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WEBINAR SERIES

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Compliance with the Financial Advisers Act - now to 15 March 2021

Karty Mayne - Rosewill Consulting

Steve Burgess - Compliance Refinery

Nick Summerfield - Anthony Harper

10 July 2020

Re-cap of Previous Session

- Preparing contracts with authorised bodies, advisers, contractors and other staff or suppliers
- Available to watch again on [Financial Services Council NZ YouTube Channel](#), or on FSC [website](#).

Agenda

1. Timeline of the new regime
2. Your obligations under the Financial Advisers Act
3. Advertising
4. FSP Registration
5. Disclosure Statements
6. Care, diligence and skill
7. Replacement business
8. Record keeping

Ready, set, go...



FSLAA
Bill passed



Code
approved



Draft regulations
released



Fees and levies
released



Transitional licensing
applications open



Disclosure
regulations pass



Full licensing
requirements
released



Transitional licensing
applications close
Full licensing
applications open

NEW REGIME STARTS

**2 YEARS
TRANSITIONAL PERIOD**

**TRANSITIONAL
PERIOD ENDS**

APRIL 2019

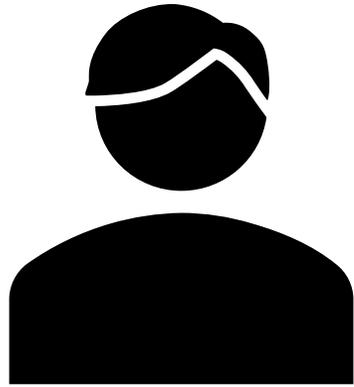
MAY 2019

NOV 2019

15 MARCH 2021

15 MARCH 2023

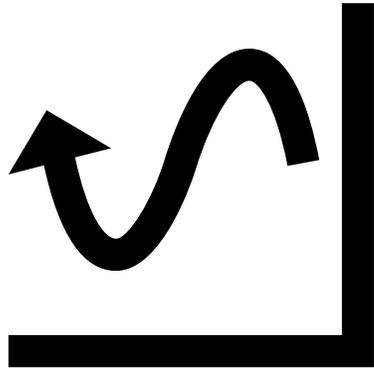
We are here



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Your obligations under the Financial Advisers Act

- **All financial advisers** must comply with the requirements of the Financial Advisers Act 2008.
- General obligations for everyone:
 - Advertising
 - Care, diligence and skill
 - Disclosure
 - Registration on the FSPR
- **Financial advice obligations relate to the:**
 - Type of financial adviser: AFA, RFA, QFE Adviser
 - Category of the product: Category 1 or Category 2
 - Type of advice: Class advice or Personalised Advice
 - Type of client: Retail or Wholesale
 - Type of service: Financial Advice or Broking Service



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Advertising

What to watch out for:

- Advertising can be wide ranging
- Only advertise the type of service you are allowed to provide
 - Don't advertise personalised advice on KiwiSaver if you are a RFA!
- If you are an AFA, you must mention your disclosure statement
 - "A disclosure statement is available, on request and free of charge"
- Your advertisement must not be misleading, deceptive or confusing.



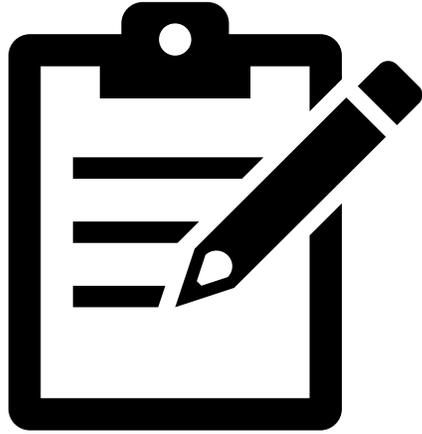
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FSP Registration

1. Check that you know what you are registered for now
2. Make sure you are registered for the right services

Common issue – registering as a Broker/Custodian

- Might trigger other obligations such as client money requirements, reporting entity for the AML/CFT Act



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Disclosure Statements

- Disclosure must be made before the advice or service is provided, or as soon as practicable after the service is provided.
- RFA disclosure statements and the AFA primary disclosure documents must follow the prescribed format outlined in the regulations.
- You cannot provide a joint disclosure statement with another adviser.
- You cannot provide a telephone disclosure for Category 1 products.
- The disclosure statement should be signed by the adviser.



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Care, diligence and skill

The obligation to exercise **care, diligence and skill** applies to all people who provide financial adviser services.

In general, when providing advice, advisers must:

- assess the product's suitability for the client's needs
- explain the key features and any limitations of the product to the client
- clearly articulate any limitations on the service being provided.

The [FMA website](#) sets out what a reasonable financial adviser would do, such as:

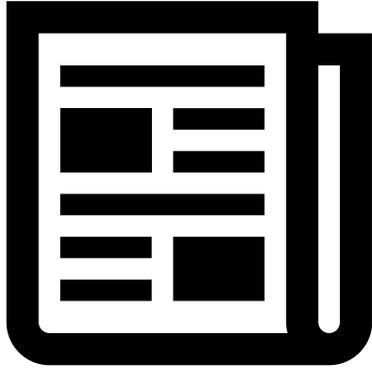
- the nature and requirements of the financial adviser's client or clients
- the nature of the service and the circumstances in which it is provided
- the type of financial adviser



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Product Replacement Advice

- Higher risk advice, avoid limiting the scope of service
- Make an **appropriate comparison of the client's existing arrangements with the new recommended product**. This will require knowledge of the terms of the client's existing product. The comparison should be clear, reasonable and balanced. It should not just focus on the benefits of changing, for example, "the new product is cheaper".
- Highlighting only the benefits is likely to be misleading....
- Explain the **material differences** in the policies relevant to the client, including:
 - any loss of benefits such as value or type of cover;
 - cover for pre-existing conditions; and
 - The specific adverse consequences of changing **policy or provider**.



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Record Keeping

- Advisers should keep records to demonstrate how they have fulfilled the care, diligence and skill requirement in providing advice.
- Advisers must also show how they have disclosed and managed any conflicts of interest arising from commissions or from their remuneration.
 - These records should adequately record any limitations on the scope of service.
- Advice should be recorded and provided to clients in a way that can assist them with decision making.
- Keeping good records helps you demonstrate your compliance e.g. keeping a copy of the disclosure statement



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Authorised Financial Advisers

If you provide any of the following financial adviser services to retail clients:

- **give personalised financial advice on category 1 products.** Financial advice covers any recommendation or opinion about buying, selling (or refraining from buying or selling) a financial product.
- provide a **personalised discretionary investment management service (DIMS).**
- provide an **investment planning service**, that is, if you design or offer to design a plan for an individual that:
 - is based on an analysis of an individual's current and future overall financial situation;
 - identifies their investment needs and goals, and
 - includes recommendations or opinions to realise those goals.



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Authorised Financial Advisers

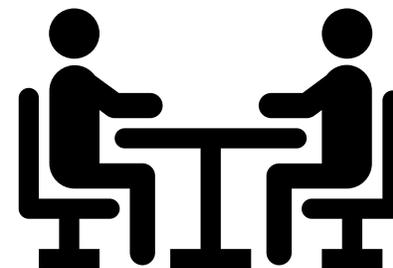
Additional obligations

- Approved as an AFA by the FMA
- Registered as an AFA on the FSPR
- Member of a Dispute Resolution Scheme
- File an annual regulatory return
- Likely to be a reporting entity under the AML/CFT Act
- Have an keep up to date an Adviser Business Statement
- Follow the Code of Professional Conduct
- Complete CPD
- Meet the conditions of your authorization

Read more on the [FMA website](#).

Summary

- Make sure you are meeting your current obligations before you leap into your new ones.
- Many of the obligations between the two regimes are similar.
- Fix any issues now before the new regime places extra burden on you.
- If in doubt, get an independent review.



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Next Webinar

An update from FMA, MBIE and Code Working Group

- The FMA, MBIE and Code Working Group will discuss the FSLAA full licensing consultation and recent announcements regarding the regime start date and disclosure regulations.
- 24 July 2020, 10am
- Registration details will be sent via FSC emails. Contact fsc@fsc.org.nz to subscribe