



MARCH 2019

SUMMARY OF CHANGES – SUPPLEMENTARY ORDER PAPER TO FINANCIAL SERVICES LEGISLATION AMENDMENT BILL

In March 2019, the Minister of Commerce and Consumer Affairs released a Supplementary Order Paper (SOP) to the Financial Services Legislation Amendment Bill.

Read a summary of the new regime for financial advice in the Bill [here](#).

The SOP includes a number of minor, technical and other changes to improve drafting or provide clarity. This fact sheet summarises the changes of substance.

Changes regarding financial advisers being engaged by multiple financial advice providers

- The SOP provides for licence conditions to specify circumstances where a financial advice provider cannot engage an individual financial adviser that is also engaged by another financial advice provider.
 - This is not a ban on individual advisers working for more than one financial advice provider.
 - This also does not limit a financial adviser's ability to give advice about multiple products from multiple product providers while acting on behalf of a single financial advice provider.

However, if providers are considering engaging individual advisers who will also be engaged by other financial advice provider(s), they should consider how such arrangements impact their duties, their disclosure obligations, professional indemnity insurance cover, and consumers' ability to seek redress if something goes wrong.

The change in the SOP means the Ministry of Business, Innovation and Employment (MBIE) and/or the Financial Markets Authority (FMA) can consider whether it would be appropriate to use licence conditions to prohibit particular types of arrangements if concerns arise, including relating to consumer confusion or lack of clarity as to which provider would be liable for misconduct by the individual adviser. Input will be sought from affected providers prior to imposing any licence conditions prohibiting or restricting particular types of arrangements. You may wish to contact the FMA or MBIE in relation to your proposed arrangements.

Clarifying that the financial advice duties apply when giving advice to clients

- Minor changes are made to the duty provisions to clarify that they apply where regulated financial advice is provided "to clients". This clarifies that the duties do not apply where advice is given internally within a business in the course of and for the purpose that business. For example, the duties do not apply where a research analyst working for a financial advice provider writes a report for the provider containing recommendations relating to financial products.



Changes to the financial services categories on the Financial Service Providers Register

- The Bill as introduced allowed for financial services to be broken down into subcategories. To improve workability with the framework of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act), the SOP removes that concept. Certain financial services (e.g. the different licensed market services) are instead listed in the Bill. The SOP also amends various provisions of the FSP Act so that regulations can prescribe additional information to be collected from providers. For example, it is intended that regulations will allow for information to be collected about whether a person is providing a service as a licensed provider, as an individual adviser (in respect of the financial advice service), or an authorised body.
- The SOP allows regulations to prescribe that providers do not need to register for more than one category of financial service in certain instances where there are overlaps between different services.

Other minor changes

- Clause 2 of the Bill sets the date by which all provisions of the Bill must come into force, if they were not previously brought into force by Order in Council. The SOP changes that date from 1 May 2020 to 1 May 2021. The intention remains that the new regime will begin in the second quarter of 2020. However, the date in clause 2 has been changed so that if there was an unforeseen delay in commencement, there is not a need to go back to Parliament.
- The SOP makes a change to the Bill so that a financial adviser may be deregistered from the Financial Service Providers Register if the adviser is not engaged by a provider for a continuous period of at least 3 months (or longer if regulations specify a different period). This change makes clear that a financial adviser would not be deregistered if they were between jobs for a period of less than 3 months.
- The Bill as introduced provides that anyone authorised to provide a discretionary investment management service (DIMS) under the Financial Advisers Act 2008 (FA Act) is deemed to hold a licence to provide this under the Financial Markets Conduct Act 2013 until the expiry of their FA Act licence. The SOP changes the expiry of that deemed licence to 2 years after the commencement date of the new regime. This aligns the expiry of the deemed DIMS licences with the end of the transitional period for the new regime.