



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HIKINA WHAKATUTUKI



# Exposure Draft

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Financial Markets Conduct (Regulated Financial Advice  
Disclosure) Amendment Regulations 2019

October 2019

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The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by 5pm on Friday 8 November.

Your submission may respond to any or all of these issues. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please use the submission template provided at:

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Please include your contact details in the cover letter or e-mail accompanying your submission.

You can make your submission by:

- sending your submission as a Microsoft Word document to [faareview@mbie.govt.nz](mailto:faareview@mbie.govt.nz).
- mailing your submission to:

Financial Markets Policy  
Building, Resources and Markets  
Ministry of Business, Innovation & Employment  
PO Box 1473

Wellington 6140  
New Zealand

Please direct any questions that you have in relation to the submissions process to [faareview@mbie.govt.nz](mailto:faareview@mbie.govt.nz).

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# 1 Introduction

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## Purpose of this discussion paper and context

1. This paper seeks feedback on a consultation draft of the regulations that set the disclosure requirements in the new financial advice regime, the Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2019 (draft Regulations).
2. The Financial Services Legislation Amendment Act 2019 (Amendment Act) introduces a new regulatory regime for financial advice. The Amendment Act repeals the Financial Advisers Act 2008 and amends the Financial Markets Conduct Act 2013 (FMC Act) and the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
3. On 25 February 2019 the Government agreed on the new disclosure requirements that will apply in the new regime<sup>1</sup>. This followed consultation on proposed disclosure requirements in April 2018 and two rounds of consumer testing<sup>2</sup>. These draft Regulations give effect to those decisions.
4. We are now seeking feedback on the attached draft Regulations. In particular, we are seeking feedback on whether these draft Regulations achieve the policy intent and whether they are workable in practice for the different ways in which advice could be given.
5. Your feedback will help to finalise the regulations before they are submitted to Cabinet for approval. We are aiming to pass the regulations in early 2020, and they will come into force in June 2020 along with the rest of the new regulatory regime. We are also seeking feedback on whether the regulations will need to include transitional provisions to give the industry sufficient time to meet the new disclosure requirements.
6. Please provide any feedback on the draft Regulations by Friday 8 November.

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<sup>1</sup> Cabinet paper is available at: [www.mbie.govt.nz/assets/b6cd7a7516/cabinet-paper-regulation-of-financial-advice-disclosure-and-multiple-providers.pdf](http://www.mbie.govt.nz/assets/b6cd7a7516/cabinet-paper-regulation-of-financial-advice-disclosure-and-multiple-providers.pdf)

<sup>2</sup> Previous consultation material is available at: [www.mbie.govt.nz/business-and-employment/business/financial-markets-regulation/regulation-of-financial-advice/regulations-to-support-the-financial-services-legislation-amendment-act/disclosure-requirements/](http://www.mbie.govt.nz/business-and-employment/business/financial-markets-regulation/regulation-of-financial-advice/regulations-to-support-the-financial-services-legislation-amendment-act/disclosure-requirements/)

## 2 Draft Regulations

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### Structure of the draft Regulations

7. The Amendment Act introduces a range of new duties that apply to those who give regulated financial advice. This includes Section 431O which introduces a duty to make prescribed information available in the prescribed manner when required to do so by the regulations, and Section 431P which prohibits false or misleading statements and omissions in disclosure information.
8. The draft Regulations prescribe the information that must be given under section 431O and include:
  - a. an outline of the disclosure requirements (see new regulation 229A)
  - b. the points at which information must be disclosed and how it must be disclosed (see new regulations 229B to 229H)
  - c. the information that must be disclosed (see new Schedule 21A).
9. These are discussed in more detail below.

### Licence condition to keep records

10. Regulation 5 in the attached draft Regulations will insert a new licence condition on a market services licence for a financial advice provider to keep a record of each disclosure made in accordance with these regulations. This includes disclosures given by the financial advice provider itself, or those they engage to give advice<sup>3</sup>. This proposed licence condition will assist the Financial Markets Authority (FMA) to determine whether disclosure has been provided in accordance with these regulations, or not.
11. We will liaise with the FMA to avoid any overlap or duplication between the proposed licence condition in these regulations and the FMA's proposed standard conditions which are likely to include a record keeping condition.

**1** Will the proposed record-keeping requirement be workable in practice?

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<sup>3</sup> The FMC Act allows a financial advice provider to engage financial advisers, nominated representatives or other entities to give advice to the financial advice provider's clients on its behalf.

## Information that must be publicly available

12. New regulation 229C gives effect to the Government’s decision to require financial advice providers who give advice to retail clients to make certain information publicly available on the financial advice provider’s website if they have one, and on request.
13. The information that must be publicly available is set out in clause 4 in the new Schedule 21A and is intended to help retail clients find a financial advice provider that meets their needs. The information that must be provided is summarised in the table below.

<b>SUMMARY OF INFORMATION TO BE MADE PUBLICLY AVAILABLE</b>	
<b>New Schedule 21A – clause 4</b>	
<b>LICENSING INFORMATION</b>	A summary of 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.
<b>NATURE AND SCOPE OF THE ADVICE</b>	Information relating to the types of advice that the financial advice provider gives, the financial advice products that can be advised on, and whether there are any limitations (including on the product providers whose products can be advised on).
<b>FEES OR EXPENSES</b>	An explanation of any fees that might be charged for financial advice, including the circumstances in which they may be payable.
<b>CONFLICTS OF INTEREST AND INCENTIVES</b>	A description of any conflicts of interests, an explanation of the circumstances in which commissions or other incentives will be received and a brief explanation of how any conflicts will be managed.
<b>COMPLAINTS HANDLING AND DISPUTE RESOLUTION</b>	Information regarding the internal complaints procedure and external dispute resolution process.
<b>AVAILABILITY OF INFORMATION</b>	A statement to the effect that the client is able to request for the information to be provided in a hard copy or an electronic copy.

2

Do you have any comments on the drafting of the Regulations that will require information to be made publicly available?

## Disclosure when the nature and scope is known

14. The Government decided that those giving financial advice should be required to disclose certain information when the nature and scope of the financial advice service that is to be provided is known. The purpose of this information is to help a client decide whether to obtain financial advice from a particular provider or individual.
15. New regulation 229D will require the information set out in clause 5 in the new Schedule 21A to be given to a retail client when the financial advice provider, financial adviser or nominated representative who gives advice knows the general nature and scope of the



advice the client is seeking, and has reasonable grounds for concluding that advice will be given to the client. The information must be given as soon as practicable after this event, and before financial advice is given (i.e. before a recommendation to acquire a financial advice product is made).

16. New regulation 229D(7) dis-applies the requirement to provide this initial information if the client has already been given the information in the last 12 months and there have been no material changes. If there has been a material change in the past 12 months, an updated version of the information that has changed or an explanation of what has changed must be provided. This gives effect to the Government’s decision to not require disclosure to existing clients in certain circumstances.

## SUMMARY OF THE INFORMATION TO BE GIVEN WHEN THE NATURE AND SCOPE OF THE ADVICE IS KNOWN

### New Schedule 21A – clause 5

<b>LICENSING INFORMATION</b>	A summary of 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 will be given.
<b>NATURE AND SCOPE OF THE ADVICE</b>	Information relating to the types of advice that will be given, the financial advice products that will be advised on, and whether there are any limitations (including on the product providers whose products will be advised on).
<b>RELIABILITY HISTORY</b>	Information regarding any recent instances of being publicly disciplined, relevant convictions or civil proceedings and, in the case of financial advisers, any recent bankruptcies or insolvencies.
<b>IDENTIFYING INFORMATION</b>	Information to help identify the financial advice provider, financial adviser or nominated representative.
<b>FEES OR EXPENSES</b>	Information regarding any fees or expenses that may need to be paid in relation to the giving of financial advice, including the circumstances when they are payable and the amount of any fees (if known) or an estimate (if practicable).
<b>CONFLICTS OF INTEREST AND INCENTIVES</b>	A description of any conflicts of interests and any commissions or other incentives that will or may be received, including the amount or value of these, and a brief explanation of how any conflicts will be managed.
<b>AVAILABILITY OF INFORMATION</b>	A statement to the effect that the client is able to request for the information to be provided in a hard copy or an electronic copy.

3

Do you have any comments on the draft Regulations that will require the disclosure of information when the nature and scope of the advice is known?

## Disclosure when the financial advice is given

17. To help clients decide whether to follow advice that they receive, new regulation 229E requires additional information to be provided when the financial advice is given to a retail

client. This includes the information set out in clause 6 of Schedule 21A, and any material changes to the information given when the nature and scope of the advice is known.

18. As with the disclosure required under new regulation 229D, information does not need to be provided if it has been given in the last 12 months, unless there have been any material changes to the information provided previously.

## SUMMARY OF THE INFORMATION TO BE GIVEN WHEN FINANCIAL ADVICE IS GIVEN

### New Schedule 21A – clause 6

<b>IDENTIFYING INFORMATION</b>	Information to help identify the financial advice provider, financial adviser or nominated representative.
<b>FEES OR EXPENSES</b>	If not previously disclosed, information regarding any fees or expenses that may need to be paid in relation to the giving of financial advice, or following the advice, including the circumstances when they are payable and, the amount of any fees (if known) or an estimate (if practicable).
<b>CONFLICTS OF INTEREST AND INCENTIVES</b>	A description of any conflicts of interests and any commissions or other incentives received in relation to the advice, including the amount or value of these, and a brief explanation of how any conflicts will be managed.
<b>COMPLAINTS HANDLING AND DISPUTE RESOLUTION</b>	Information regarding the internal complaints procedure and external dispute resolution process.
<b>DUTIES INFORMATION</b>	A description of the duties in the FMC Act that the person is required to meet.
<b>AVAILABILITY OF INFORMATION</b>	A statement to the effect that the client is able to request for the information to be provided in a hard copy or an electronic copy.

4

Do you have any comments on the draft Regulations that will require the disclosure of information when the financial advice is given?

## Disclosure when a complaint is received

19. New regulation 229F will require financial advice providers, or those they engage to give advice, to provide clients with information regarding their complaints handling processes and dispute resolution arrangements at the point a complaint about a financial advice service is received. The information that must be provided is set out in 229F(1) and clause 6(1)(i) of new Schedule 21A and relates to their internal and external complaints handling process (including the details of the relevant approved external dispute resolution scheme).

5

Do you have any comments on the draft Regulations that will require the disclosure of a provider's complaints handling and dispute resolution processes when a complaint is received?

# The manner in which information must be disclosed

20. The draft Regulations provide flexibility in terms of how information may be provided to clients. However, new regulation 229G sets some requirements that apply to disclosures provided under new regulations 229D to 229F, including that the information must be worded and presented in a clear, concise, and effective manner. Similar requirements apply to the information that must be made publicly available under regulation 229C.

6 Do you have any comments on the draft Regulations that set the manner in which information must be disclosed?

# Additional disclosure requirements

- 21. New regulation 229H clarifies that when a duty to disclose applies to an individual financial adviser or nominated representative, a provider may give the information to a client directly on the individual financial adviser’s or nominated representative’s behalf.
- 22. Clause 5(3) of new Schedule 21A clarifies the position if one person is required to provide the initial information, but is unlikely to be the person who gives financial advice to the client. In these instances, any such disclosures should relate to the person who will give the financial advice.

7 Are there instances in your business when regulation 229D might apply to someone who is not the one to give advice to the client? Please give examples and provide any comments on how the draft Regulations apply in such scenarios.

8 Do you have any further comments on new regulation 229A to 229H of the draft Regulations?

9 Do you have any further comments on new Schedule 21A in the draft Regulations?

# Implementation

23. As discussed on page 6, the new financial advice regime will come into force in June 2020, and these Regulations are likely to be made in early-2020. We recognise that providers may need to make system changes in order to meet the new disclosure requirements. We would like feedback on whether transitional provisions are needed to ensure that the industry has sufficient time to meet the new disclosure requirements.

10 What (if any) transitional provisions should be included in the regulations?