

**Reprint  
as at 28 September 2017**



## **Financial Markets Authority Act 2011**

Public Act      2011 No 5  
Date of assent      18 April 2011  
Commencement      see section 2

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#### **Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Business, Innovation, and Employment.**

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**1 Title**

This Act is the Financial Markets Authority Act 2011.

**2 Commencement**

This Act comes into force on 1 May 2011.

## Part 1

### Preliminary provisions

#### 3 Purpose of this Act

The purpose of this Act is to—

- (a) establish the Financial Markets Authority as an independent Crown entity for the purposes of section 7 of the Crown Entities Act 2004; and
- (b) state the Financial Markets Authority's main objective and its functions; and
- (c) provide for the Financial Markets Authority to have certain general information-gathering and enforcement powers; and
- (d) provide for the disestablishment of the Securities Commission and of the office of the Government Actuary.

#### 4 Interpretation

In this Act, unless the context otherwise requires,—

**associate member** means a member appointed under section 11(1)

**chairperson** means the chairperson of the board of the FMA

**dealing**, in relation to financial products, has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

**document** has the same meaning as in section 4 of the Evidence Act 2006

**financial markets**—

- (a) means the financial markets in New Zealand; and
- (b) includes—
  - (i) markets in New Zealand for the provision of financial services; and
  - (ii) the capital markets in New Zealand

**financial markets legislation** means the Acts listed in Schedule 1 and the enactments made under those Acts

**financial markets participant**—

- (a) means a person who is, or is required to be, registered, licensed, appointed, accredited, or authorised under, or for the purposes of, any of the Acts listed in Part 1 of Schedule 1 or any of the enactments made under those Acts (or would be required to be so registered, licensed, appointed, accredited, or authorised but for an exemption granted or provided by or under any of those Acts); and
- (b) includes any of the following:
  - (i) a person who participates in a regulated offer as an issuer or offeror;

- (ii) a person who participates in an offer of financial products as an issuer or offeror and who is required to give a disclosure document under clause 26 of Schedule 1 of the Financial Markets Conduct Act 2013;
- (iii) a person who acts, in respect of regulated products, as a supervisor, a manager, an investment manager, an administration manager, a custodian, or a qualified auditor (within the meaning of those terms in section 6(1) of the Financial Markets Conduct Act 2013);
- (iiia) a listed issuer (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013);
- (iv) an FMC reporting entity (within the meaning of section 451 of the Financial Markets Conduct Act 2013); and
- (c) also includes any of the following:
  - (i) a body corporate that is related to a person referred to in paragraph (a) or (b) (within the meaning of section 12(2) of the Financial Markets Conduct Act 2013); or
  - (ii) a director or senior manager of a person referred to in paragraph (a) or (b) (within the meaning of those terms in section 4 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 but applied even if the person referred to in those paragraphs is not a financial service provider); or
  - (iii) a person who was previously a person referred to in any of paragraphs (a), (b), or (c)(i) or (ii), in respect of any action, event, or circumstance while the person was such a person; but
- (d) does not include any class or classes of persons declared by the Governor-General by Order in Council not to be financial markets participants

**financial products** has the same meaning as in section 7 of the Financial Markets Conduct Act 2013

**financial service** has the same meaning as in section 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008

**FMA** means the Financial Markets Authority established by Part 2

**involved in a contravention** has the same meaning as in section 533 of the Financial Markets Conduct Act 2013

**issuer** has the same meaning as in section 11(1)(b) of the Financial Markets Conduct Act 2013

**law enforcement or regulatory agency** means any of the following:

- (a) any department of State that, with the authority of the Prime Minister, is responsible for the administration of any part of the financial markets legislation:
- (b) the Commerce Commission:
- (c) the Director of the Serious Fraud Office:
- (d) the New Zealand Police:
- (e) the Registrar of Companies:
- (f) the Registrar of Financial Service Providers:
- (g) the Reserve Bank of New Zealand:
- (h) the Takeovers Panel
- (i) an accredited body (within the meaning of section 6(1) of the Auditor Regulation Act 2011)

**member—**

- (a) means a member of the board of the FMA referred to in section 10; and
- (b) in the circumstances set out in section 12, includes an associate member

**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

**offeror** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

**overseas regulator** means a body in another country that performs functions that correspond with, or are similar to, any of those conferred on the FMA

**product holder** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

**regulated offer** has the same meaning as in section 41(1) of the Financial Markets Conduct Act 2013

**regulated product** has the same meaning as in section 41(2) of the Financial Markets Conduct Act 2013.

Section 4 **dealing**: inserted, on 1 December 2014, by section 63(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4 **dealings in securities**: repealed, on 1 December 2014, by section 63(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4 **financial markets participant** paragraph (a): amended, on 1 July 2012, by section 82 of the Auditor Regulation Act 2011 (2011 No 21).

Section 4 **financial markets participant** paragraph (b)(i): replaced, on 1 December 2014, by section 63(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4 **financial markets participant** paragraph (b)(ii): replaced, on 1 December 2014, by section 63(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4 **financial markets participant** paragraph (b)(iii): replaced, on 1 December 2014, by section 63(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).



Section 4 **financial markets participant** paragraph (b)(iia): inserted, on 1 December 2014, by section 63(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4 **financial markets participant** paragraph (b)(iv): replaced, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 4 **financial markets participant** paragraph (c)(i): replaced, on 1 December 2014, by section 63(4) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4 **financial products**: inserted, on 1 December 2014, by section 63(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4 **involved in a contravention**: inserted, on 1 December 2014, by section 63(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4 **issuer**: inserted, on 1 December 2014, by section 63(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4 **law enforcement or regulatory agency** paragraph (i): inserted, on 1 July 2012, by section 82 of the Auditor Regulation Act 2011 (2011 No 21).

Section 4 **offeror**: inserted, on 1 December 2014, by section 63(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4 **product holder**: inserted, on 1 December 2014, by section 63(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4 **regulated offer**: inserted, on 1 December 2014, by section 63(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4 **regulated product**: inserted, on 1 December 2014, by section 63(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4 **securities**: repealed, on 1 December 2014, by section 63(5) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

## **5 Act binds the Crown**

This Act binds the Crown.

# **Part 2 Financial Markets Authority**

## *Establishment of FMA*

## **6 Financial Markets Authority established**

This section establishes the Financial Markets Authority.

## **7 FMA is Crown entity**

- (1) The FMA is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (2) The Crown Entities Act 2004 applies to the FMA except to the extent that this Act expressly provides otherwise.

*FMA's main objective and functions***8 FMA's main objective**

The FMA's main objective is to promote and facilitate the development of fair, efficient, and transparent financial markets.

**9 FMA's functions**

(1) The FMA's functions are as follows:

- (a) to promote the confident and informed participation of businesses, investors, and consumers in the financial markets, including (without limitation) by—
  - (i) collecting and disseminating information or research about any matter relating to those markets:
  - (ii) issuing warnings, reports, or guidelines, or making comments, about any matter relating to those markets, financial markets participants, or other persons engaged in conduct relating to those markets (including in relation to 1 or more particular persons):
  - (iii) providing information about its functions, powers, and duties under this Act and other enactments (including promoting awareness by investors that all investments involve risks and that it is not the role of the FMA to remove those risks):
  - (iv) providing, or facilitating the provision of, public information and education about any matter relating to those markets:
  - (v) stating whether or not, or in what circumstances, the FMA intends to take or not take action over a particular state of affairs or particular conduct (for example, to give a person some level of certainty that the FMA will take no further action in relation to a matter):
- (b) to perform and exercise the functions, powers, and duties conferred or imposed on it by or under the financial markets legislation and any other enactments:
- (c) to monitor compliance with, investigate conduct that constitutes or may constitute a contravention or an involvement in a contravention of, and enforce—
  - (i) the Acts referred to in Part 1 of Schedule 1 (and the enactments made under those Acts); and
  - (ii) the Acts referred to in Part 2 of Schedule 1 (and the enactments made under those Acts) to the extent that those Acts or other enactments apply, or otherwise relate, to financial markets participants:

- (d) to monitor, and conduct inquiries and investigations into any matter relating to, financial markets or the activities of financial markets participants or of other persons engaged in conduct relating to those markets:
- (e) to keep under review the law and practices relating to financial markets, financial markets participants, and other persons engaged in conduct relating to those markets:
- (f) to co-operate with—
  - (i) any other law enforcement or regulatory agency (including under section 30):
  - (ii) overseas regulators (including under section 30 or 31).
- (2) Subsection (1)(b) and (c) do not limit the functions, powers, and duties conferred or imposed on any other person in respect of financial markets legislation.
- (3) The fact that some other person has functions, powers, and duties in respect of financial markets legislation does not limit or restrict the FMA's functions, powers, and duties in respect of that legislation.
- (4) Except as expressly provided otherwise in this or any other Act, the FMA must act independently in performing its statutory functions and duties, and exercising its statutory powers, under—
  - (a) this Act; and
  - (b) any other Act that expressly provides for the functions, powers, or duties of the FMA (other than the Crown Entities Act 2004).

Compare: 1978 No 103 s 10

Section 9(1)(a)(v): inserted, on 1 April 2014, by section 64(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 9(1)(c): amended, on 1 April 2014, by section 64(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### *Membership of board of FMA*

#### **10 Membership of board of FMA**

The board of the FMA consists of not fewer than 5, and not more than 9, members.

Compare: 1978 No 103 s 11(1)

#### **11 Associate members**

- (1) The Minister may appoint any person to be an associate member of the board of the FMA after consulting the chairperson.
- (2) The Minister may appoint no more than 5 associate members.
- (3) Subsection (1) applies despite section 28(1)(b) of the Crown Entities Act 2004.

- (4) An associate member may be appointed only in relation to a matter or a class of matters to be specified in the member's notice of appointment, and for the period, not exceeding 5 years, that is specified in that instrument.
- (5) An associate member may not be appointed as chairperson, deputy chairperson, or a temporary deputy chairperson under clause 5 of Schedule 5 of the Crown Entities Act 2004.

Compare: 1986 No 5 s 11(1)–(2), (6)

## **12 Associate member treated as member of board**

- (1) An associate member must be treated as being a member of the board of the FMA for the purposes of the performance or exercise of any function, duty, or power of a member of the board of the FMA under this Act or any other enactment.
- (2) Despite subsection (1), an associate member may attend and vote only at a meeting of the FMA relating to the matter or class of matters specified in that member's notice of appointment (including a meeting relating to matters incidental to the matter or class of matters so specified).
- (3) Except where section 11, this section, or the context otherwise requires, a reference in this Act or in any other enactment to a member of the FMA must be construed as including a reference to an associate member.

Compare: 1986 No 5 s 11(3), (4)

## **13 Removal of associate members**

- (1) The Minister may remove any associate member from office on the same grounds and in the same manner as the Governor-General may remove a member under section 39 of the Crown Entities Act 2004.
- (2) Subsection (1) applies despite section 39(1) of the Crown Entities Act 2004.

Compare: 1986 No 5 s 13(2), (3)

### *Provisions relating to divisions*

## **14 FMA may act by divisions**

- (1) The FMA or chairperson may determine that the powers of the FMA in relation to any matter or class of matters may be exercised by separate divisions of the FMA.
- (2) The FMA or chairperson may revoke or amend a determination made under subsection (1).
- (3) Every determination (or revocation or amendment of a determination) must be recorded in writing and signed by 3 members or the chairperson.
- (4) The powers in this section are an exception to clause 14 of Schedule 5 of the Crown Entities Act 2004.

- (5) This section does not limit the power of the board of the FMA to delegate any of the functions or powers of the FMA or the board under section 73 of the Crown Entities Act 2004.

Compare: 1978 No 103 s 14B

### **15 Membership, chairperson, meetings, and resolutions of division**

- (1) Each division consists of the members who are assigned to it for the time being by the FMA or chairperson.
- (2) Each division must have at least 3 members.
- (3) If the members assigned to a division do not include the chairperson, the FMA or chairperson must nominate 1 of those members as chairperson of the division.

Compare: 1978 No 103 s 14C

### **16 Powers of division**

- (1) For the purposes of determining any matter or class of matters specified in a determination under section 14,—
- (a) the FMA consists of the division of the FMA specified in the determination; and
- (b) the powers of that division are not affected by any changes or vacancies in its membership.
- (2) A division of the FMA may exercise powers of the FMA even though another division of the FMA is exercising powers of the FMA at the same time.

Compare: 1978 No 103 s 14D

### *Provisions relating to meetings of FMA*

### **17 Quorum for meetings of FMA**

- (1) At any meeting of the FMA, the quorum necessary for the transaction of business is 3 members.
- (2) This section and section 18 apply despite clause 9(1) of Schedule 5 of the Crown Entities Act 2004.

Compare: 1978 No 103 s 15(5), (6)

### **18 Completion of proceedings where member unable to attend meeting**

- (1) This section applies if—
- (a) a meeting of the FMA with 3 or more members commences any proceeding, inquiry, investigation, or the transaction of other business; and
- (b) the number of those members able to attend any subsequent meeting is reduced to 2 as a result of illness, accident, or other unavoidable cause, or the expiration of a member's term, or the resignation or removal from office of a member.

- (2) Despite section 17(1), the remaining 2 members of the FMA constitute a quorum for the purposes of completing the proceeding, inquiry, investigation, or transaction of business.
- (3) At a meeting of the FMA at which those 2 members are present, each of those members has a deliberative vote and, in the event of an equality of votes, the presiding member has a casting vote.
- (4) This section applies whether or not a division of the FMA is acting.

Compare: 1978 No 103 s 15A

#### **19 Assent to resolution without meeting**

- (1) A resolution in writing signed, or assented to in writing (whether sent by post, delivery, or electronic communication), by 3 members of the FMA is as valid and effectual as if it had been passed at a meeting of the FMA duly called and constituted.
- (2) This section applies despite clause 13(1) of Schedule 5 of the Crown Entities Act 2004.

Compare: 1978 No 103 s 16

#### *Miscellaneous matters*

#### **20 Minister may request that FMA inquire and report**

The Minister may, by notice to the FMA, request that the FMA inquire into, and report on, any matter relating to the financial markets, financial markets participants, or other persons engaged in conduct relating to those markets.

#### **21 Provisions relating to Government Superannuation Fund**

- (1) Despite anything in this Act, any person who, immediately before becoming a member or an employee of the FMA, is a contributor to the Government Superannuation Fund under Part 2 of the Government Superannuation Fund Act 1956 must be treated, for the purposes of that Act, as being employed in the Government service so long as he or she continues to be a member or an employee of the FMA.
- (2) The Government Superannuation Fund Act 1956 applies to a person referred to in subsection (1) in all respects as if his or her service as a member or an employee of the FMA were Government service.
- (3) Nothing in this section entitles any person referred to in subsection (1) to become a contributor to the Government Superannuation Fund after he or she has once ceased to be a contributor.
- (4) Subsection (3) is subject to the Government Superannuation Fund Act 1956.
- (5) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with this section, to a person who is in the service of the FMA (whether as a member or an employee) and who is a contributor to the Govern-

ment Superannuation Fund, **controlling authority**, in relation to the person, means the FMA.

Compare: 1978 No 103 s 22(2)–(4)

## **22 Protection from liability for FMA and members and employees**

- (1) The FMA is not liable for anything it may do or fail to do in the course of the performance or exercise or intended performance or exercise of its functions, powers, or duties, unless it is shown that it acted in bad faith or without reasonable care.
- (2) No member or employee of the FMA, nor any delegate of the FMA, is liable for anything that person may do or say or fail to do or say in the course of the operations of the FMA, unless it is shown that the person acted in bad faith.
- (3) Nothing in subsections (1) and (2) applies in respect of proceedings for—
  - (a) an offence against section 78, 78AA(1), 78A(1), 105, 105A, or 105B of the Crimes Act 1961; or
  - (b) the offence of conspiring to commit an offence against any of those sections of the Crimes Act 1961; or
  - (c) the offence of attempting to commit an offence against any of those sections of the Crimes Act 1961.
- (4) Sections 122 to 126 of the Crown Entities Act 2004 apply as if the conduct for which a person may be indemnified or insured under those sections were conduct that is covered by the protection from liability in this section.
- (5) This section contains an exception to section 121 of the Crown Entities Act 2004.
- (6) This section is subject to sections 165 to 168 of the Search and Surveillance Act 2012 (which provide for immunities in relation to orders and warrants, and entry, search, and surveillance powers).

Compare: 1978 No 103 s 28(1)–(5B)

Section 22(3)(a): amended, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 22(6): amended, on 1 October 2012, by section 245(2) of the Search and Surveillance Act 2012 (2012 No 24).

## **23 FMA's warnings, reports, guidelines, or comments protected by qualified privilege**

For the purposes of clause 3 of Part 2 of Schedule 1 of the Defamation Act 1992, any warning, report, guideline, or comment issued or made by the FMA in the course of the performance or intended performance of its functions must be treated as an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.

Compare: 1978 No 103 s 28(7); 1986 No 5 s 106(10)

**24 Evidence of orders and decisions of FMA**

In any proceeding under this Act or any other enactment, a certificate purporting to be signed by the chairperson and certifying that an order or a decision described in, or a copy of which is attached to, the certificate was made by the FMA on a date specified in the certificate is sufficient evidence, until the contrary is proved, that the order or decision was so made by the FMA.

Compare: 1978 No 103 s 29

**Part 3****General information-gathering and enforcement powers****Subpart 1—General information-gathering powers***Power to obtain information, documents, and evidence***25 FMA may require person to supply information, produce documents, or give evidence**

- (1) If the FMA considers it necessary or desirable for the purposes of performing or exercising its functions, powers, or duties under this Act or any provision of the financial markets legislation, the FMA may, by written notice served on any person, require the person—
  - (a) to supply to the FMA, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or
  - (b) to produce to the FMA, or to a person specified in the notice acting on its behalf in accordance with the notice, any document or class of documents specified in the notice (within the time and in the manner specified in the notice); or
  - (c) if necessary, to reproduce, or assist in reproducing, in usable form, information recorded or stored in any document or class of documents specified in the notice (within the time and in the manner specified in the notice); or
  - (d) to appear before the FMA, or a specified person, at a time and place specified in the notice to give evidence, either orally or in writing, and produce any document or class of documents specified in the notice.
- (2) The FMA may also exercise its powers under subsection (1) for the purposes of complying with the request of an overseas regulator under section 31 or otherwise co-operating with an overseas regulator.
- (3) Information supplied in response to a notice under subsection (1)(a) must be—
  - (a) given in writing; and
  - (b) signed in the manner specified in the notice.



- (4) If a document is produced in response to a notice under subsection (1), the FMA, or the person to whom the document is produced, may—
  - (a) inspect and make records of that document; and
  - (b) take copies of the document or extracts from the document.
- (5) In this section and sections 26 and 27, **specified person** means—
  - (a) a member or an employee of the FMA; or
  - (b) another person to whom the board of the FMA has delegated the power to receive the relevant evidence (being a person that the FMA is satisfied is suitably qualified or trained, or is a member of a class of persons who are suitably qualified or trained, to exercise the power).
- (6) Subpart 5 contains miscellaneous provisions relating to the powers in this subpart.

Compare: 1978 No 103 ss 67, 68, 69D; 1986 No 5 s 98

## **26 Powers of FMA to receive evidence**

- (1) The FMA may receive evidence through a specified person, or any 2 or more specified persons.
- (2) The FMA may receive in evidence, whether admissible in a court of law or not, any statement, document, information, or matter that,—
  - (a) in the opinion of the FMA or the specified person who is receiving it, may assist the FMA in dealing effectively with any matter before it; or
  - (b) the FMA may receive under section 31.

Compare: 1978 No 103 ss 69B(1), 69BA

## **27 How evidence may be given**

- (1) The FMA may receive evidence—
  - (a) given on oath:
  - (b) not given on oath:
  - (c) if the specified person who is receiving the evidence permits it, given by a written statement:
  - (d) if the specified person who is receiving the evidence permits it, given by a written statement verified on oath:
  - (e) given by audio-visual communication, if the FMA and the person giving the evidence agree.
- (2) A specified person may administer an oath for the purpose of a person giving evidence on oath.

Compare: 1978 No 103 s 69C; 1986 No 5 s 99(2)–(4)

**28 Witnesses' expenses**

- (1) If a person has appeared as a witness (whether or not under a notice under section 25), the FMA may, if it thinks fit, order any sum to be paid to that witness for his or her expenses.
- (2) That sum must not exceed the amount that would be payable to the witness if his or her attendance had been as a witness for the Crown in a criminal case in accordance with regulations for the time being in force for the payment of witnesses for the Crown in criminal cases.

Compare: 1978 No 103 s 69E; 1986 No 5 s 99(5)

*Power to enter and search place, vehicle, or other thing***29 Power to enter and search place, vehicle, or other thing**

- (1) The FMA may authorise a specified person to enter and search a place, vehicle, or other thing for the purpose of ascertaining whether a person has engaged in or is engaging in conduct that constitutes or may constitute a contravention, or being involved in a contravention, of any provision of the financial markets legislation if the FMA is satisfied that there are reasonable grounds—
  - (a) to suspect that person has engaged in or is engaging in conduct that constitutes or may constitute such a contravention or involvement; and
  - (b) to believe that the search will find evidential material in or on or part of the place, vehicle, or thing.
- (2) A specified person authorised under subsection (1) may enter and search the place, vehicle, or other thing if—
  - (a) the occupier of the place consents or the person in charge of the vehicle or thing consents (as the case may be); or
  - (b) the specified person obtains a warrant under subsection (3).
- (3) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) may issue a search warrant in relation to a place, vehicle, or thing, on an application made in the manner provided by subpart 3 of Part 4 of that Act by a specified person authorised under subsection (1), if the issuing officer is satisfied that there are reasonable grounds to—
  - (a) suspect that a person has engaged in or is engaging in conduct that constitutes or may constitute a contravention, or being involved in a contravention, of any provision of the financial markets legislation; and
  - (b) believe that the search will find evidential material in or on or part of the place, vehicle, or thing.
- (4) In this section,—  
**specified person** means—
  - (a) an employee of the FMA; or

- (b) any other person that the FMA is satisfied is suitably qualified or trained, or is a member of a class of persons who are suitably qualified or trained, to act under this section
- (5) The provisions of Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) apply, with any necessary modifications.
  - Section 29(1): amended, on 1 April 2014, by section 65(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).
  - Section 29(1)(a): amended, on 1 April 2014, by section 65(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).
  - Section 29(3): amended, on 1 October 2012, by section 245(3)(a) of the Search and Surveillance Act 2012 (2012 No 24).
  - Section 29(3): amended, on 1 October 2012, by section 245(3)(b) of the Search and Surveillance Act 2012 (2012 No 24).
  - Section 29(3)(a): amended, on 1 April 2014, by section 65(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).
  - Section 29(3)(b): amended, on 1 October 2012, by section 245(4) of the Search and Surveillance Act 2012 (2012 No 24).
  - Section 29(4): amended, on 1 October 2012, by section 245(5) of the Search and Surveillance Act 2012 (2012 No 24).
  - Section 29(4) **evidential material**: repealed, on 1 October 2012, by section 245(6) of the Search and Surveillance Act 2012 (2012 No 24).
  - Section 29(4) **thing**: repealed, on 1 October 2012, by section 245(6) of the Search and Surveillance Act 2012 (2012 No 24).
  - Section 29(4) **vehicle**: repealed, on 1 October 2012, by section 245(6) of the Search and Surveillance Act 2012 (2012 No 24).
  - Section 29(5): replaced, on 1 October 2012, by section 245(7) of the Search and Surveillance Act 2012 (2012 No 24).

## Subpart 2—Sharing information and documents

### *Power to share information and documents with other law enforcement or regulatory agencies and overseas regulators*

#### **30 Sharing of information and documents with law enforcement or regulatory agencies and overseas regulators**

- (1) The FMA may provide to a law enforcement or regulatory agency or an overseas regulator any information, or a copy of any document, that the FMA—
  - (a) holds in relation to the performance or exercise of the FMA's functions, powers, or duties under this Act or any other enactment; and
  - (b) considers may assist, as the case may be,—
    - (i) the law enforcement or regulatory agency in the performance or exercise of the law enforcement or regulatory agency's functions, powers, or duties under any enactment; or
    - (ii) the overseas regulator in the performance or exercise of the overseas regulator's functions, powers, or duties under foreign law.

- (2) However, the FMA may provide information, or a copy of a document, to an overseas regulator under this section only if the FMA is satisfied that appropriate protections are or will be in place for the purpose of maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993).
- (3) The FMA may use any information, or a copy of any document, provided to it by a law enforcement or regulatory agency under any enactment, or by an overseas regulator, in the FMA's performance or exercise of its functions, powers, or duties under this Act or any other enactment.
- (4) This section applies despite anything to the contrary in any contract, deed, or document.

Compare: 1978 No 103 ss 17A, 17B

### *Power to act on requests of overseas regulators*

#### **31 Power of FMA to act on requests of overseas regulators**

- (1) An overseas regulator may request the FMA to inquire into any matter related to the functions of that overseas regulator.
- (2) The FMA may obtain information, documents, or evidence that, in the FMA's opinion, is likely to assist the FMA in complying with that request by—
  - (a) exercising its powers under section 25 or authorising a person under section 52 to exercise powers under section 25(1)(a) to (c); or
  - (b) exercising its powers to receive evidence.
- (3) If the powers under section 25 are exercised for the purposes of complying with that request, or otherwise co-operating with an overseas regulator, that fact must be specified in the notice that is served under section 25.
- (4) The FMA may transmit the information, documents, or evidence obtained by it to the overseas regulator in the manner that the FMA thinks fit.

Compare: 1978 No 103 s 69F

#### **32 FMA's consideration of requests**

- (1) The FMA may comply with a request under section 31 only if the FMA is satisfied that—
  - (a) compliance will not substantially affect the performance of its other functions; and
  - (b) appropriate protections are or will be in place for the purpose of maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993); and
  - (c) it is appropriate to do so after taking into account any matters the FMA thinks relevant.

- (2) The matters the FMA may take into account under subsection (1) include, without limitation,—
- (a) whether the FMA is likely to be able to obtain the requested information, documents, or evidence:
  - (b) the cost to the FMA of complying with the request:
  - (c) whether the overseas regulator could more conveniently have the request satisfied by another source:
  - (d) the extent to which the functions of the overseas regulator correspond with the functions of the FMA:
  - (e) whether the overseas regulator would be likely to comply with a similar request made by the FMA and whether any arrangement with the overseas regulator to that effect exists:
  - (f) whether, in the FMA's opinion, it would be more appropriate for the request to be dealt with under the Mutual Assistance in Criminal Matters Act 1992.

Compare: 1978 No 103 s 69G

### *Conditions*

#### **33 Conditions that may be imposed on providing information, documents, or evidence to other agencies or regulators**

- (1) The FMA may impose any conditions in relation to providing information, documents, or evidence to a law enforcement or regulatory agency or an overseas regulator (whether in compliance with a request or otherwise).
- (2) The FMA must, in considering what conditions to impose, have regard to whether conditions are necessary or desirable in order to protect the privacy of any individual.
- (3) Conditions imposed under subsection (1) may include, without limitation, conditions relating to—
  - (a) maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993):
  - (b) the storing of, the use of, or access to anything provided:
  - (c) the copying, returning, or disposing of copies of documents provided:
  - (d) payment of the costs incurred by the FMA in providing anything or in generally complying with a request.

Compare: 1978 No 103 s 69H

### Subpart 3—FMA may exercise person's right of action

#### 34 FMA may exercise person's right of action

- (1) If, as a result of an inquiry or investigation carried out by the FMA, the FMA considers that it is in the public interest for it to do so, the FMA may, in accordance with this subpart,—
  - (a) exercise the right of action that a person (**person A**) has against a person who is or has been a financial markets participant by commencing and controlling specified proceedings against the person who is or has been a financial markets participant; or
  - (b) take over specified proceedings that have been commenced by a person (**person A**) against a person who is or has been a financial markets participant for the purpose of continuing the proceedings.
- (2) In this subpart, **specified proceedings** means any of the following kinds of proceedings:
  - (a) proceedings under, or in respect of, any financial markets legislation (other than criminal proceedings);
  - (b) proceedings seeking damages or other relief for a contravention, an involvement in a contravention, fraud, negligence, breach of duty, or other misconduct, committed in connection with a matter to which the inquiry or investigation referred to in subsection (1) related.
- (3) In exercising a power under this section, the FMA must act in the public interest, but (subject to that duty) may take into account the interests of—
  - (a) person A; and
  - (b) the shareholders, members, and creditors of person A; and
  - (c) if person A is an issuer, any product holders of financial products issued by person A.
- (4) *[Repealed]*
- (5) The FMA must, when considering whether exercising a power under this section is in the public interest, have regard to—
  - (a) its main objective under section 8; and
  - (b) the likely effect of the proceedings on the future conduct of financial markets participants in connection with the financial markets; and
  - (c) whether exercising the powers is an efficient and effective use of the FMA's resources; and
  - (d) the extent to which the proceedings involve matters of general commercial significance or importance to the financial markets; and
  - (e) the likelihood of person A commencing the proceedings (if those proceedings have not yet been commenced) and diligently continuing the proceedings; and

- (f) any other matters it considers relevant.

Section 34(2)(b): amended, on 1 April 2014, by section 66(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 34(3)(c): replaced, on 1 December 2014, by section 66(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 34(4): repealed, on 1 December 2014, by section 66(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### **35 Requirements for FMA exercising person's right of action**

- (1) The FMA may commence proceedings under section 34(1)(a) without the leave of the High Court only if—
  - (a) person A has not yet commenced proceedings in respect of the matter; and
  - (b) the FMA serves written notice on person A of its intention to commence proceedings; and
  - (c) within 30 working days of the FMA giving that notice, person A does not—
    - (i) commence proceedings; or
    - (ii) give written notice to the FMA that it objects to the FMA commencing the proceedings.
- (2) However, the FMA may commence proceedings under section 34(1)(a) before the 30-working-day period referred to in subsection (1)(c) expires (without the leave of the High Court) if person A gives written notice to the FMA that he, she, or it consents to the FMA commencing the proceedings.
- (3) The FMA may exercise a power under section 34(1)(b) only if—
  - (a) person A gives written notice to the FMA that he, she, or it consents to the FMA taking over the proceedings (in which case the High Court may, on an application from the FMA, make an order under section 38 to facilitate the takeover); or
  - (b) the leave of the High Court is given under section 36.

### **36 High Court may grant leave in certain circumstances**

- (1) The FMA may, with the leave of the High Court,—
  - (a) commence proceedings under section 34(1)(a) if person A objects under section 35(1)(c)(ii); or
  - (b) take over proceedings under section 34(1)(b) if proceedings have been commenced by person A.
- (2) The High Court must give leave if it is satisfied that it is in the public interest for—
  - (a) the FMA to exercise a power under section 34(1)(a) or (b) (as the case may be); and

- (b) the FMA, rather than person A, to control the conduct of the proceedings.
- (3) Despite subsections (1) and (2), if person A is an individual, this section does not apply (and, accordingly, the High Court may not give leave under this section).
- (4) The High Court must, when considering whether to give leave, have regard to—
  - (a) whether person A intends to commence or diligently continue the proceedings (as the case may be); and
  - (b) the interests of the persons referred to in section 34(3); and
  - (c) any other matters it considers relevant.

### **37 Procedural requirements for leave to exercise person's right of action**

- (1) The FMA must serve notice of an application for leave under section 36 on person A (unless the High Court orders otherwise).
- (2) In relation to that application for leave, person A—
  - (a) may appear and be heard; and
  - (b) must, if person A appears, inform the High Court whether person A intends to commence or continue proceedings.

### **38 Powers of High Court for proceedings exercising person's right of action**

- (1) The High Court may, on the application of the FMA, make any order it thinks fit in relation to proceedings commenced or taken over, or to be commenced or taken over, under this subpart, including (without limitation) an order—
  - (a) authorising the FMA to control the conduct of the proceedings;
  - (b) giving directions for the conduct of the proceedings;
  - (c) requiring person A or the directors of person A to provide information or assistance in relation to the proceedings;
  - (d) directing that any amount ordered to be paid by a defendant in the proceedings must be applied first to pay, in whole or in part, the FMA's actual costs in commencing or taking over the proceedings under this subpart and in conducting those proceedings;
  - (e) subject to paragraph (d), directing that any amount ordered to be paid by a defendant in the proceedings must be paid, in whole or in part, to any persons referred to in section 34(3)(b) or (c) instead of to person A.
- (2) If the FMA proposes to exercise a power under this subpart, the High Court may grant interim relief on the application of the FMA, whether or not the FMA has given the required notice, obtained leave, or satisfied any other requirements for its exercise of a power under this subpart.



- (3) The High Court may grant that interim relief on the conditions it thinks fit, including (without limitation) conditions as to the giving of notice or making of an application for leave.

### **39 Representative actions**

- (1) If the FMA commences or takes over proceedings under this subpart in respect of person A, and other persons have the same or substantially the same interest in relation to the subject-matter of the proceedings as person A, the High Court may appoint the FMA to represent all or some of the persons having the same or substantially the same interest.
- (2) The High Court may, for the purpose referred to in subsection (1), make any order that it thinks fit, including (without limitation) an order—
  - (a) as to the control and conduct of the proceedings:
  - (b) as to the costs of the proceedings:
  - (c) directing the distribution of any amount ordered to be paid by a defendant in the proceedings among the persons represented.

### **40 FMA must consult person A**

- (1) The FMA must, after commencing or taking over proceedings under this subpart in respect of person A, consult with person A as to the conduct of those proceedings—
  - (a) as the FMA considers appropriate; or
  - (b) as otherwise directed by the High Court.
- (2) However, the FMA is not required to consult with person A, and the High Court must not direct the FMA to do so, if the FMA considers that consultation would materially prejudice the FMA in its ability to efficiently or effectively conduct the proceedings.

### **41 Proceedings must not be settled, compromised, or discontinued without approval**

No proceedings commenced or taken over under this subpart may be settled, compromised, or discontinued without the approval of the High Court.

### **42 Special limitation provision**

If the FMA applies for the leave of the High Court to commence proceedings under section 34(1)(a), the date on which that application for leave is filed must, for the purposes of—

- (a) the Limitation Act 2010, be treated as being the date on which the claim is filed in relation to those proceedings:
- (b) the Limitation Act 1950 (as applied under section 59 of the Limitation Act 2010), be treated as being the date on which the proceedings are brought.

**43 Transitional provisions**

- (1) The FMA may exercise a power under section 34 regardless of whether the date on which the relevant claim accrued, or the date of the act or omission on which the relevant claim is based, was before or after the commencement of this section.
- (2) In subsection (1), **claim** has the same meaning as in section 4 of the Limitation Act 2010.
- (3) To avoid doubt, if a person ceased to be a financial markets participant before the commencement of this section, the person must still be treated as being a person who has been a financial markets participant as referred to in section 34.
- (4) The FMA may exercise the power to take over specified proceedings under section 34(1)(b) regardless of whether those proceedings were commenced before or after the commencement of this section.

**Subpart 4—Other powers***Power to make confidentiality orders***44 Power to make confidentiality orders**

- (1) The FMA may, on its own initiative or on the application of any person, make an order prohibiting the publication or communication of any information, document, or evidence that is provided or obtained in connection with any inquiry, investigation, or other proceeding of the FMA under this Act or any other enactment.
- (2) The FMA may make an order under subsection (1) on the terms and conditions (if any) that it thinks fit.
- (3) An order under subsection (1) may be expressed to have effect—
  - (a) from the commencement of any inquiry, investigation, or other proceeding of the FMA to the end of that inquiry, investigation, or proceeding;  
or
  - (b) for any shorter period.
- (4) At the end of the inquiry, investigation, or proceeding, the Official Information Act 1982 and the Privacy Act 1993 apply to any information or document or evidence that was the subject of the order under subsection (1).

Compare: 1978 No 103 s 69N

**45 Publication or disclosure with FMA's consent**

- (1) An order under section 44 does not prohibit the publication or disclosure of any information, document, or evidence by a person if the publication or disclosure is with the FMA's consent.
- (2) For the purposes of subsection (1), the FMA's consent must not be unreasonably withheld.

- (3) It is reasonable for the FMA to withhold its consent if it considers that the publication or disclosure of any information, document, or evidence would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of contraventions of the financial markets legislation.
- (4) Subsection (3) does not limit the circumstances in which it may be reasonable for the FMA to withhold its consent.

*Power to accept undertakings*

**46 FMA may accept undertakings**

- (1) The FMA may accept a written undertaking given by, or on behalf of, a person in connection with a matter in relation to which the FMA is performing or exercising any of its functions, powers, or duties for the purposes of this Act or any other enactment.
- (1A) An undertaking may be given in connection with the FMA making a statement under section 9(1)(a)(v) (but this subsection does not limit subsection (1)).
- (2) The person may withdraw or vary the undertaking with the consent of the FMA.

Compare: 1978 No 103 s 69J

Section 46(1A): inserted, on 1 April 2014, by section 67 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**46A Undertaking may include requirements as to compensation or penalties**

- (1) An undertaking under section 46 may include—
  - (a) an undertaking to pay compensation to any person or otherwise take action to avoid, remedy, or mitigate any actual or likely adverse effects arising from a contravention, involvement in a contravention, or possible contravention, or involvement in a contravention of any provision of the financial markets legislation;
  - (b) an undertaking to pay to the FMA an amount in lieu of a pecuniary penalty.
- (2) The FMA must ensure that each amount paid under subsection (1)(b) is paid into a Crown Bank Account (after deducting the FMA's actual costs incurred in connection with the matter).
- (3) If an undertaking referred to in subsection (1)(b) is given, the FMA must give notice of that undertaking on its Internet site (whether or not it gives notification of other undertakings given in relation to the same matter).
- (4) The notice under subsection (3) must include—
  - (a) a statement of the amount that has been undertaken to be paid; and
  - (b) a brief description of the circumstances and nature of the alleged contravention to which the undertaking relates.
- (5) This section does not limit section 46.

Section 46A: inserted, on 1 April 2014, by section 68 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

#### **47 Enforcement of undertakings**

- (1) If the FMA considers that a person who has given an undertaking under section 46 has breached a term of that undertaking, the FMA may apply to the High Court for an order under subsection (2).
- (2) The High Court may make any of the following orders if it is satisfied that the person has breached a term of the undertaking:
  - (a) an order directing the person to comply with that term:
  - (b) an order directing the person to pay to the Crown an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach:
  - (c) any order that the court thinks appropriate directing the person to compensate any other person who has suffered loss, injury, or damage as a result of the breach:
  - (d) an order for any consequential relief that the court thinks appropriate.
- (3) The High Court must, before making an order under subsection (2), take into account—
  - (a) the nature and extent of the breach of the term of the undertaking; and
  - (b) the nature and extent of any loss, injury, or damage suffered by a person as a result of the breach of the term of the undertaking; and
  - (c) the circumstances in which the breach of the term of the undertaking took place (including whether the breach was intentional, inadvertent, or caused by negligence); and
  - (d) any other matters that it considers relevant.

Compare: 1978 No 103 s 69K

#### *Power to state case for opinion of High Court*

#### **48 FMA may state case for opinion of High Court**

- (1) The FMA may, at any time, state a case for the opinion of the High Court on a question of law arising in a matter before it under this Act or any other enactment.
- (2) The High Court may order the removal into the Court of Appeal of a case stated for the opinion of the High Court under this section.
- (3) The High Court or the Court of Appeal, as the case may be, must hear and determine the question, and remit the case with its opinion to the FMA.

Compare: 1978 No 103 s 69O

*Power to appear and be heard and adduce evidence*

Heading: inserted, on 1 April 2014, by section 69 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**48A FMA may appear and be heard and adduce evidence**

- (1) The FMA is entitled to appear and be heard in any specified proceedings.
- (2) The FMA has the right to adduce evidence and the right to cross-examine witnesses if the FMA appears under this section, unless the specified proceedings are by way of appeal.
- (3) The rights referred to in this section apply whether or not the FMA was a party to the specified proceedings at any earlier stage in the proceedings.
- (4) In this section, **specified proceedings** means any of the following kinds of proceedings:
  - (a) civil or criminal proceedings under, or in respect of, any financial markets legislation:
  - (b) civil proceedings that, in connection with the offer, issue, transfer, supply, or use of financial products or financial services, seek damages or other relief for a contravention, involvement in a contravention, fraud, negligence, breach of duty, or other misconduct.

Section 48A: inserted, on 1 April 2014, by section 69 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

*Power to require warning to be disclosed*

**49 FMA may require its warning to be disclosed**

- (1) If the FMA has issued a warning about any matter relating to a relevant person, the FMA may, by written notice served on the relevant person, order the relevant person, or all or any associated persons of the relevant person, or both to do 1 or more of the following:
  - (a) prominently disclose a copy of the warning on 1 or more Internet sites maintained by or on behalf of the relevant person or any of those associated persons:
  - (b) ensure that every restricted communication of the kind that is specified in the order and that is distributed by or on behalf of the relevant person or any of those associated persons contains a copy of the warning in a prominent position or is accompanied by a copy of the warning:
  - (c) ensure that any disclosure document or other offer document of the kind that is specified in the order contains, or is amended to contain, a copy of the warning in a prominent position or is accompanied by a copy of the warning:
  - (d) ensure that any document of the kind that is specified in the order and that is required by any provision of the financial markets legislation to

- be given by the relevant person, or any of those associated persons, to another person contains, or is amended to contain, a copy of the warning in a prominent position or is accompanied by a copy of the warning.
- (2) The FMA may make an order under subsection (1) on the terms and conditions (if any) that it thinks fit.
- (3) If an order under subsection (1) extends to associated persons of the relevant person, the order may require—
- (a) all, or any specified class or classes, of the associated persons to comply with the order (including associated persons that may be incorporated or formed after the date of the order); and
  - (b) the relevant person to provide a copy of the order to all or any of those associated persons.
- (4) For the purpose of subsection (3), the order is not required to refer to the associated persons by name.
- (5) The FMA may exercise a power under subsection (1) only if—
- (a) the FMA has had regard to whether exercising the power contributes to its function of promoting the confident and informed participation of businesses, investors, and consumers in the financial markets; and
  - (b) the FMA gives the relevant person at least 3 working days' written notice of the following matters before the FMA exercises the power:
    - (i) that the FMA may make an order under subsection (1); and
    - (ii) the reasons why it is considering exercising that power; and
  - (c) the FMA gives the relevant person or the relevant person's representative an opportunity to make written submissions and to be heard on the matter within that notice period.
- (6) The FMA may—
- (a) vary an order made under subsection (1) in the same way as it may make the order:
  - (b) revoke an order made under subsection (1) if it is satisfied that it should not continue in force.
- (7) In this section and section 51,—
- (a) **relevant person** means—
    - (i) a person who is or has been a financial markets participant; or
    - (ii) a person who is or has engaged in conduct that involves dealings in financial products:
  - (b) **disclosure document**—
    - (i) has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013; and

- (ii) includes a register entry (within the meaning of that Act):
- (c) **offer document** means a document that contains or refers to an offer to acquire or dispose of financial products:
- (d) **offer, restricted communication, associated person, and distributed** have the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013.

Section 49(1)(b): replaced, on 1 April 2014, by section 70(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 49(1)(c): amended, on 1 December 2014, by section 70(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 49(7)(a)(ii): amended, on 1 December 2014, by section 70(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 49(7)(b): replaced, on 1 April 2014, by section 70(4) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 49(7)(c): amended, on 1 December 2014, by section 70(5) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 49(7)(d): replaced, on 1 April 2014, by section 70(6) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

## **50 FMA must give notice of orders**

- (1) If the FMA makes an order under section 49,—
  - (a) it must, immediately after exercising the power, give notice on its Internet site of—
    - (i) the reasons for making the order; and
    - (ii) the terms and conditions of the order (if any); and
    - (iii) any other information the FMA thinks relevant in the circumstances; and
  - (b) it may give public notice by any other means of the matters in paragraph (a); and
  - (c) it may notify any other person of the matters in paragraph (a).
- (2) If the FMA varies or revokes an order under section 49,—
  - (a) it must, immediately after exercising the power, give notice on its Internet site of—
    - (i) the reasons for the variation or revocation; and
    - (ii) the terms and conditions of the variation (if any); and
    - (iii) any other information the FMA thinks relevant in the circumstances; and
  - (b) it may give public notice by any other means of the matters in paragraph (a); and
  - (c) it may notify any other person of the matters in paragraph (a).

**51 Offence of failing to comply with order**

- (1) Every relevant person to whom an order under section 49 applies commits an offence if the relevant person refuses or fails, without reasonable excuse, to comply with the order.
- (2) If an order under section 49 applies to an associated person of a relevant person, the associated person commits an offence if the associated person—
  - (a) knew, or ought reasonably to have known, that the order applied to the associated person; and
  - (b) refuses or fails, without reasonable excuse, to comply with the order.
- (3) Every person who commits an offence against subsection (1) or (2) is liable on conviction to a fine not exceeding \$300,000.

Section 51(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**Subpart 5—Miscellaneous provisions relating to powers***FMA may authorise person to obtain information or documents***52 Power to authorise person to obtain information or documents**

- (1) The FMA may, in accordance with section 53, authorise any person to exercise any of the powers under section 25(1)(a) to (c) if exercising that power is for the purpose of—
  - (a) this Act or any Act listed in Schedule 1 or any enactment made under any of those Acts; or
  - (b) complying with the request of an overseas regulator under section 31 or otherwise co-operating with an overseas regulator.
- (2) An authorisation under subsection (1) may relate to a particular case, or a class or classes of cases, specified by the FMA.
- (3) For the purposes of subsection (1), a notice served under section 25(1)(a) to (c) may require the information or documents (as the case may be) to be supplied or produced to a person authorised under subsection (1) (rather than to the FMA).
- (4) The fact that any person authorised by the FMA exercises, or attempts to exercise, any of the powers in section 25(1)(a) to (c) is sufficient evidence that the exercise of the power has been authorised by the FMA unless there is evidence to the contrary.
- (5) Section 73 of the Crown Entities Act 2004 does not limit this section.

Compare: 1978 No 103 ss 67A, 68

**53 Requirements for persons authorised to obtain information or documents**

- (1) The FMA must not authorise a person under section 52 unless the FMA is satisfied that the person is suitably qualified or trained, or the person is a mem-



ber of a class of persons who are suitably qualified or trained, to exercise a power under section 25(1)(a) to (c).

- (2) A person authorised by the FMA to exercise a power under section 25(1)(a) to (c) must, if requested at the time of exercising the power, produce evidence of that person's authority to exercise the power.

Compare: 1978 No 103 s 68A

#### **54 Non-disclosure of information or documents from exercise of powers under section 25 except in certain circumstances**

- (1) A person authorised under section 52 must not publish or disclose to any other person any information or documents acquired in the course of exercising powers under section 25 except—
  - (a) to the FMA; or
  - (b) as directed by the FMA in accordance with section 59(3); or
  - (c) in accordance with the Official Information Act 1982 or the Privacy Act 1993.
- (2) A person authorised under section 52 who wilfully contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$200,000.

Section 54(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **55 Protection from liability for persons exercising powers**

Without limiting any other statutory protection from liability, no person is liable for any act done or omitted to be done by the person in the exercise or intended exercise of the person's powers under section 25 or 54 unless the person acts in bad faith.

Compare: 1978 No 103 s 68F

### *Privileges*

#### **56 Witnesses and counsel to have privileges of witnesses and counsel in court**

- (1) Every person has the same privileges in relation to providing information and documents to, and answering questions before, the FMA, a member or an employee or a delegate of the FMA, or a person authorised under section 52, as witnesses have in proceedings before a court.
- (2) If a power under section 25 or the FMA's power to receive evidence is exercised for the purposes of complying with a request from an overseas regulator under section 31 or otherwise co-operating with an overseas regulator, the person in respect of whom the power is exercised has the privilege against self-incrimination referred to in section 60 of the Evidence Act 2006 applied with all necessary modifications as if the reference to an offence under New Zealand law were a reference to an offence under foreign law.

- (3) Subsection (2) does not limit any other privilege that the person may have.
- (4) Every person appearing as counsel before the FMA, or a member or an employee or a delegate of the FMA, has the same privileges as counsel have in proceedings before a court.

Compare: 1978 No 103 s 69S

*Effect of proceedings on exercise of powers*

**57 Effect of proceedings**

- (1) If a person commences a proceeding in any court in respect of the exercise of any powers conferred by section 25, until a final decision in relation to the proceeding is given,—
  - (a) the powers may be, or may continue to be, exercised as if the proceeding had not been commenced; and
  - (b) no person is excused from fulfilling his or her obligations under that section by reason of the proceeding.
- (2) However, an interim order may be made by the High Court overriding the effect of subsection (1), but only if the High Court is satisfied that—
  - (a) the applicant has established a prima facie case that the exercise of the power in question is unlawful; and
  - (b) the applicant would suffer substantial harm from the exercise or discharge of the power or obligation; and
  - (c) if the power or obligation is exercised or discharged before a final decision is made in the proceeding, none of the remedies specified in subsection (3), or any combination of those remedies, could subsequently provide an adequate remedy for that harm; and
  - (d) the terms of that order do not unduly hinder or restrict the FMA in performing or exercising its functions, powers, or duties under this Act or any provision of the financial markets legislation.
- (3) The remedies are as follows:
  - (a) any remedy that the High Court may grant in making a final decision in relation to the proceeding (for example, a declaration);
  - (b) any damages that the applicant may be able to claim in concurrent or subsequent proceedings;
  - (c) any opportunity that the applicant may have, as defendant in a proceeding, to challenge the admissibility of any evidence obtained as a result of the exercise or discharge of the power or obligation.

Compare: 1978 No 103 s 68I

**58 Effect of final decision that exercise of powers under section 25 unlawful**

- (1) This section applies in any case where it is declared, in a final decision given in any proceedings in respect of the exercise of any powers conferred by section 25, that the exercise of any powers conferred by that section is unlawful.
- (2) If this section applies, to the extent to which the exercise of those powers is declared unlawful, the FMA must ensure that, immediately after the decision of the court is given,—
  - (a) any information obtained as a consequence of the exercise of powers declared to be unlawful and any record of that information are destroyed; and
  - (b) any documents, or extracts from documents, obtained as a consequence of the exercise of powers declared to be unlawful are returned to the person previously having possession of them, or previously having them under his or her control, and any copies of those documents or extracts are destroyed; and
  - (c) any information derived from or based on such information, documents, or extracts is destroyed.
- (3) However, the court may, in the court's discretion, order that any information, record, or copy of any document or extract from a document may, instead of being destroyed, be retained by the FMA subject to any terms and conditions that the court imposes.
- (4) No information, and no documents or extracts from documents, obtained as a consequence of the exercise of any powers declared to be unlawful, and no record of any such information or document,—
  - (a) are admissible as evidence in any civil proceedings unless the court hearing the proceedings in which the evidence is sought to be adduced is satisfied that there was no unfairness in obtaining the evidence;
  - (b) are admissible as evidence in any criminal proceedings if the evidence is excluded under section 30 of the Evidence Act 2006;
  - (c) may otherwise be used in connection with the exercise of any power conferred by this Act or any provision of the financial markets legislation unless the court that declared the exercise of the powers to be unlawful is satisfied that there was no unfairness in obtaining the evidence.

*Confidentiality*

**59 Confidentiality of information and documents**

- (1) This section applies to the following information and documents:
  - (a) information and documents supplied or disclosed to, or obtained by, the FMA under this Act or any financial markets legislation:

- (b) information and documents supplied or disclosed to, or obtained by, a person authorised under section 52 (an **authorised person**) under subpart 1;
  - (c) information derived from information and documents referred to in paragraph (a) or (b).
- (2) However, this section does not apply to information and documents to which section 23 of the Corporations (Investigation and Management) Act 1989 applies.
- (3) The FMA must not publish or disclose, or direct an authorised person to publish or disclose, any information or document to which this section applies unless—
  - (a) the information or document is available to the public under any enactment or is otherwise publicly available; or
  - (b) the information is in a statistical or summary form; or
  - (c) the publication or disclosure of the information or document is for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed on the FMA by this Act or any other enactment; or
  - (d) the publication or disclosure of the information or document is to a law enforcement or regulatory agency under subpart 2; or
  - (e) the publication or disclosure of the information or document is to an overseas regulator under subpart 2 or otherwise for the purpose of assisting the FMA to co-operate with an overseas regulator; or
  - (f) the publication or disclosure of the information or document is to a person who the FMA is satisfied has a proper interest in receiving the information or document; or
  - (g) the publication or disclosure of the information or document is with the consent of the person to whom the information or document relates or of the person to whom the information or document is confidential.
- (4) The FMA must not publish or disclose, or direct an authorised person to publish or disclose, any information or document under subsection (3)(f) unless the FMA is satisfied that appropriate protections are or will be in place for the purpose of maintaining the confidentiality of the information or document (in particular, information that is personal information within the meaning of the Privacy Act 1993).

**60 Conditions relating to publication or disclosure of information or documents**

- (1) The FMA may, by written notice to a person to whom any information or document is published or disclosed under section 59(3)(c), (f), or (g), impose any

conditions in relation to the publication, disclosure, or use of the information or document by the person.

- (2) The FMA must, in considering what conditions to impose, have regard to whether conditions are necessary or desirable in order to protect the privacy of any individual.
- (3) Conditions imposed under subsection (1) may include, without limitation, conditions relating to—
  - (a) maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993);
  - (b) the storing of, the use of, or access to anything provided;
  - (c) the copying, returning, or disposing of copies of documents provided.
- (4) A person who refuses or fails, without reasonable excuse, to comply with any conditions commits an offence and is liable on conviction to a fine not exceeding \$200,000.

Section 60(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### *Other offences*

#### **61 Criminal liability for obstructing exercise of powers**

- (1) Every person commits an offence who—
  - (a) refuses or fails, without reasonable excuse, to comply with a notice under section 25; or
  - (b) in purported compliance with a notice under section 25, supplies information, or produces a document, or gives evidence, knowing it to be false or misleading; or
  - (c) resists, obstructs, or delays a person acting under a warrant issued under section 29; or
  - (d) having been required under a notice under section 25(1)(d) to appear before the FMA or a specified person referred to in that paragraph, for the purposes of any matter, without reasonable excuse—
    - (i) refuses or fails to appear; or
    - (ii) refuses to take an oath or affirmation as a witness; or
    - (iii) refuses to answer any question; or
    - (iv) refuses or fails to provide any document or information that the person is required to provide; or
  - (e) deceives or attempts to deceive or knowingly misleads the FMA or a specified person referred to in section 25(5) in providing evidence to either of them; or

- (f) wilfully acts in contravention of any order made by the FMA under section 44.
- (2) A body corporate commits an offence under subsection (1)(d) if it is required to appear under section 25(1)(d) and, without reasonable excuse, an authorised representative on its behalf refuses or fails to appear, refuses to take an oath or affirmation as a witness, refuses to answer any question, or refuses or fails to provide any document or information that the body corporate is required to provide.
- (3) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$300,000.

Compare: 1978 No 103 s 59A

Section 61(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### *Other miscellaneous provisions*

## **62 Notices**

- (1) A notice served by the FMA for the purposes of this Part is sufficiently served if it is—
  - (a) in writing; and
  - (b) signed by 1 or more of the members or by any person purporting to act with the authority of the FMA; and
  - (c) served in accordance with section 63.
- (2) All documents purporting to be signed by or on behalf of the FMA must, in all courts and in all proceedings under this Act, be treated as having been so signed with due authority unless the contrary is proved.

Compare: 1986 No 5 s 101

## **63 Service of notices**

- (1) Any notice or other document required or authorised to be served on any person for the purposes of this Part may—
  - (a) be served on an individual—
    - (i) by delivering it personally or by an agent (such as a courier) to the person; or
    - (ii) by sending it by post addressed to the person at the person's usual or last known place of residence or business; or
    - (iii) by sending it by fax or email to the person's fax number or email address provided by the person for the purpose; or
    - (iv) in any other manner a District Court Judge directs:
  - (b) be served on a company, within the meaning of the Companies Act 1993, in a manner provided for in section 388 of that Act:

- (c) be served on an overseas company in a manner provided for in section 390 of the Companies Act 1993:
  - (d) be served on any other body corporate in a manner in which it could be served if the body corporate were a company within the meaning of the Companies Act 1993.
- (2) In the absence of proof to the contrary, a notice, document, or notification sent to a person in accordance with—
  - (a) subsection (1)(a)(ii) must be treated as having been served on the person when it would have been delivered in the ordinary course of post; and, in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted:
  - (b) subsection (1)(a)(iii) must be treated as having been served on the person on the second working day after the day on which it is sent.
- (3) Section 392 of the Companies Act 1993 applies for the purposes of subsection (1)(b) to (d).
- (4) If a person is absent from New Zealand, a notice served on the person's agent in New Zealand in accordance with subsection (1) must be treated as having been served on the person.
- (5) If a person has died, the notice may be served, in accordance with subsection (1), on his or her personal representative.

#### **64 Powers not limited**

This Part does not limit any power that the FMA or any other person has under any other enactment.

Compare: 1978 No 103 s 68C

#### **65 Limitation on disclosure of information obtained in FMA's operations**

- (1) No court or other person may require a member or an employee of the FMA, any delegate of the FMA, any expert appointed by the FMA, any person authorised under section 52, or any other person present at a meeting of the FMA to—
  - (a) give evidence in court or in any proceedings of a judicial nature of anything coming to his or her knowledge in connection with the operations of the FMA; or
  - (b) make discovery of a document or produce a document for inspection in court or in any proceedings of a judicial nature if the document was provided or obtained in connection with the operations of the FMA.
- (2) Subsection (1) does not apply to—
  - (a) proceedings in respect of the falsity of any testimony; or
  - (b) proceedings to which the FMA is a party (including where the FMA is acting under subpart 3); or

- (c) proceedings in respect of—
  - (i) an offence under section 51 or 61; or
  - (ii) an offence against section 78, 78A(1), 105, 105A, or 105B of the Crimes Act 1961; or
  - (iii) the offence of conspiring to commit an offence against any of those sections of the Crimes Act 1961; or
  - (iv) the offence of attempting to commit an offence against any of those sections of the Crimes Act 1961.
- (3) This section does not limit the application of the Official Information Act 1982.  
Compare: 1978 No 103 s 69V

#### **66 Part does not limit Privacy Act 1993**

Nothing in this Part limits the Privacy Act 1993.

## **Part 4**

### **Miscellaneous provisions**

#### Subpart 1—Fees, charges, costs, and levies

#### **67 Regulations relating to fees, charges, and costs**

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
  - (a) requiring the payment to the FMA of fees and charges—
    - (i) by financial markets participants in connection with the performance or exercise by the FMA of any function, power, or duty under this Act or any other enactment:
    - (ii) on an application or a request to the FMA to perform or exercise any function, power, or duty under this Act or any other enactment:
  - (b) prescribing the amounts of those fees and charges or the manner in which those fees and charges are to be calculated:
  - (c) authorising the FMA to require payment of any costs incurred by the FMA in connection with an application or a request referred to in paragraph (a)(ii).
- (2) Any Order in Council made under subsection (1) may authorise the FMA to refund or waive, in whole or in part and on any conditions as may be prescribed, payment of any fee, charge, or cost payable in relation to any person or class of persons.
- (3) The FMA may refuse to perform or exercise a function, power, or duty until the prescribed fee, charge, or cost is paid.



- (4) Any fee, charge, or cost payable to the FMA is recoverable by the FMA in any court of competent jurisdiction as a debt due to the FMA.

**68 Levy of financial markets participants and other persons registered or incorporated under Acts referred to in Schedule 1**

- (1) Every person that is included in a prescribed class of specified persons must pay to the Crown, or a prescribed person on behalf of the Crown, a levy prescribed by regulations.
- (2) In this section and section 69, **specified persons** means—
- (a) financial markets participants; and
  - (b) every other person registered or incorporated, or who makes an application for the registration or incorporation of a person, under an Act referred to in Part 2 of Schedule 1.
- (3) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the levies.
- (4) Levies must be prescribed on the basis that the following costs should be met fully out of the levies:
- (a) a portion of the costs of the FMA in performing or exercising its functions, powers, and duties under this Act and any other enactment, where the size of the portion to be met by levies under this Act is determined by the Minister; and
  - (b) the costs of collecting the levy money.
- (5) Levies may be prescribed on the basis that any actual cost that could have been, but has not been, recovered as a levy shortfall for a year may be recovered (along with any financing charge) over any period of up to 5 years.
- (6) The regulations may—
- (a) specify the class or classes of specified persons that are required to pay a levy:
  - (b) specify the amount of levies, or method of calculating or ascertaining the amount of levies:
  - (c) include in levies, or provide for the inclusion in levies of, any shortfall in recovering the actual costs:
  - (d) refund, or provide for refunds of, any over-recovery of the actual costs:
  - (e) provide for the payment and collection of levies:
  - (f) provide different levies for different classes of specified persons:
  - (g) specify the financial year or part financial year to which a levy applies, and apply that levy to that financial year or part financial year and each subsequent financial year until the levy is revoked or replaced:
  - (h) for the first financial year to which a levy applies, include in a levy amount or method the costs relating to establishing the FMA, disestab-

lishing the Securities Commission, and the FMA performing or exercising its functions, duties, and powers under any enactment:

- (i) require payment of a levy for a financial year or part financial year, irrespective of the fact that the regulations may be made after that financial year has commenced:
  - (j) provide for waivers or refunds of the whole or any part of a levy for any case or class of cases.
- (7) If a person is in 2 or more classes of specified persons in respect of which different levies have been prescribed, the person must pay each of those levies (unless the regulations provide otherwise).
- (8) A levy for a financial year that starts after the FMA begins to carry out any additional function under any enactment may recover the costs of performing that additional function, irrespective of the fact that the regulations may be made and come into effect after the start of the financial year.
- (9) The amount of any unpaid levy is recoverable in any court of competent jurisdiction as a debt due to the FMA, or to any other person prescribed for the purposes of this subsection, on behalf of the Crown.
- (10) The FMA, or any other person prescribed for the purposes of this subsection, must ensure that—
- (a) each levy payment is paid into a Crown Bank Account and is separately accounted for; or
  - (b) by the 20th day of the month after the month in which the FMA or other person receives a levy payment, the levy payment is paid into a Crown Bank Account.

Section 68(10): replaced, on 1 April 2014, by section 71 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

## **69 FMA must consult about request for appropriation**

- (1) The FMA must, before submitting a request to the Minister seeking an appropriation of public money for the following year, or any change to an appropriation for the current year, that relates to costs that are intended to be recovered by way of levies under section 68, consult about that request with—
- (a) the persons or organisations that the FMA considers are able to represent the views of those specified persons who are liable to pay a levy under that section; and
  - (b) any other representatives of persons whom the FMA believes to be significantly affected by a levy.
- (2) Consultation under subsection (1) must include consultation relating to the portion of the costs of the FMA that should be met by the levies.
- (3) The FMA must, at the time when the request is submitted, report to the Minister on the outcome of that consultation.

- (4) This section applies to requests in respect of the financial year beginning on 1 July 2013 and later financial years.
- (5) A failure to comply with this section does not affect the validity of any regulations made under section 68.

## Subpart 2—Transitional provisions

### 70 Interpretation

In this subpart, unless the context otherwise requires,—

**commencement date** means the date on which this section comes into force

**Commission** means the Securities Commission established under the Securities Act 1978

**property**—

- (a) means every type of property; and
- (b) includes money, and every type of estate and interest in property

**successor**, in respect of a function, duty, or power of the Government Actuary under an enactment, means the person who replaces the Government Actuary in respect of that function, duty, or power in accordance with sections 82 and 85 and Schedules 3 and 4

**suitable alternative position**, in relation to an employee, means a position—

- (a) for which the employee has the appropriate skills and experience; and
- (b) the pay and conditions of which are, in their overall effect, no less favourable to the employee than those applying to the employee immediately before the date of the employee's transfer to that position

**transferred employee** means a person who,—

- (a) immediately before the commencement date, is employed by the Commission; and
- (b) is transferred to the FMA under section 72(1)(f).

## *Disestablishment of Securities Commission*

### 71 Securities Commission disestablished

- (1) The Commission is disestablished.
- (2) The members of the Commission cease to hold office at the close of the day before the commencement date.
- (3) For the purpose of completing or deciding any inquiry, application, or matter that has been heard or considered (in whole or in part) before the commencement date, the board of the FMA may delegate any of the functions or powers of the FMA or the board in accordance with sections 73 to 76 of the Crown

Entities Act 2004 to 1 or more former members of the Commission as if those former members were referred to in section 73(1) of that Act.

- (4) Subsection (3) does not limit the power of the board of the FMA to make any other delegation in accordance with sections 73 to 76 of the Crown Entities Act 2004.

## **72 Consequences of disestablishment**

- (1) On the commencement date,—
- (a) the functions, duties, and powers of the Commission under any enactment vest in the FMA, except as specifically provided otherwise in this Act, but only to the extent that those functions, duties, and powers are consistent with the functions, duties, and powers of the FMA under this Act and any other enactment (subject to subsection (4)); and
  - (b) all property belonging to the Commission vests in the FMA; and
  - (c) all information and documents held by the Commission are held by the FMA; and
  - (d) all money payable to or by the Commission becomes payable to or by the FMA; and
  - (e) all rights, liabilities, contracts, entitlements, and engagements of the Commission become the rights, liabilities, contracts, entitlements, and engagements of the FMA; and
  - (f) subject to section 74, every employee of the Commission becomes an employee of the FMA on the same terms and conditions as applied immediately before he or she became an employee of the FMA; and
  - (g) anything done, or omitted to be done, or that is to be done, by or in relation to the Commission is to be treated as having been done, or having been omitted to be done, or to be done, by or in relation to the FMA; and
  - (h) the commencement, continuation, or enforcement of proceedings by or against the Commission may instead be commenced, continued, or enforced by or against the FMA without amendment to the proceedings; and
  - (i) the completion of a matter or thing that would, but for this section, have been completed by the Commission may be completed by the FMA.
- (2) The transfer of information from the Commission to the FMA under subsection (1)(c) does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993.
- (3) The disestablishment of the Commission does not, by itself, affect any of the following matters:
- (a) any decision made, or anything done or omitted to be done, by the Commission in relation to the performance or exercise of its functions, powers, or duties under any enactment:

- (b) any proceedings commenced by or against the Commission;
  - (c) any other matter or thing arising out of the Commission's performance or exercise, or purported performance or exercise, of its functions, powers, or duties under any enactment.
- (4) Despite subsection (1)(a), it is a function of the FMA to perform or exercise any functions, powers, or duties of the Commission that are necessary or desirable for it to perform or exercise, on a temporary basis, for the purpose of effectively managing the transition of functions from the Commission to the FMA.

### **73 References to Securities Commission**

- (1) A reference (express or implied) to the Commission in any enactment (other than this Act), or in any instrument, register, record, notice, security, document, or communication made, given, passed, or executed before or on the commencement date, must be read as a reference to the FMA.
- (2) A reference (express or implied) to an officer or employee of the Commission in any enactment, or in any instrument, register, record, notice, security, document, or communication made, given, passed, or executed before or on the commencement date must be read as a reference to—
  - (a) the corresponding employee of the FMA; or
  - (b) if there is no corresponding employee, any other employee of the FMA as the FMA thinks fit.
- (3) This section—
  - (a) applies unless the context otherwise requires; and
  - (b) is subject to subpart 3 and the Securities Amendment Act 2011.

### **74 Transfer of employees**

- (1) The terms and conditions of employment of a transferred employee immediately before the commencement date continue to apply in relation to that employee until—
  - (a) those terms and conditions are varied by agreement between the transferred employee and the FMA; or
  - (b) the transferred employee accepts a subsequent appointment with the FMA.
- (2) For the purposes of every enactment, law, determination, contract, and agreement relating to the employment of a transferred employee,—
  - (a) the employment agreement of that employee is to be treated as unbroken; and
  - (b) the employee's period of service with the Commission, and every other period of service of that employee that is recognised by the Commission

as continuous service, is to be treated as a period of service with the FMA.

- (3) To avoid doubt, the employment of a transferred employee by the FMA does not constitute new employment for the purposes of the KiwiSaver Act 2006.
- (4) A transferred employee is not entitled to receive any payment or benefit from the Commission or the FMA on the grounds that the person's position in the Commission has ceased to exist or the person has ceased to be an employee of the Commission as a result of the transfer to the FMA.
- (5) This section overrides Part 6A of the Employment Relations Act 2000.

## **75 Effect of Act**

Nothing effected or authorised by sections 71 to 74—

- (a) places the Commission, the FMA, or any other person in breach of contract or confidence, or makes any of them liable for a civil wrong; or
- (b) entitles a person to terminate or cancel a contract or an arrangement, or to accelerate the performance of an obligation, or to impose a penalty or an increased charge; or
- (c) places the Commission, the FMA, or any other person in breach of an enactment, a rule of law, or a provision of a contract that prohibits, restricts, or regulates the assignment or transfer of property or the disclosure of information; or
- (d) releases a surety from an obligation; or
- (e) invalidates or discharges a contract or surety.

## **76 Registers**

- (1) The Registrar-General of Land or any other person charged with keeping books or registers is not required to change the name of the Commission to the FMA in the books or registers, or in a document, solely because of the provisions of this Act.
- (2) If the FMA presents an instrument referred to in subsection (3) to a Registrar or another person, the presentation of that instrument by the FMA is, in the absence of proof to the contrary, sufficient evidence that the property is vested in the FMA.
- (3) For the purposes of this section, the instrument need not be an instrument of transfer, but must—
  - (a) be executed or purport to be executed by the FMA; and
  - (b) relate to a property held by the Commission immediately before the commencement date; and
  - (c) be accompanied by a certificate by the FMA that the property became vested in the FMA by virtue of the provisions of this Act.

*Disestablishment of office of Government Actuary*

**77 Office of Government Actuary disestablished**

- (1) The office of the Government Actuary is disestablished.
- (2) This section is subject to section 80.

**78 Consequences of disestablishment**

- (1) On the commencement date, in respect of any function, duty, or power of the Government Actuary under any enactment for which the FMA is the successor,—
  - (a) all information and documents held by the Government Actuary are held by the FMA; and
  - (b) anything done, or omitted to be done, or that is to be done, by or in relation to the Government Actuary is to be treated as having been done, or having been omitted to be done, or to be done, by or in relation to the FMA; and
  - (c) the commencement, continuation, or enforcement of proceedings by or against the Government Actuary may instead be commenced, continued, or enforced by or against the FMA without amendment to the proceedings; and
  - (d) the completion of a matter or thing that would, but for this section, have been completed by the Government Actuary may be completed by the FMA.
- (2) On the commencement date, in respect of any function, duty, or power of the Government Actuary under any enactment for which the FMA is not the successor,—
  - (a) all information and documents held by the Government Actuary are held by the department for the time being responsible for the administration of the Superannuation Schemes Act 1989 (the **department**); and
  - (b) anything done, or omitted to be done, or that is to be done, by or in relation to the Government Actuary is to be treated as having been done, or having been omitted to be done, or to be done, by or in relation to the chief executive of the department; and
  - (c) the commencement, continuation, or enforcement of proceedings by or against the Government Actuary may instead be commenced, continued, or enforced by or against the chief executive of the department without amendment to the proceedings; and
  - (d) the completion of a matter or thing that would, but for this section, have been completed by the Government Actuary may be completed by the chief executive of the department.

- (3) The transfer of information from the Government Actuary to the FMA under subsection (1)(a), or from the Government Actuary to the department under subsection (2)(a), does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993.
- (4) The disestablishment of the office of the Government Actuary does not, by itself, affect any of the following matters:
  - (a) any decision made, or anything done or omitted to be done, by the Government Actuary in relation to the performance or exercise of his or her functions, powers, or duties under any enactment:
  - (b) any proceedings commenced by or against the Government Actuary:
  - (c) any other matter or thing arising out of the Government Actuary's performance or exercise, or purported performance or exercise, of his or her functions, powers, or duties under any enactment.
- (5) This section is subject to section 80.

#### **79 References to Government Actuary**

- (1) A reference (express or implied) to the Government Actuary in any enactment (other than this Act), or in any instrument, register, record, notice, security, document, or communication made, given, passed, or executed before or on the commencement date, must be read as a reference to the successor.
- (2) This section—
  - (a) applies unless the context otherwise requires; and
  - (b) is subject to subpart 3 and section 80.

#### **80 Office of Government Actuary continues for limited purpose until 30 September 2011**

- (1) Despite section 77, the office of the Government Actuary continues until the close of 30 September 2011 for the purpose of the Government Actuary performing any function or duty, or exercising any power, in relation to the Government Superannuation Fund under any of the following enactments as in force immediately before their amendment by section 82 of this Act:
  - (a) Government Superannuation Fund Act 1956:
  - (b) Government Superannuation Fund Amendment Act 1969:
  - (c) Government Superannuation Fund (Ceasing Contributions) Regulations 1995:
  - (d) Government Superannuation Fund Regulations 1995.
- (2) To the extent required by subsection (1), until the close of 30 September 2011,—
  - (a) sections 78 and 79 do not apply; and



- (b) the enactments described in subsection (1) continue to apply as if they had not been amended by section 82 of this Act.

*Miscellaneous provisions*

**81 Ministry of Economic Development employees**

- (1) An employee is not entitled to receive any payment or other benefit on the ground that his or her position in the Ministry of Economic Development has ceased to exist if—
  - (a) the position ceases to exist as a result of a change in the functions of the Ministry of Economic Development or the Registrar of Companies in connection with the establishment of the FMA; and
  - (b) the person is offered a suitable alternative position by the FMA; and
  - (c) the offer is made—
    - (i) in the period between the date on which this Act receives the Royal assent and the date that is 6 months after the commencement date; and
    - (ii) for employment that commences on or after the commencement date.
- (2) This section overrides Part 6A of the Employment Relations Act 2000.

**Subpart 3—Amendments to other enactments**

**82 Amendments to other enactments**

The enactments specified in Schedule 3 are amended in the manner specified in that schedule.

**83 Transitional provisions relating to consequential amendments to Unit Trusts Act 1960**

- (1) Every person who, before the commencement of this section, was approved by a Minister under section 4(2) of the Unit Trusts Act 1960 must, after that commencement, be treated as having been approved by the FMA under that provision.
- (2) If, before the commencement of this section, an application has been made by a Minister under section 19(1) of the Unit Trusts Act 1960 and the court has not yet made a decision on the application, the FMA may continue with the application.
- (3) If, before the commencement of this section, an inspector is appointed by a Minister under section 21 of the Unit Trusts Act 1960, the inspector—
  - (a) may continue the investigation as if section 21 had not been amended by this Act; but
  - (b) must make his or her report to the FMA rather than the Minister.

- (4) A consent under section 25(3) of the Unit Trusts Act 1960 given before the commencement of this section remains valid despite the amendment made to that provision by this Act.

#### **84 Amendments consequential on replacement of Commission by FMA**

- (1) The provisions of the Acts specified in Part 1 of Schedule 4 are amended by omitting “Securities Commission” in each place where it appears and substituting in each case “Financial Markets Authority”.
- (2) The provisions of the regulations specified in Part 2 of Schedule 4 are amended by omitting “Securities Commission” in each place where it appears and substituting in each case “Financial Markets Authority”.
- (3) The provisions of the Acts specified in Part 3 of Schedule 4 are amended by omitting “Commission” in each place where it appears and substituting in each case “FMA”.
- (4) The provisions of the regulations specified in Part 4 of Schedule 4 are amended by omitting “Commission” in each place where it appears and substituting in each case “FMA”.
- (5) The provisions of the Acts specified in Part 5 of Schedule 4 are amended by omitting “Commission’s” in each place where it appears and substituting in each case “FMA’s”.

#### **85 Amendments consequential on replacement of Government Actuary by FMA**

- (1) The provisions of the Acts specified in Part 6 of Schedule 4 are amended by omitting “Government Actuary” in each place where it appears and substituting in each case “FMA”.
- (2) The provisions of the regulations specified in Part 7 of Schedule 4 are amended by omitting “Government Actuary” in each place where it appears and substituting in each case “FMA”.

## **Schedule 1**

### **Financial markets legislation**

s 4

#### *Part 1*

Auditor Regulation Act 2011  
Financial Advisers Act 2008  
Financial Markets Authority Act 2011  
Financial Markets Conduct Act 2013  
Financial Markets Supervisors Act 2011  
Financial Service Providers (Registration and Dispute Resolution) Act 2008  
Part 4 and Schedule 1 of the KiwiSaver Act 2006  
Sections 45U and 45V of the Public Finance Act 1989

Schedule 1 Part 1: replaced, on 1 December 2014, by section 72(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

#### *Part 2*

Anti-Money Laundering and Countering Financing of Terrorism Act 2009  
Building Societies Act 1965  
Companies Act 1993  
Co-operative Companies Act 1996  
Corporations (Investigation and Management) Act 1989  
Sections 220, 228, 229, 240, 242, and 256 to 260 of the Crimes Act 1961  
Financial Reporting Act 2013  
Friendly Societies and Credit Unions Act 1982  
Industrial and Provident Societies Act 1908  
Limited Partnerships Act 2008  
Part 5C of the Reserve Bank of New Zealand Act 1989  
Secret Commissions Act 1910  
Trustee Companies Act 1967  
Trustee Companies Management Act 1975

Schedule 1 Part 2: amended, on 30 May 2017, by section 45 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 Part 2: amended, on 1 December 2014, by section 72(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Schedule 1 Part 2: amended, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

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**Schedule 2**  
**Provisions relating to search power**  
*[Repealed]*

s 29

Schedule 2: repealed, on 1 October 2012, by section 245(8) of the Search and Surveillance Act 2012 (2012 No 24).

## Schedule 3

### Amendments to other enactments

s 82

### Part 1

#### Amendments to Acts

#### **Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35)**

Section 130(1)(b): omit “Securities Commission” and substitute “Financial Markets Authority”.

Section 137(4) and (5): repeal and substitute:

- (4) The Financial Markets Authority may use any information obtained or held by it in the exercise of its powers or the performance of its functions and duties under the Financial Markets Authority Act 2011, the Securities Act 1978, the Securities Markets Act 1988, and the Financial Advisers Act 2008 for the purpose of exercising its powers or performing its functions and duties under this Act as an AML/CFT supervisor.
- (5) The Financial Markets Authority may use any information obtained or held by it in the exercise of its powers or the performance of its functions and duties under this Act as an AML/CFT supervisor for the purpose of exercising its powers or performing its functions and duties under the Financial Markets Authority Act 2011, the Securities Act 1978, the Securities Markets Act 1988, and the Financial Advisers Act 2008.

Section 140(2): insert after paragraph (d):

- (da) the Financial Markets Authority Act 2011:

#### **Building Societies Act 1965 (1965 No 22)**

Section 2(1): insert in its appropriate alphabetical order:

**FMA** means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

Section 9C(2)(c): omit “Registrar” and substitute “FMA”.

Section 28(2): omit “Registrar” and substitute “FMA”.

Section 74(3): omit “Registrar” and substitute “FMA”.

Section 76(4): repeal and substitute:

- (4) If in any financial year default is made in holding an annual general meeting in accordance with this section, the FMA may—
  - (a) call or direct the calling of an annual general meeting in that financial year; and

**Building Societies Act 1965 (1965 No 22)—continued**

- (b) give any ancillary or consequential directions as the FMA thinks fit (including directions modifying or supplementing the operation of the society's rules in relation to the calling, holding, and conducting of the meeting).

Section 76(5): omit "Registrar" and substitute "FMA".

Section 100(7)(a): omit "Registrar" and substitute "FMA".

Section 118(3)(c): omit "Registrar" and substitute "FMA".

Section 118(5): omit "Registrar" and substitute "FMA".

Heading to section 122D: omit "**Registrar**" and substitute "**FMA**".

Section 122D(1) to (4): omit "Registrar" in each place where it appears and substitute in each case "FMA".

Section 122D(3): omit "Registrar's" and substitute "FMA's".

Section 123(1) and (3): omit "Registrar" in each place where it appears and substitute in each case "FMA".

Section 123(4): repeal and substitute:

- (4) Before exercising its powers under subsection (1) in a case where no application is made, the FMA must—
  - (a) give to the society not less than 14 days' notice in writing of the action the FMA proposes to take, specifying briefly the grounds on which the FMA proposes to take it; and
  - (b) consider any representations with respect to the proposed action that may be made to the FMA by the society within the period of the notice or any further period that the FMA may allow, and, if the society so requests, give it an opportunity of being heard by the FMA within that period or further period.

Section 123(6): repeal and substitute:

- (6) Despite anything in the rules of a society, if a special meeting is called under this section,—
  - (a) the FMA may direct at what time and place the meeting is to be held, and what matters are to be discussed and determined at the meeting, and may give any other directions as it thinks fit with respect to the calling, holding, and conduct of the meeting;
  - (b) the FMA may appoint a person to be chairperson at the meeting; and if the FMA does not do so the meeting may appoint its own chairperson;
  - (c) the meeting has all the powers of a meeting called according to the society's rules.
- (6A) Nothing in this section limits any power that the FMA has under the Financial Markets Authority Act 2011 or any other enactment.

## Companies Act 1993 (1993 No 105)

Section 2(1): insert in their appropriate alphabetical order:

**financial markets participant** has the same meaning as in section 4 of the Financial Markets Authority Act 2011

**FMA** means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

Section 239L(1): insert “the FMA (if the company is a financial markets participant),” after “liquidation,”.

Section 239R(1)(a): insert “the FMA (if the company is a financial markets participant),” after “liquidation,”.

Section 239ACJ(2): insert “the FMA (if the company is a financial markets participant),” after “liquidation,”.

Section 239ACL(2): insert “the FMA (if the company is a financial markets participant),” after “creditor,”.

Section 239ACX(2): insert after paragraph (b):

(ba) the FMA (if the company is a financial markets participant); or

Section 239ADO(4): insert after paragraph (d):

(da) the FMA (if the company is a financial markets participant); or

Section 239ADP(1): repeal and substitute:

- (1) On the application of the Registrar or, if the company is a financial markets participant, the FMA, the court may make any order that it thinks necessary to protect the interests of the company’s creditors while the company is in administration.

Section 239ADU(2): insert after paragraph (b):

(ba) if the company is a financial markets participant, the FMA; or

Section 241(2)(c): insert after subparagraph (v):

(va) if the company is a financial markets participant, the FMA; or

Section 241(2)(c)(vii): omit “in the case of ” and substitute “if the company is”.

Section 250(2): insert after paragraph (e):

(ea) if the company is a financial markets participant, the FMA; or

New section 258B: insert after section 258A:

### **258B Registrar may supply report to FMA**

- (1) If a report is made under section 258A in respect of a financial markets participant, the Registrar may supply a copy of the report to the FMA.
- (2) Any communications between—
  - (a) the Registrar and the FMA that relate to that report are protected by absolute privilege:

**Companies Act 1993 (1993 No 105)—continued**

- (b) the liquidator and the FMA that relate to that report are protected by absolute privilege.

New section 371A: insert after section 371:

**371A Sharing of information with Financial Markets Authority**

- (1) The Registrar may provide to the FMA any information, or a copy of any document, that the Registrar—
  - (a) holds in relation to the exercise or performance of the Registrar's functions, powers, or duties; and
  - (b) considers may assist the FMA in the exercise or performance of the FMA's functions, powers, or duties under this Act or any other enactment.
- (2) The Registrar may use any information, or a copy of any document, provided to him or her by the FMA under section 30 of the Financial Markets Authority Act 2011 in the Registrar's exercise or performance of the Registrar's functions, powers, or duties.
- (3) In this section, **Registrar's functions, powers, or duties** means his or her functions, powers, or duties under this Act or any other enactment (including functions, powers, or duties as the Registrar under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and the Securities Act 1978).
- (4) This section applies despite anything to the contrary in any contract, deed, or document.
- (5) Nothing in this section limits the Privacy Act 1993.

Section 373(4)(i): insert "or the FMA" after "Registrar".

Section 383(3): repeal and substitute:

- (3) An application for an order under this section may be made by the Registrar, the FMA, the Official Assignee, or by the liquidator of the company, or by a person who is, or has been, a shareholder or creditor of the company.
- (3A) Subsection (3B) applies on the hearing of—
  - (a) an application for an order under this section by the Registrar, the FMA, the Official Assignee, or the liquidator; or
  - (b) an application for leave under this section by a person against whom an order has been made on the application of the Registrar, the FMA, the Official Assignee, or the liquidator.
- (3B) The Registrar, the FMA, the Official Assignee, or the liquidator (as the case may be)—
  - (a) must appear and call the attention of the Court to any matters that seem to him, her, or it to be relevant; and



**Companies Act 1993 (1993 No 105)—continued**

- (b) may give evidence or call witnesses.

Heading to section 385: insert “**or FMA**” after “**Registrar**”.

Section 385(3), (4), (5), (7), and (8): insert “or the FMA” after “Registrar” in each place where it appears.

New section 385A: insert after section 385:

**385A Appeals from FMA’s exercise of power under section 385**

- (1) A person who is aggrieved by the FMA’s exercise of a power under section 385 may appeal to the Court within 15 working days after the date that the notice is published in the *Gazette* under section 385(3), or within any further time as the Court may allow.
- (2) On hearing the appeal, the Court may approve the FMA’s exercise of the power or may give any directions or make any determination in the matter that the Court thinks fit.
- (3) Section 370 provides for appeals from the Registrar’s acts or decisions under section 385.

**Corporations (Investigation and Management) Act 1989 (1989 No 11)**

Long Title: insert “**and the Financial Markets Authority**” after “**Registrar of Companies**”.

Section 2(1): insert in its appropriate alphabetical order:

**FMA** means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

Section 5(2): omit “Securities Commission” and substitute “FMA”.

Heading to section 7: insert “**or FMA**” after “**Registrar**”.

Section 7: insert “or the FMA,” after “Registrar,”.

Section 8(3): omit “Securities Commission” and substitute “FMA”.

Section 23(1)(a)(i), (2)(e), (3), (4)(b), and (5)(a): insert “or the FMA” after “Registrar” in each place where it appears.

Section 23(2): insert “nor the FMA” after “Neither the Registrar”.

Sections 30 to 33: repeal and substitute:

**30 Registrar or FMA may declare corporation to be at risk**

- (1) If the Registrar or the FMA has reasonable grounds to believe that any corporation is, or may be, a corporation to which this Act applies, the Registrar or the FMA may give written notice to the corporation that it is considered to be a corporation at risk.
- (2) Every notice given under subsection (1) must state the grounds on which it is given.

**Corporations (Investigation and Management) Act 1989 (1989 No 11)—continued**

- (3) The FMA may only exercise a power under this section in respect of a corporation that is a financial markets participant (within the meaning of section 4 of the Financial Markets Authority Act 2011).

**31 Obligation to consult with Registrar or FMA**

- (1) Every corporation to whom a notice is given under section 30 must promptly consult with the Registrar or the FMA (as the case may be)—
- (a) as to the circumstances of that corporation; and
  - (b) as to the methods of resolving the difficulties of that corporation.
- (2) Every associated person of a corporation to whom a notice has been given under section 30, and any officer or employee of the corporation or associated person, must, when required to do so by the Registrar or the FMA (as the case may be) by notice in writing to that person, promptly consult with the Registrar or the FMA—
- (a) as to the circumstances of that corporation; and
  - (b) as to the methods of resolving the difficulties of that corporation.

**32 Power of Registrar or FMA to give advice and assistance**

If the Registrar or the FMA gives a notice to a corporation under section 30, or gives a notice to an associated person under section 31(2), the Registrar or the FMA may—

- (a) give advice to the corporation or associated person concerning its affairs;
- (b) give advice and assistance in connection with the negotiation of any sale or other disposition of the whole or any part of the capital or business undertaking of that corporation or associated person;
- (c) give advice and assistance in connection with any scheme for resolving the difficulties of that corporation or associated person.

**33 Power of Registrar or FMA to give directions to corporation declared to be at risk**

- (1) The Registrar or the FMA may give a direction in writing to any corporation to which a notice has been given under section 30 by the Registrar or the FMA (as the case may be) requiring it—
- (a) not to remove from New Zealand, transfer, charge, or otherwise deal with any of its property or funds except with the prior approval of the Registrar or the FMA and subject to the terms and conditions that the Registrar or the FMA may specify;
  - (b) to place in a trust account any money received for investment;
  - (c) to take any other action that is specified in the notice to preserve the interests of the corporation's members and creditors.

**Corporations (Investigation and Management) Act 1989 (1989 No 11)—continued**

- (2) The Registrar or the FMA may amend any direction that he, she, or it has given.
- (3) The Registrar may only exercise a power under subsection (1) or (2) with the prior consent of the FMA.

Section 34(2): add: “or the FMA (as the case may be)”.

Section 36(2)(b): insert “or the FMA (as the case may be)” after “Registrar”.

Section 36(2)(c): insert “or the FMA (as the case may be)” after “Registrar”.

Section 37(2): add “or the FMA (as the case may be)”.

Section 38(1): omit “Securities Commission” and substitute “FMA”.

Section 39: omit “Securities Commission” and substitute “FMA”.

Section 40: omit “Securities Commission” and substitute “FMA”.

Section 63: omit “Securities Commission” and substitute “FMA”.

**Crown Entities Act 2004 (2004 No 115)**

Part 3 of Schedule 1: insert in its appropriate alphabetical order:

Name	Exemption from acquisition of securities, borrowing, guarantee, and derivative rules				Exemption from section 165 (net surplus payable to Crown)
	s 161	s 162	s 163	s 164	
Financial Markets Authority					

Item relating to the Securities Commission in Part 3 of Schedule 1: omit.

**Defence Act 1990 (1990 No 28)**

Section 73A: omit “to 73D” and substitute “and 73C”.

Section 73D: repeal.

**Fair Trading Act 1986 (1986 No 121)**

Section 48A: repeal and substitute:

**48A Sharing of information and documents with Financial Markets Authority or Takeovers Panel**

- (1) The Commission may provide to the Financial Markets Authority or the Takeovers Panel any information, or a copy of any document, that the Commission—
  - (a) holds in relation to the exercise of the Commission’s powers, or the performance of its functions and duties, in respect of this Act; and
  - (b) considers may assist the Financial Markets Authority or the Takeovers Panel in the exercise of its powers, or the performance of its functions

**Fair Trading Act 1986 (1986 No 121)—continued**

- and duties, under the Financial Markets Authority Act 2011, any enactment listed in Schedule 1 of that Act, the Takeovers Act 1993, or the Takeovers Code in force under that Act.
- (2) The Commission may use any information, or a copy of any document, provided to it by the Financial Markets Authority under section 30 of the Financial Markets Authority Act 2011 or by the Takeovers Panel under section 15B of the Takeovers Act 1993 in the Commission's exercise of its powers, or the performance of its functions and duties, in respect of this Act.
- (3) This section applies despite anything to the contrary in any contract, deed, or document.
- (4) Nothing in this section limits the Privacy Act 1993.

**Financial Advisers Act 2008 (2008 No 91)**

Definition of **Commission** in section 5: repeal.

Section 5: insert in its appropriate alphabetical order:

**FMA** means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

Section 26: repeal.

Section 59(1)(e): repeal and substitute:

- (e) has failed to pay a fee as required by this Act or the regulations or a levy as required by section 68 of the Financial Markets Authority Act 2011 or regulations made under that section.

Section 75D(1)(e): repeal and substitute:

- (e) the QFE or any partner entity of the QFE has failed to pay a fee as required by this Act or the regulations or a levy as required by section 68 of the Financial Markets Authority Act 2011 or regulations made under that section.

New section 85A: insert after section 85:

**85A Funding of code committee**

The FMA must fund the code committee.

New section 113A: insert after section 113:

**113A Funding of disciplinary committee**

The FMA must fund the disciplinary committee.

Section 116: repeal.

Section 137C(b): omit "any of sections 58, 59, and 59A" and substitute "section 58 or 59".

Section 137C: insert after paragraph (b):

**Financial Advisers Act 2008 (2008 No 91)—*continued***

- (ba) the person has been convicted of an offence against section 51 or 61 of the Financial Markets Authority Act 2011; or

Section 137F(1)(a): repeal and substitute:

- (a) an investigation is being carried out under the Financial Markets Authority Act 2011 in relation to an act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act; or

Section 137O(1)(c) and (d): repeal and substitute:

- (c) gives the person or the person's representative an opportunity to make written submissions and to be heard on the matter within that notice period.

Section 137R(4): repeal and substitute:

- (4) A person that considers that a decision of the FMA in respect of a temporary banning order is wrong in law may appeal against the decision to the High Court on a question of law only.

Section 147 and heading above section 147: repeal.

Heading above section 152: omit "*and levies*".

Section 153: repeal.

Section 161A: repeal.

**Financial Reporting Act 1993 (1993 No 106)**

Section 2(1): insert in its appropriate alphabetical order:

**FMA** means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

Section 4(1)(a)(i): omit "exemption granted by the Securities Commission pursuant to section 5 of the Securities Act 1978" and substitute "exemption granted by the FMA or the Securities Commission under the Securities Act 1978".

Section 4B(1) to (3): omit "Securities Commission" in each place where it appears and substitute in each case "FMA".

Section 4C: omit "Securities Commission" and substitute "FMA".

Section 4D: repeal and substitute:

**4D FMA must notify reasons for exemption**

The FMA's reasons for granting an exemption under section 4B (including why the exemption is appropriate) must be notified in the *Gazette* together with the exemption.

Section 16(2): omit "Securities Commission" and substitute "FMA".

Section 35A: repeal and substitute:

**Financial Reporting Act 1993 (1993 No 106)—continued****35A FMA may grant exemptions to directors of issuers that are incorporated or constituted outside New Zealand**

- (1) The FMA may exempt any directors of an issuer that is incorporated or constituted outside New Zealand, or any directors of a class of those issuers, from compliance with any provision of sections 8 to 11, 13 to 16, 18, 36, 36A, or 38.
- (2) The FMA must not grant an exemption under this section unless it is satisfied that—
  - (a) the exemption would not cause significant detriment to subscribers for the securities of the issuer who are members of the public in New Zealand, having regard to the financial reporting requirements that must be complied with in relation to the issuer under the law in force in the country where the issuer is incorporated or constituted; and
  - (b) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.
- (3) The exemption may be granted on any terms and conditions that the FMA thinks fit.
- (4) The FMA may vary or revoke an exemption in the same way as an exemption may be granted under this section.
- (5) The FMA must not grant an exemption under this section in respect of an issuer that is a licensed insurer.

**35AB Transitional provision for exemptions granted by Securities Commission**

Every exemption granted under section 35A (as in force before the commencement of this section) by the Securities Commission that is in force immediately before this section comes into force—

- (a) continues in force as if it were granted under section 35A by the FMA; and
- (b) may be amended or revoked as if granted under that section.

**35AC Status and publication of exemptions under section 35A**

- (1) An exemption granted under section 35A—
  - (a) is a regulation for the purposes of the Regulations (Disallowance) Act 1989; and
  - (b) must be presented to the House of Representatives under section 4 of that Act.
- (2) A class exemption (but not any other exemption granted under section 35A) is a regulation for the purposes of the Acts and Regulations Publication Act 1989.
- (3) An exemption granted under section 35A that is not a class exemption must, as soon as practicable after it is granted, be—

**Financial Reporting Act 1993 (1993 No 106)—continued**

- (a) published on an Internet site maintained by or on behalf of the FMA; and
  - (b) notified in the *Gazette*; and
  - (c) made available in printed form for purchase on request by members of the public.
- (4) A notification in the *Gazette* for the purpose of subsection (3)(b) does not have to include the text of the exemption.
- (5) The FMA's reasons for granting an exemption under section 35A (including why the exemption is appropriate) must be published together with the exemption.
- (6) In this section, **class exemption** means an exemption that is of general application and applies in respect of a class of issuers.

Section 35B: add:

- (7) The Registrar of Companies' reasons for granting an exemption (including why the exemption is appropriate) must be notified in the *Gazette* together with the exemption.

Section 35C(1): repeal and substitute:

- (1) In deciding whether or not to grant, amend, or revoke an exemption under section 35A or 35B, the FMA or the Registrar of Companies (as the case may be)—
- (a) may consult with any persons or organisations that the FMA or Registrar thinks fit; but
  - (b) must consult with—
    - (i) the Commissioner of Inland Revenue if the exemption is under section 35B and involves any provision of section 10; and
    - (ii) the Reserve Bank of New Zealand if the exemption concerns a registered bank (within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989).

Section 35D: omit "Securities Commission" and substitute "FMA".

Section 35E: repeal.

Section 42B(1) and (2): omit "Securities Commission" in each place where it appears and substitute in each case "FMA".

**Financial Service Providers (Registration and Dispute Resolution) Act 2008 (2008 No 97)**

Section 79A(1): omit "Commission" and substitute "Financial Markets Authority".

Section 79B(2): omit "Commission" and substitute "Financial Markets Authority".

**Friendly Societies and Credit Unions Act 1982 (1982 No 118)**

Definition of **Government Actuary** in section 2: repeal.

Section 3(2): repeal.

Section 4(2): repeal.

Heading to section 7: omit “**and Government Actuary**”.

Section 7(2): repeal.

Section 7(3): omit “and Government Actuary shall have” and substitute “has”.

Section 7(3): omit “their respective” and substitute “his or her”.

Section 158(2): omit “or the Government Actuary,”.

**Government Superannuation Fund Act 1956 (1956 No 47)**

Section 2(1): insert in its appropriate alphabetical order:

**actuary** means—

- (a) a person who is a Fellow of the New Zealand Society of Actuaries Incorporated; or
- (b) a person whom the Authority considers to have an equivalent professional qualification

Section 15E(6): omit “Government Actuary” and substitute “Authority, after receiving advice from an actuary,”.

Section 33(1A): omit “Government Actuary” and substitute “Authority, after receiving advice from an actuary,”.

Section 43(5)(b): omit “Government Actuary” and substitute “Authority, after receiving advice from an actuary,”.

Section 52A(5)(b): omit “Government Actuary” and substitute “Authority, after receiving advice from an actuary,”.

Section 71R(5): omit “Government Actuary” and substitute “Authority, after receiving advice from an actuary,”.

Section 81UA(8)(b): omit “Government Actuary” and substitute “Authority, after receiving advice from an actuary,”.

Section 94(1) to (3): repeal and substitute:

- (1) The Authority must obtain a report from an actuary that examines the financial position of the Fund as at dates determined by the Minister, being dates that are no more than 3 years apart.
- (2) The report in respect of each such examination must—
  - (a) show the state of the Fund as at the date on which the financial position of the Fund was examined, having regard to the prospective liabilities and assets of, and the probable annual sums required by, the Fund to provide benefits falling due within the ensuing 3 years without affecting or



**Government Superannuation Fund Act 1956 (1956 No 47)—*continued***

- having recourse to the actuarial reserve appertaining to the contributor's contributions; and
- (b) be received by the Authority no later than 7 months after the date the Fund was examined.
- (3) The Authority must send a copy of the report to the Minister within 28 days after the date that the Authority receives it.

Section 95(1): omit "Government Actuary" and substitute "Authority, after receiving advice from an actuary,".

Section 95(2): omit "Government Actuary" and substitute "Authority, after receiving advice from an actuary,".

**Government Superannuation Fund Amendment Act 1969 (1969 No 38)**

Section 11: omit " , on the advice of the Government Actuary,".

**Human Rights Act 1993 (1993 No 82)**

Section 2(1): insert in its appropriate alphabetical order:

**actuary** means—

- (a) a person who is a Fellow of the New Zealand Society of Actuaries Incorporated; or
- (b) a person whom the Commission or the Complaints Division, as the case may be, considers to have an equivalent professional qualification

Section 48(2)(b): omit "the Government Actuary" and substitute "an actuary".

Section 70(6)(b): omit "the Government Actuary" and substitute "an actuary".

**Income Tax Act 2007 (2007 No 97)**

Section EY 6(1): omit "the Government Actuary or any other actuary" and substitute "an actuary".

Section EY 11(3): omit "by the Government Actuary".

Section EY 11(13): omit "Government Actuary's decision can object" and substitute "FMA's decision may appeal against the decision".

Section EZ 29(4)(b): omit "the Government Actuary or any other actuary" and substitute "an actuary".

Section HM 18(1)(c): insert "or the FMA" after "Securities Commission".

Section YA 1: insert in its appropriate alphabetical order:

**FMA** means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

Definition of **complying superannuation fund** in section YA 1: omit "by the Government Actuary".

**Industrial and Provident Societies Act 1908 (1908 No 81)**

Section 16(a) and (c): insert “, the Financial Markets Authority,” after “Registrar” in each place where it appears.

**Judicature Act 1908 (1908 No 89)**

Section 24B(1)(e): omit “Securities Commission” and substitute “Financial Markets Authority,”.

**KiwiSaver Act 2006 (2006 No 40)**

Definition of **Government Actuary** in section 4(1): repeal.

Section 4(1): insert in its appropriate alphabetical order:

**FMA** means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

Section 30(1): omit “Government Actuary” and substitute “FMA”.

Section 30(1)(a): omit “he or she” and substitute “the FMA”.

Section 30(2): omit “Government Actuary” and substitute “FMA”.

Section 31(2): omit “Government Actuary’s” and substitute “FMA’s”.

Heading to section 101I: omit “**Government Actuary’s**” and substitute “**FMA’s**”.

Section 101I(5): omit “Government Actuary’s” and substitute “FMA’s”.

Section 101I(7): omit “Government Actuary’s” and substitute “FMA’s”.

Section 134(1): omit “Government Actuary” in each place where it appears and substitute in each case “FMA”.

Section 134(1)(a): omit “he or she” and substitute “the FMA”.

Section 134(2): omit “Government Actuary” and substitute “FMA”.

Heading to section 137: omit “**Government Actuary**” and substitute “**FMA**”.

Section 137(1): omit “Government Actuary” in each place where it appears and substitute in each case “FMA”.

Section 137(1)(a): omit “he or she” and substitute “the FMA”.

Section 141(2)(a): omit “he or she” and substitute “the FMA”.

Section 177: add:

- (5) In determining whether to appoint a manager as a default KiwiSaver provider under this section, the Minister must seek the advice of the FMA.

Sections 180 and 181: repeal and substitute:

**180 Appointment must be notified to FMA and Commissioner**

The Minister must, as soon as practicable after an appointment under section 177 has been made,—

**KiwiSaver Act 2006 (2006 No 40)—continued**

- (a) notify the FMA and the Commissioner that the appointment has been made; and
- (b) provide the FMA and the Commissioner with a copy of the instrument of appointment.

**181 Availability of instrument of appointment**

- (1) The FMA must—
  - (a) make copies of the instrument of appointment provided to it under section 180—
    - (i) available for inspection, during working hours, free of charge at its head office; and
    - (ii) available for purchase at a reasonable price at its head office; and
  - (b) publish the copy of that instrument of appointment on an Internet site maintained by or on behalf of the FMA; and
  - (c) give notice in the *Gazette*—
    - (i) that the instrument of appointment has been executed and of the date of execution; and
    - (ii) that the instrument of appointment is available for inspection during working hours, free of charge, and the place at which it can be inspected; and
    - (iii) that copies of the instrument of appointment can be purchased and the place at which they can be purchased; and
    - (iv) that the instrument of appointment is available on the Internet, free of charge, and the Internet site address.
- (2) This section also applies to any variation, renewal, or revocation of the instrument of appointment.

Section 186: repeal and substitute:

**186 Right of appeal against certain decisions of FMA**

- (1) A person affected by a decision of the FMA under any of the following provisions may appeal against the decision to the High Court:
  - (a) section 30 (approval of employer as exempt employer):
  - (b) section 31 (revocation of exempt employer approval):
  - (c) section 134 (registration):
  - (d) section 168 (cancellation of registration and order to wind up):
  - (e) section 169 (powers of FMA if scheme operating in contravention of this Act).

**KiwiSaver Act 2006 (2006 No 40)—continued**

- (2) A decision against which an appeal is lodged under this section continues in force unless the High Court orders otherwise.

Section 187: repeal.

Sections 188 and 189: repeal and substitute:

**188 Sharing of information and documents with Commissioner for purpose of administering KiwiSaver schemes**

- (1) The FMA may provide to the Commissioner any information, or a copy of any document, that the FMA—
- (a) holds in relation to the performance or exercise of the FMA's functions, powers, or duties under this Act or in connection with 1 or more KiwiSaver schemes under this Act or any other enactment; and
  - (b) considers may assist the Commissioner in the performance or exercise of the Commissioner's functions, powers, or duties under this Act or in connection with 1 or more KiwiSaver schemes under this Act or any other enactment.
- (2) The FMA may use any information, or a copy of any document, provided to it by the Commissioner under any enactment in the FMA's performance or exercise of its functions, powers, or duties under this Act or in connection with 1 or more KiwiSaver schemes under this Act or any other enactment.
- (3) This section applies despite anything to the contrary in any contract, deed, or document.

**189 Conditions that may be imposed on providing information, documents, or evidence to Commissioner**

- (1) The FMA may impose any conditions in relation to providing information or documents to the Commissioner (whether in compliance with a request or otherwise).
- (2) The FMA must, in considering what conditions to impose, have regard to whether conditions are necessary or desirable in order to protect the privacy of any individual.
- (3) Those conditions may include, without limitation, conditions relating to—
- (a) maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993);
  - (b) the storing of, use of, or access to anything provided;
  - (c) the copying, returning, or disposing of copies of documents provided.

Section 190: repeal.

Section 193: repeal.

**KiwiSaver Act 2006 (2006 No 40)—continued**

Section 210(1)(c) and (d): repeal and substitute:

- (c) section 43D, 43F, 43G, 43I, or 43K of the Securities Act 1978 (which relate to various restrictions on the allotment of securities).

Section 210(2)(a): omit “38F(9)(b), 38F(13), 44(6)(b), or 44(7)” and substitute “43F(2)(b), 43G(3)(b) or (4)(b)”.

Section 228(t): omit “or the Securities Regulations 1983” and substitute “or any regulations made under that Act”.

**Life Insurance Act 1908 (1908 No 105)**

Section 22: repeal and substitute:

**22 Statements and abstracts to be examined by chief executive**

- (1) The chief executive of the Ministry of Economic Development must—
  - (a) consider each statement (and accompanying auditor’s report) or abstract received under section 21; and
  - (b) report on the statement, report, or abstract, as he or she thinks fit, to the Minister.
- (2) The chief executive of the Ministry of Economic Development must consider any further information relating to the statement, report, or abstract that he or she receives under section 21(1) and may, if he or she thinks fit, report on that information to the Minister, either in a report under subsection (1) or in a separate report.
- (3) The Minister may publish, in the *Gazette*, any report that he or she receives under this section.

Section 40A(3)(b): omit “Government Actuary” and substitute “chief executive of the Ministry of Economic Development to the Minister”.

Section 40H(2): omit “the Government Actuary,”.

Section 40I(3): omit “Government Actuary” and substitute “chief executive of the Ministry of Economic Development”.

**Limited Partnerships Act 2008 (2008 No 1)**

Section 89(2): add:

- (e) in the case of a limited partnership that is a financial markets participant (within the meaning of section 4 of the Financial Markets Authority Act 2011, the Financial Markets Authority.

**National Provident Fund Restructuring Act 1990 (1990 No 126)**

Definition of **Government Actuary** in section 2: repeal.

Section 2: insert in its appropriate alphabetical order:

**National Provident Fund Restructuring Act 1990 (1990 No 126)—continued**

**actuary** means—

- (a) a person who is a Fellow of the New Zealand Society of Actuaries Incorporated; or
- (b) a person whom the Board considers to have an equivalent professional qualification

Section 44(4): omit “and (in the case of the Minister) taking advice from the Government Actuary,”.

**National Provident Fund Restructuring Amendment Act 1991 (1991 No 114)**

Section 15(2): omit “the Government Actuary and”.

Section 15(2): omit “have each” and substitute “has”.

**Official Information Act 1982 (1982 No 156)**

Schedule 1: insert in its appropriate alphabetical order:

Financial Markets Authority

Item relating to Securities Commission in Schedule 1: omit.

**Ombudsmen Act 1975 (1975 No 9)**

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

Financial Markets Authority

Item relating to Securities Commission in Part 2 of Schedule 1: omit.

**Privacy Act 1993 (1993 No 28)**

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

Securities Act 1978

Section 43N

**Remuneration Authority Act 1977 (1977 No 110)**

Section 17(3): repeal.

Schedule 4: insert after the item relating to the Employment Relations Authority:

The members and associate members of the Financial Markets Authority

Item relating to Securities Commission in Schedule 4: omit.

**Reserve Bank of New Zealand Act 1989 (1989 No 157)**

Section 2(1): insert in its appropriate alphabetical order:

**FMA** means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

Section 81A(1)(a)(i): omit “Securities Commission” and substitute “FMA”.

Section 156L: repeal and substitute:

**Reserve Bank of New Zealand Act 1989 (1989 No 157)—continued**

**156L Limit on FMA's powers in relation to Bank**

For the purposes of this Part, the FMA may exercise its powers under subpart 1 of Part 3 of the Financial Markets Authority Act 2011 in relation to the Bank only if, and to the extent that, the Bank is—

- (a) a participant in a settlement system; or
- (b) an operator of a settlement system.

Definition of **Commission** in section 156M(1): repeal.

Section 157E(1)(a): omit “Securities Commission” and substitute “FMA”.

Section 157ZO(2)(e): omit “Securities Commission” and substitute “FMA”.

**Securities Markets Act 1988 (1988 No 234)**

Definition of **Commission** in section 2(1): repeal.

Section 2(1): insert in its appropriate alphabetical order:

**FMA** means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

Section 36ZO(4): repeal and substitute:

- (4) The direction is subject to appeal only in accordance with section 47A.

Section 36ZT(b): repeal and substitute:

- (b) must, after the direction is given, give each of those persons or the person's representative an opportunity to make written submissions and to be heard on the matter; and

Section 42F(1)(d) to (f): repeal and substitute:

- (d) gives each person to whom notice of the order must be given or the person's representative an opportunity to make written submissions and to be heard on the matter within that notice period.

Section 42I(4): repeal and substitute:

- (4) An order made under this subpart is subject to appeal only in accordance with section 47A.

Section 44: repeal.

**Securities Transfer Act 1991 (1991 No 119)**

Section 7(6): repeal and substitute:

- (6) The Financial Markets Authority (**FMA**) must not make a recommendation under subsection (1) unless—
  - (a) the FMA has done everything reasonably possible to consult with the persons and organisations or their representatives that the FMA considers will be substantially affected by any Order in Council made in accordance with the recommendation, and those persons and organisations

**Securities Transfer Act 1991 (1991 No 119)—continued**

or their representatives have had the opportunity to comment to the FMA; and

- (b) the FMA has considered those comments.

**Summary Proceedings Act 1957 (1957 No 87)**

Item relating to section 385(9) of the Companies Act 1993 in Part 2 of Schedule 1: insert “or Financial Markets Authority” after “Registrar”.

**Superannuation Schemes Act 1989 (1989 No 10)**

Definition of **Government Actuary** in section 2(1): repeal.

Section 2(1): insert in its appropriate alphabetical order:

**FMA** means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

Section 6(1): omit “Government Actuary shall” and substitute “FMA must”.

Section 17(2): omit “and 54B” and substitute “to 54C”.

Heading above section 19 and section 19: repeal and substitute:

*Powers of FMA as to cancellation of registration, etc*

**19 Cancellation of registration**

- (1) The FMA may cancel the registration of a superannuation scheme—
  - (a) if a scheme that is not constituted under an Act of Parliament ceases to have a trustee who is a New Zealand resident; or
  - (b) if the FMA is satisfied on reasonable grounds that the scheme is no longer a superannuation scheme within the meaning of section 2 and the FMA has given not less than 28 days’ notice in writing to the trustees.
- (2) The FMA must cancel the registration of a superannuation scheme on receipt of an application by the trustees if the FMA is satisfied that the members and other beneficiaries of the scheme have been advised of the consequences of the scheme ceasing to be registered.
- (3) Where the registration of a scheme is cancelled, each provision set out in sections 8 to 10 continues to be implied in the trust deed of the scheme unless—
  - (a) evidence has been produced to the FMA to its satisfaction that all of the members and other beneficiaries of the scheme have consented to the provision no longer applying; or
  - (b) in any other case, the FMA has notified the trustees in writing that it is satisfied that the provision is no longer necessary.

Section 20(2): omit “Government Actuary shall” and substitute “FMA must”.

Section 22(1): omit “Government Actuary shall” and substitute “FMA must”.



**Superannuation Schemes Act 1989 (1989 No 10)—*continued***

Section 23: repeal and substitute:

**23 Right of appeal against certain decisions of FMA**

- (1) A person affected by a decision of the FMA under any of the following provisions may appeal against the decision to the High Court:
  - (a) section 19 (cancellation of registration):
  - (b) section 20 (powers of FMA if scheme is operating in contravention of this Act):
  - (c) section 34 (approval of scheme as complying superannuation fund):
  - (d) section 36 (revocation of approval of scheme as complying superannuation fund):
  - (e) section EY 11 of the Income Tax Act 2007 (certain superannuation schemes exempted from being treated as schemes providing life insurance).
- (2) A decision against which an appeal is lodged under this section continues in force unless the High Court orders otherwise.

Section 24: repeal.

Section 26: repeal.

Section 27: repeal.

**Takeovers Act 1993 (1993 No 107)**

Definition of **Securities Commission** in section 2(1): repeal.

Section 2(1): insert in its appropriate alphabetical order:

**FMA** means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

Sections 15A and 15B: repeal and substitute:

**15A Sharing of information and documents with FMA**

- (1) The Panel may provide to the FMA any information, or a copy of any document, that the Panel—
  - (a) holds in relation to the exercise of the Panel's powers or the performance of its functions and duties; and
  - (b) considers may assist the FMA in the exercise of the FMA's powers or the performance of its functions and duties under any enactment.
- (2) The Panel may use any information, or a copy of any document, provided to it by the FMA under section 30 of the Financial Markets Authority Act 2011 in the Panel's exercise of its powers or the performance of its functions and duties.

**Takeovers Act 1993 (1993 No 107)—continued**

- (3) This section applies despite anything to the contrary in any contract, deed, or document.
- (4) Nothing in this section limits the Privacy Act 1993.

**15B Sharing of information and documents with Commerce Commission**

- (1) The Panel may provide to the Commerce Commission any information, or a copy of any document, that the Panel—
  - (a) holds in relation to the exercise of the Panel’s powers, or the performance of its functions and duties; and
  - (b) considers may assist the Commerce Commission in the exercise of the Commerce Commission’s powers, or the performance of its functions and duties, in respect of the Fair Trading Act 1986.
- (2) The Panel may use any information, or a copy of any document, provided to it by the Commerce Commission under section 48A of the Fair Trading Act 1986 in the Panel’s exercise of its powers, or the performance of its functions and duties.
- (3) This section applies despite anything to the contrary in any contract, deed, or document.
- (4) Nothing in this section limits the Privacy Act 1993.

Section 31C(1)(a): repeal and substitute:

- (a) this Act, the Financial Markets Authority Act 2011, or any of the Acts listed in Schedule 1 of that Act:

Section 31C(1)(b): omit “other Act” and substitute “enactments other than those referred to in paragraph (a)”.

Section 31C(4): omit “section 69N of the Securities Act 1978” and substitute “section 44 of the Financial Markets Authority Act 2011”.

Section 31E(b): repeal and substitute:

- (b) for the purposes of this Act, the Financial Markets Authority Act 2011, or any of the Acts listed in Schedule 1 of that Act; or

**Tax Administration Act 1994 (1994 No 166)**

Section 3(1): insert in its appropriate alphabetical order:

**FMA** means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

Section 81(4)(r): repeal and substitute:

- (r) communicating to the FMA the following information, provided that the Commissioner considers it not undesirable to disclose the information and the information is reasonably necessary to enable the FMA to perform its duties or functions or exercise its powers:

**Tax Administration Act 1994 (1994 No 166)—*continued***

- (i) individual or aggregate information relating to a member of a KiwiSaver scheme or a complying superannuation fund (as those terms are defined in section 4(1) of the KiwiSaver Act 2006):
- (ii) individual or aggregate information relating to a KiwiSaver scheme or a complying superannuation fund:
- (iii) information arising from the performance of the Commissioner's duties or functions, or the exercise of the Commissioner's powers, in relation to the KiwiSaver Act 2006 or a provision of an Inland Revenue Act that is relevant to the KiwiSaver Act 2006:

Sections 85GB and 85GC: repeal.

**Unit Trusts Act 1960 (1960 No 99)**

Section 2(1): insert in its appropriate alphabetical order:

**FMA** means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

Section 4(2): omit "Minister" and substitute "FMA".

Section 4(5): omit "Registrar of Companies" and substitute "FMA".

Section 19(1): omit "Minister" and substitute "FMA".

Section 21(1)(a): repeal.

Section 21(2): omit "report of every such inspector who is appointed by the Minister shall be made to the Minister; and the".

Section 25(3): omit "Minister" and substitute "FMA".

**Part 2**

**Consequential amendments to regulations**

**Financial Reporting (Fees and Forms) Regulations 2007 (SR 2007/109)**

Regulation 5: revoke and substitute:

**5 Charges payable to Financial Markets Authority for section 4B or 35A applications**

The Financial Markets Authority may require payment to it of a charge or charges for the costs incurred by it in—

- (a) obtaining expert advice or expert assistance in connection with a section 4B or 35A application; and
- (b) the printing and publication in the Statutory Regulations series of a notice under section 4B of the Act or a notice under section 35A of the Act; and

**Financial Reporting (Fees and Forms) Regulations 2007 (SR 2007/109)—*continued***

- (c) the publication in the *Gazette* of a notice in respect of a notice under section 4B or 35A of the Act.

**Futures Industry (Client Funds) Regulations 1990 (SR 1990/227)**

Definition of **dealer** in regulation 2(1): revoke and substitute:

**dealer—**

- (a) means a person who is authorised under section 38(1)(a) of the Act, or approved under section 38(1)(b) of the Act, to carry on the business of dealing in futures contracts; but
- (b) does not include—
  - (i) a person who deals in futures contracts solely on the person's own behalf; or
  - (ii) a recognised clearing house

Regulation 21(6)(c): omit “Chairman of the Securities Commission” and substitute “chairperson of the board of the FMA”.

Form 5 of the Schedule: omit “Securities Commission” and substitute “Financial Markets Authority”.

**Government Superannuation Fund (Ceasing Contributions) Regulations 1995 (SR 1995/172)**

Regulation 36(4)(a): omit “Government Actuary” and substitute “the Authority”.

Regulation 38(4)(a): omit “Government Actuary” and substitute “the Authority”.

**Government Superannuation Fund Regulations 1995 (SR 1995/173)**

Heading to regulation 11: omit “**required by Government Actuary**”.

Regulation 11: omit “Government Actuary” and substitute “Authority”.

**KiwiSaver Regulations 2006 (SR 2006/358)**

Regulation 10(1): omit “Government Actuary's” and substitute “FMA's”.

Regulation 10(2): omit “Government Actuary's” and substitute “FMA's”.

**Securities Act (Contributory Mortgage) Regulations 1988 (SR 1988/143)**

Definition of **Commission** in regulation 2(1): revoke.

Regulation 15: revoke and substitute:

**15 Exercise of FMA's powers under Securities Act 1978**

- (1) If the FMA makes an order under section 44B(2)(a) or (b) of the Act, the Registrar must, upon receiving a copy of that order, place the order on the register of documents maintained under regulation 8.

**Securities Act (Contributory Mortgage) Regulations 1988 (SR 1988/143)—*continued***

- (2) If the FMA makes an order under section 44B(2)(c) of the Act that the broker cease to act as a broker in respect of all contributory mortgages previously allotted, the Registrar must, upon receiving a copy of that order, place the order on the register of documents maintained under regulation 8, and the registration of the broker named in the order is cancelled for the period specified in the order.
- (3) If a broker fails to comply with the requirements of regulation 12 or 14, the Registrar may notify the FMA of the failure.

**Securities (Fees) Regulations 1998 (SR 1998/461)**

Heading to regulation 3: omit “**Commission**” and substitute “**Financial Markets Authority**”.

Regulation 3(1): omit “**Commission**” in each place where it appears and substitute in each case “**FMA**”.

Regulation 3(2)(a): omit “section 5(5)” and substitute “section 70B”.

Regulation 3(2)(c) and (d): revoke.

Regulation 4: revoke and substitute:

**4 Costs payable to Financial Markets Authority**

The FMA is authorised to require payment to it of the costs incurred by the FMA in—

- (a) the printing and publication in the Statutory Regulations series of an exemption notice under section 70B of the Securities Act 1978:
- (b) the publication in the *Gazette* of a notice of an exemption notice under section 70B of the Securities Act 1978:
- (c) the publication in the *Gazette* of a notice approving a person to act as a trustee or statutory supervisor under section 48(3) of the Securities Act 1978:
- (d) the obtaining of expert advice or expert assistance in respect of an application referred to in regulation 3(2).

**Securities Markets (Fees) Regulations 2003 (SR 2003/383)**

Regulation 4: revoke and substitute:

**4 Fees and costs payable to FMA for advice or decisions**

- (1) A person (**A**) must pay the fees set out in regulation 6 and the costs set out in regulation 7 on each occasion that advice is sought from the FMA in respect of—
  - (a) an application by A for an exemption under section 36E of the Act:

**Securities Markets (Fees) Regulations 2003 (SR 2003/383)—continued**

- (b) an application by A for an exemption under section 37C(1)(c) of the Act.
- (2) A person must pay the fees set out in regulation 6 and the costs set out in regulations 7 and 8 for the following matters:
  - (a) for a decision by the FMA on whether or not to approve proposed market rules provided under section 36F of the Act:
  - (b) for a decision by the FMA on whether or not to approve changes to market rules for registered markets provided under section 36J of the Act:
  - (c) for an application for an authorisation to hold a market registration under section 36ZY of the Act (which relates to overseas exchanges):
  - (d) for an application for an authorisation to conduct a futures market under section 37(8) of the Act:
  - (e) for an application for an authorisation to carry on the business of dealing in futures contracts under section 38(1) of the Act.

Regulation 8: revoke and substitute:

**8 Costs of printing and publication**

- (1) For the purposes of regulation 4(2), the FMA may require a person to pay the costs incurred by the FMA in—
  - (a) the publication in the *Gazette* of a notice of market registration under section 36F of the Act:
  - (b) the publication in the *Gazette* of a notice of a decision to approve changes to market rules provided under section 36J of the Act:
  - (c) the publication in the *Gazette* of a notice of an authorisation to hold a market registration under section 36ZY of the Act (which relates to overseas exchanges):
  - (d) the publication in the *Gazette* of a notice of an authorisation to conduct a futures market under section 37(8) of the Act:
  - (e) the publication in the *Gazette* of a notice of authorisation of a person or class of persons to carry on the business of dealing in futures contracts under section 38(1) of the Act.
- (2) For the purposes of regulation 5, the FMA may require a person to pay the costs incurred by the FMA in—
  - (a) the printing and publication in the Statutory Regulations series of an exemption notice under section 48 of the Act; and
  - (b) the publication in the *Gazette* of a notice of an exemption under section 48 of the Act.

**Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008 (SR 2008/153)**

Definition of **Commission** in regulation 4(1): revoke.

Definition of **Registrar** in regulation 4(1): revoke and substitute:

**Registrar** has the same meaning as in section 2(1) of the Act

Regulation 4(1): insert in its appropriate alphabetical order:

**FMA** means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

Regulation 14(2): omit “section 5(5) of the Act” and substitute “section 70B of the Act”.

**Securities Regulations 2009 (SR 2009/230)**

Regulation 31: insert after paragraph (a):

(ab) in respect of a document, information, or other matter required to be made publicly available under section 54C of the Act that is an advertisement only by reason of section 2A(2)(c) of the Act:

**Takeovers (Fees) Regulations 2001 (SR 2001/160)**

Regulation 4(1)(b)(ii): omit “or of the Securities Commission”.

Regulation 5(1)(b)(ii): omit “or of the Securities Commission”.

**Schedule 4**  
**Amendments to replace references to Securities Commission or**  
**Government Actuary**

ss 84, 85

**Part 1**  
**Replacing “Securities Commission” with “Financial Markets**  
**Authority” in Acts**

**Financial Service Providers (Registration and Dispute Resolution) Act 2008**  
**(2008 No 97)**

Section 67(d)

Section 76(d)

Schedule 2

**Securities Transfer Act 1991 (1991 No 119)**

Section 7(1)

**Part 2**  
**Replacing “Securities Commission” with “Financial Markets**  
**Authority” in regulations**

**Financial Reporting (Fees and Forms) Regulations 2007 (SR 2007/109)**

Definition of **section 4B or 35A application** in regulation 3

Heading above regulation 4

Heading to regulation 4 and regulation 4

Regulation 6(b)

**Securities Act (Contributory Mortgage) Regulations 1988 (SR 1988/143)**

Schedule 2A

**Securities Markets (Market Manipulation) Regulations 2007 (SR 2007/373)**

Regulation 10(2)

Heading to regulation 11 and regulation 11(1)

**Securities Markets (Substantial Security Holders) Regulations 2007 (SR**  
**2007/372)**

Forms 1 and 2 of Schedule 1



**Securities (Mutual Recognition of Securities Offerings—Australia) Regulations  
2008 (SR 2008/153)**

Regulation 13(1)

**Part 3**  
**Replacing “Commission” with “FMA” in Acts**

**Financial Advisers Act 2008 (2008 No 91)**

Definition of **authorised** in section 5

Definition of **overseas regulator** in section 5

Definition of **standard conditions** in section 5

Section 23(2)(k)

Heading to section 45A and section 45A(1), (2)(d), and (3)

Heading to section 49 and section 49(1) to (6)

Section 50(2) and (3)

Section 52

Section 54

Heading to section 55 and section 55(1) and (3) to (5)

Section 55A(1) to (8)

Heading to section 56 and section 56(1) and (2)

Section 57(1)(b) and (d) and (2)

Section 58(4)

Section 59(1) to (5)

Section 60

Heading to section 61 and section 61(1) to (6)

Section 62(2)

Section 64

Section 66(1) and (2)

Heading to section 67 and section 67(1) and (3) to (6)

Section 67A(1) to (4)

Section 68(1) and (2)

Section 69(1) and (3)

Heading to section 70 and section 70(1) and (2)

Section 71(1) and (5)

Section 72(b)

Section 73(1)

**Financial Advisers Act 2008 (2008 No 91)—continued**

Section 74(3)

Section 75(1) to (7)

Section 75A(1) and (2)

Heading to section 75B and section 75B(1), (3), (4), and (6)

Section 75D(1) to (3) and (5) to (7)

Section 75E

Heading to section 75F and section 75F(1) to (6)

Section 75G(1) and (3)

Section 76(1)(f) to (h)

Heading to section 77 and section 77(1)

Section 77F(1)(f)(iii)

Heading to section 77V and section 77V(1) to (6)

Section 85

Section 96(1)

Heading to section 97 and section 97(1) and (2)

Section 98

Section 99

Section 101(3)(a) to (c) and (5)

Section 104(a)

Section 113

Section 127

Section 132

Section 134G

Section 135

Section 136(1)(b) and (c)

Section 137A(1)

Heading to section 137B and section 137B(1) and (2)

Section 137C

Section 137F(2)

Section 137K(1)

Section 137L(2)

Heading to section 137M and section 137M

Section 137N

Heading to section 137O and section 137O(1) and (2)

**Financial Advisers Act 2008 (2008 No 91)—*continued***

Heading to section 137P and section 137P(1) and (2)

Heading to section 137Q and section 137Q(1) and (2)

Section 137R(1) to (3)

Section 138(1)(a)

Section 139

Section 147A(1), (3), and (4)

Section 147B(1) to (3)

Section 147C(1)

Heading to section 148 and section 148(1) to (3)

Heading to section 148A and section 148A(1) and (2)

Section 148B(2)(a)

Heading to section 149 and section 149(1) and (2)

Section 151(1), (2), and (5)

Section 152(1) and (2)

Section 154(4)

Section 155(1)(a) and (b) and (2)

**Reserve Bank of New Zealand Act 1989 (1989 No 157)**

Section 156K(2)

Definition of **joint regulators** in section 156M

Section 156N(5)

Section 156P(1)(e) and (2)

Section 156ZM(1)(b) and (2)(b)

**Securities Act 1978 (1978 No 103)**

Definition of **delayed allotment order** in section 2(1)

Definition of **prohibition order** in section 2(1)

Section 37AF(1)(d)(iv)

Section 37AK(2)(c), (3)(d), and (5)(a)

Section 37A(1)(ab)(ii)

Section 37F(1)(c)

Section 38B(1) to (4), (7), and (8)

Heading to section 44A and section 44A(1) to (6)

Section 44AB

Section 44AC

**Securities Act 1978 (1978 No 103)**—*continued*

Section 44AD

Heading to section 44AE and section 44AE(1) to (4)

Section 44AF(2) and (3)

Section 44AG

Section 44B(1), (3), and (4)

Section 44C(1) and (6)

Section 44D(1)

Section 48(1), (3), and (4)

Section 55A(1)(a)

Section 55C

Section 55G(1), (2), and (5)

Section 56(2)

Section 60A(2)(a)

Section 60F(1)(a), (2), and (3)

Section 60G(2)

Section 65B

Section 70(3)

Section 70A(3)

Section 74(2)(b)

Section 75(1)(d) and (e)(iii)

Section 78(2)(b)

**Securities Markets Act 1988 (1988 No 234)**

Section 6(2)

Heading to section 19Y and section 19Y

Section 31(1)(b) and (2)

Section 32A(2)

Heading to section 34 and section 34(1)

Section 36D(2)(a)(ii)

Section 36E(4)

Heading to section 36ZD and section 36ZD

Section 36ZF(1)(d)

Heading to section 36ZG and section 36ZG

Section 36ZH

**Securities Markets Act 1988 (1988 No 234)—continued**

Section 36ZI

Section 36ZJ(1)

Heading to section 36ZK and section 36ZK

Section 36ZL(1)

Section 36ZM(2)(a) to (c)

Heading to section 36ZO and section 36ZO(1) to (3)

Section 36ZP(2)

Section 36ZQ

Heading to section 36ZR and section 36ZR(1) and (2)

Section 36ZS

Heading to section 36ZT and section 36ZT

Section 36ZU(2)

Section 36ZV(1) and (2)

Section 36ZW

Paragraph (a) of the definition of **authorised futures exchange** in section 37

Paragraphs (e) and (f) of the definition of **futures contract** in section 37

Section 37(5), (7), (8), (9), and (10)

Section 37C(4)

Section 37D(2)(a)(ii)

Section 38(1)(a), (2), and (3)

Section 41Q(3)

Section 41R(3)

Heading to section 42 and section 42

Heading to section 42B and section 42B

Heading to section 42D and section 42D

Section 42E

Heading to section 42F and section 42F(1) and (2)

Heading to section 42G and section 42G(1) and (2)

Heading to section 42H and section 42H(1) and (2)

Section 42I(1) to (3)

Section 42J(1)

Section 42K

Heading to section 42M and section 42M(1) and (2)

Section 42N

**Securities Markets Act 1988 (1988 No 234)—*continued***

Section 42P

Section 42R(1)

Section 42T(1)

Section 42Z

Section 42ZA(1)

Section 42ZE(1)

Section 43F(2)(a)

Section 43K

Section 43O(1)(a), (2), and (3)

Section 43P(2)

Section 43W

Section 43ZA(d)

Heading to section 46 and section 46

Heading above section 48

Heading to section 48C and section 48C(1) to (3)

Heading to section 48D and section 48D(1), (2), and (4)

Section 48F(3)(a)(i)

Section 48G(2)(b)(i)

Section 49(2)

Section 49A(3)

Section 49B(1)(g) and (3)

Section 49C(2)

Section 49D(2) and (3)

**Part 4****Replacing “Commission” with “FMA” in regulations****Futures Industry (Client Funds) Regulations 1990 (SR 1990/227)**Paragraph (f) of the definition of **specified client investment** in regulation 2(1)

Regulation 14(e)

Regulation 24(3)(c)

**Securities Markets (Fees) Regulations 2003 (SR 2003/383)**

Heading to regulation 5

Regulation 6

**Securities Markets (Fees) Regulations 2003 (SR 2003/383)—*continued***

Regulation 7

**Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008 (SR 2008/153)**

Regulation 8(2) and (3)

Regulation 13(4) and (5)

**Securities Regulations 2009 (SR 2009/230)**

Heading to regulation 37 and regulation 37

**Part 5**

**Replacing “Commission’s” with “FMA’s” in Acts**

**Financial Advisers Act 2008 (2008 No 91)**

Heading above section 49

Section 49(4)(c)

Heading above section 59

Heading to section 59

Section 61(4)(c)

Heading to section 62

Heading above section 75D

Heading to section 75D

Section 75F(4)(c)

Heading to section 75G

Heading above section 77V

Section 77V(4)(c)

Section 97(1)(b) and (c)

Section 98

Heading to section 127

Heading to section 132

Heading to section 134G

Heading to section 135

Section 137B(2)

Heading above section 137O

Heading to section 137S

Section 151(1)(a) and (2)

**Financial Advisers Act 2008 (2008 No 91)—*continued***

Heading to section 152

**Securities Act 1978 (1978 No 103)**

Heading to section 44B

Section 55G(5)

Heading to section 65B and section 65B

**Securities Markets Act 1988 (1988 No 234)**

Section 36ZL(1)

Section 36ZR(1)(b)

Heading to subpart 1 of Part 5

Heading above section 42F

Heading to section 42I

Heading to section 42J

Section 42M(2)

Heading to section 42Z and section 42Z

Section 43E(4)

Heading to section 43W and section 43W

**Part 6****Replacing “Government Actuary” with “FMA” in Acts****Financial Service Providers (Registration and Dispute Resolution) Act 2008  
(2008 No 97)**

Schedule 2

**Human Rights Act 1993 (1993 No 82)**

Section 71

**Income Tax Act 2007 (2007 No 97)**

Heading immediately above section EY 11(9)

Section EY 11(9) and (10)(a)

Heading immediately above section EY 11(12)

Section EY 11(12)

Clause 3(d) of Schedule 28

**KiwiSaver Act 2006 (2006 No 40)**

Section 25(1) and (2)(b)



**KiwiSaver Act 2006 (2006 No 40)—continued**

Section 27

Section 28

Section 29(1) and (2)(a) and (c)

Section 31(1) and (3)

Heading to section 32 and section 32

Section 101H(2), (3), (4)(f), and (5)

Section 101I(1), (2), (3), (4)(a), (5), and (7)

Section 101K

Section 117(1)(c)

Section 120(3)

Section 121(3)(b)

Section 122(6)

Section 123(4)(c) and (6)

Section 125(1)

Heading to section 127 and section 127(1), (2), and (3)

Section 129(3)

Section 130

Section 131(1)

Section 132(1)

Section 135(1)

Section 136

Section 138(1)

Section 139(1), (2), (4), and (5)

Heading to section 140 and section 140(1), (3), and (4)

Heading to section 141 and section 141(1) and (2)

Section 142(1)(a)

Section 143(1)

Section 148(1)

Section 149

Heading to section 150 and section 150(1)

Section 151

Section 152(1)

Section 156(2)(b)

Section 157(a)

**KiwiSaver Act 2006 (2006 No 40)—*continued***

Heading to section 159 and section 159(1) and (2)

Heading to section 162 and section 162(1) and (2)

Section 163

Heading to section 164 and section 164(1)

Section 165(d)

Section 168

Heading to section 169 and section 169(1), (4), and (5)

Heading to section 170 and section 170(1) and (3)

Section 173(1)

Section 174(d)

Section 175

Section 184(2)(a) and (4)

Heading to section 189B and section 189B

Section 189C(1) and (4)(b)

Heading to section 191 and section 191(2) and (4)

Section 192(1), (2), and (4)

Heading to section 194 and section 194(1)

Section 198(1)(a)

Heading to section 200 and section 200

Section 228(c)

Clause 5 of Part 1 of Schedule 2

Clause 3 of Part 2 of Schedule 2

Clause 3 of Part 3 of Schedule 2

**Superannuation Schemes Act 1989 (1989 No 10)**

Section 3(1)

Section 4(1)

Section 6(2)(b) and (c)

Section 9B(2A)(a) and (b), (2B)(a)(iv) and (b), and (4)

Heading to section 9BAA and section 9BAA(1), (2), (3), (4), (4B), and (5)

Section 9BAB(1), (1)(b), (2), (2)(a), (3)(b), (4), and (5)

Heading to section 9BA and section 9BA(1) and (2)

Section 10

Section 12(2)

**Superannuation Schemes Act 1989 (1989 No 10)**—*continued*

Section 13(2)(a)

Section 14(3)

Section 15(3)

Section 18

Heading to section 18A and section 18A(1) and (3)

Section 18B(1), (2), and (4)

Heading to section 20 and section 20(1) and (3)

Section 21(1)(a), (d)(i) and (ii), and (e), and (1A)

Section 22(2)

Section 25(2)(a)

Heading to section 28 and section 28(1)

Section 29

Section 34(1) and (2)

Section 35(1), (2), (3), and (4)

Section 36(1), (2), and (3)

Heading to section 37 and section 37(1)

Section 38(1)(d)

Heading to section 39 and section 39

Section 40(1) and (4)(b)

Clause (e) of Schedule 1

Clause (1)(o)(iv) of Schedule 2

**Tax Administration Act 1994 (1994 No 166)**

Section 125(i)

**Part 7**

**Replacing “Government Actuary” with “FMA” in regulations**

**KiwiSaver Regulations 2006 (SR 2006/358)**

Heading to regulation 8 and regulation 8(1)

Regulation 10(2) and (3)

Heading to regulation 11 and regulation 11

Heading to regulation 12 and regulation 12

Regulation 19(1)

Column headed “**Fee**” in Schedule 2

**Securities Regulations 2009 (SR 2009/230)**

Clause 12(3) of Schedule 6

**Superannuation Schemes (Fees) Regulations 1992 (SR 1992/284)**

Regulation 3

Heading to the Schedule

Clause 1A of Part 1 of the Schedule

Clause 6 of Part 1 of the Schedule

Clause 7 of Part 1 of the Schedule

Clause 1 of Part 2 of the Schedule

## **Reprints notes**

### **1     *General***

This is a reprint of the Financial Markets Authority Act 2011 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### **2     *Legal status***

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3     *Editorial and format changes***

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4     *Amendments incorporated in this reprint***

Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12): Part 1 subpart 6  
Intelligence and Security Act 2017 (2017 No 10): section 335  
Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102): section 126  
Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): sections 63–72  
Search and Surveillance Act 2012 (2012 No 24): section 245  
Criminal Procedure Act 2011 (2011 No 81): section 413  
Auditor Regulation Act 2011 (2011 No 21): section 82