

Regulations to implement the Financial Services Legislation Amendment Act 2019

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The [Financial Services Legislation Amendment Act 2019](#) (FSLAA) introduces a new regulatory regime for financial advice that will come into force on 15 March 2021. The new regime was developed following a [statutory review of the existing regulatory regime](#) for financial advice in 2016.

FSLAA makes changes to, amongst other things, disclosure requirements, licensing fees and levies and registration requirements for the providers of financial advice.

In December 2020, MBIE published a suite of regulations that are required to implement the changes in FSLAA. Some of these have already come into force, however the majority of these will come into force on 15 March 2021.

Background

FSLAA, among other things, amends the [Financial Service Providers \(Registration and Dispute Resolution\) Act 2008](#) (FSPA) and the [Financial Markets Conduct Act 2013](#) (FMCA), and repeals the [Financial Advisers Act 2008](#) (FAA).

In June 2019, the Cabinet Economic Development Committee published a [Cabinet Paper](#) approving the Minister of Commerce and Consumer Affairs' recommendations and providing policy approval for a suite of regulations required to implement FSLAA. This Cabinet Paper was supported by a release of a [Cabinet Minute](#) of the decision.

Cabinet agreed to amend regulations to, amongst other things, set out the nature of the information to be supplied by financial service providers and address misuse of the Financial Service Providers Register (FSPR).

December 2020 Suite of Regulations

In December 2020, MBIE published a suite of regulations required to implement some of the changes in FSLAA:

- [Financial Markets Conduct Amendment Regulations 2020](#)
- [Financial Service Providers \(Registration\) Regulations 2020](#)
- [Financial Service Providers \(Exemptions\) Amendment Regulations 2020](#)
- [Anti-Money Laundering and Countering Financing of Terrorism \(Definitions\) Amendment Regulations 2020](#)
- [Financial Markets Authority \(Levies\) Amendment Regulations \(No 2\) 2020](#).

Financial Markets Conduct Amendment Regulations 2020

Financial Markets Conduct Amendment Regulations 2020 amends the [Financial Markets Conduct Regulations 2014](#) and comes into force on 15 March 2021. Some of the key changes are as follows:

- Replaces terminology from the FAA, for example:
 - replaces references to 'category 2 products' to certain types of simple financial products such as 'call debt securities'
 - replaces references to 'Financial Advisers' to 'Financial Advice Providers'
- Sets out that some provisions of the Trusts Act 2019 do not apply to portfolio investment entity (PIE) call fund units and PIE term fund units, with these trusts being subject to governance requirements set out in the Financial Markets Conduct Regulations 2014. These provisions come into force on 30 January 2021 with this being the date the Trusts Act 2019 commences
- Prescribes eligibility criteria for an entity that wants to be an 'authorised body' under a licence that covers a financial advice service
- Replaces obligations under the [Financial Advisers \(Custodians of FMCA Financial Products\) Regulations 2014](#), prescribing requirements for providers of custodial services that relate to financial products, including providing information to clients,

reconciling records and obtaining assurance engagements

- Updates the information that must be disclosed to investors about the tax consequences of investing in managed investment schemes that are PIEs - note, these provisions came into force on 18 January 2021 and are a consequence of amendments made by the [Taxation \(KiwiSaver, Student Loans, and Remedial Matters\) Act 2020](#) that provide for the refundability of overpaid PIE tax
- Amends the [Financial Markets Conduct \(Asia Region Funds Passport\) Regulations 2019](#), creating a new exemption from the licensing requirement for financial advice services relating to advice given in relation to offers of interests in a foreign passport fund
- Makes minor updates to the Financial Markets Conduct (Unlisted Market) Regulations 2015 to update redundant terminology from the FAA.

Financial Service Providers (Registrations) Regulations 2020

The Financial Service Providers (Registrations) Regulations 2020 replaces and revokes the [Financial Service Providers \(Registrations\) Regulations 2010](#) and comes into force on 15 March 2021. Some of the key changes are as follows:

- The regulations set out various matters related to registration on the Financial Service Providers Register (FSPR) under the FSPA such as outlining the information to be provided when applying for registration and specifying the information to be contained in the FSPR. These regulations substantially carry over the requirements from the 2010 regulations, however they require additional information to be included in the FSPR about the circumstances in which a financial service is being provided (for example, whether the provider will hold a licence to provide the service)
- The regulations also seek to address and prevent misuse of the FSPR by prescribing a threshold for registration for certain financial service providers and requiring providers in certain circumstances to include a warning that registration on the FSPR does not mean active regulation in New Zealand (for example, prescribing a warning statement that must be used on all advertisements, documents and communication where the provider does not have a place of business in New Zealand).

Financial Service Providers (Exemptions) Amendment Regulations 2020

Financial Service Providers (Exemptions) Amendment Regulations 2020 amends the [Financial Service Providers \(Exemptions\) Regulations 2010](#) and comes into force on 15 March 2021.

The regulations provide various exemptions from the FSPA. The key change is the addition of the following exemptions:

- An exemption for financial service providers who do not have a place of business in New Zealand and who do not promote their services to persons in New Zealand. The exemption does not apply if the provider is required to be registered by an Act other than FSPA
- An exemption for Australian offerors in respect of offers made under the arrangements between Australia and New Zealand for the mutual recognition of securities offerings. Those arrangements allow certain offers made in New Zealand to comply with Australian law rather than New Zealand law.

The regulations also:

- Revoke an existing exemption for certain entities from the application of the FSPA. The existing exemption applies to body corporates that provide 'financial adviser services' or 'broking services' (as those terms are defined under FAA) and where there is only 1 financial adviser employed or engaged by the entity in providing those services. Under the new regime, such entities are required to register on the FSPR
- Amend an existing exemption for a member of an angel organisation in respect of financial advice services provided to other members of angel organisations, so now the exemption only applies if all members of the angel organisation to whom the advice is provided are wholesale clients.

Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2020

The Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2020 amend the [Anti-Money Laundering and Countering Financing of Terrorism \(Definitions\) Regulations 2011](#) and come into force on 15 March 2021.

The regulations make minor updates to the 2011 regulations to update redundant terminology from the FAA. These regulations do not make substantive changes to AML obligations.

Financial Markets Authority (Levies) Amendment Regulations (No 2) 2020

The Financial Markets Authority (Levies) Amendment Regulations (No 2) 2020 regulations amend the [Financial Markets Authority \(Levies\) Regulations 2012](#) and come into force on 15 March 2021.

These amendment regulations:

- Change the way levies are calculated for managers of registered schemes and providers of discretionary investment management services
- Add new levies for, amongst other things, 'financial advisers' and 'financial advice providers', and specify additional amounts based on the number of nominated representatives who act under the licence
- Set out the levies charged by the FMA in a schedule which comes into force on 15 March 2021 as well as subsequent updates to this schedule which come into force on 1 July 2021 and 1 July 2022.

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