

Departmental Disclosure Statement

Financial Markets Conduct Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment (MBIE).

MBIE certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

5/03/2025.

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Part One: General Policy Statement

This is an omnibus Bill introduced in accordance with Standing Order 267(1)(a). That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The single broad policy is to strengthen financial markets conduct by making it easier for participants to comply with the requirements of, and for the Financial Markets Authority (the **FMA**) to administer, the financial markets regulatory system.

This Bill amends the Financial Markets Conduct Act 2013 (the **FMCA**) and the Financial Markets Authority Act 2011. The Bill is part of a financial services reform package of 3 Bills that seek to streamline and ensure the effectiveness of financial services regulation. The objectives of this reform are to—

- simplify and streamline regulation of financial services (including reducing duplication); and
- remove undue compliance costs for financial markets participants; and
- improve outcomes for consumers.

The other 2 Bills are the Financial Service Providers (Registration and Dispute Resolution) Amendment Bill and the Credit Contracts and Consumer Finance Amendment Bill.

Conduct reforms progressed by this Bill

Fair conduct programme minimum requirements

The Bill simplifies and clarifies minimum requirements for fair conduct programmes to allow for more flexibility and to reduce unnecessary prescription and compliance costs. This includes—

- clarifying the requirement to communicate with consumers in a timely, clear, concise, and effective manner to expressly include communicating about the price of services or products; and
- adding a requirement about resolving consumers' complaints in a timely and effective manner; and
- adjusting the requirements relating to training, supervising, and monitoring employees to reduce the level of prescription; and
- removing requirements relating to existing legal obligations and regularly reviewing effectiveness of fair conduct programmes.

Single licence and consolidation

The Bill requires the FMA to issue a single licence covering different classes of market services. Facilitating the move to a single licence through legislation will improve clarity and certainty for firms and the FMA regarding the licensing model. This approach also means that existing licenses held by a firm can be automatically consolidated by the Bill into a single licence.

New powers for change in control approval and on-site inspection

The Bill introduces change in control approval provisions that require firms holding a licence under the FMCA, or authorised bodies, to obtain regulatory approval from the FMA before certain changes in firms take effect. This covers changes where another person obtains significant influence, defined as obtaining 25% of voting rights or the ability to appoint 50% of directors. It also covers significant transactions (asset sales) of a material part of the business and amalgamations. The purpose of this power is to ensure that a proposed restructure does not negatively impact on the interests of consumers from a conduct perspective and aligns with the prudential approach to changes in control.

The Bill introduces on-site inspection powers for the FMA to, without notice, enter and remain at a place of business of a financial markets participant for compliance monitoring purposes. This allows the FMA to conduct routine monitoring inspections of financial markets participants that have a general purpose of proactively and independently verifying regulatory compliance and enables the FMA to act quickly and reduce potential harm to consumers.

Technical amendments

The Bill also makes a number of technical amendments to the FMCA, the Financial Markets Authority Act 2011, and the Financial Markets Conduct Regulations 2014 to cut red tape, improve the operation of the legislation, and reduce costs on business and government.

The Bill makes a number of exemptions already made under the FMA's exemption powers permanent. Most of these exemptions have already been made for 2 5-years periods by the FMA and it is clear they are needed in the long term.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
Fit for purpose financial markets conduct regulation, Ministry of Business, Innovation and Employment, 13 August 2024. The regulatory impact statement can be accessed here: https://www.mbie.govt.nz/business-and-employment/business/financial-markets-regulation/2024-financial-services-reforms	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
The Treasury were consulted and deemed it sufficient that an internal MBIE panel would be sufficient to provide independent advice on quality.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
The size of potential costs and benefits are in sections 2B.6, 2C.6, 2D.6, 2E.6, and 2F.6 of the Regulatory Impact Statement located here: https://www.mbie.govt.nz/dmsdocument/29101-regulatory-impact-statement-fit-for-purpose-financial-markets-conduct-regulation	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
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(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>The Bill creates and changes obligations for financial institutions in their fair conduct programmes under the FMC Act. The impacts of this are discussed in Section 2, Part B of the Regulatory Impact Statement: https://www.mbie.govt.nz/dmsdocument/29101-regulatory-impact-statement-fit-for-purpose-financial-markets-conduct-regulation</p> <p>The Bill also creates new obligations for firms licensed under Part 6 of the Financial Markets Conduct Act to seek regulatory approval from the FMA before a change in control takes place. The impacts are discussed in Section 2, Part E of the Regulatory Impact Statement: https://www.mbie.govt.nz/dmsdocument/29101-regulatory-impact-statement-fit-for-purpose-financial-markets-conduct-regulation</p> <p>The FMA will be responsible for ongoing operation and enforcement of the changes. The plan for implementation can be accessed in Section 3 of MBIE's Regulatory Impact Statement https://www.mbie.govt.nz/dmsdocument/29101-regulatory-impact-statement-fit-for-purpose-financial-markets-conduct-regulation</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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MBIE has sent our draft Bill and other relevant documentation to the Ministry of Foreign Affairs and Trade for consideration.

Analysis provided in the RIS provides that the status quo for the FMA's regulatory toolkit does not align with international expectations and good practice. The International Organisation of Securities Commissions' (IOSCO) Principle 10 requires that conduct regulators have the power to carry out inspections of regulated entities on their premises without prior notice (or consent) when appropriate to verify compliance with regulatory requirements. Other international conduct regulators have such powers (eg in Australia, the United Kingdom, Canada, the United States of America and Singapore).

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

MBIE undertook internal analysis to identify whether a Treaty interest or obligation arose in the policy development phase. MBIE has a general obligation through Te Tiriti to engage with Māori on economic development. The analysis identified that this obligation likely did not extend to this policy area outside of a general obligation to consider conduct issues more broadly.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

A copy of the advice can soon be accessed here: <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/advice/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>The Bill applies existing strict civil liability provisions under subpart 3 of Part 8 of the Financial Markets Conduct Act 2013 to the new subpart 3A of Part 6 in the event of a contravention of a licensee's duty to comply with conditions of an approval of a change in control (under new section 421L).</p> <p>The Bill also amends section 307 and extends the existing offence to the newly created section 305A. A listed issuer must give notice to the FMA of where its interests register is available for inspection.</p> <p>The Bill also applies existing criminal liability provisions under section 61 of the Financial Market's Authority Act 2011 to the new section 28B in the event of the wilful obstruction of the exercise of a power when the FMA is carrying out an on-site inspection.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice was consulted at policy development stage and during the drafting of the Bill regarding amendments to liability discussed in 3.4.</p> <p>The Ministry of Justice raised issues concerning the impact of the introduction of these powers on rights expressed under the New Zealand Bill of Rights Act (NZBORA). These being:</p> <ul style="list-style-type: none"> • The limits that a change in control power would have on freedom of expression under s14 of NZBORA. • Extending strict liability under new provisions and how this limits the presumption of innocence in s25(c) of NZBORA. Further, issues were raised regarding the penalty currently within the FMC Act. • The nature and rationale of the introduction of an on-site inspection power. <p>All of these have been addressed by MBIE through further consultation with the Ministry of Justice.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p>The Bill provides the FMA with a new on-site inspection power to conduct routine monitoring inspections of licensees to ensure regulatory compliance (sections 28A-28D). No advanced notice is required for these inspections. The Bill also clarifies that the FMA can continue exercising this inspection power if it finds evidence of a contravention, without obtaining a search warrant. Previously, the FMA could only enter and search a premises to gather information with a search warrant and advanced notice. It is possible that personal information (such as individual's names) can be accessed during these inspections.</p>	
3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES

The Office of the Privacy Commissioner (OPC) was consulted on the new on-site inspection provisions with a near final draft of the Bill and the relevant Cabinet papers. The OPC was asked to provide guidance on how to ensure that the FMA complies with privacy principles whilst using the new inspection powers.

OPC advised that personal information gathered through the new provision is unlikely to be different from personal information that the FMA would previously gather. They advised that the FMA's standing processes would suffice to cover this new provision.

The OPC noted that they would have preferred additional limitations on the power of entry without notice. However, they advised that the FMA should only use the new power where there is no legal ability to seek a warrant, where the entity poses a significant risk to financial services clients; and where giving notice would defeat the purpose of the visit. The OPC's guidance has been provided to the FMA to integrate into their operational processes.

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?

YES

In May 2024, MBIE publicly consulted on options to simplify requirements introduced under the CoFI Act, reform conduct licensing requirements, improve how the Reserve Bank and Financial Markets Authority (FMA) work together as regulators, and enhance the regulatory tools available to the FMA.

Views obtained through feedback varied dependent on the issue covered. Feedback on some options, like changes to the fair conduct principle and the single license proposal, indicated general positive consensus. Other options, like the introduction of a wider regulatory toolkit for the FMA were generally opposed by industry but were supported by consumer advocate groups.

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?

NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

This Bill amends existing strict liability in both the FMA Act and FMC Act, and extends this to offences that would apply in certain circumstances:

- Clause 15: Amends section 307 of the FMC Act and extends the offence to the amended section 305 and new 305A that relates to a listed issuer's duty to keep an interest register, and to make this available for public inspection. If a listed issuer fails to meet obligations under section 305 and 305A, then they will be subject to the offences listed in section 307 of the FMC Act.
- Clause 18: If a person fails to obtain approval from the FMA for certain changes under the newly created subpart 3A of Part 6 of the FMC Act, then the strict civil liability in subpart 3 of Part 8 will apply.

Extending strict liability to these new provisions is needed for the FMA to enforce requirements of the financial markets regulatory regime to deter conduct that undermines market integrity and confidence.

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>Clause 18 provides the FMA with decision-making powers to make a determination about a person's right to obtain significant influence over a licensee or authorised body, enter into a significant transaction or amalgamate with another person (change in control).</p> <p>The FMA is an independent crown entity with appropriate expertise to make determinations about a change in control. FMA must consider whether it would still be satisfied that licence conditions are met, as set out in the FMC Act and must make a decision within 20 working days.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>Clause 30 provides a power to create regulations that can exempt classes of firms licensed under Part 6 of the FMC Act, and authorised bodies, from some or all of the change in control approval requirements. This power is limited to the specific subpart and subject to existing safeguards for making regulations under Part 6 of the FMC Act, including that the Minister must consult the FMA.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>Clause 2 of the Bill provides that the Act comes into force on a date or dates set by Order in Council. This is to allow flexibility to implement some parts of the Act.</p> <p>Clauses 9, 10, 12, 13 and 23 modernise requirements to allow for digital record keeping and the use of cloud services that may not be located in New Zealand for interests registers. This includes a new regulation making power which may prescribe overseas jurisdictions (beyond Australia) where an interests register may be located. This allows for flexibility and cooperation with overseas regulators over time if the Government discovers a comparable jurisdiction.</p> <p>Clause 18 inserts:</p> <ul style="list-style-type: none"> • new s 421C which provides that regulations can determine whether a part of a business is material. Transfers of a material part of a licensee's business will be significant transactions that require FMA approval. This allows flexibility and a proportionate approach to approving changes in control across different types of market services. • new s 421H which allows for regulations to prescribe the manner in which request for change in control approvals may be made. This is a detailed matter that does not require primary legislation • new s 421K allows for regulations to prescribe conditions for approval of change in control. This is a detailed matter that does not require primary legislation <p>Clause 30 provides a power to create regulations that can exempt classes of firms licensed under Part 6 of the FMC Act, and authorised bodies, from some or all of the change in control approval requirements. This allows flexibility in how the power is applied.</p> <p>These powers fit under existing regulation-making powers under the FMC Act (s 546). The Minister is required to consult with the FMA before recommending the making of regulations. Regulations will be drafted by Parliamentary Counsel, subject to Cabinet scrutiny, and subject to any Cabinet waiver of the 28 day rule. Regulations will be subject to the Legislation Act 2019 and review by the Regulations Review Committee.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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