MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HIKINA WHAKATUTUKI

Consultation Paper – New Financial Advice Regime

The draft Financial Services Legislation Amendment Bill and proposed transitional arrangements

newzealand.govt.nz

We seek your views

Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by 5pm on **31 March 2017**.

Your submission may respond to any or all of these issues. We also encourage your input on any other relevant issues. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please use the submission template provided at: ***http://www.mbie.govt.nz/faareview***. This will help us to collate submissions and ensure that your views are fully considered. Please also include your name and (if applicable) the name of your organisation in your submission. Please include your contact details in the cover letter or e-mail accompanying your submission.

You can make your submission:

- By sending your submission as a Microsoft Word document to ***faareview@mbie.govt.nz***.
- By mailing your submission to:

  Financial Markets Policy
  Building, Resources and Markets
  Ministry of Business, Innovation & Employment
  PO Box 1473
  Wellington 6140
  New Zealand

Please direct any questions that you have in relation to the submissions process to ***faareview@mbie.govt.nz***.

During the consultation period we will be available to meet with stakeholders. If you would like to discuss the contents of this document with us, please email: ***faareview@mbie.govt.nz***.

Use of information

The information provided in submissions will be used to inform the development of the Financial Services Legislation Amendment Bill, decisions in relation to the outstanding policy matters, and advice to Ministers.

We may contact submitters directly if we require clarification of any matters in submissions.

Except for material that may be defamatory, MBIE intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

Release of information

Submissions are also subject to the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

If your submission contains any confidential information, please indicate this on the front of the submission. Any confidential information should be clearly marked within the text. If you wish to provide a submission containing confidential information, please provide a separate version excluding the relevant information for publication on our website.

Private information

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

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Contents

List of Acronyms

AFA	Authorised Financial Adviser
DIMS	Discretionary investment management service
FA Act	Financial Advisers Act 2008
FMA	Financial Markets Authority
FMC Act	Financial Markets Conduct Act 2013
FSP Act	Financial Service Providers (Registration and Dispute Resolution) Act 2008
FSP Register	Financial Service Providers Register
MBIE	Ministry of Business, Innovation and Employment
QFE	Qualifying Financial Entity
RFA	Registered Financial Adviser

1 Introduction

Purpose and context

This document seeks feedback on the draft Financial Services Legislation Amendment Bill (**the Bill**) which will introduce an improved regime for the regulation of financial advice in New Zealand. It also seeks feedback on the proposed arrangements for transitioning from the current regime to the new regime.

The document is divided into three sections:

1. **Introduction**

   This section provides contextual information about the review of the Financial Advisers Act and Financial Service Providers Act, a recap of the new regime, and next steps.

2. **Commentary on the draft Financial Services Legislation Amendment Bill**

   This section seeks your feedback on the Bill and whether the drafting achieves the policy intent or could have any unintended consequences. In a few cases policy questions remain and we are seeking feedback on these. However, for the most part, the design of the new regime has been decided by Cabinet and the purpose of the consultation is to seek your feedback on the drafting.

3. **Proposed transitional arrangements**

   This section seeks your feedback on the proposed arrangements for industry participants to transition to the new regime.

About the review

The Ministry of Business, Innovation and Employment (**MBIE**) was required by statute to review the Financial Advisers Act 2008 (**FA Act**) and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSP Act**) within five years of their commencement.

Since late 2014 MBIE has reviewed the operation of the FA and FSP Acts. Throughout the review industry and consumers have engaged constructively. In May 2015, an Issues Paper was released which sought feedback on the key issues with the regime and opportunities for change. Feedback indicated there were a number of problems impeding the functioning of the Acts and this led to the release of an Options Paper in November 2015 which outlined opportunities for addressing those problems.

In June 2016 MBIE reported to the Minister of Commerce and Consumer Affairs with its recommendations for improvements to the regime. Then, in July 2016, the Government announced its decisions to make amendments to the current regime (see ***www.mbie.govt.nz/faareview***). These changes will effectively create a new financial advice regime which will enable improved access to quality advice without imposing undue compliance costs on industry. In addition, the Government has since made further detailed decisions which are summarised in Annex 1.

The current regime

In 2008 the FA Act and the FSP Acts were passed, bringing into effect the current regime and regulating financial advisers for the first time in New Zealand. The regime lifted professional standards by requiring financial advisers to be accountable for their advice and to meet minimum conduct obligations. It also improved access to redress by requiring those who provide advice to retail consumers to belong to a dispute resolution scheme.

Issues with the current regime

Despite these positive changes the review found there are a number of issues with the current regime which are hindering investor confidence, participation in financial markets and informed decision-making. These issues are summarised below:

Some types of financial advice aren't being provided – very few consumers are getting advice that takes into account their particular situation or goals, and there are barriers to the provision of robo-advice (automated advice provided online).

The quality of financial advice may be suboptimal – commissions and remuneration structures are incentivising advisers to push particular products which may not be appropriate for the consumer, different types of advisers are held to different standards of competence despite providing some of the same types of advice, and some advisers and firms are held to account and subject to active regulatory oversight while others are not.

Compliance costs are unbalanced and there are inefficiencies – some businesses are licensed at a firm level, while some individual advisers are required to be individually authorised, which means some industry participants are subject to significantly greater compliance costs.

Unnecessary complexity is preventing adequate consumer confidence and understanding – terminology and definitions are confusing and disclosure documents are unwieldy and do not contain the information consumers need to make informed decisions.

Objectives

The long term outcome we want the financial advice regime to achieve is more informed and confident participation of consumers in financial markets.

To achieve this we set three primary objectives to guide the development of policy options for a new regime:

1. Consumers can access the advice and assistance they need.
2. Advice improves consumers' financials outcomes and makes them better off.
3. Consumers have access to effective redress.

A new financial advice regime

In July and November 2016 the Government decided on a package of changes which will improve access to quality financial advice for all New Zealanders. As announced in July 2016, the changes represent a shift away from the current regime which sought to professionalise a subset of advisers, towards a regime which establishes a level playing field of regulation for all who provide advice.

Further details on these changes are available on MBIE's website at ***www.mbie.govt.nz/faareview***. In addition Annex 1 provides further information on the more recent decisions given that these decisions have not been previously announced.

They key elements of the new regime are:

Removal of unnecessary complexity and regulatory boundaries

The requirement for advice tailored for a consumer to be provided by a natural person will be removed, along with the definitions of class and personalised advice and the categorisation of products. These changes will enable the provision of robo-advice and make it easier to give tailored advice.

An even playing field with more proportionate regulatory requirements

All financial advisers and financial advice providers (including providers giving advice through robo-advice platforms) will be required to place the interests of the consumer first and to only provide advice where competent to do so. All financial advice will also be subject to a Code of Conduct which will set specific standards of knowledge, competence and skill. We expect the standards in the Code to vary for different types of advice. For example, competency standards for general insurance advice may differ to the standards for investment advice.

Lower cost and fit for purpose licensing

Anyone giving financial advice to retail clients will need to be operating under a licence (including any person giving financial advice through a robo-advice platform). To ensure this does not impose undue costs on industry or Government, licensing will be required at the firm level. This approach replicates the efficiencies of the current QFE model and applies it to all. There will be flexibility, depending on the size and nature of a firm, in how prospective licensees will be expected to meet those requirements as a 'one size fits all' approach to licensing and reporting will not be appropriate.

New adviser designations

The three current types of advisers – Authorised Financial Advisers, Registered Financial Advisers, and Qualifying Financial Entity advisers, will be replaced. To improve consumer understanding, any individual giving financial advice will now be known as either a 'financial adviser' or a 'financial advice representative '.[1] Financial advisers will be individually accountable for complying with the legislative and Code obligations whereas licensed firms will be accountable for their representatives and have some accountability for their financial advisers.

Financial Markets Conduct Act approach to compliance and enforcement

Licensed firms will be subject to the Financial Market Conduct Act's compliance and enforcement tools such as civil pecuniary penalties, licensing actions and criminal offences for various breaches. This will ensure there is consistency in enforcement approach for all licensed financial services. In addition, the Financial Advisers Disciplinary Committee will be retained for breaches by individual financial advisers (and we are consulting on whether financial advice providers should also be subject to the Financial Advisers Disciplinary Committee).

Improved consumer understanding through disclosure and client-care

More meaningful disclosure requirements for all types of advice will be introduced to improve consumer understanding and transparency. Detailed disclosure requirements are yet to be determined as they will sit in regulations (rather than in the primary legislation). However, disclosure

[1] The term 'financial advice representative' replaces the previously announced term 'agent' in response to feedback that 'agent' has a different use in the financial services industry.

will be re-designed to ensure consumers receive core information such as remuneration (including commissions) at the time most relevant to their decision making.

In addition a client-care obligation will be introduced, requiring advisers and representatives to ensure that consumers are aware of the limitations of their advice, such as how many products and how many providers they have considered.

Requiring a stronger connection to New Zealand in order to be registered on the Financial Service Providers Register

To maintain the integrity of the regulation of financial markets in New Zealand, entities will only be able to register if they are in the business of providing financial services and promote those services to persons in New Zealand. Other mechanisms to reduce the risk of misuse of the register will also be implemented, such as limits on statements providers can make about what being registered in New Zealand means, and providing a power for the Registrar to require information from persons other than the provider, such as a director of the provider.

Next steps and transitional arrangements

The legislative process

The legislative elements of the new regime have been translated into a draft Financial Services Legislation Amendment Bill (**the Bill**) which is out for public consultation and submissions from Friday 17 February until Friday 31 March. The purpose of this consultation is to identify and resolve any practical problems with the Bill before it is introduced to Parliament (see Part 2 of this document and the draft Bill to read and provide feedback on the Bill).

After the consultation period closes on Friday 31 March MBIE will analyse the feedback and submissions received. Depending on the nature of that feedback, anything from minor to significant changes to the way the Bill is drafted may be required.

Once the drafting of the Bill is complete it will be introduced to Parliament and the normal Parliamentary process for the passage of legislation will begin. This will include a select committee process which will provide a further opportunity for public submissions on the Bill.

Disclosure regulations

Throughout 2017 MBIE will be engaging with consumers and industry to develop the draft regulations for disclosure requirements. This will include what should be disclosed, to whom, how and when. More detail about how to engage in this process will be released in due course.

Transitional arrangements

Alongside consultation on the Bill, MBIE is seeking feedback on the proposed arrangements for transitioning to the new regime to ensure they are fit-for-purpose (see Part 3 of this document to read the proposed transitional arrangements and provide feedback). The proposed transitional arrangements aim to bring each element of the new regime into effect as soon as practicable while ensuring existing industry participants have sufficient time to transition to the new regime smoothly.

Appointment of a Code Working Group

In the first-half of 2017 a Code Working Group will be appointed by the Minister of Commerce and Consumer Affairs to produce the Code of Conduct. More detail about the applications and appointments process will be released in due course.

2 Commentary on the draft Financial Services Legislation Amendment Bill

Providing feedback on the Bill

This section seeks your feedback on the Bill and whether the drafting achieves the policy intent or could have any unintended consequences. It outlines the core provisions in the Bill, explains key legislative terms and concepts, and emphasises parts of the Bill which differ from the current legislation.

Throughout this section are consultation questions for you to respond to. In a few cases policy questions remain and we are seeking feedback on these. However, for the most part, the design of the new regime has been decided by Cabinet and the purpose of the consultation is to seek your feedback on the drafting.

About the Bill

The Financial Services Legislation Amendment Bill will introduce a comprehensive package of changes that will create an improved regime for financial advice. It will be an omnibus bill that repeals the Financial Advisers Act 2008 (FA Act) and amends both the Financial Markets Conduct Act 2013 (FMC Act) and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSPR Act).

The majority of the regulation of financial advice will sit within the FMC Act. This is due in part to the move to firm-level licensing for financial advice. Firm-level licensing for certain financial market services is already a feature of the FMC Act, so regulating all market services under the FMC Act avoids duplication. Recognising that there are some unique features to the regulation of financial advice, the FMC Act will include some new sub-parts which relate solely to financial advice.

Structure of the Bill

This commentary follows the structure of the Bill. To aid navigability of the Bill and commentary, the table below summarises the contents of each part of the Bill.

Part of the Bill	What does it do?
Part 1 of the Bill	Part 1 of the Bill amends the preliminary sections of the FMC Act. This includes the interpretation section of the FMC Act, to which Part 1 of the Bill adds some key definitions relating to the regulation of financial advice.
Part 2 of the Bill	Part 2 of the Bill amends subparts 1 to 5 of Part 6 of the FMC Act. This Part of the Bill creates the requirement for a provider of a financial advice service to be licensed.

Part 3 of the Bill	Part 3 of the Bill creates a new subpart 5A of Part 6 of the FMC Act. This Part contains the majority of the financial advice specific regulation. (**Readers may therefore wish to start with Part 3 when beginning to review the Bill and commentary**). Part 3 of the Bill includes: • A new financial advice specific purpose statement • The definition of financial advice, regulated financial advice, and providing a financial advice service • Legislative duties that apply to financial advice, including disclosure and conduct obligations
Part 4 of the Bill	Part 4 of the Bill creates a new subpart 5B of Part 6 of the FMC Act. This Part sets out broker-specific regulation (largely as per the current Part 3A of the FA Act).
Part 5 of the Bill	Part 5 of the Bill makes changes to other sections of the FMC Act (i.e. sections not covered elsewhere). Key elements in Part 5 of the Bill include: • Civil liability arrangements for financial advice providers • Powers to designate a service as a financial advice service • Definition of retail service for financial advice.
Part 6 of the Bill	Part 6 of the Bill amends the FSP Act. This Part: • Amends the territorial application of the FSP Act to address concerns about misuse of the FSP Register. • Sets out registration processes for financial advisers and financial advice providers.
Part 7 of the Bill	Part 7 of the Bill repeals and amends other Acts. This includes repealing the FA Act and its associated Regulations.
Schedule 1 of the Bill	Schedule 1 of the Bill inserts a new Part into Schedule 4 of the FMC Act which sets the transitional provisions for DIMS providers and the preparation of the new code of conduct.
Schedule 2 of the Bill	Schedule 2 of the Bill creates a new Schedule to the FMC Act which contains detail about the regulation of financial advice, including: • Definitions of retail and wholesale clients • Exclusions (previously called exemptions) from regulated financial advice • Details relating to the code of professional conduct and code committee • Details relating to complaints and disciplinary proceedings

Part 1 of the Bill amends definitions in the FMC Act

Part 1 of the Bill amends the preliminary sections of the FMC Act to include the regulation of financial advice and broking services. This includes amendments and additions to the interpretation section and the provisions dealing with offers in the course of unsolicited meetings.

Interpretation

Part 1 of the Bill updates interpretation section in the FMC Act, introducing new definitions and repealing definitions that will not be used in the new regime (**refer to clause 5 in Part 1 of the Bill**).

Please refer to the Bill for the full list of new definitions. We wanted to draw your attention to four key new terms introduced into the interpretation section (see below). Some other key terms (including 'financial advice' and 'financial advice service') are discussed in later sections of this document, such as the commentary on Parts 3 and 5 and Schedule 2 of the Bill.

Key term: **financial advice product**

The term 'financial advice product' replaces what under the FA Act are described as 'category 1' and 'category 2' products. (As announced in July 2016, that distinction will no longer exist.) The definition incorporates the existing FMC Act definition of 'financial product', but also includes a discretionary investment management service (DIMS) facility, a contract of insurance, a consumer credit contract, any other product declared by the regulations to be a financial advice product, and a renewal or variation of the terms or conditions of an existing financial advice product.

Key terms: **financial advice provider**

A financial advice provider means a person (including a legal person such as a firm) that provides a financial advice service (this means they give regulated financial advice in the ordinary course of their business or they engage a person to give regulated financial advice on their behalf).

A financial advice provider will be the entity (or sole trader) licensed to provide a financial advice service. A financial advice provider may give advice itself, or may engage financial advisers and financial advice representatives to give advice on its behalf.

This is as per the Government decision to remove the three existing types of financial adviser – Authorised Financial Advisers (AFA), Registered Financial Advisers (RFA), and Qualifying Financial Entity (QFE) advisers. Instead regulated financial advice may only be given by:

- a financial advice provider, or
- a financial adviser working on behalf of a provider, or
- a financial advice representative working on behalf of a provider.

Key term: **financial adviser**

A financial adviser means an individual who is registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 in relation to a financial advice service. A financial adviser can only give advice on behalf of a financial advice provider (or, in the case of sole-trader, on their own account).

As discussed on page 21, when a financial adviser gives advice, both the adviser and the provider (on whose behalf the advice is given) will be responsible for complying with the conduct and disclosure duties.

Key term: **financial advice representative**

A financial advice representative means an individual who is engaged by a financial advice provider to give financial advice; and is not a financial adviser.

We note that the term 'financial advice representative' replaces the previously announced term 'agent'. This change responds to concerns about the term agent which is currently used differently in the financial advice industry.

As discussed on page 21 of this document, financial advice representatives will not be individually accountable for compliance with conduct and disclosure duties. Rather:

- the financial advice provider is responsible for these duties when advice is given by a representative on the provider's behalf; and
- the financial advice provider must have in place clear and effective processes, controls, and limitations relating to the financial advice that may be given by the representative. (Refer section **431O in Part 3 of the Bill** and discussed on page 20 of this document).

Offers in course of unsolicited meetings

In general, the FMC Act does not allow financial products to be offered in the course of, or because of, an unsolicited meeting. This is set out in Section 34 of the FMC Act. However, the Act includes a number of exceptions to this rule, including an exception if the offer is made by an AFA or QFE Adviser.

The new regime retains this exception (**refer to clause 10 in Part 1 of the Bill**) and updates the wording to replace FA Act terms with the terms that will be used under the new regime.

It is, however, worth considering whether this exception should be retained, and if it is, whether there should be some parameters set around it to safeguard against consumers being sold financial products in a way that reduces their ability to make an informed decision. For example, the exception could be limited to only unsolicited meetings with existing clients. We would welcome your comments on this.

1	If an offer is through a financial advice provider, should it be allowed to be made in the course of, or because of, an unsolicited meeting with a potential client? Why or why not?
2	If the exception allowing financial advice providers to use unsolicited meetings to make offers is retained, should there be further restrictions placed upon it? If so, what should they be?
3	Do you have any other feedback on the drafting of Part 1 of the Bill?

Part 2 of the Bill sets out licensing requirements

In July 2016 the Government announced that anyone (or any robo-advice platform) giving financial advice to retail clients will need to be operating under a licence. And, to ensure this does not impose undue costs on industry or Government, licensing will be enabled at the firm level.

As the FMC Act was designed to be flexible enough to license all financial market services, financial advice services will be licensed through Part 6 of the FMC Act. Part 2 of the Bill introduces licensing requirements for financial advice by making various amendments to subparts 1 to 5 of Part 6 of the FMC Act: 'Licensing and other regulation of market services'.

Key concept: **a financial advice provider must be licensed**

Part 2 of the Bill specifies that anyone acting as a provider of a financial advice service must be licensed (**refer to clause 14 in Part 2 of the Bill**). As set out on page 18 of this document, a person provides a financial advice service if, in the ordinary course of their business, they give regulated financial advice or engage someone else to give regulated financial advice on their behalf.

Part 2 of the Bill extends the principles guiding the exercise of FMA powers when issuing licences and imposing conditions on licences. In particular, it requires the FMA to be guided by the additional purpose of "improving the availability of financial advice for persons seeking that advice; and improving the quality of financial advice and financial advice services", as set out in Part 3 of the Bill.

Key concept: **a service that is not a retail service does not need to be licensed**

The Bill also clarifies that a provider of a financial advice service will be exempt from the requirement to be licensed if the service is not a retail service. (**Refer to clause 15 in Part 2 of the Bill**).

Note however that if a service is provided to *any* retail clients, then that service is a retail service (even if all of the provider's other clients to whom that service is provided are wholesale clients). The provider would need to be licensed and the licensee obligations would apply in respect of the service as a whole (whether the service is provided to a wholesale client or a retail client). See page 26 of this document for a discussion of what is a retail service.

The Bill makes it clear that the FMA may impose conditions on a licence that identify that a service is a retail service. **(Refer to clause 20 in Part 2 of the Bill).** For example, if a financial advice provider is providing advice to wholesale clients, but that service is not clearly demarcated from its retail service, the licence conditions could identify the service as a retail service.

Key concept: **limits on the advice that may be provided by a financial advice representative**

As discussed on page 20 of this document, a financial advice provider must have in place clear and effective processes, controls, and limitations relating to the financial advice that may be given by the representative.

The Bill also makes it clear that the FMA may impose conditions on a licence that state which types of financial advice may be given by a financial advice representative. **(Refer to clause 20 in Part 2 of the Bill).** For example, the FMA may wish to limit the advice that may be given by a financial advice representative to particular types of advice where the financial advice provider has demonstrated that they have sufficient processes, controls, and limitations around the advice.

Key concept: **a single licence may cover multiple entities to provide a financial advice service**

Part 2 of the Bill amends section 400 of the FMC Act to allow a single licence to cover multiple named entities to provide a financial advice service, provided the FMA is satisfied that certain criteria are met (**refer clause 19 in Part 2 of the Bill**). These named entities are known as 'authorised bodies'.

This provision has a similar effect to the current provisions in the FA Act that allow a QFE to have 'associated entities'. However, authorised bodies are subject to stricter criteria than the associated entity concept under the FA Act. For example, the FMA must be satisfied that arrangements are in place to ensure that the licensee will maintain appropriate control or supervision by the associated entity.

We note that the new provision is slightly different to the general 'authorised bodies' provisions in section 400 of the FMC Act. In particular, the added subsection for financial advice services replicates the broader FMC Act approach, but drops the reference to 'related bodies corporate'. This is because we envision any firm, not just those that fit the definition of 'related bodies corporate', may become an authorised body of a firm licensed to provide financial advice services.

4	Do you have any feedback on the drafting of Part 2 of the Bill?

Part 3 of the Bill sets out additional regulation of financial advice

Part 3 of the Bill creates a new subpart 5A of Part 6 of the FMC Act. This subpart contains the majority of the provisions that will regulate financial advice. In particular, it:

- Sets an additional purpose for the regulation of financial advice
- Defines financial advice, regulated financial advice, and a financial advice service
- Sets out prohibitions around who may hold themselves out as able to give certain financial advice
- Sets the conduct and disclosure obligations for financial advice.

New purpose statement

Part 3 of the Bill creates an additional purpose for the regulation of financial advice. **Refer new section 431A in Part 3 of the Bill**.

This purpose is additional to that in sections 3 and 4 of the FMC Act. The new purpose is intended to reflect the Government's objectives to ensure consumers can access the financial advice they need and improve the quality of financial advice.

Along with the purposes in sections 3 and 4 of the FMC Act this new purpose statement will guide the exercise of relevant duties and powers. For example, it will help to guide the code committee in preparing a code of conduct for financial advice.

Meaning of financial advice and regulated financial advice

Part 3 of the Bill defines financial advice and regulated financial advice (**refer new section 431B in Part 3 of the Bill**). These definitions are crucial because they effectively set the activities that are regulated under the new regime.

Key term: when a person gives **financial advice**

In the Bill a person gives financial advice if they make a recommendation or give an opinion about acquiring or disposing of a financial advice product or if they design an investment plan for a person.

A key change (vis a vis the current FA Act) is that discretionary investment management services (DIMS) will no longer be regulated as financial advice. Instead, anyone providing DIMS will need to operate under an FMC Act DIMS licence. This avoids regulating DIMS in two separate ways under the same Act and reflects the similar requirements that already exist between the FA Act and FMC Act DIMS regimes. Refer to page 32 of this document for a discussion of what this will mean for AFAs who are currently authorised to provide DIMS under the FA Act.

We would also like to draw your attention to some features of the definition of when a person gives financial advice:

- Firstly, the definition refers to a 'financial advice product'. This is a new defined term (**refer to Part 1 of the Bill**) which encapsulates the products that are currently captured by the FA Act definitions of Category 1 and Category 2 products.

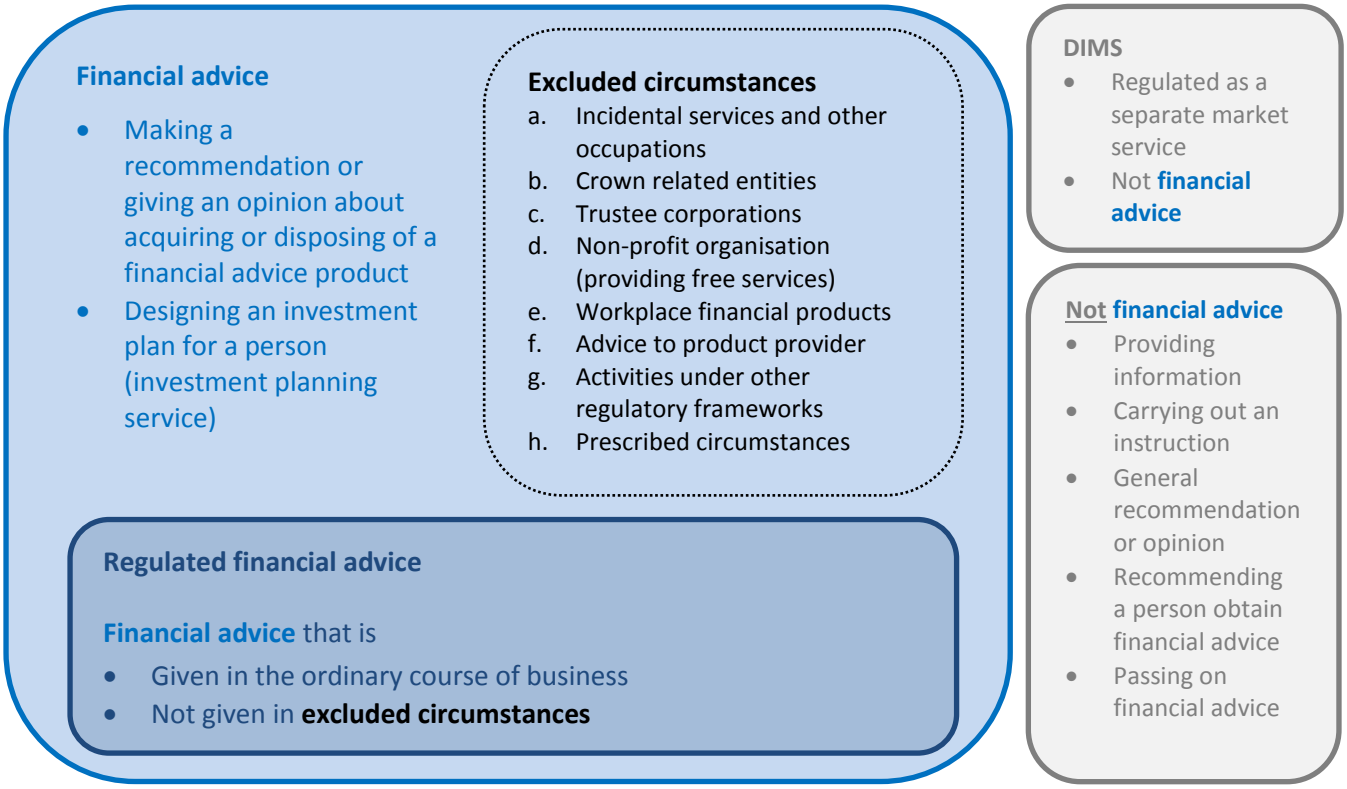
- Secondly, as per the current FA Act, the definition of financial advice links to a list of activities that are not financial advice (i.e. a person does not give financial advice merely by doing the listed activities). To see the list, **refer to clause 6 of the new Schedule 5 in Schedule 2 of the Bill.** Refer to page 35 of this document for an explanation of minor changes that have been made to this list of activities.

Key term: when a person gives **regulated financial advice**

The Bill creates a new concept of 'regulated financial advice' (**refer new section 431B(3) in Part 3 of the Bill**). Advice is regulated financial advice if it is given in the ordinary course of business and is not listed as one of the exclusions from regulated financial advice. The exclusions are then listed in **clauses 7–14 of the new schedule 5 (in schedule 2 of the Bill).**

This concept effectively replicates the current exemptions in sections 13 and 14 of the FA Act. That is, excluded activities are not regulated financial advice. Refer to page 35 of this document for an explanation of minor changes that have been made to these exclusions.

Figure 1: Relationship between financial advice and regulated financial advice



Meaning of financial advice service

Part 3 of the Bill sets out when a person provides a financial advice service (**refer new section 431C in Part 3 of the Bill**). Providing a financial advice service is the activity that will require a licence. Refer to page 14 of this document for an explanation of the new licensing provisions.

Key term: When a person provides a **financial advice service**

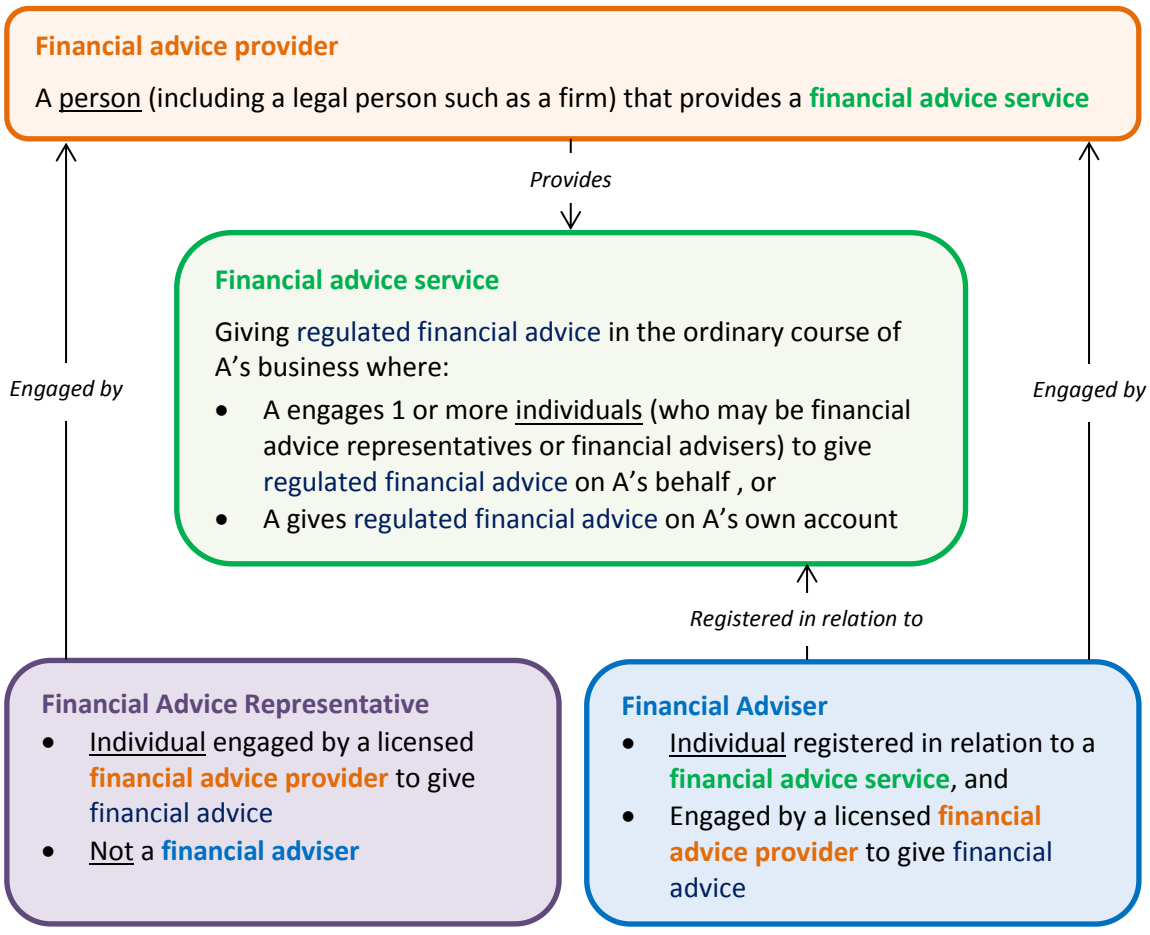
In essence, a person (including a legal person such as a firm) provides a 'financial advice service' if, in the ordinary course of their business, they give regulated financial advice or they engage a person to give regulated financial advice on their behalf.

As explained on page 12 of this commentary, a person that provides a financial advice service is a financial advice provider. A financial advice provider may engage both financial advice representatives and financial advisers to give regulated financial advice on its behalf. It may also give advice directly, for example, as robo-advice.

The new section 431C includes an example of ABC Limited to further explain and illustrate these concepts, including that:

- A financial advice provider can be an entity (in this case, ABC Limited).
- ABC Limited is itself giving advice when advice is given through its Internet site (although an Internet site is used in the example, this could be any form of online channel or electronic device)
- When Susan gives financial advice on behalf of ABC Limited, Susan is *giving the advice*. However, since the advice is given on behalf of ABC Limited, ABC Limited is *providing the financial advice service*.

Figure 2: Relationship between a financial advice provider, adviser, and representative



Key concept: **technology neutral legislation**

The Government decided to remove barriers to the provision of robo-advice and other financial technology solutions. The Bill gives effect to this as it allows a person (who does not need to be a natural person) to give financial advice (currently only a natural person can give personalised financial advice). When a consumer uses a robo-advice platform, the advice will be treated as having been given by the financial advice provider.

We note the Bill does not need to define robo-advice as this is simply another channel through which advice may be provided. This is intended to enable the legislation to capture other financial technology solutions and future innovations.

Holding-out prohibitions

Part 3 of the Bill also contains 'holding-out' provisions (**refer section 431D in Part 3 of the Bill**) which prevent a person holding out:

- that they are a financial advice provider, financial adviser, or financial advice representative if that is not the case, or
- that they are able to do certain activities if that is not the case.

Conduct, competency, and disclosure duties of financial advice providers and financial advisers who give advice

As announced in July, the Government decided to create a much more level playing field of conduct, competency, and disclosure obligations, which anyone providing financial advice will need to meet. These duties are set out in Part 3 of the Bill.

Key concepts: **duties of persons giving regulated financial advice**

The Bill imposes duties on financial advice providers, financial advisers, and financial advice representatives who give regulated financial advice (**refer section 431F to 431M in Part 3 of the Bill**). The main duties that apply to any person giving regulated financial advice are as follows:

- They must not give advice as part of a retail service unless they meet the relevant competency standards in the code of conduct. As discussed further on page 37 of this document, the code of conduct will set minimum standards of competence, knowledge and skill for different types of financial advice.
- They must not give advice as part of a retail service unless they agree the nature and scope of the advice with the client and take reasonable steps to ensure that the client understands any limitations on the nature and scope of the advice. This provision clarifies that advice can be limited (e.g. it may only cover a client's life-insurance needs, or it may only involve consideration of three provider's products) but requires the adviser to take steps to ensure the client agrees to the service they are receiving and understands any associated limitations.
- They must put the client's interests first in giving the advice or doing anything in relation to the giving of advice. This means that if there is a conflict of interest between the financial adviser or financial advice provider and the client, the person must give priority to the client's interests. The client's interest must be the primary motivation for the advice. A useful question for a person giving advice is "would the advice be the same in the absence of the conflict?" The text "or doing anything in relation to the giving of advice" aims to make it clear that the duty does not only apply in the moment of giving advice. For example, in

determining whether to give advice or to provide an information-only service, the person must put the client's interests first.

- They must exercise the care, diligence, and skill that a prudent person engaged in the business of giving regulated financial advice would exercise in the same circumstances. This duty is carried-over from the current FA Act.
- They must, if providing a retail service, comply with the standards of ethical behaviour, conduct, and client care required by the code of conduct.
- They must provide the prescribed information to clients at the prescribed time and in the prescribed manner. The detail on what must be disclosed and when will be set in regulations. The information that is disclosed must not include any false or misleading statements or omissions.

5	Do you agree that the duty to put the client's interest first should apply both in giving the advice and doing anything in relation to the giving of advice? Does this make it clear that the duty does not only apply in the moment of giving advice?

Additional duties on the provider when advice is given on their behalf

As announced in July 2016, the Government decided that financial advice providers (then referred to as 'financial advice firms') would have duties that relate to the advice that is *given by someone else on their behalf*. These duties are additional to the duties that apply to financial advice providers when giving advice directly (**refer to sections 431N to 431O in Part 3 of the Bill**).

Key concept: **a provider must ensure that financial advisers and representatives comply with the advice duties**

If regulated financial advice is given by a financial adviser or financial advice representative on a provider's behalf, the provider has a duty to ensure that the adviser or representative complies with the duties that apply when giving advice (i.e. the duties in 431F to 431M). (**Refer section 431N in Part 3 of the Bill**).

Key concept: **clear and effective processes, controls, and limitations for representatives**

The Bill places a further duty on financial advice providers regarding controls on advice that is given by a representative:

- to have in place clear and effective processes, controls, and limitations relating to the financial advice that may be given by a representative (**refer section 431O in Part 3 of the Bill**).

This duty requires the provider to be clearly controlling any advice given by representatives. This is consistent with the concept that when a representative gives advice it is treated as the financial advice provider giving advice, similar to robo-advice. These controls are why representatives are not liable for complying with the advice duties – i.e. the controls in effect mean that the provider is controlling the advice outcomes for consumers and it is therefore appropriate that the provider be liable for those outcomes.

Key concept: **a provider must not provide inappropriate incentives to representatives**

The Bill places a further duty on providers regarding the incentives they can pay to a representative:

- The provider must not give a representative any kind of *inappropriate payment or other incentive*. An incentive is defined as inappropriate if it is intended to encourage, or likely to have the effect of encouraging, the representative to engage in conduct that contravenes any of the duties under sections 431F to 431M. (**Refer section 431O in Part 3 of the Bill**).

This additional duty responds to concerns that the conduct obligations do not sit directly on representatives. Representatives may therefore lack sufficient incentives to comply with the conduct obligations, particularly when faced with competing sales incentives offered by their firm. The duty requires providers to recognise the impact of the incentives they offer to their representatives (such as sales targets and performance bonuses) and ensure that any such incentives will not encourage the representative to engage in conduct that, for example, does not place the consumer's interests ahead of their own.

6	Do you have any comments on the proposed wording of the duty that a provider must not give a representative any kind of inappropriate payment or incentive? What impacts (both positive and negative) could this duty have?

Liability for duties

Section 431E in Part 3 of the Bill sets out who is liable for breaches of the above duties.

Key concept: **liability for duties**

As set out in section 431E:

- If a financial advice provider contravenes any of its duties (i.e. in section 431F to 431O) it may be **civilly liable** but will not be subject to disciplinary action.
- If a financial adviser contravenes a duty in section 431F to 431M, the adviser is not civilly liable but may be subject to **disciplinary action** (as set out in Part 5 in Schedule 2 of the Bill). Additionally, if the adviser was acting on behalf of a financial advice provider, the provider may be civilly liable.
- If a financial advice representative contravenes a duty in section 431F to 431M, the representative is neither civilly liable nor subject to disciplinary action. However, the financial advice provider on whose behalf the representative was acting may be civilly liable.

Reporting of breaches to the FMA

New **section 431P in Part 3 of the Bill** provides protection for financial advisers or representatives who report suspected breaches of financial advice obligations by others to the FMA. It provides that proceedings may not be brought against the person by reason of them reporting the breach and the person's employment may not be terminated.

The duties that apply when the service is not a retail service

As explained on page 26 of this document, the Bill sets out when a financial advice service is a *retail service*. In effect, if a service is provided to *any* retail clients, then that service is a retail service (even if all of the provider's other clients to whom that service is provided are wholesale clients). If a provider only provides a service to wholesale clients, then that service is not a retail service.

While all of the advice duties apply to a retail service, some of them do not apply when the service is not a retail service, i.e. when the service is provided only to wholesale clients (**refer to wording "this section applies only to a retail service" in sections 431F, 431G, and 431J**). For example, the duties to

meet the relevant competency standards in the code of conduct and to comply with the code of conduct do not apply when the service is not a retail service.

Consistent with the current treatment of all advice in the FA Act, anyone giving regulated financial advice (regardless of whether their clients are wholesale or retail clients) will be required to exercise care, diligence and skill. In addition, the Government has decided that the following will apply to all advice, even if the service is not a retail service:

- The duty to give priority to the interests of the client. The Government has asked MBIE to consult on the impact of applying this duty to non-retail services, but as an initial position considers this will help to create a more level playing field whereby all advice is held to the same clear conduct standard.
- The duty to disclose prescribed information at prescribed times. The content, format and timing of disclosure will be detailed in regulations. This will allow flexibility to tailor different disclosure requirements for wholesale versus retail services. For example, the disclosure obligation for those who only advise wholesale clients could be to disclose to those clients that the service is not a retail service and the implications of this for the client.

7	Do you support extending the client-first duty to providers who do not provide a retail service (i.e. those who only advise wholesale clients)? Why or why not?
8	Do you have any other feedback on the drafting in Part 3 of the Bill?

Part 4 of the Bill sets out brokers' disclosure and conduct obligations

Cabinet has noted that the existing legislative settings relating to brokers remain appropriate and should be retained. The new subpart 5B (**refer to Part 4 of the Bill**) therefore carries over most of the broker provisions (so far as possible) as they appear in the FA Act. However, this review may also provide an opportunity to simplify or clarify the drafting; we would welcome your feedback on how these provisions could be simplified or clarified.

We would also like to draw your attention to the following small changes and some clauses that are no longer required (since we have adopted the general FMCA approach to liability, some FA Act broker provisions are no longer required):

- section 77V of the FA Act (FMA direction power) is covered by section 468 of the FMC Act,
- section 77G of the FA Act (misleading and deceptive disclosure) is now covered by Part 2 of the FMC Act.
- FMA stop orders in FMC Act section 462(1) have been amended to deal with "confusing" broker disclosures (previously s77G of the FA Act).

Key concept: **removal of the offering concept from the definition of a broker**

The FA Act currently defines a broker as an individual or entity who carries on a business of providing *or offering to provide* a broking service to a client (refer to section 77A(1) of the FA Act).

The Bill (**refer to new section 431Q in Part 4 of the Bill**) removes the 'offering' concept from the meaning of broker (i.e. removes the italicised text above). This is both because it does not appear to add anything to the definition and because its removal will align this provision with the equivalent for financial advice. We are seeking feedback on whether there are any problems with its removal.

9	What would be the implications of removing the 'offering' concept from the definition of a broker?
10	Do you have any other feedback on the drafting of Part 4 of the Bill, for example any suggestions on how the drafting of broker provisions could be simplified or clarified?

Part 5 of the Bill makes miscellaneous amendments to the FMC Act

Part 5 of the Bill makes amendments to Part 6 (subparts 6 to 8), Parts 7 to 9, and Schedules 1 to 4 of the FMC Act.

Key changes made by Part 5 of the Bill are as follows:

- It creates civil liability for breaches of certain provisions by financial advice providers
- It sets out specific FMA enforcement powers, such as the use of stop-orders
- It sets out the regulation-making powers
- It creates a new 'designation power' for the FMA, which allows the FMA to declare that a service is a financial advice service
- It defines a retail service for financial advice.

Civil liability arrangements

Key concept: **Part 6 services provisions**

Part 6 services provisions are listed in section 449 of the FMC Act. A contravention of any of these provisions may give rise to civil liability. There are two levels of civil liability:

a) Some contraventions may give rise to a pecuniary penalty of up to $1 million in the case of an individual or $5 million in any other case.
b) Some contraventions may give rise to a pecuniary penalty not exceeding $200,000 in the case of an individual or $600,000 in any other case.

In addition to civil pecuniary penalties, a person who breaches a civil liability provision can be directed to pay compensation for loss or damage.

The existing regime for financial advice is largely based on criminal offences with little civil liability. The Government decided that financial advice providers should face civil liability for breaches of obligations, which will bring financial advice regulation in line with other licensing regimes. Therefore, Part 5 of the Bill inserts financial advice duties into the lists of Part 6 services provisions, as follows (**refer clause 28 in Part 5 of the Bill**):

- A breach of the duties relating to false or misleading statements and omissions may give rise to the higher level of civil liability.
- A breach of the following may give rise to the lower level of civil liability:
  - A breach of the duty relating to prohibitions on holding out in relation to giving financial advice
  - A breach of the duties which set out the duties on those who give advice (e.g. the duty to comply with the code of conduct)
  - A breach of the duties on a financial advice provider where financial advice is given on the provider's behalf
  - A breach of the brokers' disclosure, conduct, and money-handling duties.

We would like to draw your attention to the fact that, as currently drafted, only financial advice providers, and not individual financial advisers, have direct civil liability for breaches of duties. An individual could be liable as an accessory for a breach, but the threshold for this is quite high and requires intent from the individual adviser. We would like feedback on whether civil liability should be extended to individuals. We would also like feedback on whether a financial advice provider should have a defence against its own liability if it can show it took all reasonable steps to ensure its advisers complied with their legislative obligations.

11	Should financial advisers have direct civil liability for breaches of their obligations, if the financial advice provider has met its obligations to support its advisers? Why or why not?
12	Should the regime allow financial advice providers to run a defence that they met their obligations to have in place processes, and provide resources to enable their advisers to comply with their duties?

FMA's enforcement powers

Under section 462 of the FMC Act, the FMA may make stop orders prohibiting the supply of specified financial services in certain circumstances. Part 5 of the Bill includes false or misleading disclosure in relation to financial advice in the list of when the FMA may make stop orders. (**Refer clause 30 in Part 5 of the Bill**).

Under sections 468 and 469 of the FMC Act, the FMA may make particular types of direction orders in certain circumstances. Part 5 of the Bill provides for the FMA to issue an order directing the Registrar of Financial Service Providers to deregister, suspend, or prevent the re-registration of, a financial adviser. (**Refer clause 31 in Part 5 of the Bill**)

Regulation making powers

Part 5 of the Bill sets out the regulation-making powers (**refer clauses 43 and 44 in Part 5 of the Bill**).

These powers determine the regulations that can be made by the Government in due course. As a general rule, matters are addressed in regulations rather than in the primary legislation when they deal with technical matters or where there is a need for flexibility. Please refer to the Bill for the complete list of regulation-making powers but it includes, for example, prescribing the disclosure requirements that apply to those who give advice.

FMA's designation power

Key concept: **designation power**

The Government asked officials to consider additional mechanisms to ensure the legislation is, in practice, capturing the activities that should be regulated. To this end, Part 5 of the Bill creates a power for the FMA to declare that a service that would not otherwise be a financial advice service is a financial advice service. (**Refer clause 46 in Part 5 of the Bill).** This provides a mechanism for the FMA to respond if providers are found to be purposefully avoiding the regulatory perimeter through activities that are advice in substance but not form.

The designation power will be subject to procedural requirements (**refer clause 47 in Part 5 of the Bill**). The FMA must not declare a service (that would not otherwise be a financial advice service) is a financial advice service unless it is necessary or desirable to promote the purposes in section 3 and 4 or any of the financial advice specific purposes in the new section 431A of the FMC Act. The FMA is also required to consult with those who would be substantially affected by the declaration.

13	Is the designation power for what constitutes financial advice appropriate? Are there any additional/different procedural requirements you would suggest for the exercise of this power?

Retail service

Key concept: **retail service**

Part 5 of the Bill sets out when a financial advice service is a retail service (**refer to clause 50 in Part 5 of the Bill**).

This is a key concept since it determines when a provider of a financial advice service needs to be licensed (as discussed on page 14 of this document) and what duties apply (as discussed on page 21 of this document).

The new clause states that a financial advice service is a retail service if it is supplied to:

- a retail client; or
- 2 or more clients and at least 1 of those clients is a retail client.

As a result, if a service is provided to *any* retail clients, then that service is a retail service (even if all of the provider's other clients to whom that service is provided are wholesale clients). If a provider only provides a service to wholesale clients, then that service is not a retail service.

To illustrate:

- A bank's wealth banking division might involve advice to at least some retail clients. If it does, it is a retail service. It must therefore be covered by a licence. Moreover, all of the conduct and competency duties apply.
- A bank's institutional banking division might only provide advice to wholesale clients. If this is the case, it is not a retail service. The service should be clearly demarcated from any retail service that the business also provides. It does not need a licence and some of the conduct and competency duties do not apply.

Eligible investors

An eligible investor is a wholesale client who has that status by virtue of having certified that they meet certain requirements.

Part 5 of the Bill sets out the matters that a person must certify in order to be an eligible investor (**refer clause 50 in Part 5 of the Bill)**. This is largely as per the current criteria and process for eligible investors under Section 5D of the FA Act with minor amendments made to align the process with that for eligible investors in the FMC Act.

14	Do you have any feedback on applying the concept of a 'retail service' to financial advice services? Is it workable in practice?
15	Do you have any other feedback on the drafting of Part 5 of the Bill?

Part 6 of the Bill amends the FSP Act

Part 6 of the Bill amends the FSP Act. In particular, it:

- amends the territorial application of the Act and includes complementary measures aimed at addressing misuse of the Financial Service Providers Register (FSPR); and
- sets out registration processes for financial advisers and financial advice providers.

Territorial application of FSP Act

The Bill amends the application of the FSP Act (**refer clause 57 in Part 6 of the Bill**), which effectively sets the scope of persons who can and must register on the FSPR.

The Government decided to amend the persons who could register on the FSPR to help address the issue of some (predominantly offshore-controlled) entities misusing the FSPR to create the impression that they are licensed or actively regulated in New Zealand.

Since the Government decisions in July 2016, we have continued to consider the degree of connection to New Zealand that should be required for registration on the FSPR. We have proposed a test based on where a person's services are promoted. Essentially, the Bill provides that the FSP Act applies to a person who is in the business of providing a financial service if:

- their financial services are promoted in New Zealand. This is consistent with the territorial application of the disclosure provisions of the FMC Act; or
- they are required to be licensed or registered by another Act.

The Bill also provides for regulations (**refer clause 71 in Part 6 of the Bill**) to:

- prescribe that a person cannot register if the financial services they provide in New Zealand are below a prescribed threshold e.g. those that only carry out minimal transactions with New Zealanders; and
- prescribe additional circumstances where the Act applies.

These mechanisms, along with the existing exemption power in section 44 of the Act, provide a more flexible approach to the scope of the Act and also allow a quicker Government response if the territorial application of the Act was found to be inappropriate e.g. due to providers superficially adjusting their operations in the future to avoid the regulatory perimeter.

We would welcome your feedback on the proposed territorial application of the Act. We recognise that the territorial application of the Act on its own is unlikely to eliminate all misuse. For example, a person could attempt to make sham offers of financial services to New Zealanders in order to fall within the proposed territorial scope. The intention is that the changes to territorial application would work together with the complementary measures discussed below and the existing deregistration powers in the FSP Act to address misuse.

Given the risk of damage to the integrity and reputation of New Zealand's financial markets, it is proposed that these changes come into force relatively shortly after the passing of the Bill. E.g. existing registered entities that do not meet the new scope would have a few months to deregister.

16	Does the proposed territorial application of the Act set out above help address misuse of the FSPR? Are there any unintended consequences? How soon after the passing of the Bill should the new territorial application take effect?

Restrictions on holding-out and other complementary measures

The Bill also provides other measures to help address the misuse issue. In particular, it provides:

- that the Registrar may require a director of a provider to produce information relating to the provider (**refer clause 70 of Part 6 of the Bill**); and
- for regulations to prescribe information that must be included in any advertising or other documentation relating to a financial service (**refer clause 71 of Part 6 of the Bill**). It is anticipated that regulations would be made to provide that a person that refers to their registered status (who do not otherwise have a licence) must make clear the limitation of being registered.

We are also considering whether to include a further requirement (which may be in regulations under the FSP Act) for other information to be contained in the FSPR to help the public make decisions about whether they wish to engage with a particular provider. This may include for example, information about the provider's supervisor under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT supervisor).

Access to dispute resolution

The proposed territorial scope seeks to balance between a number of factors, including reducing misuse and promoting access to dispute resolution. This includes access to redress for New Zealand retail customers that deal with providers who may not have a place of business in New Zealand (some such providers are not currently required to register on the FSPR or belong to a dispute resolution scheme). We would welcome your feedback on how the proposals impact these factors and whether further measures are necessary. For example, whether the legislation should provide that dispute resolution schemes may refuse or terminate membership if a provider is not engaging with the scheme as required or if the scheme is not satisfied that the provider will engage with the scheme.

17	Do you support requiring further information (such as a provider's AML/CFT supervisor) to be contained on the FSPR to help address misuse?
18	Do you consider that other measures are required to promote access to redress against registered providers?

Registration process for individual financial advisers and providers

The Bill also amends the FSP Act so that the FSP registration process for individual financial advisers and licensed providers reflects the new financial advice regime.

In particular, the Bill:

- provides for individual advisers to be registered on the FSPR (**refer clause 66 of the Bill**);
    - note that the FSP Act currently provides for the registration of those in the business of providing financial services. Individual employees of financial advice providers are not in the business of providing financial advice (as outlined above on page 17 in relation to section 431C of the FMC Act). However, the Bill specifically provides for the registration of such individual employees;
- provides for individual adviser registrations to be linked to a financial advice provider. In particular, the Bill:

    - provides for the register to show whether an individual is engaged by a financial advice provider (**refer clauses 61, 62 and 67 of the Bill**)
    - requires providers to inform the Registrar if an individual is no longer engaged by the provider (**refer clause 63 of the Bill**)
- provides for the deregistration and suspension of a financial adviser or financial advice provider upon the direction of the FMA or disciplinary committee (**refer clauses 64 to 66 of the Bill**)

Proposed changes to categories of financial service providers

We also seek feedback on proposed changes to the categories of financial services in the FSP Act. The list of financial services is set out in section 5 of the FSP Act and includes for example, a financial adviser service, a broking service, and being a licensed non-bank deposit taker.

A similar list of services is used on the FSPR itself to allow providers to select (and the register to display) the types of financial services they provide.

There has been some uncertainty and overlap in relation to some categories of financial services set out in section 5 and the FSPR. This has led to confusion for providers as to which financial services they should select in their registration, and reduced the usefulness of the register for regulators and the public. For example, it is often unclear what activities are in fact carried out by providers that identify themselves as "*keeping, investing, administering, or managing money, securities, or investment portfolios on behalf of other persons*" and whether certain regulatory obligations apply to some of those providers (because they may for example, also fall under the category of "a broking service (including a custodial service)").

The list of financial services should aim to:

- Cover all the types of financial institutions set out in the Financial Action Task Force's Recommendations[2] (in order to meet the Recommendation that all financial institutions be registered or licensed);
- Use terminology consistent with other financial services legislation to allow easier identification of all providers that are subject to particular regulatory obligations; and
- Minimise any overlap between different categories.

To meet the above objectives, we propose that the list of financial services in section 5 and on the FSPR be amended. Further work on the appropriate categories is required. However, an outline of the proposed approach is set out in the table below and we are seeking feedback on the proposal. The proposed approach divides the existing categories of services in the FSP Act (with minor amendments) into three different groups. It is proposed that if a provider's service is caught under the first group, the provider would not need to also register in another category in respect of the same activity.

For example, a manager of a registered scheme would fall under category 5. While the fund manager's activities would also be captured by the words of category 24 (by investing money on behalf of others) and category 25 (trades financial products on behalf of other persons), the expectation is that the fund manager would not register in the latter two categories, as the relevant activity would already be captured by their registration in category 6.

[2] See definition of "financial institutions" in ***http://www.fatf-gafi.org/glossary/d-i/***

Proposed list of services

A	**The following services which require the provider to be licensed (unless an exemption applies)** 1. Being a licensed NBDT 2. Being a registered bank 3. Acting as a licensed insurer *A licensed market service:* 4. Being a licensed financial advice provider 5. Independent trustee of a restricted scheme 6. Manager of a registered scheme (other than a restricted scheme) 7. Operating a licensed peer-to-peer lending service 8. Operating a licensed crowdfunding service 9. Being a licensed derivatives issuer 10. Being a licensed DIMS provider 11. Operating a financial product market 12. Supervisor of registered scheme or regulated offer of debt securities
B	**The following services which are subject to service-specific regulatory obligations** 13. Being an individual financial adviser 14. Providing wholesale financial advice 15. A broking service (including a custodial service, other than a custodian of a DIMS licensee or registered scheme) 16. Being a creditor under a credit contract 17. Participating in an FMC offer as the issuer or offeror of the financial products / acting as an issuer or investment manager in respect of regulated products or financial products previously offered under an FMC offer - ***other than where the relevant activity already covered by one of the services described in 5, 6 or 9 above*** 18. Custodian of DIMS licensee or registered scheme 19. Authorised to undertake trading activities on licensed markets, other than natural persons *[new category from the Financial Markets Authority (Levies) Regulations 2012]*
C	**The following other services:** 20. Giving financial guarantees ***One of the following, other than where the relevant activity is already covered by registration in one of the services described in A. or B. above****:* 21. Operating a money or value transfer service 22. Issuing and managing means of payment (for example, credit and debit cards, cheques, travellers' cheques, money orders, bankers' drafts, and electronic money) 23. Changing foreign currency 24. Keeping, investing, administering, or managing money, securities, or investment portfolios on behalf of other persons 25. Trading financial products or foreign exchange on behalf of other persons 26. Other financial services of the types described in Group A, but where the provider is exempt from licensing requirements (e.g. because the provider has wholesale customers only or because an exemption notice applies)

There would be an appropriate period for providers to transition to any new categories, which could be carried out through the annual confirmation process and alongside implementation of the new terminology in relation to financial advisers.

We welcome your feedback on the proposed approach set out above. Further work on the feasibility of the approach will be carried out following feedback.

19	Do you have any comments on the proposed categories of financial services? If you're a financial service provider, is it clear to you which categories you should register in under the proposed list?

Information in relation to consumer disputes

Section 67 of the FSP Act requires schemes to co-operate and communicate information in certain circumstances. If there are a series of material complaints about a particular licensed provider or class of licensed provider, they must communicate that fact to the relevant licensing authority. This appears to limit when schemes are permitted to provide information to the FMA to when they receive a series of material complaints. This interpretation could limit the sharing of useful information with the FMA. We are considering clarifying that schemes are required to provide information to the FMA in a wider range of circumstances e.g. if the scheme has reason to believe that a provider may be involved in conduct that constitutes breach of relevant financial markets legislation. We will analyse whether to add this clarification to the Bill following feedback.

20	Do you support clarifying that schemes must provide information to the FMA if they believe that a provider may be involved in conduct that constitutes breach of relevant financial markets legislation?
21	Do you have any other feedback on the drafting of Part 6 of the Bill?

Schedule 1 of the Bill sets out transitional provisions relating to DIMS, the code of conduct and the disciplinary committee

Schedule 1 of the Bill inserts a new Part 4 into Schedule 4 of the FMC Act. It sets out the transitional provisions for financial advisers who are currently authorised to provide personalised DIMS and for the development of the new code of conduct. It also specifies that the Code Working Group will continue as the Code Committee, and that existing disciplinary committee will continue with the same membership under the new regime.

We note other transitional arrangements (e.g. when different elements of the new regime should take effect, how long advisers will have to meet any new competency standards etc.) are currently being consulted on. Our proposals for these other transitional arrangements are set out in Part 3 of this document.

Transitional provisions for DIMS

As described on page 16 of this document, all providers of DIMS will be regulated under the existing FMC Act DIMS licensing regime. As a result:

- the definition of financial advice will not include providing a DIMS; and
- the current FMC Act exemption from the need for an FMC Act DIMS licence for a person who provides the service under the FA Act will be removed.

Schedule 1 of the Bill sets out the transitional provisions for AFAs who provide personalised DIMS under an FMC Act exemption. The Government decided that, because these DIMS providers are already subject to similar obligations, they should be able to be automatically granted licences under the FMC Act. Therefore Schedule 1 provides that if a person is permitted to provide personalised DIMS to retail clients under the FA Act immediately before the clause takes effect, then that person can be automatically treated as an FMC Act DIMS licensee (unless they notify the FMA that they do not wish to be granted the licence). (**Refer to new clause 63 in Schedule 4 of the FMC Act as set out in Schedule 1 of the Bill**).

These licences will be subject to the condition that providers continue to limit their service to that which they can currently provide under the FA Act (i.e. personalised DIMS). (**Refer to new clause 63(2)(b) in Schedule 4 of the FMC Act as set out in Schedule 1 of the Bill**).

22	When should an FMC Act DIMS licence granted to AFAs who provide personalised DIMS expire? For example, should it expire on the date on which the AFA's current authorisation to provide DIMS expires?

Transitional provisions for the code of conduct

As described on page 52 of this document, the Government has agreed that a Code Working Group be appointed to commence work on the new code of conduct before the Bill is passed.

Schedule 1 of the Bill allows the code of conduct to be prepared before the Bill is passed. In particular, it specifies that any action by the Code Working Group to prepare the new code of conduct must be treated as having been undertaken by the code committee (under the code development provisions (see page 36 of this document)). Once the Act comes into force, the Code

Working Group will become the Code Committee (**Refer to new clauses 64 and 66 in Schedule 4 of the FMC Act as set out in Schedule 1 of the Bill**).

Continuation of the disciplinary committee

This Part of the Bill also specifies that the disciplinary committee will continue in its current form and with its existing membership under the new regime (**refer to new clause 67 in Schedule 4 of the FMC Act, located in Schedule 1 of the Bill**).

23	Do you have any other feedback on the drafting of Schedule 1 of the Bill?

Schedule 2 of the Bill creates a new schedule to the FMC Act with detail about the regulation of financial advice

Schedule 2 of the Bill insets a new Schedule 5 into the FMC Act. This schedule includes:

- definitions of retail and wholesale clients
- details on what is excluded from the definitions of financial advice and regulated financial advice
- details relating to the code of professional conduct and code committee
- details relating to complaints and disciplinary proceedings.

Retail and wholesale clients

The Government has decided to retain the current definitions of retail and wholesale clients. Part 1 of the new Schedule 5 sets out the definitions of retail and wholesale clients.

Key terms: **retail client** and **wholesale client**

The definitions of retail and wholesale clients are largely carried over from the current FA Act (**refer to Part 1 of the new Schedule 5, located in Schedule 2 of the Bill**):

- A retail client continues to be defined as any client who is not a wholesale client.
- A wholesale client is defined in essentially the same way it was defined in the FA Act (with some minor changes reflecting its incorporation into the FMC Act, but no changes of substance).
- Consistent with the current regime, clients are able to opt out of wholesale status. Moreover, a person may opt-in to wholesale status by certifying they are a wholesale client (this is known as eligible investor certification; see page 26 of this commentary for discussion of the eligible investor provisions).

There is a question of whether the definition of retail and wholesale in relation to financial advice should be more closely aligned with the FMC Act definitions of retail and wholesale investor. We note that the FA Act definition, as carried-over in the Bill, is slightly broader that the equivalent FMC Act definition. In particular wholesale client in respect of financial advice:

- includes any person who meets the FMC Act definition of wholesale investor; but
- also includes an entity with net assets or turnover exceeding $1 million which is not part of the FMC Act definition.

Given the incorporation of the regulation of financial advice in the FMC Act, we are seeking feedback on whether a wholesale client for the purpose of financial advice should be aligned with the FMC Act definition of wholesale investor.

24	Should the FMC Act definition of 'wholesale' be adopted as the definition of wholesale client for the purposes of financial advice? Why or why not?

Financial advice exclusions

Part 2 of new Schedule 5 of the FMC Act located in Schedule 2 of the Bill sets out:

- Activities that are excluded from the definition of 'financial advice' and
- Activities that are excluded from the definition of 'regulated financial advice'.

Key concept: **exclusions from the definition of financial advice**

The Bill (**refer clause 6 of the new Schedule 5 of the FMC Act, located in Schedule 2 of the Bill**) sets out activities that are excluded from the definition of financial advice. This list is largely carried over from the current list in section 10(3) of the FA Act of activities that do not constitute financial advice (i.e. *a person does not give financial advice merely by doing 1 or more of the following*).

Some minor amendments have been made in carrying over this list from section 10(3) of the FA Act as follows:

- For clarity, the current exception for "providing information" has been amended to "providing factual information":

  A person does not give financial advice merely by doing 1 or more of the following:
  providing factual information (for example, information about the cost or terms and conditions of a financial advice product, or about the procedure for acquiring or disposing of a financial advice product)

- To clarify that execution-only services do not constitute financial advice, the following text is added to the list of exclusions from the definition of financial advice:

  A person does not give financial advice merely by doing 1 or more of the following: [. . .]
  carrying out an instruction from a person to acquire or dispose of, or not to acquire or dispose of, a financial advice product for that person

- For clarity, the current exception for "making a recommendation or giving an opinion relating to a class of financial products" (section 10(3)(b) of FA Act) is re-worded as follows:

  A person does not give financial advice merely by doing 1 or more of the following: [. . .]
  making a recommendation or giving an opinion about a kind of financial advice product in general rather than a particular financial advice product (for example, an opinion about shares generally rather than shares of a particular company)

- The wording of the exemption for those that are merely "transmitting" the advice of another person has been amended to refer to those that are "passing on" advice. This is to clarify that advisers and representatives are still giving advice even though the provider is essentially responsible for the advice.

  A person does not give financial advice merely by doing 1 or more of the following: [. . .]
  Passing on financial advice given by another person (unless the person holds out the financial advice as being the person's own advice)

Key concept: **exclusions from regulated financial advice**

The Bill (**refer clauses 7 to 14 of the new Schedule 5 of the FMC Act, located in Schedule 2 of the Bill)** sets out activities that are not regulated financial advice. These excluded activities replicate the exemptions in sections 13 and 14 of the current FA Act.

- Financial advice is not regulated financial advice if it is given only as an incidental part of a business of which the principal activity in not the provision of a financial service. The

reference to a business "that is not otherwise a financial service" (in section 13(1) of FA Act) has been removed as we see this to be a duplication of the principal activity concept (as above). The definition of "incidental" has also been amended to refer only to activities that are ancillary to the carrying on of a business, and no longer includes to "facilitate the carrying out of another business" as to "facilitate" may be unduly broad.

- The current definition of Crown organisation in the FA Act refers to the Lawyers and Conveyancers Act 2006, which defines Crown organisation to mean a Crown entity, department or government-related organisation. These terms are then defined by reference to terms defined in other Acts. The new exemption for Crown related entities (**Refer to new clause 8 in Schedule 5 of the FMC Act as set out in Schedule 2 of the Bill**) instead refers directly to these defined terms.
- In relation to the Māori Trustee, there appears to be some overlap in the existing FA Act exemption provisions. Under FA Act section 14(1)(h) the Māori Trustee is exempt as a trustee corporation in relation to its drafting, estate management and administration services. However the person holding office as the Māori Trustee also fits the definition of a 'statutory officer' under section 14(1)(e), and would be exempted in relation to all of his or her statutory functions. The new drafting has adopted the more narrow exemption provision, and therefore excludes the Māori Trustee from the exemption for statutory officers (**Refer to new clause 8(2)(a)(iv) in Schedule 5 of FMC Act as set out in Schedule 2 of the Bill**). The Māori Trustee is still captured under the exemption for trustee corporations. We are seeking feedback on the implications of this.

25	We understand that some lenders consider that they may be subject to the financial adviser regime because their interactions with customers during execution-only transactions could be seen to include financial advice. Does the proposed clarification in relation to execution-only services help to address this issue?
26	Are there any unintended consequences resulting from the minor amendments to the exclusions from regulated financial advice, as detailed above?

Broker exceptions

As outlined on page 23, most of the provisions relating to brokers are incorporated into a new subpart 5B of Part 6 of the FMC Act. The provisions relating to broker exceptions (i.e. what is *not* a broking service) have been incorporated into the new Schedule 5 in the FMC Act (**refer to Part 3 of Schedule 2 of the Bill**). They are carried over from the FA Act without any substantive changes.

Code committee and code of professional conduct

Part 4 of Schedule 2 of the Bill establishes the legislative framework for the code committee and code of professional conduct for financial advice. For the avoidance of doubt, the Bill is establishing a new code of conduct (which will apply to all financial advice) and a new code committee to develop and maintain the code. That is, the Bill is not referring to the current AFA code of conduct or to the current code committee.

Code committee

The Bill establishes a code committee to produce a draft code and review it from time to time (**refer clauses 20 to 27 of the new Schedule 5 of the FMC Act, located in Schedule 2 of the Bill**).

Most of the provisions relating to the proceedings of the code committee are consistent with the existing provisions in the FA Act which relate to the current code committee for authorised financial advisers. This includes:

- The functions to produce, review and recommend changes to the code of professional conduct
- To have no fewer than seven and no more than eleven members
- That the quorum for meetings is five members
- That every question before the code committee must be determined by a majority of votes
- That the chairperson has a deliberate vote and in the case of equality the casting vote.

There are two elements of the draft bill which differ from the existing provisions in the FA Act relating to the code committee. These differences relate to who appoints the members and the membership criteria.

- The draft Bill requires that the Minister of Commerce and Consumer Affairs (and not the FMA) appoint the members of the code committee. As Ministerial appointments are subject to established protocols with checks and balances in place, this will bring the appointment process in line with best practice.
- The draft Bill also requires that *two* members of the code committee are appointed based on their knowledge, skills and experience in relation to consumer affairs or dispute resolution, and that other members are appointed because of their knowledge, skills and experience in financial services, or other knowledge, skills and experience which is deemed relevant. This is designed to ensure that the code committee comprises members with the appropriate mix of skills, knowledge and experience to maintain a code of professional conduct that applies to all those giving financial advice, not just a subset of advisers like it currently does (authorised financial advisers). It also seeks to maintain flexibility so the membership can respond to future changes in the financial advice market.

27	Do any of the membership criteria or proceedings for the code committee require further clarification? If so, what?

Code of professional conduct

The new code of conduct (**refer clauses 28 to 36 of the new Schedule 5 of the FMC Act, located in Schedule 2 of the Bill**) will apply to all financial advice and will contain minimum standards of:

- general competence, knowledge, and skills that apply to all persons that give financial advice; and
- particular competence, knowledge, and skills that apply in respect of different types of financial advice, financial advice products, or other circumstances; and
- ethical behaviour; and
- conduct and client care.

In preparing the draft code the code committee must have regard to the relevant purposes of the FMC Act (including the new financial advice purpose statement, see page 16 of this document) and international obligations that apply to New Zealand regarding financial markets or advice. The code committee must 'prepare an impact analysis document that describes how the proposed standards

contribute to, or detract from' these matters. This impact analysis requirement will bring the development of the code in line with best practice for regulatory rule making. **Refer to clause 29(2) of the new Schedule 5 of the FMC Act, located in Schedule 2 of the Bill.**

The Minister of Commerce and Consumer Affairs is responsible for approving the draft code so long as he or she is satisfied that the code committee has complied with its obligations and the draft code is consistent with the FMC Act. The Minister of Commerce and Consumer Affairs must consult with the FMA before approving the draft code. This removes the inefficient double approval system (with the FMA and then the Minister approving the draft code) that is required under the FA Act, whilst also maintaining the FMA's input. **Refer to clauses 30 to 34 of the new Schedule 5 of the FMC Act, located in Schedule 2 of the Bill.**

28	Does the drafting of the impact analysis requirement provide enough direction to the code committee without being overly prescriptive?

Key concept: **different standards of competence, knowledge, and skills for different types of advice**

As set out above, the code will include general minimum standards of competence, knowledge and skill for all giving advice, as well as minimum standards of competence, knowledge and skill which 'apply in respect of different types of financial advice, financial advice products or other circumstances'. **Refer clause 28 of the new Schedule 5 of the FMC Act, located in Schedule 2 of the Bill**.

This recognises the broader applicability of the code of professional conduct and that it will be appropriate for additional standards to vary for different types of advice – for example, investment advice standards will likely be different to insurance advice standards.

Key concept: **the way a provider may demonstrate competence, knowledge, and skill**

In addition to setting out minimum standards of competence that anyone providing advice must meet, the code will include optional methods for demonstrating that those standards have been met. For example, the code might specify qualifications that, if passed, are deemed to meet the associated code standards. **Refer clause 28(3)(b) of the new Schedule 5 of the FMC Act, located in Schedule 2 of the Bill**.

Importantly, these methods are optional. They provide a certain and straightforward route to compliance with the competency standards.

However, a financial advice provider may elect to meet the standard through other means – for example, a provider may run in-house training courses and provide other support/controls that means that their advice meets the minimum standards of competence. If a provider wishes to meet the standard through other means, then they will need to demonstrate to the FMA through the licensing process that their advice nonetheless meets the code standards. This is a less certain, but more flexible, route to compliance.

29	Does the wording of the required minimum standards of competence knowledge and skill which 'apply in respect of different types of advice, financial advice products or other circumstances' adequately capture the circumstances in which additional and different standards may be required?

Complaints and disciplinary proceedings

Part 5 of Schedule 2 of the Bill sets out the complaints and disciplinary proceedings for financial advisers.

Whereas under the existing regime the Financial Advisers Disciplinary Committee only applies to Authorised Financial Advisers, the Bill allows the FMA to refer any financial adviser to the Disciplinary Committee. Financial Advice Representatives will not fall under the jurisdiction of the committee.

The conditions under which a financial adviser may be referred to the disciplinary committee have been broadened slightly from conduct that, in the FMA's opinion, amounts to a breach of the code to the following (**refer to clause 39 of the new Schedule 5 of the FMC Act, located in Schedule 2 of the Bill**):

> *in the FMA's opinion, the conduct complained of amounts to a contravention of a provision of subpart 5A of Part 6 (for example, a contravention of the code).*

This means that a financial adviser could be referred to the disciplinary committee for a breach of a duty (such as failing to disclose prescribed information at the prescribed time) as well as for a breach of the Code of Conduct.

The detail around the membership, proceedings and powers of the disciplinary committee is consistent with the current FA Act (**refer to clauses 47 to 57 of the new Schedule 5 of the FMC Act, located in Schedule 2 of the Bill**). The disciplinary committee will continue in its current form and with its existing membership (**refer to new clause 67 of Schedule 4 of the FMC Act, located in Schedule 1 of the Bill**).

The jurisdiction of the disciplinary committee could be extended to financial advice providers, as well as individual financial advisers. This could provide an additional mechanism for addressing breaches by financial advice providers that is faster and cheaper than proceeding through the Courts and uses the expertise of the disciplinary committee. We would welcome your feedback as to whether the jurisdiction should be extended, and if so, what the maximum fine for financial advice providers should be. (Note that the maximum fine the disciplinary committee can impose on an individual financial adviser is $10,000.)

Note that for appeals of decisions by the disciplinary committee, the Bill carries over the existing provisions as set out in the FA Act, which allow a person to appeal decisions to the District Court. For other appeals (for example, provisions relating to licensing), the existing appeals provisions in the FSP and FMC Acts apply, which allow a person to appeals decisions to the High Court. We are undertaking further policy work on the appeal provisions, so they are subject to change.

30	Should the Financial Advisers Disciplinary Committee consider complaints against financial advice providers as well as complaints against financial advisers? Why or why not?
31	If the jurisdiction of the Financial Advisers Disciplinary Committee is extended to cover financial advice providers, what should be the maximum fine it can impose on financial advice providers?
32	Do you have any other feedback on the drafting of Schedule 2 of the Bill?

3 Transitional Arrangements

About transitional arrangements

The new regime for financial advice will, amongst other things, remove the current types of financial adviser (authorised financial adviser, registered financial adviser and qualifying financial entity), create a licensing regime that operates at the firm level, and introduce new conduct and competency requirements for all financial advice. These are significant changes, and existing industry participants will need time to transition to and operate under the new regime. For example, they will need sufficient time to get a licence, update disclosure material and ensure that they meet the competency standards (with some likely to need to undertake further training).

Transitional arrangements will manage how the new financial advice regime comes into operation and effect. The proposed arrangements are designed to:

- Bring each element of the new regime into effect as soon as practicable
- Ensure existing industry participants can transition to the new regime smoothly and with an appropriate amount of time
- Minimise unnecessary compliance costs
- Minimise disruption for consumers.

33	Are there any other objectives we should be seeking to achieve in the design of transitional arrangements?

Proposed transitional arrangements

Overview

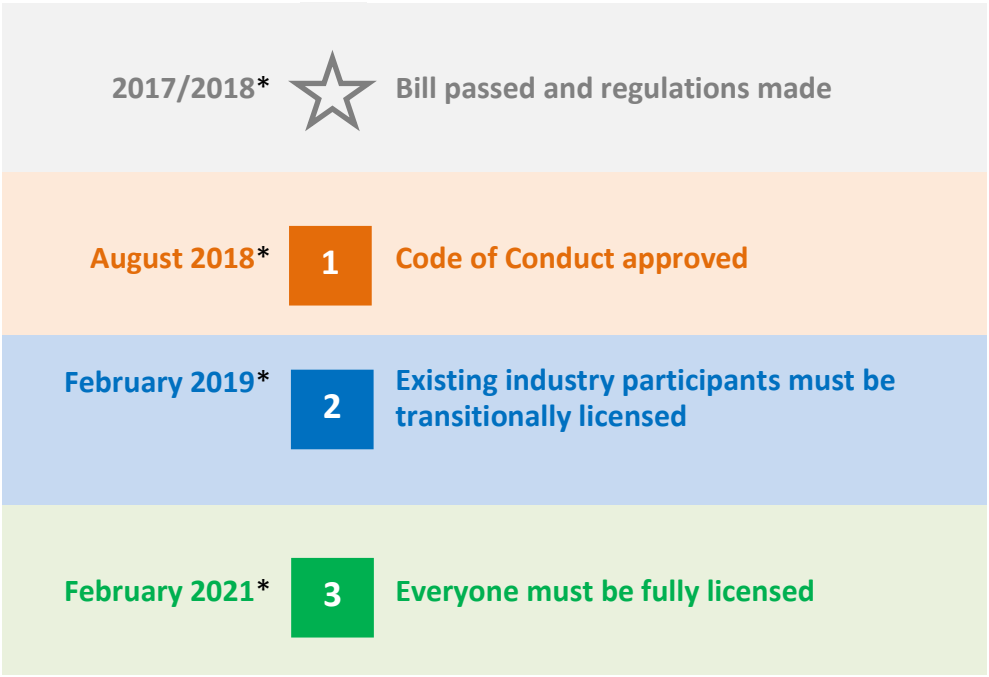
The proposed transitional arrangements are not included in the exposure draft of the Bill as we want your feedback before including them in the Bill. Please note that all dates for the proposed transitional arrangements are based on anticipated timing at the point of publishing and are **indicative only**. The proposed transitional arrangements are described in detail on the following pages but the key elements include:

- Appointment of a Code Working Group to enable early development of the Code of Conduct, which would be approved by the Minister of Commerce and Consumer Affairs by 31 August 2018.
- A requirement for all existing industry participants to be engaged by a firm with a transitional licence by 28 February 2019. On 28 February 2019 transitional licences and the new regime would take effect (however existing advisers who did not meet the new Code of Conduct competence, knowledge and skill standards would be protected by a ‘safe harbour’ – see below for more detail).

- A requirement for everyone to be operating under a full licence by 28 February 2021. Once operating under a full licence the new competency requirements (as set out in the new Code of Conduct) would take effect.

See Figure 3 below for a high-level timeline illustrating these proposed transitional arrangements and Annex 2 for a detailed timeline. Page 45 provides case studies which illustrate what the proposed transitional arrangements will mean for different industry participants and Annex 3 shows the key steps in the proposed transitional process.

Figure 3: High-level timeline of proposed transitional arrangements



* *Dates indicative only*

1 Code of Conduct development

The new Code of Conduct will be a key part of the new regime as it will, amongst other things, set the standards of competence, knowledge and skill that apply to all types of advice. Therefore it is important that industry has certainty about the content of the Code of Conduct as soon as possible.

However, as the Code Committee (which will differ from the current Code Committee for Authorised Financial Advisers) will be established by the new legislation, its members will not be able to be appointed until after the Bill has passed. Leaving the Code of Conduct to be developed until after the Bill has passed and the Code Committee members have been appointed would delay the benefits of the new regime being realised and create a longer period of uncertainty.

Therefore Cabinet has agreed that a Code Working Group be appointed prior to the introduction of the Bill to prepare the draft Code of Conduct, which the Minister will then consider and approve. The membership of the Code Working Group will reflect the required composition of the Code Committee as outlined in the Bill (see page 36 of this document). Likewise, the terms of reference for the Code Working Group will mirror the procedural requirements for the production of the Code of Conduct, as set out in the Bill.

This will enable development and approval of the Code of Conduct to be achieved much sooner than would otherwise be possible. As per Figure 3, it is anticipated that the Code of Conduct be approved and published by August 2018.

Staged transition

Overview

To support industry to move across to the new regime we propose that the transition happen in two main stages:

- First, existing industry participants will need to be engaged by a firm with a transitional licence by 28 February 2019 (six months after the Code of Conduct is approved). At a minimum, transitional licences will enable existing industry participants to continue providing their current advice services (as permitted under the FA Act) for a further two years. Those existing industry participants who do not meet the new Code of Conduct competence, knowledge and skill standards by 28 February 2019 will be protected by a 'safe harbour' – see next page for more detail.
- Then two years later, in February 2021, all transitional licences will expire and all industry participants will need to be operating under a full licence. Once operating under a full licence everyone must meet the new Code of Conduct competence, knowledge and skill standards.

What are the benefits of this staged transition?

- It will realise many of the benefits of the new regime sooner than would otherwise be practicable.
- It will help existing industry participants progressively move towards operation under the new regime, making the transition smoother and more manageable, particularly in relation to competency requirements.
- Existing industry participants will be required to comply with the majority of the new regime in February 2019, six months after the Code of Conduct is approved.
- It will provide the FMA and education providers with a better sense of who is operating in the market, enabling them to better anticipate the number of full licences and resources needed for compliance and training.
- It will avoid complexity for industry, consumers and the FMA of having two regimes concurrently in place.

2 Transitional licensing

What is required? We propose that all existing industry participants be required to be engaged by a firm with a transitional licence by 28 February 2019 (six months after the Code of Conduct is approved).

What will getting a transitional licence involve? The transitional licensing process and requirements will be determined by the FMA and/or regulations in due course but the expectation is that it will be the same for all firms, be simple and essentially involve notification to the FMA. For example, it may require a firm to notify the FMA of:

- The name of the firm who will be providing financial advice services.
- The names and FSP registration numbers of any financial advisers who will be operating under the firm's transitional licence (if relevant).
- The financial advice services that the firm will be providing.

When will firms be able to apply for a transitional licence? We propose that applications for transitional licences open on 31 August 2018 (six months before everyone must be engaged by a firm with a transitional licence and transitional licences take effect).

When will transitional licences take effect? It is proposed that all transitional licences take effect on 28 February 2019.

What will take effect when everyone is transitionally licensed? On 28 February 2019 (when everyone is transitionally licensed) it is proposed that all elements of new regime take effect. The most substantive elements of the new regime that will take effect will be:

- The new disclosure requirements (the details of which are not included in the exposure draft as they will be set in regulations).
- The new legislative duty to put the client's interests first.
- The Code of Conduct (except for the competence, knowledge and skill standards – see 'what doesn't take effect with transitional licensing' below).
- The new enforcement mechanisms.

What doesn't take effect with transitional licensing? As above, all elements of the new regime take effect. However, we propose that those existing industry participants who are operating under a transitional licence and do not meet the new Code of Conduct competence, knowledge and skill standards be protected by a transitional provision known as a 'safe harbour'.

The safe harbour would enable them to continue providing the same advice services that they can currently provide (as permitted under the FA Act). For example, someone who is a registered financial adviser before 28 February 2019 would be able to continue providing insurance advice, but would not be able to provide personalised advice on KiwiSaver.

If industry participants wished to provide services in addition to those which they are currently able to provide, they would have to meet the new Code of Conduct competence, knowledge and skill standards relevant to those types of advice. For example, if an existing registered financial adviser wanted to start providing investment planning advice they would need to meet the relevant standards under the new Code of Conduct.

The safe harbour would be in place for up to two years (i.e. until transitional licences expire in February 2021, or that person is operating under a full licence, or that person meets the new standards – whichever is sooner).

What changes and decisions will need to be made to operate under a transitional licence? Licensing will be done at the firm level and therefore industry participants will need to decide how to be structured under the new regime. For example, a financial adviser could obtain a licence as a sole trader, or could operate under a larger firm's licence.

Industry participants will also need to alter some of their systems and processes to ensure compliance with the elements of the new regime that will take effect (see 'what will take effect when everyone is transitionally licensed' above). For example, they will need to update disclosure material and ensure their advice processes enable them to put their clients' interests first.

Will I be able to be a financial adviser or a financial advice representative? It is proposed that all existing RFAs and AFAs who wish to continue providing advice services during the transitional licensing period are required to be financial advisers. Existing QFE advisers who remain engaged by a firm which was previously a QFE will be able to operate as financial advice representatives.

How will firms be able to take on new staff (i.e. people who are not currently advisers) during the transitional licensing period? It is proposed that firms with transitional licences will be able to

engage new financial advisers (i.e. they will be able to engage advisers who were not previously AFAs or RFAs when the new regime takes effect). These financial advisers will not have the option of being protected by the safe harbour and will have to meet the new Code of Conduct competence, knowledge and skill standards for the services they wish to provide.

Firms with transitional licences which were formerly QFEs will be able to engage financial advisers and financial advice representatives. As above, these financial advisers will not have the option of being protected by the safe harbour and will have to meet the new Code of Conduct competence, knowledge and skill standards for the services they wish to provide. Any new financial advice representatives will not need to meet new competence standards in the transitional period, but they will be limited to giving advice that QFE advisers are permitted to give under the current regime.

When will transitional licences expire? It is proposed that all transitional licences expire on 28 February 2021 (two years after they have taken effect). All those wishing to give financial advice after February 2021 would need to be operating under a full licence (see 'full licencing' below).

34	Do you support the idea of a staged transition? Why or why not?
35	Is six months from the approval of the Code of Conduct sufficient time to enable existing industry participants to shift to a transitional licence?
36	Do you perceive any issues or risks with the safe harbour proposal?
37	Do you think there are any elements of the new regime that should or shouldn't take effect with transitional licences? What are these and why?

3 Full licensing

What is required? We propose that all industry participants be required to be engaged by a firm with a full licence and operating under that licence by 28 February 2021 (following a two year transitional licensing period).

What will getting a full licence involve? As with transitional licensing, the process and requirements for full licensing will be determined by the FMA and/or regulations in due course. But unlike transitional licensing it will be more comprehensive. What prospective licensees will need to provide to the FMA to meet the licensing requirements will depend on factors such as:

- The nature and size of the firm and the services it provides.
- Whether the firm engages financial advisers, financial advice representatives or is a sole trader.

When will firms be able to start applying for a full licence? It is proposed that full licence applications open on 28 February 2019 (the same day that transitional licences take effect and two years before everyone must be operating under a full licence).

When will full licences take effect? Firms will be able to notify the FMA of the date on which they would like their licence to take effect ("nominated effective date"). Full licences will take effect from the nominated effective date or on 28 February 2021, whichever is sooner.

What will take effect when a firm is fully licensed? It is proposed that the safe harbour (which enabled those existing industry participants operating under a transitional licence to continue providing advice with their current competency and scope of service requirements) would cease. As

a result, anyone giving advice will need to meet the applicable Code of Conduct competence, knowledge and skill standards when their firm begins to operate under a full licence.

What doesn't take effect with full licensing? Nothing, all elements of the new regime will take effect as and when a firm begins to operate under a full licence.

What changes and decisions will need to be made to operate under a full licence? Existing industry participants will need to alter some further systems and process to ensure compliance with the competence, knowledge and skill requirements. Firms will also need to meet the licensing requirements and this may include demonstrating how they comply with all legislative and Code of Conduct requirements and how financial advisers and financial advice representatives are supervised, performance managed and remunerated.

Will I be able to be a financial adviser or a financial advice representative? Yes. It will be up to each firm whether to employ financial advisers or financial advice representatives or a mix of both. You will need to ensure you are engaged by a firm that has a business model that suits you.

When will full licences expire? This will be determined by the FMA.

38	Is two and a half years from approval of the Code of Conduct sufficient time to enable industry participants to become fully licensed and to meet any new competency standards?

Case Studies

AFA or RFA with their own business

April is an AFA who operates as a sole trader under her company 'April's Advice'. She primarily provides investment planning services.

Poppy is an RFA who operates as a sole trader under her company 'Poppy's Life'. She has been providing life insurance services for the past 11 years.

When the transitional licensing period opens, April and Poppy must decide whether they want to:

1. Apply for a transitional licence to provide financial advice and continue to operate as sole trader financial advisers or
2. Engage with or be employed by a business which intends to get a transitional licence (in which case April and Poppy would be financial advisers under the firm's licence) or

3. Provide financial advice to wholesale clients only, in which case a licence would not be required.

April's story

April decides she wants to continue giving financial advice through April's Advice. April's Advice applies for a licence to provide financial advice services during the transitional period. This is a relatively simple process whereby the FMA is notified of April's intention to give financial advice as a sole trader financial adviser under April's Advice's licence.

On 28 February 2019 April's Advice's transitional licence takes effect and the new regime comes into force. Both April as an individual, and April's Advice as a firm, are responsible for complying with the relevant legislative duties and the Code of Conduct.

The competency safe harbour allows April to continue giving advice that she was permitted to give under the previous regime, without having met the new competence, knowledge and skill standards in the Code of Conduct. April can therefore continue giving investment planning advice, and April's Advice works with the FMA to gain a full licence before 28 February 2021, when the transitional licensing period ends. April also works towards meeting a couple of additional competence, knowledge and skill standards relevant to investment advice, as set out in the Code of Conduct.

In July 2020 April's Advice is granted a full licence by the FMA.

April and April's Advice have a single registration and the registration states that April is a sole trader financial adviser operating under April's Advice's licence, and gives investment planning advice.

Poppy's story

Poppy decides she does not want to continue giving advice as a sole trader through Poppy's Life. Poppy accepts employment with another firm, 'Big Life', as a financial adviser. Big Life applies for a transitional licence to provide financial advice services and names Poppy (along with its other financial advisers) as a financial adviser who will be operating under its licence.

On 28 February 2019 when the transitional licence takes effect, both Poppy as an individual, and Big Life as a firm, are responsible for complying with the relevant legislative duties and the Code of Conduct.

The competency safe harbour allows Poppy to continue giving the advice she was permitted to give under the FA Act, without having met the new competence, knowledge and skill standards in the Code of Conduct. Poppy was previously an RFA, so she can continue to give class and personalised advice on life insurance.

Big Life works with the FMA to gain a full licence before 28 February 2021. At the same time, Poppy works towards meeting a couple of additional competence, knowledge and skill standards relevant to life insurance, as set out in the Code of Conduct.

Big Life also applies to be licensed to provide investment advice on superannuation funds. Poppy decides she wants to start giving investment advice on superannuation funds, so completes additional competence, knowledge and skill standards for this type of advice, as set out in the Code of Conduct.

In October 2020 Big Life is granted a full licence by the FMA which means Poppy can start giving investment advice on superannuation funds.

Poppy also retains her registration number, and the registration states that she is engaged by the licensed firm Big Life as a financial adviser, and that she gives financial advice on life insurance and investments.

Firm with multiple RFAs

Home4Life is a firm that provides mortgage advice services. Glen is one of four RFAs who work at Home4Life.

Under the new regime Home4Life wants Glen and his colleagues to operate as financial advice representatives. This is because Home4Life has in place clear and effective processes, controls and limitations relating to the financial advice that may be given by its representatives. It is therefore appropriate for the firm to be accountable for the advice given by representatives.

To operate with financial advice representatives, Home4Life must be granted a full licence by the FMA. The FMA must be satisfied that Home4Life complies with the relevant legislative duties set out in legislation and the Code of Conduct.

In the meantime, Home4Life applies for a transitional licence to provide financial advice. Glen must operate as a financial adviser under Home4Life's transitional licence until Home4Life is granted a full licence (as only previous QFE's may operate with representatives under a transitional licence). This means that both Glen and Home4Life are responsible for complying with the relevant legislative duties and Code of Conduct.

Home4Life determines that Glen will have to undertake further training in order to meet a couple of additional competence, knowledge and skill standards relevant to mortgage advice, as set out in the Code of Conduct. However, as the competency safe harbour applies during the transitional licensing period, Glen can continue to give advice on the services he was able to under the previous regime (i.e. class and personalised advice on Category 2 products).

Home4Life ensures that Glen and his colleagues meet the competence, knowledge and skill standards relevant to mortgage advice so they can satisfy the FMA of this and be granted a full licence. Home4Life decides it also wants to be able to provide general insurance services. This means it will need to ensure its financial advice representatives meet the competence, knowledge and skill standards for general insurance as well as for mortgage advice.

In September 2020 Home4Life is granted a full licence. Through the licensing process, Home4Life has demonstrated to the FMA that it has sufficient processes, controls, and limitations around the financial advice that financial advice representatives (like Glen) give. Home4Life can therefore start providing financial advice services (as covered by their licence) via financial advice representatives.

As Glen has now met the competence, knowledge and skill standards for both mortgage and general insurance, he can give both types of advice. Glen is no longer individually registered as a financial adviser and Home4Life will be accountable for any breach of duties by Glen and the other financial advice representatives it engages.

Note that Home4Life could have chosen to continue operating with financial advisers rather than representatives.

QFE with AFAs and QFE advisers

Sharon works for the QFE 'ABC Bank' giving personalised advice on KiwiSaver as well as other investment advice services.

When the application period for transitional licensing opens, ABC Bank applies for, and is granted, a transitional licence which covers both financial advisers (former AFAs) and financial advice representatives (former QFE advisers). ABC Bank's FSPR registration states that ABC Bank is a licensed provider of financial advice, and lists all financial advisers operating under its licence.

Sharon's FSPR registration states that she is a financial adviser engaged by ABC Bank, and lists the financial advice services she gives under ABC Bank's licence. The financial advice representatives at ABC Bank do not require individual FSPR registrations.

Once the new regime and Code of Conduct come into force (in February 2019, six months after the Code of Conduct is approved), both Sharon as an individual, and ABC Bank as a firm, are responsible for complying with the relevant legislative duties and the Code of Conduct. Sharon can continue to give investment advice services and personalised advice on KiwiSaver throughout the transitional period, under the competency safe harbour.

ABC Bank's financial advice representatives can continue to give the services they were previously able to provide as QFE advisers (class advice and personalised advice on ABC Bank's Category 1 products). ABC Bank is responsible for their financial advice representatives' compliance with the new legislative duties and the Code of Conduct.

ABC Bank wants to apply for a full licence and establishes some in-house training programmes to ensure its financial advisers and financial advice representatives meet the new competence, knowledge and skill standards in the Code of Conduct. Through the licensing process, ABC Bank demonstrates to the FMA that its in-house training programmes ensure its financial advisers and financial advice representatives met the standards in the Code of Conduct.

ABC Bank then applies for and is granted a full licence by the FMA in December 2020. Both Sharon and ABC Bank's accountability remain the same under the full licence.

Firm wanting to provide robo-advice

'Love Life' is a firm that currently provides life insurance advice through RFAs and AFAs. Love Life wants to transition to the new financial advice regime, and also wants to start providing personalised life insurance advice through an online platform.

When the transitional licensing period opens, Love Life applies for and is granted a transitional licence. Once the regime comes into force (in February 2019, six months after the Code of Conduct is approved), Love Life can continue to provide the life insurance service it was permitted to provide under the previous regime (including class advice through an online platform). Love Life's AFAs and RFAs become financial advisers under Love Life's transitional licence. Love Life's financial advisers continue to provide the respective services they were able to provide under the FA Act.

Love Life cannot yet offer personalised life insurance advice through an online platform, as this is not something they were able to provide under the FA Act regime.

Love Life engages with the FMA to begin the full licensing process, so they can launch their new online advice platform as quickly as possible. The FMA will need to be satisfied the advice given through its new robo-advice platform meets the legislative duties, as well as the standards set out in the Code of Conduct.

Love Life is granted a full licence in November 2019 and can now launch their new online advice platform. Love Life will be responsible for ensuring that the advice provided through their online platform meets the duties in legislation and the Code of Conduct standards. Love Life's financial advisers will also be able to provide any further services that Love Life is licensed for, provided they are competent to do so.

New financial adviser wanting to enter the industry

Clare decides she would like to become a financial adviser, but the period to apply for a transitional licence has closed. She wants to provide investment advice.

Before Clare can provide investment advice, she must be engaged by a firm with a full or transitional licence and registered on the FSPR. This includes the option of being licensed as a sole trader.

Clare applies to the Companies Office for FSPR registration, and works to complete the competence, knowledge and skill standards for investment advice, as set out in the Code of Conduct.

Clare decides she does not want to operate as a sole trader, so seeks a job at the firm 'Advice for All'. Advice for All is transitionally licensed to provide investment advice.

Advice for All must ensure that Clare is competent to provide investment advice. Once this is confirmed, Clare's FSPR registration can be updated to specify that she is engaged by 'Advice for All'.

Clare can then provide investment advice under Advice for All's transitional licence. Both Clare as an individual, and Advice for All as a firm, are responsible for complying with the relevant legislative duties and the standards in the Code of Conduct.

New financial advice representative wanting to enter the industry

Rose decides she would like to become a financial advice representative for ABC Bank, but ABC Bank has only just started operating under its transitional licence.

As ABC Bank used to be a QFE, ABC Bank can engage new financial advice representatives under its transitional licence. ABC Bank engages Rose as a financial advice representative. While giving advice under ABC Bank's transitional licence, Rose can only give advice on things that QFE advisers were permitted to under the current regime (i.e. advice on Category 2 products and on ABC's own Category 1 products).

Once ABC Bank has a full licence Rose will need to meet the new Code of Conduct competence, knowledge and skill standards for the services she wishes to provide.

Industry participant wanting to provide wholesale advice only

James is an existing financial adviser who decides he wants to only give advice to wholesale investors under the new regime.

When the transitional licensing period opens, he updates his FSPR registration to a 'wholesale' only status. He does not need to operate under a licence to provide financial advice.

When the new regime comes into force (in February 2019, six months after the Code of Conduct is approved), James needs to comply with the legislative duties that apply to wholesale advice, such as to put the interests of his clients' first.

Should James decide he wants to give advice to retail clients, James will need to be granted a licence or become engaged by a licensed firm.

Possible complementary options

Demonstrating competence

In addition to the proposed transitional arrangements described above, the following pages describe two complementary options which could also be implemented. These options would provide alternative methods for existing AFAs and RFAs to meet the competence, knowledge and skill standards in the new Code of Conduct. No complementary options for supporting existing QFE advisers to demonstrate competence are proposed.

Option 1: Temporary Grandfathering for existing Authorised Financial Advisers

Under this option, existing AFAs would be temporarily exempt from meeting the competence, knowledge and skill standards in the new Code of Conduct and could continue providing the financial advice services which they are currently able to. This recognises that AFAs have already completed the National Certificate in Financial Services (Financial Advice) (Level 5) which, based on the feedback received throughout the review, is considered by many to be broadly appropriate.

This exemption would be temporary and would only apply for five years from the time that everyone is required to be operating under a full licence, meaning it would expire in February 2026. Therefore if the new Code of Conduct has different or higher standards than the current Level 5 Certificate, AFAs would need to meet them by February 2026.

39	Do you support the option of AFAs being exempt from complying with the competence, knowledge and skill standards for a limited period of time? Why or why not?
40	Would it be appropriate for the exemption to expire after five years? If not, what timeframe do you suggest and why?
41	Is there a risk that this exemption could create confusion amongst industry and for consumers about what standards of competence, knowledge and skill are required?
42	If you support this option do you think it should be set in legislation or something for the Code Working Group to consider as an option as it prepares the Code of Conduct?

Option 2: Demonstrating Competence through an Assessment Process

Under this option, existing AFAs and RFAs would be able to demonstrate that they meet the competence, knowledge and skill standards in the new Code of Conduct through an assessment process that recognised prior learning and experience. This option recognises that there are a large number of experienced AFAs and RFAs who may not have a qualification which is recognised in the new Code of Conduct and would not benefit from being required to undertake one. Under this process an individual could be assessed as being competent to give the different types of advice that they have considerable experience and competence in giving.

The process would be voluntary and open to existing AFAs and RFAs who had experience giving financial advice for a minimum of ten years. Initial thinking is that this process would involve:

- Implementation of an assessment process (using appropriately qualified and experienced assessors) to ensure existing AFAs and RFAs could provide evidence of the competence, knowledge and skill standards they would be required to meet. The assessment process could include the use of real files and records of client advice and activity, possibly accompanied by tests and interviews.
- Systems that support AFAs and RFAs to respond to any gaps in standards, through further training or additional assessments.

43	Do you support the option of a competency assessment process for existing AFAs and RFAs? Why or why not?
44	Is it appropriate for the competency assessment process to be limited to existing AFAs and RFAs with 10 or more years' experience? If not, what do you suggest?
45	If you support this option do you think it should be set in legislation or something for the Code Working Group to consider as an option as it prepares the Code of Conduct?

Phased approach to licensing

In order for the FMA to manage volumes of licence applications, an option of phased licensing could be used. For example, under a phased approach to licensing the FMA could complete licence applications in groups, whereby transitionally licensed industry participants are directed to apply for a full licence within allocated time windows spread across the transitional period. This would mean that some industry participants would not have two years to get their full licence.

46	What would be the costs and benefits of a phased approach to licensing?
47	Do you have any suggestions for alternative options to incentivise market participants to get their full licences early in the transitional period?
48	Do you have any other comments or suggestions regarding the proposed transitional arrangements?

Annex 1: Overview of recent policy decisions

In July 2016 the Government announced the overarching design of an amended regulatory regime for financial advice. The new regime aims to improve access to high quality financial advice. See ***www.mbie.govt.nz/faareview*** for the announcement and related reading.

Further detailed policy decisions have since been made and are summarised below.

Compliance and enforcement tools

The Government decided that financial advice providers will be subject to the compliance and enforcement tools provided under the FMC Act for other licensed services. This includes civil pecuniary penalties and compensation for persons who operate without a licence, falsely hold themselves out as licensed, or provide a disclosure document containing false or misleading statements. The FMA may also undertake a number of licensing actions, such as censure, imposition of action plans, directions, or the suspension or cancellation of a licence.

Moreover, the Government decided to retain the Financial Adviser Disciplinary Committee for breaches by individual financial advisers.

Mechanics of the Code of Conduct and Code Committee

Under the new regime, all financial advice will be subject to a Code of Conduct. (Currently only a subset of advisers is subject to a Code of Conduct.) The Government decided to carry over much of the detail around the operation of the Code Committee, which oversees the Code, subject to minor amendments to ensure it reflects best practice. This includes, for example, a requirement that the Code Committee publish a summary of the submissions received, their response to these submissions, and an impact analysis that refers to the legislative purposes.

The Government also decided to appoint a Working Group to begin drafting the new Code of Conduct prior to legislation being enacted. The membership of the Code Working Group will reflect the required composition of the Code Committee as outlined in the Bill.

Transitional arrangements

The Government agreed to MBIE consulting further on transitional arrangements to ensure they are workable. The proposed transitional regime is set out in Part 3 of this paper.

Regulation of discretionary investment management services (DIMS)

DIMS are currently regulated in two separate ways, under the FA Act and the FMC Act. The Government decided that all providers of DIMS will be subject to the same requirements and regulated in the same way under the existing FMC Act licensing provisions.

The Government also recognised that AFAs who are authorised to provide DIMS under the FA Act are already subject to obligations that are similar to those imposed by the FMC Act. Therefore these providers will be granted licences under the FMC Act, subject to the condition that the service they provide remains limited to that which they can currently provide under the FA Act (i.e. personalised DIMS).

Regulation of advice provided to wholesale clients

The Government decided that those who only advise wholesale clients will not be required to be covered by a financial advice firm licence.

The Government also decided that advice to wholesale clients will be subject to the following legislative obligations:

- The new legislative duty to place the interests of the consumer first. This aims to create a level playing field whereby all advice is subject to the same broad conduct standard. MBIE is seeking feedback through this consultation document on the implications of this change.
- The new legislative obligation to disclose prescribed information. The content, format and timing of disclosure will be detailed in regulations. This will allow flexibility to tailor different disclosure requirements for wholesale versus retail clients. For example, the disclosure requirements for wholesale advisers could be to take reasonable steps to ensure the client is aware they are regarded as a wholesale client, the consequences of that status, and that they can opt-out of that status.

Note that the duties that currently apply to wholesale advice (such as the duty to exercise care, diligence, and skill) will continue to apply.

Further work on the impact of soft commissions

MBIE has considered whether there should be formal reporting of soft-commissions (such as trips abroad and other non-monetary incentives). For example, this could take the form of a public register of soft-commissions paid by providers to advisers.

In the first instance, the FMA will undertake further work on the impact of soft commissions on advice. This work will inform future policy decisions on whether additional disclosure and/or other actions are needed in relation to soft commissions.

Complementary measures to help address misuse of the Financial Service Providers Register (FSPR)

The Government agreed to complementary measures to help address misuse of the FSPR. In particular:

- If an entity is not otherwise licensed in New Zealand, then if it refers to its New Zealand registered status (other than where required by law), it must make clear the limitations of being registered, i.e. that registration does not indicate the entity is licensed or monitored by a regulatory agency in New Zealand.
- In addition, the Government has decided to provide a power for the Registrar to require information from persons other than the provider, such as a director of the provider. This is intended to deter New Zealand individuals from helping to facilitate misuse of the FSPR by agreeing to act as nominee directors of offshore-controlled entities applying to be registered.

These measures are additional to the previously announced decision to amend the application of the FSP Act (i.e. entities will only be able to register if they are in the business of providing financial services and promote those services to persons in New Zealand).

Annex 2: Detailed timeline of proposed transitional arrangements

2017 Code Working Group appointed Bill introduced	Early-mid Mid
2018 Code of Conduct approved Transitional licence applications open	Aug
2019 Existing industry participants must be transitionally licensed New regime takes effect (including new Code of Conduct and new adviser designations) with a competency safe harbour Full licence applications open	Feb
2020	
2021 Transitional licences expire Everyone must be fully licensed Competency safe harbour ceases	Feb

Code of Conduct

- Code Working Group appointed in early-mid 2017 to develop a Code of Conduct before the Act comes into force.
- Will provide industry with more certainty about the requirements sooner, alleviating anxiety about any changes.
- Means most elements of the new regime will be able to take effect sooner.

Transitional licensing

- All existing industry participants must be licensed within six months of the approval of the Code of Conduct.
- Relatively easy process vis a vis the full licensing requirements.
- Brings existing industry participants into the new regime quickly – subject to new Code of Conduct and enforcement measures.
- Option of competency safe harbour but must limit their services to those they are currently able to provide.
- Gives FMA and education providers time to better anticipate licensing, training and compliance requirements.
- Will make transition to full licence smoother and more manageable for industry.

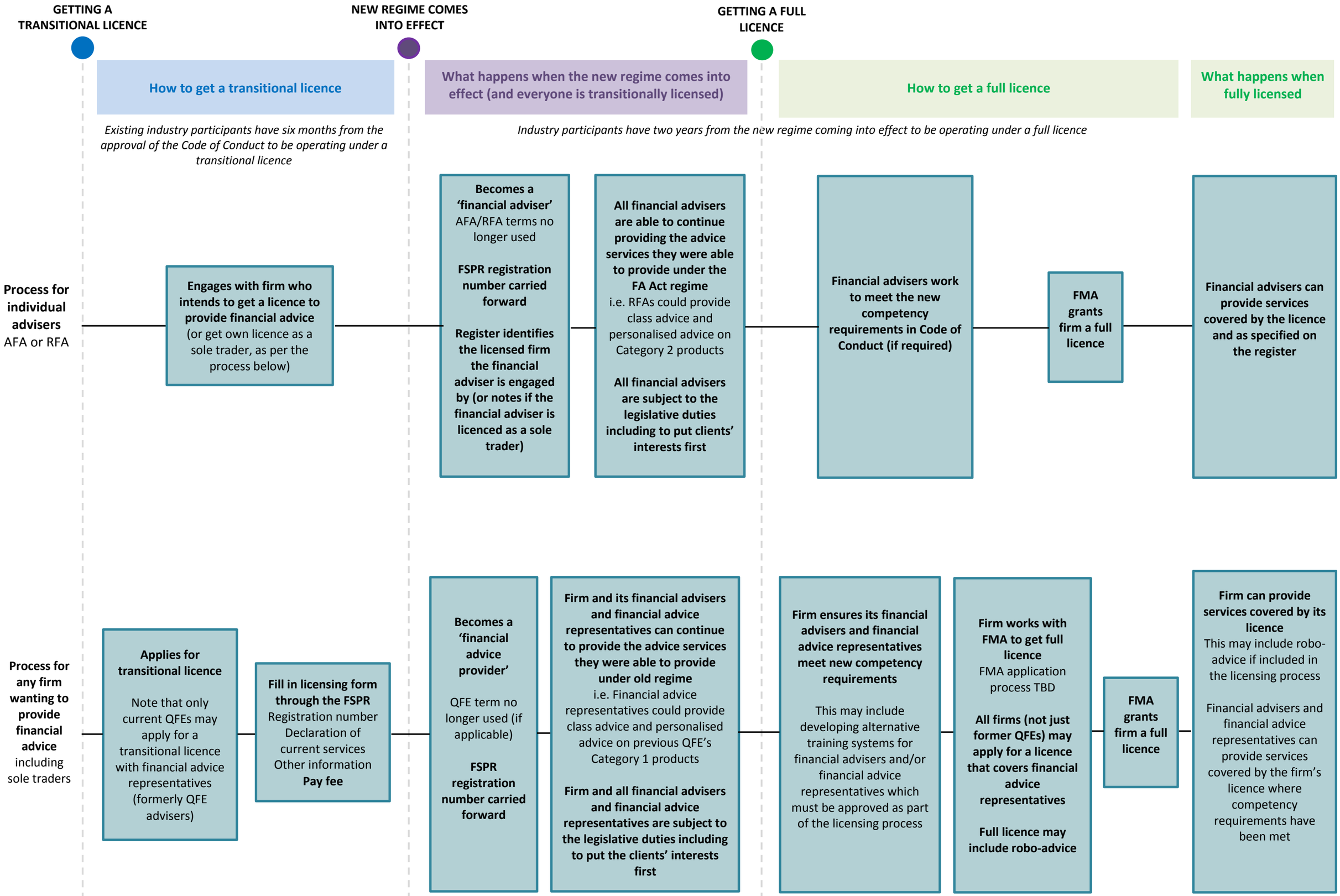
Full licensing

- Existing industry participants will have two years from transitional licensing taking effect to be operating under a full licence.
- More comprehensive process than the transitional licensing process, but will also be flexible and depend on factors such as the nature and size of the firm and the services it provides.
- Competency safe harbour will cease and all industry participants will be required to meet the competency standards in the Code of Conduct.

Key

- Code of Conduct
- Legislation and regulations
- Transitional licensing
- Full licensing

Annex 3: Key steps in the proposed transitional process


GETTING A TRANSITIONAL LICENCE
NEW REGIME COMES INTO EFFECT
GETTING A FULL LICENCE
How to get a transitional licence
What happens when the new regime comes into effect (and everyone is transitionally licensed)
How to get a full licence
What happens when fully licensed
Existing industry participants have six months from the approval of the Code of Conduct to be operating under a transitional licence
Industry participants have two years from the new regime coming into effect to be operating under a full licence
Process for individual advisers AFA or RFA
Engages with firm who intends to get a licence to provide financial advice (or get own licence as a sole trader, as per the process below)
Becomes a 'financial adviser' AFA/RFA terms no longer used
FSPR registration number carried forward
Register identifies the licensed firm the financial adviser is engaged by (or notes if the financial adviser is licenced as a sole trader)
All financial advisers are able to continue providing the advice services they were able to provide under the FA Act regime i.e. RFAs could provide class advice and personalised advice on Category 2 products
All financial advisers are subject to the legislative duties including to put clients' interests first
Financial advisers work to meet the new competency requirements in Code of Conduct (if required)
FMA grants firm a full licence
Financial advisers can provide services covered by the licence and as specified on the register
Process for any firm wanting to provide financial advice including sole traders
Applies for transitional licence
Note that only current QFEs may apply for a transitional licence with financial advice representatives (formerly QFE advisers)
Fill in licensing form through the FSPR
Registration number
Declaration of current services
Other information
Pay fee
Becomes a 'financial advice provider'
QFE term no longer used (if applicable)
FSPR registration number carried forward
Firm and its financial advisers and financial advice representatives can continue to provide the advice services they were able to provide under old regime i.e. Financial advice representatives could provide class advice and personalised advice on previous QFE's Category 1 products
Firm and all financial advisers and financial advice representatives are subject to the legislative duties including to put the clients' interests first
Firm ensures its financial advisers and financial advice representatives meet new competency requirements
This may include developing alternative training systems for financial advisers and/or financial advice representatives which must be approved as part of the licensing process
Firm works with FMA to get full licence
FMA application process TBD
All firms (not just former QFEs) may apply for a licence that covers financial advice representatives
Full licence may include robo-advice
FMA grants firm a full licence
Firm can provide services covered by its licence
This may include robo-advice if included in the licensing process
Financial advisers and financial advice representatives can provide services covered by the firm's licence where competency requirements have been met