



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Regulations to support licensing of financial advice providers	Date to be published	3 December 2019

List of documents that have been proactively released

Date	Title	Author
October 2019	Cabinet paper: Regulations to support licensing of financial advice providers	Office of the Minister of Commerce and Consumer Affairs
October 2019	Cabinet minute: Regulations to support licensing of financial advice providers	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. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister of Commerce and Consumer Affairs
Chair, Cabinet Legislation Committee

Regulations to support licensing of financial advice providers

Proposal

1. This paper seeks authorisation to submit to the Executive Council the following regulations and Order in Council, which set the licensing fees, levies and some registration requirements that will apply in the new financial advice regime:
 - 1.1. Financial Markets Conduct (Fees) Amendment Regulations (No 2) 2019;
 - 1.2. Financial Markets Authority (Levies) Amendment Regulations 2019;
 - 1.3. Financial Service Providers (Registration) Amendment Regulations 2019;
 - 1.4. Financial Services Legislation Amendment Act 2019 Commencement Order 2019.

Policy

Financial advice providers required to be licensed by June 2020

2. The Financial Services Legislation Amendment Act 2019 (Amendment Act) introduces a new regime for the regulation of financial advice in order to improve access to quality financial advice. In the new regulatory regime, anyone who gives financial advice to retail clients (such as everyday consumers) will need to operate under a licence that is granted by the Financial Markets Authority (FMA).
3. To support the transition into the new regime, there will be two phases of licensing: an initial transitional licensing phase followed by a full licensing phase. Industry will be able to apply for transitional licences from November 2019 to June 2020 when the new regime begins and the transitional licences take effect.

The regulations give effect to Cabinet decisions on the new financial advice regime

4. The proposed regulations have been prepared to give effect to decisions by the Cabinet Economic Development Committee in June 2019 [DEV-19-MIN-0154 and DEV-19-MIN-0155 refers].

Financial Markets Conduct (Fees) Amendment Regulations (No 2) 2019

5. These amendment regulations implement decisions by Cabinet to recover the cost of licensing financial advice providers from applicants. Specifically, Cabinet agreed to set:

- 5.1. a flat transitional licence fee of \$465.75 (GST inclusive) plus an additional fee of \$44.56 for each authorised body¹; and
- 5.2. full licensing fees that are a combination of a flat application fee and hourly rate that will apply if an application takes longer than a specified number of hours to process, as set out in the following table. Full licensing fees are split into different categories to reflect the amount of work required when processing applications with different business structures.

Table 1: Licence fees (GST inclusive)

Type of applicant	Flat application fee	Threshold for charging hourly rate (\$178.25 per hour)
Transitional licence		
Transitional licence application fee	\$465.75	N/A
Additional fee for any authorised body	\$44.56	N/A
Full licence		
Category 1 – sole adviser businesses or those that only give advice on its own account	\$703.80	2 hours
Category 2 – businesses that engage multiple financial advisers but no nominated representatives	\$882.05	3 hours
Category 3 – businesses that engage one or more nominated representatives	\$1,060.30	4 hours
Additional fee for any authorised body	\$178.25	N/A

Financial Markets Authority (Levies) Amendment Regulations 2019

6. These amendment regulations implement decisions by Cabinet to update the FMA levies payable by the financial advice sector as set out in the following table, and to update the levies payable by authorised bodies. The majority of the FMA's funding is recovered through a levy charged to financial service providers. The new regime replaces the current categories of financial advisers, which means the current classes of levy relating to them need to be updated.
7. These levies are intended to collect the same amount of revenue from the financial advice sector as is collected under the current regulatory regime. A separate review of the FMA's funding is underway to ensure it can effectively regulate financial advice in the new regime and meet its other statutory functions. This will include a review of the appropriate level and structure of levies paid by the financial advice sector, along with those relating to other financial markets participants.

Table 2: Updated levies (GST inclusive)

Levy class	Levy
Financial adviser	\$304.75

¹ An authorised body is a business that can provide financial advice under another business' licence.

Financial advice provider	\$258.75
+ Amount per nominated representative engaged by provider	\$205.85
+ Amount if the provider gives advice on its own account	\$847.55
Authorised body	\$529.00

8. The proposed regulations also give effect to Cabinet's decision to provide relief to those who currently rely on a registration exemption for single-adviser businesses and are transitioning to the new regime. In these situations the business will not be required to pay the usual one-off levy of \$529.00 when they first register under the new regime.

Financial Service Providers (Registration) Amendment Regulations 2019

9. These amendment regulations partially implement decisions by Cabinet to enable the collection and display of more detailed information on the Financial Service Providers Register (FSPR), to help regulators and the public to better identify different types of financial service providers with different regulatory obligations. The proposed regulations implement the FSPR changes required to support transitional licensing. Approval for further regulations will be sought by early 2020.

Financial Services Legislation Amendment Act 2019 Commencement Order 2019

10. This proposed Order in Council brings into force on 29 June 2020 those provisions of the Amendment Act which are not yet in force (which include the provisions that introduce the new financial advice regulatory regime and changes to the FSPR).

Timing and 28-day rule

11. The following regulations will come into force on 25 November 2019 to support transitional licensing:
- 11.1. Regulations 4 and 5(2) of the Financial Markets Conduct (Fees) Amendment Regulations (No 2) 2019;
 - 11.2. Regulation 11 of the Financial Markets Authority (Levies) Amendment Regulations 2019;
 - 11.3. The Financial Service Providers (Registration) Amendment Regulations 2019.
12. The remainder of the proposed regulations will come into force on 29 June 2020 when the new financial advice regulatory regime begins.

Compliance

13. The proposed regulations comply with:
- 13.1. the principles of the Treaty of Waitangi;
 - 13.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;

- 13.3. the principles and guidelines set out in the Privacy Act 1993;
 - 13.4. relevant international standards and obligations;
 - 13.5. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
14. The FMA has been consulted on the proposed regulations as required under section 549 of the Financial Markets Conduct Act 2013.

Regulations Review Committee

15. There are no grounds for the Regulations Review Committee to draw the regulations or order to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

16. The regulations and Order have been certified by Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

17. A Regulatory Impact Assessment in relation to the financial advice fees and levies changes was prepared in accordance with the necessary requirements, and was submitted at the time that Cabinet approval was sought of the policy relating to the relevant regulations [DEV-19-MIN-0154 refers].
18. The Treasury Regulatory Quality Team has determined that a Regulatory Impact Assessment is not required in respect of the other proposed changes.

Publicity

19. The Ministry of Business, Innovation and Employment (MBIE) intends to notify key affected stakeholders of the approval of these regulations.

Proactive release

20. I intend to release the paper proactively in whole within 30 days. MBIE will publish a copy on its website.

Consultation

21. The FMA, the Treasury and the Department of the Prime Minister and Cabinet (Policy Advisory Group) have been consulted on this Cabinet paper.
22. Public feedback was sought on proposed licensing fees and changes to the FMA levy prior to Cabinet policy approval. Twenty submissions were received and there was broad support for the proposals.

Recommendations

I recommend that the Cabinet Legislation Committee:

1. note that on 12 June 2019 the Cabinet Economic Development Committee agreed to licensing fees and Financial Markets Authority levy changes that will apply in the new financial advice regulatory regime [DEV-19-MIN-0154 refers] and the other arrangements necessary to implement the new regime [DEV-19-MIN-0155 refers];
2. note that the following regulations give effect to the decision in paragraph 1 above:
 - 2.1. Financial Markets Conduct (Fees) Amendment Regulations (No 2) 2019
 - 2.2. Financial Markets Authority (Levies) Amendment Regulations 2019
 - 2.3. Financial Service Providers (Registration) Amendment Regulations 2019
 - 2.4. Financial Services Legislation Amendment Act 2019 Commencement Order 2019;
3. note that section 549 of the Financial Markets Conduct Act 2013 requires the Minister of Commerce and Consumer Affairs to consult the Financial Markets Authority before recommending regulations under that Act;
4. note the advice of the Minister of Commerce and Consumer Affairs that the requirement in paragraph 3 above has been met;
5. authorise the submission to the Executive Council of the following:
 - 5.1. Financial Markets Conduct (Fees) Amendment Regulations (No 2) 2019
 - 5.2. Financial Markets Authority (Levies) Amendment Regulations 2019
 - 5.3. Financial Service Providers (Registration) Amendment Regulations 2019
 - 5.4. Financial Services Legislation Amendment Act 2019 Commencement Order 2019;
6. note that Regulations 4 and 5(2) of the Financial Markets Conduct (Fees) Amendment Regulations (No 2) 2019, Regulation 11 of the Financial Markets Authority (Levies) Amendment Regulations 2019 and the Financial Service Providers (Registration) Amendment Regulations 2019 will come into force on 25 November 2019 to facilitate transitional licensing;
7. note that the remainder of the regulations will come into force on 29 June 2020 when the new financial advice regime begins.

Authorised for lodgement

Hon Kris Faafoi

Minister of Commerce and Consumer Affairs