



## COVERSHEET

<b>Minister</b>	Hon Kris Faafoi	<b>Portfolio</b>	Commerce and Consumer Affairs
<b>Title of Cabinet paper</b>	Regulations to support Financial Services Legislation Amendment Act 2019 Paper 1: financial advice licensing fees and FMA levy	<b>Date to be published</b>	June 2019

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
June 2019	Cabinet paper: Regulations to support Financial Services Legislation Amendment Act 2019 Paper 1: financial advice licensing fees and FMA levy	Office of Minister of Commerce and Consumer Affairs
June 2019	Cabinet minute: Regulations to support Financial Services Legislation Amendment Act 2019 Paper 1: financial advice licensing fees and FMA levy	Cabinet Office

### Information redacted

**NO**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Economic Development Committee

## **Regulations to support Financial Services Legislation Amendment Act 2019 Paper 1: financial advice licensing fees and FMA levy**

### **Proposal**

1. This paper seeks agreement to make regulations that will set the licensing fees and levies that will apply in the new financial advice regime.

### **Executive Summary**

2. The Financial Services Legislation Amendment Act 2019 (Amendment Act) introduces a new regime for the regulation of financial advice that will improve access to quality financial advice. This is the first of two papers today seeking agreement to make regulations that are necessary to implement the new regime.
3. In the new regulatory regime, anyone who gives regulated financial advice will need to operate under a licence that is granted by the Financial Markets Authority (FMA). I propose to set licensing fees that enable the FMA to recover the costs associated with licensing. It is appropriate that these costs be recovered directly from applicants, as they will receive the benefit of holding a licence.
4. The proposed fee model is consistent with other licensing fees charged by the FMA, in that it is comprised of a flat application fee and hourly rate that will only apply when the FMA is dealing with more complex applications. I expect the majority of applicants will only pay the flat fee, but the FMA will have the ability to recover the costs of processing resource intensive applications.
5. In addition to licensing, the FMA will have ongoing monitoring and enforcement functions. The majority of the FMA's funding for these activities is recovered through a levy that is charged to financial service providers. I am proposing levies that have been designed to collect the same amount of funding from the financial advice sector.
6. The proposed fees and levies are similar to those that were publicly consulted on, and have been amended to take into account feedback received. I am confident that the costs are fair and reasonable and will be proportionate to the size and complexity of the various businesses that will operate in the new regime.

### **Background**

7. The Amendment Act introduces a new regime for the regulation of financial advice. The Amendment Act aims to improve the quality of financial advice by introducing

new duties that will apply to any individual or business that gives regulated financial advice to retail clients in New Zealand.

8. The new regime is expected to come into force in mid-2020, at which point anyone who gives financial advice to retail clients will be required to operate under a licence granted by the FMA. Licensing fees enable the FMA to recover the costs incurred in processing licence applications.
9. In addition, the FMA will be responsible for monitoring the provision of financial advice and carrying out enforcement action when required. The FMA receives an annual appropriation of \$36.000 million to carry out its activities. The majority of this is funded through a levy charged to financial service providers, including those that provide financial advice.
10. In December 2018 [DEV-18-MIN-0275.01] Cabinet authorised the release of a consultation paper seeking feedback on proposed licensing fees and changes to the FMA levy. Twenty submissions were received and there was broad support for the proposals among submitters. The final proposals have been amended to take into account feedback received through consultation.
11. I am now seeking Cabinet approval to set the licensing fees and the FMA levy that will apply in the new financial advice regime. I am also seeking approval to make one technical amendment to the existing FMA levy relating to authorised bodies in order to better achieve the objective of the levy.
12. In developing the models for the licensing fees and the levy I have sought to ensure that these compliance costs do not create a barrier to entry as this might reduce access to advice for New Zealanders. I am conscious that compliance costs can be a concern, particularly for smaller businesses, and I believe that the proposed fees and levies are fair and reasonable.

### **Licensing fees**

13. Under the new financial advice regime, anyone who gives regulated financial advice to a retail client will be required to operate under a financial advice provider licence granted by the FMA. Licensing will allow the FMA to assess whether a business is fit to provide financial advice and able to meet its statutory obligations (e.g. to give priority to a client's interests in the event of a conflict of interest). It also improves the FMA's ability to monitor the provision of financial advice in New Zealand, and take enforcement action when necessary.
14. The FMA is able to recover the costs incurred in considering a licence application if fees are prescribed in regulations. As the licensee receives the sole benefit from holding the licence it is a private good and I consider it appropriate that the associated costs are recovered from the applicant. If these costs are not recovered from applicants, the FMA would need to subsidise the cost of licensing from other revenue streams.
15. The Amendment Act provides for two distinct stages of licensing: an initial transitional licensing phase followed by a full licensing phase.

- 16.** To facilitate an efficient licensing process, the FMA is developing an online licensing portal for each phase of licensing, the costs of which will be recovered from applicants.

#### *Transitional licensing fees*

- 17.** Transitional licences will last for up to two years from the commencement of the new regime and are intended to allow businesses to continue to operate while subject to the new obligations, without the FMA having to first fully assess each provider's fitness to provide financial advice services. This means that the benefits of the new regulatory regime can be realised sooner than would otherwise be practical. The transitional licensing process will therefore be straightforward and the application process, and associated costs, will be the same for all applicants.
- 18.** I propose that all applicants for transitional licences be charged a flat fee of \$405.00 (GST exclusive). Applicants will incur an additional fee of \$38.75 for each authorised body (a business that can provide financial advice under another business' licence) named in an application. Any subsequent requests to add or remove an authorised body from a licence will be charged in accordance with the FMA's existing variation fees.

#### *Full licensing fees*

- 19.** After the two year transitional period, anyone that would like to provide regulated financial advice to retail clients must hold a full licence. During full licensing, the FMA will be required to consider a wider range of factors, including whether the applicant is capable of effectively providing financial advice services.
- 20.** The Amendment Act provides for businesses to arrange themselves in various ways. For example, a firm may give advice on its own account (e.g. through a digital advice platform) or engage individual financial advisers or nominated representatives to give advice on its behalf. Additional duties apply to firms that engage financial advisers or nominated representatives. The FMA therefore must carry out additional checks, and incur additional costs, when processing applications from those firms. Accordingly, I propose that full licensing fees be set for the following categories of applicant:
- 20.1. category 1 – sole adviser businesses<sup>1</sup> or financial advice providers that only give advice on their own account
  - 20.2. category 2 – financial advice providers that engage multiple financial advisers but no nominated representatives
  - 20.3. category 3 – financial advice providers that engage one or more nominated representatives (and may also engage financial advisers).
- 21.** I propose that full licensing fees be a combination of a flat application fee and hourly rate<sup>2</sup> that will apply if an application takes longer than a specified number of hours to

<sup>1</sup> An individual who holds a licence and does not engage any other individuals to give regulated financial advice on their behalf, or a body corporate which holds a licence and only engages one financial adviser (being the sole director or one of two directors, and the only senior manager) to give advice on its behalf.

<sup>2</sup> The FMA's hourly rate is set in a range of regulations that set fees, including the Financial Markets Conduct (Fees) Regulations 2014, at \$155.00 per hour (GST exclusive).

process. The flat fee component has been calculated based on the estimated average processing time for a standard application within each category, and reflects the additional assessment that will be required for applications in categories 2 and 3.

22. The hourly rate component of the fees will allow the FMA to recover the costs it incurs in considering more complex or risky applications. This is consistent with the approach used for other categories of licences processed by the FMA. This approach will help to improve access to advice by keeping the fees charged to the majority of applicants relatively low, while enabling the FMA to recover the costs of processing complex applications.
23. I am aware that this aspect of the charging model has been questioned by some in the industry, as it might increase uncertainty for them. It is my expectation that most applicants will only pay the flat application fee, and the FMA will only charge the additional hourly rate after notifying the applicant that it will be charged and detailing the reasons for this. This should alleviate the industry's concerns and ensure the appropriate use of the hourly rate.
24. Applications that name an authorised body to be covered by the licence will be charged an additional flat fee of \$155.00 (GST exclusive) per authorised body. Any subsequent requests to add or remove an authorised body from a licence will be charged in accordance with the FMA's existing licence variation fees.

Table 1: Licence fees (GST exclusive)

Type of applicant	Estimated average processing time	Licensing system and development costs	Flat application fee (processing time plus system costs)	Threshold for charging the hourly rate
Transitional licence application fee	15 minutes	\$366.25	\$405.00	N/A
Category 1 – sole adviser businesses or financial advice providers that only give advice on their own account	1 hour	\$457.00	\$612.00	2 hours
Category 2- financial advice providers that engage multiple financial advisers but no nominated representatives	2 hours	\$457.00	\$767.00	3 hours
Category 3 – financial advice providers that engage one or more nominated representatives	3 hours	\$457.00	\$922.00	4 hours

25. These proposed fees are lower than equivalent fees paid by authorised financial advisers and qualifying financial entities in the current regime. They are slightly higher than those consulted on due to an increase in the estimated licensing system and development costs used in calculating the fees.

### **Changes to the FMA Levy**

*It is necessary to make amendments to the FMA levy*

26. The majority of the FMA's appropriation is funded through a levy charged to financial service providers. The levy was revised in 2017 following a review of the FMA's funding.
27. All financial service providers pay a flat levy of \$460.00 when they first register on the financial service providers register (FSPR) and are required to pay a levy relating to the class of service provided on each annual confirmation thereafter. The different annual levies for different classes are intended to reflect the benefit each gains from participating in a well-regulated market.
28. Approximately \$3.600 million of the levy is collected from the financial advice industry. The Amendment Act replaces the current categories of financial advisers, which means that the current classes of levy relating to them will no longer be effective. It is necessary to amend the FMA levy to ensure that the same level of funding is collected from the financial advice industry.
29. In keeping with the overall design of the current levy model, the intention is that the levy payable by those providing financial advice will reflect the benefit they gain from participating in a well-regulated market. Further, the levy model has been designed to ensure that these levies do not reduce access to financial advice.

*Amended levy model to take into account the size of financial advice providers*

30. I propose that the levy model will continue to include the levy of \$460.00 payable on initial registration, followed by particular levies at each annual confirmation thereafter.
31. I propose that financial advisers continue to be levied individually, and the levy for each licensed financial advice provider will take into account the number of nominated representatives engaged by the firm, and whether the firm gives advice on its own account (e.g. through a digital advice platform). This will ensure that those firms that receive the greatest benefit from the FMA's activity will contribute the most to its funding.
32. The model includes a cap of \$80,000, recognising that many larger financial advice providers will contribute to the FMA's funding through other levy classes (e.g. banks and insurers). Without the cap some larger providers may choose to restrict the provision of financial advice in order to reduce the levy they would be required to pay.



Table 2: New FMA levy classes (GST exclusive)

Levy class		Levy
Licensed financial advice provider		\$225.00
+	Amount per nominated representative engaged by the financial advice provider	\$179.00
+	Amount if the financial advice provider gives advice on its own account	\$737.00
Financial adviser		\$265.00

- 33.** The proposal aims to strike a balance between ensuring that the businesses that will receive the greatest benefit from participating in a well-regulated market pay a proportionate amount, while not discouraging businesses from providing financial advice. In particular, I have sought to reduce the impact of these new levies on small businesses to ensure that the new regime works for them.
- 34.** The proposed adjustments to the FMA levy model are similar to those publicly consulted on, for which there was broad support. Some minor changes have been made to incorporate updated forecast volumes, and to reduce the levy that would be payable by a financial advice provider that gives advice on its own account, as a larger levy might act as a barrier to entry.
- 35.** Some submitters that represent banks and insurers raised concern about paying higher levies than under the current regime, noting that they already pay large levies under other classes. I understand these concerns but note that these firms will receive a significant benefit from operating in the new financial advice regime and believe it is reasonable that they contribute towards the FMA's funding in relation to financial advice services.

*Relief for small businesses*

- 36.** The Amendment Act will require some financial advisers who are currently operating as sole adviser businesses to establish a new registration on the FSPR if they choose to operate in a similar fashion in the new regime. I propose that we provide some relief to these businesses as they transition to the new regime by removing the requirement to pay the initial \$460.00 levy when registering their business for the first time. This will only apply to those who are currently relying on the sole adviser exemption and choose to adopt a similar model in the new regime.

*Authorised bodies*

- 37.** In relation to financial services more generally, I am also proposing some changes to how authorised bodies are levied. As noted above, a provider's licence will sometimes authorise another entity (the authorised body) to provide the licensed service without that entity holding a licence in its own name. For example, ABC Limited may hold a licence that authorises ABC Funds to also provide services as an authorised body.
- 38.** Authorised bodies currently pay different levies depending on the services they provide. However, several levy classes (e.g. fund managers) are tiered so that a licensee pays a higher levy if they have more funds or assets under management.

For licensees in those levy classes that have authorised bodies, the full extent of their business might not be taken into account in the charging of the levy. There is also a risk of licensees restructuring their business to reduce the levy payable by moving funds under management to authorised bodies.

**39.** I therefore propose that:

39.1. All authorised bodies (regardless of the service they provide) pay an annual levy of \$460.00 (GST exclusive).

39.2. Financial service providers that pay a levy under the tiered classes (e.g. fund managers, DIMS providers) will pay a levy based on the total funds or assets under management of both the licensee and any authorised bodies covered by the licence. The tier bands and levy amounts for these groups will not otherwise change from their current settings.

39.3. Financial advice providers will pay the levy for the total number of nominated representatives engaged by the licensee and by any authorised bodies covered by the licence.

**40.** This enables the full extent of the licensee's business to be taken into account in the levy, reduces the risk of providers restructuring their business to avoid paying the levy, provides certainty for treatment of authorised bodies, and better meets the objective of ensuring the levy is consistent with the benefits a market participant receives from a well-regulated financial market.

## **Consultation**

**41.** The FMA, the Treasury and the Department of the Prime Minister and Cabinet (Policy Advisory Group) have been consulted on this paper.

**42.** In December 2018 Cabinet approved the release of a discussion paper which sought feedback on proposed licensing fees and changes to the FMA levy [DEV-18-MIN-0275.01 refers]. Twenty submissions were received and there was broad support for the proposals. Minor adjustments have been made to the proposals to incorporate the feedback received.

**43.** Submitters were concerned that the proposal to include an hourly rate component in the licensing fees may have reduced certainty for the industry. As noted above, I am satisfied that the combination of flat application fee and hourly rate is suitable as it allows for a relatively low fee to be applied to most applicants while allowing the FMA to recover the cost of processing resources intensive applications.

## **Financial Implications**

**44.** There are no financial implications as the proposed regulations will simply ensure that the FMA can recover licensing costs in the new regime from applicants, and that the same amount of funding can be collected from the financial advice industry through levies. The FMA's overall funding has not been reviewed at this time as the FMA has sufficient reserves to oversee the initial implementation of the new regime.



## Legislative Implications

45. The proposals in this paper will require the making of regulations under the Financial Markets Conduct Act 2013 and the Financial Markets Authority Act 2011.

## Impact Analysis

46. The Ministry of Business, Innovation and Employment's (MBIE) Regulatory Impact Analysis Review Panel has reviewed the attached Cost Recovery Impact Statement (stage 2) prepared by MBIE. The Panel considers that the information and analysis summarised in the Impact Statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

## Publicity

47. MBIE intends to notify key affected stakeholders of policy decisions in relation to fees and levies.

## Proactive Release

48. I intend to release this paper proactively in whole within 30 days. MBIE will publish a copy of this paper on its website.

## Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

1. **note** that the Financial Services Legislation Amendment Act 2019 introduces a new regulatory regime for financial advice;
2. **note** that in the new regulatory regime, anyone who gives regulated financial advice to retail clients will need to operate under a licence granted by the Financial Markets Authority;
3. **note** that the Financial Markets Authority is able to recover the costs of licensing from applicants;
4. **agree** to introduce licensing fees for applicants of a market services licence to provide a financial advice service as set out in Appendix 1;
5. **agree** that an additional fee of \$38.75 (GST exclusive) be charged for each authorised body named in a transitional licence application, and \$155.00 (GST exclusive) for each authorised body named in a full licence application;
6. **note** that the Financial Markets Authority is part industry funded via a levy charged to financial service providers;
7. **note** that the Amendment Act removes the current categories of financial advisers;
8. **agree** to amend the levies set out in the Financial Markets Authority (Levies) Regulations 2012 as set out in Appendix 2;

9. **agree** that the maximum total levy payable by a financial advice provider (in respect of their financial advice service) will be \$80,000;
10. **agree** to provide relief to financial advice providers who currently rely on the sole adviser exemption so that they are not required to pay the levy of \$460.00 on the initial registration as a financial advice provider, if continuing to operate as a single adviser business;
11. **agree** to amend how authorised bodies are levied so that the levy payable by licensees takes into account the full extent of their business, including services provided by authorised bodies;
12. **authorise** the Minister of Commerce and Consumer Affairs to issue drafting instructions to Parliamentary Counsel Office to give effect to the above recommendations;
13. **authorise** the Minister of Commerce and Consumer Affairs to make minor or technical changes to the licensing fees and the FMA levy model consistent with the policy decisions in this paper.

Authorised for lodgement

Hon Kris Faafoi

Minister of Commerce and Consumer Affairs

## Appendix 1

### Transitional licensing fees

<b>Application fees</b>	<b>Fee (ex GST)</b>
Financial advice provider application fee	\$405.00
Additional fee for any authorised body named in an application	\$38.75

### Full licensing fees

<b>Application fees</b>	<b>Fee (ex GST)</b>	<b>Threshold for charging the hourly rate</b>
Tier 1 – sole adviser businesses or financial advice providers that only give advice on their own account	\$612.00	2 hours
Tier 2- financial advice providers that engage multiple financial advisers but no nominated representatives	\$767.00	3 hours
Tier 3 – financial advice providers that engage one or more nominated representatives	\$922.00	4 hours
Additional fee for any authorised body named in an application	\$155.00	N/A

PROACTIVELY RELEASED

## Appendix 2

### Changes to the FMA Levy

Levy class		Levy (ex GST)
Financial adviser		\$265.00
Financial advice provider		\$225.00
+	Amount per nominated representative engaged by the financial advice provider	\$179.00
+	Amount if the financial advice provider gives advice on its own account	\$737.00
Authorised body		\$460.00

For fund managers, discretionary investment management services providers, and financial advice providers: Clarify that amount of levy payable is to be calculated based on total funds under management/total managed assets/total number of nominated representatives (as applicable) of the licensee *and* all of its authorised bodies.

PROACTIVELY RELEASED