



FINANCIAL ADVICE LAW

A GUIDE FOR
FINANCIAL ADVISERS

Financial Services
Council NZ



**GROW THE FINANCIAL
CONFIDENCE AND
WELLBEING OF
NEW ZEALANDERS**

FSC.

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ABOUT FINANCIAL ADVICE LAW

On 15 March 2021, the **Financial Services Legislation Amendment Act 2019** (FSLAA) amended the **Financial Markets Conduct Act 2013** (FMCA). This overhaul of financial advice law affected anyone who gives financial advice in New Zealand. The law aims to ensure the availability of financial advice for persons seeking that advice, and ensure the quality of financial advice and financial advice services (FMCA, section 431B).

The law requires anyone who gives regulated financial advice to retail clients to have, or be engaged under, a financial advice provider licence issued by the Financial Markets Authority (FMA).

There are five key elements to the FMCA for financial advice law:

1. the Financial Markets Conduct Act 2013;
2. the **Code of Professional Conduct for Financial Advice Services** (the Code),
3. disclosure requirements in the **Financial Markets Conduct Regulations 2014** (disclosure regulations);
4. **licensing requirements** issued by the FMA; and
5. fees listed in the **Financial Markets Conduct (Fees) Regulations 2014** and levies listed in the **Financial Markets Authority (Levies) Regulations 2012**.

ABOUT THIS GUIDE

The previous law, the Financial Advisers Act 2008 (FAA), contained a clause requiring the Ministry of Business, Innovation and Employment (MBIE) to review and report on how it was operating within five years of commencement. MBIE released **its report** in July 2016. This report led to a robust process of consultation and review that resulted in FSLAA.

During the following five years, the review involved three official entities: MBIE, the FMA, and the Code Working Group (now the Code Committee). These entities released information at different times, through their own channels.

The Financial Services Council (FSC) consolidated information from these sources, and summarised it for financial advisers. As more details were released, the FSC published a Professional Advice Hub online, summarising the latest information from these sources into one place. Now that all the details are finalised, this guide brings that information together into a single, convenient document.

WARNING: This guidance note has been prepared for information purposes only, and is not a substitute for legal advice. We highly recommend that you seek professional legal advice specific to your circumstances.

THE FINANCIAL MARKETS CONDUCT ACT



The Financial Markets Conduct Act 2013 (FMCA) was amended by the Financial Services Legislation Amendment Act 2019 (FSLAA) on 15 March 2021, and is now law. The Financial Advisers Act 2008 was repealed and is no longer law.

Regulated financial advice

The definition of “financial advice product” expanded the definition of “financial product” in the FMCA to include a DIMS (Discretionary Investment Management Service) facility, a contract of insurance, a consumer credit contract, or any other product prescribed by the regulations. Importantly, it also includes “a renewal or variation of the terms or conditions of an existing financial advice product” (the category 1 and category 2 financial product distinction from the FAA no longer exists).

At its core, the definition of “financial advice” changed little from the definition in the FAA: financial advice occurs when a person “makes a recommendation or gives an opinion about acquiring or disposing of (or not acquiring or disposing of) a financial advice product”.

The definition includes:

- recommending or giving an opinion about switching funds within a managed investment scheme;
- designing a personalised investment plan in certain circumstances and;
- providing financial planning of a kind prescribed by the regulations (there are no such prescriptions yet).

Activities that are excluded are:

- providing factual information, or certain specified documents;
- carrying out client instructions (execution only);
- making a recommendation or giving an opinion about a kind of financial advice product in general;
- recommending that a person obtain financial advice;
- passing on financial advice given by another person;
- other activities prescribed in regulations (which allows MBIE to exclude further activities later without going through the full legislative process).

Sales of financial advice products without financial advice are not covered by the FMCA.

“Regulated financial advice” is financial advice that is given in the ordinary course of business, and not excluded. Exclusions from regulated financial advice include advice given:

- in the ordinary course of certain occupations, such as conveyancing practitioners, journalists, lawyers, lecturers, qualified statutory accountants, real estate agents, registered legal executives, registered valuers, tax agents, and teachers;

- in connection with providing credit under a credit contract as an incidental part of a non-financial services business, or for the purpose of complying with lender responsibilities where reasonable steps are taken to ensure the borrower understands the advice is not regulated;
- by Crown-related entities in the ordinary course of business;
- trustee corporations relating to preparing a will, estate management or administration services;
- non-financial not-for-profit organisations for no charge;
- by or for an employer to an employee in relation to financial advice products made available through the workplace; and
- a few other circumstances specified in the FMCA.

Licensed financial advice providers

Anyone who gives regulated financial advice to retail clients must be, or be engaged by, a financial advice provider (commonly referred to as a “FAP”) who is licensed by the FMA. Regulated financial advice can be given by:

- a financial adviser, a person who is independently qualified to give financial advice and is registered on the Financial Services Provider Register (FSPR);
- a nominated representative, a person who gives financial advice as restricted by the systems and processes of the financial advice provider;
- An authorised body, which is an entity authorised by the FMA to come under the licence of another licence holder;
- an interposed person, an entity that engages financial advisers or nominated representatives, and provides regulated financial advice on behalf of a licensed financial advice provider;
- a financial advice provider directly (e.g., robo-advice).

A financial adviser may be engaged by more than one licensed financial advice provider (unless there are contrary conditions in the financial advice provider’s licence). A nominated representative may be engaged to provide regulated financial advice through one financial advice provider licence only.

The licensing requirements do not currently apply to the provision of financial advice to wholesale clients. Note that “retail clients” does not mean consumers only – it includes most individuals and entities with assets or turnover under \$5 million. For details, see **FMCA Schedule 5**, clauses 3-4.

Duties of financial advisers

The FMCA imposes duties on persons who give regulated financial advice. Some apply to advice given to retail clients only, and others apply to all regulated financial advice, regardless of whether the client is retail or wholesale.

Duties that apply to retail clients only are to:

- take reasonable steps to ensure that clients understand the nature and scope of advice, including any limitations on the nature and scope of the advice;
- comply with the Code of Conduct; and
- meet competence, knowledge and skill standards.

Duties that apply to both retail and wholesale clients are to:

- prioritise the client's interests, if there is a conflict of interests;
- comply with disclosure requirements defined in regulations, and ensure the disclosure is not false, misleading or incomplete (although no disclosure requirements currently apply to advice given to wholesale clients);
- exercise the care, diligence and skill that a prudent financial adviser would exercise in the circumstances;
- not recommend a financial product that contravenes the FMCA or regulations.

Financial advice providers, and interposed persons, must take all reasonable steps to ensure that any person they engage to give regulated financial advice complies with these duties.

Financial advice providers who engage nominated representatives have additional duties. They must have processes and controls that enable them to:

- limit the nature and scope of the advice given by their nominated representatives;
- regulate the advice and the circumstances in which it is given;
- ensure that the advice given is commensurate with the nominated representative's competence, knowledge and skill.

Financial advice providers and interposed persons must ensure that nominated representatives comply with these process and controls, and monitor the nominated representatives, and the advice they give, to ensure that the processes and controls are effective and are complied with.

Neither the financial advice provider, nor any interposed person, may make or offer payments or other incentives that encourage nominated representatives to engage in conduct that contravenes their duties.

Liability for financial advice

If a person who gives regulated financial advice contravenes a duty in the FMCA:

- A financial advice provider and its authorised bodies may be civilly liable, and the FMA may take the entity to court. As a licensee, it may also be subject to FMA action around enforcement of licences. Possible penalties include:
 - a declaration of contravention;
 - a pecuniary penalty up to the greater of (i) the value of the transaction, (ii) three times the financial benefit resulting from the breach, and (iii) \$5 million for an entity or 1 million for an individual;
 - a compensatory order; or
 - other civil liability orders.
- A financial adviser may be subject to action by the Financial Advice Disciplinary Committee (FADC) (including a fine of up to \$10,000). The financial adviser may also be suspended from the FSPR, deregistered or have conditions placed on their ability to give regulated financial advice. Regulatory action could also be taken against the financial advice provider.

- An interposed person may be civilly liable, and the FMA may take the interposed person to court, and/or take action against any financial advice provider who engaged the interposed person. If the interposed person is a licensee, it may also be subject to FMA action around enforcement of licences.
- A nominated representative cannot be civilly liable, or subject to any legislative disciplinary action, for any breach of duty, although regulatory action could be taken against their financial advice provider. However, disciplinary action may be taken by the financial advice provider under the nominated representative's contract.

There are also other actions that may be taken under the FMCA for more serious contraventions.

Registration and disputes resolution

Both financial advice providers and financial advisers must be registered on the FSPR. The FMA may also require interposed persons to register on the FSPR as a licence condition (note that a sole trader who applies for a licence is a financial advice provider, and not a financial adviser).

Financial advice providers who provide regulated financial advice to retail clients must be members of dispute resolution schemes. Professional indemnity insurance may also be held at the financial advice provider level.

Client money or property services

The FMCA regulates client money or property services (previously called “broking services” under the FAA), including:

- obligations for handling client money and client property;
- conduct obligations;
- disclosure obligations for services for retail clients.

Further information

The Financial Services Legislation Amendment Act (FSLAA) became law on 8 April 2019 and was implemented by amending the Financial Markets Conduct Act (FMCA) on 15 March 2021. Read more at – ***Financial Services Legislation Amendment Act 2019, Financial Markets Conduct Act 2013***. FSLAA inserted into the FMCA, Subpart 5A (sections 431A to 431ZJ), Schedule 4 Part 6, Schedule 5, and other changes providing for the governance of financial advice under the FMCA. For background information, read about the development process on the ***MBIE website***.

THE CODE OF PROFESSIONAL CONDUCT FOR FINANCIAL ADVICE SERVICES



Under the financial advice regime, all regulated financial advice provided to retail clients must comply with the Code of Professional Conduct for Financial Advice Services (the Code), which came into force on 15 March 2021.

The Code of Professional Conduct for Financial Advice Services

The final Code of Professional Conduct for Financial Advice Services (the Code) was released on 7 May 2019 and came into force on 15 March 2021. It is available on the **Financial Advice Code** website.

The Code contains high level principles, not detailed rules.

- Each standard contains commentary to explain it and to help those who give financial advice comply with the standards, providing a few examples.
- The education standard for general competence, knowledge and skill is one of:
 - a level 5 certificate in financial services with the financial advice strand, or
 - AFA status at 15 March 2021, or
 - demonstrable competence in these qualification outcomes in some other way (e.g., through other qualifications or experience).
- The standard that regulated financial advice must meet is “a prudent person engaged in the profession of giving financial advice”.

A person who was a financial adviser registered on the FSPR on 15 March 2021 has a two-year safe harbour to meet competence requirements, until 15 March 2023. This means that until 15 March 2023, a financial adviser may continue to give financial advice that they could legally give under the FAA provided they are, or are engaged by, a FAP.

This relief also applies to entities who were registered to provide financial adviser services on 15 March 2021, such as former qualifying financial entities (QFEs). Those who were QFE advisers for a QFE registered on 15 March 2021, and register as financial advisers after 15 March 2021, also have the safe harbour until 15 March 2023. There is some competency relief for nominated representatives where the financial advice provider was registered to provide financial adviser services on 8 April 2019.

Financial advisers registered after 15 March 2021 must meet the competence requirements before they give regulated financial advice to retail clients.

Other than this safe harbour for financial advisers, all regulated financial advice must meet all duties in the FMCA and the Code from 15 March 2021.

The Code Standards

The Code Standards are in two parts:

Part 1: Ethical behaviour, conduct, and client care

1. Treat clients fairly;
2. Act with integrity;
3. Give financial advice that is suitable;
4. Ensure that the client understands the financial advice;
5. Protect client information.

Part 2: Competence, knowledge, and skill

6. Have general competence, knowledge, and skill;
7. Have particular competence, knowledge, and skill for designing an investment plan;
8. Have particular competence, knowledge, and skill for product advice;
9. Keep competence, knowledge, and skill up-to-date.

The Code Committee

The Code Committee is appointed by the Minister of Commerce to write and periodically review the Code of Conduct. Before 15 March 2021, the Code Committee were the Code Working Group.

The Code of Conduct must contain standards of:

- general competence, knowledge and skill for all those giving financial advice;
- specific competence, knowledge and skill for subsets of financial advice;
- ethical behaviour;
- conduct and client care;
- continuing professional development.

Further information

Read the ***Code of Professional Conduct for Financial Advice Services***. For more information about the Code and the Code Committee, read the ***Financial Advice Code*** website.

DISCLOSURE



The Ministry of Business, Innovation and Employment (MBIE) released disclosure regulations on 25 June 2020. These regulations came into force on 15 March 2021.

The disclosure regulations apply to anyone who gives regulated financial advice to retail clients (this includes robo-advice).

The regulations set out what to disclose and when, but not how. This is intended to ensure that the regulations are flexible enough to adapt to innovation.

The FSC released the **FSC disclosure guide** for financial advisers on 9 November 2020.

Disclosure Guide

The **FSC disclosure guide** provides examples of disclosure through different advice scenarios and gives examples of wording that could be used. It takes readers through the process of preparing clear information for consumers, outlining the general requirements of the regulations, and providing examples at each stage of disclosure.

Publicly available information

Each financial advice provider (FAP) must disclose the following information publicly, such as on its website prominently, or provide it to members of the public on request (see the **Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020** for details in each case):

- **Licensing information.** Certain statements relating to the licensing status of the financial advice provider and a brief summary of any conditions on the licence that may limit or restrict the advice that can be given.
- **Nature and scope of the advice.** Information relating to the types of advice that the financial advice provider gives, the financial advice products that can be advised on (specifically or by adequate description), and whether there are any material limitations (including on the product providers whose products can be advised on).
- **Fees or expenses.** A brief explanation of any fees, expenses or other amounts that might be charged to clients for financial advice, including the circumstances in which they may be payable.
- **Conflicts of interest and incentives.** A description of any material conflicts of interest, an explanation of the circumstances in which material commissions or other incentives will be received and a brief explanation of how any conflicts will be managed.
- **Complaints handling and dispute resolution.** An explanation of how to complain, and information regarding the internal complaints procedure and external dispute resolution scheme.
- **Duties information.** A statement that the advice must meet legal duties to meet standards of competence, knowledge and skill in the Code of Conduct;

give priority to the client's interests; exercise care, diligence and skill; and meet standards of ethical behaviour, conduct and client care in the Code of Conduct.

- **Contact details.** The name and contact details of the financial advice provider.

By the time nature and scope is known

By the time the nature and scope of advice is known (or if not practicable, as soon as practicable afterwards), the following information must be disclosed:

- **Nature and scope of the advice.** Information relating to the types of advice that will be given, the financial advice products that will be advised on (specifically or by adequate description), and whether there are any material limitations (including on the product providers whose products can be advised on).
- **Reliability history.** Certain information regarding any recent material instances of being publicly disciplined, relevant convictions or civil proceedings and, in the case of financial advisers, any recent bankruptcies or insolvencies.
- **Identifying information.** Certain information to help identify the financial advice provider and financial adviser.
- **Fees and expenses.** Information regarding any fees, expenses or other amounts that may need to be paid by the client in relation to the giving of financial advice, including a brief explanation of the circumstances when they are payable, terms of payment (if known), and of the amount of any fees (if known) or how they will be determined and an estimate (if practicable).
- **Conflicts of interest and incentives.** A brief description of any material conflicts of interest and any material commissions or other incentives that will or may be received, including when commissions or incentives are paid, their amount or value (or how they would be determined), who is involved, and a brief explanation of how any conflicts will be managed.
- **Availability of information.** If not given in writing, a statement that the client is able to request the information in writing.

When giving advice

The following information must be disclosed when giving advice (or if not practicable, as soon as practicable afterwards):

- **Fees or expenses.** Where different from that previously disclosed, information regarding any fees, expenses or other amounts that may need to be paid by the client in relation to the giving of financial advice, including the circumstances when they are payable, terms of payment (if known), the amount of any fees (if known) or how they will be determined and an estimate (if practicable), and a statement about any fees or expenses in relation to acting on the advice.
- **Conflicts of interest and incentives.** Where different from that previously disclosed, a description of any material conflicts of interest and any material commissions or other incentives that will or may be received, including when commissions or incentives are paid, their amount or value (or how they would be determined), who is involved, and a brief explanation of how any conflicts will be managed.

- **Complaints handling and dispute resolution.** An explanation of how to complain, and information regarding the internal complaints procedure and external dispute resolution scheme. This can be a reference to the provider's website, unless the information has materially changed.
- **Duties information.** A statement that the advice must meet legal duties to meet standards of competence, knowledge and skill in the Code of Conduct; give priority to the client's interests; exercise care, diligence and skill; and meet standards of ethical behaviour, conduct and client care in the Code of Conduct.
- **Identifying information.** Information to help identify the financial advice provider and financial adviser.
- **Availability of information.** If not given in writing, a statement that the client is able to request the information in writing.

When a complaint is received

If a complaint about the financial advice or financial advice service is received, and it is resolved within two working days, no disclosure is prescribed. Otherwise within two working days after a complaint is received (or if not practicable, as soon as practicable afterwards), the financial advice provider or a person engaged to give advice on their behalf must provide:

- an overview of the financial advice provider's complaints handling process; and
- prescribed information about the financial advice provider's disputes resolution scheme.

Frequently asked questions

How clear must disclosure be?

Disclosure must be clear, concise and effective. If it is presented with other information, it must be prominent. If it is in writing, it must be in a format, font and type size that are easily readable. It must be provided free of charge.

Will I have to disclose commission in dollars or as a percentage?

Commission may be disclosed as either dollars or as a percentage.

Will there be a prescribed summary disclosure document?

No, there is no specified format for disclosure, except that it must be available to customers in writing, and it must be clear, concise and effective.

Will someone give me templates?

Disclosure in the new regime is customised for each interaction, so you will need to understand the requirements. When the nature and scope of advice is known, and when you make a recommendation, you must disclose information specific to the customer's situation.

Will it be possible to disclose verbally? Will there be additional requirements if disclosure is verbal or online?

Yes, it is possible to disclose verbally. The financial advice provider must provide disclosure in writing if the client requests it. Also note the record-keeping standard condition for financial advice provider licences.

Will there be additional disclosure requirements for replacement business, e.g. the risks of replacement?

The regulations do not specify additional disclosure requirements for replacement business (but additional disclosure may be necessary to meet the requirements of the Code).

Will there be reduced requirements when disclosing to existing clients?

Yes. If the client already received information that must be provided by the time the nature and scope is known or when making a recommendation, it does not need to be provided again unless the client requests it, or it has materially changed.

What is “material”?

Information is material if a reasonable client would expect the information to, or to be likely to, influence their decision relating to the advice.

What if the scope is agreed, and recommendations are made, in the same meeting?

There is flexibility around the timing of disclosure if the scope is agreed and advice is provided in the same conversation. The required information only needs to be disclosed once.

Should wholesale clients be informed of their ability to opt-out, and be treated as retail clients?

The regulations apply to financial advice given to retail clients. They do not include financial advice given to wholesale clients.

Further information

The ***Financial Markets Conduct Regulations 2014*** were amended by the ***Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020*** and came into force on 15 March 2021. The amendment inserted regulations 229A to 229J, and Schedule 21A. For background reading, see the ***MBIE website***. The ***FSC Disclosure Guide*** explains how to implement the disclosure requirements and provides example wording.

LICENSING



Anyone giving regulated financial advice to retail clients must be, or be engaged by, a licensed financial advice provider. Licensing occurs in two phases:

- a transitional licence; and
- a full licence.

The FMA released transitional licence requirements on 25 July 2019. They released standard conditions for full licences on 6 November 2020, and the full licence guide on 17 November 2020.

Transitional licensing

All transitional licences became effective on 15 March 2021. Anyone applying for a licence after that date may only apply for a full licence.

Entities with a transitional licence must meet all the requirements of the FMCA from 15 March 2021. There is some relief from meeting competence requirements for certain financial advisers and financial advice providers until 15 March 2023 (see page 9).

During the transition period, if an entity extends the range of financial advice products on which it provides financial advice beyond what its advisers could give advice on under the FAA prior to 15 March 2021, it must apply to the FMA to modify the conditions of its transitional licence.

Transitional licence standard conditions

The FMA issued transitional licences subject to standard conditions. Individual licences may also have specific conditions, and there are other obligations in the FMCA and Regulations. The standard conditions are:

1. Record keeping

You must create in a timely manner and maintain adequate records in relation to your financial advice service. Your records:

- must be kept in a form (which may be electronic) that maintains the integrity of information, and can be inspected and reviewed by the FMA conveniently;
- may be in any language, but must have a summary in English, and must provide translations to the FMA if requested (at your cost and by a translator the FMA approves);
- must be available for inspection by the FMA at all reasonable times;
- must be kept for at least 7 years after the date it is made or relied on (whichever is later).

2. Internal complaints process

You must have an internal process for resolving client complaints relating to your financial advice service that provides for:

- complaints to be dealt with in a fair, timely and transparent manner; and
- records to be kept of all complaints and any action taken in relation to them including the dates on which each complaint was received and any action was taken in relation to that complaint.

Other conditions

Other conditions on transitional licences include:

- under the licence, you can only provide the service to which the licence relates (financial advice);
- you can only engage nominated representatives or interposed persons if you met specified requirements before 9 April 2019;
- you must report certain matters to the FMA if and when they occur.

Engaging financial advisers

The FSP Registrar may commence proceedings to deregister any financial adviser who is not engaged by a licensed financial advice provider.

FAPs must log onto the FSPR and link all financial advisers they engage to their FAP. The rules of engagement for financial advisers, and a video demonstrating how FAPs can link advisers, is available on the **MBIE website**.

If a financial adviser changes FAP, the FAP must log onto the FSPR and disengage the financial adviser. The financial adviser has three months to be engaged by a new FAP. After three months, if the financial adviser is not engaged by another FAP, the FSP Registrar may commence proceedings to deregister the financial adviser.

Types of financial advice provider full licences

There are three classes of financial advice provider licence:

- Class 1, a financial advice provider with only one financial adviser (who is also a director if it is a company), and may also provide advice directly to clients. Class 1 explicitly does not permit the use of interposed persons, authorised bodies, multiple financial advisers, or nominated representatives.
- Class 2, a financial advice provider that may have authorised bodies and multiple financial advisers. A Class 2 licence does not allow the licence holder or authorised bodies to engage nominated representatives or entities to provide advice on its behalf. Interposed persons are only permitted with the FMA's approval.
- Class 3, a financial advice provider that can engage authorised bodies, financial advisers and nominated representatives, and any structure permitted by the FMCA. Interposed persons are only permitted with the FMA's approval.

The licence classes are incremental, so a Class 2 licence includes everything permitted in a Class 1 licence, and a Class 3 licence includes everything permitted in Class 1 and 2 licences. However, if a business changes beyond its current licence class, it will have to apply for a new licence of the appropriate class.

Full licence requirements

Financial advice providers who were granted a transitional licence must apply for and obtain a full licence by 15 March 2023 if they wish to provide regulated financial advice to retail clients after that date. Other financial advice providers can apply for a full licence at any time, but cannot provide regulated financial advice to retail clients until the licence is granted. The FMA has the power to require transitional licence holders to apply for a full licence at particular times during the transition period.

On 20 October 2021, the FMA set target dates for financial advice providers to apply for full licences. By getting their application in before the relevant target date, applicants would give themselves the best chance of ensuring their full licence was processed before their transitional licence expired. The target date for Class 1 and Class 2 licences is 30 September 2022. The target date for Class 3 licences is 30 June 2022.

The FMA released **full licensing requirements** on 17 November 2020. The guide is updated periodically, so check that you have the latest version (the version number and date are in the bottom right corner of each page of the guide). Full licensing questions fall into multiple topics:

- Business structure
- Applicant and authorised body details
- Business Continuity Plan
- Cybersecurity
- Relevant parties
- How advice will be provided
- Client money and client property service
- Competency
- Oversight
- Outsourcing
- Nominated Representatives
- Customer care and handling conflicts
- Code compliance processes
- Complaints handling
- Record keeping
- Reviewing conduct
- Digital advice
- Confirmations
- Authorised Bodies' details
- Fit and proper

Applicants will only be asked questions relevant to the licence class for which they apply. The FMA has released separate documents containing the question sets for **Class 1**, **Class 2** and **Class 3** licences.

Most questions have structured answers (yes/no, dates, checklists). Some questions are free text fields requiring descriptive answers.

Full licence application process

Full licence applications are online. You need a RealMe login to apply. The financial advice provider (and all authorised bodies) must be registered on the FSPR.

Before you apply for a full licence, you must logon to the FSPR and, under financial services, indicate your intention to apply for a full licence. You can then apply for your full licence the following day.

The FMA aim to process full licensing applications within 60 working days of receiving the completed application.

The FMA may contact applicants to request clarification or additional information.

Full licence standard conditions

There are seven standard conditions that licence holders and those authorised under a licence must comply with. These are:

- **Record keeping** – a requirement that adequate records must be retained in relation to the financial advice service, in a form that ensures the integrity of the information, in English, available for inspection and kept for a minimum of seven years. This is the same as the record keeping condition for transitional licences.
- **Internal complaints process** – a requirement that there is an internal process for resolving client complaints that provides for complaints to be dealt with in a fair, timely and transparent manner and records to be kept of the complaints. The standard condition wording is the same as that applied to other licences under the Act.
- **Regulatory returns** – a requirement that all information is provided to the FMA that is necessary to monitor the adviser's ongoing capability to effectively perform the financial advice service in accordance with the applicable eligibility criteria and other requirements with the Act. The standard condition wording is the same as that applied to other licences under the Act.
- **Outsourcing** – if a system or process is outsourced there is a requirement that arrangements are in place to meet the adviser's market service licensee obligations. The purpose of this requirement is to ensure that outsource providers and associated arrangements are regularly reviewed.
- **Business continuity and technology systems** – a requirement to have and maintain a business continuity plan that is appropriate for the scale and scope of the financial advice service to ensure that they are able to manage disruptions in the business.
- **Ongoing eligibility** – a requirement to meet section 396 and, if applicable, section 400 of the FMCA which specify the matters in respect of which the FMA must be satisfied in order to grant a licence, or authorise an entity as an authorised body.

- **Notification of material changes** – a requirement to notify the FMA in writing within 10 days of commencing to implement material change to the nature of, or manner in which the financial advice service is provided.

The FMA may issue specific conditions on a licence on a case-by-case basis. They will inform licensees about specific conditions when they grant the licence.

Licence conditions may be made pursuant to regulations under the FMCA. As at January 2022, the only regulation that imposes an additional licence condition on a FAP licence was regulation 191 of the FMC Regulations, which is a general reporting condition. Section 412 of the FMCA also imposes an obligation to report material contraventions or changes of circumstances, and to report where the licence holder believes information supplied in support of a licence application or variation application is false or misleading.

Further information

Read the guides on the FSPR:

- ***How a financial advice provider engages an adviser.***
- ***Fees and levies (including levy classes) for annual renewals.***
- ***Other help on the FSPR.***

and from the FMA:

- ***Transitional licence standard conditions.***
- ***Standard conditions for full licences and classes of financial advice service.***
- ***Guide to Financial Advice Provider licence requirements and application kit.***
- Full licence application question sets for **Class 1**, **Class 2** and **Class 3** licences.

FEES AND LEVIES



Financial advice providers must be registered on the Financial Services Provider Register (FSPR) and licensed by the Financial Markets Authority (FMA). There are fees to obtain a licence, and annual levies for the services an entity is registered for on the FSPR.

Licensing fees

Financial advice provider licences can be for a single entity, or for a group of entities applying together. If a group of entities apply together, there is one lead applicant (the licence holder), and the other entities are called “authorised bodies”. As at January 2022, licensing fees are (excluding GST):

- Single adviser business or gives advice on its own account, \$612 (for 2 hours);
- Financial advice provider that engages financial advisers, \$767 (for 3 hours);
- Financial advice provider that engages nominated representatives, \$922 (for 4 hours);
- plus Fee per authorised body in the application, \$155;
- plus Fee for every additional hour or part thereof over the base, \$155;
- Application to vary licence conditions, \$100 + \$155 per hour (or part thereof).

These fees are based on an estimate of the time it will take to process an application. Complex cases will be charged \$155/hour over the expected assessment hours. Two hours are expected for a financial advice provider with one financial adviser, three hours for one with multiple financial advisers, and four hours for a financial advice provider that engages nominated representatives.

Licences are usually issued without an expiry date.

FMA levies

The costs of the FMA are covered by levies charged to financial market participants. These fees are collected when entities renew their registrations on the FSPR. The levies are listed on the **MBIE website**. As at January 2022, FMA levies are:

- Levy at initial registration:
 - \$500 per financial service provider.
- Levy at annual confirmation:
 - Financial advice provider, \$280;
 - plus Levy per nominated representative, \$240;
 - plus Levy if the financial advice provider gives advice on its own account, \$980;
 - these levies capped at \$80,000 per financial advice provider;
 - Financial adviser, \$340 (separate from the levy cap);
 - Authorised bodies, \$760.
- All values exclude GST, and exclude FSPR fees.

Levies are scheduled to increase from 1 July 2022:

- Levy at initial registration:
 - per financial service provider, \$600.
- Levy at annual confirmation:
 - Financial advice provider, \$340;
 - plus Levy per nominated representative, \$300;
 - plus Levy if the financial advice provider gives advice on its own account, \$1,180;
 - these levies capped at \$80,000 per financial advice provider;
 - Financial adviser, \$400, separate from the levy cap;
 - Authorised bodies, \$880.
- All values excluding GST, and exclude FSPR fees.

Further information

There is a summary of fees and levies, and levy classes for annual renewals, on the **FSPR website**. Read more about licensing fees and FMA levies and relief for sole-adviser firms on the **MBIE website**.

LIST OF ACRONYMS

The following acronyms are used in this guide:

DIMS	Discretionary Investment Management Service
FAA	Financial Advisers Act 2008
FADC	Financial Advisers Disciplinary Committee
FAP	Financial advice provider
FMA	Financial Markets Authority
FMCA	Financial Markets Conduct Act 2013
FSC	Financial Services Council (NZ)
FSLAA	Financial Services Legislation Amendment Act 2019
FSP	Financial Services Provider
FSPR	Financial Services Provider Register
MBIE	Ministry of Business, Innovation and Employment

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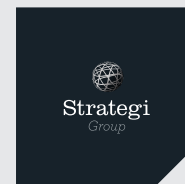


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