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as at 28 July 2009**



Financial Advisers Act 2008

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Commencement see section 2

Contents

	Page
1 Title	9
2 Commencement	9
Part 1	
Preliminary provisions	
3 Purpose of Act	9
4 Overview of Act	10
5 Interpretation	10
6 Act binds the Crown	16
Part 2	
Financial advisers and their disclosure and conduct obligations	
7 Outline of this Part	16
Subpart 1—Who are financial advisers and what they can do	
8 Who is financial adviser	16
9 Types of financial adviser	16

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This Act is administered by the Ministry of Economic Development.

10	What is financial adviser service	17
11	When person gives financial advice	17
12	When advice or transaction by certain persons is not performing financial adviser service	17
13	Meaning of financial advice clarified	19
	<i>Restriction on performing financial adviser service</i>	
14	Who may perform financial adviser service	20
15	Individual who is authorised financial adviser	20
16	Individual who is registered	20
17	Individual who is QFE employee or agent	20
	<i>Provisions relating to employer or principal of financial adviser</i>	
18	Employer or principal of financial adviser must be registered	21
19	No requirement to be member of approved dispute resolution scheme if employer is member	21
20	Client's rights preserved against employer or principal of financial adviser	22
	Subpart 2—Financial advisers' disclosure and conduct obligations	
	<i>Disclosure obligations</i>	
21	What is disclosure obligation	22
22	Financial adviser must make disclosure before performing financial adviser service	22
23	Disclosure by authorised financial adviser	22
24	How disclosure must be made by authorised financial adviser	23
25	Disclosure by financial adviser performing financial adviser service in relation to category 2 product	23
26	Disclosure by qualifying financial entity	24
27	Disclosure must not be misleading, deceptive, or confusing	25
28	Disclosure of additional information	25
29	No compliance with disclosure obligations if disclosure out of date	25
30	Advertisement advertising financial adviser services by authorised financial adviser must refer to disclosure statement	26
31	Disclosure by 2 or more financial advisers in joint disclosure statement	26

	<i>Conduct obligations</i>	
32	What is conduct obligation	26
	<i>Conduct obligations that apply to all financial advisers</i>	
33	Financial adviser must exercise care, diligence, and skill	27
34	Financial adviser must not engage in misleading or deceptive conduct	27
35	Advertisement by financial adviser must not be misleading, deceptive, or confusing	27
36	Restriction on use of term sharebroker	27
	<i>Conduct obligations that apply to authorised financial advisers only</i>	
37	Authorised financial adviser must comply with code	27
38	Authorised financial adviser must not recommend or receive money for acquisition of securities if offer for subscription illegal	28
39	Authorised financial adviser must pay client's money into separate trust account	28
40	Authorised financial adviser must account for client's money or property	28
41	Authorised financial adviser must keep records of client's money and other property	28
42	Restrictions on use of client's money or property	29
43	Protection of client's money or property held on trust	29
44	Meaning of received or held	30
45	Authorised financial adviser must comply with terms and conditions of his or her authorisation	30
	<i>Conduct obligations that apply to QFEs only</i>	
46	QFE must comply with terms and conditions of grant of QFE status	30
47	QFE must not engage in misleading or deceptive conduct in relation to financial adviser service by employee or agent	30
48	Advertisement by QFE of financial adviser service must not be misleading, deceptive, or confusing	30
	<i>Commission's direction in respect of breach of disclosure or conduct obligation</i>	
49	Commission may give financial adviser direction in respect of breach of disclosure or conduct obligation	31

Part 3
Authorised financial advisers and qualifying financial entities

50	Outline of this Part	31
	Subpart 1—Authorised financial advisers	
51	Who is authorised financial adviser	32
52	Who may apply to be authorised	32
53	Application to be authorised	32
54	Eligibility to be authorised	32
55	Commission must approve or decline application for authorisation	33
56	Commission must notify Registrar of authorisation	33
57	Termination of authorisation	34
58	Renewal of authorisation	34
	<i>Commission's powers in relation to default by authorised financial adviser</i>	
59	Commission's powers in relation to default by authorised financial adviser	35
60	Reasonable opportunity to be heard	35
61	Commission may give authorised financial adviser direction	36
62	Other provisions concerning Commission's powers in relation to default by authorised financial adviser	37
	Subpart 2—Qualifying financial entities	
63	What is qualifying financial entity (QFE)	37
64	Who may apply for QFE status	37
65	Application for QFE status	37
66	Eligibility for QFE status	37
67	Commission must approve or decline application for QFE status	38
68	Commission must notify Registrar of grant of QFE status	38
69	Termination of QFE status	38
70	Renewal of QFE status	39
	<i>Commission's powers in relation to default by QFE</i>	
71	Commission's powers in relation to QFE default	39
72	Reasonable opportunity to be heard	40
73	Commission may give QFE direction	40
74	Other provisions concerning Commission's powers in relation to QFE default	41

	<i>Liability of employee or agent</i>	
75	Exemption from liability for employee or agent of QFE	41
	<i>QFE's obligations</i>	
76	QFE's ongoing compliance obligations	42
77	QFE must provide annual report to Commission	42
	Part 4	
	How financial advisers are regulated	
78	Outline of this Part	43
	Subpart 1—Commissioner for Financial Advisers, code of professional conduct, and code committee	
	<i>Commissioner for Financial Advisers</i>	
79	Commissioner for Financial Advisers	44
80	Functions of Commissioner	44
	<i>Code committee</i>	
81	Commissioner must establish code committee	45
82	Functions of code committee	45
83	Membership of code committee	45
84	Proceedings of code committee	46
85	Certain provisions of Crown Entities Act 2004 apply to members of code committee	46
	<i>Code of professional conduct for authorised financial advisers</i>	
86	Content of code	46
87	Code committee must prepare code	47
88	Commissioner's approval of draft code	47
89	Commissioner may require revision or consultation	47
90	Commissioner's approval of revised draft code	48
91	Deadline for Commissioner's approval of draft code	48
92	Minister's approval required	48
93	Deadline for Minister's approval of draft code	49
94	Code comes into force by <i>Gazette</i> notice	49
	<i>Changes to code</i>	
95	Changes to code	49
	Subpart 2—Complaints and disciplinary proceedings	
	<i>Who deals with complaints</i>	
96	Complaint about financial adviser	50

97	Investigation by Commission	50
	<i>Complaint about authorised financial adviser</i>	
98	Complaint about authorised financial adviser	50
99	Disciplinary committee must give notice of complaint to financial adviser concerned	50
100	Content of disciplinary committee's notice of complaint	51
101	Disciplinary committee may discipline authorised financial adviser for breach of code	51
102	Reasonable opportunity to be heard	52
	<i>Disciplinary committee</i>	
103	Minister must establish disciplinary committee	52
104	Functions of disciplinary committee	52
105	Membership of disciplinary committee	53
106	Proceedings of disciplinary committee	53
107	Disciplinary committee may hear evidence in disciplinary proceeding	54
108	District Court may authorise disciplinary committee to summon witnesses on disciplinary matters	54
109	Issuing of summons by disciplinary committee	55
110	Serving of summons	55
111	Witnesses' fees, allowances, and expenses	56
112	Protection for witnesses and counsel in disciplinary proceeding	56
113	Certain provisions of Crown Entities Act 2004 apply to members of disciplinary committee	56
	Subpart 3—Offences	
	<i>Offences: registration and authorisation</i>	
114	Offence of performing financial adviser service without being registered	57
115	Offence of performing financial adviser service without being authorised	57
116	Offences in relation to employer or principal failing to maintain registration	58
	<i>Disclosure offences: financial advisers and QFEs</i>	
117	Failure to make disclosure under or in accordance with disclosure obligation	58

<i>Conduct offences: financial advisers</i>		
118	Offence of misleading or deceptive conduct by financial adviser	58
119	Offence of misleading, deceptive, or confusing advertisement by financial adviser	58
120	Offence of contravening restriction on use of term sharebroker	59
<i>Offences: authorised financial advisers only</i>		
121	Offence of recommending or receiving money in connection with offer of securities when subscription illegal	59
122	Offence of contravening requirement that authorised financial adviser pay client's money into separate trust account	59
123	Offence of failing to account for client's money or other property	59
124	Offence in relation to records of client's money or property	59
125	Offence of breaching restrictions on use of client's money or property	59
126	Offence of failing to comply with terms and conditions of authorisation	60
127	Offence of failing to comply with Commission's direction	60
128	Offence of contravening condition of disciplinary committee's order	60
<i>Offences: QFEs only</i>		
129	Offence of failing to comply with terms and conditions of QFE status	60
130	Offence of misleading or deceptive conduct in relation to financial adviser service by employee or agent	60
131	Offence of misleading, etc, advertisement of financial adviser service by employee or agent	60
132	Offence of failing to comply with Commission's direction	61
133	Offence of failing to comply with obligations in relation to authorised financial advisers	61
134	Offence of failing to provide annual report	61
135	Offence of failing to comply with Commission's direction in respect of breach of disclosure or conduct obligation	61

<i>Miscellaneous offences</i>		
136	Offence of false declaration, etc, in support of application for authorisation or grant of QFE status	61
137	Failure to comply with summons by Commissioner to attend disciplinary committee hearing	62
Part 5		
General provisions		
<i>Appeal of decisions</i>		
138	Right of appeal	62
139	Notice of right of appeal	63
140	Decision to have effect pending determination of appeal	63
141	Procedure on appeal	63
142	Court's decision final	64
143	Court may refer matter back for reconsideration	64
144	Orders as to costs	64
145	Orders as to publication of names	65
146	Appeal on question of law	65
<i>Securities Commission: general powers</i>		
147	Commission may exercise powers under Securities Act 1978	65
<i>Exemptions</i>		
148	Commission may grant exemptions	66
149	Commission must notify reasons for exemption	66
150	Commission may vary or revoke exemption	66
<i>Information sharing</i>		
151	Information sharing	66
<i>Fees and levies</i>		
152	Commission's fees, charges, and costs	67
153	Operational levy	68
<i>Regulations</i>		
154	General regulations	68
155	Regulations relating to fees, charges, and costs	70
<i>Other matters</i>		
156	No contracting out	70
157	Territorial scope	70
158	Breach of exemption conditions	71

159	Exemption or regulation in respect of specified overseas jurisdictions	71
160	Time for laying information for summary offences	71
161	Ministry must review and report on operation of Act	71
	<i>Other legislation affected</i>	
161A	Financial Service Providers (Registration and Dispute Resolution) Act 2008 amended	72
162	KiwiSaver Act 2006 amended	72
163	Securities Act 1978 amended	72
164	Securities Markets Act 1988 amended	73
165	Sharebrokers Act 1908 repealed	73
166	Securities Markets (Investment Advisers and Brokers) Regulations 2007 revoked	73
	<i>Transitional provisions</i>	
167	Transitional provisions for existing offences and contravention under Securities Markets Act 1988	74

1 Title

This Act is the Financial Advisers Act 2008.

2 Commencement

- (1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council.
- (2) One or more Orders in Council may be made appointing different dates for the commencement of different provisions.

Section 2: Part 1 and sections 7–13, 78–95, 152–155, and 163(1)–(6) brought into force, on 5 December 2008, by the Financial Advisers Act Commencement Order 2008 (SR 2008/412).

**Part 1
Preliminary provisions**

3 Purpose of Act

The purpose of this Act is to promote the sound and efficient delivery of financial advice, and to encourage public confidence in the professionalism and integrity of financial advisers, by—

- (a) requiring disclosure by financial advisers, so ensuring that investors and consumers can make informed decisions about whether to use a financial adviser and whether to follow a financial adviser's advice; and
- (b) requiring competency of financial advisers, so ensuring that there are available to investors and consumers financial advisers who have the experience, expertise, and integrity to match effectively a person to a financial product that best meets that person's need and risk profile; and
- (c) ensuring that financial advisers are held accountable for any financial advice that they give and there are incentives for financial advisers to manage appropriately conflicts of interest.

4 Overview of Act

This Act is divided into 5 Parts, which are—

- (a) Part 1 (Preliminary provisions):
- (b) Part 2 (Financial advisers and their disclosure and conduct obligations):
- (c) Part 3 (Authorised financial advisers and qualifying financial entities):
- (d) Part 4 (How financial advisers are regulated):
- (e) Part 5 (General provisions).

5 Interpretation

In this Act, unless the context otherwise requires,—

advertisement means a form of communication that—

- (a) refers to a financial adviser or financial adviser service or is reasonably likely to induce persons to seek a financial adviser service; and
- (b) is authorised or instigated by, or on behalf of, a financial adviser or QFE or prepared with the co-operation of, or by arrangement with, a financial adviser or QFE; and
- (c) is to be, or has been, distributed to a person

approved dispute resolution scheme has the same meaning as in section 4 of the FSP Act

authorised means authorised by the Commission under section 55

authorised advertisement has the same meaning as in section 38 of the Securities Act 1978

authorised financial adviser means a person described in section 51

bank in New Zealand means a registered bank that carries on in New Zealand the business of banking

bank term deposit means a fixed term deposit product offered by a registered bank in New Zealand

business includes any profession, trade, or undertaking, whether or not carried on with the intention of making a profit

call debt security has the meaning given to it in the regulations

category 1 product means—

- (a) a security (other than a security that is a category 2 product); or
- (b) any estate or interest in land; or
- (c) a futures contract; or
- (d) any other product specified by the regulations

category 2 product means—

- (a) a call debt security; or
- (b) a bank term deposit; or
- (c) an insurance product excluding a life insurance policy issued after 31 December 2008; or
- (d) a consumer credit contract as defined in section 11 of the Credit Contracts and Consumer Finance Act 2003; or
- (e) any other product specified by the regulations

chartered accountant has the same meaning as in section 2 of the Institute of Chartered Accountants of New Zealand Act 1996

client means a person for whom a financial adviser service is performed

code means the code of professional conduct brought into force under section 94

college of education has the same meaning as in section 159 of the Education Act 1989

Commission means the Securities Commission established under the Securities Act 1978

Commissioner for Financial Advisers or **Commissioner** means the person appointed under section 79(3)

conduct obligation means an obligation described in section 32

Crown organisation has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006

director means a director as defined in section 126 of the Companies Act 1993

disclosure obligation means the obligation described in section 21

dispose of includes—

- (a) dispose of by allotting, withdrawing from, or terminating; and
- (b) agree to dispose of

document means—

- (a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and figures), images, or sounds from which symbols, images, or sounds can be derived, and includes—
 - (i) a label, marking, or other writing that identifies or describes a thing of which it forms part, or to which it is attached;
 - (ii) a book, map, plan, graph, or drawing;
 - (iii) a photograph, film, or negative; or
- (b) information electronically recorded or stored, and information derived from that information

entity does not include an individual

financial adviser has the meaning set out in section 8

financial adviser obligation means an obligation of a financial adviser under this Act, the regulations, or the code

financial adviser service has the meaning set out in section 10

financial planning service means a service that analyses an individual's current financial situation, identifies his or her financial goals, and develops financial options for realising those goals

financial product means a category 1 product or a category 2 product

FSP Act means the Financial Service Providers (Registration and Dispute Resolution) Act 2008

futures contract has the same meaning as in section 37(1) of the Securities Markets Act 1988

general education system has the same meaning as in section 120 of the Education Act 1989

individual means a natural person

investment statement has the same meaning as in section 38C of the Securities Act 1978

investment transaction means the receipt, handling, payment, or investment of money or other property by one person on behalf of another person in relation to acquiring or disposing of a financial product

issuer has the same meaning as in section 2(1) of the Securities Act 1978

lawyer has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006

lecturer means a person who is employed by a university, polytechnic, or college of education to teach or instruct students of the university, polytechnic, or college of education

licensed service has the same meaning as in section 4 of the FSP Act

life insurance policy has the same meaning as in section 2(1) of the Securities Act 1978

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

overseas regulator means a body in another country with functions corresponding to those of the Commission under this Act

polytechnic has the same meaning as in section 159(1) of the Education Act 1989

prescribed means prescribed by regulations made under this Act

principal officer means a director or a person who occupies a position equivalent to that of a director (such as a trustee or partner)

prospectus has the same meaning as in section 2(1) of the Securities Act 1978

qualifying financial entity or **QFE** means an entity described in section 63

real estate agent means a person who is a licensee under the Real Estate Agents Act 2008

record includes—

- (a) any file, register, ledger, book of account, or passbook, and any reproduction or copy of them or any entry in any of them; and
- (b) any apparatus or equipment in or on which information is recorded, stored, or embodied in any form so as to be capable of being retrieved, reproduced, or processed by any means; and
- (c) any material by means of which information is supplied to, or derived from, any such apparatus or equipment

register means the register of financial service providers maintained under the FSP Act

registered means registered under the FSP Act and **registration** has a corresponding meaning

registered bank has the same meaning as in section 2(1) of the Reserve Bank of New Zealand Act 1989

registered exchange has the same meaning as in section 2(1) of the Securities Markets Act 1988

registered valuer has the same meaning as in section 2 of the Valuers Act 1948

Registrar means the Registrar of Financial Service Providers

regulations means regulations made under this Act

related company has the same meaning as in section 2(3) of the Companies Act 1993

security—

- (a) means—

- (i) any interest in, or right to participate in, any capital, assets, earnings, royalties, or other properties of any person:
 - (ii) any interest in, or right to be paid, money that is, or is to be, deposited with, lent to, or otherwise owing by any person (whether or not the interest or right is secured by a charge over any property):
 - (iii) any renewal or variation of the terms or conditions of any existing security; but
- (b) does not include a security exempted from Part 2 of the Securities Act 1978 under any of paragraphs (b) to (h) of section 5(1) of that Act

State services has the meaning given to it in section 2 of the State Sector Act 1988

State services employee means an employee or chief executive in any part of the State services, whether paid by salary, wages, or otherwise

Takeovers Code means the takeovers code in force under the Takeovers Act 1993

tax agent has the same meaning as in section 3(1) of the Tax Administration Act 1994

teacher means a person in a teaching position in the general education system

teaching position has the same meaning as in section 120 of the Education Act 1989

trust account means, in relation to an authorised financial adviser, any trust account at a bank in New Zealand or any other prescribed entity that is—

- (a) a trust account in the name of the financial adviser; or
- (b) if the financial adviser is the employee or agent of another person (A) and performs a financial adviser service in the course of A's business, a trust account in A's name or the name of the financial adviser

trust account records—

- (a) means records relating to a trust account; and
- (b) includes any information that relates to a trust account and that is recorded or stored by means of any tape recorder, computer, or other device, and any material

subsequently derived from information so recorded or stored

university has the same meaning as in section 159 of the Education Act 1989.

- 6 Act binds the Crown**
This Act binds the Crown.

Part 2

Financial advisers and their disclosure and conduct obligations

- 7 Outline of this Part**
- (1) This Part is divided into 2 subparts.
 - (2) Subpart 1 defines who financial advisers are, defines what is a financial adviser service and what is financial advice, and sets out who is permitted to perform a financial adviser service.
 - (3) Subpart 2 describes the obligations of a financial adviser under this Act: to make disclosure and comply with conduct obligations.

Subpart 1—Who are financial advisers and what they can do

- 8 Who is financial adviser**
A financial adviser is an individual who performs a financial adviser service.
- 9 Types of financial adviser**
Under this Act there are 3 types of financial adviser:
- (a) a financial adviser who is authorised and registered (an **authorised financial adviser**: *see* section 51); and
 - (b) a financial adviser who is registered but who is not authorised; and
 - (c) a financial adviser who is neither authorised nor registered but who is an employee or agent of a qualifying financial entity (a **QFE**: *see* section 63).

10 What is financial adviser service

A person (A) performs a financial adviser service if, in the course of business, A—

- (a) gives financial advice; or
- (b) makes an investment transaction; or
- (c) provides a financial planning service.

11 When person gives financial advice

A person (A) gives financial advice (and so performs a financial adviser service) if A makes a recommendation or gives an opinion or guidance in relation to acquiring or disposing of (including refraining from acquiring or disposing of) a financial product.

12 When advice or transaction by certain persons is not performing financial adviser service

A person does not perform a financial adviser service in the following cases:

- (a) a teacher, lecturer, journalist, or State Services employee giving advice in the course of that occupation; or
- (b) a Minister of the Crown giving advice in the course of his or her duties as a Minister of the Crown; or
- (c) a member of Parliament giving advice in the course of his or her duties as a member of Parliament; or
- (d) a lawyer giving advice or making an investment transaction in the course of his or her professional practice as a lawyer if the advice or transaction is a necessary incident of legal practice; or
- (e) a chartered accountant giving advice or making an investment transaction in the course of his or her professional practice as a chartered accountant if the advice or transaction is a necessary incident of professional accounting practice; or
- (f) a tax agent giving advice or making an investment transaction in the course of his or her professional practice as a tax agent if the advice or transaction is a necessary incident of professional tax agency; or

- (g) a real estate agent giving advice or making an investment transaction in the course of his or her occupation as a real estate agent if the advice or transaction is a necessary incident of working as a real estate agent; or
- (h) a registered valuer giving advice in the course of his or her professional practice as a registered valuer if the advice is a necessary incident of the professional practice of a registered valuer; or
- (i) any of the following persons making an investment transaction in relation to a security:
 - (i) an issuer or a trustee (within the meaning of the Securities Act 1978 or the Unit Trusts Act 1960):
 - (ii) a nominated person of a trustee (within the meaning of the Unit Trusts Act 1960):
 - (iii) a nominee of a nominated person of a trustee (within the meaning of the Unit Trusts Act 1960):
 - (iv) a statutory supervisor (within the meaning of the Securities Act 1978):
 - (v) a security registrar appointed by the issuer; or
- (j) a person who only transmits money or other property without being able to apply the money or property for any other purpose; or
- (k) a member of the board of a Crown entity under the Crown Entities Act 2004 giving advice in the course of his or her duties as a member of the board and in accordance with the Crown Entities Act 2004 and the Crown entity's own Act; or
- (l) a Crown organisation giving advice or making an investment transaction or providing a financial planning service in the course of its functions; or
- (m) the Reserve Bank of New Zealand (the **Reserve Bank**), a member of the board of the Reserve Bank, or an employee of the Reserve Bank, giving advice or making an investment transaction in the course of the functions of the Reserve Bank; or
- (n) a person giving advice, or making an investment transaction, in relation to a category 2 product or providing a financial planning service, if the advice is given, or the transaction is made, or the planning service is provided

- without charge in the course of a service offered by a non-profit organisation; or
- (o) an employee giving advice to, or making an investment transaction on behalf of, his or her employer in the course of his or her employment; or
 - (p) an employer providing assistance to an employee with the implementation of a decision to acquire or dispose of a financial product made available through the employee's workplace unless the assistance includes or is accompanied by a recommendation or opinion as to the suitability of the financial product; or
 - (q) a company giving advice to, or making an investment transaction on behalf of, a related company; or
 - (r) the offeror or target company giving advice in the course of a takeover offer made under the Takeovers Code; or
 - (s) an independent adviser giving advice in the exercise of that person's functions under the Takeovers Code; or
 - (t) a person giving general commentary relating to a financial market if that commentary is not directed to a specific person or persons; or
 - (u) any other person or class of persons specified in the regulations giving advice or making an investment transaction or providing a financial planning service in circumstances specified in the regulations.

13 Meaning of financial advice clarified

- (1) Financial advice does not include anything contained in—
- (a) a prospectus; or
 - (b) an investment statement; or
 - (c) an authorised advertisement; or
 - (d) a bank disclosure statement; or
 - (e) a document or documents issued in lieu of a prospectus or investment statement in accordance with an exemption under the Securities Act 1978; or
 - (f) a disclosure statement that is required under the Credit Contracts and Consumer Finance Act 2003; or
 - (g) a disclosure statement for the purposes of the Retirement Villages Act 2003.

- (2) Whether advice is financial advice for the purposes of this Act is not affected by how the advice is given or communicated.
- (3) For the avoidance of doubt, the provision of information, whether orally or in writing, is not financial advice unless accompanied by a recommendation, an opinion, or guidance.

Section 13(1)(f): amended, on 28 July 2009, by section 4 of the Financial Advisers Amendment Act 2009 (2009 No 24).

Section 13(1)(g): added, on 28 July 2009, by section 4 of the Financial Advisers Amendment Act 2009 (2009 No 24).

*Restriction on performing financial adviser
service*

14 Who may perform financial adviser service

Only the persons described in sections 15 to 17 may perform a financial adviser service.

15 Individual who is authorised financial adviser

An individual who is an authorised financial adviser may—

- (a) give financial advice in relation to a category 1 product;
or
- (b) make an investment transaction in relation to a category 1 product; or
- (c) provide a financial planning service.

16 Individual who is registered

An individual who is registered may—

- (a) give financial advice in relation to a category 2 product;
or
- (b) make an investment transaction in relation to a category 2 product.

17 Individual who is QFE employee or agent

- (1) An individual (whether registered or not) who is an employee or agent of a QFE may, in the course of the QFE's business,—

- (a) give financial advice in relation to a category 2 product;
or
- (b) make an investment transaction in relation to a category 2 product.

- (2) An individual (whether registered or not) who is an employee of a QFE may, in the course of the QFE's business,—
- (a) give financial advice in relation to a category 1 product of which the QFE is the issuer; or
 - (b) make an investment transaction in relation to a category 1 product of which the QFE is the issuer.

Section 17(1): amended, on 28 July 2009, by section 5 of the Financial Advisers Amendment Act 2009 (2009 No 24).

*Provisions relating to employer or principal of
financial adviser*

18 Employer or principal of financial adviser must be registered

- (1) This section applies where one person (**A**) employs or engages another person (**B**) as employee or agent to perform a financial adviser service in the course of A's business for A's client or clients (the **financial adviser service**).
- (2) In any case to which this section applies,—
- (a) A must maintain registration for the duration of B's employment or agency; and
 - (b) B must not perform the financial adviser service if B knows or ought to know that A is not currently registered.
- (3) A person who contravenes subsection (2) commits an offence (*see* section 116).

Section 18(1): amended, on 28 July 2009, by section 6 of the Financial Advisers Amendment Act 2009 (2009 No 24).

19 No requirement to be member of approved dispute resolution scheme if employer is member

- (1) This section applies where a person (**A**) employs another person (**B**) as employee to perform a financial adviser service in the course of A's business for A's client or clients.
- (2) In any case to which this section applies, B must not be required to be a member of an approved dispute resolution scheme for the purposes of registration under the FSP Act.
- (3) Subsection (2) applies no matter what the FSP Act says.

20 Client's rights preserved against employer or principal of financial adviser

Nothing in this Act affects the rights of a person for whom a financial adviser performs a financial adviser service against the employer or principal of the financial adviser.

Subpart 2—Financial advisers' disclosure and conduct obligations*Disclosure obligations***21 What is disclosure obligation**

A disclosure obligation is an obligation to make disclosure under or in accordance with sections 22 to 31.

22 Financial adviser must make disclosure before performing financial adviser service

Subject to section 26, a financial adviser who performs a financial adviser service must make disclosure, in accordance with this Act and the regulations, to the person for whom the financial adviser service is performed before (or, if not practicable before, as soon as practicable after) performing the financial adviser service.

23 Disclosure by authorised financial adviser

- (1) An authorised financial adviser must disclose the information prescribed by regulations.
- (2) For the purposes of this section, regulations may prescribe disclosure in relation to any or all of the following matters:
 - (a) professional or business experience relevant to performance of a financial adviser service:
 - (b) criminal convictions:
 - (c) disciplinary proceedings:
 - (d) adverse findings by a court or the Commission:
 - (e) bankruptcy or other insolvency proceedings:
 - (f) fees:
 - (g) material interests, relationships, or associations:
 - (h) remuneration:
 - (i) financial products in relation to which a financial adviser service is performed:

- (j) procedures for handling a client's money or other property:
 - (k) indemnity insurance:
 - (l) dispute resolution arrangements:
 - (m) location of business premises:
 - (n) matters required to be disclosed by the financial adviser's terms and conditions of authorisation.
- (3) Regulations made for the purposes of this section may prescribe different disclosure according to different classes of authorised financial adviser, financial adviser service, or client.

24 How disclosure must be made by authorised financial adviser

- (1) Disclosure by an authorised financial adviser must be made in a disclosure statement.
- (2) The disclosure statement must—
- (a) be in writing; and
 - (b) state when it was prepared; and
 - (c) state the name, address, and business telephone number of the financial adviser; and
 - (d) be either received by the client, or delivered or sent to the client, at the client's last known address or an address (including an electronic address) specified by the client for this purpose; and
 - (e) comply with regulations prescribing the form of the statement.
- (3) Subject to subsection (2), regulations may prescribe the form of the statement.

25 Disclosure by financial adviser performing financial adviser service in relation to category 2 product

- (1) Subject to section 26, a financial adviser who performs a financial adviser service in relation to a category 2 product must disclose the information prescribed by regulations.
- (2) For the purposes of this section, regulations may prescribe disclosure in relation to all or any of the following matters:
- (a) the status of the financial adviser, for example, whether the financial adviser is authorised or not:

- (b) dispute resolution arrangements:
 - (c) location of business premises:
 - (d) telephone, email, and fax details.
- (3) Regulations may prescribe the form of disclosure.

26 Disclosure by qualifying financial entity

- (1) This section applies—
- (a) if a financial adviser (A)—
 - (i) is not an authorised financial adviser; and
 - (ii) is an employee or agent of a QFE; and
 - (iii) performs a financial adviser service in relation to a category 2 product in the course of the QFE's business; or
 - (b) if a financial adviser (A)—
 - (i) is not an authorised financial adviser; and
 - (ii) is an employee of a QFE; and
 - (iii) performs a financial adviser service in relation to a category 1 product of which the QFE is the issuer in the course of the QFE's business.
- (1A) In this section, **the financial adviser service** means a financial adviser service referred to in—
- (a) subsection (1)(a)(iii); or
 - (b) subsection (1)(b)(iii).
- (2) In any case to which this section applies,—
- (a) before (or, if not practicable before, as soon as practicable after) A performs the financial adviser service, the QFE must disclose the information prescribed by regulations to the person for whom the financial adviser service is performed; and
 - (b) A has no obligation of disclosure.
- (3) For the purposes of this section, regulations may prescribe disclosure in relation to any or all of the following matters:
- (a) the QFE's dispute resolution arrangements;
 - (b) matters required to be disclosed by the QFE's terms and conditions of grant of QFE status;
 - (c) whether the QFE provides any other licensed service.
- (4) Regulations may prescribe the form of disclosure.

Section 26(1): substituted, on 28 July 2009, by section 7 of the Financial Advisers Amendment Act 2009 (2009 No 24).

Section 26(1A): inserted, on 28 July 2009, by section 7 of the Financial Advisers Amendment Act 2009 (2009 No 24).

27 Disclosure must not be misleading, deceptive, or confusing
Disclosure under a disclosure obligation must not be misleading, deceptive, or confusing at the time that the disclosure is made.

28 Disclosure of additional information

- (1) Disclosure of the matters that must be disclosed under a disclosure obligation may be accompanied by disclosure of additional information.
- (2) Additional disclosure that accompanies disclosure under a disclosure obligation must not be deceptive, misleading, or confusing at the time that it is made.

29 No compliance with disclosure obligations if disclosure out of date

- (1) Previous disclosure does not discharge a person's disclosure obligation if the previous disclosure is out of date when the financial adviser service is performed.
- (2) The previous disclosure is out of date if—
 - (a) since the date of the disclosure there has been a material change in any matter that must be disclosed; and
 - (b) a reasonable person in the position of the person for whom the financial adviser service is performed (**A**) would consider that the change would materially affect any of the following decisions by A:
 - (i) to proceed with a financial adviser service by the financial adviser in question (**B**);
 - (ii) to proceed with financial advice already given by B;
 - (iii) about the weight that A gives to financial advice by B;
 - (iv) to postpone or countermand the performance of a financial adviser service.
- (3) Subsection (1) does not apply if—
 - (a) the previous disclosure was by way of a disclosure statement; and

- (b) before the financial adviser service is performed, B gives A—
 - (i) a new disclosure statement that is up to date; or
 - (ii) additional written information that, when read with the original disclosure statement, updates the disclosure statement.

30 Advertisement advertising financial adviser services by authorised financial adviser must refer to disclosure statement

Any advertisement advertising financial adviser services by an authorised financial adviser must state that a disclosure statement is available, on request and free of charge.

31 Disclosure by 2 or more financial advisers in joint disclosure statement

- (1) Subject to regulations being made under subsection (3), disclosure may be made by 2 or more financial advisers in a joint disclosure statement.
- (2) A joint disclosure statement must—
 - (a) comply with section 24(2)(a) to (c); and
 - (b) comply with regulations prescribing the form of the joint disclosure statement; and
 - (c) be either received by the client, or delivered or sent to the client, at the client's last known address or an address (including an electronic address) specified by the client for this purpose.
- (3) Regulations may prescribe—
 - (a) when, and subject to what terms and conditions, disclosure may be made in a joint disclosure statement; and
 - (b) the form of a joint disclosure statement.

Conduct obligations

32 What is conduct obligation

A conduct obligation is an obligation under sections 33 to 48.

Conduct obligations that apply to all financial advisers

- 33 Financial adviser must exercise care, diligence, and skill**
A financial adviser, when performing a financial adviser service, must exercise the care, diligence, and skill that a reasonable financial adviser would exercise in the same circumstances, taking into account, but without limitation, the nature and requirements of the financial adviser's client and the nature of the service performed for the client.
- 34 Financial adviser must not engage in misleading or deceptive conduct**
- (1) A financial adviser must not engage in conduct in relation to the performance of a financial adviser service that is misleading or deceptive or likely to mislead or deceive.
 - (2) A person who knowingly or recklessly contravenes subsection (1) commits an offence (*see* section 118).
Compare: 1988 No 234 s 13(1)
- 35 Advertisement by financial adviser must not be misleading, deceptive, or confusing**
- (1) A financial adviser must not advertise a financial adviser service in a way that is misleading, deceptive, or confusing.
 - (2) A person who knowingly or recklessly contravenes subsection (1) commits an offence (*see* section 119).
- 36 Restriction on use of term sharebroker**
- (1) A person (A) must not use the term sharebroker in advertising or promoting A as a financial adviser or advertising or promoting a financial adviser service unless A is a member of a registered exchange.
 - (2) A person who contravenes subsection (1) commits an offence (*see* section 120).

Conduct obligations that apply to authorised financial advisers only

- 37 Authorised financial adviser must comply with code**
An authorised financial adviser must comply with the code.

38 Authorised financial adviser must not recommend or receive money for acquisition of securities if offer for subscription illegal

- (1) An authorised financial adviser (A) must not recommend to a person that that person acquire securities, and must not receive money from a person in respect of the acquisition of securities, if—
 - (a) when the securities were or are offered for subscription, the offer was or is illegal; and
 - (b) the illegality has not been remedied; and
 - (c) A knows or ought to know that, when the securities were or are offered for subscription, the offer was or is illegal.
- (2) A person who contravenes subsection (1) commits an offence (*see* section 121).

Compare: 1988 No 234 s 41S

39 Authorised financial adviser must pay client's money into separate trust account

- (1) An authorised financial adviser who receives money on behalf of a client receives the money on trust and must ensure that the money is paid promptly into a separate trust account.
- (2) A person who contravenes subsection (1) commits an offence (*see* section 122).

Compare: 2006 No 1 s 110(1)

40 Authorised financial adviser must account for client's money or property

- (1) An authorised financial adviser who receives or holds the money or other property of a client on trust must account properly, or ensure that account is properly made, to the client for that money or property.
- (2) A person who contravenes subsection (1) commits an offence (*see* section 123).

41 Authorised financial adviser must keep records of client's money and other property

- (1) An authorised financial adviser who receives or holds on trust the money of a client must keep, or ensure that there are kept,

trust account records that disclose clearly the position of the money in the trust account.

- (2) An authorised financial adviser who receives or holds on trust the property of a client other than money must keep, or ensure that there are kept, records that—
 - (a) identify the property; and
 - (b) show the date when the property was received; and
 - (c) if the property has been disposed of, show when the property was disposed of and to whom.
- (3) An authorised financial adviser must keep the records required by this section, or ensure that they are kept, in a manner that enables those records to be conveniently and properly audited or inspected.
- (4) A person who contravenes any of subsections (1) to (3) commits an offence (*see* section 124).

Compare: 2006 No 1 s 112(1)

42 Restrictions on use of client's money or property

- (1) A person must not use or apply money or other property received or held on trust for a client by an authorised financial adviser in any way except—
 - (a) as expressly directed by the client in writing; or
 - (b) in accordance with section 39.
- (2) A person who contravenes subsection (1) commits an offence (*see* section 125).

43 Protection of client's money or property held on trust

The money or other property of a client that is received or held by an authorised financial adviser on trust—

- (a) must not be used to pay the debts of any other creditor of the authorised financial adviser or of the authorised financial adviser's employer or principal; and
- (b) must not be attached or taken in execution under the order or process of any court at the instance of another creditor of the authorised financial adviser or of the authorised financial adviser's employer or principal.

Compare: 2006 No 1 s 113(1)

44 Meaning of received or held

For the purposes of this Part, money or property is deemed to be received or held by an authorised financial adviser (**A**) if it is held or received by A's employer or principal (**B**) in relation to a financial adviser service performed by A in the course of B's business.

45 Authorised financial adviser must comply with terms and conditions of his or her authorisation

- (1) An authorised financial adviser must comply with the terms and conditions of his or her authorisation.
- (2) A person who contravenes subsection (1) commits an offence (*see* section 126).

*Conduct obligations that apply to QFEs only***46 QFE must comply with terms and conditions of grant of QFE status**

- (1) Every QFE must comply with the terms and conditions of the grant of its QFE status.
- (2) A person who contravenes subsection (1) commits an offence (*see* section 129).

47 QFE must not engage in misleading or deceptive conduct in relation to financial adviser service by employee or agent

- (1) A QFE must not engage in conduct in relation to a financial adviser service by its employee or agent that is misleading or deceptive or likely to mislead or deceive.
- (2) A person who knowingly or recklessly contravenes subsection (1) commits an offence (*see* section 130).

48 Advertisement by QFE of financial adviser service must not be misleading, deceptive, or confusing

- (1) A QFE must not advertise a financial adviser service in a way that is misleading, deceptive, or confusing.
- (2) A person who knowingly or recklessly contravenes subsection (1) commits an offence (*see* section 131).

*Commission's direction in respect of breach of
disclosure or conduct obligation*

**49 Commission may give financial adviser direction in
respect of breach of disclosure or conduct obligation**

- (1) This section applies if the Commission has reason to believe that a financial adviser is in breach of a disclosure or conduct obligation.
- (2) The Commission may give the financial adviser notice of his or her alleged breach and, if the Commission does give a notice of breach, the Commission must also give the financial adviser a reasonable opportunity to respond.
- (3) If the Commission concludes, after considering the financial adviser's response, that the financial adviser is in breach, the Commission may give the financial adviser a direction in writing.
- (4) The direction may—
 - (a) direct the financial adviser to comply with the conduct or disclosure obligation:
 - (b) stipulate any steps that the financial adviser must take in order to comply with the obligation:
 - (c) require the financial adviser to report to the Commission within 28 days of the date of the direction stating how and when the Commission's direction will be implemented.
- (5) A financial adviser who fails to comply with a direction by the Commission commits an offence (*see* section 135).
- (6) Nothing in this section precludes the Commission from exercising any of its other powers under this Act against a financial adviser.

Part 3

**Authorised financial advisers and
qualifying financial entities**

50 Outline of this Part

- (1) This Part is divided into 2 subparts.

- (2) Subpart 1 describes who is an authorised financial adviser, how a person is authorised, and the powers of the Commission in relation to an authorised financial adviser.
- (3) Subpart 2 describes what is a qualifying financial entity (a **QFE**), how an entity achieves QFE status, and the powers of the Commission in relation to a QFE.

Subpart 1—Authorised financial advisers

51 Who is authorised financial adviser

An authorised financial adviser is an individual who is—

- (a) registered; and
- (b) authorised.

52 Who may apply to be authorised

Any individual may apply to the Commission to be authorised.

53 Application to be authorised

An application to be authorised must be—

- (a) in the prescribed form (if any); and
- (b) accompanied by the prescribed fee (if any).

54 Eligibility to be authorised

A person (**A**) is eligible to be authorised if—

- (a) the Commission is satisfied that—
 - (i) A is registered or complies with section 13(a) and (b) of the FSP Act; and
 - (ii) A is a person of good character; and
 - (iii) A meets the levels of competency, knowledge, and skills specified in the code for an authorised financial adviser; and
 - (iv) A is not debarred from applying for authorisation; and
- (b) the Commission—
 - (i) is not aware, after due inquiry, that A has been convicted by a court in New Zealand or elsewhere of an offence punishable by imprisonment for a term of 6 months or more; or

- (ii) if the Commission is so aware, is satisfied that the commission of the offence does not reflect adversely on A's fitness to act as an authorised financial adviser.

55 Commission must approve or decline application for authorisation

- (1) If an applicant for authorisation is eligible, the Commission must authorise that person in respect of 1 or more of the following for a specified period:
 - (a) performing a financial adviser service in relation to a category 1 product;
 - (b) making an investment transaction in relation to a category 1 product;
 - (c) providing a financial planning service.
- (2) The authorisation may be subject to terms and conditions.
- (3) If the Commission approves the application, the Commission must notify the applicant in writing of—
 - (a) the authorisation; and
 - (b) the terms and conditions (if any); and
 - (c) the period of authorisation.
- (4) If an applicant for authorisation is not eligible, the Commission must—
 - (a) decline the application; and
 - (b) notify the applicant in writing—
 - (i) of the decision and the reasons for it; and
 - (ii) of the applicant's right of appeal against the decision.

56 Commission must notify Registrar of authorisation

- (1) If the Commission authorises the applicant, the Commission must notify the Registrar in writing of—
 - (a) the name and business address of the applicant; and
 - (b) the terms and conditions (if any) of the authorisation; and
 - (c) the period of authorisation.
- (2) The Commission may publicly notify the authorisation and the other matters referred to in subsection (1) as it thinks fit.

57 Termination of authorisation

- (1) A person's authorisation as an authorised financial adviser terminates when—
 - (a) the period of authorisation (including any extension under section 58(5)) expires; or
 - (b) the Commission receives a written request from the person requesting the Commission to cancel his or her authorisation; or
 - (c) the person ceases to be registered; or
 - (d) the Commission cancels his or her authorisation under section 59(2).
- (2) The Commission must notify the Registrar in writing of termination of authorisation under subsection (1)(a), (b), or (d).

58 Renewal of authorisation

- (1) An authorised financial adviser may apply for renewal of authorisation.
- (2) An application for renewal of authorisation must be—
 - (a) made in the prescribed form (if any); and
 - (b) accompanied by the prescribed fee (if any).
- (3) Subject to subsection (4), sections 52 to 56 apply, with any necessary modifications, to an application for renewal of authorisation.
- (4) In addition to the matters specified in section 54, the Commission must be satisfied that the applicant for renewal has complied with the minimum professional standards for authorised financial advisers prescribed by the code.
- (5) If an application for renewal of authorisation has been made but not determined before the date on which the authorisation is due to expire, the authorisation continues in force until the application is determined.
- (6) The renewal of authorisation takes effect from the date of expiry of the previous authorisation.

*Commission's powers in relation to default by
authorised financial adviser*

59 Commission's powers in relation to default by authorised financial adviser

- (1) This section applies if the Commission is satisfied that an authorised financial adviser (A)—
 - (a) has ceased to be eligible for authorisation; or
 - (b) has breached or is in breach of this Act (excluding section 37) or the regulations; or
 - (c) has breached or is in breach of a term or condition of his or her authorisation; or
 - (d) is the subject of a recommendation by the disciplinary committee under section 101(3)(a), (b), or (c); or
 - (e) has failed to pay a fee or levy as required by this Act or the regulations.
- (2) In any case to which this section applies, the Commission may, after following the procedure set out in section 60 and subject to subsection (3),—
 - (a) cancel the authorisation; or
 - (b) cancel the authorisation and debar A for a specified period from re-applying for authorisation; or
 - (c) suspend the authorisation for a specified period or until A does any thing that the Commission may specify; or
 - (d) amend the terms and conditions of the authorisation; or
 - (e) make no order.
- (3) The Commission may only take 1 of the actions specified in subsection (2).
- (4) If the Commission cancels or suspends the authorisation of an authorised financial adviser, the Commission must notify the Registrar in writing of the cancellation or suspension, and, in the case of suspension, the period of suspension.
- (5) The Commission may publicly notify the action it takes under subsection (2) as it sees fit.

60 Reasonable opportunity to be heard

The Commission must not take any of the actions specified in section 59(2) unless it has first—

- (a) informed the person concerned in writing as to why it may take any of those actions; and
- (b) given that person or his or her representative a reasonable opportunity to make written submissions and be heard on the question.

61 Commission may give authorised financial adviser direction

- (1) This section applies if the Commission has reason to believe that an authorised financial adviser is in breach of the terms and conditions of his or her authorisation (the **terms and conditions**).
- (2) The Commission may give the financial adviser notice of his or her alleged breach and, if the Commission does give a notice of breach, the Commission must also give the financial adviser a reasonable opportunity to respond.
- (3) If the Commission concludes, after considering the financial adviser's response, that the financial adviser is in breach, the Commission may give the financial adviser a direction in writing.
- (4) The direction may—
 - (a) direct the financial adviser to comply with the terms and conditions;
 - (b) stipulate any steps that the financial adviser must take in order to comply with the terms and conditions;
 - (c) require the financial adviser to report to the Commission within 28 days of the date of the direction stating how and by when the Commission's direction will be implemented.
- (5) An authorised financial adviser who fails to comply with a direction by the Commission commits an offence (*see* section 127).
- (6) Nothing in this section precludes the Commission from exercising any of its other powers under this Act against an authorised financial adviser.

62 Other provisions concerning Commission's powers in relation to default by authorised financial adviser

- (1) At the end of a period of suspension of authorisation, the person's authorisation is immediately revived, unless his or her authorisation has been further suspended or has been cancelled.
- (2) Suspension or cancellation under section 59(2) is effective when a written notice of the suspension or cancellation is sent to the person concerned by the Commission.

Subpart 2—Qualifying financial entities

63 What is qualifying financial entity (QFE)

A QFE is an entity that—

- (a) is registered; and
- (b) has QFE status.

64 Who may apply for QFE status

Any entity may apply to the Commission for QFE status.

65 Application for QFE status

An application for QFE status must be—

- (a) in the prescribed form (if any); and
- (b) accompanied by the prescribed fee (if any).

66 Eligibility for QFE status

An entity is eligible for QFE status if the Commission is satisfied that—

- (a) the entity is registered or is entitled to be registered; and
- (b) the entity is not debarred from applying for QFE status; and
- (c) on the grant of QFE status and at all times while a QFE, the entity has the capacity to, and will,—
 - (i) discharge its ongoing compliance obligations under section 76 and all other obligations on it under this Act or the regulations; and
 - (ii) comply with the terms and conditions (if any) of the grant of QFE status.

67 Commission must approve or decline application for QFE status

- (1) If an applicant for QFE status is eligible, the Commission must approve the application and grant the entity QFE status.
- (2) The grant of QFE status may be subject to terms and conditions.
- (3) If the Commission approves the application, the Commission must notify the entity in writing of —
 - (a) the grant of QFE status; and
 - (b) the terms and conditions (if any); and
 - (c) the period for which QFE status has been granted.
- (4) If an applicant for QFE status is not eligible, the Commission must—
 - (a) decline the application; and
 - (b) notify the entity in writing of—
 - (i) the decision and the reasons for it; and
 - (ii) the entity's right of appeal against the decision.

68 Commission must notify Registrar of grant of QFE status

- (1) If the Commission grants the entity QFE status, the Commission must notify the Registrar in writing of the period for which QFE status has been granted.
- (2) The Commission may publicly notify the grant of QFE status and the other matters referred to in subsection (1) as it thinks fit.

69 Termination of QFE status

- (1) An entity's QFE status terminates when—
 - (a) the period of grant of QFE status expires; or
 - (b) the Commission receives a written request from the QFE requesting the Commission to cancel its QFE status; or
 - (c) the entity ceases to be registered; or
 - (d) the Commission cancels its QFE status under section 71(2).
- (2) The Commission must notify the Registrar in writing of the termination of QFE status under subsection (1)(a), (b), or (d).

70 Renewal of QFE status

- (1) A QFE may apply for renewal of QFE status.
- (2) An application for renewal of QFE status must be—
 - (a) made in the prescribed form (if any); and
 - (b) accompanied by the prescribed fee (if any).
- (3) Sections 64 to 68 apply, with any necessary modifications, to an application for renewal of QFE status.
- (4) If an application for renewal of QFE status has been made but not determined before the date on which the QFE status is due to expire, the QFE status continues until the application is determined.
- (5) The renewal of QFE status takes effect from the date of expiry of the previous grant of QFE status.

*Commission's powers in relation to default by
QFE*

71 Commission's powers in relation to QFE default

- (1) This section applies if the Commission is satisfied that a QFE—
 - (a) has ceased to be eligible for QFE status; or
 - (b) has breached or is in breach of this Act or the regulations; or
 - (c) has breached or is in breach of a term or condition of its grant of QFE status; or
 - (d) has failed to comply with a direction given to it by the Commission under section 73; or
 - (e) has failed to pay a fee or levy as required by this Act or the regulations.
- (2) In any case to which this section applies, the Commission may, after following the procedure set out in section 72 and subject to subsections (3) and (4),—
 - (a) cancel the QFE's status as a QFE; or
 - (b) cancel the QFE's status as a QFE and debar the entity for a specified period from re-applying for QFE status; or
 - (c) suspend the QFE's status as a QFE for a specified period or until the entity does any thing that the Commission may specify; or

- (d) amend the terms and conditions of the QFE's grant of status; or
 - (e) order that the QFE pay a fine not exceeding \$50,000; or
 - (f) censure the QFE; or
 - (g) take no further action.
- (3) The Commission may only take 1 of the actions specified in subsection (2), except that it may order the QFE to pay a fine not exceeding \$50,000 in addition to taking an action under subsection (2)(d) or (f).
- (4) The Commission must not order the QFE to pay a fine in relation to an act or omission that constitutes an offence for which the QFE has been convicted by a court.
- (5) If the Commission cancels or suspends the QFE status of a QFE, the Commission must notify the Registrar in writing of the cancellation or suspension, and, in the case of suspension, the period of suspension.

72 Reasonable opportunity to be heard

The Commission must not take any of the actions specified in section 71(2) unless it has first—

- (a) informed the QFE in writing as to why it may take any of those actions; and
- (b) given the QFE or its representative a reasonable opportunity to make written submissions and be heard on the question.

73 Commission may give QFE direction

- (1) This section applies if the Commission has reason to believe that a QFE is in breach of a disclosure or conduct obligation.
- (2) The Commission may give the QFE notice of its alleged breach and, if the Commission does give a notice of breach, the Commission must also give the QFE a reasonable opportunity to respond.
- (3) If the Commission concludes, after considering the QFE's response, that the QFE is in breach, the Commission may give the QFE a direction in writing.
- (4) The direction may—

- (a) direct the QFE to comply with the disclosure or conduct obligation:
 - (b) stipulate any steps that the QFE must take in order to comply with the disclosure or conduct obligation:
 - (c) require the QFE to report to the Commission within 28 days of the date of the direction stating how and by when the Commission's direction will be implemented.
- (5) A QFE that fails to comply with a direction by the Commission commits an offence (*see* section 132).
- (6) Nothing in this section precludes the Commission from exercising any of its other powers under this Act against a QFE.

74 Other provisions concerning Commission's powers in relation to QFE default

- (1) A fine imposed by the Commission under section 71(2)(e) is recoverable in any court as a debt due to the Commission.
- (2) At the end of a period of suspension of QFE status, a QFE's status is immediately revived, unless its QFE status has been further suspended or has been cancelled.
- (3) Suspension or cancellation is effective when a written notice of the suspension or cancellation is sent to the QFE by the Commission.

Liability of employee or agent

75 Exemption from liability for employee or agent of QFE

- (1) This section applies to—
 - (a) a financial adviser who—
 - (i) is not an authorised financial adviser; and
 - (ii) is an employee or agent of a QFE; and
 - (iii) performs a financial adviser service in relation to a category 2 product in the course of the QFE's business; and
 - (b) a financial adviser who—
 - (i) is not an authorised financial adviser; and
 - (ii) is an employee of a QFE; and
 - (iii) performs a financial adviser service in relation to a category 1 product of which the QFE is the issuer in the course of the QFE's business.

- (2) A financial adviser to whom this section applies is exempt from liability under this Act for contravention of a financial adviser obligation.

Section 75: substituted, on 28 July 2009, by section 8 of the Financial Advisers Amendment Act 2009 (2009 No 24).

QFE's obligations

76 QFE's ongoing compliance obligations

- (1) A QFE must—
- (a) ensure compliance by the QFE, its employees, and its agents with the terms and conditions of the grant of QFE status; and
 - (b) in relation to its employees and agents who are financial advisers, ensure compliance by each of those persons with his or her financial adviser obligations; and
 - (c) in relation to employees and agents who perform a financial adviser service that, by virtue of sections 14, 15, and 17, only an authorised financial adviser may perform,—
 - (i) ensure that each of those persons is authorised; and
 - (ii) provide the Commission with a list of the names of each of those persons; and
 - (iii) update that list as changes in the list occur; and
 - (d) provide an annual report to the Commission in accordance with section 77; and
 - (e) comply with a direction by the Commission given under section 73; and
 - (f) comply with its other obligations under this Act and the regulations.
- (2) A QFE that contravenes subsection (1)(c) commits an offence (*see* section 133).

77 QFE must provide annual report to Commission

- (1) Within 5 months after the end of its financial year, a QFE must send to the Commission a written report in respect of that year (**the reporting year**)—
- (a) stating the name of each person who, as its agent, was a financial adviser in the reporting year; and

- (b) stating the name of each person who, as its employee or agent, was an authorised financial adviser in the reporting year; and
 - (c) certifying that the QFE has complied with its obligations under this Act and the regulations, and with the terms and conditions of the grant of QFE status; and
 - (d) if the QFE has not complied with its obligations under this Act and the regulations, and with the terms and conditions of the grant of QFE status, stating those respects in which it has failed to comply; and
 - (e) if the QFE is aware of any breach by an employee or agent of a financial adviser obligation, stating—
 - (i) the name of that person; and
 - (ii) the nature of that person's breach or breaches; and
 - (f) containing any other information required by the regulations; and
 - (g) containing the information (if any) that is required to be contained in the report by the terms and conditions of the grant of QFE status.
- (2) The report must be signed by a principal officer of the QFE.
- (3) A QFE that contravenes subsection (1) commits an offence (*see* section 134).

Part 4

How financial advisers are regulated

78 Outline of this Part

- (1) This Part is divided into 3 subparts.
- (2) Subpart 1 deals with—
 - (a) the appointment and role of the Commissioner for Financial Advisers; and
 - (b) the establishment of a code of professional conduct for authorised financial advisers; and
 - (c) the establishment and functions of a code committee.
- (3) Subpart 2 deals with—
 - (a) the procedure for dealing with complaints in relation to an authorised financial adviser; and
 - (b) the establishment of a disciplinary committee.

- (4) Subpart 3 deals with offences under this Act.

**Subpart 1—Commissioner for Financial
Advisers, code of professional conduct, and
code committee**

Commissioner for Financial Advisers

79 Commissioner for Financial Advisers

- (1) There must be a Commissioner for Financial Advisers (the **Commissioner**).
- (2) The Commissioner is a member of the Commission as provided in section 11(3C) of the Securities Act 1978.
- (3) The Commissioner must be appointed by the Governor-General on the recommendation of the Minister.
- (4) The Minister must not recommend a person for appointment as Commissioner unless, in the Minister's opinion, that person is qualified for appointment, having regard to the functions and duties of the Commission, whether under this Act or any other enactment.
- (5) For the purposes of subsection (4), a person is qualified for appointment by virtue of that person's knowledge of, or experience in, the financial adviser industry or any other industry, commerce, economics, law, accountancy, public administration, or securities.
- (6) This section must be read subject to the following:
- (a) subsection (3) applies despite section 28(1)(b) of the Crown Entities Act 2004; and
 - (b) subsection (4) applies despite section 11(4) of the Securities Act 1978; and
 - (c) subsections (4) and (5) do not limit section 29 of the Crown Entities Act 2004.

Compare: 2001 No 103 s 9

80 Functions of Commissioner

The functions of the Commissioner are as follows:

- (a) to appoint members of the code committee:
- (b) to review the code and propose changes to the code as required:

- (c) to act as chairperson of the disciplinary committee:
- (d) to exercise and perform such other functions, powers, and duties as are conferred or imposed on the Commissioner by or under this Act or any other enactment.

Code committee

81 Commissioner must establish code committee

The Commissioner must establish a code committee.

82 Functions of code committee

The functions of the code committee are—

- (a) first, to produce a draft code for approval by the Commissioner; and
- (b) subsequently, to review the code from time to time; and
- (c) to recommend to the Commissioner changes to the code as the code committee thinks fit.

83 Membership of code committee

- (1) The Commissioner may at any time—
 - (a) appoint a member of the code committee; or
 - (b) discharge a member of the code committee.
- (2) The appointment of a member of the code committee must be for a specified period, but a member may be discharged under subsection (1)(b) before his or her period of appointment has expired.
- (3) The code committee must have not less than 7 members and not more than 11 members, and the Commissioner must ensure that the number of current members does not fall below 7.
- (4) The Commissioner must appoint as members of the code committee—
 - (a) 1 person who, in the Commissioner's opinion, is qualified for appointment by virtue of his or her knowledge of, and experience and competency in relation to, consumer affairs; and
 - (b) other persons who, in the Commissioner's opinion, are each qualified for appointment by virtue of their individual knowledge of, and experience and competency in relation to, the financial adviser industry.

- (5) A member of the code committee may resign by notice in writing to the Commissioner.

84 Proceedings of code committee

- (1) Meetings of the code committee must be held at the times and places as the code committee or the chairperson from time to time decides.
- (2) The code committee must elect 1 of its members as chairperson.
- (3) The quorum for a meeting of the code committee is 5 members.
- (4) Every question before the code committee must be determined by a majority of the votes of the members present or otherwise.
- (5) The chairperson of the code committee has a deliberative vote and, in the case of an equality of votes, a casting vote.
- (6) Except as provided in this section and in any regulations made under this Act, the code committee may regulate its own procedure.

Compare: 2006 No 60 s 56

85 Certain provisions of Crown Entities Act 2004 apply to members of code committee

Clause 15 of Schedule 5 of the Crown Entities Act 2004 (**Schedule 5**) applies as if the code committee were a committee appointed by the Commission under clause 14 of Schedule 5 and with all other necessary modifications.

Code of professional conduct for authorised financial advisers

86 Content of code

- (1) The code must provide for minimum standards of professional conduct that must be demonstrated by authorised financial advisers, including minimum standards—
- (a) of competence; and
 - (b) of knowledge and skills; and
 - (c) of ethical behaviour; and
 - (d) of client care.
- (2) The code must also provide for continuing professional training for authorised financial advisers, including specification

of minimum requirements that an authorised financial adviser must meet for the purpose of continuing professional training.

- (3) The code may specify different standards for different classes of authorised financial adviser.

87 Code committee must prepare code

- (1) The code committee must prepare a draft code.
- (2) In preparing the draft code, the code committee must—
 - (a) consult any persons that it reasonably considers to be representative of the financial adviser industry; and
 - (b) consult with interest groups within the financial adviser industry; and
 - (c) allow an opportunity for any person affected by the code to make submissions to the code committee.

88 Commissioner's approval of draft code

- (1) After receiving the draft code prepared by the code committee, the Commissioner must—
 - (a) approve it; or
 - (b) decline to approve it.
- (2) The Commissioner must approve the draft code prepared by the code committee if the Commissioner is satisfied that—
 - (a) a majority of the code committee has approved the draft code; and
 - (b) the code committee has complied with its obligations under section 87(2); and
 - (c) the draft code is consistent with this Act.
- (3) A failure by the code committee to comply with its obligations under section 87(2) does not affect the validity of the code.
- (4) This section is subject to section 89.

Section 88(3): amended, on 28 July 2009, by section 9 of the Financial Advisers Amendment Act 2009 (2009 No 24).

89 Commissioner may require revision or consultation

- (1) If the Commissioner is not satisfied as to a matter specified in section 88(2),—

- (a) the Commissioner must direct the code committee to revise the draft code or undertake further consultation or receive submissions, as necessary; and
 - (b) the code committee must as soon as practicable comply with the Commissioner's direction.
- (2) If the Commissioner considers that the draft code is not consistent with this Act, the Commissioner must, in directing the code committee to revise the draft code, state in what respects he or she considers that the draft code is not consistent.

90 Commissioner's approval of revised draft code

- (1) After receiving a revised draft code, the Commissioner must—
- (a) approve the revised draft code; or
 - (b) if the Commissioner considers that the draft code requires further amendment to be consistent with this Act,—
 - (i) make any amendments to the draft code that the Commissioner considers necessary; and
 - (ii) approve the draft code as amended.
- (2) Before making any amendment to the draft code under this section, the Commissioner must—
- (a) advise the code committee of the Commissioner's intention to do so; and
 - (b) give the code committee a reasonable opportunity to make submissions on the matter; and
 - (c) consider those submissions.

91 Deadline for Commissioner's approval of draft code

The Commissioner must approve the draft code within 90 days of receiving the draft code or, if section 89 applies, within 90 days of receiving the revised draft code.

92 Minister's approval required

- (1) After approving the draft code or after the 90-day deadline for approval specified in section 91 has expired, the Commissioner must forward the draft code to the Minister for the Minister's approval.

- (2) The Minister must approve the draft code unless the Minister considers that it is not consistent with this Act.
- (3) If the Minister is not satisfied that the draft code is consistent with this Act, the Minister must implement the procedure set out in sections 89 and 90 with necessary modifications.
- (4) For the purposes of subsection (3), a reference in sections 89 and 90 to the Commissioner must be read as a reference to the Minister.

93 Deadline for Minister's approval of draft code

The Minister must approve the draft code within 90 days of receiving the draft code or, if section 92(3) applies, within 90 days of receiving the revised draft code.

94 Code comes into force by *Gazette* notice

- (1) After the Minister has approved the draft code or after the 90-day deadline for approval specified in section 93 has expired, the Commissioner must give notice in the *Gazette* of the date on which the code comes into force, and the code comes into force on that date.
- (2) The date on which the code comes into force must not be less than 28 days after the date of notification in the *Gazette*.
- (3) The code is a regulation for the purposes of the Regulations (Disallowance) Act 1989.

Changes to code

95 Changes to code

- (1) A change to the code may be proposed by—
 - (a) the code committee; or
 - (b) the Commissioner; or
 - (c) the Minister.
- (2) The procedure for changing the code is the same as the procedure set out in sections 87 to 94 for the preparation and approval of the draft code.

Subpart 2—Complaints and disciplinary proceedings

Who deals with complaints

96 Complaint about financial adviser

- (1) Any person may complain to the Commission about the conduct of another person in that second person's capacity as a financial adviser.
- (2) The Commissioner may initiate a complaint.

97 Investigation by Commission

- (1) After receiving a complaint, the Commission must investigate the complaint if it is practicable to do so having regard to—
 - (a) the nature and number of complaints to be investigated; and
 - (b) the Commission's regulatory priorities as reflected in its statement of intent; and
 - (c) the Commission's available resources.
- (2) The Commission need not investigate a complaint if it is satisfied that—
 - (a) the complaint is vexatious; or
 - (b) the complaint is not sufficiently serious to warrant investigation.

Section 97(2): amended, on 28 July 2009, by section 10 of the Financial Advisers Amendment Act 2009 (2009 No 24).

Complaint about authorised financial adviser

98 Complaint about authorised financial adviser

The Commission must refer a complaint about an authorised financial adviser to the disciplinary committee if, in the Commission's opinion, the conduct complained of amounts to a breach of the code.

99 Disciplinary committee must give notice of complaint to financial adviser concerned

If the Commission refers a complaint about an authorised financial adviser to the disciplinary committee, and the disciplinary committee considers that a hearing is necessary to deal

with the complaint, the disciplinary committee must serve a written notice of the complaint on the financial adviser.

100 Content of disciplinary committee's notice of complaint

The disciplinary committee's notice of complaint to the financial adviser concerned (A) must—

- (a) state that the disciplinary committee considers that there is reason to believe that A may have breached the code; and
- (b) contain the particulars that are reasonably necessary to clearly inform A of the nature of the contravention; and
- (c) specify a date, which must not be sooner than 20 working days after the date of service of the notice, on which the disciplinary committee intends to hear the matter.

Section 100: amended, on 28 July 2009, by section 11 of the Financial Advisers Amendment Act 2009 (2009 No 24).

101 Disciplinary committee may discipline authorised financial adviser for breach of code

- (1) In this section, A is the person who is the subject of the complaint.
- (2) The disciplinary committee may take any of the actions referred to in subclause (3) if it is satisfied that A has breached the code.
- (3) In any case to which subsection (2) applies, the disciplinary committee may—
 - (a) recommend that the Commission cancels A's authorisation;
 - (b) recommend that the Commission—
 - (i) cancels A's authorisation; and
 - (ii) debars A for a specified period from applying to be re-authorised;
 - (c) recommend that the Commission suspends A's authorisation for a period of no more than 12 months or until A meets specified conditions relating to the authorisation (but, in any case, not for a period of more than 12 months);
 - (d) censure A:

- (e) order that A may, for a period not exceeding 3 years, perform a financial adviser service only subject to any conditions as to employment, supervision, or otherwise that the disciplinary committee may specify in the order:
 - (f) order that A undertake training specified in the order:
 - (g) order that A must pay a fine not exceeding \$10,000:
 - (h) take no action.
- (4) No fine may be imposed under subsection (3)(g) in relation to an act or omission that constitutes an offence for which A has been convicted by a court.
 - (5) In any case to which subsection (2) applies, the disciplinary committee may order that A must pay costs and expenses of, and incidental to, the investigation by the Commission and the disciplinary committee's proceeding.
 - (6) The disciplinary committee may publicly notify the action in any way that it thinks fit.
 - (7) This section applies whether or not A is an authorised financial adviser at the time of the complaint, the investigation, or the disciplinary proceeding.

102 Reasonable opportunity to be heard

The disciplinary committee must not take any of the actions specified in section 101(3) unless it has first—

- (a) informed the person concerned in writing as to why it may take any of those actions; and
- (b) given that person or his or her representative a reasonable opportunity to make written submissions and be heard on the question.

Disciplinary committee

103 Minister must establish disciplinary committee

The Minister must establish a disciplinary committee.

104 Functions of disciplinary committee

The functions of the disciplinary committee are to—

- (a) conduct disciplinary proceedings arising out of complaints regarding authorised financial advisers referred to it by the Commission; and
- (b) take any of the actions referred to in section 101(3) as a result of disciplinary proceedings.

105 Membership of disciplinary committee

- (1) The Minister may at any time appoint a member of the disciplinary committee.
- (2) The appointment of a member of the disciplinary committee must be for a specified period.
- (3) The Minister must appoint the Commissioner as the chairperson of the disciplinary committee.
- (4) The disciplinary committee must have between not less than 4 members and not more than 6 members including the chairperson, and the Minister must ensure that the number of current members does not fall below 4.
- (5) Apart from the chairperson, the Minister must appoint as members of the disciplinary committee—
 - (a) at least 1 member who works or has worked in the financial adviser industry; and
 - (b) at least 1 member who is independent of the financial adviser industry; and
 - (c) at least 1 member who is a lawyer with not less than 7 years' legal experience.
- (6) A member of the disciplinary committee may resign by notice in writing to the Minister.

106 Proceedings of disciplinary committee

- (1) Meetings of the disciplinary committee must be held at the times and places as the disciplinary committee or the chairperson from time to time decides.
- (2) The quorum for a meeting of the disciplinary committee is 3 members.
- (3) Every question before the disciplinary committee must be determined by a majority of the votes of the members present at the meeting.

- (4) The chairperson of the disciplinary committee has a deliberative vote and, in the case of an equality of votes, a casting vote.
- (5) Except as provided for in this Act and in any regulations made under this Act, the disciplinary committee may regulate its own procedure.

Compare: 2006 No 60 s 56

107 Disciplinary committee may hear evidence in disciplinary proceeding

- (1) In a disciplinary proceeding the disciplinary committee may—
 - (a) receive evidence on oath (and for that purpose a member of the disciplinary committee may administer an oath);
 - (b) permit a person appearing as a witness before it to give evidence by tendering a written statement and verifying that statement by oath, statutory declaration, or otherwise.
- (2) A hearing before the disciplinary committee in a disciplinary proceeding is a judicial proceeding for the purposes of sections 108 and 109 of the Crimes Act 1961.

Compare: 2005 No 38 s 30

108 District Court may authorise disciplinary committee to summon witnesses on disciplinary matters

- (1) A District Court Judge may, on the application of the disciplinary committee or the person to whom the proceedings relate, give a certificate authorising the disciplinary committee to issue a summons under section 109.
- (2) A District Court Judge must not give a certificate under subsection (1) unless satisfied that—
 - (a) the evidence of the witness is or may be material to the hearing of a disciplinary matter by the disciplinary committee; and
 - (b) it is necessary or desirable that the summons be issued to compel the attendance of the witness at the hearing.

Compare: 2005 No 38 s 31

109 Issuing of summons by disciplinary committee

- (1) The disciplinary committee must, on production of a certificate referred to in section 108, issue a summons to a person requiring that person to attend a hearing before the disciplinary committee and to do all or any of the following:
 - (a) give evidence:
 - (b) give evidence under oath:
 - (c) produce documents, things, or information, or any specified documents, things, or information, in the possession or control of that person, that are relevant to the hearing.
- (2) The summons must be in writing, be signed by the chairperson of the disciplinary committee, and state—
 - (a) the date and time when, and the place where, the person must attend; and
 - (b) the documents, things, or information that the person is required to bring and produce to the disciplinary committee; and
 - (c) the entitlement to be tendered or paid a sum in respect of witnesses' fees, allowances, and expenses; and
 - (d) the penalty for failing to attend.
- (3) The disciplinary committee may require that any documents, things, or information produced under this section be verified by oath, statutory declaration, or otherwise.

Compare: 2005 No 38 s 32

110 Serving of summons

- (1) A summons may be served—
 - (a) by delivering it personally to the person summoned; or
 - (b) by posting it to the person summoned at that person's usual place of residence.
- (2) A summons must,—
 - (a) if it is to be served under subsection (1)(a), be served at least 48 hours before the attendance of the witness is required:
 - (b) if it is to be served under subsection (1)(b), be served at least 10 days before the attendance of the witness is required.

- (3) A summons that is posted is treated as having been served when it would have been delivered in the ordinary course of post.

Compare: 2005 No 38 s 33

111 Witnesses' fees, allowances, and expenses

- (1) A witness appearing before the disciplinary committee under a summons is entitled to be paid witnesses' fees, allowances, and expenses in accordance with the scales prescribed by regulations under the Summary Proceedings Act 1957.
- (2) The person requiring attendance of the witness must pay or tender to the witness the fees, allowances, and expenses at the time the summons is served or at some other reasonable time before the hearing.

Compare: 2005 No 38 s 34

112 Protection for witnesses and counsel in disciplinary proceeding

- (1) Every person who does the following things has the same privileges as witnesses have in a court:
- (a) provides documents, things, or information to the disciplinary committee in relation to a disciplinary matter; or
 - (b) gives evidence or answers questions at a hearing of the disciplinary committee in relation to a disciplinary matter.
- (2) Every counsel appearing before the disciplinary committee in relation to a disciplinary matter has the same privileges and immunities as counsel in a court.

Compare: 2005 No 38 s 36

113 Certain provisions of Crown Entities Act 2004 apply to members of disciplinary committee

Clause 15 of Schedule 5 of the Crown Entities Act 2004 (**Schedule 5**) applies as if the disciplinary committee were a committee appointed by the Commission under clause 14 of Schedule 5 and with all other necessary modifications.

Subpart 3—Offences

Offences: registration and authorisation

114 Offence of performing financial adviser service without being registered

- (1) A person who, without being registered, performs a financial adviser service that under this Act only a registered financial adviser may perform commits an offence and is liable on summary conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$5,000;
 - (b) in the case of an entity, to a fine not exceeding \$10,000.
- (2) A person (A) has a defence to a charge under subsection (1) if A proves on a balance of probabilities that—
 - (a) A does not know, and ought not reasonably to know, that A is not registered; or
 - (b) A performs the financial adviser service as the employee or agent of a former QFE and A does not know, and ought not reasonably to know, that the former QFE has ceased to be a QFE; or
 - (c) the financial adviser service is performed by A's employee or agent, and the employee or agent is registered.
- (3) A person who performs a financial adviser service without being registered does not commit an offence under section 11(2) of the FSP Act.

Section 114(1): amended, on 28 July 2009, by section 12 of the Financial Advisers Amendment Act 2009 (2009 No 24).

115 Offence of performing financial adviser service without being authorised

- (1) Subject to subsection (2), a person who, without being authorised, performs a financial adviser service that under this Act only an authorised financial adviser may perform commits an offence and is liable on summary conviction to a fine,—
 - (a) in the case of an individual, not exceeding \$10,000;
 - (b) in the case of an entity, not exceeding \$50,000.
- (2) Subsection (1) does not apply to an individual who is an employee or agent of a QFE and who, in the course of the QFE's business, performs a financial adviser service in relation to

a category 1 product or provides a financial planning service without being authorised.

- (3) A person (A) has a defence to a charge under subsection (1) if A proves on a balance of probabilities that the financial adviser service is performed by A's employee or agent, and the employee or agent is authorised.

116 Offences in relation to employer or principal failing to maintain registration

- (1) A person who contravenes section 18(2)(a) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.
- (2) A person who contravenes section 18(2)(b) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

Disclosure offences: financial advisers and QFEs

117 Failure to make disclosure under or in accordance with disclosure obligation

A person who knowingly or recklessly contravenes a disclosure obligation commits an offence and is liable on summary conviction to a fine,—

- (a) in the case of an individual, not exceeding \$100,000;
(b) in the case of a QFE, not exceeding \$300,000.

Conduct offences: financial advisers

118 Offence of misleading or deceptive conduct by financial adviser

A person who knowingly or recklessly contravenes section 34(1) commits an offence and is liable on summary conviction to a fine not exceeding \$100,000.

119 Offence of misleading, deceptive, or confusing advertisement by financial adviser

A person who knowingly or recklessly contravenes section 35(1) commits an offence and is liable on summary conviction to a fine not exceeding \$100,000.

120 Offence of contravening restriction on use of term sharebroker

A person who contravenes section 36(1) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

Offences: authorised financial advisers only

121 Offence of recommending or receiving money in connection with offer of securities when subscription illegal

A person who contravenes section 38(1) commits an offence and is liable on summary conviction to a fine not exceeding \$100,000.

122 Offence of contravening requirement that authorised financial adviser pay client's money into separate trust account

A person who contravenes section 39(1) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

123 Offence of failing to account for client's money or other property

A person who contravenes section 40(1) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

124 Offence in relation to records of client's money or property

A person who contravenes any of section 41(1) to (3) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

125 Offence of breaching restrictions on use of client's money or property

A person who contravenes section 42(1) commits an offence and is liable on summary conviction to a fine, —
(a) in the case of an individual, not exceeding \$5,000:

(b) in the case of an entity, not exceeding \$25,000.

126 Offence of failing to comply with terms and conditions of authorisation

A person who contravenes section 45(1) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

127 Offence of failing to comply with Commission's direction

A person who fails to comply with a direction of the Commission given under section 61(3) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

128 Offence of contravening condition of disciplinary committee's order

A person who contravenes a condition of an order made by the disciplinary committee under section 101(3)(e) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

Offences: QFEs only

129 Offence of failing to comply with terms and conditions of QFE status

A QFE that contravenes section 46(1) commits an offence and is liable on summary conviction to a fine not exceeding \$25,000.

130 Offence of misleading or deceptive conduct in relation to financial adviser service by employee or agent

A QFE that knowingly or recklessly contravenes section 47(1) commits an offence and is liable on summary conviction to a fine not exceeding \$300,000.

131 Offence of misleading, etc, advertisement of financial adviser service by employee or agent

A QFE that knowingly or recklessly contravenes section 48(1) commits an offence and is liable on summary conviction to a fine not exceeding \$300,000.

132 Offence of failing to comply with Commission's direction

A QFE that fails to comply with a direction of the Commission given under section 73(3) commits an offence and is liable on summary conviction to a fine not exceeding \$25,000.

133 Offence of failing to comply with obligations in relation to authorised financial advisers

- (1) A QFE that contravenes section 76(1)(c) commits an offence and is liable on summary conviction to a fine not exceeding \$50,000.
- (2) It is a defence to a charge under subsection (1) that a QFE has contravened section 76(1)(c) if the QFE proves on a balance of probabilities that the QFE believed on reasonable grounds that the financial adviser in question did not perform a financial adviser service that only an authorised financial adviser may perform.

134 Offence of failing to provide annual report

A QFE that contravenes section 77(1) commits an offence and is liable on summary conviction to a fine not exceeding \$25,000.

135 Offence of failing to comply with Commission's direction in respect of breach of disclosure or conduct obligation

A person who fails to comply with a direction of the Commission given under section 49(3) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

Miscellaneous offences

136 Offence of false declaration, etc, in support of application for authorisation or grant of QFE status

- (1) A person (A) commits an offence if A has, for the purpose of obtaining authorisation or the grant of QFE status, either for A or for any other person,—
 - (a) either orally or in writing, made any declaration or representation knowing it to be false or misleading in a material particular; or

- (b) produced to the Commission or made use of any document knowing it to contain a declaration or representation referred to in paragraph (a); or
 - (c) produced to the Commission or made use of any document knowing that it was not genuine.
- (2) A person who commits an offence under this section is liable on summary conviction to a fine,—
- (a) in the case of an individual, not exceeding \$100,000;
 - (b) in the case of an entity, not exceeding \$300,000.

137 Failure to comply with summons by Commissioner to attend disciplinary committee hearing

- (1) A person summoned under section 109 commits an offence if he or she, without sufficient cause,—
- (a) fails to attend in accordance with the summons; or
 - (b) does not give evidence when required to do so; or
 - (c) does not give evidence under oath when required to do so; or
 - (d) does not answer any question that is lawfully asked by the disciplinary committee; or
 - (e) does not provide any documents, things, or information that the summons requires the person to provide.
- (2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding \$5,000.
- (3) A person must not be convicted of an offence under this section if witnesses' fees, allowances, and expenses to which the person is entitled under section 111 have not been paid or tendered to him or her.

Compare: 2005 No 38 s 35

Part 5
General provisions

Appeal of decisions

138 Right of appeal

- (1) A person affected may appeal to a District Court against any decision of—
- (a) the Commission to—
 - (i) decline authorisation under section 55(4); or

- (ii) decline QFE status under section 67(4); or
 - (iii) take any action referred to in section 59(2) or 71(2); or
 - (iv) give a direction under section 61 or 73; or
 - (b) the disciplinary committee to take any action referred to in section 101(3) or (5).
- (2) An appeal—
 - (a) must be brought to the District Court by way of notice of appeal in accordance with the rules of court; and
 - (b) must be lodged within 20 working days after notice of the decision is communicated to the appellant, or within any further time a District Court Judge allows on application made before or after the period expires.

Compare: 2005 No 38 s 38

Section 138(1)(a)(ii): amended, on 28 July 2009, by section 13 of the Financial Advisers Amendment Act 2009 (2009 No 24).

139 Notice of right of appeal

When notifying a person under this Act of any decision against which section 138 gives him or her a right of appeal, the Commission or the disciplinary committee must also notify the person in writing of the right of appeal and the time within which an appeal must be lodged.

Compare: 2005 No 38 s 39

140 Decision to have effect pending determination of appeal

A decision against which an appeal is lodged under this Part continues in force unless the District Court orders otherwise.

Compare: 2005 No 38 s 40

141 Procedure on appeal

- (1) An appeal under this Part must be heard as soon as is reasonably practicable after it is lodged.
- (2) An appeal under this Part is by way of rehearing.
- (3) On hearing the appeal, the District Court—
 - (a) may confirm, reverse, or modify the decision appealed against; and

- (b) may make any other decision that the person or body that made the decision appealed against could have made.
 - (4) The court must not review—
 - (a) any part of a decision not appealed against; or
 - (b) any decision not appealed against at all.
- Compare: 2005 No 38 s 41

142 Court's decision final

Except as provided in section 146, the decision of the District Court on an appeal under this Part is final.

Compare: 2005 No 38 s 42

143 Court may refer matter back for reconsideration

- (1) Instead of determining an appeal under this Part, the District Court may direct the person or body whose decision is under appeal to reconsider, either generally or in respect of any specified aspect, the whole or any part of the decision.
- (2) In giving a direction under subsection (1), the court—
 - (a) must state its reasons for the direction; and
 - (b) may give any other directions it thinks just in relation to the matter referred back for reconsideration.
- (3) Upon being directed to reconsider a matter, the person or body whose decision is under appeal—
 - (a) must reconsider the matter; and
 - (b) in doing so, must—
 - (i) take the court's reasons into account; and
 - (ii) give effect to the court's directions.

Compare: 2005 No 38 s 43

144 Orders as to costs

On an appeal under this Part, the District Court may order any party to the appeal to pay to any other party to the appeal any or all of the costs incurred by the other party in respect of the appeal.

Compare: 2005 No 38 s 44

145 Orders as to publication of names

- (1) On any appeal under this Part, the District Court may, if in its opinion it is proper to do so, prohibit the publication of the name or particulars of the affairs of a financial adviser or any other person.
- (2) In deciding whether to make an order under subsection (1), the court must have regard to—
 - (a) the interests of any person (including, without limitation, the privacy of any complainant); and
 - (b) the public interest.

Compare: 2005 No 38 s 45(1), (2)

146 Appeal on question of law

- (1) A party to an appeal under this Part may appeal to the High Court against any determination of law arising in the appeal.
- (2) The appeal must be heard and determined in accordance with the appropriate rules of court.
- (3) Part 4 of the Summary Proceedings Act 1957 (together with the other provisions of that Act that are applied in that Part) applies to the appeal—
 - (a) so far as it is applicable and with all necessary modifications; but
 - (b) only so far as it relates to appeals on questions of law.
- (4) Subsection (3) overrides subsection (2).

Compare: 2005 No 38 s 46

Securities Commission: general powers

147 Commission may exercise powers under Securities Act 1978

- (1) The Commission may exercise any of its powers under the Securities Act 1978 in performing its functions under this Act.
- (2) Part 3 of the Securities Act 1978 applies to the exercise by the Commission of any of its powers under the Securities Act 1978 in the performance of its functions under this Act.

Compare: 1988 No 234 s 44

*Exemptions***148 Commission may grant exemptions**

- (1) Subject to subsection (2), the Commission may, in its discretion and on the terms and conditions (if any) that it thinks fit, by notice in the *Gazette* exempt any person or class of persons, any transaction or class of transactions, or any class of financial advice (for example, financial advice given by telephone) from compliance with a disclosure obligation or obligations.
- (2) The Commission must be satisfied, before it grants an exemption, that the cost of compliance with the disclosure obligation would—
 - (a) be unreasonable; or
 - (b) not be justified by the benefit of compliance.

149 Commission must notify reasons for exemption

- (1) The Commission's reasons for granting an exemption (including why the exemption is appropriate) must be notified in the *Gazette* with the exemption.
- (2) However, the Commission may defer notifying or not notify the reasons for granting an exemption if the Commission is satisfied that it is proper to do so on the ground of commercial confidentiality.

Compare: 1988 No 234 s 48A

150 Commission may vary or revoke exemption

- (1) The Commission may vary the exemption in the same way as it may grant the exemption under section 148.
- (2) The Commission may revoke the exemption by notice in the *Gazette*.

Compare: 1988 No 234 s 48B

*Information sharing***151 Information sharing**

- (1) The Commission may communicate to any of the agencies referred to in subsection (4) any information that the Commission—

- (a) holds in relation to the exercise of the Commission's powers, or the performance of its functions and duties, under this Act; and
 - (b) considers may assist the agency in the exercise of its powers or the performance of its functions and duties.
- (2) The Commission may use any information communicated to it by an agency referred to in subsection (4) in the exercise of the Commission's powers, or the performance of its functions and duties, under this Act.
- (3) This section applies no matter what any enactment, contract, deed, or document may say.
- (4) The agencies to which this section applies are the following:
- (a) the Registrar:
 - (b) the Commerce Commission:
 - (c) the New Zealand Police:
 - (d) an approved dispute resolution scheme:
 - (e) a licensing authority listed in Schedule 2 of the FSP Act:
 - (f) an overseas regulator.
- (5) The Commission may impose any conditions in relation to communicating information to an agency to which this section applies, including (without limitation) conditions relating to—
- (a) maintaining the confidentiality of the information (in particular, information that is personal information within the meaning of the Privacy Act 1993):
 - (b) the storing of, use of, or access to the information:
 - (c) the copying, returning, or disposing of the information:
 - (d) payment of the costs incurred by the Commission in communicating the information.

Fees and levies

152 Commission's fees, charges, and costs

- (1) Regulations may be made under section 155 for the payment to the Commission of fees, charges, and costs.
- (2) If regulations have been made under section 155(2) authorising the Commission to do so, the Commission may require payment of any costs incurred by the Commission.

153 Operational levy

- (1) The Governor-General may, by Order in Council made on the recommendation of the Commission, impose on every authorised financial adviser and every QFE an operational levy of any amount for the purpose of funding the costs arising from the performance of any or all of the functions and duties under this Act of the Commission, the Commissioner, the code committee, or the disciplinary committee.
- (2) A levy made under subsection (1) may do either or both of the following:
 - (a) prescribe different amounts as the levy payable by different classes of authorised financial adviser or QFE:
 - (b) exempt from any liability to pay that levy, in whole or in part, any class or classes of authorised financial adviser or QFE, and may provide for the waiver or refund of the whole or part of that levy.
- (3) Every levy imposed under subsection (1) is payable, and recoverable as a debt due, to the Commission.

*Regulations***154 General regulations**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with subsections (3) and (4), make regulations—
 - (a) defining the meaning of **call debt security** (*see* section 5):
 - (b) specifying a product as a category 1 product (*see* section 5):
 - (c) specifying a product as a category 2 product (*see* section 5):
 - (d) prescribing an entity for the purposes of the definition of trust account (*see* section 5):
 - (e) for the purpose of determining when a person does not perform a financial adviser service under section 12, specifying a person or class of persons and the circumstances in which they do not perform a financial adviser service:

- (f) prescribing the information that must be disclosed by an authorised financial adviser and the form of an authorised financial adviser's disclosure statement (*see* sections 23(2) and 24(3)):
 - (g) prescribing the information that must be disclosed by a financial adviser performing a financial adviser service in relation to a category 2 product and the form of disclosure (*see* section 25(2) and (3)):
 - (h) prescribing the information that must be disclosed by a QFE and the form of disclosure (*see* section 26(2)(a) and (4)):
 - (i) prescribing when, and subject to what terms and conditions, disclosure may be made in a joint disclosure document, and prescribing the form of a joint disclosure statement (*see* section 31(3)):
 - (j) prescribing the form of an application for authorisation (*see* section 53(a)):
 - (k) prescribing the form of an application for the grant of QFE status (*see* section 65(a)):
 - (l) prescribing information that must be contained in a QFE's annual report (*see* section 77(1)(f)):
 - (m) prescribing the procedure of the code committee (*see* section 84(6)):
 - (n) prescribing the procedure of the disciplinary committee (*see* section 106(5)):
 - (o) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) In subsection (1), **prescribing the form** includes specifying additional content, means of communication, or any other requirement of form without necessarily specifying the use of a particular form.
- (3) The Minister must consult with the Commission before making a recommendation under subsection (1).
- (4) The Minister must not recommend regulations under subsection (1)(e) unless the Minister is satisfied that the person or persons to whom the regulations relate are engaged in an occupation that is subject to other regulation in New Zealand or overseas that is equivalent to regulation under this Act.

155 Regulations relating to fees, charges, and costs

- (1) The Governor-General may from time to time, by Order in Council, make regulations—
- (a) requiring the payment to the Commission of fees and charges—
 - (i) in connection with the performance by the Commission of any function or duty, or the exercise of any power, under this Act; or
 - (ii) on an application to the Commission to perform any function or duty, or exercise any power, under this Act; and
 - (b) prescribing the amounts of the fees and charges payable to the Commission; and
 - (c) prescribing the amount of any other fee required to be paid under this Act.
- (2) The Governor-General may from time to time, by Order in Council, make regulations authorising the Commission to require payment to it of any costs incurred by the Commission in the performance by the Commission of any function or duty, or the exercise of any power, under this Act.

*Other matters***156 No contracting out**

The provisions of this Act have effect no matter what any agreement may say.

Compare: 1988 No 234 s 41V

157 Territorial scope

This Act applies to a financial adviser service performed in New Zealand, regardless of where the person performing the financial adviser service is resident, is incorporated, or carries on business.

Section 157: amended, on 28 July 2009, by section 14 of the Financial Advisers Amendment Act 2009 (2009 No 24).

158 Breach of exemption conditions

The breach of a term or condition of an exemption provided by regulations made under this Act or by notice under section 148 is a breach of the obligation to which the exemption applies.

Compare: 1988 No 234 s 49E

159 Exemption or regulation in respect of specified overseas jurisdictions

Without limiting section 148, an exemption made under section 148 may extend, to all, or classes of, person, transaction, or other matters in relation to specified overseas jurisdictions.

Compare: 1988 No 234 s 41V

160 Time for laying information for summary offences

- (1) Any information for an offence against this Act punishable on summary conviction may be laid at any time within 3 years after the date of the offence.
- (2) Subsection (1) applies despite section 14 of, or anything else to the contrary in, the Summary Proceedings Act 1957.

Compare: 1988 No 234 s 43U

161 Ministry must review and report on operation of Act

- (1) The Ministry must, not later than 5 years after the commencement of this section,—
 - (a) review the operation of this Act since the commencement of this section; and
 - (b) prepare a report on the review for the Minister.
- (2) The report on the review must include recommendations to the Minister on whether any amendments to the Act are necessary or desirable.
- (3) As soon as practicable after receiving the report, the Minister must present a copy of that report to the House of Representatives.

*Other legislation affected***161A Financial Service Providers (Registration and Dispute Resolution) Act 2008 amended**

- (1) This section amends the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
- (2) Section 7(2)(m) is amended by adding “, except to the extent that an individual may be required to be registered in order to perform a financial adviser service under the Financial Advisers Act 2008”.

Section 161A: inserted, on 28 July 2009, by section 15 of the Financial Advisers Amendment Act 2009 (2009 No 24).

162 KiwiSaver Act 2006 amended

- (1) This section amends the KiwiSaver Act 2006.
- (2) The heading to section 206 is amended by omitting “**investment advice**” and substituting “**financial adviser service**”.
- (3) Section 206 is amended by omitting “give investment advice and is not an investment broker or a broker, for the purposes of the Investment Advisers (Disclosure) Act 1996” and substituting “perform a financial adviser service for the purposes of the Financial Advisers Act 2008”.

163 Securities Act 1978 amended

- (1) This section amends the Securities Act 1978.
- (2) Section 10(1)(b) is amended by inserting “financial advisers,” after “securities,” in the first place where it appears.
- (3) Section 10(1)(c) is amended by inserting “and financial advisers” after “securities”.
- (4) Section 10(1)(d) is amended by inserting “and the law and practice relating to financial advisers” after “securities”.
- (5) Section 11(1) is amended by omitting “10” and substituting “11”.
- (6) Section 11 is amended by inserting the following subsection after subsection (3B):
“(3C) One of the members must be appointed by the Governor-General as Commissioner for Financial Advisers under section 79(3) of the Financial Advisers Act 2008.”

- (7) Schedule 1 is amended by omitting the item “Securities Markets Act 1988 Part 4” and substituting the item “Financial Advisers Act 2008”.

164 Securities Markets Act 1988 amended

- (1) This section amends the Securities Markets Act 1988.
- (2) Section 2(1) is amended by repealing the following definitions: **advertisement**, **advice advertisement**, **broker advertisement**, **investment advice** and **advice**, **investment adviser** and **adviser**, **investment advisers’ disclosure obligations** and **investment advisers’ obligations**, **investment broker** and **broker**, **investment brokers’ disclosure obligations** and **investment brokers’ obligations**, **investment brokers’ service**, **investment money** and **money**, and **investment property** and **property**.
- (3) Paragraph (e) of the definition of **security** in section 2(1) is repealed.
- (4) Part 4 is repealed.
- (5) Sections 42B(d), 42D, 42E, 42G(3)(b), 42N(b), 42P(c), 42S(f), 42T(2)(b), 42ZC, 42ZD, 43D, 43E(1)(a), 43E(3)(a) and (b), and 43K to 43N are repealed.
- (6) *[Repealed]*
- (7) Sections 48(1)(c) and 49C are repealed.

Section 164(6): repealed (without coming into force), on 28 July 2009, by section 16 of the Financial Advisers Amendment Act 2009 (2009 No 24).

165 Sharebrokers Act 1908 repealed

The Sharebrokers Act 1908 (1908 No 176) is repealed.

166 Securities Markets (Investment Advisers and Brokers) Regulations 2007 revoked

The Securities Markets (Investment Advisers and Brokers) Regulations 2007 (SR 2007/374) are revoked.

*Transitional provisions***167 Transitional provisions for existing offences and contravention under Securities Markets Act 1988**

- (1) This section applies to an offence committed under, or a contravention of, the Securities Markets Act 1988 before section 164 comes into force.
 - (2) The Securities Markets Act 1988 continues to have effect as if it had not been amended by this Act for the purpose of—
 - (a) investigating an offence or contravention to which this section applies:
 - (b) commencing or completing proceedings for an offence or contravention to which this section applies:
 - (c) imposing a penalty or other remedy, or making an order, in relation to an offence or contravention to which this section applies.
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Contents

- 1 General
 - 2 Status of reprints
 - 3 How reprints are prepared
 - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
 - 5 List of amendments incorporated in this reprint (most recent first)
-

Notes

1 *General*

This is a reprint of the Financial Advisers Act 2008. The reprint incorporates all the amendments to the Act as at 28 July 2009, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that have yet to come into force or that contain relevant transitional or savings provisions are also included, after the principal enactment, in chronological order.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted.

For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/legislation/reprints.shtml> or Part 8 of the *Tables of Acts and Ordinances and Statutory Regulations, and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*

Financial Advisers Amendment Act 2009 (2009 No 24)

Financial Advisers Act Commencement Order 2008 (SR 2008/412)
