

Short-Form Supplementary Departmental Disclosure Statement

Financial Markets (Conduct of Institutions) 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 Markets (Conduct of Institutions) Amendment Bill, dated 22 November 2019, which can be found at this link: <http://disclosure.legislation.govt.nz/bill/government/2019/203/>

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.

8 June 2022.

Significant Legislative Features

Offences, penalties and court jurisdictions

1. Do the proposed amendments create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<u>Background</u> The proposed amendments apply fair conduct programme requirements to Lloyd's managing agents rather than Lloyd's underwriting members (due to the unique structure of the Lloyd's market and in order to ensure that Lloyd's managing agents are treated similarly to other insurers). Lloyd's underwriting members are given an exemption from the requirement to hold a market services licence as a financial institution (see clause 6A, which amends section 389 of the Financial Markets Conduct Act (FMC Act), and new section 446WA in clause 9). In connection with the exemption, regulations may impose terms and conditions on the exemption. These terms and conditions may impose requirements on the Lloyd's society, a Lloyd's underwriter or a Lloyd's managing agent (see new section 449A in clause 10AA).	
<u>Creation of offences or penalties</u> The proposed amendments provide that if the Lloyd's society, a Lloyd's managing agent or a Lloyd's underwriting agent contravenes the terms and conditions of the exemption (or if a Lloyd's managing agent contravenes a fair conduct programme requirement), that party will have civil liability under subpart 3 of Part 8 of the FMC Act (see clause 9, which adds new section 446WA, and clause 10, which amends section 449 to specify various provisions as civil liability provisions). The civil liability orders available under this section include (for example) a pecuniary penalty.	

1.1. Was the Ministry of Justice consulted about these provisions?	NO
The Ministry of Justice was not consulted because the proposed amendments: <ul style="list-style-type: none">• introduce civil penalties for breach of the licence exemption terms and conditions which are equivalent to the penalties for a financial institution's breach of its own licence obligations• introduce civil penalties for breach of the fair conduct programme requirements by managing agents equivalent to the penalties for a financial institution's breach of those requirements.	

Privacy issues

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?	NO
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Compulsory acquisition of private property

3. Do the proposed amendments 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. Do the proposed amendments 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

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

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

Civil or criminal immunity

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

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?	NO
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Powers to make delegated legislation

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?	YES
<p><u>Background</u></p> <p>Clause 16(2), section 546 amended, already allows regulations to be made to prescribe requirements which fair conduct programmes must not or are not required to impose, in respect of intermediaries (new section 446M(2)(b)-(c)). As explained in MBIE's disclosure statement on the Bill, this and other regulation-making powers allow the regime to be refined in the context of changing technology, circumstances, and market practice: such changes often being unforeseeable.</p> <p><u>Amendment of power to make delegated legislation</u></p> <p>The proposed amendments extend this power to allow regulations to be made to prescribe requirements which fair conduct programmes must not or are not required to impose, in respect of non-intermediary agents. The extension is proposed because the same policy considerations apply in respect of non-intermediary agents as to intermediaries.</p> <p>Before regulations prescribing matters to which fair conduct programmes cannot (or are not required to) relate can be made, the Minister must be satisfied that the extent to which requirements are disapplied is not broader than is reasonably necessary to address the matters that gave rise to the regulations (section 550(1)(b)).</p>	

10. Do the proposed amendments create or amend any other powers to make delegated legislation?	YES
<p>As noted above, the proposed amendments apply fair conduct programme requirements to Lloyd's managing agents rather than Lloyd's underwriting members. In this respect, the proposed amendments create the following powers to make delegated legislation:</p> <ul style="list-style-type: none"> • Regulations may prescribe requirements for a managing agent's fair conduct programme and making information about the programme publicly available (see new section 446WA in clause 9). These requirements will need to be prescribed in regulations because they are technical and apply to a complex unique model for providing insurance, and may need to change if that model changes. • Regulations may impose terms and conditions on the exemption. A term or condition may impose a requirement on Lloyd's, a Lloyd's underwriter or a Lloyd's managing agent (see new section 449A in new clause 10AA). These requirements are technical and may also need to change if the Lloyd's model changes. Having these requirements set out in regulations is also consistent with the FMC Act regime overall which provides that other exemption terms and conditions are set out in secondary legislation (rather than the Act). 	

Any other unusual provisions or features

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