

Reprint  
as at 1 July 2014



**Financial Service Providers  
(Registration and Dispute  
Resolution) Act 2008**

Public Act 2008 No 97  
Date of assent 29 September 2008  
Commencement see section 2

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Business, Innovation, and Employment.**

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**1 Title**

This Act is the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

**2 Commencement**

- (1) Part 2 and section 48 come into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more orders may be made that do either or both of the following:
- (a) bring different provisions into force on different dates:
  - (b) bring provisions into force on different dates in respect of different types of financial service or financial service provider.

- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Section 2(1)(a): Part 2 (except subpart 1) and section 48 brought into force, on 16 August 2010, by clause 2 of the Financial Service Providers (Registration and Dispute Resolution) Act Commencement Order 2010 (SR 2010/231).

Section 2(1)(b): subpart 1 of Part 2 brought into force (in respect of financial services other than financial adviser services), on 1 December 2010, by clause 3 of the Financial Service Providers (Registration and Dispute Resolution) Act Commencement Order 2010 (SR 2010/231).

Section 2(1)(b): subpart 1 of Part 2 brought into force (in respect of financial adviser services), on 1 April 2011, by clause 4 of the Financial Service Providers (Registration and Dispute Resolution) Act Commencement Order 2010 (SR 2010/231).

Section 2(1): replaced, on 1 July 2010, by section 5 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

## **Part 1**

### **Preliminary provisions**

#### **2A Purposes of this Act**

The purposes of this Act are—

- (a) to promote the confident and informed participation of businesses, investors, and consumers in the financial markets; and
- (b) to promote and facilitate the development of fair, efficient, and transparent financial markets.

Section 2A: inserted, on 1 July 2014, by section 4 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

#### **3 Overview**

- (1) This Act requires financial service providers to be registered.
- (2) Financial service providers are generally required to be members of a dispute resolution scheme if they provide financial services to retail clients.
- (3) The Act sets out how a dispute resolution scheme may be approved by the Minister and why the approval might be withdrawn.
- (4) *[Repealed]*
- (5) This section is intended as a guide only.

Section 3(2): replaced, on 1 July 2010, by section 6 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 3(2): amended, on 1 July 2014, by section 5(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 3(3): amended, on 1 July 2014, by section 5(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 3(4): repealed, on 1 July 2014, by section 5(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

#### 4 Interpretation

In this Act, unless the context otherwise requires,—

**annual confirmation** means the annual confirmation relating to a registered provider supplied to the Registrar under section 28

**annual report** means the annual report relating to an approved dispute resolution scheme supplied to the Minister under section 68

**approved dispute resolution scheme** has the meaning given by section 50

**broker** has the meaning given by section 77A of the Financial Advisers Act 2008

**broking service** has the meaning given by section 77B of the Financial Advisers Act 2008

**business** includes any profession, trade, or undertaking, whether or not carried on with the intention of making a pecuniary profit

**chartered accountant** has the same meaning as in section 2 of the Institute of Chartered Accountants of New Zealand Act 1996

**chief executive** means the chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**company** means a company, or an overseas company, within the meaning of section 2(1) of the Companies Act 1993

**contract of insurance**—

- (a) means every contract of insurance including a contract of life insurance (including endowment and annuity contracts) and reinsurance; but
- (b) does not include a class of contract declared not to be a contract of insurance by regulations

**controlling owner** means, in relation to a financial service provider that is not an individual, any person who beneficially owns 50% or more of that provider



**conveyancing practitioner** has the meaning given by section 6 of the Lawyers and Conveyancers Act 2006

**credit contract**—

- (a) has the meaning given by section 7 of the Credit Contracts and Consumer Finance Act 2003; but
- (b) does not include—
  - (i) contracts specified in section 15(1)(a) or (b) of that Act;
  - (ii) *[Repealed]*
  - (iii) contracts under which no interest charges, and no credit fees, as defined in section 5 of that Act are payable

**creditor** has the same meaning as in section 5 of the Credit Contracts and Consumer Finance Act 2003

**director** has the meaning given by section 126 of the Companies Act 1993, but also includes, in relation to a body that is not a company, a person who occupies a position comparable to that of a director (such as a trustee or a partner)

**document** means—

- (a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and figures), images, or sounds, or from which symbols, images, or sounds can be derived, and includes—
  - (i) a label, marking, or other writing that identifies or describes a thing of which it forms a part, or to which it is attached;
  - (ii) a book, map, plan, graph, or drawing;
  - (iii) a photograph, film, or negative; and
- (b) information electronically recorded or stored, and information derived from that information

**due date**, in relation to an annual confirmation, means the date allocated to a registered financial service provider by the Registrar under section 16(1)(b)

**family trust** has the same meaning as in section 5 of the Credit Contracts and Consumer Finance Act 2003

**FATF** means the Financial Action Task Force on Money Laundering established in Paris in 1989

**FATF Recommendations** means all of the following recommendations:

- (a) the 40 Recommendations adopted by FATF at its plenary meeting on 20 June 2003;
- (b) the Special Recommendations on Terrorist Financing adopted by FATF at its extraordinary plenary meeting on 31 October 2001;
- (c) Special Recommendation IX on Terrorist Financing adopted by FATF at its plenary meeting between 20 and 22 October 2004

**financial adviser service** has the meaning given by section 9 of the Financial Advisers Act 2008

**financial service** has the meaning given by section 5

**financial service provider** means a person who provides or offers to provide a financial service

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

**in the business of providing a financial service** has the meaning given by section 6

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

**insurer** means a person by whom or on whose behalf the risk or part of the risk to which any contract of insurance relates is accepted

**lawyer** has the meaning given by section 6 of the Lawyers and Conveyancers Act 2006

**levy** means a levy prescribed by regulations made under section 68 of the Financial Markets Authority Act 2011

**licensed** means licensed, registered, authorised, or otherwise approved by a licensing authority

**licensed provider** means a person, identified in Schedule 2, who—

- (a) provides or offers to provide a licensed service; and
- (b) is licensed, registered, authorised, or otherwise approved by a licensing authority

**licensed service** means a financial service in respect of which a licensing enactment requires a person to be licensed (or to be exempt from that requirement) to—

- (a) provide the service; or
- (b) hold out that the person provides the service

**licensing authority** means a body, identified in Schedule 2, that licenses, registers, authorises, or otherwise approves a person to be a licensed provider

**licensing enactment** means an enactment identified in Schedule 2

**member**, in relation to a dispute resolution scheme, has the meaning given by section 48(2)

**member of a local authority** has the meaning given by section 5(1) of the Local Government Act 2002

**Minister** means—

- (a) the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act and for Parts 1 and 2; and
- (b) the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for Part 3

**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**person** includes a corporation sole, a body corporate, and an unincorporated body

**prescribed** means prescribed by this Act or by any regulations made under this Act

**real estate agent** means a person who is a licensee under the Real Estate Agents Act 2008

**register** means the register of financial service providers established and maintained under section 24

**Registrar** means the Registrar of Financial Service Providers appointed under section 35

**related company** has the meaning given by section 2(3) of the Companies Act 1993

**retail client** has the meaning set out in section 49

**senior manager** means, in relation to a financial service provider, a person who is not a director but occupies a position that allows the person to exercise significant influence over the management or administration of that provider (for example, a chief executive or a chief financial officer)

**tax agent** has the meaning given by section 3(1) of the Tax Administration Act 1994

**wholesale client** has the meaning set out in section 49.

Section 4 **affiliated entity**: repealed, on 1 July 2014, by section 6(4) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 4 **broker**: inserted, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **broking service**: inserted, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **chartered accountant**: inserted, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **contract of insurance**: inserted, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **conveyancing practitioner**: inserted, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **credit contract** paragraph (b)(ii): repealed, on 1 July 2014, by section 6(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 4 **credit contract** paragraph (b)(iii): amended, on 1 July 2014, by section 6(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 4 **creditor**: inserted, on 1 July 2014, by section 6(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 4 **financial adviser service**: amended, on 1 July 2010, by section 7(4) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **FMA**: inserted, on 1 July 2014, by section 6(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 4 **incorporated law firm**: inserted, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **insurance business**: repealed, on 1 July 2010, by section 7(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **insurer**: inserted, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **levy**: inserted, on 1 July 2014, by section 6(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 4 **licensed**: inserted, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **licensed service**: replaced, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **licensing enactment**: inserted, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **person**: amended, on 1 July 2010, by section 7(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **reserve scheme**: repealed, on 1 July 2014, by section 6(4) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 4 **responsible financial service provider**: repealed, on 1 July 2014, by section 6(4) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 4 **retail client**: inserted, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **wholesale client**: inserted, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

## **5 Meaning of financial service**

In this Act, **financial service** means any of the following financial services:

- (a) a financial adviser service:
- (ab) a broking service (including a custodial service):
- (b) acting as a deposit taker as defined in the Reserve Bank of New Zealand Act 1989:
- (c) being a registered bank:
- (d) keeping, investing, administering, or managing money, securities, or investment portfolios on behalf of other persons:

- (e) providing credit under a credit contract:
- (f) operating a money or value transfer service:
- (g) issuing and managing means of payment (for example, credit and debit cards, cheques, travellers' cheques, money orders, bankers' drafts, and electronic money):
- (h) giving financial guarantees:
- (i) participating in an offer of securities to the public in either of the following capacities (within the meaning of those terms under section 2(1) of the Securities Act 1978):
  - (i) as an issuer of the securities:
  - (ii) as a promoter:
- (ia) acting in any of the following capacities (within the meaning of those terms under section 2(1) of the Securities Act 1978) in respect of securities offered to the public:
  - (i) as a trustee:
  - (ia) as a statutory supervisor:
  - (ii) as a unit trustee:
  - (iii) as a superannuation trustee:
  - (iv) as a manager:
- (j) changing foreign currency:
- (k) entering into derivative transactions, or trading in money market instruments, foreign exchange, interest rate and index instruments, transferable securities (including shares), and futures contracts on behalf of another person:
- (l) providing forward foreign exchange contracts:
- (m) acting as an insurer:
- (n) providing any other financial service that is prescribed for the purposes of New Zealand complying with the FATF Recommendations, other recommendations by FATF, or other similar international obligations that are consistent with the purpose of this Act.

Section 5(ab): inserted, on 1 July 2010, by section 8(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 5(ab): amended, on 1 April 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5(i): replaced, on 1 July 2010, by section 8(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 5(ia): inserted, on 1 July 2010, by section 8(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 5(ia)(ia): inserted, on 1 October 2011, by section 61(2) of the Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10).

Section 5(m): replaced, on 1 July 2010, by section 8(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

- 6 Meaning of in the business of providing a financial service**  
In this Act, **in the business of providing a financial service** means carrying on a business of providing or offering to provide a financial service (whether or not the business is the provider's only business or the provider's principal business).

**7 Application of Act**

- (1) This Act applies to persons who are in the business of providing a financial service.
- (2) None of the following persons are in the business of providing a financial service for the purposes of this Act to the extent this subsection applies to them:
  - (a) a lawyer, incorporated law firm, conveyancing practitioner, chartered accountant, tax agent, or real estate agent providing a service in the ordinary course of business of the relevant kind;
  - (b) a government department listed in Schedule 1 of the State Sector Act 1988;
  - (c) the Reserve Bank of New Zealand (and any subsidiaries);
  - (d) the statutory entities listed in Schedule 1 of the Crown Entities Act 2004;
  - (e) a person engaged in terminating the business of a financial service provider after that provider has been deregistered;
  - (f) a non-profit organisation in respect of free financial services:

- (g) *[Repealed]*
  - (h) an executor, administrator, or trustee in respect of services provided in the administration of an estate or a trustee in respect of services provided to beneficiaries of a family trust:
  - (i) a nominated representative (within the meaning of the Financial Advisers Act 2008) while acting in that capacity:
  - (j) an employer while providing services to enable employees of the employer to obtain rights or benefits under a registered superannuation scheme (as defined in section 2(1) of the Superannuation Schemes Act 1989) or a KiwiSaver scheme (as defined in section 4(1) of the KiwiSaver Act 2006), being a scheme in which that employer participates for the benefit of its employees:
  - (k) any person exempted, under regulations made under this Act or by or under any other enactment, from the application of this Act or from the requirement to register under this Act (to the extent of the relevant exemption).
- (3) If subsection (2) applies to a person (A), it applies equally to any controlling owner, director, employee, agent, or other person while acting in the course of, and for the purposes of, A's business to the same extent as it applies to A.
- (4) However, subsections (2) and (3) do not apply if, and to the extent that, any other enactment requires a person referred to in those subsections to be registered under this Act.

Section 7: replaced, on 1 July 2010, by section 9 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 7(2)(g): repealed, on 1 July 2014, by section 8 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

## **8 Act binds the Crown**

This Act binds the Crown.

### **8A Territorial scope**

This Act applies to a person who—

- (a) is ordinarily resident in New Zealand (within the meaning of section 4 of the Crimes Act 1961) or has a place



- of business in New Zealand, regardless of where the financial service is provided; or
- (b) is, or is required to be, a licensed provider under a licensing enactment; or
  - (c) is required to be registered under this Act by any other enactment.

Section 8A: inserted, on 1 July 2010, by section 10 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 8A(b): amended, on 1 April 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 8A(c): inserted, on 1 April 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

## **Part 2 Registration**

### **9 Purpose of this Part**

The purpose of this Part is to—

- (a) establish a compulsory public register of financial service providers to enable—
  - (i) the public to access information about financial service providers; and
  - (ii) the Registrar and other regulators to regulate financial service providers;
- (b) prohibit certain people from being involved in the management or direction of registered financial service providers;
- (c) conform with New Zealand's obligations under the FATF Recommendations.

### **10 Registration and deregistration**

- (1) Registration under this Act continues until the registered person is deregistered.
- (2) Registration may not be transferred and may not vest by operation of law in any person other than the person registered under this Act.
- (3) A person is deregistered when the Registrar enters on the register that the person is deregistered.

**Subpart 1—No holding out or being in  
business of providing financial service  
unless registered and member of approved  
dispute resolution scheme**

Subpart 1: brought into force (in respect of financial services other than financial adviser services), on 1 December 2010, by clause 3 of the Financial Service Providers (Registration and Dispute Resolution) Act Commencement Order 2010 (SR 2010/231).

Subpart 1: brought into force (in respect of financial adviser services), on 1 April 2011, by clause 4 of the Financial Service Providers (Registration and Dispute Resolution) Act Commencement Order 2010 (SR 2010/231).

Subpart 1 heading: amended, on 1 July 2014, by section 9 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

**11 No being in business of providing financial service unless registered and member of approved dispute resolution scheme**

- (1) A person to whom this Act applies must not be in the business of providing a financial service unless that person—
- (a) is registered for that service under this Part; and
  - (b) is, if required by section 48, a member of an approved dispute resolution scheme.
- (2) Every person who knowingly breaches subsection (1) commits an offence and is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$100,000, or to both; or
  - (b) in the case of a person who is not an individual, to a fine not exceeding \$300,000.

Section 11: brought into force (in respect of financial services other than financial adviser services), on 1 December 2010, by clause 3 of the Financial Service Providers (Registration and Dispute Resolution) Act Commencement Order 2010 (SR 2010/231).

Section 11: brought into force (in respect of financial adviser services), on 1 April 2011, by clause 4 of the Financial Service Providers (Registration and Dispute Resolution) Act Commencement Order 2010 (SR 2010/231).

Section 11 heading: amended, on 1 July 2014, by section 10(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 11(1): replaced, on 1 July 2014, by section 10(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 11(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**12 No holding out that in business of providing financial service unless registered and member of approved dispute resolution scheme**

- (1) A person to whom this Act applies must not—
- (a) hold out that the person is registered under this Act unless that person—
    - (i) is registered under this Part; and
    - (ii) is, if required by section 48, a member of an approved dispute resolution scheme; or
  - (b) hold out that the person is registered in respect of a particular service or entitled, qualified, able, or willing to be in the business of providing a financial service unless that person—
    - (i) is registered for that service under this Part; and
    - (ii) is, if required by section 48, a member of an approved dispute resolution scheme.
- (2) Every person who knowingly breaches subsection (1) commits an offence and is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$100,000, or to both; or
  - (b) in the case of a person who is not an individual, to a fine not exceeding \$300,000.

Section 12: brought into force (in respect of financial services other than financial adviser services), on 1 December 2010, by clause 3 of the Financial Service Providers (Registration and Dispute Resolution) Act Commencement Order 2010 (SR 2010/231).

Section 12: brought into force (in respect of financial adviser services), on 1 April 2011, by clause 4 of the Financial Service Providers (Registration and Dispute Resolution) Act Commencement Order 2010 (SR 2010/231).

Section 12 heading: amended, on 1 July 2014, by section 11(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 12(1): replaced, on 1 July 2014, by section 11(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 12(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## Subpart 2—Registration of financial service provider

### 13 Qualifications for registration as financial service provider

A person is qualified to be registered as a financial service provider if—

- (a) the person is not disqualified under section 14; and
- (b) *[Repealed]*
- (c) if a licensing enactment requires the person to be a licensed provider, the person is, or will be (on and from commencing to be in the relevant business), a licensed provider.

Section 13(b): repealed, on 1 July 2014, by section 12 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 13(c): replaced, on 1 July 2010, by section 13 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

### 14 Disqualified person

- (1) A person is disqualified if,—
  - (a) in the case of an individual, the individual is disqualified under subsection (2); or
  - (b) in the case of a person who is not an individual, the person has a controlling owner, director, or senior manager who is disqualified under subsection (2).
- (2) The following persons are disqualified:
  - (a) an undischarged bankrupt;
  - (b) a person prohibited from being a director or promoter of, or concerned in the management of, an incorporated or unincorporated body under the Companies Act 1993, the Securities Act 1978, the Securities Markets Act 1988, or the Takeovers Act 1993;
  - (c) a person subject to a management banning order under the Securities Act 1978, the Securities Markets Act 1988, the Takeovers Act 1993, or subject to an order under section 108 of the Credit Contracts and Consumer Finance Act 2003;
  - (d) a person who has been convicted of an offence against section 11, 12, or 41 within the past 5 years:

- (e) a person who has been convicted of an offence under sections 217 to 266 of the Crimes Act 1961 within the past 5 years:
  - (ea) a person who has been convicted within the past 5 years, in a country other than New Zealand, of an offence that is substantially similar to an offence specified in paragraph (e):
  - (f) a person who has been convicted of a money laundering offence or an offence relating to the financing of terrorism, whether in New Zealand or elsewhere:
  - (g) a person who is subject to a confiscation order under the Proceeds of Crime Act 1991.
- (3) A member of a local authority must be treated as if he or she is not disqualified.

Section 14(2)(ea): inserted, on 1 July 2014, by section 13(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 14(2)(f): amended, on 1 July 2014, by section 13(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

*Application for registration as financial service  
provider*

**15 Application to be registered as financial service provider**

- (1) An application to be registered as a financial service provider must be made to the Registrar and—
- (a) state the following (as relevant to the applicant):
    - (i) the name and business address of the applicant;
    - (ii) *[Repealed]*
    - (iii) whether the application relates to a licensed service, and if so, which particular licensed service; and
  - (b) be in the form (if any) required by the Registrar; and
  - (c) confirm that the applicant is not disqualified under section 14; and
  - (d) contain, or be accompanied by, any other prescribed information or documents; and
  - (e) be accompanied by the prescribed fee or levy (if any).
- (2) If the application relates to a licensed service, it must be accompanied by any information required, by or under the

licensing enactment, to become a licensed provider, unless otherwise agreed by the relevant licensing authority and the Registrar.

Section 15(1)(a)(ii): repealed, on 1 July 2014, by section 14 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 15(1)(e): amended, on 1 July 2010, by section 14(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 15(2): amended, on 1 May 2014, by section 91(3) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Section 15(2): amended, on 1 July 2010, by section 14(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

#### **15A Purpose of FMA's powers relating to registration**

The purpose of section 15B is to prevent a person (A) from being registered as a financial service provider if such registration has, will have, or is likely to have the effect of—

- (a) creating, or causing the creation of, a false or misleading appearance with respect to the extent to which A—
  - (i) provides, or will provide, financial services in New Zealand; or
  - (ii) provides, or will provide, financial services from a place of business in New Zealand; or
  - (iii) is, or will be, regulated by New Zealand law in relation to a financial service; or
- (b) otherwise damaging the integrity or reputation of—
  - (i) New Zealand's financial markets; or
  - (ii) New Zealand's law or regulatory arrangements for regulating those markets.

Section 15A: inserted, on 1 July 2014, by section 15 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

#### **15B FMA may prevent registration of financial service provider**

- (1) On receipt of an application under section 15, the Registrar may, if the Registrar considers it necessary or desirable after having regard to section 15A, refer the application to the FMA

- and the FMA may, but is not required to, consider the application.
- (2) If the FMA decides to consider the application, the FMA must, after taking into account section 15A, consider whether preventing the applicant from being registered under section 16(1) is necessary or desirable.
  - (3) If, in the FMA's view, the applicant should be prevented from being registered under section 16(1), the FMA must—
    - (a) comply with subsection (4); and
    - (b) if, having considered any submission received under subsection (4), the FMA remains of the view that the applicant should be prevented from being registered, direct the Registrar to reject the application in accordance with section 16(2); and
    - (c) give its reasons for that direction.
  - (4) Before giving a direction under subsection (3)(b), the FMA must—
    - (a) give the applicant—
      - (i) written notice of its intention to give the direction; and
      - (ii) the reasons why it intends to give that direction; and
      - (iii) a date (being not less than 10 working days after the date of the notice referred to in subparagraph (i)) by which the applicant may make written submissions to the FMA in relation to its proposed direction; and
    - (b) consider any submissions received in accordance with paragraph (a)(iii).
  - (5) The Registrar must comply with a direction given under subsection (3)(b).
  - (6) A provider who is not satisfied with a direction given under this section may appeal to the High Court under section 42.

Section 15B: inserted, on 1 July 2014, by section 15 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

**15C FMA may prevent registration regardless of whether applicant is otherwise qualified to be registered**

The FMA may give a direction under section 15B in relation to an applicant regardless of whether the applicant is qualified for registration under section 13.

Section 15C: inserted, on 1 July 2014, by section 15 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

**16 Registration of financial service provider**

- (1) If the Registrar accepts that an applicant is qualified to be registered as a financial service provider, the Registrar must—
- (a) enter the following details on the register (as relevant to the provider):
    - (i) the name and business address of the provider;
    - (ii) *[Repealed]*
    - (ia) the type or types of financial service for which the provider is registered;
    - (iii) if the provider is a licensed provider in relation to a particular licensed service, that fact and the name and business address of the relevant licensing authority;
    - (iv) any other information prescribed in regulations; and
  - (aa) notify the provider of the Registrar's decision; and
  - (ab) require the provider to notify the Registrar, within 10 working days from receiving notification under paragraph (aa), of the name and business address of, and of the provider's membership number in, the approved dispute resolution scheme of which the provider is a member (if the provider is required, by section 48, to be a member of a scheme); and
  - (b) allocate a due date for the provider's annual confirmation, notify the provider of that date, and notify that date on the register.
- (2) If the Registrar does not accept that an applicant is qualified to be registered as a financial service provider, or if directed by the FMA to reject the application, the Registrar must notify the applicant and any relevant licensing authority of the



Registrar's decision or the FMA's direction, as the case may be.

- (3) Subsection (1) does not apply if the FMA has directed the Registrar to reject the application.

Section 16(1)(a)(ii): repealed, on 1 July 2014, by section 16(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 16(1)(a)(ia): inserted, on 1 July 2010, by section 15 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 16(1)(aa): inserted, on 1 July 2014, by section 16(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 16(1)(ab): inserted, on 1 July 2014, by section 16(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 16(2): amended, on 1 July 2014, by section 16(3)(a) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 16(2): amended, on 1 July 2014, by section 16(3)(b) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 16(3): inserted, on 1 July 2014, by section 16(4) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

*Changes relating to financial service provider*

**17 Duty to notify changes relating to financial service provider**

- (1) Each of the following persons must notify the Registrar about the following relevant changes relating to a financial service provider:
- (a) a financial service provider, if—
    - (i) the provider knows that the provider is no longer qualified for registration in accordance with section 13; or
    - (ii) the provider is in a business of providing a financial service for which the provider is not registered; or
    - (iii) the provider knows that any details on the register are no longer accurate, including information

- relating to the provider's membership of an approved dispute resolution scheme:
- (b) the licensing authority, if the licensing authority knows that a financial service provider has ceased to be licensed:
  - (c) the person responsible for an approved dispute resolution scheme of which a financial service provider was a member, if the person knows that the provider is no longer a member of that scheme, in which case the person responsible must also notify the Registrar of the following matters:
    - (i) whether that provider's membership was terminated under section 63(1)(ba); and
    - (ii) whether any remedial action imposed on that provider by the scheme has not been carried out; and
    - (iii) whether there is any unresolved complaint about that provider.
- (1A) To avoid doubt, the notification obligations in subsection (1)(c) apply in relation to an approved dispute resolution scheme or a reserve scheme that has been discontinued (whether as a result of approval being withdrawn or for any other reason).
- (2) The time within which a person must notify the Registrar under subsection (1) is 10 working days from the date the person comes to know about the change or, in the case of an approved dispute resolution scheme or a reserve scheme that has been discontinued, within 10 working days of that discontinuance.
- (3) A financial service provider who breaches subsection (1)(a) commits an offence and is liable on conviction to a fine not exceeding \$10,000.
- (4) A person who breaches subsection (1)(c) commits an offence and is liable on conviction to a fine not exceeding \$10,000.

Section 17(1)(a): replaced, on 1 July 2010, by section 16 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 17(1)(a)(iii): replaced, on 1 July 2014, by section 17(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 17(1)(b): replaced, on 1 July 2010, by section 16 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 17(1)(c): replaced, on 1 July 2014, by section 17(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 17(1A): inserted, on 1 July 2014, by section 17(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 17(2): amended, on 1 July 2014, by section 17(4) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 17(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 17(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### *Deregistration of financial service provider*

## **18 Deregistration of financial service provider**

- (1) The Registrar must deregister a financial service provider after a notice period in accordance with sections 19 and 20, if the Registrar is satisfied that the provider—
- (a) is no longer qualified to be registered in accordance with section 13; or
  - (aa) has failed to notify the Registrar of the name, business address, and membership number, as required by section 16(1)(ab); or
  - (b) is not in the business of providing a financial service (at any time after the expiry of 3 months after registration); or
  - (c) has been registered because of a false or misleading representation or omission; or
  - (d) has proffered an application fee or annual confirmation fee or levy that has subsequently been dishonoured, declined, or reversed.
- (1A) The Registrar may, if the Registrar considers it necessary or desirable after taking into account section 18A, refer consideration of whether a financial service provider should be deregistered to the FMA for the FMA's direction.
- (1B) The Registrar must deregister a financial service provider if the FMA gives a direction under section 18B(3)(c)(i).

- (2) The Registrar must deregister a financial service provider if the provider so requests in writing, with effect from any future date requested. The Registrar must notify any relevant licensing authority of this deregistration.
- (3) For the purposes of this section and sections 19 and 20, **notice period** means 20 working days from the date of the Registrar's notification under section 19.

Section 18(1)(aa): inserted, on 1 July 2014, by section 18(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 18(1)(b): replaced, on 1 July 2010, by section 17(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 18(1)(d): amended, on 1 July 2010, by section 17(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 18(1A): inserted, on 1 July 2014, by section 18(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 18(1B): inserted, on 1 July 2014, by section 18(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

### **18A Purpose of FMA's powers relating to deregistration**

The purpose of section 18B is to provide for the deregistration of a person (A) if A's registration has, will have, or is likely to have the effect of—

- (a) creating, or causing the creation of, a false or misleading appearance with respect to the extent to which A—
- (i) provides, or will provide, financial services in New Zealand; or
  - (ii) provides, or will provide, financial services from a place of business in New Zealand; or
  - (iii) is, or will be, regulated by New Zealand law in relation to a financial service; or
- (b) otherwise damaging the integrity or reputation of—
- (i) New Zealand's financial markets; or
  - (ii) New Zealand's law or regulatory arrangements for regulating those markets.

Section 18A: inserted, on 1 July 2014, by section 19 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

**18B Consideration of deregistration of financial service provider by FMA**

- (1) The FMA—
  - (a) may, but is not required to, consider a referral under section 18(1A); and
  - (b) may otherwise consider giving a direction under this section at its own discretion (if a referral has not been made).
- (2) If the FMA decides to consider the referral or otherwise decides to consider giving a direction under this section, the FMA must, after taking into account section 18A, consider whether it is necessary or desirable for a financial service provider to be deregistered.
- (3) If, after acting under subsection (2), the FMA decides to give a direction to the Registrar under this section to deregister the financial service provider, the FMA must—
  - (a) give the financial service provider—
    - (i) written notice of its intention to give the direction; and
    - (ii) the reasons why it intends to give the direction; and
    - (iii) a date (being not less than 20 working days after the date of the notice referred to in subparagraph (i)) by which the applicant may make written submissions to the FMA in relation to its proposed direction; and
  - (b) consider any submissions received in accordance with paragraph (a)(iii); and
  - (c) either,—
    - (i) if the FMA remains of the view that the financial service provider should be deregistered, direct the Registrar to deregister the provider; or
    - (ii) if the FMA decides that the provider should not be deregistered, advise the Registrar accordingly; and
  - (d) give its reasons for the direction or advice, as the case may be.
- (4) A provider who is not satisfied with a direction given under this section may appeal to the High Court under section 42.

- (5) Sections 19 and 20 do not apply if a financial service provider is deregistered as a result of a direction given under subsection (3)(c)(i).

Section 18B: inserted, on 1 July 2014, by section 19 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

**18C FMA may direct deregistration regardless of whether section 18(1) applies**

The FMA may give a direction under section 18B in relation to a person regardless of whether any of paragraphs (a) to (d) of section 18(1) apply.

Section 18C: inserted, on 1 July 2014, by section 19 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

**19 Notice of intention to deregister**

- (1) The Registrar must notify a financial service provider and any relevant licensing authority of the Registrar's intention to deregister the provider under section 18(1).
- (2) The Registrar's notice must set out—
- (a) that the Registrar intends to deregister the provider under section 18(1) (stating whichever paragraph applies); and
  - (b) the reasons why the Registrar considers the relevant paragraph in section 18(1) applies; and
  - (c) that there is a notice period before deregistration occurs during which the provider may object, under section 20, to the deregistration.

**20 Objection to proposed deregistration of financial service provider**

- (1) During the notice period, the financial service provider may object (with reasons) to the proposed deregistration under section 18(1).
- (2) If the Registrar receives an objection under subsection (1) within the notice period, the Registrar must consider the objection and must not proceed with a deregistration under

section 18(1), unless the Registrar is satisfied that any of paragraphs (a) to (d) of section 18(1) applies.

**21 Notification of deregistration of financial service provider**

If the Registrar deregisters a financial service provider, the Registrar must notify—

- (a) the financial service provider, stating the provider's right of appeal to the High Court against the deregistration under section 42; and
- (b) any relevant licensing authority; and
- (c) the public, by a notice that is publicly available on an Internet site (at all reasonable times) for not less than 20 working days.

*Reregistration of financial service provider*

**22 Reregistration of financial service provider**

(1) The Registrar may reregister a financial service provider who was deregistered—

- (a) on the grounds set out in section 18(1)(b) if the Registrar is satisfied that the financial service provider was still in the business of providing a financial service at the time of deregistration; or
- (b) on the grounds set out in section 18(1)(d) if the Registrar is satisfied that the application fee or annual confirmation fee or levy has been paid.

(2) A reregistration is effective from the date of deregistration as if the deregistration had not occurred.

(3) If the Registrar reregisters a financial service provider, the Registrar must notify—

- (a) the financial service provider; and
- (b) any relevant licensing authority; and
- (c) the public, by a notice that is publicly available on an Internet site (at all reasonable times) for not less than 20 working days.

Section 22(1)(b): amended, on 1 July 2010, by section 18 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

*Responsible financial service provider*  
*[Repealed]*

Heading: repealed, on 1 July 2014, by section 20 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

**23 Responsible financial service provider**

*[Repealed]*

Section 23: repealed, on 1 July 2014, by section 20 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Subpart 3—Register of financial service  
providers

*Register established*

**24 Register of financial service providers**

The Registrar must establish and maintain a register of financial service providers.

**25 Operation of and access to register**

- (1) The register may be kept as an electronic register or in any other manner that the Registrar thinks fit.
- (2) The register must be available for access and searching by members of the public at all times unless suspended under subsection (3).
- (3) The Registrar may refuse access to the register or suspend its operation, in whole or in part,—
  - (a) if the Registrar considers that it is not practical to provide access to the register; or
  - (b) for any other reason that is prescribed by regulations made under this Act.

Compare: 2008 No 1 s 55(1), (2)

**26 Purposes of register**

The purposes of the register are—

- (a) to enable the public and any person referred to in paragraph (b) to—



- (i) identify registered financial service providers; and
- (ii) access information about—
  - (A) the name and business address of a registered financial service provider; and
  - (B) the approved dispute resolution scheme of which a registered financial service provider is a member (if required by section 48); and
  - (BA) the type or types of financial service for which a financial service provider is registered; and
  - (C) whether a registered financial service provider provides a licensed service; and
- (b) to assist any person in the exercise of the person's powers or the performance of the person's functions under this Act or any other enactment; and
- (c) to conform with New Zealand's obligations under the FATF Recommendations.

Section 26(a)(ii)(B): amended, on 1 July 2014, by section 21 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 26(a)(ii)(BA): inserted, on 1 July 2010, by section 19 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

## **27 Contents of register**

- (1) The register must contain the following information about each registered person (to the extent that the information is relevant):
  - (a) the registered financial service provider's name and business address:
  - (b) the name and business address of the approved dispute resolution scheme of which the registered financial service provider is a member:
  - (ba) the type or types of financial service for which the registered financial service provider is registered:
  - (c) in relation to a licensed provider,—
    - (i) the relevant licensed service:

- (ii) the name and business address of the relevant licensing authority;
  - (d) any other information prescribed in regulations.
- (2) In addition to the information referred to in subsection (1), the Registrar may, if the Registrar thinks it is appropriate, insert a note of warning in the register in relation to a registered person if—
  - (a) a request for information has been made by the Registrar under this Act in relation to that person; or
  - (b) the Registrar or the FMA is considering any matters relating to the deregistration of that person under this Act.
- (3) The Registrar must remove a note of warning inserted under subsection (2) if the Registrar is satisfied that the reasons for inserting it no longer apply.

Section 27(1)(b): amended, on 1 July 2014, by section 22(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 27(1)(ba): inserted, on 1 July 2010, by section 20 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 27(2): inserted, on 1 July 2014, by section 22(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 27(3): inserted, on 1 July 2014, by section 22(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

## **28 Annual confirmation**

- (1) Each registered financial service provider must supply to the Registrar each year by the due date an annual confirmation of details relating to that provider.
- (2) The annual confirmation must—
  - (a) be in the form (if any) required by the Registrar and be accompanied by the prescribed fee (if any) and any levy payable by the provider; and
  - (b) confirm that the provider is not disqualified under section 14; and
  - (c) contain, or be accompanied by, any other prescribed information or documents.

- (3) If a registered financial service provider does not comply with subsection (1) by the due date, the Registrar may assume that the provider is no longer in the business of providing a financial service and sections 18 to 20 apply.

Section 28(2)(a): amended, on 1 July 2010, by section 21 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

**29 Registrar must amend register in certain circumstances**

The Registrar must amend the register if—

- (a) an annual confirmation contains information that is different from the information entered on the register (where the Registrar is satisfied that the situations described in section 18(1) do not apply); or
- (b) a financial service provider informs the Registrar of information that is different from the information entered on the register (where the Registrar is satisfied that the situations described in section 18(1) do not apply); or
- (c) a licensing authority informs the Registrar that a registered financial service provider has become a licensed provider in relation to a particular licensed service; or
- (d) the Registrar is satisfied at any time that the register contains a typographical error or a mistake, or omits information supplied to the Registrar; or
- (e) regulations made under this Act require the Registrar to do so in circumstances specified by the regulations.

Section 29(e): replaced, on 1 July 2010, by section 22 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

**30 Registrar may refuse to accept document**

The Registrar may refuse to accept a document received by the Registrar under this Act if that document—

- (a) is not in the required form (if any); or
- (b) does not comply with prescribed requirements.

*Searches of register***31 Searches of register**

The register may be searched only by reference to the criteria specified in section 27(1)(a) to (d) and any other criteria prescribed in regulations.

Section 31: amended, on 1 July 2014, by section 23 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

**32 Search purposes**

The register may be searched for the following purposes:

- (a) by an individual, or a person with the consent of the individual, for the purpose of searching for information about that individual in accordance with the Privacy Act 1993:
- (b) by a person for a purpose referred to in section 26:
- (c) by a person for the purpose of advising another person in connection with any of the purposes referred to in this section.

**33 When search breaches information privacy principle**

A person who searches a public register for personal information for a purpose that is not a purpose set out in section 32 must be treated, for the purposes of Part 8 of the Privacy Act 1993, as if that person has breached an information privacy principle under section 66(1)(a)(i) of that Act.

Compare: 2006 No 55 s 456

*Information sharing***34 Sharing information with other persons or bodies**

- (1) The Registrar may communicate to any of the persons or bodies referred to in subsection (4) any information that the Registrar—
  - (a) holds (other than on the register) in relation to the exercise of the Registrar's powers or the performance of the Registrar's functions and duties; and
  - (b) considers may assist the person or body in the exercise of its powers or the performance of its functions and duties.

- (2) The Registrar may use any information communicated to the Registrar by a person or body referred to in subsection (4) in the Registrar's exercise of the Registrar's powers or the performance of the Registrar's functions and duties.
- (3) This section applies despite anything to the contrary in any enactment, contract, deed, or document.
- (4) The persons or bodies to which this section applies are—
  - (a) a licensing authority identified in Schedule 2:
  - (b) the New Zealand Police:
  - (c) the person responsible for an approved dispute resolution scheme:
  - (d) the Commerce Commission:
  - (e) a prescribed agency that carries out supervisory or enforcement functions relating to money laundering or terrorist financing:
  - (f) a prescribed overseas agency that is the equivalent of the Registrar or of a body referred to in paragraphs (a) to (c), but only where there is a written agreement between the overseas agency and the Minister about sharing the information.

Section 34(4)(d): replaced, on 1 July 2014, by section 24 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

### *Registrar of Financial Service Providers*

#### **35 Appointment of Registrar**

- (1) The chief executive must appoint a Registrar of Financial Service Providers under the State Sector Act 1988.
- (2) The person holding office as Registrar of Companies under the Companies Act 1993, immediately before the commencement of this Act, is deemed to have been appointed as the first Registrar of Financial Service Providers in accordance with this section.

Compare: 1999 No 126 s 136

#### **36 Power of Registrar to delegate**

- (1) The Registrar may delegate to any person, either generally or particularly, any of the Registrar's functions, duties, and powers except the power of delegation.

- (2) A delegation—
  - (a) must be in writing; and
  - (b) may be made subject to any restrictions and conditions the Registrar thinks fit; and
  - (c) is revocable at any time, in writing; and
  - (d) does not prevent the performance or exercise of a function, duty, or power by the Registrar.
- (3) A person to whom any functions, duties, or powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.
- (4) A person who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.

Compare: 2003 No 12 s 62

#### Subpart 4—Registrar’s inspection powers

##### **37 Registrar’s inspection powers**

- (1) The Registrar, or a person authorised by the Registrar, may take any of the steps listed in subsection (2) for the purpose of ascertaining whether a person—
  - (a) is in the business of providing a financial service in breach of section 11; or
  - (b) is holding out or has held out that the person is in the business of providing a financial service in breach of section 12; or
  - (c) is qualified or has been qualified to be registered in accordance with section 13; or
  - (ca) is ordinarily resident in New Zealand; or
  - (cb) has a place of business in New Zealand; or
  - (cc) is in the business of providing a financial service; or
  - (d) has made a false or misleading representation or omission in breach of section 41.
- (2) The steps referred to in subsection (1) are the following:
  - (a) requiring a person to produce for inspection relevant documents within that person’s possession or control:
  - (aa) ascertaining whether information provided to the Registrar is correct:

- (ab) requiring a person, in relation to information provided to the Registrar, to—
    - (i) confirm that the information is correct; or
    - (ii) correct the information:
  - (ac) specifying—
    - (i) a particular form in which the confirmation or correction referred to in paragraph (ab) must be provided; and
    - (ii) a date by which the confirmation or correction must be provided; and
    - (iii) whether the confirmation or correction must be verified by the production of original documents or certified copies of original documents or by a statutory declaration:
  - (b) inspecting and taking copies of relevant documents:
  - (c) taking possession of relevant documents and retaining them for a reasonable time for the purpose of taking copies.
- (3) Any person who exercises powers under subsection (1) must make his or her authorisation from the Registrar available on request.
- (4) Nothing in this section limits or affects the Tax Administration Act 1994 or the Statistics Act 1975.
- (5) A person must not obstruct or hinder the exercise of a power conferred by subsection (1).
- (6) If a registered financial service provider does not comply with a requirement under subsection (2)(a) to (ab) (including compliance with the specifications in subsection (2)(ac)) within 20 working days from the date the requirement was notified to the provider, the Registrar may assume that the provider is no longer in the business of providing a financial service and sections 18 to 20 apply.
- (7) A person who knowingly fails to comply with a requirement under subsection (2) commits an offence and is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$30,000;
  - (b) in the case of a person who is not an individual, to a fine not exceeding \$300,000.

- (8) A person who breaches subsection (5) commits an offence and is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$30,000;
  - (b) in the case of a person who is not an individual, to a fine not exceeding \$300,000.
- (9) In this section, **relevant document** means a document that contains information relating to whether a person—
- (a) is in the business of providing a financial service or a particular financial service; or
  - (b) is holding out or has held out that the person is in the business of providing a financial service in breach of section 12; or
  - (c) is qualified or has been qualified to be registered in accordance with section 13; or
  - (ca) is ordinarily resident in New Zealand; or
  - (cb) has a place of business in New Zealand; or
  - (cc) is in the business of providing a financial service; or
  - (d) has made a false or misleading representation or omission in breach of section 41.

Compare: 1993 No 105 s 365

Section 37(1)(ca): inserted, on 1 July 2014, by section 25(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 37(1)(cb): inserted, on 1 July 2014, by section 25(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 37(1)(cc): inserted, on 1 July 2014, by section 25(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 37(2)(aa): inserted, on 1 July 2014, by section 25(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 37(2)(ab): inserted, on 1 July 2014, by section 25(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 37(2)(ac): inserted, on 1 July 2014, by section 25(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 37(6): amended, on 1 July 2014, by section 25(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).



Section 37(7): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 37(8): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 37(9)(a): amended, on 1 July 2010, by section 23 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 37(9)(ca): inserted, on 1 July 2014, by section 25(4) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 37(9)(cb): inserted, on 1 July 2014, by section 25(4) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 37(9)(cc): inserted, on 1 July 2014, by section 25(4) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

### **38 Disclosure of information and reports**

- (1) A person authorised by the Registrar for the purposes of section 37 who has obtained a document or information in the course of making an inspection under that section or prepared a report in relation to an inspection under that section must, if directed to do so by the Registrar, give the document, information, or report to—
  - (a) the Registrar; or
  - (b) the Minister; or
  - (c) the chief executive; or
  - (d) any person authorised by the Registrar to receive the document, information, or report for the purposes of this Act.
- (2) A person authorised by the Registrar for the purposes of section 37 who has obtained a document or information in the course of making an inspection under that section or prepared a report in relation to an inspection under that section must not disclose that document, information, or report, except—
  - (a) in accordance with subsection (1); or
  - (b) subject to the approval of the Registrar, with the consent of the person to whom it relates; or
  - (c) subject to the approval of the Registrar, for the purposes of this Act; or

- (d) to the extent that the information, or information contained in the document or report, is available under any Act or in a public document.
- (3) A person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding \$10,000.

Compare: 1993 No 105 s 366

Section 38(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**39 Exercise of powers under section 37 not affected by appeal**

- (1) Despite any other provision of any Act or any rule of law, if a person appeals or applies to the High Court in relation to an act or decision of the Registrar or a person authorised by the Registrar under section 37, until a decision on the appeal or application is given,—
- (a) the Registrar, or that authorised person, may continue to exercise the powers under that section as if no such appeal or application had been made; and
  - (b) no person is excused from fulfilling an obligation under that section by reason of that appeal or application.
- (2) Subsection (3) overrides subsection (1).
- (3) If the appeal or application is allowed or granted,—
- (a) the Registrar must ensure that, as soon as is reasonably practicable after the court's decision is delivered, any copy of a document taken or retained under section 37 is destroyed; and
  - (b) no information acquired under section 37 is admissible in evidence in any proceedings unless the court hearing the proceedings in which it is sought to adduce the evidence is satisfied it was not obtained unfairly.

Compare: 1993 No 105 s 371

**Subpart 5—Miscellaneous**

**40 Offence also committed by director**

If any financial service provider that is not an individual commits an offence against this Act, every director of the provider

who knowingly authorises or knowingly fails to prevent the offence also commits an offence against this Act.

**41 Offence to make false or misleading representation**

- (1) Every person commits an offence who, in any document or information required by or for the purposes of this Part or by regulations (whether or not supplied to the Registrar),—
  - (a) makes a representation knowing that it is false or misleading in a material particular; or
  - (b) omits any matter knowing that the omission is false or misleading in a material particular.
- (2) A person who is convicted of an offence under subsection (1) is liable on conviction,—
  - (a) in the case of an individual, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$100,000, or to both; or
  - (b) in the case of a person who is not an individual, to a fine not exceeding \$300,000.

Section 41(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**42 Appeals from Registrar's decisions and FMA directions**

- (1) A financial service provider who is not satisfied with any of the following decisions of the Registrar may appeal to the High Court:
  - (a) not registering an applicant as a financial service provider under section 16;
  - (b) a deregistration under section 18;
  - (c) a decision of the Registrar or a person authorised by the Registrar under section 37.
- (1A) A financial service provider who is not satisfied with any direction given by the FMA under section 15B or 18B may appeal to the High Court.
- (2) The time within which an appeal under subsection (1) may be made is 20 working days after the date of notification of the decision or direction, or within any further time that the court allows.
- (3) On appeal, the court may do any of the following:

- (a) confirm, modify, or reverse the decision or direction or any part of it:
- (b) exercise any of the powers that could have been exercised by the Registrar or the FMA in relation to the matter to which the appeal relates:
- (c) refer the decision or direction back to the Registrar or the FMA (as the case may be) with directions to reconsider the whole or a specified part of the decision or direction.

Section 42 heading: amended, on 1 July 2014, by section 26(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 42(1A): inserted, on 1 July 2014, by section 26(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 42(2): amended, on 1 July 2014, by section 26(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 42(3)(a): amended, on 1 July 2014, by section 26(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 42(3)(b): amended, on 1 July 2014, by section 26(4) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 42(3)(c): replaced, on 1 July 2014, by section 26(5) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

#### **43 Decisions or directions continue in effect until appeal**

Unless the High Court orders otherwise, a decision or direction appealed against under section 42 continues in effect.

Section 43 heading: amended, on 1 July 2014, by section 27(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 43: amended, on 1 July 2014, by section 27(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

#### **44 Regulations under Part 1 and this Part**

- (1) The Governor-General may, by Order in Council on the recommendation of the Minister, make regulations for all or any of the following purposes:

- (aa) declaring a class of contract to be a contract of insurance for the purposes of this Act:
  - (a) prescribing a financial service for the purposes of section 5(n):
  - (ab) exempting any service or person or class of service or persons from the application of this Act, and prescribing the terms and conditions (if any) of the exemption:
  - (b) specifying information or documents to be included in, or provided with, applications, and requiring documents to be signed by specified persons:
  - (c) prescribing procedures, requirements, and other matters, not inconsistent with this Part or with the purposes described in section 26, relating to the register, including matters that relate to—
    - (i) the operation of the register:
    - (ii) the information or documents to be contained in the register:
    - (iii) access to the register:
    - (iv) search criteria for the register:
    - (v) fees that may be payable in order to search the register:
  - (d) prescribing either of the following types of agency:
    - (i) an agency that carries out supervisory or enforcement functions relating to money laundering or terrorist financing for the purposes of section 34; or
    - (ii) an overseas agency that is the equivalent of the Registrar or of a body referred to in section 34(4)(a) to (c) for the purposes of section 34:
  - (e) prescribing fees payable to the Registrar in respect of any matter under this Act or the manner in which fees may be calculated:
  - (f) providing for any other matters contemplated by Part 1 or by this Part, necessary for its administration, or necessary for giving it full effect.
- (1A) The Minister must, in relation to a recommendation under subsection (1)(ab),—

- (a) before making a recommendation, have regard to New Zealand's obligations under the FATF Recommendations; and
  - (b) not make the recommendation unless the Minister is satisfied that the costs of compliance with this Act would be unreasonable or not justified by the benefit of compliance.
- (2) Without limiting subsection (1)(b), information or documents may be prescribed under that subsection for the purpose of assisting any person with the person's powers, functions, or duties as a licensing authority under the relevant enactment identified in Schedule 2 (regardless of whether or not that information or documentation is collected for the purposes of this Part).
- (3) The Registrar may refuse to perform a function or exercise a power until a prescribed fee or levy is paid.
- (4) Any Order in Council made under subsection (1)(e) may—
- (a) prescribe the method of payment of a fee; and
  - (b) authorise the Registrar to refund or waive, in whole or in part and on any prescribed conditions, payment of a fee in relation to any person or class of persons.
- (5) Any fee or amount payable to the Registrar is recoverable by the Registrar in any court of competent jurisdiction as a debt due to the Registrar.

Section 44(1): amended, on 1 July 2010, by section 24(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 44(1)(aa): inserted, on 1 July 2010, by section 24(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 44(1)(ab): inserted, on 1 July 2010, by section 24(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 44(1A): inserted, on 1 July 2010, by section 24(4) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 44(3): amended, on 1 July 2010, by section 24(5) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

*Review and report on operation of this Part*

**45 Ministry must review and report on operation of this Part**

- (1) The Ministry must, not later than 5 years after the commencement of this section,—
- (a) review the operation of this Part since the commencement of this section; and
  - (b) prepare a report on the review for the Minister.
- (2) The report on the review must include recommendations to the Minister on whether any amendments to the Act concerning the matters dealt with in this Part are necessary or desirable.
- (3) As soon as practicable after receiving the report, the Minister must present a copy of that report to the House of Representatives.

**46 Territorial scope**

*[Repealed]*

Section 46: repealed, on 1 July 2010, by section 25 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

**Part 3  
Dispute resolution**

**47 Purpose of this Part**

The purpose of this Part is to promote confidence in financial service providers by improving consumers' access to redress from providers through schemes to resolve disputes. The schemes are intended to be accessible, independent, fair, accountable, efficient, and effective.

Subpart 1—Financial service provider must  
be member of dispute resolution scheme

**48 Financial service provider must be member of dispute resolution scheme**

- (1) Every financial service provider must be a member of an approved dispute resolution scheme in respect of a financial service provided to a retail client.

- (2) A **member**, in relation to an approved dispute resolution scheme, is a financial service provider who may be the subject of a complaint to that scheme.
- (3) However, this obligation does not apply—
- (a) to a financial service provider if—
    - (i) it is in the business of providing financial services only because it is an issuer or promoter participating in 1 or more offers of securities to the public; and
    - (ii) doing so is not its only or principal business; or
  - (b) to a financial service provider if it is exempted from the obligation by or under any other Act or by regulations made under section 79.

Section 48(1): amended, on 1 July 2014, by section 28(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 48(1): amended, on 1 July 2010, by section 26(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 48(2): amended, on 1 July 2014, by section 28(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 48(3): inserted, on 1 July 2010, by section 26(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

#### **49 Who are retail clients**

- (1) A retail client is any person who receives a financial service who is not a wholesale client.
- (2) The following persons who receive a financial service are wholesale clients in respect of that financial service:
- (a) a person who is in the business of providing any financial service and receives the financial service in the course of that business;
  - (b) a person whose principal business is the investment of money or who, in the course of and for the purposes of the person's business, habitually invests money;
  - (c) an entity to which at least 1 of the following applied at the end of each of the last 2 completed accounting periods:



- (i) at the balance date, the net assets of the entity exceeded \$1 million:
  - (ii) the turnover of the entity for the accounting period exceeded \$1 million:
  - (d) a related body corporate (within the meaning of section 5B(2) of the Securities Markets Act 1988) of an entity to which paragraph (c) applies:
  - (e) a local authority, a Crown entity, a State enterprise, the Reserve Bank of New Zealand, and the National Provident Fund (and a company appointed under clause 3(1)(b) of Schedule 4 of the National Provident Fund Restructuring Act 1990):
  - (f) a person who falls within 1 or more of the categories listed in section 3(2), 5(2CB), or 5(2CBA) of the Securities Act 1978 if the service relates to securities that may be offered to that person, or that have been subscribed for by that person, in a private offer of securities:
  - (g) an eligible investor under section 49A:
  - (h) if the financial service is a financial adviser service or a broking service, a person who is a wholesale client in respect of that service under the Financial Advisers Act 2008.
- (3) If subsection (2) applies to a person (A), it applies equally to any controlling owner, director, employee, agent, or other person acting in the course of, and for the purposes of, A's business to the same extent as it applies to A.
- (4) In this section,—
- entity**—
- (a) includes a body corporate and an unincorporated body (including partners in a partnership, members of a joint venture, or the trustees of a trust) and the sole trustee of a trust acting in his, her, or its capacity as trustee of that trust; but
  - (b) does not include an individual
- private offer of securities** means an offer of securities that—
- (a) does not constitute an offer of securities to the public under section 3 of the Securities Act 1978; or

- (b) is exempt from Part 2 (other than sections 38B and 58) of that Act under section 5(2CB) or 5(2CBA) of that Act.

Section 49: replaced, on 1 July 2010, by section 27 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

#### **49A Who are eligible investors**

- (1) A client is an eligible investor if—
  - (a) the client certifies in writing that the client understands that, as a consequence of certifying himself, herself, or itself to be an eligible investor, the financial service provider may not be a member of an approved dispute resolution scheme; and
  - (b) the client states the reasons for this certification; and
  - (c) a financial service provider signs a written acceptance of the certification in accordance with section 49B.
- (2) A certification may be specific to a particular service or class of services or may be general (but is effective only in relation to services provided after all of the requirements of subsection (1)(a) to (c) are met).

Section 49A: inserted, on 1 July 2010, by section 27 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

#### **49B Acceptance of certification**

- (1) A financial service provider must not accept a certification unless he, she, or it, having considered the client's reasons for the certification,—
  - (a) is satisfied that the client has been sufficiently advised of the consequences of the certification; and
  - (b) has no reason to believe that the certification is incorrect or that further information or investigation is required as to whether or not the certification is correct.
- (2) The person who accepts the certification of a client may be the person providing the financial services to the client (but does not need to be).
- (3) A financial service provider who accepts a certification without having complied with subsection (1) contravenes a wholesale certification requirement.

- (4) Contravention of this section may give rise to a pecuniary penalty order or compensatory order (*see* sections 79A and 79B).

Section 49B: inserted, on 1 July 2010, by section 27 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

**49C Revocation of certification**

- (1) A client who is an eligible investor may revoke a certification, in relation to a financial service provider to whom the certification has been given, by giving the financial service provider a signed notification to that effect.
- (2) A revocation is effective only in relation to services provided after it is given.

Section 49C: inserted, on 1 July 2010, by section 27 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

**49D How to opt out of being wholesale client**

- (1) A person may opt out of being a wholesale client, in relation to a financial service provider, by giving the financial service provider a signed notification to that effect.
- (2) A notification may be specific to a particular service, or class of services, or may be general for all services provided by the financial service provider to whom it is given.
- (3) A person may vary or revoke a notification in the same way as the notification may be given.
- (4) A notification (or variation or revocation of a notification) under this section is effective only in relation to services provided after it is given.
- (5) This section does not apply if a person is a wholesale client by reason of being an eligible investor.

Section 49D: inserted, on 1 July 2010, by section 27 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

**49E Giving revocation of certification or notification of opt out**

- (1) A revocation of a certification under section 49C or a notification under section 49D is sufficiently given to a financial service provider if—

- (a) it is provided to the financial service provider; or
  - (b) delivered or posted to the financial service provider at the person's business address stated on the register or (if not registered) the person's last known place of business in New Zealand; or
  - (c) sent by fax or email to the person's fax number or email address stated on the register.
- (2) The revocation or notification is treated as received by the person no later than 7 days after it is posted or 2 days after it is faxed or emailed, unless the person to whom it is posted or sent proves that it was not received (otherwise than through fault on the person's part).

Section 49E: inserted, on 1 July 2010, by section 27 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

**49F Members of dispute resolution scheme must comply with rules and binding resolutions**

- (1) A member of an approved dispute resolution scheme must comply with the rules of the scheme.
- (2) On the application of the person responsible for the scheme, a District Court may make an order requiring a member of the scheme to do either or both of the following:
  - (a) comply with the rules of the scheme;
  - (b) comply with a resolution of a complaint that constitutes a binding resolution under those rules (a **binding settlement**).
- (3) If a District Court is satisfied that the terms of a binding settlement of a complaint are manifestly unreasonable, the court's order under subsection (2) may modify the terms of the binding settlement.
- (4) If an order requiring a member to comply with a binding settlement includes a requirement that the member pay an amount of money to a person, that order (or part of the order) may be enforced as if it were a judgment by a District Court for the payment of a sum of money.

Section 49F: inserted, on 1 July 2010, by section 27 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 49F(1): amended, on 1 July 2014, by section 29 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

**49G Offence to fail to comply with District Court order**

- (1) A member of an approved dispute resolution scheme who, knowing that the member is subject to an order made under section 49F, fails to comply with the order, or fails to comply with the order within the time or in the manner required by the order, commits an offence and is liable on conviction to a fine not exceeding \$200,000.
- (2) Nothing in this section applies to an order or part of an order of a District Court referred to in section 49F(4).

Section 49G: inserted, on 1 July 2010, by section 27 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 49G(1): amended, on 1 July 2014, by section 30 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 49G(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**Subpart 2—Approval of dispute resolution  
schemes**

**50 Meaning of approved dispute resolution scheme**

- (1) A dispute resolution scheme is an **approved dispute resolution scheme** if it has been approved by the Minister in accordance with this Part and that approval has not been withdrawn.
- (2) If an interim dispute resolution scheme is appointed under section 79AA, references in this Act to an approved dispute resolution scheme are to be read as including references to the interim dispute resolution scheme.
- (3) However, nothing in sections 51 to 61 applies in relation to the interim dispute resolution scheme.

Section 50(2): inserted, on 1 July 2014, by section 31 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 50(3): inserted, on 1 July 2014, by section 31 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

*Approval of dispute resolution schemes***51 Application for approval**

- (1) The person responsible for a dispute resolution scheme may apply to the Minister for approval of the scheme.
- (2) The applicant must submit the following with the application:
  - (a) the rules about the scheme:
  - (b) any other information that is prescribed concerning the considerations outlined in section 52:
  - (c) the prescribed fee (if any).
- (3) The Minister may request the applicant to supply further information or documentation relating to the matters referred to in subsection (2)(a) or (b).

**52 Mandatory considerations for approval**

- (1) When considering an application under section 51, the Minister must have regard to the following considerations in light of the principles listed in subsection (2):
  - (a) whether the scheme has an appropriate purpose:
  - (b) whether the applicant has undertaken reasonable consultation on the scheme with members or potential members of the scheme, and persons (or their representatives) likely to be substantially affected by the scheme:
  - (c) whether the applicant has adequate funding to enable it to operate the scheme according to the scheme's purpose and in accordance with the rules about the scheme:
  - (d) whether the applicant's directors and senior managers are competent to manage a dispute resolution scheme:
  - (da) whether the scheme will accept all types of financial service providers as members and, if not, whether there are other approved dispute resolution schemes that cover all types of financial service providers:
  - (e) whether the scheme is capable of resolving disputes about the types of financial services provided by the members or potential members of the scheme:
  - (f) the amounts of money that complaints lodged with the scheme may be about, and whether those amounts are reasonable and appropriate:

- (g) whether the rules about the scheme are adequate and comply with—
    - (i) the principles listed in subsection (2); and
    - (ii) the requirements of section 63:
  - (h) the number of currently approved dispute resolution schemes:
  - (i) the types of financial service providers that may be members of currently approved dispute resolution schemes:
  - (j) the proposed size of the scheme:
  - (k) the types of financial service providers that may be potential members of the scheme:
  - (l) any other applications for approval that have been made.
- (2) The principles are—
- (a) accessibility:
  - (b) independence:
  - (c) fairness:
  - (d) accountability:
  - (e) efficiency:
  - (f) effectiveness.

Section 52(1)(da): inserted, on 1 July 2014, by section 32 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

### **53 Minister must decide application for approval**

- (1) The Minister must decide an application under section 51 by approving it or by rejecting it.
- (2) The Minister may only make a decision under subsection (1) after consultation with—
  - (a) the Minister of Finance; and
  - (b) the Minister of Commerce.

### **54 Notification and publication of decision**

The Minister must, as soon as practicable after deciding the application,—

- (a) notify the applicant of the decision; and
- (b) if the decision is to approve the application, ensure that—

- (i) the approval is published in the *Gazette*; and
- (ii) the chief executive updates the details described in section 78(2).

## **55 Reapplication by unsuccessful applicant**

An applicant whose application has been rejected may at any time reapply under section 51.

### *Withdrawal of approval*

## **56 Withdrawal of approval**

- (1) The Minister may withdraw the approval of an approved dispute resolution scheme after a notice period in accordance with sections 57 and 58 for any or all of the following reasons:
- (a) there has been a breach of a prescribed requirement;
  - (b) there has been a failure to comply with the rules about the scheme:
  - (ba) the rules about the scheme do not, or no longer, comply with the requirements of section 63:
  - (c) the person responsible for the scheme has not maintained or published a list of current members as required by section 62:
  - (d) the person responsible for the scheme has not published the rules as required by section 64:
  - (e) the person responsible for the scheme has not supplied the Minister with any of the following:
    - (i) an annual report as required by section 68:
    - (ii) any further information requested by the Minister under section 69:
    - (iii) an independent review as required by the rule described in section 63(1)(q):
  - (f) the person responsible for the scheme has not notified the Minister in accordance with section 65 before changing the rules about the scheme:
  - (g) the person responsible for the scheme has not complied with section 67:
  - (h) the scheme no longer satisfies the principles in section 52(2).



- (2) When considering whether to withdraw an approval, the Minister must have regard to the considerations referred to in section 52(1)(a) to (g) in light of the principles listed in section 52(2).
- (3) The Minister must withdraw the approval of an approved dispute resolution scheme if the person responsible for the scheme so requests, with effect from any future date requested.
- (3A) However, despite subsection (3), the Minister is not required to withdraw approval unless the person responsible for the scheme has, at the time of the request,—
  - (a) given the Minister—
    - (i) 3 months' notice of the date on which the proposed withdrawal of approval is to take place; or
    - (ii) any lesser notice period agreed to by the Minister; and
  - (b) informed the Minister of adequate arrangements that it has made, or will make, to facilitate the transfer of members of the existing scheme to another approved dispute resolution scheme or schemes.
- (4) For the purposes of this section and sections 57 and 58, **notice period** means 20 working days from the date of the Minister's notification under section 57(1).

Section 56(1)(ba): inserted, on 1 July 2014, by section 33(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 56(1)(e)(iii): amended, on 1 July 2014, by section 33(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 56(3A): inserted, on 1 July 2014, by section 33(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

## **57 Notice of intention to withdraw approval**

- (1) The Minister must notify the person responsible for the approved dispute resolution scheme of the Minister's intention to withdraw the scheme's approval under section 56(1).
- (2) The Minister's notice must set out—

- (a) that the Minister intends to withdraw the scheme's approval for any or all of the grounds described in section 56(1) (stating which apply); and
  - (b) the reasons why the Minister considers any or all of the grounds described in section 56(1) apply; and
  - (c) that there is a notice period before the withdrawal of the scheme's approval during which the person responsible for the scheme may object, under section 58, to the intended withdrawal.
- (3) The Minister's notice may require the person responsible for the scheme to—
  - (a) notify all members of the Minister's intention to withdraw the scheme's approval; or
  - (b) provide the Minister with a list of the names and business addresses of current members so that the Minister can, if the Minister wishes, notify all members of the Minister's intention to withdraw the scheme's approval.
- (4) The Minister's notice may also require the person responsible for the scheme to do 1 or more of the following:
  - (a) notify members of the scheme of adequate arrangements that have been, or will be, made to facilitate the transfer of members of the scheme to another approved dispute resolution scheme or schemes:
  - (b) make clear to those members that those members may—
    - (i) apply to join another approved dispute resolution scheme or schemes in accordance with those arrangements; or
    - (ii) apply to join any other approved dispute resolution scheme:
  - (c) remind each of its members of the member's obligation—
    - (i) to continue to be a member of an approved dispute resolution scheme, as required by section 48; and
    - (ii) to notify the Registrar that the member has transferred to another approved dispute resolution scheme, and details of that scheme, as required by section 17.

Section 57(4): inserted, on 1 July 2014, by section 34 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

**58 Objection to intended withdrawal of approval**

- (1) During the notice period, the person responsible for an approved dispute resolution scheme—
- (a) may object (with reasons) to the intended withdrawal of the scheme’s approval under section 56(1); and
  - (b) must not accept any new members.
- (2) If the Minister has received an objection under subsection (1) within the notice period, the Minister must consider it and must not proceed with a withdrawal under section 56(1) unless the Minister is satisfied that any or all of the reasons set out in section 56(1) apply.

**59 Approval is withdrawn from date person responsible for scheme is notified**

If the Minister withdraws a scheme’s approval, the scheme’s approval is withdrawn from the date the person responsible for the scheme is notified under section 60(a).

**60 Notification and publication of withdrawal of approval**

The Minister must, as soon as practicable after withdrawing the approval of a dispute resolution scheme,—

- (a) notify the person responsible for the scheme; and
- (b) notify the Registrar; and
- (c) ensure the withdrawal is published in the *Gazette*; and
- (d) ensure the chief executive updates the details described in section 78(2).

**61 Effect of withdrawal of approval on members of dispute resolution scheme**

When a dispute resolution scheme’s approval is withdrawn, each member of the scheme—

- (a) ceases to be a member of that scheme; and
- (b) must ensure that—
  - (i) the member’s obligations under section 17 are complied with; and

- (ii) the member continues to comply with section 48.

Section 61: replaced, on 1 July 2014, by section 35 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

*List of members of approved dispute resolution  
scheme*

**62 List of members**

The person responsible for an approved dispute resolution scheme must maintain a list of the scheme's current members and must publish this list on an Internet site that is publicly available (at all reasonable times).

*Rules about approved dispute resolution scheme*

**63 Rules about approved dispute resolution scheme**

- (1) The person responsible for an approved dispute resolution scheme must issue rules about that scheme, and those rules must provide for, or set out, the following:
  - (a) which types of financial service providers may be members of the scheme:
    - (aa) that the types of financial service providers referred to in paragraph (a) must be accepted as members of the scheme, unless—
      - (i) refused membership for a reason set out in paragraph (ba); or
      - (ii) a provider is not eligible for registration under this Act:
    - (b) how financial service providers become members of the scheme and how membership is terminated:
  - (ba) that membership may be refused or terminated because of an applicant's, or a member's,—
    - (i) material or persistent breach of a scheme's rules:
    - (ii) failure to take remedial action imposed on that provider by a scheme (whether or not that scheme still exists):
    - (iii) failure to pay a scheme's membership fee:
    - (iv) failure to continue to be a type of financial service provider that may be a member of the scheme:

- (c) that consumers and businesses that have no more than 19 full-time equivalent employees may make complaints for resolution by the scheme:
- (d) how complaints about a member may be made for resolution by the scheme:
- (e) a period after which the scheme, if asked by a complainant, must investigate a complaint that has been made directly to a member:
- (f) that complaints about members must be investigated in a way that is consistent with the rules of natural justice:
- (g) that the scheme has jurisdiction in respect of—
  - (i) a breach of contract, a statutory obligation, or an industry code; and
  - (ii) any other prescribed matters; and
  - (iii) any other matter provided for in the rules:
- (h) that any information may be considered in relation to a complaint and any inquiry made that is fair and reasonable in the circumstances:
- (i) the remedial action that the scheme can impose on a member to resolve a complaint (for example, a requirement to change systems or to compensate a complainant up to a certain amount stated in the rules):
- (j) how remedial action may be enforced against the scheme's members, including after members have left the scheme:
- (k) *[Repealed]*
- (l) that the scheme will not charge a fee to any complainant to investigate or resolve a complaint:
- (m) that a resolution of a complaint about a member of the scheme is binding on the member concerned:
- (n) that a resolution of a complaint about a member of the scheme is binding on the complainant concerned, if the complainant accepts the resolution:
- (o) that the complainant may take alternative court action against the member at any time, including if the complainant rejects the resolution:
- (p) that the scheme may cease investigating and resolving a complaint if the complainant takes alternative court action against the member:

- (q) that an independent review of the scheme must occur at least once every 5 years after the date of the scheme's approval and must be supplied to the Minister within 3 months of completion:
  - (r) that the person responsible for the scheme and the scheme's members must inform the people referred to in paragraph (c) about the scheme:
  - (s) any other prescribed matters.
- (2) The compensation referred to in subsection (1)(i) that the scheme can impose on a member must be able to include, in the case of a complaint relating to a repossession under Part 3A of the Credit Contracts and Consumer Finance Act 2003, compensation for non-financial loss, stress, humiliation, and inconvenience up to a certain amount stated in the rules.
- (3) The rules about an approved dispute resolution scheme must be treated as containing any provision that is implied into those rules by regulations made under this Act.
- (4) A rule about an approved dispute resolution scheme has no effect to the extent that it is inconsistent with any provision implied into the rules by those regulations.

Section 63(1)(a): amended, on 1 July 2014, by section 36(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 63(1)(aa): inserted, on 1 July 2014, by section 36(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 63(1)(ba): inserted, on 1 July 2014, by section 36(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 63(1)(g): replaced, on 1 July 2014, by section 36(4) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 63(1)(k): repealed, on 1 July 2014, by section 36(5) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 63(1)(s): inserted, on 1 July 2014, by section 36(6) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 63(2): inserted, on 1 July 2014, by section 36(7) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 63(3): inserted, on 1 July 2014, by section 36(7) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 63(4): inserted, on 1 July 2014, by section 36(7) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

**64 Obligation to publish rules**

The person responsible for an approved dispute resolution scheme must make copies of the rules about the scheme available for inspection by the public, free of charge,—

- (a) at the scheme's head office (during ordinary office hours); and
- (b) on an Internet site in an electronic form that is publicly available (at all reasonable times).

**65 Duty to notify change to rules**

The person responsible for an approved dispute resolution scheme must notify the Minister if the person wishes to change the rules about the scheme.

**66 Minister's consideration of change of rules**

- (1) After receiving a notification under section 65, the Minister must notify the person responsible for a scheme that the Minister—
  - (a) approves the change; or
  - (b) considers the proposed change is not adequate and does not comply with—
    - (i) the principles listed in section 52(2); and
    - (ii) the requirements of section 63.
- (2) If subsection (1)(b) applies, the rule change must not be made.
- (3) The Minister must comply with subsection (1) within 45 working days of the notification of the change of rules unless the Minister, within those 45 working days,—
  - (a) requests further information from the person responsible for the scheme (in which case, the Minister must comply with subsection (1) within 45 working days after receipt of that further information); or
  - (b) advises the person responsible for the scheme that a period of more than 45 working days is required to con-

sider the change (in which case, the Minister must specify the time within which he or she will comply with subsection (1)).

Section 66(1): amended, on 1 July 2014, by section 37(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 66(3): replaced, on 1 July 2014, by section 37(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

## **67 Duty to co-operate and communicate information in certain circumstances**

- (1) The person responsible for an approved dispute resolution scheme must—
  - (a) co-operate with other approved dispute resolution schemes if a complaint involves members of those other schemes (disclosing personal information in accordance with the Privacy Act 1993 and protecting information that is subject to an obligation of confidence); and
  - (b) co-operate with the Registrar, including by communicating information to the Registrar in accordance with sections 17 and 34; and
  - (c) if there is a series of material complaints about a particular licensed provider or class of licensed provider, communicate that fact to the relevant licensing authority:
    - (ca) if there is a series of material complaints about a particular creditor under a consumer credit contract or class of such creditors, communicate that fact to the Commerce Commission;
    - (d) if there is a series of material complaints about a particular broker or class of broker, communicate that fact to the FMA.
- (2) In subsection (1)(ca), **consumer credit contract**—
  - (a) has the same meaning as in section 11 of the Credit Contracts and Consumer Finance Act 2003; and
  - (b) includes a credit contract to which Part 3A of that Act applies.



Section 67(1)(a): amended, on 1 July 2014, by section 38(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 67(1)(ca): inserted, on 1 July 2014, by section 38(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 67(1)(d): inserted, on 1 July 2010, by section 29 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 67(1)(d): amended, on 1 July 2014, by section 38(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 67(2): inserted, on 1 July 2014, by section 38(4) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

*Annual reports and information requests by  
Minister*

**68 Annual report**

The person responsible for an approved dispute resolution scheme must supply to the Minister, within 3 months after the end of the financial year applying to the scheme, an annual report containing prescribed information about the scheme in relation to that financial year.

**69 Person responsible for approved dispute resolution scheme must supply further information on Minister's request**

- (1) The person responsible for an approved dispute resolution scheme must supply to the Minister—
  - (a) any further information requested by the Minister about the information that is required by regulations to be in an annual report; and
  - (b) any information requested by the Minister about the scheme's compliance with the principles listed in section 52(2).
- (2) In supplying the information to the Minister, the person must disclose personal information in accordance with the Privacy Act 1993 and protect information that is subject to an obligation of confidentiality.

**70 Annual report and information requested by Minister to be publicly available**

The person responsible for an approved dispute resolution scheme must make copies of its annual report available for inspection by the public, free of charge,—

- (a) at the scheme's head office (during ordinary office hours); and
- (b) on an Internet site in an electronic form that is publicly available (at all reasonable times).

**Subpart 3—Reserve scheme**

*[Repealed]*

Subpart 3: repealed, on 1 July 2014, by section 39 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

**71 Reserve scheme**

*[Repealed]*

Section 71: repealed, on 1 July 2014, by section 39 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

***Appointment of reserve scheme***

*[Repealed]*

Heading: repealed, on 1 July 2014, by section 39 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

**72 Appointment of reserve scheme**

*[Repealed]*

Section 72: repealed, on 1 July 2014, by section 39 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

**72A Reserve scheme: rules about fees and charges**

*[Repealed]*

Section 72A: repealed, on 1 July 2014, by section 39 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

**73 Revocation of appointment as reserve scheme**

*[Repealed]*

Section 73: repealed, on 1 July 2014, by section 39 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

**74 Notice of intention to recommend revocation of appointment as reserve scheme under section 73(2)(a) or (b)**

*[Repealed]*

Section 74: repealed, on 1 July 2014, by section 39 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

**75 Objection to intended recommendation for revocation**

*[Repealed]*

Section 75: repealed, on 1 July 2014, by section 39 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

**76 Duty to co-operate and communicate information in certain circumstances**

*[Repealed]*

Section 76: repealed, on 1 July 2014, by section 39 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

*Levy to fund reserve scheme*

*[Repealed]*

Heading: repealed, on 1 July 2010, by section 33 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

**77 Levy to fund reserve scheme**

*[Repealed]*

Section 77: repealed, on 1 July 2010, by section 33 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

## Subpart 4—Miscellaneous

### *Publication of details relating to approved dispute resolution schemes*

Heading: amended, on 1 July 2014, by section 40 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

#### **78 Publication of details relating to approved dispute resolution schemes**

- (1) The chief executive—
- (a) must ensure that the names of approved dispute resolution schemes and the name and business address of the person responsible for each scheme are available for inspection by the public, free of charge, at the head office of the Ministry (during ordinary office hours), and on an Internet site that is publicly available (at all reasonable times);
  - (b) may make copies of the details available in any other way that the chief executive considers appropriate in the circumstances.
- (2) *[Repealed]*

Section 78 heading: amended, on 1 July 2014, by section 41(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 78(1)(a): replaced, on 1 July 2014, by section 41(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 78(2): repealed, on 1 July 2014, by section 41(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

### *Levy* *[Repealed]*

Heading: repealed, on 1 July 2014, by section 42 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

**78A Levy**

*[Repealed]*

Section 78A: repealed, on 1 July 2014, by section 42 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

*Regulations under this Part*

**79 Regulations under this Part**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:
- (a) exempting any person or class of persons from the obligation to be a member of an approved dispute resolution scheme and prescribing the terms and conditions (if any) of the exemption:
    - (aa) providing rules for an interim dispute resolution scheme:
  - (b) prescribing the information or documents to be supplied to the Minister as part of an application under this Part:
  - (c) prescribing processes for applications for the approval of dispute resolution schemes:
  - (ca) prescribing matters for the purposes of section 63(1)(g)(ii) and (s):
  - (cb) prescribing provisions to be implied into rules about approved dispute resolution schemes:
  - (d) prescribing rules for a class of approved dispute resolution scheme or for all approved dispute resolution schemes in the event that approval of those schemes is withdrawn:
  - (e) prescribing the information that must be included in every annual report supplied in accordance with section 68, which must include—
    - (i) information about any independent review that occurred within the previous 12 months; and
    - (ii) information about a scheme's operation (including complaints received):
  - (f) prescribing fees payable in respect of any matter under this Part or the manner in which fees may be calculated:

- (g) providing for any other matters contemplated by this Part, necessary for its administration, or necessary for giving it full effect.
- (1A) The Minister must not recommend the making of regulations under subsection (1)(a), unless the Minister is satisfied that—
- (a) the exemption is consistent with the purposes of this Act; and
  - (b) the costs of compliance with the obligation would be unreasonable or not justified by the benefits of compliance.
- (1B) The Minister must not recommend the making of regulations under subsection (1)(aa) unless the Minister—
- (a) is satisfied that—
    - (i) members of a scheme that has ceased, or will cease, to be an approved dispute resolution scheme would be, or are, unable to reasonably become members of another approved dispute resolution scheme; and
    - (ii) the interim dispute resolution scheme will be consistent with the purpose of this Part (*see* section 47); and
    - (iii) the interim dispute resolution scheme will be capable of providing a scheme for the purpose of this Part; and
    - (iv) the rules of the interim dispute resolution scheme will comply with section 63; and
  - (b) has consulted the FMA and any other persons that the Minister considers are likely to be substantially affected by the establishment of an interim dispute resolution scheme.
- (1C) The Minister must not recommend the making of regulations under subsection (1)(ca) or (cb) unless the Minister has consulted the FMA and any other persons that the Minister considers are likely to be substantially affected by the regulations.
- (1D) However, a failure to consult with the persons referred to in subsection (1B)(b) or (1C) does not affect the validity of the regulations.
- (2) The Minister may refuse to make a decision under this Part until the prescribed fee is paid.

- (3) Any Order in Council made under subsection (1) may—
- (a) prescribe the method of payment of a fee; and
  - (b) authorise the Minister to refund or waive, in whole or in part and on any prescribed conditions, payment of a fee in relation to any person or class of persons.

- (4) Any fee or amount payable under this Part is recoverable in any court of competent jurisdiction as a debt due to the Crown.

Section 79(1): amended, on 1 July 2010, by section 35(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 79(1)(a): replaced, on 1 July 2010, by section 35(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 79(1)(a): amended, on 7 June 2014, by section 43(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 79(1)(aa): inserted, on 7 June 2014, by section 43(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 79(1)(ca): inserted, on 7 June 2014, by section 43(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 79(1)(cb): inserted, on 7 June 2014, by section 43(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 79(1A): inserted, on 1 July 2010, by section 35(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 79(1B): inserted, on 7 June 2014, by section 43(4) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 79(1C): inserted, on 7 June 2014, by section 43(4) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 79(1D): inserted, on 7 June 2014, by section 43(4) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

### **79AA Appointment of interim dispute resolution scheme**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—
- (a) appoint a dispute resolution scheme to fulfil the functions of the interim dispute resolution scheme (with

or without conditions) for a term recommended by the Minister:

- (b) revoke an appointment made under paragraph (a).
- (2) The Minister may recommend an Order in Council for the purpose described in subsection (1)(a) only after complying with section 79(1B).
- (3) The Minister may recommend an Order in Council for the purpose described in subsection (1)(b) if the Minister is satisfied that the scheme is no longer required.

Section 79AA: inserted, on 1 July 2014, by section 44 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

*Pecuniary and compensatory orders  
for contravening wholesale certification  
requirement*

Heading: inserted, on 1 July 2010, by section 36 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

**79A Pecuniary order for contravening wholesale certification requirement**

- (1) The High Court may, on application by the FMA, order a person to pay a pecuniary penalty to the Crown if the court is satisfied that the person has, without reasonable excuse, contravened a wholesale certification requirement under section 49B.
- (2) The amount of the pecuniary penalty must not, in respect of each act or omission, exceed \$100,000 in the case of an individual or \$300,000 in the case of an entity.
- (3) In setting the amount of the pecuniary penalty, the court must take into account all of the following matters:
  - (a) the nature and extent of the contravention:
  - (b) the nature and extent of any loss or damage suffered by a person as a result of the contravention, including the effect on a person of the loss of the opportunity to make a complaint to an approved dispute resolution scheme:



- (c) the circumstances in which the contravention took place (including whether the contravention was intentional, inadvertent, or caused by negligence):
  - (d) whether the person has previously been found by the court in proceedings under this Act to have engaged in similar conduct.
- (4) A financial service provider may not be liable to more than 1 pecuniary penalty in respect of the same conduct.
- (5) Proceedings under this section may be commenced at any time within 3 years after the contravention occurred.

Section 79A: inserted, on 1 July 2010, by section 36 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 79A(1): amended, on 1 July 2014, by section 45(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

Section 79A(3)(b): amended, on 1 July 2014, by section 45(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

### **79B Compensation for contravention of wholesale certification requirement**

- (1) If the court orders a person to pay a pecuniary penalty under section 79A in respect of the contravention of a wholesale certification requirement, the court may, in addition, order a person to pay compensation to any person who has suffered, or is likely to suffer, loss or damage as a result of the contravention (**the aggrieved person**).
- (2) An application for orders under this section may be made by the FMA or any aggrieved person.
- (3) The application must be made within 1 year of the date of the pecuniary penalty order.
- (4) The court may make an order under this section whether or not any aggrieved person is a party to the proceedings.
- (5) In proceedings under this section, the court may make such orders as it thinks fit.

Section 79B: inserted, on 1 July 2010, by section 36 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 79B(2): amended, on 1 July 2014, by section 46 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34).

*Review and report on operation of this Part*

**80 Ministry must review and report on operation of this Part**

- (1) The Ministry must, not later than 5 years after the commencement of this section,—
- (a) review the operation of this Part since the commencement of this section; and
  - (b) prepare a report on the review for the Minister.
- (2) The report on the review must include recommendations to the Minister on whether any amendments to the Act concerning the matters dealt with in this Part are necessary or desirable.
- (3) As soon as practicable after receiving the report, the Minister must present a copy of that report to the House of Representatives.

*Consequential amendment*

**81 Consequential amendment**

The enactment specified in Schedule 1 is amended in the manner indicated in that schedule.

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**Schedule 1**

s 81

**Consequential amendment**

**Privacy Act 1993 (1993 No 28)**

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

Financial Service Providers (Registration and Dispute  
Resolution) Act 2008

Section 24

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## Schedule 2

### Licensing authorities and licensed providers

s 4

This schedule identifies—

- (a) bodies who are licensing authorities; and
- (b) the persons that each licensing authority licenses, registers, authorises, or otherwise approves to provide a licensed service; and
- (c) the enactments that require the relevant financial service to be provided only by a person who is licensed, registered, authorised, or otherwise approved by that licensing authority.

Licensing authority	Licensed provider	Enactment
Financial Markets Authority	Authorised financial advisers and qualifying financial entities	Financial Advisers Act 2008
Reserve Bank of New Zealand	Registered banks	Reserve Bank of New Zealand Act 1989
Financial Markets Authority	Licensed trustees in respect of debt securities, licensed statutory supervisors in respect of participatory securities, and licensed unit trustees	Securities Trustees and Statutory Supervisors Act 2011
Reserve Bank of New Zealand	Licensed insurers	Insurance (Prudential Supervision) Act 2010
Financial Markets Authority	Persons who hold, or are authorised bodies under, a market services licence	Financial Markets Conduct Act 2013

Schedule 2: amended, on 1 April 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Schedule 2: amended, on 7 September 2013, by section 242 of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

Schedule 2: amended, on 1 October 2011, by section 61(3) of the Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10).

Schedule 2: amended, on 1 May 2011, by section 84(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Schedule 2: amended, on 1 July 2010, by section 37 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

## **Reprints notes**

### **1 General**

This is a reprint of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### **2 Legal status**

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3 Editorial and format changes**

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4 Amendments incorporated in this reprint**

Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 (2014 No 34)

Non-bank Deposit Takers Act 2013 (2013 No 104): section 91(3)

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150

Criminal Procedure Act 2011 (2011 No 81): section 413

Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10): section 61

Financial Markets Authority Act 2011 (2011 No 5): section 84(1)

Insurance (Prudential Supervision) Act 2010 (2010 No 111): section 242

Financial Service Providers (Registration and Dispute Resolution) Act Commencement Order 2010 (SR 2010/231)

Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41)

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