



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Regulations to support Financial Services Legislation Amendment Act 2019 Paper 2: policy approval for other regulations	Date to be published	June 2019

List of documents that have been proactively released

Date	Title	Author
June 2019	Cabinet paper: Regulations to support Financial Services Legislation Amendment Act 2019 Paper 2: policy approval for other regulations	Office of Minister of Commerce and Consumer Affairs
June 2019	Cabinet minute: Regulations to support Financial Services Legislation Amendment Act 2019 Paper 2: policy approval for other regulations	Cabinet Office

Information redacted

NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Economic Development Committee

Regulations to support Financial Services Legislation Amendment Act 2019 Paper 2: policy approval for other regulations

Proposal

1. This paper seeks policy approvals in relation to various regulations required to implement the Financial Services Legislation Amendment Act 2019 (Amendment Act), which introduces a new financial advice regulatory regime and makes changes to the financial service providers registration system.

Executive Summary

2. This is the second of two papers today seeking policy approvals for regulations necessary to implement the Amendment Act. The Amendment Act is primarily aimed at improving the quality of financial advice. It also addresses misuse of the Financial Service Providers Register (FSPR – a public register of persons that provide financial services) by providers with little or no connection to New Zealand, and makes changes to improve the workability of the FSPR.
3. The proposals include changes to regulations that set out the detailed information to be supplied by financial service providers and displayed on the FSPR. This is to help implement the changes in the Amendment Act, and to assist the Registrar and regulators with the exercise of their functions.
4. Further, I seek approval for regulations to support measures to address misuse of the FSPR. This paper proposes that providers must have a minimum number of New Zealand clients and volume of transactions in order to register on the FSPR, and also restricts how they can promote their status as a registered financial service provider.
5. I also seek approval to carry over some existing exemptions and other regulations with appropriate changes to ensure they work effectively in the new regime.
6. I propose that the changes introduced by the Amendment Act come into force in June 2020, to give time for industry to prepare for the new regime.

Background

The Amendment Act introduces a new financial advice regulatory regime

7. As mentioned in the paper *Regulations to Support Financial Services Legislation Amendment Act 2019 Paper 1: financial advice licensing fees and FMA levy*, the Amendment Act reforms the regulation of financial advice. It is intended to improve access to quality financial advice, which will assist New Zealanders to make informed financial decisions and to invest in financial markets with confidence.
8. For example, the new regulatory regime requires anyone who gives regulated financial advice to a retail client (i.e. an everyday consumer) to give priority to a client's interests, disclose certain information to clients and comply with a code of conduct. They will also need to operate under a licence granted by the Financial Markets Authority (FMA).

The Amendment Act also makes changes to the Financial Service Providers Register

9. The Amendment Act also amends the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act). These changes primarily relate to the FSPR, a public register of persons that provide financial services.
10. First, there are changes to support the new financial advice regulatory regime, including enabling the FSPR to identify licensed financial advice providers and individual financial advisers that give advice on those providers' behalf.
11. Secondly, in relation to financial services more generally, the Amendment Act also addresses misuse of the FSPR by firms with little or no connection to New Zealand. Registration on the FSPR does not necessarily mean a provider is licensed or regulated in New Zealand or elsewhere. Some, but not all, providers on the FSPR are licensed. Some unscrupulous firms have been registering to create the impression to customers that they are actively regulated in New Zealand.
12. Finally, the Amendment Act makes other changes to the categories of financial services used on the FSPR, to minimise uncertainty and overlap between categories.

Regulations must be made before the changes in the Amendment Act can be implemented

13. Regulations are needed to provide the supporting detail to the above changes in the Amendment Act.
14. The above changes in the Amendment Act are to be brought into force by Order in Council and are expected to come into force in mid-2020.

Registration details on the FSPR

15. I am seeking approval to make changes to existing registration regulations as part of the implementation of the Amendment Act. The proposed changes are consistent with the purpose of the FSPR to assist members of the public to make decisions about financial services, and to assist regulators with the exercise of powers under financial markets legislation.

Additional information about providers of financial advice and other financial services

16. In order to help regulators and the public identify different types of financial service providers with different regulatory obligations (thereby assisting regulators with the exercise of their powers and functions), I propose that regulations require providers to supply more detailed information to be displayed on the FSPR.
17. For example, the information would include the licence status of the financial service provider (including whether they are relying on an exemption), and whether they service wholesale or retail clients. The public would then be able to use the status of licensed providers as search criteria on the FSPR. In relation to financial advice services, the information would include details of the financial advice providers an individual financial adviser gives advice on behalf of. I also propose requiring individual financial adviser applicants to provide a personal email address (not for display on the FSPR) to ensure that the Registrar is able to contact the applicant directly, even where their employer has completed the registration for them.
18. An indication of the additional information I am proposing is set out in Appendix 1.

Minimising overlaps between financial services

19. In some cases a service may be caught by two or more categories of financial services described in the FSP Act. For example a KiwiSaver manager would be a “manager of a registered scheme” but also providing the service of “keeping, investing, administering, or managing money...”. This overlap between categories has caused confusion for providers as to which categories they should select in their registration, and reduced the usefulness of the register for regulators and the public. The Amendment Act inserts a new provision into the FSP Act which allows for regulations to prescribe circumstances where registering in only one of these categories is sufficient to comply with the FSP Act.
20. I propose to prescribe that providers registered in certain categories that more precisely describe their activities (e.g. manager of a registered scheme) do not need to also register in certain broad financial service categories (e.g. “keeping, investing, administering, or managing money...” and “acting as an issuer of...financial products”) if the first category already captures all of the relevant activities of the provider. The list of overlapping categories I am proposing to address in regulations is set out in Appendix 1.
21. I seek Cabinet’s agreement to the matters set out in Appendix 1 and to delegate authority to me to make further decisions in relation to the detail of the additional information to be required and in relation to dealing with overlapping categories, consistent with the policy in this paper and the purposes of the FSPR.

Repealing the sole adviser practice exemption

22. Sole financial adviser practices – being companies that employ only one financial adviser who essentially owns and operates the business – are currently exempt from having to register both the company and its single adviser on the FSPR. This means that the business’s sole financial adviser holds a single registration on the FSPR and pays FMA levies associated with that one registration.

23. Under the new regime, it is the business that is licensed rather than individual financial advisers. Individual financial advisers giving financial advice to retail clients will need to be engaged by a financial advice provider licensed by the FMA. It is therefore desirable that the business, as well as the individual financial adviser, appear on the FSPR. Accordingly, I propose to repeal the existing sole adviser practice exemption, which will have the effect of requiring both the adviser and their business to be registered. However, I propose to provide relief from the compliance costs for sole adviser practices moving to the new regime so that they are not required to pay the FMA levy of \$460 that usually applies on initial registration. I have also proposed ongoing levies that are intended to be fair and reasonable for smaller businesses (see the paper *Regulations to Support Financial Services Legislation Amendment Act 2019 Paper 1: financial advice licensing fees and FMA levy*).
24. Sole advisers would still incur the additional one-off registration cost for the business of \$300 which is charged by the Companies Office on a cost recovery basis and the additional annual confirmation fee each year for the new registration (\$75).¹ I consider the overall impacts to be fair and appropriate given the relief granted in other areas.

Supporting details to address misuse of the Financial Service Providers Register

Threshold for registration

25. The FSP Act requires financial service providers to be registered on the FSPR and, if they provide services to retail clients, to belong to a dispute resolution scheme which those clients can access for free.
26. The Amendment Act amends the FSP Act so that its registration and dispute resolution requirements apply to financial services businesses if they have New Zealand clients above a threshold prescribed in regulations, regardless of whether the provider has a place of business in New Zealand.
27. This change is intended to address the issue of misuse by providers with little connection to New Zealand. Requiring more than a minimal number of New Zealand clients means a provider cannot register on the FSPR by simply incorporating a New Zealand company and setting up an administrative office in New Zealand.
28. I propose that in order to register, a provider must meet the following threshold in any one year:
- 28.1. provide financial services to 10 or more New Zealand resident clients; and
 - 28.2. derive revenue totalling \$10,000 or more from financial services transactions with New Zealand clients, or in particular circumstances, have transactions with New Zealand clients valued at \$10,000 or more in total.

Rules will need to be developed in the drafting process in relation to how to determine whether the thresholds have been met. An indication of how this would be determined is set out in Appendix 2.

¹ A criminal check fee of \$35 may also apply in some cases.

29. The proposed threshold would not apply to providers of licensed services or providers of consumer credit services, as those providers would have been through checks conducted by the relevant licensing authority (or in the case of consumer credit providers, will soon need to go through fit and proper checks conducted by the Commerce Commission), so are unlikely to be registering for misuse purposes. The thresholds will also not apply to others required to register on the FSPR, such as individual financial advisers, or reporting entities under anti-money laundering legislation that provide financial services.
30. To help ensure that relevant financial service transactions are genuine, services to relatives, and close business associates and associated persons of the provider (as defined in the Financial Markets Conduct Act 2013) would be excluded for the purposes of determining whether the threshold has been met.
31. The proposed threshold will provide greater comfort that a provider will likely be carrying out genuine financial services transactions for New Zealand clients.
32. There may be concerns that this means some New Zealand consumers may not have access to free dispute resolution due to their provider having a very small amount of New Zealand business and therefore not being able to register or required to belong to a dispute resolution scheme.² However, access to dispute resolution is unlikely to be reduced compared to the status quo in relation to genuine financial service providers.³ Officials will also consider messaging to help make consumers aware of the benefits of using a provider that belongs to a dispute resolution scheme.

Restrictions on promoting registered status

33. The Amendment Act also requires that providers must in certain circumstances include information prescribed in regulations when promoting their services. The intention is that if an unscrupulous provider becomes registered despite the new requirements, they are restricted in their ability to mislead the public about what their status as a registered financial service provider means. Failure to comply can lead to deregistration.
34. I propose that providers who are registered but not licensed in New Zealand be required to include a warning statement if they refer to their FSPR registration or New Zealand dispute resolution membership, other than where the reference is required by law or dispute resolution rules:
 - 34.1. The warning statement would explain that the provider has not been licensed by a New Zealand regulator and is not actively regulated in New Zealand.

² Registration is also linked to dispute resolution scheme membership – the schemes will generally only accept members registered on the FSPR so they can rely on checks conducted by the Registrar that the provider is for example, not an undischarged bankrupt. The potential sanction of being deregistered from the FSPR also acts as an incentive for providers to comply with the schemes' directions.

³ Current registration requirements have been interpreted to apply to businesses that are providing financial services (not just administrative services) from New Zealand. Even with the changes in the Amendment Act, all businesses that have substantive financial service infrastructure in New Zealand will still have to register regardless of whether they meet the threshold or not (because they are reporting entities under anti-money laundering legislation). Therefore genuine providers required to register currently are likely to still be registered in the new regime.

- 34.2. For providers that do not have a place of business in New Zealand, the warning statement must also explain that it will be more challenging for New Zealand regulators and dispute resolution schemes to assist if something goes wrong, and that they will likely be unable to assist overseas clients.
35. If a previously-registered provider is being deregistered and no longer belongs to a dispute resolution scheme due to providing services below the threshold, the provider must inform remaining New Zealand retail clients that the provider is no longer a member of a dispute resolution scheme.
36. The above proposals should help to clarify potential misunderstandings about what it means to be registered and/or a member of a dispute resolution scheme. I expect that legitimate financial service providers should not need to refer to their registration often (other than where required by law), so do not expect these proposals to impose excessive cost or deter customers from using legitimate financial service providers.

Overseas providers that do not promote their services to New Zealand clients

37. Because the Amendment Act significantly changes who is required to register on the FSPR, I am also proposing an exemption from the registration requirements for overseas providers that do not promote their services to New Zealand clients (where a licence is not required to provide the relevant service).
38. The Amendment Act effectively changes the scope of registration from those that provide financial services from New Zealand to those that provide financial services to persons in New Zealand. This will require some overseas providers to register in New Zealand.
39. However, a New Zealand-based consumer may on their own initiative seek financial services from an overseas provider (e.g. through a foreign website). It is unlikely that the customer would in those circumstances expect the provider to be subject to regulation in New Zealand or belong to a New Zealand dispute resolution scheme. I consider that in those circumstances, requiring registration and dispute resolution scheme membership in New Zealand would be unreasonable (and it may be difficult to enforce such a requirement in any case). I therefore propose an exemption from registration for providers that are based overseas and do not promote their services to New Zealand clients, but do provide financial services to persons in New Zealand (where a licence is not required for the service).

Carrying over existing regulations and other consequential changes

40. To ensure the new financial advice regulatory regime works effectively, there is a need to carry over some existing regulations with appropriate changes to reflect differences in the new regime. There is also a need to make consequential changes to some other regulations, including the Financial Markets Conduct Regulations 2014 and the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011 to reflect changes in terminology in the new regime.
41. This paper seeks approval for key aspects of the regulations to be carried over.

Exemptions to be made under the new financial advice regime

42. Under the Financial Advisers Act 2008 (FA Act) a number of exemptions have been made through regulations that provide that the requirements of the FA Act do not apply in certain circumstances. The existing exemptions have generally been granted on the basis that sufficient regulation already exists by other means.

43. I propose to make regulations prescribing that activities subject to existing exemptions are not regulated financial advice subject to the new financial advice regime's obligations (i.e. they would not be required to obtain a licence or comply with the new regime's requirements). I am satisfied that these activities are sufficiently regulated elsewhere, and/or that subjecting them to additional regulation would be overly burdensome. The relevant activities are as follows.

43.1. *National Provident Fund and Annuitas Management Limited* – granted an exemption in regulations under the FA Act. The Board of Trustees of the fund is a statutory entity, the members of which are appointed by the Minister of Finance, providing sufficient oversight of their activities and levers to control them where necessary. Further, the fund is closed to new members, so it was determined that there was little benefit in subjecting them to the FA Act.

43.2. *Workplace financial products for advice to related entity employees* – both the FA Act and Amendment Act exempt advice provided to employees in connection with a financial product made available through the employees' workplace (e.g. superannuation schemes). This is intended to allow employees to take advantage of financial products that are available through their employment. Without an exemption from the financial advice regime employers would need to employ a financial adviser or other suitable person to provide advice on these products to employees. This additional cost would likely mean the employer simply ceases providing advice on these products meaning that employees would have to seek financial advice possibly at a cost to themselves.

The FA Act exemption was broadened via regulations to cover employees of related entities, such as a group giving information about workplace savings products to employees working for a company within that group. This was to enable employees working for a company in a group to be able to receive advice on their workplace savings and similar services from the entity in the group best placed to provide the advice.

Carrying over this additional exemption through regulations will clarify the position for employees of related entities.

43.3. *Retirement village operators* – an exemption is provided in regulations which clarifies that services relating to occupation rights agreements in a retirement village are not subject to the requirements of the FA Act. This only applies if that service is incidental to the normal activities of their primary business as an operator of a retirement village.

Retirement Villages are subject to regulation under the Retirement Villages Act 2003 and the Retirement Villages Code of Practice 2008 that is designed

to protect the interests of residents and intending residents. That Act already includes requirements to disclose information, to require residents to obtain independent legal advice, and provides a dispute resolution system, so also applying the new financial advice regime's requirements would add compliance costs without providing additional benefits to prospective residents. Any consumer issues in relation to occupation rights agreements are best dealt with under the Retirement Villages Act.

Asia Region Funds Passport

44. I also propose a new exemption for operators of foreign passport funds under the Asia Region Funds Passport regime from the licensing requirement of the new financial advice regulatory regime.
45. The Funds Passport regime is a mutual recognition arrangement between Australia, Japan, the Republic of Korea, Thailand and New Zealand allowing fund managers in one country to offer managed funds to investors in other member countries without having to obtain a licence in the second country, provided certain criteria are met. Regulations were made in May 2019 to implement the Funds Passport regime in New Zealand.
46. The Memorandum of Co-operation agreed between member countries provides that foreign passport funds offered into New Zealand under the Funds Passport initiative must not be required to be licensed to provide financial advice services in New Zealand. I propose making regulations to exempt foreign passport funds from being required to be licensed. Significant protections will remain for New Zealand investors. Those operators will still be required to comply with the substantive obligations of the new regime, and will be monitored by both the FMA and their home regulator.

Regulations relating to holding of client money

47. Existing regulations under the FA Act contain record keeping and disclosure obligations for those that hold client money (which financial advice providers sometimes do). I propose to largely carry these client money regulations over to the new regulatory regime, subject to:
 - 47.1. minor changes to address workability issues that have emerged since the regulations have been in effect; and
 - 47.2. to reflect a change in the Amendment Act designed to allow providers to deposit their own money into client accounts in certain circumstances, including to reduce the risk of the client account being overdrawn due to delays processing payments.

Provide transitional relief to provide for contingency DIMS

48. Authorised financial advisers are currently exempt from the Financial Market Conduct Act's licensing requirements to provide a discretionary investment management service (DIMS) on a contingency basis. This is intended to enable the management of a client's portfolio for a temporary period in situations of absence, incapacity or other unexpected contingencies.

49. The Amendment Act removes the term 'authorised financial adviser' and the exemption will need to be amended to allow 'financial advice providers' to provide DIMS on a contingency basis without being subject to DIMS licensing requirements. This exemption will continue to apply only in the same situations, and when it is incidental or secondary to other financial services provided to the client.
50. I propose to provide transitional relief that will allow a client to continue to receive contingency DIMS provided under the existing exemption for a period of one year. This will help to facilitate a smooth transition by ensuring that contingency DIMS can continue to be provided while new authorities are signed.

Commencement of the new regime

51. The provisions of the Amendment Act which introduce the new financial advice regulatory regime and changes to the financial service providers registration system will come into force on a date to be set by Order in Council.
52. I propose that those changes come into force in June 2020. This provides time for industry to prepare for the new regime and apply for transitional licences, for the necessary regulations to be made and digested by those affected, and for the Companies Office (which administers the FSPR) and the FMA to implement the necessary system changes.
53. An exact date will be set in the Order in Council, which I intend to submit to the Cabinet Legislation Committee later this year.

Consultation

54. The FMA, the Treasury, the Ministry of Justice, the Department of Internal Affairs and the Department of the Prime Minister and Cabinet (Policy Advisory Group) have been consulted on this Paper.
55. In April 2018, the Ministry of Business, Innovation and Employment (MBIE) consulted on a discussion document relating to regulations to support measures to address misuse of the FSPR [DEV-18-SUB-0034 refers]. 14 submissions were received from financial service providers, dispute resolution schemes and the Commerce Commission. MBIE may also carry out further targeted consultation as part of the drafting process for the regulations.
56. Some submissions on the discussion document were concerned with ensuring that consumer protections are not reduced due to providers that provide a small amount of services not being required to register or belong to a dispute resolution scheme. In response to those comments, I have proposed that the threshold does not apply to consumer credit providers, so that they are always required to register and belong to a dispute resolution scheme. More generally, as noted above, I consider the risks of reduced protections are not significant due to the relatively low threshold.
57. Some submitters also commented that it would be difficult to assess whether providers are promoting their services to New Zealand persons, particularly in relation to advertising on the internet and social media platforms. I am advised that providers that do not wish to be subject to New Zealand registration requirements

would usually have the ability on social media platforms and other internet advertising channels to exclude advertising to persons in New Zealand.

58. The other proposals in this paper have been developed in consultation with the Financial Markets Authority and the Companies Office as relevant. Feedback received during the development of the Amendment Act in relation to issues with the current regime has also helped to inform the proposed regulations.

Financial Implications

59. There are no financial implications from the recommendations in this paper.

Legislative Implications

60. The proposals in this paper will require the making of regulations under the Financial Markets Conduct Act 2013 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008, as amended by the Financial Services Legislation Amendment Act 2019.

Impact Analysis

61. MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Summary prepared by MBIE in relation to regulations to help address misuse of the FSPR. The Panel considers that the information and analysis summarised in the Regulatory Impact Summary meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.
62. The Treasury Regulatory Quality Team has determined that a Regulatory Impact Assessment is not required in respect of the other proposals in this paper.

Human Rights

63. The proposals outlined in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. There are no gender or disability perspective implications from the proposals in this paper.

Publicity

64. MBIE intends to notify key affected stakeholders of the policy decisions in this paper.

Proactive Release

65. I intend to release the paper proactively in whole within 30 days. The Ministry of Business, Innovation and Employment will publish a copy on its website.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

1. **note** that regulations are needed to support the new financial advice regulatory regime and registration changes introduced by the Financial Services Legislation Amendment Act 2019, which passed into law in April 2019;

Registration details on the FSPR

2. **agree** to the changes to existing registration regulations outlined in Appendix 1, which are required to enable the collection and display of more detailed information on the Financial Service Providers Register (FSPR) and to minimise overlap between categories of financial services;
3. **authorise** the Minister of Commerce and Consumer Affairs to make further decisions in relation to the detail of the changes described in paragraph 2 above, consistent with the purposes of the FSPR and the policy agreed in this paper;
4. **note** that sole financial adviser practices currently have an exemption from the requirement to register on the FSPR which is unworkable in the new financial advice regime where it is necessary for both the sole adviser and their business to be registered;
5. **agree** to repeal the sole adviser practice exemption and instead provide relief for these small businesses from compliance costs in the form of lower levies as set out in the paper *Regulations to Support Financial Services Legislation Amendment Act 2019 Paper 1: financial advice licensing fees and FMA levy*;

Supporting measures to address misuse of the FSPR

6. **note** that to help address misuse of the FSPR by unscrupulous overseas-controlled providers, the Financial Services Legislation Amendment Act provides for regulations to prescribe a threshold level of financial services below which a provider is not able to register on the FSPR;
7. **agree** to prescribe a threshold for registration on the FSPR as set out in paragraph 1 of appendix 2;
8. **note** that the threshold described applies in respect of financial services except where a licence is required to provide the service in New Zealand, the provider is a reporting entity under money laundering legislation providing financial services, registration is required under other legislation, the provider is a creditor under a consumer credit contract, or the provider is an individual financial adviser;
9. **agree** to prescribe a warning statement that providers must include if the provider is registered but not licensed in New Zealand, and the provider refers to its FSPR registration or New Zealand dispute resolution membership other than where the reference is required by law or dispute resolution rules;

10. **agree** that the relevant warning statement in the circumstances set out in paragraph 9 should explain that the provider has not been licensed by a New Zealand regulator and is not actively regulated in New Zealand;
11. **agree** to prescribe additional warning statements in the circumstances set out in paragraph 9 for registered providers that have no place of business in New Zealand to explain that it will be more challenging for New Zealand regulators and dispute resolution schemes to assist if something goes wrong, and that they will likely be unable to assist overseas clients;
12. **agree** to require previously-registered providers that are being deregistered due to providing services below the threshold set by paragraph 7 to inform remaining retail clients if it means the provider is no longer a member of a dispute resolution scheme;
13. **agree** that providers without a place of business in New Zealand be exempt from registration on the FSPR if they do not promote services to New Zealand clients;

Other matters

14. **agree** to make regulations to continue the effect of existing exemption regulations under the Financial Advisers Act 2008;
15. **agree** to exempt operators of foreign passport funds under the Asia Region Funds Passport regime from the requirement to become licensed under the new financial advice regulatory regime;
16. **authorise** the Minister of Commerce and Consumer Affairs to make decisions in relation to carrying over existing regulations in relation to those that hold client money, with changes to reflect the policy in the Financial Services Legislation Amendment Act and other minor changes;
17. **authorise** the Minister of Commerce and Consumer Affairs to make further decisions in relation to other consequential matters necessary to give effect to the new regime for financial advice, including updating terminology, provided they are consistent with the policy in the Financial Services Legislation Amendment Act and this paper, and in consultation with the Minister of Justice in relation to regulations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009;
18. **agree** to provide transitional relief to allow Discretionary Investment Management Services to be provided on a contingency basis by a financial advice provider if the authorised financial adviser named in the investment authority is engaged by the provider;

Commencement of the new regime

19. **agree** that an Order in Council be made bringing the provisions of the Financial Services Legislation Amendment Act relating to the new financial advice regulatory regime and changes to the financial service providers registration system into force in June 2020;

20. **invite** the Minister of Commerce and Consumer Affairs to report to the Cabinet Legislation Committee by October 2019 with an Order in Council prescribing the commencement date or dates of the new regime;

General

21. **authorise** the Minister of Commerce and Consumer Affairs to issue drafting instructions to Parliamentary Counsel Office to give effect to the above recommendations;
22. **authorise** the Minister of Commerce and Consumer Affairs to make further decisions on the details of the matters covered in this paper and any issues that arise during the drafting of the regulations, consistent with the policy agreed in this paper.

Authorised for lodgement

Hon Kris Faafoi

Minister of Commerce and Consumer Affairs

PROACTIVELY RELEASED

Appendix 1

Additional information to be collected about financial service providers

Service	Additional information to be prescribed in regulations and displayed on FSPR
(a) financial advice service:	Licensee transitional; Licensee full; authorised body transitional; authorised body full; financial adviser; wholesale; relying on an exemption;
(ab) a regulated client money or property service (including a custodial service)	Retail custodial service; wholesale custodial service; Retail non-custodial service; wholesale non-custodial service
(e) [being a creditor] under a credit contract:	Consumer credit; non-consumer credit
(ib)	
(i) acting as a manager of a registered scheme:	Licensee; authorised body
(ii) acting as a provider of a discretionary investment management service:	Licensee; authorised body
(iii) acting as a derivatives issuer:	Licensee; authorised body
(iv) acting as a provider of prescribed intermediary services	Peer-to-peer lending; crowdfunding
(id) operating a financial product market:	Licensed; wholesale/exempt;
(k) trading financial products or foreign exchange on behalf of other persons:	Trading on licensed markets; other
(m) acting as an insurer:	Licensed; not required to be licensed
(ma) following prescribed under new s5(1)(ma)	Wholesale/exempt manager of managed investment scheme, Wholesale/exempt DIMS provider, Wholesale/exempt derivatives issuer

For individual financial adviser applicants, require a personal email address (not for display on the FSPR) to enable registrar to contact applicant directly.

For financial advice providers, require information necessary to determine the amount of the Financial Market Authority levy payable – refer the paper *Regulations to support Financial Services Legislation Amendment Act 2019 Paper 1: financial advice licensing fees and FMA levy* (not for display on the FSPR).

For all new applicants, require applicant to state whether they will be an AML reporting entity, and who the relevant AML supervisor would be (FMA, Department of Internal Affairs or Reserve Bank, not for display on the FSPR).

Overlapping categories to be addressed in relation to section 12A of the FSP Act (as amended)

If a provider is:

- a) registered in respect of the financial advice service, client money and property service, licensed NBDT, registered bank, the licensed market services in section 5(1)(ib) of the Act, acting as a supervisor or acting as an investment manager, or acting as a custodian;
- b) also provides a service that is covered by the service of “keeping, investing, administering or managing money, securities, or investment portfolios on behalf of other persons”, “acting as an issuer” of financial products or “acting as an offeror of financial products” only in the ordinary course of providing one of the services in (a),

the provider is not required to also register for the services in (b).

Appendix 2

Indicative details of proposed threshold for registration to address misuse of FSPR

The threshold

1. To register on the FSPR, a provider must meet all of the following in any year ending on the date of that provider's annual confirmation of registration⁴:
 - a. provide financial services to 10 or more New Zealand resident clients; and
 - b. derive revenue totalling \$10,000 or more from financial services transactions with New Zealand resident clients, or in particular circumstances, have transactions with New Zealand resident clients valued at \$10,000 or more in total.
2. As initial registration must take place before a provider starts providing services, an applicant for registration would need to confirm when applying that they expect they will meet the threshold. If registered, the provider must in the first six months after registration have achieved half of the threshold above (i.e. 5 clients and \$5,000 of transactions with persons in New Zealand).
3. The proposed threshold would not apply to providers of licensed services, providers of consumer credit services or certain others required to register on the FSPR, such as financial advisers or reporting entities under anti-money laundering legislation providing financial services.
4. Undischarged bankrupts and other persons that do not qualify for registration would not be able to provide financial services even below the threshold. Australian issuers under the trans-Tasman mutual recognition of securities offerings will not be required to register.

Indicative rules for determining whether threshold has been met

5. For the purposes of determining whether the threshold has been met, services would be excluded where provided to (1) relatives, close business associates or associated persons (as defined in the Financial Markets Conduct Act 2013) of the provider; (2) to non-New Zealand residents; (3) to New Zealand wholesale clients (e.g. sophisticated or institutional investors) by providers without a place of business in New Zealand.
6. The dollar value of transactions would be calculated based on (as relevant): the amount of money the provider is administering, holding, transferring, trading or exchanging on the clients' behalf, the amount of premiums payable for any insurance contract, the amount of interest payable for any non-consumer credit, and the dollar value of any other transaction the financial service relates to.

Monitoring of the threshold

7. Providers would be required to confirm that they expect to meet the registration threshold on application for registration, and that they have met the threshold each year as part of their annual confirmation. The Registrar would be able to request further information and documentation in high-risk cases. Subject to consultation with the Office of the Privacy Commissioner, it is proposed that the Registrar can request client names,

⁴ A provider must confirm its registration details every year to remain registered on the FSPR.

copies of client identification documents, and transaction records to check the threshold has been met.

PROACTIVELY RELEASED