

# Short-Form Supplementary Departmental Disclosure Statement

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Financial Services Legislation Amendment Bill
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A short form supplementary disclosure statement for proposed government amendments to a Bill seeks to bring together in one place some selected information to support and enhance the Parliamentary and public scrutiny of those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

It provides a limited supplement to the original disclosure statement for the Financial Services Legislation Amendment Bill, dated 18 July 2017, which can be found at this link:

<http://disclosure.legislation.govt.nz/assets/disclosures/bill-government-2017-291.pdf>

This supplementary disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

7 March 2019

## Significant Legislative Features

### Offences, penalties and court jurisdictions

<b>1. Do the proposed amendments create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
Clause 30 of the Bill is amended so that financial advice providers may be civilly liable if they fail to keep an up-to-date record of the individual “nominated representatives” that they have engaged to give financial advice as required by new section 431S(4). This change is to ensure that there is a consequence of breaching this obligation. This change will bring liability for breaches of new section 431S(4) in line with those of the other duties that apply to financial advice providers.	

<b>1.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
The Ministry of Justice was consulted about the change to clause 30 and the Ministry did not raise concerns.	

### Privacy issues

<b>2. Do the proposed amendments create, amend, or remove any provisions relating to the collection storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
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### Compulsory acquisition of private property

<b>3. Do the proposed amendments contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the burden of proof for offences

<b>6. Do the proposed amendments:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding?</b>	<b>NO</b>

## Civil or criminal immunity

<b>7. Do the proposed amendments create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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## Significant decision-making powers

<b>8. Do the proposed amendments 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?</b>	<b>YES</b>
<p>The SOP amends clause 23 of the Bill to provide for licence conditions to specify circumstances where a financial advice provider cannot engage an individual financial adviser that is also engaged by another financial advice provider. This allows licence conditions to be used to prohibit particular types of arrangements if required, including if concerns arise relating to consumer confusion or lack of clarity as to which provider would be liable for misconduct by the individual adviser. Dealing with this issue by licence condition provides flexibility to address any concerns that arise, without impeding other arrangements that do not give rise to issues.</p> <p>Before the Financial Markets Authority imposes a licence condition, it must give an applicant the opportunity to make written submissions.</p> <p>The Financial Markets Conduct Act 2013 also allows for licence conditions to be imposed by regulation. If licence conditions are imposed by regulations, the Minister must consult the Financial Markets Authority before recommending a regulation.</p>	

## Powers to make delegated legislation

<b>9. Do the proposed amendments 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?</b>	<b>NO</b>
<b>10. Do the proposed amendments create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>The SOP amends certain regulation-making powers in order to deal with matters of detail that are not appropriate for primary legislation.</p> <p>Clause 84 of the Bill is amended in relation to the Financial Service Providers Register:</p> <ul style="list-style-type: none"> <li>to provide where certain categories of financial services on the Register overlap, regulations can specify circumstances where providers do not need to register in respect of all the overlapping categories on the Register;</li> <li>to enable regulations to specify further information to be collected from financial service providers and displayed in relation to the Register to assist with powers and duties in relation to financial markets legislation;</li> <li>to allow regulations to specify categories of wholesale and exempt financial services on the Register; and</li> <li>to allow regulations to specify circumstances a longer than 3 month period in which a financial adviser can be not engaged by a provider before they are deregistered (for example taking extended leave for illness)</li> </ul>	

**Any other unusual provisions or features**

<b>11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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