,—
- (a) all information and documents held by the Government Actuary are held by the department for the time being responsible for the administration of the Superannuation Schemes Act 1989 (the **department**); and
 - (b) anything done, or omitted to be done, or that is to be done, by or in relation to the Government Actuary is to be treated as having been done, or having been omitted to be done, or to be done, by or in relation to the chief executive of the department; and
 - (c) the commencement, continuation, or enforcement of proceedings by or against the Government Actuary may instead be commenced, continued, or enforced by or against the chief executive of the department without amendment to the proceedings; and
 - (d) the completion of a matter or thing that would, but for this section, have been completed by the Government Actuary may be completed by the chief executive of the department.
- (3) The transfer of information from the Government Actuary to the FMA under subsection (1)(a), or from the Government Actuary to the department under subsection (2)(a), does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993.
- (4) The disestablishment of the office of the Government Actuary does not, by itself, affect any of the following matters:
- (a) any decision made, or anything done or omitted to be done, by the Government Actuary in relation to the performance or exercise of his or her functions, powers, or duties under any enactment:
 - (b) any proceedings commenced by or against the Government Actuary:

- (c) any other matter or thing arising out of the Government Actuary's performance or exercise, or purported performance or exercise, of his or her functions, powers, or duties under any enactment.
- (5) This section is subject to section 80.

79 References to Government Actuary

- (1) A reference (express or implied) to the Government Actuary in any enactment (other than this Act), or in any instrument, register, record, notice, security, document, or communication made, given, passed, or executed before or on the commencement date, must be read as a reference to the successor.
- (2) This section—
 - (a) applies unless the context otherwise requires; and
 - (b) is subject to subpart 3 and section 80.

80 Office of Government Actuary continues for limited purpose until 30 September 2011

- (1) Despite section 77, the office of the Government Actuary continues until the close of 30 September 2011 for the purpose of the Government Actuary performing any function or duty, or exercising any power, in relation to the Government Superannuation Fund under any of the following enactments as in force immediately before their amendment by section 82 of this Act:
 - (a) Government Superannuation Fund Act 1956:
 - (b) Government Superannuation Fund Amendment Act 1969:
 - (c) Government Superannuation Fund (Ceasing Contributions) Regulations 1995:
 - (d) Government Superannuation Fund Regulations 1995.
- (2) To the extent required by subsection (1), until the close of 30 September 2011,—
 - (a) sections 78 and 79 do not apply; and
 - (b) the enactments described in subsection (1) continue to apply as if they had not been amended by section 82 of this Act.

*Miscellaneous provisions***81 Ministry of Economic Development employees**

- (1) An employee is not entitled to receive any payment or other benefit on the ground that his or her position in the Ministry of Economic Development has ceased to exist if—
- (a) the position ceases to exist as a result of a change in the functions of the Ministry of Economic Development or the Registrar of Companies in connection with the establishment of the FMA; and
 - (b) the person is offered a suitable alternative position by the FMA; and
 - (c) the offer is made—
 - (i) in the period between the date on which this Act receives the Royal assent and the date that is 6 months after the commencement date; and
 - (ii) for employment that commences on or after the commencement date.
- (2) This section overrides Part 6A of the Employment Relations Act 2000.

Subpart 3—Amendments to other enactments**82 Amendments to other enactments**

The enactments specified in Schedule 3 are amended in the manner specified in that schedule.

83 Transitional provisions relating to consequential amendments to Unit Trusts Act 1960

- (1) Every person who, before the commencement of this section, was approved by a Minister under section 4(2) of the Unit Trusts Act 1960 must, after that commencement, be treated as having been approved by the FMA under that provision.
- (2) If, before the commencement of this section, an application has been made by a Minister under section 19(1) of the Unit Trusts Act 1960 and the court has not yet made a decision on the application, the FMA may continue with the application.

- (3) If, before the commencement of this section, an inspector is appointed by a Minister under section 21 of the Unit Trusts Act 1960, the inspector—
 - (a) may continue the investigation as if section 21 had not been amended by this Act; but
 - (b) must make his or her report to the FMA rather than the Minister.
- (4) A consent under section 25(3) of the Unit Trusts Act 1960 given before the commencement of this section remains valid despite the amendment made to that provision by this Act.

84 Amendments consequential on replacement of Commission by FMA

- (1) The provisions of the Acts specified in Part 1 of Schedule 4 are amended by omitting “Securities Commission” in each place where it appears and substituting in each case “Financial Markets Authority”.
- (2) The provisions of the regulations specified in Part 2 of Schedule 4 are amended by omitting “Securities Commission” in each place where it appears and substituting in each case “Financial Markets Authority”.
- (3) The provisions of the Acts specified in Part 3 of Schedule 4 are amended by omitting “Commission” in each place where it appears and substituting in each case “FMA”.
- (4) The provisions of the regulations specified in Part 4 of Schedule 4 are amended by omitting “Commission” in each place where it appears and substituting in each case “FMA”.
- (5) The provisions of the Acts specified in Part 5 of Schedule 4 are amended by omitting “Commission’s” in each place where it appears and substituting in each case “FMA’s”.

85 Amendments consequential on replacement of Government Actuary by FMA

- (1) The provisions of the Acts specified in Part 6 of Schedule 4 are amended by omitting “Government Actuary” in each place where it appears and substituting in each case “FMA”.

- (2) The provisions of the regulations specified in Part 7 of Schedule 4 are amended by omitting “Government Actuary” in each place where it appears and substituting in each case “FMA”.
-

Schedule 1
Financial markets legislation

s 4

Part 1

Financial Advisers Act 2008
Financial Service Providers (Registration and Dispute Resolution)
Act 2008
Parts 4 and 5 and Schedules 1 and 2 of the KiwiSaver Act 2006
Securities Act 1978
Securities Markets Act 1988
Securities Transfer Act 1991
Superannuation Schemes Act 1989
Unit Trusts Act 1960

Part 2

Anti-Money Laundering and Countering Financing of Terrorism
Act 2009
Building Societies Act 1965
Companies Act 1993
Co-operative Companies Act 1996
Corporations (Investigation and Management) Act 1989
Sections 220, 228, 229, 240, 242, and 256 to 260 of the Crimes Act
1961
Financial Reporting Act 1993
Friendly Societies and Credit Unions Act 1982
Industrial and Provident Societies Act 1908
Limited Partnerships Act 2008
Part 5C of the Reserve Bank of New Zealand Act 1989
Trustee Companies Act 1967

Schedule 2

Provisions relating to search power

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Search warrants

1 Interpretation

- (1) In this schedule, unless the context otherwise requires,—
- access**, in relation to any computer system, means instruct, communicate with, store data in, receive data from, or otherwise make use of any of the resources of the computer system
- access information** includes codes, passwords, and encryption keys, and any related information that enables access to a computer system or any other data storage device

applicant means a specified person authorised under section 29

computer system—

- (a) means—
- (i) a computer; or
 - (ii) 2 or more interconnected computers; or
 - (iii) any communication links between computers or to remote terminals or another device; or
 - (iv) 2 or more interconnected computers combined with any communication links between computers or to remote terminals or any other device; and
- (b) includes any part of the items described in paragraph (a) and all related input, output, processing, storage, software, or communication facilities, and stored data

issuing officer means a Judge of the High Court or a District Court Judge

remote access search means a search of a thing such as an Internet data storage facility that does not have a physical address that a person can enter and search

thing seized does not include anything made or generated by a person exercising a search power (for example, photographs, drawings, or audio or video recordings made by or on behalf of that person, or a forensic copy of a computer hard drive).

- (2) For the purposes of the definition of computer system, a computer is interconnected with another computer if it can be lawfully used to provide access to that other computer—
- (a) with or without access information; and
 - (b) whether or not either or both computers are currently turned on; and
 - (c) whether or not access is currently occurring.

2 Application for search warrant

- (1) An application for a search warrant must contain, in reasonable detail, the following particulars:
- (a) the name of the applicant;
 - (b) the provision authorising the making of the application:

- (c) the grounds on which the application is made (including the reasons why the legal requirements for issuing the warrant are believed by the applicant to be satisfied):
 - (d) the address or other description of the place, vehicle, or other thing proposed to be entered and searched:
 - (e) a description of the item or items or other evidential material believed to be in or on or part of the place, vehicle, or other thing that is or are sought by the applicant:
 - (f) the period for which the warrant is sought:
 - (g) if the applicant wants to be able to execute the warrant on more than 1 occasion, the grounds on which execution on more than 1 occasion is believed to be necessary.
- (2) The issuing officer may require the applicant to supply further information concerning the grounds on which the search warrant is sought.
- (3) The applicant must disclose in the application—
- (a) details of any other application for a search warrant that the applicant knows to have been made within the previous 3 months in respect of the place, vehicle, or other thing proposed to be searched; and
 - (b) the result of that application or those applications.
- (4) The applicant must, before making an application for a search warrant, make reasonable inquiries within the FMA for the purpose of complying with subclause (3).
- (5) The issuing officer may authorise the search warrant to be executed on more than 1 occasion during the period in which the warrant is in force if he or she is satisfied that this is required for the purposes for which the warrant is being issued.
- (6) An application for a search warrant must contain or be accompanied by a statement by the applicant confirming the truth and accuracy of the contents of the application.

3 Mode of application for search warrant

- (1) An application for a search warrant—
- (a) must be in writing, unless subclause (3) applies; and
 - (b) may be transmitted to the issuing officer electronically.
- (2) The applicant must appear in person before, or communicate orally with, the issuing officer, unless subclause (4) applies.

- (3) An issuing officer may allow an application for a search warrant to be made orally (for example, by telephone call) or by personal appearance and excuse the applicant from putting all or any part of the application (including any required material) in writing if—
- (a) the issuing officer is satisfied that the delay that would be caused by requiring an applicant to put all or any part of the application (including any required material) in writing would compromise the effectiveness of the search; and
 - (b) the issuing officer is satisfied that the question of whether the warrant should be issued can properly be determined on the basis of an oral communication or a personal appearance (together with the material described in paragraph (c)); and
 - (c) the information required by clause 2(1) to (3) is supplied (whether orally, or partly orally and partly in writing) to the issuing officer.
- (4) An issuing officer may allow an application for a search warrant to be made without either an appearance in person or an oral communication with the issuing officer if—
- (a) the issuing officer is satisfied that the question of whether the search warrant should be issued can properly be determined on the basis of any written communication by the applicant (including the material described in paragraph (b)); and
 - (b) the information required by clause 2(1) to (3) has been supplied to the issuing officer; and
 - (c) the issuing officer is satisfied that there is no need to ask any questions of, or seek any further information from, the applicant.
- (5) An issuing officer who allows an application for a search warrant to be made under subclause (3) must record the grounds for the application as soon as practicable.

4 Retention of documents

- (1) A copy (whether in electronic form or otherwise) of every written application for a search warrant, or (in the case of an oral application) the record of the application made by the is-

suings officer, must be retained under the control of the Registrar of the District Court at which, or under the control of the Registrar of the District Court that is closest to the place at which, the application was made, until,—

- (a) in a case where a search warrant is issued, the completion of any proceedings in respect of which the validity of the warrant may be in issue; and
 - (b) in any other case, the expiry of 2 years after the records were first retained under the control of the Registrar of a District Court.
- (2) An applicant to whom a search warrant is issued must retain (whether in electronic form or otherwise) the warrant, a copy of the application (if made in written form), copies of all documents tendered by the applicant in support of the application, and a copy of any search warrant report referred to in clause 7 required to be prepared, until,—
- (a) in the case of a warrant that is executed, the completion of any proceedings in respect of which the validity of the warrant may be in issue; and
 - (b) in any other case, the destruction or transfer of the warrant and other documents is required by the Public Records Act 2005 or any other enactment or rule of law.

5 Restrictions on issue of search warrant

An issuing officer must not issue a warrant to seize any thing held by a lawyer that is a communication of a kind to which legal professional privilege normally applies unless the issuing officer is satisfied that there is a prima facie case that the thing was made, or received, or compiled, or prepared—

- (a) for a dishonest purpose; or
- (b) for the purpose of planning to commit or committing an offence.

6 Form and content of search warrant

- (1) Every search warrant issued must be in the prescribed form.
- (2) Every search warrant issued must be directed to every person who has authority to execute the warrant.
- (3) A search warrant may be—

- (a) executed by any or all of the persons to whom it is directed:
 - (b) subject to any conditions specified in the warrant that the issuing officer considers reasonable, including (without limitation)—
 - (i) any restriction on the time of execution that is reasonable:
 - (ii) a condition that the occupier or person in charge of a place must provide reasonable assistance to a person executing the warrant if, in the absence of such assistance, it would not be practical to execute the warrant without undue delay:
 - (c) executed only once, unless execution on more than 1 occasion has been authorised.
- (4) Every search warrant must contain, in reasonable detail, the following particulars:
- (a) the name or other individual designation of the issuing officer and the date of issue:
 - (b) the provision or provisions authorising the issue of the warrant (including, where relevant, the suspected offence or offences):
 - (c) that the person executing the warrant may use any assistance that is reasonable in the circumstances:
 - (d) that any person authorised to do so may execute the warrant:
 - (e) that the person executing the warrant may use any force that is reasonable in the circumstances to enter or break open or access any area within the place, vehicle, or other thing being searched, or the thing found:
 - (f) the address or description of the place, vehicle, or other thing that may be entered and searched:
 - (g) a description of what may be seized:
 - (h) the period during which the warrant may be executed, being—
 - (i) a period specified by the issuing officer not exceeding 14 days from the date of issue; or
 - (ii) if the issuing officer is satisfied that a period of longer than 14 days is necessary for execution,

- a period specified by the issuing officer not exceeding 30 days from the date of issue:
- (i) any conditions specified by the issuing officer under subclause (3)(b):
 - (j) if the warrant may be executed on more than 1 occasion, the number of times that the warrant may be executed:
 - (k) if the warrant is intended to authorise a remote access search (for example, a search of a thing such as an Internet data storage facility that is not situated at a physical location), the access information that identifies the thing to be searched remotely:
 - (l) an explanation of the availability of relevant privileges and an outline of how any of those privileges may be claimed.
- (5) A search warrant may authorise the search of more than 1 place, vehicle, or other thing.
- (6) An issuing officer may not issue a search warrant authorising the remote access search of a thing unless he or she is satisfied that the thing is not located at a physical address that a person can enter and search.
- (7) A person is not required, as a consequence of a condition imposed under subclause (3)(b)(ii), to give any information tending to incriminate the person.

7 Issuing officer may require search warrant report

- (1) An issuing officer may impose a condition under clause 6(3)(b) requiring the FMA to provide that issuing officer with a search warrant report within a specified period.
- (2) A search warrant report must contain the following information:
- (a) whether the search warrant was executed:
 - (b) whether the execution of the search warrant resulted in the seizure of evidential material, and, if so, whether that material was material—
 - (i) specified in the search warrant; or
 - (ii) seized under clause 20; or
 - (iii) some of which was specified in the warrant and some of which was seized under clause 20:

- (c) whether any other powers exercised in conjunction with the execution of the warrant resulted in the seizure of evidential material:
- (d) whether any criminal proceedings have been brought, or are under consideration, that relate to any evidential material seized.

8 Transmission of search warrant

If it is not possible or practicable for the person charged with executing the warrant to have it in his or her possession at the time of execution, one of the following documents (which is deemed for all legal purposes to constitute the warrant) may be executed:

- (a) a facsimile, or a printout of an electronically generated copy, of a warrant issued by the issuing officer:
- (b) a copy made by the person to whom the warrant is directed, at the direction of the issuing officer and endorsed to that effect.

9 When search warrant executed

A search warrant is executed when the person executing the warrant and any person assisting in the execution of the warrant—

- (a) has seized all the items specified in the warrant; or
- (b) leaves the place, vehicle, or other thing being searched and does not return within 4 hours.

10 When search warrant invalid

- (1) A search warrant is invalid—
 - (a) if, having regard to the information contained in the application, the grounds or conditions for lawful issue of a warrant set out in section 29 were not satisfied at the time the search warrant was issued:
 - (b) if the warrant contains a defect, irregularity, omission, or want of form that is likely to mislead anyone executing or affected by the warrant as to its purpose or scope.
- (2) If a warrant is invalid under this clause, section 204 of the Summary Proceedings Act 1957 does not apply to that warrant.

Carrying out inspection and search powers

11 Application

For the purposes of this schedule, **search power** means—

- (a) every search warrant issued under this Act; and
- (b) every power conferred under section 29 to enter and search (without warrant) any place, vehicle, or other thing.

12 Search powers

Every search power authorises the person exercising it—

- (a) to enter and search the place, vehicle, or other thing that the person is authorised to enter and search, and any item or items found in that place, vehicle, or other thing, at any time that is reasonable:
- (b) to request any person to assist with the entry and search (including, without limitation, a member of a hapū or an iwi if the place to be entered is of cultural or spiritual significance to that hapū or iwi):
- (c) to use any force in respect of any property that is reasonable for the purposes of carrying out the entry and search and any lawful seizure:
- (d) to seize any thing that may lawfully be seized:
- (e) to bring and use in or on the place, vehicle, or other thing searched any equipment, to use any equipment found on the place, vehicle, or other thing, and to extract any electricity from the place, vehicle, or other thing to operate the equipment that it is reasonable to use in the circumstances, for the purposes of carrying out the entry and search:
- (f) to copy any document, or part of a document, that may lawfully be seized:
- (g) to access and copy intangible material from a computer system or other data storage device located (in whole or in part) at the place, vehicle, or other thing searched (including copying by means of previewing, cloning, or other forensic methods either before or after removal for examination):
- (h) to use any reasonable measures to—

- (i) gain access to any computer system or other data storage device located (in whole or in part) at the place, vehicle, or other thing to be searched; and
 - (ii) create a forensic copy of any material in such a computer system or other data storage device:
- (i) to take photographs, sound and video recordings, and drawings of the place, vehicle, or other thing searched, and of any thing found in that place, vehicle, or other thing, if the person exercising the power has reasonable grounds to believe that the photographs or sound or video recordings or drawings may be relevant to the purposes of the entry and search.

13 Remote access search of thing authorised by warrant

Every person executing a search warrant authorising a remote access search may—

- (a) access and copy intangible material from the thing being searched (including copying by means of previewing, cloning, or other forensic methods); and
- (b) use reasonable measures to—
 - (i) gain access to the thing; and
 - (ii) create a forensic copy of material in the thing.

14 Items of uncertain status may be seized

If a person exercising a search power is uncertain whether any item found may lawfully be seized, and it is not reasonably practicable to determine whether that item can be seized at the place or vehicle where the search takes place, the person exercising the search power may remove the item for the purpose of examination or analysis to determine whether it may be lawfully seized.

15 Powers of persons called on to assist

- (1) Every person called on to assist a person exercising a search power is subject to the control of the person with overall responsibility for exercising that power.
- (2) Every person called on to assist a person exercising a search power may—
 - (a) enter the place, vehicle, or other thing to be searched:

- (b) while under the direction of the person exercising the power, use reasonable force in respect of any property for the purposes of carrying out the entry and search and any lawful seizure:
 - (c) search areas within the place, vehicle, or other thing that the person exercising the power has determined may lawfully be searched:
 - (d) seize any thing that may lawfully be seized:
 - (e) take photographs, sound and video recordings, and drawings of the place, vehicle, or other thing, and things found in the place, vehicle, or other thing, if the person exercising the power has determined that those things may be lawfully taken:
 - (f) bring into or onto the place, vehicle, or other thing and use any equipment, make use of any equipment found on the place, vehicle, or other thing, or extract electricity from the place, vehicle, or other thing for the purposes of operating the equipment that the person exercising the power has determined may be lawfully used:
 - (g) access and copy intangible material from a computer system or other data storage device located (in whole or in part) at the place, vehicle, or other thing searched (including copying by means of previewing, cloning, or other forensic methods either before or after removal for examination):
 - (h) copy any document, or part of a document, that the person exercising the power has determined may be lawfully copied:
 - (i) use any reasonable measures to—
 - (i) gain access to any computer system or other data storage device that is located (in whole or in part) at the place, vehicle, or other thing to be searched; and
 - (ii) create a forensic copy of any material in such a computer system or other data storage device.
- (3) If a constable is assisting another person exercising the search power, the constable may, without any direction or supervision by the person he or she is assisting, exercise any power ordinarily exercisable by the constable.

- (4) The person exercising the search power must—
 - (a) accompany any assistant on the first occasion when the assistant enters the place, vehicle, or other thing to be searched; and
 - (b) provide such other supervision of any assistant as is reasonable in the circumstances.
- (5) Subclause (4) does not apply if the assistant is a constable.

16 Powers of persons called on to assist remote access search

Every person called on to assist a person executing a search warrant authorising a remote access search may—

- (a) access and copy intangible material from the thing being searched (including copying by means of previewing, cloning, or other forensic methods); and
- (b) use reasonable measures to—
 - (i) gain access to the thing; and
 - (ii) create a forensic copy of material in the thing.

17 Limitation on exercise of powers

The powers conferred by clauses 12 to 16 are subject to—

- (a) any conditions imposed under clause 6(3)(b) by an issuing officer who issues a search warrant;
- (b) clauses 29 to 35 (which relate to privileges).

18 Securing place, vehicle, or other thing to be searched

- (1) The person carrying out a search may, in a manner and for a duration that is reasonable for the purposes of carrying out the search,—

- (a) secure the place, vehicle, or other thing searched, any area within that place, vehicle, or other thing, or any thing found within that place, vehicle, or other thing;
- (b) exclude any person from the place, vehicle, or other thing searched, or from any area within the place, vehicle, or other thing, or give any other reasonable direction to such a person, if the person carrying out the search has reasonable grounds to believe that the person will obstruct or hinder the exercise of the power.

- (2) A person who exercises any power under subclause (1) must on the request of any person affected by the exercise of the power—
- (a) identify himself or herself; and
 - (b) advise the person affected of the reason and authority for the exercise of the power.

19 Moving vehicle for purpose of search, safekeeping, or road safety

A person who exercises a search power may move a vehicle to another place if he or she finds the vehicle and he or she—

- (a) has lawful authority to search the vehicle, but it is impracticable to do so at that place; or
- (b) has reasonable grounds to believe that it is necessary to move the vehicle for safekeeping or for road safety purposes.

20 Seizure of items in plain view

- (1) A person who exercises a search power or who is lawfully in any place as part of his or her duties may seize any item or items that he or she, or any person assisting him or her, finds in the course of carrying out the search or as a result of observations at that place, if the person has reasonable grounds to believe that he or she could have seized the item or items under—
- (a) any search warrant that could have been obtained by him or her under this Act or any other enactment; or
 - (b) any other search power exercisable by him or her under this Act or any other enactment.
- (2) If a person seizes any item or items under subclause (1) in circumstances where he or she is not already exercising a search power, the person may exercise any applicable power conferred by clause 12 in relation to the seizure of the item or items.

21 Search warrants to enter and search vehicles

If a search warrant is issued authorising the entry and search of a vehicle, the person executing the warrant may enter any

place where the person has reasonable grounds to believe that the vehicle is for the purpose of locating it and searching it.

22 **Duty to remain stopped**

If a person exercises a power to search a vehicle, the person may require the vehicle to remain stopped for as long as is reasonably necessary to undertake the search.

23 **Duty of persons with knowledge of computer system or other data storage devices to assist access**

- (1) A person exercising a search power at any place or vehicle or in respect of any other thing may require a relevant person to provide access information and other information or assistance that is reasonable and necessary to allow the person exercising the search power to access data held in—
 - (a) a computer system that is located (in whole or in part) at the place or in the vehicle or other thing being searched;
 - (b) any other data storage device that is located (in whole or in part) at the place or in the vehicle or other thing being searched.
- (2) In this clause, a **relevant person** is a person who—
 - (a) is the owner or lessee of the computer system or other data storage device, or is in possession or control of the computer system or data storage device, an employee of any of the above, or any service provider who provides service to the above and holds access information; and
 - (b) has relevant knowledge of—
 - (i) the computer system or other data storage device; or
 - (ii) measures applied to protect data held in, or accessible from, the computer system or other data storage device.
- (3) A relevant person may not be required under subclause (1) to give any information tending to incriminate the person.
- (4) Subclause (3) does not prevent a person exercising a search power from requiring a relevant person to provide information that—
 - (a) is reasonable and necessary to allow the person exercising the search power to access data held in, or accessible

- from, a computer system or other data storage device that—
- (i) is at or in the place, vehicle, or other thing to be searched; and
 - (ii) contains or may contain information tending to incriminate the relevant person; but
- (b) does not itself tend to incriminate the relevant person.
- (5) Subclause (3) does not prevent a person exercising a search power from requiring a relevant person to provide assistance that is reasonable and necessary to allow the person exercising the search power to access data held in, or accessible from, a computer system or other data storage device that—
- (a) is at or in the place, vehicle, or other thing concerned; and
 - (b) contains or may contain information tending to incriminate the relevant person.
- (6) Subclauses (1), (4), and (5) are subject to clauses 29 to 35 (which relate to privileges).

24 Identification and notice requirements for person exercising search power (other than remote access search)

- (1) A person exercising a search power (other than a remote access search) must,—
- (a) before initial entry into or onto the place, vehicle, or other thing to be searched,—
 - (i) announce his or her intention to enter and search the place, vehicle, or other thing under a statutory power; and
 - (ii) identify himself or herself; and
 - (b) before or on initial entry into or onto the place, vehicle, or other thing to be searched,—
 - (i) give the occupier (if present) of the place or the person in charge of the vehicle or other thing a copy of the search warrant or advice about the enactment (the **authority**) that authorises him or her to conduct the entry and search; and
 - (ii) produce to the occupier of the place or the person in charge of the vehicle or other thing evidence of

his or her identity (which may include details of a unique identifier instead of a name).

- (2) The person exercising the search power is not required to comply with subclause (1)(a) if he or she has reasonable grounds to believe that—
 - (a) no person is lawfully present in or on the place, vehicle, or other thing to be searched; or
 - (b) compliance with subclause (1)(a) would—
 - (i) endanger the safety of any person; or
 - (ii) prejudice the successful exercise of the entry and search power; or
 - (iii) prejudice ongoing investigations.
- (3) The person exercising the search power may use reasonable force in order to effect entry into or onto the place, vehicle, or other thing if—
 - (a) subclause (2) applies; or
 - (b) following a request, the person present refuses entry or does not allow entry within a reasonable time.
- (4) If the occupier of a place is not present at any time during the search, or no person is in charge of the vehicle or other thing during the search, the person carrying out the search must,—
 - (a) on completion of the search, leave a copy of the authority referred to in subclause (1)(b)(i) and the notice referred to in subclause (5) in a prominent position at the place or in or on the vehicle or other thing; or
 - (b) if this is not reasonably practicable, provide the copy of the authority referred to in subclause (1)(b)(i) and the notice referred to in subclause (5) to the occupier of the place or the owner of the vehicle or other thing no later than 7 days after the exercise of the power.
- (5) The notice required by subclause (4) is a written notice containing the following particulars:
 - (a) the date and time of the commencement and completion of the search;
 - (b) the name or unique identifier of the person who had overall responsibility for that search;
 - (c) the address of the office to which inquiries should be made;
 - (d) if nothing is seized, the fact that nothing was seized:

- (e) if anything was seized, the fact that seizure occurred and (if an inventory is not provided at the same time under clauses 26 to 28) that an inventory of the things seized will be provided to the occupier of the place or person in charge of the vehicle or other thing no later than 7 days after the seizure.
- (6) For the purposes of this clause and clauses 26 to 28,—
 - (a) the following persons may not be treated as the occupier of the place or the person in charge of the vehicle or other thing:
 - (i) any person who is under 14 years of age;
 - (ii) any person who the person executing the warrant has reasonable grounds to believe is not the occupier of the place or person in charge of the vehicle or other thing;
 - (b) every reference to a copy of the authority referred to in subclause (1)(b)(i) means, in a case where a search is undertaken without a search warrant, written advice about the enactment that authorises the search.
- (7) Subclauses (4) and (5) are subject to clauses 27 and 28.
- (8) This clause does not apply to a remote access search.

25 Identification and notice requirements for remote access search

- (1) A person who conducts a remote access search must, on completion of the search, send an electronic message to the email address of the thing searched—
 - (a) attaching a copy of the search warrant; and
 - (b) setting out the following particulars:
 - (i) the date and time of the commencement and completion of the search;
 - (ii) the name and unique identifier of the person who had overall responsibility for that search;
 - (iii) the address of the office to which inquiries should be made.
- (2) If the person conducting the search is unable to deliver the electronic message required by subclause (1) (or it is returned undelivered), the person must take all reasonable steps to iden-

tify the user of the thing searched and to send the information referred to in subclause (1)(a) and (b) to that person.

26 Inventory of items seized

- (1) The person who carries out a search must, at the time he or she seizes any thing, or as soon as practicable after the seizure of any thing, and in any case not later than 7 days after that seizure, provide to the occupier of the place, or the person in charge of the vehicle or other thing, from where the seizure took place, and to every other person who the person who carried out the search has reason to believe is the owner of the thing that was seized,—
 - (a) written notice specifying what was seized; and
 - (b) a copy of the authority referred to in clause 24(1)(b)(i).
- (2) A written notice referred to in subclause (1)(a)—
 - (a) must contain information about the extent to which a person from whom a thing was seized or the owner of the thing has a right to apply—
 - (i) to have access to the thing; or
 - (ii) to have access to any document relating to the application for a search warrant or the exercise of any other search power that led to the seizure; and
 - (b) must contain information about the right to bring a claim that any privileged or confidential information has been seized; but
 - (c) need not be provided to the occupier of the place or person in charge of the vehicle or other thing from which the seizure took place, if the person who carries out the search is satisfied that none of the items seized are owned by that person.
- (3) If the occupier of the place or person in charge of the vehicle or other thing is not present at the time of seizure, a written notice referred to in subclause (1)(a) and a copy of the authority referred to in clause 24(1)(b)(i) may be provided to that person by leaving the notice in a prominent position at the place or in or on the vehicle or other thing.
- (4) Subclause (1) is subject to subclauses (2) and (3).
- (5) This clause is subject to clauses 27 and 28.

27 Compliance with certain provisions may be deferred in certain circumstances

- (1) A person exercising a search power may apply to a District Court Judge for a postponement of the obligation to comply with clause 24(4) or (5) or 26 on the grounds that compliance would—
 - (a) endanger the safety of any person; or
 - (b) prejudice ongoing investigations.
- (2) An application may be made under subclause (1),—
 - (a) in the case of an entry and search power that is a search warrant, at the time of the initial application or until the expiry of 7 days after the warrant is finally executed; or
 - (b) in the case of any other entry and search power, until the expiry of 7 days after the search power is exercised.
- (3) On an application under subclause (1), the District Court Judge may postpone for a specified period not exceeding 12 months the obligation to comply with clause 24(4) or (5) or 26, if the Judge is satisfied that there are reasonable grounds for believing that compliance would—
 - (a) endanger the safety of any person; or
 - (b) prejudice ongoing investigations.

28 Further postponement of, or dispensation from, obligation to comply with certain provisions

- (1) A person who has obtained an order under clause 27(3) may, before the expiry of that order, apply to a District Court Judge for a further postponement of, or dispensation from, the obligation to comply with clause 24(4) or (5) or 26 on the grounds that compliance would—
 - (a) endanger the safety of any person; or
 - (b) prejudice ongoing investigations.
- (2) An application for a further postponement may be made on only 1 occasion.
- (3) On an application under subclause (1), the District Court Judge may postpone for a further specified period not exceeding 12 months, or order a permanent dispensation from, the obligation to comply with clause 24(4) or (5) or 26 if the Judge is satisfied that compliance would—
 - (a) endanger the safety of any person; or

- (b) prejudice ongoing investigations.
- (4) A District Court Judge may not grant, under subclause (3), any postponement of, or dispensation from, an obligation in respect of any thing that has been seized, unless the thing seized is—
 - (a) a copy or clone of any information taken or made; or
 - (b) a thing the possession of which by the person from whom it was seized is unlawful under New Zealand law.

Privileges

29 Recognition of privilege

- (1) The following privileges are recognised for the purposes of this schedule:
 - (a) legal professional privilege, to the extent that (under section 53(5) of the Evidence Act 2006) it forms part of the general law;
 - (b) privilege for communications with legal advisers (as described in section 54 of the Evidence Act 2006);
 - (c) privilege for preparatory materials for proceedings (as described in section 56 of the Evidence Act 2006);
 - (d) privilege for settlement negotiations or mediation (as described in section 57 of the Evidence Act 2006);
 - (e) privilege for communications with ministers of religion (as described in section 58 of the Evidence Act 2006);
 - (f) privilege in criminal proceedings for information obtained by medical practitioners and clinical psychologists (as described in section 59 of the Evidence Act 2006);
 - (g) privilege for informers (as described in section 64 of the Evidence Act 2006);
 - (h) the rights conferred on a journalist under section 68 of the Evidence Act 2006 to protect certain sources.
- (2) For the purposes of this schedule, no privilege applies in respect of any communication or information if there is a prima facie case that the communication or information is made or received, or compiled or prepared,—
 - (a) for a dishonest purpose; or

- (b) to enable or aid any person to commit or plan to commit what the person claiming the privilege knew, or ought reasonably to have known, to be an offence.
- (3) Subclause (4) applies to documents that are books of account or accounting records kept—
 - (a) by a solicitor in relation to any trust account money that is subject to section 112 of the Lawyers and Conveyancers Act 2006; or
 - (b) by a nominee company that—
 - (i) is subject to practice rules made by the Council of the New Zealand Law Society under section 96 of the Lawyers and Conveyancers Act 2006; and
 - (ii) is operated by a barrister and solicitor or an incorporated law firm as a nominee in respect of securities and documents of title held for clients.
- (4) The application by subclause (1) of section 54 of the Evidence Act 2006 (which relates to the privilege for communications with legal advisers) does not prevent, limit, or affect—
 - (a) the issuing of a search warrant or exercise of any other search power in respect of a document to which this subclause applies; or
 - (b) the obligation to comply with that search warrant or other search power in respect of a document to which this subclause applies; or
 - (c) the admissibility, in a criminal proceeding for an offence described in the search warrant or for an offence in respect of which any other search power was exercised, of any evidence that relates to the contents of a document obtained under the search warrant or as the result of the exercise of any other search power.

30 Effect of privilege on search warrants and search powers

A person who makes a claim of privilege (being a privilege recognised by this schedule) in respect of any thing that is seized or sought to be seized has the right, in accordance with clauses 31 to 35,—

- (a) to prevent the search under this Act of any communication or information to which the privilege would apply

if it were sought to be disclosed in a proceeding, pending determination of the claim to privilege, and subsequently if the claim to privilege is upheld:

- (b) to require the return of a copy of, or access to, any such communication or information to the person if it is seized or secured by a person exercising a search power, pending determination of the claim to privilege.

31 Search warrants that extend to lawyers' premises or material held by lawyers

- (1) This clause applies to the execution of a search warrant that authorises the search of materials held by a lawyer relating to a client.
- (2) If this clause applies, the search warrant may not be executed unless—
 - (a) the lawyer is present; or
 - (b) a representative of the lawyer is present.
- (3) If the person who is to execute the search warrant is unable to contact the lawyer or his or her representative, that person must instead contact the New Zealand Law Society and request that a person be appointed by the Society to represent the interests of the clients of the lawyer in relation to the search.
- (4) Before executing the search warrant, the person who is to execute it must give the lawyer or his or her representative, or any person appointed by the New Zealand Law Society under sub-clause (3),—
 - (a) the opportunity to claim privilege on behalf of the lawyer's client; or
 - (b) the opportunity to make an interim claim of privilege if instructions have not been obtained from the client.

32 Searches otherwise affecting privileged materials

- (1) This clause applies if—
 - (a) a person executes a search warrant or exercises another search power; and
 - (b) he or she has reasonable grounds to believe that any thing discovered in the search may be the subject of a privilege recognised by this schedule.

- (2) If this clause applies, the person responsible for executing the search warrant or other person exercising the search power—
- (a) must provide to any person who he or she believes may be able to claim a privilege recognised by this schedule a reasonable opportunity to claim it; and
 - (b) may, if the person executing the search warrant or exercising the other search power is unable to identify or contact a person who may be able to claim a privilege, or that person's lawyer, within a reasonable period,—
 - (i) apply to a District Court for a determination as to the status of the thing; and
 - (ii) do any thing necessary to enable that court to make that determination.

33 Interim steps pending resolution of privilege claim

If a person executing a search warrant or exercising another search power is unable, under clause 30, 31, or 32, to search a thing (whether as a result of the requirements of any of those provisions, or because of a claim of privilege made in respect of the thing, or for any other reason), the person—

- (a) may—
 - (i) secure the thing; and
 - (ii) if the thing is intangible (for example, computer data), secure the thing by making a forensic copy; and
 - (iii) deliver the thing, or a copy of it, to the District Court, to enable the determination of a claim to privilege; and
- (b) must supply to the lawyer or other person who may or does claim privilege a copy of, or access to, the secured thing; and
- (c) must not search the thing secured, unless no claim of privilege is made, or a claim of privilege is withdrawn, or the search is in accordance with the directions of the court determining the claim of privilege.

34 Claims for privilege for things seized or sought to be seized

Any person who wishes to claim privilege in respect of any thing seized or sought to be seized by a person executing a search warrant or exercising another search power—

- (a) must provide to the person responsible for executing the search warrant or exercising the other search power a particularised list of the things in respect of which the privilege is claimed, as soon as practicable after being provided with the opportunity to claim privilege or being advised that a search is to be, or is being, or has been conducted, as the case requires:
- (b) if the thing or things in respect of which the privilege is claimed cannot be adequately particularised in accordance with paragraph (a), may apply to a District Court for directions or relief (with a copy of the thing provided under clause 33(b)).

35 Admission of evidence

- (1) If a District Court upholds a claim to privilege under clauses 29 to 34 in respect of any communication or information, the communication or information to which the privilege applies is not admissible in any proceedings arising from, or related to, the execution of the search warrant or exercise of the other search power, as the case requires.
- (2) Subject to subclause (1), this schedule does not limit or affect the admissibility of any evidence, or the discretion of any court to admit or refuse to admit any evidence, in any proceedings.

Disposal of things seized**36 Disposal of things seized**

- (1) In any proceedings relating to any thing seized under a search warrant or the exercise of any other search power under this schedule, the court may order, either at the trial or hearing or on an application, that the thing be delivered to the person appearing to the court to be entitled to it, or that it be otherwise disposed of in any manner that the court thinks fit.

- (2) The FMA may, at any time, unless an order has been made under subclause (1), return the thing to the person from whom it was seized, or apply to a District Court Judge for an order for its disposal.
- (3) On any such application, the District Court Judge may make any order that a court may make under subclause (1).
- (4) If proceedings for an offence relating to the thing are not brought within a period of 3 months of seizure, any person claiming to be entitled to the thing may, after the expiry of that period, apply to a District Court Judge for an order that it be delivered to him or her.
- (5) On any such application, the District Court Judge may—
 - (a) adjourn the application, on any terms that he or she thinks fit, for proceedings to be brought; or
 - (b) make any order that a court may make under subclause (1).

37 Court order for disposal of things seized to be suspended on conviction

- (1) If any person is convicted in any proceedings for an offence relating to anything for which a search warrant has been issued, and any order is made under clause 36, the operation of the order is suspended,—
 - (a) in any case, until the expiration of the time prescribed by the Summary Proceedings Act 1957 for the filing of a notice of appeal or an application for leave to appeal; and
 - (b) if a notice of appeal is filed within the time so prescribed, until the determination of the appeal; and
 - (c) if application for leave to appeal is filed within the time so prescribed, until the application is determined, and, if leave to appeal is granted, until the determination of the appeal.
- (2) If the operation of any such order is suspended until the determination of the appeal, the court determining the appeal may, by order, cancel or vary the order.

38 Disposal of forensic copies

- (1) A person who makes a forensic copy of any data held in a computer system or other data storage device must, if he or she determines that the data does not contain any evidential material, ensure that the forensic copy and any copies made from that copy are deleted, erased, or otherwise destroyed in a way that prevents retrieval of the copy or copies by any method.
- (2) However, if an examination of the data shows that it contains a mixture of data that is evidential material and data that is not evidential material,—
 - (a) the forensic copy of the data and any copies made of that copy may be retained in their entirety; and
 - (b) that forensic copy and any copies made of that copy may continue to be searched, if such a search was authorised by the search power under which the data was seized and copied.

Immunities**39 Immunities in relation to exercise of entry or search powers**

- (1) Every person is immune from civil or criminal liability—
 - (a) for any act done in good faith in order to obtain a search warrant;
 - (b) for any act done in good faith in relation to the execution of a search warrant, if the execution is carried out in a reasonable manner.
- (2) Every person is immune from civil and criminal liability for any act done in good faith in order to exercise an entry power or a search power if—
 - (a) the power is exercised by that person in a reasonable manner; and
 - (b) the person believes on reasonable grounds that the pre-conditions for the exercise of that power have been satisfied.
- (3) Every person is immune from civil and criminal liability for any act done in good faith and in a reasonable manner in order to assist a person to exercise an entry power or a search power or in order to examine or analyse any thing that is seized.

- (4) In any civil proceeding in which a person asserts that he or she has an immunity under this clause, the onus is on that person to prove those facts necessary to establish the basis of the claim.

40 Immunity of FMA

If any person is immune from civil liability under clause 39 in respect of anything done or omitted to be done, the FMA is also immune from civil liability in tort in respect of that person's conduct.

Offences

41 False application for search warrant

Every person commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 1 year, who makes an application for a search warrant that contains any assertion or other statement known by the person to be false.

42 Offence of failing to carry out obligations in relation to computer system search

Every person commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 3 months, who fails, without reasonable excuse, to assist a person exercising a search power when requested to do so under clause 23.

Miscellaneous

43 Effect of proceedings

- (1) This clause applies when any proceeding has been commenced in any court in respect of—
- (a) the exercise of any power conferred by section 29; or
 - (b) the discharge of any duty imposed by this schedule; or
 - (c) the use for investigative purposes of any evidential material obtained from the execution of a power conferred by section 29.
- (2) Until a final decision in relation to the proceeding is given, unless an interim order made under subclause (3) is in force,—

- (a) the power or duty to which the proceeding relates may be, or may continue to be, exercised or discharged as if the proceeding had not been commenced, and no person is excused from fulfilling any obligation under this schedule by reason of that proceeding; and
 - (b) any evidential material obtained from the execution of the power or discharge of the duty to which the proceeding relates may be, or may continue to be, used for investigative purposes.
- (3) An interim order may be made by the High Court overriding the effect of subclause (2), but only if the High Court is satisfied that—
 - (a) the applicant for the order has established a prima facie case that the warrant in question is unlawful; and
 - (b) that applicant would suffer substantial harm from the exercise or discharge of the power or duty; and
 - (c) if the power or duty is exercised or discharged before a final decision is made in the proceeding, none of the remedies specified in subclause (4), or any combination of those remedies, could subsequently provide an adequate remedy for that harm; and
 - (d) the terms of that order do not unduly hinder or restrict the investigation or prosecution.
- (4) The remedies are as follows:
 - (a) any remedy that the court may grant in making a final decision in relation to the proceeding (for example, a declaration):
 - (b) any damages that the applicant for the order may be able to claim in concurrent or subsequent proceedings:
 - (c) any opportunity that the applicant may have, as defendant in a criminal proceeding, to challenge the admissibility of any evidence obtained as a result of the exercise or discharge of the power or duty.
- (5) An interim order made under subclause (3)—
 - (a) ceases to have effect on—
 - (i) a date specified in that order; or
 - (ii) any date subsequently specified by the High Court on being satisfied that paragraphs (a) to (d) of subclause (3) continue to apply; and

- (b) may be extended or renewed (whether before, on, or after its expiry) by the High Court, but only if the High Court is satisfied that paragraphs (a) to (d) of subclause (3) continue to apply.

44 Service of orders and notices under schedule

- (1) Where an order or a notice is to be given to a person for the purposes of this schedule, it may be given—
 - (a) by delivering it personally to the person; or
 - (b) by delivering it at the usual or last known place of residence or business of the person, including by fax or by electronic mail; or
 - (c) by sending it by prepaid post addressed to the person at the usual or last known place of residence or business of the person.
 - (2) Where an order or notice is to be served on a corporation for the purposes of this schedule, service on an officer of the corporation, or on the registered office of the corporation, in accordance with subclause (1) is deemed to be service on the corporation.
 - (3) Where an order or notice is to be served on a partnership for the purposes of this schedule, service on any one of the partners in accordance with subclause (1) or (2) is deemed to be service on the partnership.
 - (4) Where an order or notice is sent by post to a person in accordance with subclause (1)(c), the order or notice is deemed, in the absence of proof to the contrary, to have been given on the third day after the day on which it was posted.
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Schedule 3

s 82

Amendments to other enactments

Part 1

Amendments to Acts

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

Section 130(1)(b): omit “Securities Commission” and substitute “Financial Markets Authority”.

Section 137(4) and (5): repeal and substitute:

“(4) The Financial Markets Authority may use any information obtained or held by it in the exercise of its powers or the performance of its functions and duties under the Financial Markets Authority Act 2011, the Securities Act 1978, the Securities Markets Act 1988, and the Financial Advisers Act 2008 for the purpose of exercising its powers or performing its functions and duties under this Act as an AML/CFT supervisor.

“(5) The Financial Markets Authority may use any information obtained or held by it in the exercise of its powers or the performance of its functions and duties under this Act as an AML/CFT supervisor for the purpose of exercising its powers or performing its functions and duties under the Financial Markets Authority Act 2011, the Securities Act 1978, the Securities Markets Act 1988, and the Financial Advisers Act 2008.”

Section 140(2): insert after paragraph (d):

“(da) the Financial Markets Authority Act 2011.”

Building Societies Act 1965 (1965 No 22)

Section 2(1): insert in its appropriate alphabetical order:

“FMA means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011”.

Section 9C(2)(c): omit “Registrar” and substitute “FMA”.

Section 28(2): omit “Registrar” and substitute “FMA”.

Section 74(3): omit “Registrar” and substitute “FMA”.

Part 1—*continued***Building Societies Act 1965 (1965 No 22)**—*continued*

Section 76(4): repeal and substitute:

“(4) If in any financial year default is made in holding an annual general meeting in accordance with this section, the FMA may—

- “(a) call or direct the calling of an annual general meeting in that financial year; and
- “(b) give any ancillary or consequential directions as the FMA thinks fit (including directions modifying or supplementing the operation of the society’s rules in relation to the calling, holding, and conducting of the meeting).”

Section 76(5): omit “Registrar” and substitute “FMA”.

Section 100(7)(a): omit “Registrar” and substitute “FMA”.

Section 118(3)(c): omit “Registrar” and substitute “FMA”.

Section 118(5): omit “Registrar” and substitute “FMA”.

Heading to section 122D: omit “**Registrar**” and substitute “**FMA**”.

Section 122D(1) to (4): omit “Registrar” in each place where it appears and substitute in each case “FMA”.

Section 122D(3): omit “Registrar’s” and substitute “FMA’s”.

Section 123(1) and (3): omit “Registrar” in each place where it appears and substitute in each case “FMA”.

Section 123(4): repeal and substitute:

“(4) Before exercising its powers under subsection (1) in a case where no application is made, the FMA must—

- “(a) give to the society not less than 14 days’ notice in writing of the action the FMA proposes to take, specifying briefly the grounds on which the FMA proposes to take it; and
- “(b) consider any representations with respect to the proposed action that may be made to the FMA by the society within the period of the notice or any further period that the FMA may allow, and, if the society so requests, give it an opportunity of being heard by the FMA within that period or further period.”

Part 1—*continued***Building Societies Act 1965 (1965 No 22)**—*continued*

Section 123(6): repeal and substitute:

“(6) Despite anything in the rules of a society, if a special meeting is called under this section,—

“(a) the FMA may direct at what time and place the meeting is to be held, and what matters are to be discussed and determined at the meeting, and may give any other directions as it thinks fit with respect to the calling, holding, and conduct of the meeting:

“(b) the FMA may appoint a person to be chairperson at the meeting; and if the FMA does not do so the meeting may appoint its own chairperson:

“(c) the meeting has all the powers of a meeting called according to the society’s rules.

“(6A) Nothing in this section limits any power that the FMA has under the Financial Markets Authority Act 2011 or any other enactment.”

Companies Act 1993 (1993 No 105)

Section 2(1): insert in their appropriate alphabetical order:

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

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

Section 239L(1): insert “the FMA (if the company is a financial markets participant),” after “liquidation),”.

Section 239R(1)(a): insert “the FMA (if the company is a financial markets participant),” after “liquidation),”.

Section 239ACJ(2): insert “the FMA (if the company is a financial markets participant),” after “liquidation),”.

Section 239ACL(2): insert “the FMA (if the company is a financial markets participant),” after “creditor,”.

Section 239ACX(2): insert after paragraph (b):

“(ba) the FMA (if the company is a financial markets participant); or”.

Part 1—*continued***Companies Act 1993 (1993 No 105)**—*continued*

Section 239ADO(4): insert after paragraph (d):

“(da) the FMA (if the company is a financial markets participant); or”.

Section 239ADP(1): repeal and substitute:

“(1) On the application of the Registrar or, if the company is a financial markets participant, the FMA, the court may make any order that it thinks necessary to protect the interests of the company’s creditors while the company is in administration.”

Section 239ADU(2): insert after paragraph (b):

“(ba) if the company is a financial markets participant, the FMA; or”.

Section 241(2)(c): insert after subparagraph (v):

“(va) if the company is a financial markets participant, the FMA; or”.

Section 241(2)(c)(vii): omit “in the case of ” and substitute “if the company is”.

Section 250(2): insert after paragraph (e):

“(ea) if the company is a financial markets participant, the FMA; or”.

New section 258B: insert after section 258A:

“258B Registrar may supply report to FMA

“(1) If a report is made under section 258A in respect of a financial markets participant, the Registrar may supply a copy of the report to the FMA.

“(2) Any communications between—

“(a) the Registrar and the FMA that relate to that report are protected by absolute privilege:

“(b) the liquidator and the FMA that relate to that report are protected by absolute privilege.”

New section 371A: insert after section 371:

“371A Sharing of information with Financial Markets Authority

“(1) The Registrar may provide to the FMA any information, or a copy of any document, that the Registrar—

Part 1—*continued***Companies Act 1993 (1993 No 105)**—*continued*

- “(a) holds in relation to the exercise or performance of the Registrar’s functions, powers, or duties; and
- “(b) considers may assist the FMA in the exercise or performance of the FMA’s functions, powers, or duties under this Act or any other enactment.
- “(2) The Registrar may use any information, or a copy of any document, provided to him or her by the FMA under section 30 of the Financial Markets Authority Act 2011 in the Registrar’s exercise or performance of the Registrar’s functions, powers, or duties.
- “(3) In this section, **Registrar’s functions, powers, or duties** means his or her functions, powers, or duties under this Act or any other enactment (including functions, powers, or duties as the Registrar under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and the Securities Act 1978).
- “(4) This section applies despite anything to the contrary in any contract, deed, or document.
- “(5) Nothing in this section limits the Privacy Act 1993.”
- Section 373(4)(i): insert “or the FMA” after “Registrar”.
- Section 383(3): repeal and substitute:
- “(3) An application for an order under this section may be made by the Registrar, the FMA, the Official Assignee, or by the liquidator of the company, or by a person who is, or has been, a shareholder or creditor of the company.
- “(3A) Subsection (3B) applies on the hearing of—
- “(a) an application for an order under this section by the Registrar, the FMA, the Official Assignee, or the liquidator; or
- “(b) an application for leave under this section by a person against whom an order has been made on the application of the Registrar, the FMA, the Official Assignee, or the liquidator.
- “(3B) The Registrar, the FMA, the Official Assignee, or the liquidator (as the case may be)—

Part 1—*continued***Companies Act 1993 (1993 No 105)**—*continued*

“(a) must appear and call the attention of the Court to any matters that seem to him, her, or it to be relevant; and

“(b) may give evidence or call witnesses.”

Heading to section 385: insert “**or FMA**” after “**Registrar**”.

Section 385(3), (4), (5), (7), and (8): insert “or the FMA” after “Registrar” in each place where it appears.

New section 385A: insert after section 385:

“385A Appeals from FMA’s exercise of power under section 385

“(1) A person who is aggrieved by the FMA’s exercise of a power under section 385 may appeal to the Court within 15 working days after the date that the notice is published in the *Gazette* under section 385(3), or within any further time as the Court may allow.

“(2) On hearing the appeal, the Court may approve the FMA’s exercise of the power or may give any directions or make any determination in the matter that the Court thinks fit.

“(3) Section 370 provides for appeals from the Registrar’s acts or decisions under section 385.”

Corporations (Investigation and Management) Act 1989 (1989 No 11)

Long Title: insert “**and the Financial Markets Authority**” after “**Registrar of Companies**”.

Section 2(1): insert in its appropriate alphabetical order:

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

Section 5(2): omit “Securities Commission” and substitute “FMA”.

Heading to section 7: insert “**or FMA**” after “**Registrar**”.

Section 7: insert “or the FMA,” after “Registrar,”.

Section 8(3): omit “Securities Commission” and substitute “FMA”.

Section 23(1)(a)(i), (2)(e), (3), (4)(b), and (5)(a): insert “or the FMA” after “Registrar” in each place where it appears.

Section 23(2): insert “nor the FMA” after “Neither the Registrar”.

Part 1—*continued***Corporations (Investigation and Management) Act 1989 (1989 No 11)**—*continued*

Sections 30 to 33: repeal and substitute:

“30 Registrar or FMA may declare corporation to be at risk

- “(1) If the Registrar or the FMA has reasonable grounds to believe that any corporation is, or may be, a corporation to which this Act applies, the Registrar or the FMA may give written notice to the corporation that it is considered to be a corporation at risk.
- “(2) Every notice given under subsection (1) must state the grounds on which it is given.
- “(3) The FMA may only exercise a power under this section in respect of a corporation that is a financial markets participant (within the meaning of section 4 of the Financial Markets Authority Act 2011).

“31 Obligation to consult with Registrar or FMA

- “(1) Every corporation to whom a notice is given under section 30 must promptly consult with the Registrar or the FMA (as the case may be)—
- “(a) as to the circumstances of that corporation; and
 - “(b) as to the methods of resolving the difficulties of that corporation.
- “(2) Every associated person of a corporation to whom a notice has been given under section 30, and any officer or employee of the corporation or associated person, must, when required to do so by the Registrar or the FMA (as the case may be) by notice in writing to that person, promptly consult with the Registrar or the FMA—
- “(a) as to the circumstances of that corporation; and
 - “(b) as to the methods of resolving the difficulties of that corporation.

“32 Power of Registrar or FMA to give advice and assistance

If the Registrar or the FMA gives a notice to a corporation under section 30, or gives a notice to an associated person under section 31(2), the Registrar or the FMA may—

Part 1—*continued***Corporations (Investigation and Management) Act 1989 (1989 No 11)**—*continued*

- “(a) give advice to the corporation or associated person concerning its affairs:
- “(b) give advice and assistance in connection with the negotiation of any sale or other disposition of the whole or any part of the capital or business undertaking of that corporation or associated person:
- “(c) give advice and assistance in connection with any scheme for resolving the difficulties of that corporation or associated person.

“33 Power of Registrar or FMA to give directions to corporation declared to be at risk

- “(1) The Registrar or the FMA may give a direction in writing to any corporation to which a notice has been given under section 30 by the Registrar or the FMA (as the case may be) requiring it—
 - “(a) not to remove from New Zealand, transfer, charge, or otherwise deal with any of its property or funds except with the prior approval of the Registrar or the FMA and subject to the terms and conditions that the Registrar or the FMA may specify:
 - “(b) to place in a trust account any money received for investment:
 - “(c) to take any other action that is specified in the notice to preserve the interests of the corporation’s members and creditors.
- “(2) The Registrar or the FMA may amend any direction that he, she, or it has given.
- “(3) The Registrar may only exercise a power under subsection (1) or (2) with the prior consent of the FMA.”

Section 34(2): add: “or the FMA (as the case may be)”.

Section 36(2)(b): insert “or the FMA (as the case may be)” after “Registrar”.

Section 36(2)(c): insert “or the FMA (as the case may be)” after “Registrar”.

Part 1—*continued***Corporations (Investigation and Management) Act 1989 (1989 No 11)**—*continued*

Section 37(2): add “or the FMA (as the case may be)”.

Section 38(1): omit “Securities Commission” and substitute “FMA”.

Section 39: omit “Securities Commission” and substitute “FMA”.

Section 40: omit “Securities Commission” and substitute “FMA”.

Section 63: omit “Securities Commission” and substitute “FMA”.

Crown Entities Act 2004 (2004 No 115)

Part 3 of Schedule 1: insert in its appropriate alphabetical order:

Name	Exemption from acquisition of securities, borrowing, guarantee, and derivative rules	Exemption from section 165 (net surplus payable to Crown)
	s 161	s 162
	s 163	s 164

Financial Markets Authority

Item relating to the Securities Commission in Part 3 of Schedule 1: omit.

Defence Act 1990 (1990 No 28)

Section 73A: omit “to 73D” and substitute “and 73C”.

Section 73D: repeal.

Fair Trading Act 1986 (1986 No 121)

Section 48A: repeal and substitute:

“48A Sharing of information and documents with Financial Markets Authority or Takeovers Panel

“(1) The Commission may provide to the Financial Markets Authority or the Takeovers Panel any information, or a copy of any document, that the Commission—

“(a) holds in relation to the exercise of the Commission’s powers, or the performance of its functions and duties, in respect of this Act; and

“(b) considers may assist the Financial Markets Authority or the Takeovers Panel in the exercise of its powers, or

Part 1—*continued***Fair Trading Act 1986 (1986 No 121)**—*continued*

the performance of its functions and duties, under the Financial Markets Authority Act 2011, any enactment listed in Schedule 1 of that Act, the Takeovers Act 1993, or the Takeovers Code in force under that Act.

- “(2) The Commission may use any information, or a copy of any document, provided to it by the Financial Markets Authority under section 30 of the Financial Markets Authority Act 2011 or by the Takeovers Panel under section 15B of the Takeovers Act 1993 in the Commission’s exercise of its powers, or the performance of its functions and duties, in respect of this Act.
- “(3) This section applies despite anything to the contrary in any contract, deed, or document.
- “(4) Nothing in this section limits the Privacy Act 1993.”

Financial Advisers Act 2008 (2008 No 91)

Definition of **Commission** in section 5: repeal.

Section 5: insert in its appropriate alphabetical order:

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

Section 26: repeal.

Section 59(1)(e): repeal and substitute:

“(e) has failed to pay a fee as required by this Act or the regulations or a levy as required by section 68 of the Financial Markets Authority Act 2011 or regulations made under that section.”

Section 75D(1)(e): repeal and substitute:

“(e) the QFE or any partner entity of the QFE has failed to pay a fee as required by this Act or the regulations or a levy as required by section 68 of the Financial Markets Authority Act 2011 or regulations made under that section.”

New section 85A: insert after section 85:

“85A Funding of code committee

The FMA must fund the code committee.”

Part 1—*continued***Financial Advisers Act 2008 (2008 No 91)**—*continued*

New section 113A: insert after section 113:

“113A Funding of disciplinary committee

The FMA must fund the disciplinary committee.”

Section 116: repeal.

Section 137C(b): omit “any of sections 58, 59, and 59A” and substitute “section 58 or 59”.

Section 137C: insert after paragraph (b):

“(ba) the person has been convicted of an offence against section 51 or 61 of the Financial Markets Authority Act 2011; or”.

Section 137F(1)(a): repeal and substitute:

“(a) an investigation is being carried out under the Financial Markets Authority Act 2011 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”.

Section 137O(1)(c) and (d): repeal and substitute:

“(c) gives the person or the person’s representative an opportunity to make written submissions and to be heard on the matter within that notice period.”

Section 137R(4): repeal and substitute:

“(4) A person that considers that a decision of the FMA in respect of a temporary banning order is wrong in law may appeal against the decision to the High Court on a question of law only.”

Section 147 and heading above section 147: repeal.

Heading above section 152: omit “*and levies*”.

Section 153: repeal.

Section 161A: repeal.

Financial Reporting Act 1993 (1993 No 106)

Section 2(1): insert in its appropriate alphabetical order:

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

Part 1—*continued***Financial Reporting Act 1993 (1993 No 106)**—*continued*

Section 4(1)(a)(i): omit “exemption granted by the Securities Commission pursuant to section 5 of the Securities Act 1978” and substitute “exemption granted by the FMA or the Securities Commission under the Securities Act 1978”.

Section 4B(1) to (3): omit “Securities Commission” in each place where it appears and substitute in each case “FMA”.

Section 4C: omit “Securities Commission” and substitute “FMA”.

Section 4D: repeal and substitute:

“4D FMA must notify reasons for exemption

The FMA’s reasons for granting an exemption under section 4B (including why the exemption is appropriate) must be notified in the *Gazette* together with the exemption.”

Section 16(2): omit “Securities Commission” and substitute “FMA”.

Section 35A: repeal and substitute:

“35A FMA may grant exemptions to directors of issuers that are incorporated or constituted outside New Zealand

- “(1) The FMA may exempt any directors of an issuer that is incorporated or constituted outside New Zealand, or any directors of a class of those issuers, from compliance with any provision of sections 8 to 11, 13 to 16, 18, 36, 36A, or 38.
- “(2) The FMA must not grant an exemption under this section unless it is satisfied that—
- “(a) the exemption would not cause significant detriment to subscribers for the securities of the issuer who are members of the public in New Zealand, having regard to the financial reporting requirements that must be complied with in relation to the issuer under the law in force in the country where the issuer is incorporated or constituted; and
 - “(b) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.
- “(3) The exemption may be granted on any terms and conditions that the FMA thinks fit.

Part 1—*continued***Financial Reporting Act 1993 (1993 No 106)**—*continued*

- “(4) The FMA may vary or revoke an exemption in the same way as an exemption may be granted under this section.
- “(5) The FMA must not grant an exemption under this section in respect of an issuer that is a licensed insurer.

“35AB Transitional provision for exemptions granted by Securities Commission

Every exemption granted under section 35A (as in force before the commencement of this section) by the Securities Commission that is in force immediately before this section comes into force—

- “(a) continues in force as if it were granted under section 35A by the FMA; and
- “(b) may be amended or revoked as if granted under that section.

“35AC Status and publication of exemptions under section 35A

- “(1) An exemption granted under section 35A—
- “(a) is a regulation for the purposes of the Regulations (Disallowance) Act 1989; and
- “(b) must be presented to the House of Representatives under section 4 of that Act.
- “(2) A class exemption (but not any other exemption granted under section 35A) is a regulation for the purposes of the Acts and Regulations Publication Act 1989.
- “(3) An exemption granted under section 35A that is not a class exemption must, as soon as practicable after it is granted, be—
- “(a) published on an Internet site maintained by or on behalf of the FMA; and
- “(b) notified in the *Gazette*; and
- “(c) made available in printed form for purchase on request by members of the public.
- “(4) A notification in the *Gazette* for the purpose of subsection (3)(b) does not have to include the text of the exemption.

Part 1—*continued***Financial Reporting Act 1993 (1993 No 106)**—*continued*

“(5) The FMA’s reasons for granting an exemption under section 35A (including why the exemption is appropriate) must be published together with the exemption.

“(6) In this section, **class exemption** means an exemption that is of general application and applies in respect of a class of issuers.”

Section 35B: add:

“(7) The Registrar of Companies’ reasons for granting an exemption (including why the exemption is appropriate) must be notified in the *Gazette* together with the exemption.”

Section 35C(1): repeal and substitute:

“(1) In deciding whether or not to grant, amend, or revoke an exemption under section 35A or 35B, the FMA or the Registrar of Companies (as the case may be)—

“(a) may consult with any persons or organisations that the FMA or Registrar thinks fit; but

“(b) must consult with—

“(i) the Commissioner of Inland Revenue if the exemption is under section 35B and involves any provision of section 10; and

“(ii) the Reserve Bank of New Zealand if the exemption concerns a registered bank (within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989).”

Section 35D: omit “Securities Commission” and substitute “FMA”.

Section 35E: repeal.

Section 42B(1) and (2): omit “Securities Commission” in each place where it appears and substitute in each case “FMA”.

Financial Service Providers (Registration and Dispute Resolution) Act 2008 (2008 No 97)

Section 79A(1): omit “Commission” and substitute “Financial Markets Authority”.

Section 79B(2): omit “Commission” and substitute “Financial Markets Authority”.

Part 1—*continued***Friendly Societies and Credit Unions Act 1982 (1982 No 118)**

Definition of **Government Actuary** in section 2: repeal.

Section 3(2): repeal.

Section 4(2): repeal.

Heading to section 7: omit “**and Government Actuary**”.

Section 7(2): repeal.

Section 7(3): omit “and Government Actuary shall have” and substitute “has”.

Section 7(3): omit “their respective” and substitute “his or her”.

Section 158(2): omit “or the Government Actuary,”.

Government Superannuation Fund Act 1956 (1956 No 47)

Section 2(1): insert in its appropriate alphabetical order:

“**actuary** means—

“(a) a person who is a Fellow of the New Zealand Society of Actuaries Incorporated; or

“(b) a person whom the Authority considers to have an equivalent professional qualification”.

Section 15E(6): omit “Government Actuary” and substitute “Authority, after receiving advice from an actuary,”.

Section 33(1A): omit “Government Actuary” and substitute “Authority, after receiving advice from an actuary,”.

Section 43(5)(b): omit “Government Actuary” and substitute “Authority, after receiving advice from an actuary,”.

Section 52A(5)(b): omit “Government Actuary” and substitute “Authority, after receiving advice from an actuary,”.

Section 71R(5): omit “Government Actuary” and substitute “Authority, after receiving advice from an actuary,”.

Section 81UA(8)(b): omit “Government Actuary” and substitute “Authority, after receiving advice from an actuary,”.

Section 94(1) to (3): repeal and substitute:

“(1) The Authority must obtain a report from an actuary that examines the financial position of the Fund as at dates determined by the Minister, being dates that are no more than 3 years apart.

Part 1—*continued***Government Superannuation Fund Act 1956 (1956 No 47)**—*continued*

- “(2) The report in respect of each such examination must—
- “(a) show the state of the Fund as at the date on which the financial position of the Fund was examined, having regard to the prospective liabilities and assets of, and the probable annual sums required by, the Fund to provide benefits falling due within the ensuing 3 years without affecting or having recourse to the actuarial reserve appertaining to the contributor’s contributions; and
 - “(b) be received by the Authority no later than 7 months after the date the Fund was examined.
- “(3) The Authority must send a copy of the report to the Minister within 28 days after the date that the Authority receives it.”

Section 95(1): omit “Government Actuary” and substitute “Authority, after receiving advice from an actuary,”.

Section 95(2): omit “Government Actuary” and substitute “Authority, after receiving advice from an actuary,”.

Government Superannuation Fund Amendment Act 1969 (1969 No 38)

Section 11: omit “, on the advice of the Government Actuary,”.

Human Rights Act 1993 (1993 No 82)

Section 2(1): insert in its appropriate alphabetical order:

“**actuary** means—

- “(a) a person who is a Fellow of the New Zealand Society of Actuaries Incorporated; or
- “(b) a person whom the Commission or the Complaints Division, as the case may be, considers to have an equivalent professional qualification”.

Section 48(2)(b): omit “the Government Actuary” and substitute “an actuary”.

Section 70(6)(b): omit “the Government Actuary” and substitute “an actuary”.

Part 1—*continued***Income Tax Act 2007 (2007 No 97)**

Section EY 6(1): omit “the Government Actuary or any other actuary” and substitute “an actuary”.

Section EY 11(3): omit “by the Government Actuary”.

Section EY 11(13): omit “Government Actuary’s decision can object” and substitute “FMA’s decision may appeal against the decision”.

Section EZ 29(4)(b): omit “the Government Actuary or any other actuary” and substitute “an actuary”.

Section HM 18(1)(c): insert “or the FMA” after “Securities Commission”.

Section YA 1: insert in its appropriate alphabetical order:

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

Definition of **complying superannuation fund** in section YA 1: omit “by the Government Actuary”.

Industrial and Provident Societies Act 1908 (1908 No 81)

Section 16(a) and (c): insert “, the Financial Markets Authority,” after “Registrar” in each place where it appears.

Judicature Act 1908 (1908 No 89)

Section 24B(1)(e): omit “Securities Commission” and substitute “Financial Markets Authority”.

KiwiSaver Act 2006 (2006 No 40)

Definition of **Government Actuary** in section 4(1): repeal.

Section 4(1): insert in its appropriate alphabetical order:

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

Section 30(1): omit “Government Actuary” and substitute “FMA”.

Section 30(1)(a): omit “he or she” and substitute “the FMA”.

Section 30(2): omit “Government Actuary” and substitute “FMA”.

Section 31(2): omit “Government Actuary’s” and substitute “FMA’s”.

Part 1—*continued***KiwiSaver Act 2006 (2006 No 40)**—*continued*

Heading to section 101I: omit “**Government Actuary’s**” and substitute “**FMA’s**”.

Section 101I(5): omit “Government Actuary’s” and substitute “FMA’s”.

Section 101I(7): omit “Government Actuary’s” and substitute “FMA’s”.

Section 134(1): omit “Government Actuary” in each place where it appears and substitute in each case “FMA”.

Section 134(1)(a): omit “he or she” and substitute “the FMA”.

Section 134(2): omit “Government Actuary” and substitute “FMA”.

Heading to section 137: omit “**Government Actuary**” and substitute “**FMA**”.

Section 137(1): omit “Government Actuary” in each place where it appears and substitute in each case “FMA”.

Section 137(1)(a): omit “he or she” and substitute “the FMA”.

Section 141(2)(a): omit “he or she” and substitute “the FMA”.

Section 177: add:

“(5) In determining whether to appoint a manager as a default KiwiSaver provider under this section, the Minister must seek the advice of the FMA.”

Sections 180 and 181: repeal and substitute:

“**180 Appointment must be notified to FMA and Commissioner**
The Minister must, as soon as practicable after an appointment under section 177 has been made,—

- “(a) notify the FMA and the Commissioner that the appointment has been made; and
- “(b) provide the FMA and the Commissioner with a copy of the instrument of appointment.

“**181 Availability of instrument of appointment**

“(1) The FMA must—

- “(a) make copies of the instrument of appointment provided to it under section 180—

Part 1—*continued***KiwiSaver Act 2006 (2006 No 40)**—*continued*

- “(i) available for inspection, during working hours, free of charge at its head office; and
- “(ii) available for purchase at a reasonable price at its head office; and
- “(b) publish the copy of that instrument of appointment on an Internet site maintained by or on behalf of the FMA; and
- “(c) give notice in the *Gazette*—
 - “(i) that the instrument of appointment has been executed and of the date of execution; and
 - “(ii) that the instrument of appointment is available for inspection during working hours, free of charge, and the place at which it can be inspected; and
 - “(iii) that copies of the instrument of appointment can be purchased and the place at which they can be purchased; and
 - “(iv) that the instrument of appointment is available on the Internet, free of charge, and the Internet site address.
- “(2) This section also applies to any variation, renewal, or revocation of the instrument of appointment.”

Section 186: repeal and substitute:

“186 Right of appeal against certain decisions of FMA

- “(1) A person affected by a decision of the FMA under any of the following provisions may appeal against the decision to the High Court:
 - “(a) section 30 (approval of employer as exempt employer):
 - “(b) section 31 (revocation of exempt employer approval):
 - “(c) section 134 (registration):
 - “(d) section 168 (cancellation of registration and order to wind up):
 - “(e) section 169 (powers of FMA if scheme operating in contravention of this Act).
- “(2) A decision against which an appeal is lodged under this section continues in force unless the High Court orders otherwise.”

Part 1—*continued***KiwiSaver Act 2006 (2006 No 40)**—*continued*

Section 187: repeal.

Sections 188 and 189: repeal and substitute:

**“188 Sharing of information and documents with
Commissioner for purpose of administering KiwiSaver
schemes**

- “(1) The FMA may provide to the Commissioner any information, or a copy of any document, that the FMA—
- “(a) holds in relation to the performance or exercise of the FMA’s functions, powers, or duties under this Act or in connection with 1 or more KiwiSaver schemes under this Act or any other enactment; and
 - “(b) considers may assist the Commissioner in the performance or exercise of the Commissioner’s functions, powers, or duties under this Act or in connection with 1 or more KiwiSaver schemes under this Act or any other enactment.
- “(2) The FMA may use any information, or a copy of any document, provided to it by the Commissioner under any enactment in the FMA’s performance or exercise of its functions, powers, or duties under this Act or in connection with 1 or more KiwiSaver schemes under this Act or any other enactment.
- “(3) This section applies despite anything to the contrary in any contract, deed, or document.

**“189 Conditions that may be imposed on providing
information, documents, or evidence to Commissioner**

- “(1) The FMA may impose any conditions in relation to providing information or documents to the Commissioner (whether in compliance with a request or otherwise).
- “(2) The FMA must, in considering what conditions to impose, have regard to whether conditions are necessary or desirable in order to protect the privacy of any individual.
- “(3) Those conditions may include, without limitation, conditions relating to—

Part 1—*continued***KiwiSaver Act 2006 (2006 No 40)**—*continued*

- “(a) maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993):
- “(b) the storing of, use of, or access to anything provided:
- “(c) the copying, returning, or disposing of copies of documents provided.”

Section 190: repeal.

Section 193: repeal.

Section 210(1)(c) and (d): repeal and substitute:

- “(c) section 43D, 43F, 43G, 43I, or 43K of the Securities Act 1978 (which relate to various restrictions on the allotment of securities).”

Section 210(2)(a): omit “38F(9)(b), 38F(13), 44(6)(b), or 44(7)” and substitute “43F(2)(b), 43G(3)(b) or (4)(b)”.

Section 228(t): omit “or the Securities Regulations 1983” and substitute “or any regulations made under that Act”.

Life Insurance Act 1908 (1908 No 105)

Section 22: repeal and substitute:

“22 Statements and abstracts to be examined by chief executive

- “(1) The chief executive of the Ministry of Economic Development must—
 - “(a) consider each statement (and accompanying auditor’s report) or abstract received under section 21; and
 - “(b) report on the statement, report, or abstract, as he or she thinks fit, to the Minister.
- “(2) The chief executive of the Ministry of Economic Development must consider any further information relating to the statement, report, or abstract that he or she receives under section 21(1) and may, if he or she thinks fit, report on that information to the Minister, either in a report under subsection (1) or in a separate report.
- “(3) The Minister may publish, in the *Gazette*, any report that he or she receives under this section.”

Part 1—*continued***Life Insurance Act 1908 (1908 No 105)**—*continued*

Section 40A(3)(b): omit “Government Actuary” and substitute “chief executive of the Ministry of Economic Development to the Minister”.

Section 40H(2): omit “the Government Actuary,”.

Section 40I(3): omit “Government Actuary” and substitute “chief executive of the Ministry of Economic Development”.

Limited Partnerships Act 2008 (2008 No 1)

Section 89(2): add:

- “(e) in the case of a limited partnership that is a financial markets participant (within the meaning of section 4 of the Financial Markets Authority Act 2011, the Financial Markets Authority.”

National Provident Fund Restructuring Act 1990 (1990 No 126)

Definition of **Government Actuary** in section 2: repeal.

Section 2: insert in its appropriate alphabetical order:

“**actuary** means—

- “(a) a person who is a Fellow of the New Zealand Society of Actuaries Incorporated; or
- “(b) a person whom the Board considers to have an equivalent professional qualification”.

Section 44(4): omit “and (in the case of the Minister) taking advice from the Government Actuary,”.

National Provident Fund Restructuring Amendment Act 1991 (1991 No 114)

Section 15(2): omit “the Government Actuary and”.

Section 15(2): omit “have each” and substitute “has”.

Official Information Act 1982 (1982 No 156)

Schedule 1: insert in its appropriate alphabetical order:

“Financial Markets Authority”.

Item relating to Securities Commission in Schedule 1: omit.

Part 1—*continued***Ombudsmen Act 1975 (1975 No 9)**

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

“Financial Markets Authority”.

Item relating to Securities Commission in Part 2 of Schedule 1: omit.

Privacy Act 1993 (1993 No 28)

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

Securities Act 1978

Section 43N

Remuneration Authority Act 1977 (1977 No 110)

Section 17(3): repeal.

Schedule 4: insert after the item relating to the Employment Relations Authority:

“The members and associate members of the Financial Markets Authority”.

Item relating to Securities Commission in Schedule 4: omit.

Reserve Bank of New Zealand Act 1989 (1989 No 157)

Section 2(1): insert in its appropriate alphabetical order:

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

Section 81A(1)(a)(i): omit “Securities Commission” and substitute “FMA”.

Section 156L: repeal and substitute:

“156L Limit on FMA’s powers in relation to Bank

For the purposes of this Part, the FMA may exercise its powers under subpart 1 of Part 3 of the Financial Markets Authority Act 2011 in relation to the Bank only if, and to the extent that, the Bank is—

“(a) a participant in a settlement system; or

“(b) an operator of a settlement system.”

Definition of **Commission** in section 156M(1): repeal.

Section 157E(1)(a): omit “Securities Commission” and substitute “FMA”.

Part 1—*continued***Reserve Bank of New Zealand Act 1989 (1989 No 157)**—*continued*

Section 157ZO(2)(e): omit “Securities Commission” and substitute “FMA”.

Securities Markets Act 1988 (1988 No 234)

Definition of **Commission** in section 2(1): repeal.

Section 2(1): insert in its appropriate alphabetical order:

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

Section 36ZO(4): repeal and substitute:

“(4) The direction is subject to appeal only in accordance with section 47A.”

Section 36ZT(b): repeal and substitute:

“(b) must, after the direction is given, give each of those persons or the person’s representative an opportunity to make written submissions and to be heard on the matter; and”.

Section 42F(1)(d) to (f): repeal and substitute:

“(d) gives each person to whom notice of the order must be given or the person’s representative an opportunity to make written submissions and to be heard on the matter within that notice period.”

Section 42I(4): repeal and substitute:

“(4) An order made under this subpart is subject to appeal only in accordance with section 47A.”

Section 44: repeal.

Securities Transfer Act 1991 (1991 No 119)

Section 7(6): repeal and substitute:

“(6) The Financial Markets Authority (**FMA**) must not make a recommendation under subsection (1) unless—

“(a) the FMA has done everything reasonably possible to consult with the persons and organisations or their representatives that the FMA considers will be substantially affected by any Order in Council made in accord-

Part 1—*continued***Securities Transfer Act 1991 (1991 No 119)**—*continued*

ance with the recommendation, and those persons and organisations or their representatives have had the opportunity to comment to the FMA; and

“(b) the FMA has considered those comments.”

Summary Proceedings Act 1957 (1957 No 87)

Item relating to section 385(9) of the Companies Act 1993 in Part 2 of Schedule 1: insert “or Financial Markets Authority” after “Registrar”.

Superannuation Schemes Act 1989 (1989 No 10)

Definition of **Government Actuary** in section 2(1): repeal.

Section 2(1): insert in its appropriate alphabetical order:

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

Section 6(1): omit “Government Actuary shall” and substitute “FMA must”.

Section 17(2): omit “and 54B” and substitute “to 54C”.

Heading above section 19 and section 19: repeal and substitute:

“Powers of FMA as to cancellation of registration, etc

“19 Cancellation of registration

“(1) The FMA may cancel the registration of a superannuation scheme—

“(a) if a scheme that is not constituted under an Act of Parliament ceases to have a trustee who is a New Zealand resident; or

“(b) if the FMA is satisfied on reasonable grounds that the scheme is no longer a superannuation scheme within the meaning of section 2 and the FMA has given not less than 28 days’ notice in writing to the trustees.

“(2) The FMA must cancel the registration of a superannuation scheme on receipt of an application by the trustees if the FMA is satisfied that the members and other beneficiaries of the

Part 1—*continued***Superannuation Schemes Act 1989 (1989 No 10)**—*continued*

scheme have been advised of the consequences of the scheme ceasing to be registered.

- “(3) Where the registration of a scheme is cancelled, each provision set out in sections 8 to 10 continues to be implied in the trust deed of the scheme unless—
- “(a) evidence has been produced to the FMA to its satisfaction that all of the members and other beneficiaries of the scheme have consented to the provision no longer applying; or
 - “(b) in any other case, the FMA has notified the trustees in writing that it is satisfied that the provision is no longer necessary.”

Section 20(2): omit “Government Actuary shall” and substitute “FMA must”.

Section 22(1): omit “Government Actuary shall” and substitute “FMA must”.

Section 23: repeal and substitute:

“23 Right of appeal against certain decisions of FMA

- “(1) A person affected by a decision of the FMA under any of the following provisions may appeal against the decision to the High Court:
- “(a) section 19 (cancellation of registration):
 - “(b) section 20 (powers of FMA if scheme is operating in contravention of this Act):
 - “(c) section 34 (approval of scheme as complying superannuation fund):
 - “(d) section 36 (revocation of approval of scheme as complying superannuation fund):
 - “(e) section EY 11 of the Income Tax Act 2007 (certain superannuation schemes exempted from being treated as schemes providing life insurance).
- “(2) A decision against which an appeal is lodged under this section continues in force unless the High Court orders otherwise.”

Section 24: repeal.

Section 26: repeal.

Part 1—*continued***Superannuation Schemes Act 1989 (1989 No 10)**—*continued*

Section 27: repeal.

Takeovers Act 1993 (1993 No 107)

Definition of **Securities Commission** in section 2(1): repeal.

Section 2(1): insert in its appropriate alphabetical order:

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

Sections 15A and 15B: repeal and substitute:

“15A Sharing of information and documents with FMA

“(1) The Panel may provide to the FMA any information, or a copy of any document, that the Panel—

“(a) holds in relation to the exercise of the Panel’s powers or the performance of its functions and duties; and

“(b) considers may assist the FMA in the exercise of the FMA’s powers or the performance of its functions and duties under any enactment.

“(2) The Panel may use any information, or a copy of any document, provided to it by the FMA under section 30 of the Financial Markets Authority Act 2011 in the Panel’s exercise of its powers or the performance of its functions and duties.

“(3) This section applies despite anything to the contrary in any contract, deed, or document.

“(4) Nothing in this section limits the Privacy Act 1993.

“15B Sharing of information and documents with Commerce Commission

“(1) The Panel may provide to the Commerce Commission any information, or a copy of any document, that the Panel—

“(a) holds in relation to the exercise of the Panel’s powers, or the performance of its functions and duties; and

“(b) considers may assist the Commerce Commission in the exercise of the Commerce Commission’s powers, or the performance of its functions and duties, in respect of the Fair Trading Act 1986.

Part 1—*continued***Takeovers Act 1993 (1993 No 107)**—*continued*

“(2) The Panel may use any information, or a copy of any document, provided to it by the Commerce Commission under section 48A of the Fair Trading Act 1986 in the Panel’s exercise of its powers, or the performance of its functions and duties.

“(3) This section applies despite anything to the contrary in any contract, deed, or document.

“(4) Nothing in this section limits the Privacy Act 1993.”

Section 31C(1)(a): repeal and substitute:

“(a) this Act, the Financial Markets Authority Act 2011, or any of the Acts listed in Schedule 1 of that Act.”

Section 31C(1)(b): omit “other Act” and substitute “enactments other than those referred to in paragraph (a)”.

Section 31C(4): omit “section 69N of the Securities Act 1978” and substitute “section 44 of the Financial Markets Authority Act 2011”.

Section 31E(b): repeal and substitute:

“(b) for the purposes of this Act, the Financial Markets Authority Act 2011, or any of the Acts listed in Schedule 1 of that Act; or”.

Tax Administration Act 1994 (1994 No 166)

Section 3(1): insert in its appropriate alphabetical order:

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

Section 81(4)(r): repeal and substitute:

“(r) communicating to the FMA the following information, provided that the Commissioner considers it not undesirable to disclose the information and the information is reasonably necessary to enable the FMA to perform its duties or functions or exercise its powers:

“(i) individual or aggregate information relating to a member of a KiwiSaver scheme or a complying superannuation fund (as those terms are defined in section 4(1) of the KiwiSaver Act 2006):

Part 1—*continued***Tax Administration Act 1994 (1994 No 166)**—*continued*

- “(ii) individual or aggregate information relating to a KiwiSaver scheme or a complying superannuation fund:
- “(iii) information arising from the performance of the Commissioner’s duties or functions, or the exercise of the Commissioner’s powers, in relation to the KiwiSaver Act 2006 or a provision of an Inland Revenue Act that is relevant to the KiwiSaver Act 2006.”.

Sections 85GB and 85GC: repeal.

Unit Trusts Act 1960 (1960 No 99)

Section 2(1): insert in its appropriate alphabetical order:

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

Section 4(2): omit “Minister” and substitute “FMA”.

Section 4(5): omit “Registrar of Companies” and substitute “FMA”.

Section 19(1): omit “Minister” and substitute “FMA”.

Section 21(1)(a): repeal.

Section 21(2): omit “report of every such inspector who is appointed by the Minister shall be made to the Minister; and the”.

Section 25(3): omit “Minister” and substitute “FMA”.

Part 2

Consequential amendments to regulations

Financial Reporting (Fees and Forms) Regulations 2007 (**SR 2007/109**)

Regulation 5: revoke and substitute:

“5 Charges payable to Financial Markets Authority for section 4B or 35A applications

The Financial Markets Authority may require payment to it of a charge or charges for the costs incurred by it in—

- “(a) obtaining expert advice or expert assistance in connection with a section 4B or 35A application; and

Part 2—*continued***Financial Reporting (Fees and Forms) Regulations 2007 (SR 2007/109)**—*continued*

- “(b) the printing and publication in the Statutory Regulations series of a notice under section 4B of the Act or a notice under section 35A of the Act; and
- “(c) the publication in the *Gazette* of a notice in respect of a notice under section 4B or 35A of the Act.”

Futures Industry (Client Funds) Regulations 1990 (SR 1990/227)

Definition of **dealer** in regulation 2(1): revoke and substitute:

“**dealer**—

- “(a) means a person who is authorised under section 38(1)(a) of the Act, or approved under section 38(1)(b) of the Act, to carry on the business of dealing in futures contracts; but
- “(b) does not include—
 - “(i) a person who deals in futures contracts solely on the person’s own behalf; or
 - “(ii) a recognised clearing house”.

Regulation 21(6)(c): omit “Chairman of the Securities Commission” and substitute “chairperson of the board of the FMA”.

Form 5 of the Schedule: omit “Securities Commission” and substitute “Financial Markets Authority”.

Government Superannuation Fund (Ceasing Contributions) Regulations 1995 (SR 1995/172)

Regulation 36(4)(a): omit “Government Actuary” and substitute “the Authority”.

Regulation 38(4)(a): omit “Government Actuary” and substitute “the Authority”.

Government Superannuation Fund Regulations 1995 (SR 1995/173)

Heading to regulation 11: omit “required by Government Actuary”.

Part 2—*continued***Government Superannuation Fund Regulations 1995 (SR 1995/173)**—*continued*

Regulation 11: omit “Government Actuary” and substitute “Authority”.

KiwiSaver Regulations 2006 (SR 2006/358)

Regulation 10(1): omit “Government Actuary’s” and substitute “FMA’s”.

Regulation 10(2): omit “Government Actuary’s” and substitute “FMA’s”.

Securities Act (Contributory Mortgage) Regulations 1988 (SR 1988/143)

Definition of **Commission** in regulation 2(1): revoke.

Regulation 15: revoke and substitute:

“15 Exercise of FMA’s powers under Securities Act 1978

“(1) If the FMA makes an order under section 44B(2)(a) or (b) of the Act, the Registrar must, upon receiving a copy of that order, place the order on the register of documents maintained under regulation 8.

“(2) If the FMA makes an order under section 44B(2)(c) of the Act that the broker cease to act as a broker in respect of all contributory mortgages previously allotted, the Registrar must, upon receiving a copy of that order, place the order on the register of documents maintained under regulation 8, and the registration of the broker named in the order is cancelled for the period specified in the order.

“(3) If a broker fails to comply with the requirements of regulation 12 or 14, the Registrar may notify the FMA of the failure.”

Securities (Fees) Regulations 1998 (SR 1998/461)

Heading to regulation 3: omit “**Commission**” and substitute “**Financial Markets Authority**”.

Regulation 3(1): omit “Commission” in each place where it appears and substitute in each case “FMA”.

Regulation 3(2)(a): omit “section 5(5)” and substitute “section 70B”.

Part 2—*continued***Securities (Fees) Regulations 1998 (SR 1998/461)**—*continued*

Regulation 3(2)(c) and (d): revoke.

Regulation 4: revoke and substitute:

“4 Costs payable to Financial Markets Authority

The FMA is authorised to require payment to it of the costs incurred by the FMA in—

- “(a) the printing and publication in the Statutory Regulations series of an exemption notice under section 70B of the Securities Act 1978:
- “(b) the publication in the *Gazette* of a notice of an exemption notice under section 70B of the Securities Act 1978:
- “(c) the publication in the *Gazette* of a notice approving a person to act as a trustee or statutory supervisor under section 48(3) of the Securities Act 1978:
- “(d) the obtaining of expert advice or expert assistance in respect of an application referred to in regulation 3(2).”

Securities Markets (Fees) Regulations 2003 (SR 2003/383)

Regulation 4: revoke and substitute:

“4 Fees and costs payable to FMA for advice or decisions

- “(1) A person (A) must pay the fees set out in regulation 6 and the costs set out in regulation 7 on each occasion that advice is sought from the FMA in respect of—
 - “(a) an application by A for an exemption under section 36E of the Act:
 - “(b) an application by A for an exemption under section 37C(1)(c) of the Act.
- “(2) A person must pay the fees set out in regulation 6 and the costs set out in regulations 7 and 8 for the following matters:
 - “(a) for a decision by the FMA on whether or not to approve proposed market rules provided under section 36F of the Act:
 - “(b) for a decision by the FMA on whether or not to approve changes to market rules for registered markets provided under section 36J of the Act:

Part 2—*continued***Securities Markets (Fees) Regulations 2003 (SR 2003/383)**—*continued*

- “(c) for an application for an authorisation to hold a market registration under section 36ZY of the Act (which relates to overseas exchanges):
- “(d) for an application for an authorisation to conduct a futures market under section 37(8) of the Act:
- “(e) for an application for an authorisation to carry on the business of dealing in futures contracts under section 38(1) of the Act.”

Regulation 8: revoke and substitute:

“8 Costs of printing and publication

- “(1) For the purposes of regulation 4(2), the FMA may require a person to pay the costs incurred by the FMA in—
 - “(a) the publication in the *Gazette* of a notice of market registration under section 36F of the Act:
 - “(b) the publication in the *Gazette* of a notice of a decision to approve changes to market rules provided under section 36J of the Act:
 - “(c) the publication in the *Gazette* of a notice of an authorisation to hold a market registration under section 36ZY of the Act (which relates to overseas exchanges):
 - “(d) the publication in the *Gazette* of a notice of an authorisation to conduct a futures market under section 37(8) of the Act:
 - “(e) the publication in the *Gazette* of a notice of authorisation of a person or class of persons to carry on the business of dealing in futures contracts under section 38(1) of the Act.
- “(2) For the purposes of regulation 5, the FMA may require a person to pay the costs incurred by the FMA in—
 - “(a) the printing and publication in the Statutory Regulations series of an exemption notice under section 48 of the Act; and
 - “(b) the publication in the *Gazette* of a notice of an exemption under section 48 of the Act.”

Part 2—*continued***Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008 (SR 2008/153)**

Definition of **Commission** in regulation 4(1): revoke.

Definition of **Registrar** in regulation 4(1): revoke and substitute:

“**Registrar** has the same meaning as in section 2(1) of the Act”.

Regulation 4(1): insert in its appropriate alphabetical order:

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

Regulation 14(2): omit “section 5(5) of the Act” and substitute “section 70B of the Act”.

Securities Regulations 2009 (SR 2009/230)

Regulation 31: insert after paragraph (a):

“(ab) in respect of a document, information, or other matter required to be made publicly available under section 54C of the Act that is an advertisement only by reason of section 2A(2)(c) of the Act.”.

Takeovers (Fees) Regulations 2001 (SR 2001/160)

Regulation 4(1)(b)(ii): omit “or of the Securities Commission”.

Regulation 5(1)(b)(ii): omit “or of the Securities Commission”.

Schedule 4

ss 84, 85

**Amendments to replace references to
Securities Commission or Government
Actuary****Part 1**Replacing “Securities Commission” with
“Financial Markets Authority” in Acts**Financial Service Providers (Registration and Dispute
Resolution) Act 2008 (2008 No 97)**

Section 67(d)

Section 76(d)

Schedule 2

Securities Transfer Act 1991 (1991 No 119)

Section 7(1)

Part 2Replacing “Securities Commission” with
“Financial Markets Authority” in regulations**Financial Reporting (Fees and Forms) Regulations 2007 (SR
2007/109)**Definition of **section 4B or 35A application** in regulation 3

Heading above regulation 4

Heading to regulation 4 and regulation 4

Regulation 6(b)

**Securities Act (Contributory Mortgage) Regulations 1988 (SR
1988/143)**

Schedule 2A

**Securities Markets (Market Manipulation) Regulations 2007
(SR 2007/373)**

Regulation 10(2)

Heading to regulation 11 and regulation 11(1)

Part 2—*continued***Securities Markets (Substantial Security Holders) Regulations 2007 (SR 2007/372)**

Forms 1 and 2 of Schedule 1

Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008 (SR 2008/153)

Regulation 13(1)

Part 3

Replacing “Commission” with “FMA” in
Acts**Financial Advisers Act 2008 (2008 No 91)**Definition of **authorised** in section 5Definition of **overseas regulator** in section 5Definition of **standard conditions** in section 5

Section 23(2)(k)

Heading to section 45A and section 45A(1), (2)(d), and (3)

Heading to section 49 and section 49(1) to (6)

Section 50(2) and (3)

Section 52

Section 54

Heading to section 55 and section 55(1) and (3) to (5)

Section 55A(1) to (8)

Heading to section 56 and section 56(1) and (2)

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Part 3—*continued***Financial Advisers Act 2008 (2008 No 91)**—*continued*

Section 67A(1) to (4)

Section 68(1) and (2)

Section 69(1) and (3)

Heading to section 70 and section 70(1) and (2)

Section 71(1) and (5)

Section 72(b)

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Section 74(3)

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Heading to section 75B and section 75B(1), (3), (4), and (6)

Section 75D(1) to (3) and (5) to (7)

Section 75E

Heading to section 75F and section 75F(1) to (6)

Section 75G(1) and (3)

Section 76(1)(f) to (h)

Heading to section 77 and section 77(1)

Section 77F(1)(f)(iii)

Heading to section 77V and section 77V(1) to (6)

Section 85

Section 96(1)

Heading to section 97 and section 97(1) and (2)

Section 98

Section 99

Section 101(3)(a) to (c) and (5)

Section 104(a)

Section 113

Section 127

Section 132

Section 134G

Section 135

Section 136(1)(b) and (c)

Part 3—*continued***Financial Advisers Act 2008 (2008 No 91)**—*continued*

Section 137A(1)

Heading to section 137B and section 137B(1) and (2)

Section 137C

Section 137F(2)

Section 137K(1)

Section 137L(2)

Heading to section 137M and section 137M

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Heading to section 137O and section 137O(1) and (2)

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Heading to section 148A and section 148A(1) and (2)

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Section 152(1) and (2)

Section 154(4)

Section 155(1)(a) and (b) and (2)

Reserve Bank of New Zealand Act 1989 (1989 No 157)

Section 156K(2)

Definition of **joint regulators** in section 156M

Section 156N(5)

Section 156P(1)(e) and (2)

Section 156ZM(1)(b) and (2)(b)

Part 3—*continued***Securities Act 1978 (1978 No 103)**Definition of **delayed allotment order** in section 2(1)Definition of **prohibition order** in section 2(1)

Section 37AF(1)(d)(iv)

Section 37AK(2)(c), (3)(d), and (5)(a)

Section 37A(1)(ab)(ii)

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Heading to section 19Y and section 19Y

Section 31(1)(b) and (2)

Section 32A(2)

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Section 36D(2)(a)(ii)

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Heading to section 36ZD and section 36ZD

Section 36ZF(1)(d)

Heading to section 36ZG and section 36ZG

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Heading to section 36ZK and section 36ZK

Section 36ZL(1)

Section 36ZM(2)(a) to (c)

Heading to section 36ZO and section 36ZO(1) to (3)

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Section 36ZS

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Paragraph (a) of the definition of **authorised futures exchange** in section 37Paragraphs (e) and (f) of the definition of **futures contract** in section 37

Section 37(5), (7), (8), (9), and (10)

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Part 3—*continued***Securities Markets Act 1988 (1988 No 234)**—*continued*

Section 38(1)(a), (2), and (3)

Section 41Q(3)

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Heading to section 42 and section 42

Heading to section 42B and section 42B

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Section 43F(2)(a)

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Section 43P(2)

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Heading above section 48

Heading to section 48C and section 48C(1) to (3)

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Section 48F(3)(a)(i)

Part 3—*continued***Securities Markets Act 1988 (1988 No 234)**—*continued*

Section 48G(2)(b)(i)
Section 49(2)
Section 49A(3)
Section 49B(1)(g) and (3)
Section 49C(2)
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Part 4

Replacing “Commission” with “FMA” in
regulations**Futures Industry (Client Funds) Regulations 1990 (SR 1990/227)**

Paragraph (f) of the definition of **specified client investment** in regulation 2(1)
Regulation 14(e)
Regulation 24(3)(c)

Securities Markets (Fees) Regulations 2003 (SR 2003/383)

Heading to regulation 5
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Regulation 7

Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008 (SR 2008/153)

Regulation 8(2) and (3)
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Part 5
Replacing “Commission’s” with “FMA’s” in
Acts

Financial Advisers Act 2008 (2008 No 91)

Heading above section 49

Section 49(4)(c)

Heading above section 59

Heading to section 59

Section 61(4)(c)

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Heading above section 75D

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Section 75F(4)(c)

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Securities Act 1978 (1978 No 103)

Heading to section 44B

Section 55G(5)

Heading to section 65B and section 65B

Securities Markets Act 1988 (1988 No 234)

Section 36ZL(1)

Part 5—*continued***Securities Markets Act 1988 (1988 No 234)**—*continued*

Section 36ZR(1)(b)

Heading to subpart 1 of Part 5

Heading above section 42F

Heading to section 42I

Heading to section 42J

Section 42M(2)

Heading to section 42Z and section 42Z

Section 43E(4)

Heading to section 43W and section 43W

Part 6

Replacing “Government Actuary” with
“FMA” in Acts**Financial Service Providers (Registration and Dispute
Resolution) Act 2008 (2008 No 97)**

Schedule 2

Human Rights Act 1993 (1993 No 82)

Section 71

Income Tax Act 2007 (2007 No 97)

Heading immediately above section EY 11(9)

Section EY 11(9) and (10)(a)

Heading immediately above section EY 11(12)

Section EY 11(12)

Clause 3(d) of Schedule 28

KiwiSaver Act 2006 (2006 No 40)

Section 25(1) and (2)(b)

Section 27

Section 28

Section 29(1) and (2)(a) and (c)

Part 6—*continued***KiwiSaver Act 2006 (2006 No 40)**—*continued*

Section 31(1) and (3)

Heading to section 32 and section 32

Section 101H(2), (3), (4)(f), and (5)

Section 101I(1), (2), (3), (4)(a), (5), and (7)

Section 101K

Section 117(1)(c)

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Section 123(4)(c) and (6)

Section 125(1)

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Section 129(3)

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Section 132(1)

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Section 142(1)(a)

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Section 151

Section 152(1)

Section 156(2)(b)

Section 157(a)

Heading to section 159 and section 159(1) and (2)

Part 6—*continued***KiwiSaver Act 2006 (2006 No 40)**—*continued*

Heading to section 162 and section 162(1) and (2)

Section 163

Heading to section 164 and section 164(1)

Section 165(d)

Section 168

Heading to section 169 and section 169(1), (4), and (5)

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Heading to section 189B and section 189B

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Heading to section 191 and section 191(2) and (4)

Section 192(1), (2), and (4)

Heading to section 194 and section 194(1)

Section 198(1)(a)

Heading to section 200 and section 200

Section 228(c)

Clause 5 of Part 1 of Schedule 2

Clause 3 of Part 2 of Schedule 2

Clause 3 of Part 3 of Schedule 2

Superannuation Schemes Act 1989 (1989 No 10)

Section 3(1)

Section 4(1)

Section 6(2)(b) and (c)

Section 9B(2A)(a) and (b), (2B)(a)(iv) and (b), and (4)

Heading to section 9BAA and section 9BAA(1), (2), (3), (4), (4B), and (5)

Section 9BAB(1), (1)(b), (2), (2)(a), (3)(b), (4), and (5)

Heading to section 9BA and section 9BA(1) and (2)

Part 6—*continued***Superannuation Schemes Act 1989 (1989 No 10)**—*continued*

Section 10

Section 12(2)

Section 13(2)(a)

Section 14(3)

Section 15(3)

Section 18

Heading to section 18A and section 18A(1) and (3)

Section 18B(1), (2), and (4)

Heading to section 20 and section 20(1) and (3)

Section 21(1)(a), (d)(i) and (ii), and (e), and (1A)

Section 22(2)

Section 25(2)(a)

Heading to section 28 and section 28(1)

Section 29

Section 34(1) and (2)

Section 35(1), (2), (3), and (4)

Section 36(1), (2), and (3)

Heading to section 37 and section 37(1)

Section 38(1)(d)

Heading to section 39 and section 39

Section 40(1) and (4)(b)

Clause (e) of Schedule 1

Clause (1)(o)(iv) of Schedule 2

Tax Administration Act 1994 (1994 No 166)

Section 125(i)

Part 7

Replacing “Government Actuary” with
“FMA” in regulations**KiwiSaver Regulations 2006 (SR 2006/358)**

Heading to regulation 8 and regulation 8(1)

Part 7—*continued***KiwiSaver Regulations 2006 (SR 2006/358)**—*continued*

Regulation 10(2) and (3)

Heading to regulation 11 and regulation 11

Heading to regulation 12 and regulation 12

Regulation 19(1)

Column headed “**Fee**” in Schedule 2**Securities Regulations 2009 (SR 2009/230)**

Clause 12(3) of Schedule 6

Superannuation Schemes (Fees) Regulations 1992 (SR 1992/284)

Regulation 3

Heading to the Schedule

Clause 1A of Part 1 of the Schedule

Clause 6 of Part 1 of the Schedule

Clause 7 of Part 1 of the Schedule

Clause 1 of Part 2 of the Schedule

Legislative history

5 April 2011

Divided from Financial Markets (Regulators and KiwiSaver) Bill (Bill 211–2) by committee of the whole House as Bill 211–3A

7 April 2011

Third reading

18 April 2011

Royal assent

This Act is administered by the Ministry of Economic Development.
