

Financial Service Providers (Registration and Dispute Resolution) Bill

Government Bill

As reported from the Finance and
Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Financial Service Providers (Registration and Dispute Resolution) Bill and recommends that it be passed with the amendments shown.

Introduction

This bill seeks to regulate financial service providers by establishing a registration system for them, and requiring them to join an approved industry-led dispute resolution scheme or the reserve scheme.

The bill is one of a suite of measures to implement the recommendations of the Government's Review of Financial Products and Providers. We have already considered and made recommendations on the Reserve Bank of New Zealand Amendment Bill (No 3), which imposes a regulatory framework on non-bank deposit takers. We are also considering the Financial Advisers Bill, which would set and monitor standards for financial advisers.

The Financial Service Providers (Registration and Dispute Resolution) Bill is the umbrella legislation for these measures. It would provide a basic regulatory framework for registration for all financial service providers.

Who must register

Clauses 5 and 6 of the bill determine the application of the legislation by defining the activities considered to be financial services, and setting out who would be excluded from the regime.

We recommend amendments to clauses 5 and 6 to ensure that the regulatory regime is appropriately targeted. We recommend the insertion of clause 5(A) and amendments to clause 6(2) to ensure that organisations who carry out financial services as a necessary but incidental element of their professional practice would not be included in the regime. This amendment would ensure that those who offer financial services only as a necessary consequence to their primary role, such as lawyers, chartered accountants, tax agents, and real estate agents would not be subject to further registration and dispute resolution requirements under this regime. We recommend similar amendments to clauses 10 and 11 to confirm that only those in the business of providing financial services are intended to be captured under the regime.

We also recommend amendments to allow a specific exemption for non-profit organisations that provide free financial services such as budgetary advice, as we consider the advice provided by such organisations an important community service. Although the exemption under this bill would apply only to organisations, we note that staff providing free budgetary advice for a non-profit organisation would be excluded from registration under the Financial Advisers Bill.

We recommend further amendments to ensure that the Crown agencies who are exempt (Government departments, the Reserve Bank, and statutory entities listed in Schedule 1 of the Crown Entities Act 2004) are set out in the bill rather than prescribed by regulation. We do not consider it appropriate that a regulation-making power might be used to determine the application of the legislation. We therefore recommend that clause 42(1)(b) be deleted and that all exceptions for Crown agencies be set out in the bill.

We recommend the deletion of clause 5(a) to ensure that arrangements where payment is made in arrears (such as hire purchase arrangements) are not captured by the bill. We consider that the regulation of such arrangements does not accord with the intention of the bill. We recommend amendments to clause 5 to clarify that those who act as deposit-takers or who are involved in offering debt securities, registered banks, investment brokers, and dealers in futures contracts would be subject to the regime. We also recommend the consolidation of subclauses (c) and (d) to simplify the provisions relating to credit contracts.

Financial adviser service

For simplicity we recommend removing separate references to “financial advisers” and “financial adviser services” from throughout the bill, and inserting “financial adviser service” as a new category within the meaning of “financial service” in clause 5.

We acknowledge that there is separate legislation before the House (which we are currently considering) that deals specifically with financial advisers. However we see no need to separate these terms out in this bill. We consider financial adviser services to be a type of financial service, and the amendment we recommend accords with the intention that the Financial Service Provider regime be the umbrella scheme for any regulation of financial advisers that may be implemented through separate legislation.

This amendment means that financial advisers would be required to be members of a dispute resolution scheme under this legislation. Although the bill as introduced did not require financial advisers to be members of a dispute resolution scheme, we note that this amendment would not change the obligations imposed on financial advisers in practical terms, as the Financial Advisers Bill (as introduced) contains provisions which require financial advisers to become members of a dispute resolution regime.

Registration

Disqualified persons

We recommend that clause 13, which sets out matters that disqualify a person from registering as a financial service provider, be amended to specify the types of offences that would count as fraudulent or dis-

honest in relation to the provision of a financial service. This amendment is intended to avoid doubt and to give clarity and certainty to those involved in administering the regime.

We recommend the inclusion of new subclause 13(ca) to provide that those who offend against the regime by being in the business of providing a financial service without registering, or by holding out that they are entitled to provide financial services when they are not, would also be ineligible to register.

Licensed service offence

We recommend the deletion of clause 10(2), which provides that it is an offence to provide a licensed service unless licensed. Whilst this legislation contains the requirement to be licensed, it does not contain particular licensed service requirements for each type of financial service provider. It is intended that each type of financial service provider will have its own legislation setting out particular licensed service requirements. This amendment is intended to allow offences for particular licensed services to be dealt with in the specific legislation for that licensing regime.

Deregistration of financial service provider

We recommend amending clause 17 to oblige the Registrar to deregister an applicant who has made a false or misleading application or whose registration fee has been dishonoured, declined, or reversed. We consider this amendment necessary to ensure that the register remains a reliable source of honest and credible providers.

We recommend amending clause 20 to provide that deregistration should be publicly notified. This would help to ensure that relevant information is available to all consumers who might deal with financial service providers, and we consider that this amendment would make the regime more transparent and effective.

Re-registration of financial service provider

We recommend inserting a new provision in the bill (clause 20A) to provide for re-registration of a financial service provider who was deregistered as a result of certain of the breaches outlined in clause 17. The Registrar would have the power to consider applications for re-registration where he or she determined that the reasons for dereg-

istration no longer applied (for example, if the registration fee had subsequently been paid). However, providers who had been deregistered because they had provided false or misleading information on registration, or who no longer qualified, could not be re-registered, but might be able to reapply for registration under clause 14.

Responsible financial service provider

We recommend inserting new clause 20B to allow institutional registration as a “responsible financial service provider”, and an amendment to clause 6 to allow their affiliated entities to be exempt from registration. The bill as introduced focuses on the registration of individuals or businesses. We are concerned that this might pose compliance difficulties for some businesses, such as KiwiBank, whose franchise structure would mean that each franchisee would have to be individually registered and a member of a dispute resolution scheme. We consider that compliance in such cases would be unduly burdensome with no corresponding benefit to consumers.

Under new clause 20B, the Governor-General would be able to declare an entity a responsible financial service provider, on the recommendation of the Minister. This status would exempt any affiliated entities from the need to register separately under clause 6, and the responsible financial service provider would be held responsible for the financial services provided by its affiliated entities. We consider that this amendment would help to achieve the objectives of the bill in a way that accommodated the various structures of businesses.

Establishment of and access to the register

We recommend that clause 26 be amended to require the type of services a licensed provider is registered or licensed to provide to be recorded on the register. We consider that this information is vital in ensuring consumers are well informed when they deal with providers. However, we accept that there are practical difficulties in requiring information on the type of services to be provided from registered providers. As such, we recommend that at this stage only licensed providers be required to provide this information. However, we expect that regulations could be made in future under clause 42 that required the register to show which financial services a registered provider could provide.

We recommend an amendment to clause 30 to make it clear that it should be possible to search the register by the criteria specified in clause 26. In the bill as introduced, the search criteria were to be set by regulation. However, we consider it preferable that basic search criteria be included in the bill, and see no reason that the entire content as set out in clause 26 should not be accessible by searching. Other search criteria could still be added by regulation as necessary. We recommend an amendment to clause 33 and the addition of new Schedule 2 to specify further bodies with which the Registrar may share information. Clause 33 as introduced includes four bodies or agencies. The additional agencies would include the New Zealand Police, the person responsible for an approved dispute resolution scheme or the reserve scheme, and any other body listed in Schedule 2 of the bill. Other agencies could still be added by regulation under clause 42(1)(e).

Registrar's inspection powers

We recommend expanding the investigative powers of the Registrar in clause 36 to include investigation of false or misleading representations. This is an offence under the bill, and it is important that the Registrar be able to investigate such matters if the prohibition on such behaviour is to be effective.

Review of registration system and dispute resolution regime

We recommend the insertion of new clause 42A requiring that the registration system be reviewed within five years. The findings of the review would be reported to the responsible Minister, who would in turn be required to present a copy of the report to the House. We recommended a similar review provision for the Reserve Bank Amendment (No 3) Bill, given the novelty of some of the features of the regime and the allowance for matters to be determined by regulation; we consider that a similar case can be made regarding this bill, and that a co-ordinated approach should be taken to reviewing the new regulatory framework for the financial sector.

We recommend a similar provision be inserted as new clause 74A in regard to Part 3 of the bill (the dispute resolution regime).

Territorial application

We also recommend inserting new clause 42B for the avoidance of doubt to limit the territorial application of the bill to the provision of a financial service in New Zealand by a person who is in New Zealand. This new provision would clarify that it is not the intent of the legislation to apply to off-shore financial services.

Decisions continue until appeal

We recommend the insertion of a new clause (clause 41A) to clarify that any decision of a Registrar that is subject to an appeal would remain in force unless the High Court should determine otherwise. This should provide certainty for scheme members and ensure continuity in terms of recourse for consumers.

Dispute resolution schemes

Membership

Clause 44 in the bill as introduced requires a financial service provider to join an approved dispute resolution scheme only if it provides a financial service to individuals or to small and medium-sized businesses, and if a default scheme (the reserve scheme to be established under clause 65) is available.

We recommend replacing this with new clause 44, which would require every provider of a financial service to the public to be a member of an approved scheme or the reserve scheme. We regard it as important that all those who provide financial services to the public, bar the exemptions set out in clause 6, be subject to a dispute resolution regime. We recommend an associated amendment to clause 58 to confirm that only consumers and small to medium-sized businesses and organisations could make complaints for resolution by a dispute resolution scheme.

We recommend removing (as a condition of scheme membership) the requirement that a reserve scheme be available. We consider that this qualification could reduce consumers' access to redress if no reserve scheme were appointed.

We considered an amendment to exempt credit unions from the requirement to join an approved dispute resolution scheme. However, whilst we acknowledge that credit unions have a dispute resolution

regime available under the Friendly Societies and Credit Unions Act 1982, we are not convinced that the two schemes are sufficiently similar to justify an exemption from this bill. In addition, we expect that any overlaps between them could be addressed in the context of the current review of that legislation.

We also do not consider it necessary to exempt lawyers, accountants, and real estate agents who are acting as financial service providers, from membership of a dispute resolution scheme. We consider that the occupational regulation bodies of these industries are focused on professional conduct, and provide limited opportunities for redress where financial services are involved (as distinct from legal, accounting, or real estate services). We similarly do not think that funeral directors who offer pre-paid funerals should have a specific exemption.

However, we note that scheme membership would only be required if these businesses were offering services to the public.

Number of schemes

We recommend the inclusion of new paragraphs (k), (l), (la), (lb) and (m) in clause 47(1) to reduce the risk of a proliferation of small schemes, and to avoid schemes “cherry-picking” members to their advantage, or vice versa. We are concerned that this could hamper the development of a pool of dispute resolution expertise, and result in some schemes ceasing to be viable. The amendments we recommend would require the Minister to have regard to the number and type of approved schemes in existence, any other current applications for approval, and the proposed size and membership coverage, before approving a scheme.

These amendments are intended to allow multiple schemes whilst discouraging undue proliferation of new schemes.

Approval of schemes

We recommend deleting the ten-year expiry provision for approval of schemes (clause 45(2)). The bill already contains adequate accountability provisions, including provision for the withdrawal of schemes, independent review of schemes, and annual reporting (clauses 51, 58(m) and 62). We therefore consider the expiry provision under clause 45(2) unnecessary.

We also recommend an amendment to clause 48 to require the responsible Minister to consult the Ministers of Finance and Commerce before approving dispute resolution schemes. This change is necessary because we consider that the bill should provide separate ministerial responsibility for Part 3. As introduced, the Minister of Commerce would be the responsible Minister and would be required under clause 48 to consult with the Ministers of Finance and Consumer Affairs. We expect that the responsible Minister for Part 3 would be the Minister of Consumer Affairs rather than the Minister of Commerce because that Minister is advised by the Ministry of Consumer Affairs on matters of consumer dispute resolution. Consequential amendments are also recommended for clauses 66(3) and 67(3) to take account of the provision for separate ministerial responsibility.

Scheme rules

Public access to information

We recommend amending clause 57 to require that a list of the members of an approved dispute resolution scheme be displayed on the website of the scheme. This is intended to improve consumers' access to information about the redress available through the scheme.

We recommend amendments to clauses 49 and 55, and the insertion of new clause 74AA, to require details of the approved schemes and withdrawal of approvals to also be publicly notified, with details to be made available for inspection at the head office of the Ministry free of charge, on the Internet, and in any other way the chief executive thinks fit.

Rules of the scheme

Clause 58 sets out a number of rules for the operation of an approved dispute resolution scheme.

We recommend amending clause 58 by deleting the provision for costs to be allocated to consumers (clause 58(i)). We believe that access to the schemes should be free for consumers, to ensure equitable accessibility.

We further recommend amendments to clause 58 for the following purposes:

- to replace the requirement for an internal review of the scheme every three years with a requirement for an independent review of the scheme at least once every five years from the date of the scheme's approval (clause 58(m)), and for the results of this review to be provided to the Minister (and we recommend a consequential amendment to clause 46(2)(d))
- to require that a time limit be set for the investigation of complaints
- to tighten the requirements regarding remedial action, requiring schemes to set out how they intend to enforce remedial action, including action after a member has left the scheme
- to allow the termination of the investigation of any complaints if the complainant takes alternative court action against the member.

We consider that these changes would make the schemes more effective, leading to better outcomes for complainants and scheme members alike.

Duty to cooperate and communicate in certain circumstances

We recommend inserting new clause 61A, which would impose a duty on the person responsible for a dispute resolution scheme to cooperate with other schemes if a complaint involved their members, and other relevant financial service provider licensing authorities. The clause would also impose obligations of confidentiality to ensure that individual privacy is protected. This amendment is intended to help facilitate the fair and just resolution of cross-service complaints. We recommend an associated amendment to clause 51(1)(g) to allow the Minister to withdraw approval of a scheme on the grounds of failure to comply with this duty (clause 51(1)(ga)).

Reserve scheme

We recommend an amendment to clause 66 to require the appointment of a reserve scheme from an established recognised dispute resolution service. As introduced, the bill would only allow an approved scheme to be appointed as the reserve scheme. This amendment is intended to ensure that the body appointed is chosen on the

basis of requisite experience and knowledge, and is well-respected in dispute resolution. We note that this amendment would not require a dispute resolution body to be chosen from within the financial sector. Its focus instead would be on the dispute resolution experience and ability of the body.

We recommend an amendment to clause 66(1) and the insertion of new clause 66(1A) to clarify that rules about the functions of the reserve scheme may be prescribed by Order in Council. The bill as introduced allowed these matters to be dealt with under clause 66(5). However we consider it preferable to have it clearly set out that rules must be made which provide for matters equivalent to the rules for approved schemes under clause 58. This amendment is intended to ensure that adequate rules for the reserve scheme are implemented.

We recommend the addition of clause 66(6) to require the Minister to recommend a reserve scheme within two years of the commencement of the Act. Clause 2(1) of the bill allows the commencement dates of the requirements for registration (Part 2) and membership of a dispute resolution scheme (clause 44) to be set by Order in Council. We asked about the likely commencement dates, as we were concerned that the regime might take some time to establish and financial service providers would need time to comply with the new arrangements. We were told that a two-year transition period is intended to allow dispute resolution schemes to be established and approved, and to give providers time to comply with the scheme. We expect that such a period would be reasonable, and trust that such an approach will be followed. The amendment we recommend to clause 66 would ensure that the reserve scheme would be established when registration commenced.

We recommend amendments to clause 67 to provide that appointment as a reserve scheme should be revoked should the appointee fail to comply with rules relating to the scheme, or otherwise breach an appointment condition. This amendment is intended to maintain the integrity of the regime. The amendments we recommend would require the Minister to recommend a replacement reserve scheme at the same time as the revocation of the first scheme. This amendment would ensure that adequate dispute resolution coverage was available to consumers at all times.

Appeals

We recommend amending the appeals provisions set out in the bill as introduced (deleting clauses 71 to 73). This appeals process was modelled on that of the Disputes Tribunal. We do not consider the Disputes Tribunal analogous to the disputes resolution schemes that would be available under this bill. For example, decisions of the Disputes Tribunal are binding on both parties, whereas decisions of the approved dispute resolution schemes would be binding on the financial service provider or adviser only. We therefore consider that the Tribunal's appeals process is not an appropriate model. Parties would continue to have the usual right of appeal through judicial review.

Appendix

Committee process

The Financial Service Providers (Registration and Dispute Resolution) Bill was referred to the committee on 11 December 2007. The closing date for submissions was 28 February 2008. We received and considered 47 submissions from interested groups and individuals. We heard 26 submissions.

We received advice from the Ministry for Economic Development on Parts 1 and 2 of the bill and the Ministry of Consumer Affairs for part 3 of the bill. The Regulations Review Committee reported to the committee on the powers contained in clause 42(1)(b).

Committee membership

Charles Chauvel (Chairperson)

Hon Bill English

Jeanette Fitzsimons

Craig Foss

Hon Mark Gosche

Hone Harawira

Rodney Hide

Moana Mackey

Dr the Hon Lockwood Smith (Deputy Chairperson)

Hon Paul Swain

Chris Tremain

Judy Turner

R Doug Woolerton

**Financial Service Providers (Registration
and Dispute Resolution) Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Lianne Dalziel

Financial Service Providers (Registration and Dispute Resolution) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Financial Service Providers (Registration and Dispute Resolution) Act **2007**.

2 Commencement

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(1) **Part 2 and section 44** come into force on a date to be appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made appointing different dates in respect of different types of financial service providers.

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(2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Preliminary provisions

3 Overview

- (1) This Act requires financial service providers to be registered. There are different requirements for registration depending on whether a provider provides— 5
- (a) a financial adviser service (a term defined in the **Financial Advisers Act 2007**); or
 - (b) a financial service.
- (2) In order to be registered, financial service providers are required to be members of an approved a dispute resolution scheme if they provide financial services to certain people the public. However, this requirement only applies if the reserve scheme has been appointed. 10
- (3) The Act sets out how a dispute resolution scheme may be approved by the Minister, why the approval might be withdrawn, and how an approved a dispute resolution scheme may be appointed as the reserve scheme. 15
- (4) The Act provides that the reserve scheme is to act as the default dispute resolution scheme and is to be capable of resolving disputes relating to all types of financial service providers. 20
- (5) This section is intended as a guide only.

4 Interpretation

In this Act, unless the context otherwise requires,—

affiliated entity means an affiliated entity that has been identified in an Order in Council in accordance with **section 20B(3)** 25

annual confirmation means the annual confirmation relating to a registered provider supplied to the Registrar under **section 27**

annual report means the annual report relating to an approved dispute resolution scheme supplied to the Minister under **section 62** 30

approved dispute resolution scheme has the meaning given by **section 45**

approved professional body has the meaning given by **section 35 of the Financial Advisers Act 2007** 35

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

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

company means a company, or an overseas company, within the meaning of section 2(1) of the Companies Act 1993

controlling owner means, in relation to a financial service provider that is not an individual, any person who beneficially owns 50% or more of that provider

credit contract—

(a) has the meaning given by section 7 of the Credit Contracts and Consumer Finance Act 2003; but

(b) does not include—

(i) contracts specified in section 15(1)(a) or (b) of that Act:

(ii) contracts to be treated as credit sales and consumer credit contracts under section 16 of that Act:

(iii) contracts under which no interest charges as defined in section 5 of that Act are payable

deposit has the meaning given by section 108(2) of the Friendly Societies and Credit Unions Act 1982

director has the meaning given by section 126 of the Companies Act 1993, but also includes, in relation to a body that is not a company, a person who occupies a position comparable to that of a director (such as a trustee or a partner)

document means—

(a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and figures), images, or sounds, or 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 a part, or to which it is attached:

(ii) a book, map, plan, graph, or drawing:

(iii) a photograph, film, or negative; and

- (b) information electronically recorded or stored, and information derived from that information

due date, in relation to an annual confirmation, means the date allocated to a registered financial service provider by the Registrar under **section 15(1)(b) or 21(b)** 5

FATF means the Financial Action Task Force on Money Laundering established in Paris in 1989

FATF Recommendations means all of the following recommendations:

- (a) the 40 Recommendations adopted by FATF at its plenary meeting on 20 June 2003: 10
- (b) the Special Recommendations on Terrorist Financing adopted by FATF at its extraordinary plenary meeting on 31 October 2001:
- (c) Special Recommendation IX on Terrorist Financing adopted by FATF at its plenary meeting between 20 and 22 October 2004 15

financial adviser has the meaning given by **section 7 of the Financial Advisers Act 2007**

financial adviser service has the meaning given by **section 5 sections 10 and 12 of the Financial Advisers Act 2007** 20

financial service has the meaning given by **section 5**

financial service provider means a person who provides or offers to provide a financial service

in the business of providing a financial service has the meaning given by **section 5A** 25

insurance has the meaning given by section 2 of the Insurance Companies' Deposits Act 1953

lawyer has the meaning given by section 6 of the Lawyers and Conveyancers Act 2006 ~~except that, before that section comes into force, lawyer means a barrister or solicitor as defined in section 2 of the Law Practitioners Act 1982~~ 30

licensing authority means a body identified in **Schedule 2** as a body that licenses licensed providers

licensed provider means a person ~~who is~~ identified in Schedule 2 as being licensed by a licensing authority to provide a licensed service 35

licensed service means a financial service that is required by an enactment identified in **Schedule 2** to be provided only by a licensed provider

member, in relation to a dispute resolution scheme, has the meaning given by **section 4544(2)** 5

member of a local authority has the meaning given by section 5(1) of the Local Government Act 2002

~~**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~~ 10

Minister means—

(a) 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 and for Parts 1 and 2; and 15

(b) 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 Part 3

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 20

prescribed means prescribed by this Act or by any regulations made under this Act

real estate agent means a person who is a licensee under the Real Estate Agents Act **2008** 25

~~**register** means the register of financial service providers and financial advisers established and maintained under **section 23**~~

Registrar means the Registrar of Financial Service Providers and Financial Advisers appointed under **section 34** 30

related company has the meaning given by section 2(3) of the Companies Act 1993

reserve scheme has the meaning given by **section 65**

responsible financial service provider is a person declared to be a responsible financial service provider under **section 20B(1)** 35

senior manager means, in relation to a financial service provider, a person who is not a director but occupies a position that allows the person to exercise significant influence over the management or administration of that provider (for example, a chief executive or a chief financial officer): 5

tax agent has the meaning given by section 3(1) of the Tax Administration Act 1994.

5 Meaning of financial service

In this Act, **financial service** means any of the following financial services ~~that is not provided in the context of a financial adviser service:~~ 10

- (aa) a financial adviser service:
- (a) ~~accepting deposits:~~
- (a) acting as a deposit taker as defined in the Reserve Bank of New Zealand Act 1989: 15
- (ab) being a registered bank:
- (b) keeping, investing, administering, or managing money, ~~or securities, or investment portfolios~~ on behalf of other persons:
- (c) ~~lending money or securities and providing credit (for example, under a credit contract within the meaning of the Credit Contracts and Consumer Finance Act 2003):~~ 20
- (d) ~~providing financial leases, except under a contract that is not a consumer credit contract under section 15 of the Credit Contracts and Consumer Finance Act 2003:~~ 25
- (e) operating a money or value transfer service:
- (f) issuing and managing means of payment (for example, credit and debit cards, cheques, travellers' cheques, money orders, bankers' drafts, and electronic money):
- (g) giving financial guarantees: 30
- (h) participating in securities issues the offer of a security to the public as any of the following:
 - (i) an issuer, a contributory mortgage broker, a trustee, a unit trustee, a superannuation trustee, a statutory supervisor, a promoter, or a manager 35
within the meaning of those terms in section 2(1) of the Securities Act 1978:

- (ii) a public issuer within the meaning of that term in section 2(1) of the Securities Markets Act 1988:
- ~~(iii) a provider of lending facilities:~~
- (i) changing foreign currency: 5
- (j) entering into derivative transactions, or trading in money market instruments, foreign exchange, interest rate and index instruments, transferable securities (including shares), and ~~commodity~~ futures contracts on behalf of another person: 5
- (k) providing forward foreign exchange contracts: 10
- ~~(l) managing individual or collective investment portfolios:~~
- (m) underwriting and placing insurance:
- (n) providing any other financial service that is prescribed for the purposes of New Zealand complying with the FATF Recommendations, other recommendations by FATF, or other similar international obligations that are consistent with the purpose of this Act. 15
- 5A Meaning of in the business of providing a financial service**
In this Act, in the business of providing a financial service means carrying on a business of providing a financial service (whether or not the business is the provider's only business or the provider's principal business). 20
- 6 Application of Act**
- (1) This Act applies to people who are in the business of providing a financial service ~~or a financial adviser service.~~ 25
- (2) ~~This Act does not apply to any of~~ The following people are not financial service providers to whom this Act applies:
- (a) a lawyer in the course of that person's professional practice as a lawyer if the financial service is a necessary incident of legal practice: 30
- (b) a chartered accountant in the course of that person's professional practice as a chartered accountant if the financial service is a necessary incident of professional accounting practice: 35

- (ba) a tax agent in the course of that person's professional practice as a tax agent if the financial service is a necessary incident of tax practice:
- (bb) a real estate agent in the course of that person's professional practice as a real estate agent if the financial service is a necessary incident of real estate practice: 5
- (c) a prescribed Crown agency:
- (c) the government departments listed in Schedule 1 of the State Sector Act 1988:
- (ca) the Reserve Bank (and any subsidiaries): 10
- (cb) the statutory entities listed in Schedule 1 of the Crown Entities Act 2004:
- (cc) any person engaged in terminating the business of a financial service provider after that provider has been deregistered: 15
- (cd) a non-profit organisation providing free financial services:
- (ce) an affiliated entity (except to the extent that the entity may be required to be registered under the Financial Advisers Act 2007): 20
- (d) an employee, controlling owner, or director of a person listed in **paragraph (a), (b), or (c), (ca), (cb), (cc), (cd), or (ce)** (while acting as an employee, controlling owner, or director):
- (e) an employee, controlling owner, or director of a registered financial service provider (while acting as an employee, controlling owner, or director): 25
- (3) This Act does not apply with respect to financial services provided between related companies.
- 7 Act binds the Crown** 30
This Act binds the Crown.

Part 2 Registration

- 8 Purpose of this Part**
The purpose of this Part is to— 35

- (a) establish a compulsory public register of financial service providers ~~and financial advisers~~ to enable—
- (i) the public to access information about financial service providers ~~and financial advisers~~; and
- (ii) the Registrar and other regulators to regulate financial service providers ~~and financial advisers~~: 5
- (b) prohibit certain people from being involved in the management or direction of registered financial service providers: 10
- (c) conform with New Zealand’s obligations under the FATF Recommendations. 10
- 9 Registration and deregistration**
- (1) Registration under this Act continues until the registered person is deregistered.
- (2) Registration may not be transferred and may not vest by operation of law in any person other than the person registered under this Act. 15
- (3) A person is deregistered when the Registrar enters on the register that the person is deregistered.
- ~~Subpart 1—No providing holding out or being in business of providing financial service or licensed service or holding out that entitled to provide financial service unless registered~~ 20
- 10 No ~~providing being in business of providing financial service or licensed service in course of business unless registered~~** 25
- (1) A person to whom this Act applies must not ~~provide a financial service in the course of business~~ be in the business of providing a financial service unless that person is registered under this Part. 30
- (2) A person to whom this Act applies must not provide a licensed service in the course of business unless that person is registered under this Part as a licensed provider in relation to that particular licensed service. 35

- (3) Every person who knowingly breaches **subsection (1) or (2)** commits an offence and is liable on summary conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding ~~2 years~~ 12 months or to a fine not exceeding \$100,000, or to both; or 5
- (b) in the case of a ~~body corporate~~ person who is not an individual, to a fine not exceeding \$300,000.
- 11 No holding out that in course of business that entitled to provide of providing financial service unless registered**
- (1) A person to whom this Act applies must not hold out (whether directly or indirectly) ~~in the course of business~~ that the person is registered under this Act or; entitled, qualified, able, or willing to be in the business of providing a financial service ~~provide a financial service~~ unless that person is registered under this Part. 10
15
- (2) Every person who knowingly breaches **subsection (1)** commits an offence and is liable on summary conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$100,000, or to both; or 20
- (b) in the case of a ~~body corporate~~ person who is not an individual, to a fine not exceeding \$300,000.

Subpart 2—Registration of financial service provider

- 12 Qualifications for registration as financial service provider** 25
- A person is qualified to be registered as a financial service provider if—
- (a) the person is not disqualified under **section 13**; and
- (b) the person is a member of an approved dispute resolution scheme ~~if required by section 44~~ or the reserve scheme if the person provides a financial service to the public; and 30
- (c) the person has a licence to provide any licensed services the person provides or offers to provide.

13 Disqualified person

- (1) A person is disqualified if,—
- (a) in the case of an individual, the individual is disqualified under **subsection (2)**; or
 - (b) in the case of a person who is not an individual, the person has a controlling owner, director, or senior manager who is disqualified under **subsection (2)**. 5
- (2) The following persons are disqualified:
- (a) an undischarged bankrupt:
 - (b) a person prohibited from being a director or promoter of, or concerned in the management of, an incorporated or unincorporated body under the Companies Act 1993, the Securities Act 1978, the Securities Markets Act 1988, or the Takeovers Act 1993: 10
 - (c) a person subject to a management banning order under the Securities Act 1978, the Securities Markets Act 1988, the Takeovers Act 1993, or subject to an order under section 108 of the Credit Contracts and Consumer Finance Act 2003: 15
 - (ca) a person who has been convicted of an offence against section 10, 11, or 40 within the past 5 years: 20
 - (d) a person who has been convicted of an offence relating to fraud or dishonesty under sections 217 to 266 of the Crimes Act 1961) within the past 5 years:
 - (e) a person who has been convicted of a money laundering offence or an offence relating to the financing of terrorism: 25
 - (f) a person who is subject to a confiscation order under the Proceeds of Crime Act 1991.
- (3) A member of a local authority must be treated as if he or she is not disqualified. 30

Application for registration as financial service provider

14 Application to be registered as financial service provider

- (1) An application to be registered as a financial service provider must be made to the Registrar and— 35
- (a) contain the following (as relevant to the applicant):
 - (i) the name and business address of the applicant:

- (ii) the name and business address of the approved dispute resolution scheme or the reserve scheme of which the applicant is a member:
- (iii) whether the applicant is applying in relation to a licensed service, and if so, which particular licensed service; and 5
- (b) be in the form (if any) required by the Registrar; and
- (c) confirm that the applicant is not disqualified under **section 13**; and
- (d) contain, or be accompanied by, any other prescribed information or documents; and 10
- (e) be accompanied by the prescribed fee (if any).
- (2) If the application relates to a licensed service, it must be accompanied by any prescribed information required to obtain an appropriate licence. 15

15 Registration of financial service provider

- (1) If the Registrar accepts that an applicant is qualified to be registered as a financial service provider, the Registrar must—
 - (a) enter the following details on the register (as relevant to the provider): 20
 - (i) the name and business address of the provider:
 - (ii) the name and business address of the approved dispute resolution scheme or the reserve scheme of which the provider is a member:
 - (iii) if the provider is a licensed provider in relation to a particular licensed service, that fact and the name and business address of the licensing authority that has licensed that provider: 25
 - (iv) any other information prescribed in regulations; and 30
 - (b) allocate a due date for the provider’s annual confirmation, notify the provider of that date, and notify that date on the register.
- (2) If the Registrar does not accept that an applicant is qualified to be registered as a financial service provider, the Registrar must notify the applicant and any relevant licensing authority of the Registrar’s decision. 35

Changes relating to financial service provider

16 Duty to notify changes relating to financial service provider

- (1) Each of the following persons must notify the Registrar about the following relevant changes relating to a financial service provider: 5
- (a) a financial service provider, if the provider knows that the provider is no longer qualified for registration in accordance with **section 12**: 10
 - (b) the licensing authority in relation to a provider who is no longer licensed: 10
 - (c) the person responsible for an approved dispute resolution scheme or the reserve scheme of which a financial service provider was a member, if the person knows that the provider is no longer a member of that scheme. 15
- (2) The time within which a person must notify the Registrar under **subsection (1)** is 10 working days from the date the person comes to know about the change.
- (3) A financial service provider who breaches **subsection (1)(a)** commits an offence and is liable on summary conviction to a fine not exceeding \$10,000. 20
- (4) A person who breaches **subsection (1)(c)** commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

Deregistration of financial service provider 25

17 Deregistration of financial service provider

- (1) The Registrar must deregister a financial service provider after a notice period in accordance with **sections 18 and 19**, if the Registrar is satisfied that the provider is ~~no longer~~— 30
- (a) is no longer qualified to be registered in accordance with **section 12**; or 30
 - (b) is no longer in the business of providing or offering to provide a financial service; or
 - (c) has been registered because of a false or misleading representation or omission; or 35

- (d) has proffered an application fee or annual confirmation fee that has subsequently been dishonoured, declined, or reversed.
- (2) The Registrar must deregister a financial service provider if the provider so requests in writing, with effect from the any future date requested by the provider. The Registrar must notify any relevant licensing authority of this deregistration. 5
- (3) For the purposes of this section and **sections 18 and 19**, **notice period** means 20 working days from the date of the Registrar's notification under **section 18**. 10
- 18 Notice of intention to deregister**
- (1) The Registrar must notify a financial service provider and any relevant licensing authority of the Registrar's intention to deregister the provider under **section 17(1)**.
- (2) The Registrar's notice must set out— 15
- (a) that the Registrar intends to deregister the provider under either **section 17(1)(a) or (b) 17(1)** (stating whichever paragraph applies); and
- (b) the reasons why the Registrar considers the relevant paragraph in **section 17(1)(a) or (b) 17(1)** applies; 20
and
- (c) that there is a notice period before deregistration occurs during which the provider may object, under **section 19**, to the deregistration.
- 19 Objection to proposed deregistration of financial service provider** 25
- (1) During the notice period, the financial service provider may object (with reasons) to the proposed deregistration under **section 17(1)**.
- (2) If the Registrar receives an objection under **subsection (1)** within the notice period, the Registrar must consider the objection and must not proceed with a deregistration under **section 17(1)**; unless the Registrar is satisfied that the financial service provider is no longer— 30
- (a) qualified to be registered in accordance with **section 12**; or 35

- (b) ~~providing or offering to provide a financial service.~~
- (2) If the Registrar receives an objection under **subsection (1)** within the notice period, the Registrar must consider the objection and must not proceed with a deregistration under **section 17(1)**, unless the Registrar is satisfied that any of **paragraphs (a) to (d) of section 17(1)** applies. 5

20 Notification of deregistration of financial service provider
If the Registrar ~~proceeds with deregistration~~ deregisters a financial service provider, the Registrar must notify—

- (a) ~~the financial service provider of the deregistration and, stating the provider’s right of appeal to the High Court against the deregistration under **section 41**; and~~ 10
- (b) ~~any relevant licensing authority of the deregistration; and~~
- (c) the public, by a notice that is publicly available on an Internet site (at all reasonable times) for not less than 20 working days. 15

Reregistration of financial service provider

20A Reregistration of financial service provider

- (1) The Registrar may reregister a financial service provider who was deregistered— 20
- (a) on the grounds set out in **section 17(1)(b)** if the Registrar is satisfied that the financial service provider was still in the business of providing a financial service at the time of deregistration; or 25
- (b) on the grounds set out in **section 17(1)(d)** if the Registrar is satisfied that the application fee or annual confirmation fee has been paid.
- (2) A reregistration is effective from the date of deregistration as if the deregistration had not occurred. 30
- (3) If the Registrar reregisters a financial service provider, the Registrar must notify—
- (a) the financial service provider; and
- (b) any relevant licensing authority; and

- (c) the public, by a notice that is publicly available on an Internet site (at all reasonable times) for not less than 20 working days.

Responsible financial service provider

- 20B Responsible financial service provider** 5
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, declare (with or without conditions) that an entity is a responsible financial service provider.
- (2) The Minister may make a recommendation under **subsection (1)** only if— 10
- (a) the entity has applied to the Minister to be declared a responsible financial service provider; and
- (b) the entity has affiliated entities who each would qualify to be registered as a financial service provider under **section 12**; and 15
- (c) the entity undertakes to be responsible for the financial services provided by any of the affiliated entities; and
- (d) the Minister is satisfied that declaring the entity to be a responsible financial service provider would be in the public interest. 20
- (3) The Order in Council must identify the affiliated entities of the responsible financial service provider.

Subpart 3—Registration of provider of financial adviser service 25

- 21 Registration of provider of financial adviser service**
- If an approved professional body notifies the Registrar, under **section 51 of the Financial Advisers Bill**, of the details of a provider of a financial adviser service, the Registrar must—
- (a) enter those details on the register; and 30
- (b) allocate a due date for the provider’s annual confirmation to be sent under **section 27**; notify the approved professional body of that date; and notify that date on the register.

- 22 Deregistration of provider of financial adviser service**
The Registrar must deregister a provider of a financial adviser service who has ceased to be a member of an approved professional body.
- Subpart 4—Register of financial service providers and financial advisers
Register established
- 23 Register of financial service providers and financial advisers**
The Registrar must establish and maintain a register of financial service providers and financial advisers. 10
- 24 Operation of and access to register**
- (1) The register may be kept as an electronic register or in any other manner that the Registrar thinks fit.
- (2) The register must be available for access and searching by the public at all times unless— 15
- (a) the Registrar suspends the operation of the register, in whole or in part, in accordance with **subsection (3)**; or
- (b) otherwise prescribed.
- (3) The Registrar may refuse access to the register or otherwise suspend the operation of the register, in whole or in part, if the Registrar considers that it is not practical to provide access to the register. 20
- (2) The register must be available for access and searching by members of the public at all times unless suspended under **subsection (3)**. 25
- (3) The Registrar may refuse access to the register or suspend its operation, in whole or in part,—
- (a) if the Registrar considers that it is not practical to provide access to the register; or 30
- (b) for any other reason that is prescribed by regulations made under this Act.

Compare: 2008 No 1 s 55(1), (2)

25 Purposes of register

The purposes of the register are—

- (a) to enable the public and any person referred to in **paragraph (b)** to—
- (i) identify registered financial service providers ~~and financial advisers~~; and 5
 - (ii) access information about—
 - ~~(A) how to contact registered persons; and~~
 - (A) the name and business address of a registered financial service provider; and 10
 - (B) the approved dispute resolution scheme or the reserve scheme of which a registered person financial service provider is a member (if required by **section 44**); and
 - (C) whether a registered financial service provider provides a licensed service; and 15
 - ~~(D) in relation to a financial adviser, the approved professional body of which the financial adviser is a member; and~~
- (b) to assist any person in the exercise of the person's 20
powers or the performance of the person's functions under this Act or any other enactment; and
- (c) to conform with New Zealand's obligations under the FATF Recommendations.

26 Contents of register

25

The register must contain the following information about each registered person (to the extent that the information is relevant):

- (a) the ~~person~~ registered financial service provider's name and business address: 30
- ~~(b) whether the person is a financial service provider or a financial adviser;~~
- (c) the name and business address of the approved dispute resolution scheme or the reserve scheme of which the ~~person~~ registered financial service provider is a member: 35
- (ca) in relation to a licensed provider, the licensed service the provider is licensed to provide;

- (d) in relation to a licensed provider, the name and business address of the licensing authority that has licensed that provider:
- (e) ~~in relation to a financial adviser, the name and business address of the approved professional body of which that financial adviser is a member:~~ 5
- (f) any other information prescribed in regulations.

27 Annual confirmation

- (1) Each registered financial service provider must supply to the Registrar each year by the due date an annual confirmation of details relating to that provider. 10
- (2) ~~Each approved professional body (on behalf of each registered member) must supply to the Registrar each year by the due date an annual confirmation of details relating to that member.~~
- (3) ~~The annual confirmation must be in the form required by the Registrar (if any) and be accompanied by the prescribed fee (if any).~~ 15
- (3) The annual confirmation must—
 - (a) be in the form (if any) required by the Registrar and be accompanied by the prescribed fee (if any); and 20
 - (b) confirm that the provider is not disqualified under **section 13**; and
 - (c) contain, or be accompanied by, any other prescribed information or documents.
- (4) If a registered financial service provider does not comply with **subsection (1)** ~~within 3 months of~~ by the due date, the Registrar may assume that the provider is no longer in the business of providing or offering to provide a financial service and **sections 17 to 19** apply. 25

28 Registrar must amend register in certain circumstances 30

- The Registrar must amend the register if—
- (a) an annual confirmation contains information that is different from the information entered on the register (where the Registrar is satisfied that the situations described in **section 17(1)** do not apply); or 35

- (b) a financial service provider or an approved professional body (on behalf of a registered member) informs the Registrar of changes to the name and business address of the provider or to the approved dispute resolution scheme to which the provider belongs; or 5
- (b) a financial service provider informs the Registrar of information that is different from the information entered on the register (where the Registrar is satisfied that the situations described in **section 17(1)** do not apply); or 10
- (c) a licensing authority informs the Registrar that a registered financial service provider has become a licensed provider in relation to a particular licensed service; or 10
- (d) the Registrar is satisfied at any time that the register contains a typographical error, or a mistake, or omits information ~~that was~~ supplied to the Registrar; or 15
- (e) any other information prescribed by regulations. 15

29 Registrar may refuse to accept document

The Registrar may refuse to accept a document received by the Registrar under this Act if that document—

- (a) is not in the required form (if any); or 20
- (b) does not comply with prescribed requirements.

Searches of register

30 Searches of register

The register may be searched only by reference to ~~criteria to be specified in the regulations~~ the criteria specified in **section 26(a) to (f)** and any other criteria prescribed in regulations. 25

31 Search purposes

The register may be searched for the following purposes:

- (a) by an individual, or a person with the consent of the individual, for the purpose of searching for information about that individual in accordance with the Privacy Act 1993: 30
- (b) by a person for a purpose referred to in **section 25**:

- (c) by a person for the purpose of advising another person in connection with any of the purposes referred to in this section.

32 When search breaches information privacy principle

A person who searches a public register for personal information for a purpose that is not a purpose set out in **section 31** must be treated, for the purposes of Part 8 of the Privacy Act 1993, as if that person has breached an information privacy principle under section 66(1)(a)(i) of that Act.

Compare: 2006 No 55 s 456

Information sharing

33 Sharing information with other ~~agencies~~ persons or bodies

(1) The Registrar may communicate to any of the ~~agencies~~ persons or bodies referred to in **subsection (4)** any information that the Registrar—

- (a) holds (other than on the register) in relation to the exercise of the Registrar’s powers or the performance of the Registrar’s functions and duties; and
- (b) considers may assist the ~~agency~~ person or body in the exercise of its powers or the performance of its functions and duties.

(2) The Registrar may use any information communicated to the Registrar by ~~an agency~~ a person or body referred to in **subsection (4)** in the Registrar’s exercise of the Registrar’s powers or the performance of the Registrar’s functions and duties.

(3) This section applies despite anything to the contrary in any enactment, contract, deed, or document.

(4) The ~~agencies~~ persons or bodies to which this section applies are—

- (a) ~~the Securities Commission; and~~
- (b) ~~the Reserve Bank of New Zealand; and~~
- (ba) a licensing authority identified in **Schedule 2**:
- (bb) the New Zealand Police:
- (bc) the person responsible for an approved dispute resolution scheme:
- (bd) the person responsible for the reserve scheme:

- (c) a prescribed agency that carries out supervisory or enforcement functions relating to money laundering or terrorist financing; ~~and;~~
- (d) a prescribed overseas agency that is the equivalent of the Registrar or of a body referred to in **paragraphs (a) to (c)**, but only where there is a written agreement between the overseas agency and the Minister about sharing the information. 5

*Registrar of Financial Service Providers ~~and~~
Financial Advisers* 10

34 Appointment of Registrar

- (1) The chief executive must appoint a Registrar of Financial Service Providers ~~and Financial Advisers~~ under the State Sector Act 1988.
 - (2) The person holding office as Registrar of Companies under the Companies Act 1993, immediately before the commencement of this Act, is deemed to have been appointed as the first Registrar of Financial Service Providers ~~and Financial Advisers~~ in accordance with this section. 15
- Compare: 1999 No 126 s 136 20

35 Power of Registrar to delegate

- (1) The Registrar may delegate to any person, either generally or particularly, any of the Registrar's functions, duties, and powers except the power of delegation.
- (2) A delegation— 25
 - (a) must be in writing; and
 - (b) may be made subject to any restrictions and conditions the Registrar thinks fit; and
 - (c) is revocable at any time, in writing; and
 - (d) does not prevent the performance or exercise of a function, duty, or power by the Registrar. 30
- (3) A person to whom any functions, duties, or powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation. 35

- (4) A person who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.

Compare: 2003 No 12 s 62

Subpart 5—Registrar’s inspection powers 5

36 Registrar’s inspection powers

- (1) The Registrar, or a person authorised by the Registrar, may take any of the steps listed in **subsection (2)** for the purpose of ascertaining whether a person—
- (a) is in the business of providing ~~or has provided~~ a financial service in breach of **section 10**; or 10
 - (b) ~~is offering or has offered to provide a financial service;~~
~~or~~
 - (c) is holding out or has held out that the person ~~provides or has provided~~ is in the business of providing a financial service in breach of **section 11**; or 15
 - (d) is qualified or has been qualified to be registered in accordance with **section 12**; or
 - (e) has made a false or misleading representation or omission in breach of **section 40**. 20
- (2) The steps referred to in **subsection (1)** are the following:
- (a) requiring a person to produce for inspection relevant documents within that person’s possession or control:
 - (b) inspecting and taking copies of relevant documents:
 - (c) taking possession of relevant documents and retaining them for a reasonable time for the purpose of taking copies. 25
- (2A) Any person who exercises powers under **subsection (1)** must make his or her authorisation from the Registrar available on request. 30
- (3) Nothing in this section limits or affects the Tax Administration Act 1994 or the Statistics Act 1975.
- (4) A person must not obstruct or hinder the exercise of a power conferred by **subsection (1)**.
- (5) If a registered financial service provider does not comply with a requirement under **subsection (2)(a)** within 20 working days from the date the requirement was notified to the provider, 35

the Registrar may assume that the provider is no longer in the business of providing or offering to provide a financial service and **sections 17 to 19** apply.

- (6) A person who knowingly fails to comply with a requirement under **subsection (2)** commits an offence and is liable on summary conviction,— 5
- (a) in the case of an individual, to a fine not exceeding \$30,000;
- (b) in the case of a ~~body corporate~~person who is not an individual, to a fine not exceeding \$300,000. 10
- (7) A person who breaches **subsection (4)** commits an offence and is liable on summary conviction,—
- (a) in the case of an individual, to a fine not exceeding \$30,000;
- (b) in the case of a ~~body corporate~~person who is not an individual, to a fine not exceeding \$300,000. 15
- (8) In this section, **relevant document** means a document that contains information relating to whether a person—
- (a) is in the business of providing or has provided a financial service; or 20
- (b) ~~is offering or has offered to provide a financial service; or~~
- (c) is holding out or has held out that the person ~~provides or has provided~~ is in the business of providing a financial service in breach of **section 11**; or 25
- (d) is qualified or has been qualified to be registered in accordance with **section 12**; or
- (e) has made a false or misleading representation or omission in breach of **section 40**. 30

Compare: 1993 No 105 s 365

37 Disclosure of information and reports

- (1) A person authorised by the Registrar for the purposes of **section 36** who has obtained a document or information in the course of making an inspection under that section or prepared a report in relation to an inspection under that section must, if directed to do so by the Registrar, give the document, information, or report to— 35
- (a) the Registrar; or

- (b) the Minister; or
 - (c) the chief executive; or
 - (d) any person authorised by the Registrar to receive the document, information, or report for the purposes of this Act. 5
- (2) A person authorised by the Registrar for the purposes of **section 36** who has obtained a document or information in the course of making an inspection under that section or prepared a report in relation to an inspection under that section must not disclose that document, information, or report, except— 10
- (a) in accordance with **subsection (1)**; or
 - (b) subject to the approval of the Registrar, with the consent of the person to whom it relates; or
 - (c) subject to the approval of the Registrar, for the purposes of this Act; or 15
 - (d) to the extent that the information, or information contained in the document or report, is available under any Act or in a public document.
- (3) A person who fails to comply with this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000. 20
- Compare: 1993 No 105 s 366
- 38 Exercise of powers under section 36 not affected by appeal**
- (1) Despite any other provision of any Act or any rule of law, if a person appeals or applies to the High Court in relation to an act or decision of the Registrar or a person authorised by the Registrar under **section 36**, until a decision on the appeal or application is given,— 25
- (a) the Registrar, or that authorised person, may continue to exercise the powers under that section as if no such appeal or application had been made; and 30
 - (b) no person is excused from fulfilling an obligation under that section by reason of that appeal or application.
- (2) **Subsection (3)** overrides **subsection (1)**.
- (3) If the appeal or application is allowed or granted,— 35
- (a) the Registrar must ensure that, as soon as is reasonably practicable after the Court’s decision is delivered, any

copy of a document taken or retained under **section 36** is destroyed; and

- (b) no information acquired under **section 36** is admissible in evidence in any proceedings unless the Court hearing the proceedings in which it is sought to adduce the evidence is satisfied it was not obtained unfairly. 5

Compare: 1993 No 105 s 371

Subpart 6—Miscellaneous

39 Offence also committed by director

If any financial service provider that is not an individual commits an offence against this Act, every director of the provider who knowingly authorises or knowingly fails to prevent the offence also commits an offence against this Act. 10

40 Offence to make false or misleading representation

- (1) Every person commits an offence who, in any document or information required by or for the purposes of this Part or by regulations (whether or not supplied to the Registrar),— 15

(a) makes a representation knowing that it is false or misleading in a material particular; or

(b) omits any matter knowing that the omission is false or misleading in a material particular. 20

- (2) A person who is convicted of an offence under **subsection (1)** is liable on summary conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$100,000, or to both; or 25

(b) in the case of a ~~body corporate~~ person who is not an individual, to a fine not exceeding \$300,000.

41 Appeals from Registrar's decisions

- (1) A financial service provider who is not satisfied with any of the following decisions of the Registrar may appeal to the High Court: 30

(a) not registering an applicant as a financial service provider under **section 15**:

(b) a deregistration under **section 17**: 35

- (c) ~~an act or~~ a decision of the Registrar or a person authorised by the Registrar under **section 36**.
- (2) The time within which an appeal under **subsection (1)** may be made is 20 working days after the date of notification of the decision, or within any further time that the Court allows. 5
- (3) On appeal, the Court may do any of the following:
- (a) confirm, modify, or reverse the ~~act or~~ decision or any part of it:
- (b) exercise any of the powers that could have been exercised by the Registrar in relation to the matter to which the appeal relates: 10
- (c) refer the ~~act or~~ decision back to the Registrar with directions to reconsider the whole or a specified part of the act or decision.
- 41A** Decisions continue in effect until appeal 15
Unless the High Court orders otherwise, a decision appealed against under **section 41** continues in effect.
- 42** **Regulations under Part 1 and this Part**
- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 20
- (a) ~~specifying~~ prescribing a financial service for the purposes of **section 5(n)**:
- (b) ~~prescribing the Crown agencies to whom this Act does not apply under **section 6**:~~
- (c) specifying information or documents to be included in, or ~~attached to, application forms, and requiring those forms provided with, applications, and requiring documents~~ to be signed by specified persons: 25
- (d) prescribing procedures, requirements, and other matters, not inconsistent with this Part or with the purposes described in **section 25**, ~~for relating to the register,~~ including matters that relate to— 30
- (i) the operation of the register:
- (ii) the information or documents to be contained in the register: 35
- (iii) access to the register:
- (iv) search criteria for the register:

- (v) fees that may be payable in order to search the register:
- (e) prescribing either of the following types of agency:
- (i) an agency that carries out supervisory or enforcement functions relating to money laundering or terrorist financing for the purposes of **section 33(4)**; or 5
- (ii) an overseas agency that is the equivalent of the Registrar or of a body referred to in **section 33(4)(a) to (c)** for the purposes of **section 33(4)**; 10
- (f) prescribing fees payable to the Registrar in respect of any matter under this **Part Act** or the manner in which fees may be calculated:
- (g) providing for any other matters contemplated by **Part 1 or by** this Part, necessary for its administration, or necessary for giving it full effect. 15
- (2) Without limiting **subsection (1)(c)**, information or documents may be prescribed under that subsection for the purpose of assisting any person with the person's powers, functions, or duties as a licensing authority under any enactment providing for the licensing of licensed providers (regardless of whether or not that information or documentation is collected for the purposes of this Part). 20
- (3) The Registrar may refuse to perform a function or exercise a power until ~~the~~ a prescribed fee is paid. 25
- (4) Any Order in Council made under **subsection (1)(f)** may—
- (a) prescribe the method of payment of a fee; and
- (b) authorise the Registrar to refund or waive, in whole or in part and on any prescribed conditions, payment of a fee in relation to any person or class of persons. 30
- (5) Any fee or amount payable to the Registrar is recoverable by the Registrar in any court of competent jurisdiction as a debt due to the Registrar.

Review and report on operation of this Part

42A Ministry must review and report on operation of this Part

(1) The Ministry must, not later than 5 years after the commencement of this section,—

- (a) review the operation of this Part since the commencement of this section; and 5
- (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 concerning the matters dealt with in this Part are necessary or desirable. 10

(3) As soon as practicable after receiving the report, the Minister must present a copy of that report to the House of Representatives.

42B Territorial scope

This Act applies to the provision in New Zealand of a financial service by a person who is in New Zealand, regardless of where the financial service provider is resident, is incorporated, or carries on business. 15

**Part 3
Dispute resolution** 20

43 Purpose of this Part

The purpose of this Part is to promote confidence in financial service providers ~~and financial advisers~~ by improving consumers' access to redress from providers through schemes to resolve disputes. ~~the establishment of approved dispute resolution schemes.~~ The schemes are intended to be accessible, independent, fair, accountable, efficient, and effective. 25

Subpart 1—Financial service provider must be member of ~~approved~~ dispute resolution scheme 30

44 Financial service provider must be member of approved dispute resolution scheme

Every financial service provider must be a member of an ~~approved~~ dispute resolution scheme—

- (a) if the provider provides a financial service to—
 - (i) consumers who are natural persons; or
 - (ii) businesses that have no more than 19 full-time-equivalent employees; and
- (b) if the reserve scheme has been appointed under **section 66**. 5

44 Financial service provider must be member of dispute resolution scheme

- (1) Every financial service provider must be a member of either an approved dispute resolution scheme or the reserve scheme if the provider provides a financial service to the public. 10
- (2) A **member**, in relation to an approved dispute resolution scheme or the reserve scheme, is a financial service provider who may be the subject of a complaint to that scheme.

Subpart 2—Approval of dispute resolution schemes 15

45 Meaning of approved dispute resolution scheme and meaning of member of approved dispute resolution scheme

A dispute resolution scheme is an **approved dispute resolution scheme** if it has been approved by the Minister in accordance with this Part and that approval has not expired or been withdrawn. 20

- (2) An approval expires 10 years after the date it was issued.
- (3) ~~A **member of an approved dispute resolution scheme** is a financial service provider or a provider of a financial adviser service who may be the subject of a complaint to that scheme.~~ 25

Approval of dispute resolution schemes

46 Application for approval

- (1) The person responsible for a dispute resolution scheme may apply to the Minister for approval of the scheme. 30
- (2) The applicant must submit the following with the application:
 - (a) the rules about the scheme:

- (b) any other information that is prescribed concerning the considerations outlined in **section 47**:
- (c) ~~any annual reports relating to the scheme:~~
- (d) ~~any internal reviews of the scheme:~~
- (e) the prescribed fee (if any). 5
- (3) The Minister may request the applicant to supply further information or documentation relating to the matters referred to in **subsection (2)(a) to (d) or (b)**.
- 47 Mandatory considerations for approval**
- (1) When considering an application under **section 46**, the Minister must have regard to the following considerations in light of the principles listed in **subsection (2)**:
- (a) whether the scheme has an appropriate purpose:
- (b) whether the applicant has undertaken appropriate reasonable consultation on the scheme with members or potential members of the scheme and representatives of the people referred to in **section 44(a)**, and persons (or their representatives) likely to be substantially affected by the scheme: 15
- (c) ~~whether the scheme's proposed dispute resolution processes are timely and appropriate:~~ 20
- (d) ~~the extent to which the applicant's governance arrangements ensure the independence and accountability of the scheme:~~
- (e) whether the applicant has adequate funding to enable it to operate the scheme according to the scheme's purpose and in accordance with the rules about the scheme: 25
- (f) whether the applicant's directors and senior managers are competent to manage a dispute resolution scheme:
- (g) ~~the cost, if any, to lodge a complaint with the scheme, and whether that cost is reasonable and appropriate:~~ 30
- (h) whether the scheme is capable of resolving disputes about the types of financial services provided by the members or potential members of the scheme:
- (i) the amounts of money that complaints lodged with the scheme may be about, and whether those amounts are reasonable and appropriate: 35

- (j) whether the rules about the scheme are adequate and comply with the principles listed in **subsection (2)**:
- (i) whether the rules about the scheme are adequate and comply with—
- (i) the principles listed in **subsection (2)**; and 5
- (ii) the requirements of **section 58**;
- (k) the number of currently approved dispute resolution schemes:
- (l) the types of financial service providers that may be members of currently approved dispute resolution schemes: 10
- (la) the proposed size of the scheme:
- (lb) the types of financial service providers that may be potential members of the scheme:
- (m) any other applications for approval that have been made. 15
- (2) The principles are—
- (a) accessibility:
- (b) independence:
- (c) fairness: 20
- (d) accountability:
- (e) efficiency:
- (f) effectiveness.
- 48 Minister must decide application for approval**
- (1) The Minister must decide an application under **section 46** by approving it (~~with or without conditions~~) or by rejecting it. 25
- (2) The Minister may only make a decision under **subsection (1)** after consultation with—
- (a) the Minister of Finance; and
- (b) the Minister of ~~Consumer Affairs~~ Commerce. 30
- (3) The Minister may impose conditions on the approval about any or all of the following matters:
- (a) the applicant's governance arrangements:
- (b) training requirements for people employed or engaged in the operation of the scheme: 35
- (c) other prescribed matters that relate to the principles listed in **section 47(2)**:

49 Notification and publication of decision

The Minister must, as soon as practicable after deciding the application,—

- (a) notify the applicant ~~in writing~~ of the decision; and
- (b) ~~ensure that the decision is—~~ 5
 - (i) ~~published in the *Gazette*; and~~
 - (ii) ~~made available to the public by making copies of it available for inspection, free of charge, at the head office of the Ministry (during ordinary office hours); and for a reasonable period of time on an Internet site in an electronic form that is publicly available (at all reasonable times).~~ 10
- (b) if the decision is to approve the application, ensure that—
 - (i) the approval is published in the *Gazette*; and 15
 - (ii) the chief executive updates the details described in **section 74AA(2)**.

50 Reapplication by unsuccessful applicant

An applicant whose application has been rejected may at any time reapply under **section 46**. 20

Withdrawal of approval

51 Withdrawal of approval

- (1) The Minister may withdraw the approval of an approved dispute resolution scheme after a notice period in accordance with **sections 52 and 53** for any or all of the following reasons: 25
 - (a) there has been a breach of a prescribed requirement:
 - (b) ~~there has been a breach of a condition of approval:~~
 - (c) there has been a failure to comply with the rules about the scheme:
 - (d) the person responsible for the scheme has not main- 30
 - tained or published a list of current members as required by **section 57**:
 - (da) the person responsible for the scheme has not published the rules as required by **section 59**:
 - (e) ~~the person responsible for the scheme has not supplied the Minister with an annual report by 1 July as required by **section 62**:~~ 35

- (e) the person responsible for the scheme has not supplied the Minister with any of the following:
- (i) an annual report as required by **section 62**:
 - (ii) any further information requested by the Minister under **section 63**: 5
 - (iii) an independent review as required by the rule described in **section 58(m)**:
- (f) the person responsible for the scheme has not supplied the Minister with any further information requested by the Minister under **section 63**: 10
- (g) the person responsible for the scheme has not notified the Minister ~~within 10 working days after the date of any change made to~~ in accordance with **section 60** before changing the rules about the scheme:
- (ga) the person responsible for the scheme has not complied with **section 61A**: 15
- (h) the rules about the scheme have changed since the scheme's approval was given, and that change means the rules—
- (i) are no longer adequate; or 20
 - (ii) do not comply with the principles listed in **section 47(2)**:
- (i) the scheme no longer satisfies the principles in **section 47(2)**.
- (2) When considering whether to withdraw an approval, the Minister must have regard to the considerations referred to in ~~**section 47(1)**~~ **47(1)(a) to (j)** in light of the principles listed in **section 47(2)**. 25
- (3) The Minister must withdraw the approval of an approved dispute resolution scheme if the person responsible for the scheme so requests, with effect from ~~the~~ any future date requested. 30
- (4) For the purposes of this section and **sections 52 and 53**, **notice period** means 20 working days from the date of the Minister's notification under **section 52(1)**. 35

52 Notice of intention to withdraw approval

- (1) The Minister must notify the person responsible for the approved dispute resolution scheme of the Minister’s intention to withdraw the scheme’s approval under **section 51(1)**.
- (2) The Minister’s notice must set out— 5
- (a) that the Minister intends to withdraw the scheme’s approval for any or all of the grounds described in **section 51(1)** (stating which apply); and
 - (b) the reasons why the Minister considers any or all of the grounds described in **section 51(1)** apply; and 10
 - (c) that there is a notice period before the withdrawal of the scheme’s approval during which the person responsible for the scheme may object, under **section 53**, to the intended withdrawal.
- (3) The Minister’s notice may require the person responsible for the scheme to— 15
- (a) notify all members of the Minister’s intention to withdraw the scheme’s approval; or
 - (b) provide the Minister with a list of the names and business addresses of current members so that the Minister can, if the Minister wishes, notify all members of the Minister’s intention to withdraw the scheme’s approval. 20

53 Objection to intended withdrawal of approval

- (1) ~~During the notice period, the person responsible for an approved dispute resolution scheme may object (with reasons) to the intended withdrawal of the scheme’s approval under **section 51(1)**;~~ 25
- (1) During the notice period, the person responsible for an approved dispute resolution scheme—
- (a) may object (with reasons) to the intended withdrawal of the scheme’s approval under **section 51(1)**; and 30
 - (b) must not accept any new members.
- (2) If the Minister has received an objection under **subsection (1)** within the notice period, the Minister must consider it and must not proceed with a withdrawal under **section 51(1)** unless the Minister is satisfied that any or all of the reasons set out in **section 51(1)** apply. 35

- 54 Approval is withdrawn from date person responsible for scheme is notified**
If the Minister withdraws a scheme's approval, the scheme's approval is withdrawn from the date the person responsible for the scheme is notified under **section 55(a)**. 5
- 55 Notification and publication of withdrawal of approval**
The Minister must, as soon as practicable after withdrawing the approval of a dispute resolution scheme,—
- (a) notify the person responsible for the scheme ~~in writing of the withdrawal of the scheme's approval~~; and 10
 - (b) notify the Registrar ~~of the withdrawal of the scheme's approval~~; and
 - (c) ensure that the withdrawal is—
 - (i) ~~published in the *Gazette*~~; and
 - (ii) made available to the public by making copies of it available for inspection, free of charge, at the head office of the Ministry (during ordinary office hours); and for a reasonable period of time on an Internet site in an electronic form that is publicly available (at all reasonable times). 15 20
 - (c) ensure the withdrawal is published in the *Gazette*; and
 - (d) ensure the chief executive updates the details described in **section 74AA(2)**.
- 56 Effect of withdrawal of approval on members of dispute resolution scheme** 25
On the date that a dispute resolution scheme's approval is withdrawn, members of the scheme become a members of the reserve scheme ~~(if any)~~.
- List of members of approved dispute resolution scheme* 30
- 57 List of members**
The person responsible for an approved dispute resolution scheme must maintain a list of the scheme's current members and must publish this list on an Internet site that is publicly available (at all reasonable times). 35

Rules about approved dispute resolution scheme

58 Rules about approved dispute resolution scheme

The person responsible for an approved dispute resolution scheme must issue rules about that scheme, and those rules must provide for, or set out, the following:

- (a) ~~which types of financial service providers and providers of a financial adviser service~~ may be members of the scheme (all providers of that type must be eligible): 5
- (b) how financial service providers ~~and providers of a financial adviser service~~ become members of the scheme and how membership is terminated: 10
- (ba) that consumers and businesses that have no more than 19 full-time equivalent employees may make complaints for resolution by the scheme:
- (c) how complaints about a member may be made ~~to~~ for resolution by the scheme: 15
- (ca) a period after which the scheme, if asked by a complainant, must investigate a complaint that has been made directly to a member:
- (d) that complaints about members must be investigated in a way that is consistent with the rules of natural justice: 20
- (e) that complaints about members may be made relating to any of the following things:
 - (i) breaches of contract by the member:
 - (ii) breaches of statutory obligations by the member: 25
 - (iii) breaches of industry codes by the member:
 - (iv) any other matters provided for in the rules:
- (f) that any information may be considered in relation to a complaint and any inquiry made that is fair and reasonable in the circumstances: 30
- (g) ~~the sanctions that can be imposed on a member of the scheme following remedial action that the scheme can impose on a member to resolve a complaint~~ (for example, a requirement to change systems or to compensate a complainant up to a certain amount stated in the rules) ~~and the compensation that can be awarded to the complainant:~~ 35
- (h) how ~~sanctions imposed and compensation awarded~~ remedial action may be enforced against the scheme's

- members, including after members have left the scheme:
- (ha) that a financial service provider who has not taken remedial action imposed on that provider by another approved dispute resolution scheme or the reserve scheme cannot join the scheme: 5
 - (i) any provision for allocating the costs of resolving the dispute between the member complained about and the complainant:
 - (i) that the scheme will not charge a fee to any complainant to investigate or resolve a complaint: 10
 - (j) that a decision made on resolution of a complaint about a member of the scheme is binding on the member concerned; subject to an appeal under **section 74**:
 - (k) that a decision made on resolution of a complaint about a member of the scheme is binding on the complainant concerned; subject to an appeal under **section 74**, if the complainant accepts the decision resolution: 15
 - (l) that the complainant may take alternative court action against the member at any time, including if the complainant rejects the decision resolution: 20
 - (la) that the scheme may cease investigating and resolving a complaint if the complainant takes alternative court action against the member:
 - (m) that an internal independent review of the scheme must occur at least once every 3-5 years after the date of the scheme's approval and must be supplied to the Minister within 3 months of completion: 25
 - (n) that the person responsible for the scheme must co-operate with other approved dispute resolution schemes if a complaint involves members of those other schemes: 30
 - (o) that the person responsible for the scheme and the scheme's members must inform the people referred to in **section 44(a) paragraph (ba)** about the scheme to the extent that the members provide a financial service to those people. 35

59 Obligation to publish rules

~~A~~ The person responsible for an approved dispute resolution scheme must make copies of the rules about the scheme available for inspection by the public, free of charge,—

- (a) ~~at the scheme’s head office (during ordinary office hours); and~~ 5
- (b) ~~on an Internet site in an electronic form that is publicly available (at all reasonable times).~~

60 Duty to notify change to rules

~~A~~ The person responsible for an approved dispute resolution scheme must notify the Minister ~~of a~~ if the person wishes to change made to the rules about the scheme within 10 working days after the date of the change. 10

61 Change to rules may lead to withdrawal of approval Minister’s consideration of change of rules 15

(1) ~~Following receipt of~~ After receiving a notification ~~of a change of rules~~ under **section 60**, the Minister may notify the person responsible for a scheme that the Minister—

- (a) ~~approves the change; or~~
- (b) ~~intends to withdraw~~ considers the proposed change is not adequate and does not comply with—the scheme’s approval under **section 51(1)**; and **sections 51 to 56** apply: 20
 - (i) the principles listed in **section 47(2)**; and
 - (ii) the requirements of **section 58**. 25

(1A) If **subsection (1)(b)** applies, the rule change must not be made.

(2) If the Minister does not notify the person responsible for the scheme in accordance with **subsection (1)** within 45 working days of the notification of the change of rules, the change is treated as having been approved by the Minister. 30

61A Duty to co-operate and communicate information in certain circumstances

The person responsible for an approved dispute resolution scheme must— 35

- (a) co-operate with other approved dispute resolution schemes and with the reserve scheme if a complaint involves members of those other schemes (disclosing personal information in accordance with the Privacy Act 1993 and protecting information that is subject to an obligation of confidence); and 5
- (b) co-operate with the Registrar, including by communicating information to the Registrar in accordance with **sections 16 and 33**; and
- (c) if there is a series of complaints about a particular licensed provider or class of licensed provider, communicate that fact to the relevant licensing authority. 10

*Annual reports and information requests by
Minister*

- 62 Annual report** 15
- ~~A~~ The person responsible for an approved dispute resolution scheme must supply to the Minister, by 1 July each year within 3 months after the end of the financial year applying to the scheme, an annual report containing prescribed information about the scheme in relation to the 12 months ending on 31 March in that year that financial year. 20
- 63 Person responsible for approved dispute resolution scheme must supply further information on Minister's request**
- A person responsible for an approved dispute resolution scheme must supply to the Minister any further information requested by the Minister about the information that is required by regulations to be in an annual report. 25
- 63 Person responsible for approved dispute resolution scheme must supply further information on Minister's request** 30
- (1) The person responsible for an approved dispute resolution scheme must supply to the Minister—

- (a) any further information requested by the Minister about the information that is required by regulations to be in an annual report; and
- (b) any information requested by the Minister about the scheme's compliance with the principles listed in **section 47(2)**. 5
- (2) In supplying the information to the Minister, the person must disclose personal information in accordance with the Privacy Act 1993 and protect information that is subject to an obligation of confidentiality. 10
- 64 Annual report and information requested by Minister to be publicly available**
- A The person responsible for an approved dispute resolution scheme must make copies of its annual report and any information requested under **section 63** available for inspection by the public, free of charge,—
- (a) at the scheme's head office (during ordinary office hours); and
- (b) on an Internet site in an electronic form that is publicly available (at all reasonable times). 20

Subpart 3—Reserve scheme

- 65 Reserve scheme**
- The reserve scheme is ~~an approved~~ a dispute resolution scheme that has been appointed by Order in Council under **section 66** to fulfill the functions of the reserve scheme. 25

Appointment of reserve scheme

- 66 Appointment of reserve scheme**
- (1) ~~The Governor-General may, by Order in Council made on the recommendation of the Minister, appoint an approved dispute resolution scheme to be the reserve scheme (with or without conditions) for a term not exceeding the term of the scheme's approval.~~ 30
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—

- (a) appoint a dispute resolution scheme to fulfil the functions of the reserve scheme (with or without conditions) for a term recommended by the Minister; and
- (b) prescribe rules about the functions of the reserve scheme. 5
- (1A) Rules made under **subsection (1)(b)** must provide for equivalent matters to those required by **section 58** to be provided for, or set out, in the rules of an approved dispute resolution scheme.
- (2) The Minister may ~~only~~ make a recommendation only if— 10
- (a) the person responsible for the scheme consents in writing to the scheme being appointed to fulfil the functions of the reserve scheme in accordance with the rules made under **subsection (1)(b)**; and
- (b) ~~the scheme~~ the Minister is satisfied that the person responsible for the scheme and the scheme itself are capable of resolving disputes relating to all types of providers of all types of financial services and financial adviser services; and 15
- (c) the Minister is satisfied that the scheme is a formally constituted dispute resolution body with demonstrable experience; and 20
- (d) the Minister is satisfied that the person responsible for the scheme and the scheme itself are capable of fulfilling the functions of the reserve scheme in accordance with the rules made under **subsection (1)(b)**. 25
- (3) The Minister may ~~only~~ make a recommendation only after consultation with—
- (a) the Minister of Finance; and
- (b) the Minister of ~~Consumer Affairs~~ Commerce; and 30
- (c) any persons (or their representatives) that the Minister considers are likely to be substantially affected by the recommendation.
- (4) A failure to comply with **subsection (3)(c)** does not affect the validity of an Order in Council made under **subsection (1)**. 35
- (5) Conditions that may be imposed by an Order in Council may relate to any or all of the following:

- (a) the governance arrangements of the person responsible for relating to the reserve scheme:
- (b) training requirements for people employed or engaged in the operation of the reserve scheme:
- (c) other prescribed matters that relate to the principles listed in **section 47(2)**. 5
- (6) The Minister's first recommendation for an Order in Council referred to in **subsection (1)** must be made within 2 years of this section coming into force.
- 67 Revocation of appointment as reserve scheme** 10
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, revoke ~~the~~an appointment of an approved dispute resolution scheme as the reserve scheme made under **section 66(1)(a)**.
- (2) The Minister may only make a recommendation only for any or all of the following reasons: 15
- (a) ~~the reserve scheme's approval as an approved dispute resolution scheme has been withdrawn:~~
- (b) the Minister is no longer satisfied that the reserve scheme is capable of resolving disputes relating to all types of providers of all types of financial services and financial adviser services: 20
- (ba) there has been a failure to fulfil the functions of the reserve scheme as required by rules made under **section 66(1)(b)**: 25
- (bb) there has been a breach of a condition of appointment:
- (c) the person responsible for the reserve scheme requests that ~~its~~ the scheme's appointment as the reserve scheme be revoked.
- (3) The Minister may only make a recommendation for the reasons set out in **subsection (2)(ba) or (bb)** only after consultation with— 30
- (a) the Minister of Finance; and
- (b) the Minister of Consumer Affairs Commerce.
- (c) any persons the Minister considers are likely to be substantially affected by the recommendation. 35

- (4) A failure to comply with **subsection (3)(c)** does not affect the validity of an Order in Council made under **subsection (1)**.
- (5) At the same time as making a recommendation under **subsection (1)**, the Minister must recommend that the Governor-General appoint another dispute resolution scheme to fulfil the functions of the reserve scheme under **section 66(1)(a)** for a term recommended by the Minister. 5
- 68 Notice of intention to recommend revocation of appointment as reserve scheme under section 67(2)(ba) or (bb)** 10
- (1) The Minister must notify the person responsible for the reserve scheme that the Minister intends, under **section 67(2)(b) 67(2)(ba) or (bb)**, to recommend a revocation of the reserve scheme's appointment. 15
- (2) The Minister's notice must set out—
- (a) that the Minister intends, under **section 67(2)(b) 67(2)(ba) or (bb)**, to recommend a revocation of the reserve scheme's appointment; and
- (b) the reasons why the Minister considers that **section 67(2)(b) 67(2)(ba) or (bb)** applies apply; and 20
- (c) that there is a notice period during which the person responsible for the reserve scheme may object, under **section 69**, to the intended recommendation.
- (3) For the purposes of this section and **section 69, notice period** means 20 working days from the date of the Minister's notification under **subsection (1)**. 25
- 69 Objection to intended recommendation for revocation**
- (1) During the notice period, the person responsible for the reserve scheme may object (with reasons) to the Minister's intention, under **section 67(2)(b) 67(2)(ba) or (bb)**, to recommend a revocation of the reserve scheme's appointment. 30
- (2) If the Minister has received an objection under **subsection (1)** within the notice period, the Minister must consider the objection and must not proceed with a recommendation for a revocation of the reserve scheme's appointment under **sec-** 35

~~tion 67(2)(b)~~ **67(2)(ba) or (bb)** unless the Minister is satisfied that ~~section 67(2)(b)~~ **67(2)(ba) or (bb)** applies apply.

69A Duty to co-operate and communicate information in certain circumstances

The person responsible for a reserve scheme must— 5

- (a) co-operate with approved dispute resolution schemes if a complaint involves members of those schemes (disclosing personal information in accordance with the Privacy Act 1993 and protecting information that is subject to an obligation of confidence); and 10
- (b) co-operate with the Registrar, including by communicating information to the Registrar in accordance with **sections 16 and 33**; and
- (c) if there is a series of complaints about a particular licensed provider or class of licensed provider, communicate that fact to the relevant licensing authority. 15

Levy to fund reserve scheme

70 Levy to fund reserve scheme

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations— 20

- (a) ~~specifying that levies to fund the reserve scheme are payable by all members or by any class of members, and that different levies may apply to members who provide—~~
 - (i) ~~different types of financial adviser services; or~~ 25
 - (ii) ~~different types of financial service:~~
- (a) specifying that levies to fund the reserve scheme are payable by all members or by any class of members, and that different levies may apply to members who provide different types of financial service: 30
- (b) specifying the amounts of levies payable under this section:
- (c) providing for the method by which levies will be calculated:
- (d) specifying the criteria and other requirements by and against which levies will be set or reset: 35

- (e) specifying the financial year or part-financial year to which levies apply:
 - (f) providing for the payment and collection of levies:
 - (g) exempting any member from paying levies:
 - (h) providing for waivers or refunds of the whole or any part of any levy paid by any member or class of members: 5
 - (i) providing for interest to be paid if a member fails to pay levies by the due date specified in the regulations:
 - (j) enabling the reserve scheme to terminate the membership of a member who has failed to pay levies by the due date specified in the regulations. 10
- (2) Regulations made under **subsection (1)** must provide that no other membership fee apart from the levies may be charged by the reserve scheme. 15
- (3) The Minister may only make a recommendation under **subsection (1)** after consultation with any persons (or their representatives) that the Minister considers are likely to be substantially affected by the regulations.
- (4) A failure to comply with **subsection (3)** does not affect the validity of an Order in Council made under **subsection (1)**. 20

Subpart 4—Miscellaneous

Appeals

71 Appeals

- (1) Either party may appeal to a District Court against a decision made in accordance with an approved dispute resolution scheme on a complaint about a member of the scheme on the grounds that the dispute resolution process was unfair to the appellant and prejudicially affected the result of the decision. 25
- (2) Without limiting the generality of **subsection (1)**, a decision maker is deemed to have conducted the dispute resolution process in a manner that was unfair to the appellant and prejudicially affected the result if— 30
- (a) the decision maker failed to have regard to either of the following: 35

- (i) any provision of any enactment that was brought to the attention of the decision maker before the decision maker's decision; or
 - (ii) any rule about the scheme; and
 - (b) as a result of the failure referred to in **paragraph (a)**, the decision is unfair to the appellant. 5
- (3) An appeal may be brought by filing a notice of appeal in the District Court within 28 days of the decision, or within any further time as a District Court Judge may, on application, allow. 10
- (4) As soon as practicable after a notice of appeal has been filed, the appellant must serve a copy of the notice of appeal on the other party to the decision and on the person responsible for the scheme.
- (5) The District Court Registrar must fix the time and place for the hearing of the appeal and must notify both parties. 15
- (6) The filing of a notice of appeal against a decision operates as a stay of any process for the enforcement of that decision, but the District Court may at any time, on the application of either party, order that any process may be resumed or commenced or, the process having been resumed or commenced, order that it be further stayed. 20
- (7) In this section,—
- appellant** means the person who appeals the decision, and may be the complainant or the member of the approved dispute resolution scheme 25
- party** means a person who was a party to the decision, whether the person is the complainant or the member of the approved dispute resolution scheme.
- Compare: 1988 No 110 s 50 30
- 72 Decision maker to file report**
- (1) Within 28 days after the notice of appeal is served on the person responsible for an approved dispute resolution scheme under **section 71(4)**, the decision maker must file with the District Court Registrar a report on the manner in which the complaint was considered and the reasons for the decision on the complaint. 35

- (2) Apart from filing the report under **subsection (1)**, the decision maker, and the person responsible for the approved dispute resolution scheme (if different), may not be parties to the District Court's decision on the appeal (except in relation to the costs of preparing and filing the report under **subsection (1)**): 5
- (3) The District Court Registrar must serve a copy of the report filed under **subsection (1)** on both parties a reasonable period of time before the hearing of the appeal: 10
Compare: 1988 No 110 s 51

73 Powers of District Court Judge on appeal

- (1) On the hearing of an appeal, a District Court Judge may— 15
- (a) quash the decision appealed from and order the complaint to be reheard on any terms the Judge thinks fit; or
- (b) dismiss the appeal.
- (2) In ordering a rehearing under **subsection (1)(a)**, the Judge may give any directions the Judge thinks fit about the rehearing of the complaint.
- (3) An appeal under this section is to be heard by a District Court Judge in chambers, and the procedure at the hearing may be determined by the Judge. 20
Compare: 1988 No 110 s 53

Publication of details relating to approved dispute resolution schemes and reserve scheme

- 74AA Publication of details relating to approved dispute resolution schemes and reserve scheme** 25
- (1) The chief executive—
- (a) must ensure that the details described in **subsection (2)** are available for inspection by the public, free of charge, at the head office of the Ministry (during ordinary office hours), and on an Internet site that is publicly available (at all reasonable times): 30
- (b) may make copies of the details available in any other way that the chief executive considers appropriate in the circumstances. 35
- (2) The details are—

- (a) the names of approved dispute resolution schemes and the name and business address of the person responsible for each scheme; and
- (b) the name of the reserve scheme and the name and business address of the person responsible for the reserve scheme. 5

Regulations under this Part

74 Regulations under this Part

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 10
 - (a) prescribing the information or documents to be supplied to the Minister as part of an application under this Part:
 - (b) prescribing processes for applications for the approval of dispute resolution schemes:
 - (c) prescribing rules for a class of approved dispute resolution scheme or for all approved dispute resolution schemes in the event that approval of those schemes is withdrawn: 15
 - (d) prescribing the information that must be included in every annual report supplied in accordance with **section 62**, which must include— 20
 - (i) information about any ~~internal~~ independent review that occurred within the previous 12 months; and
 - (ii) information about a scheme’s operation (including complaints received): 25
 - (e) prescribing fees payable in respect of any matter under this Part or the manner in which fees may be calculated:
 - (f) providing for any other matters contemplated by this Part, necessary for its administration, or necessary for giving it full effect. 30
- (2) The Minister may refuse to make a decision under this Part until the prescribed fee is paid.
- (3) Any Order in Council made under **subsection (1)** may— 35
 - (a) prescribe the method of payment of a fee; and

- (b) authorise the Minister to refund or waive, in whole or in part and on any prescribed conditions, payment of a fee in relation to any person or class of persons.
- (4) Any fee or amount payable under this Part is recoverable in any court of competent jurisdiction as a debt due to the Crown. 5

Review and report on operation of this Part

74A Ministry must review and report on operation of this Part

- (1) The Ministry must, not later than 5 years after the commencement of this section,—
 - (a) review the operation of this Part since the commencement of this section; and 10
 - (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 concerning the matters dealt with in this Part are necessary or desirable. 15
- (3) As soon as practicable after receiving the report, the Minister must present a copy of that report to the House of Representatives.

Consequential amendment

- 75 Consequential amendments amendment** 20
The enactment specified in ~~the Schedule~~ **Schedule 1** is amended in the manner indicated in that schedule.
-

Schedule 1

s 75

**Consequential amendments to other
enactments**

Privacy Act 1993 (1993 No 28)

5

Part 1 of Schedule 2: insert the following item in its appropriate alphabetical order:

**Financial Service Providers (Registration and Dispute
Resolution) Act 2007**

Section 23

Schedule 2

s 4

**Licensing authorities (with relevant
licensed providers and enactments)**

Government Actuary: registered superannuation schemes (Super-
annuation Schemes Act 1989) 5

Government Actuary: registered KiwiSaver schemes (KiwiSaver
Act 2006)

Securities Commission: authorised financial advisers and qualify-
ing financial entities (Financial Advisers Act **2007**) 10

Reserve Bank: registered banks (Reserve Bank of New Zealand Act
1989)

Legislative history

4 December 2007
11 December 2007

Introduction (Bill 190–1)
First reading and referral to Finance and
Expenditure Committee
