

**Reprint
as at 1 December 2014**



**Financial Markets (Repeals and
Amendments) Act 2013**

Public Act 2013 No 70
Date of assent 13 September 2013
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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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Financial Markets (Repeals and Amendments) Act 2013.

2 Commencement

- (1) Sections 4(2) to (4), 91, 101(3), (6), and (7), 105, and 107 come into force on the day after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council; and 1 or more orders

may be made appointing different dates for different provisions and for different purposes.

- (3) To the extent that it is not previously brought into force under subsection (1) or (2), the rest of this Act comes into force on 1 April 2017.
- (4) In this section, **provision** includes any item, or any part of an item, in the Schedule.

Section 2(2): sections 6–9, 10, 11, 13, 35, 37–39, 41, 42(1)–(3), 43–47, 49, 52, 53, 58, 61(2)–(10), 42(4) (other than as far as it relates to new subsection (1A)), 62, 64, 65, 66(1), 67–69, 70(1), (4), and (6), 71, 150 (but only for the purpose of the items that are coming into force under paragraph (f)), and items in the Schedule brought into force, on 1 April 2014, by clause 3 of the Financial Markets Legislation (Phase 1) Commencement Order 2014 (LI 2014/51).

Section 2(2): the remaining provisions that have not earlier been brought into force, except the amendment in Part 1 of the Schedule inserting, by substitution, a new section 3(1)(h) of the Financial Transactions Reporting Act 1996, brought into force, on 1 December 2014, by clause 3 of the Financial Markets Legislation (Phase 2) Commencement Order 2014 (LI 2014/325).

3 Overview

- (1) This Act repeals and revokes the legislation replaced by the Financial Markets Conduct Act 2013 and makes amendments to other enactments.
- (2) The transitional provisions governing the transition to the Financial Markets Conduct Act 2013 are set out in Schedule 4 of that Act.

Repeals and revocations

4 Repeals

- (1) The following Acts are repealed:
 - (a) Securities Act 1978 (1978 No 103):
 - (b) Securities Markets Act 1988 (1988 No 234):
 - (c) Securities Transfer Act 1991 (1991 No 119):
 - (d) Superannuation Schemes Act 1989 (1989 No 10):
 - (e) Unit Trusts Act 1960 (1960 No 99).
- (2) Sections 5(3), 16(3), 22, 40, 43(2), and 49(3) to (6) of the Securities Amendment Act 2011 are repealed (and, if sections 43N to 43S of the Securities Act 1978 are in force on the commencement of this subsection,—
 - (a) those provisions are also repealed; and

- (b) section 66 of the Securities Act 1978 (as in force immediately before its repeal) must be treated as being in force).
- (3) Section 35A(5) of the Financial Reporting Act 1993 is repealed.
- (4) To avoid doubt, the reference to section 48(1)(c) in section 164(7) of the Financial Advisers Act 2008 must be treated as having been omitted on 1 May 2011.

5 Revocations

The following enactments are revoked:

- (a) Futures Industry (Client Funds) Notice 1991 (SR 1991/43):
- (b) Futures Industry (Client Funds) Regulations 1990 (SR 1990/227):
- (c) KiwiSaver (Periodic Disclosure) Regulations 2013 (SR 2013/47):
- (d) Securities Act (Contributory Mortgage) Regulations 1988 (SR 1988/143):
- (e) Securities (Fees) Regulations 1998 (SR 1998/461):
- (f) Securities Markets (Disclosure of Relevant Interests by Directors and Officers) Regulations 2003 (SR 2003/382):
- (g) Securities Markets (Fees) Regulations 2003 (SR 2003/383):
- (h) Securities Markets (Insider Trading Exemption—Fonterra Co-operative Group Limited) Regulations 2012 (SR 2012/322):
- (i) Securities Markets (Insider Trading Exemption—Futures Contracts) Regulations 2010 (SR 2010/354):
- (j) Securities Markets (Market Manipulation) Regulations 2007 (SR 2007/373):
- (k) Securities Markets (Substantial Security Holders) Regulations 2007 (SR 2007/372):
- (l) Securities Markets (Unsolicited Offers) Regulations 2012 (SR 2012/331):
- (m) Securities (Moratorium) Regulations 2009 (SR 2009/395):

- (n) Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008 (SR 2008/153):
- (o) Securities Regulations 2009 (SR 2009/230):
- (p) Superannuation Schemes (Fees) Regulations 1992 (SR 1992/284):
- (q) Unit Trusts (Fees) Regulations 1999 (SR 1999/152).

Amendments to Fair Trading Act 1986

6 Principal Act amended

Sections 7 and 8 amend the Fair Trading Act 1986.

7 Section 5A repealed

Section 5A is repealed.

8 New sections 48P to 48S inserted

The following sections are inserted after section 48O:

“48P Proceedings relating to financial products or financial services

“(1) This section applies if—

- “(a) the Commission is considering commencing civil or criminal proceedings in relation to conduct that constitutes, or may constitute, a contravention of any of sections 9 to 13; and
- “(b) the Commission considers that that conduct is in relation to a financial product or a financial service.

“(2) The Commission must, before commencing those proceedings, obtain the consent of the Financial Markets Authority (the **FMA**).

“(3) However, a failure to obtain consent under subsection (2) does not affect any proceedings commenced by the Commission.

“(4) The FMA, when considering whether to give its consent, must have regard to the following matters to the extent that the FMA considers that those matters are relevant:

- “(a) the purposes of the Financial Markets Conduct Act 2013 specified in sections 3 and 4 of that Act:
- “(b) any warning, report, or guideline issued, or comment or statement made, under section 9(1)(a)(ii) or (v) of the Financial Markets Authority Act 2011:

- “(c) any undertaking accepted under section 46 of the Financial Markets Authority Act 2011:
- “(d) any exemption granted under the Financial Markets Conduct Act 2013:
- “(e) any other action that the FMA has taken, or intends to take, in relation to the conduct:
- “(f) any other matters that the FMA considers relevant.
- “(5) The FMA’s consent may relate to particular conduct or a class of conduct (whether or not the conduct has already occurred).
- “(6) In this section,—
 - “**financial product**—
 - “(a) has the same meaning as in section 7 of the Financial Markets Conduct Act 2013; and
 - “(b) includes, in relation to any provision of sections 9 to 13, any class or classes of financial product declared by regulations made under section 548(1)(a) of that Act to be a financial product for the purposes of the provision of Part 2 of that Act that corresponds to that provision of this Act
- “**financial service** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013.

“48Q No pecuniary penalty and fine for same conduct involving financial products or financial services

- “(1) A person cannot be ordered to pay a pecuniary penalty, or be liable for a fine, under the Financial Markets Conduct Act 2013 and be liable for a fine under this Act for the same conduct.
- “(2) A person that has, in respect of certain conduct, paid an amount in lieu of a pecuniary penalty under section 46A(1)(b) of the Financial Markets Authority Act 2011 is not liable for a fine under this Act for the same conduct.

“48R Unsubstantiated representations prohibition does not apply to financial markets disclosure

- “(1) The provision of this Act that corresponds to section 23 of the Financial Markets Conduct Act 2013 does not apply to a representation made in a disclosure document or a register entry.

“(2) In this section, **disclosure document** and **register entry** have the same meanings as in section 6(1) of the Financial Markets Conduct Act 2013.

“48S Certain conduct under Financial Markets Conduct Act 2013 does not contravene various provisions of this Act

“(1) Conduct that contravenes section 82, 99, 262, 265, or 427 or clause 27 of Schedule 1 of the Financial Markets Conduct Act 2013 does not contravene any of sections 9 to 13 of this Act.

“(2) For the purpose of this section, conduct must be treated as contravening section 82, 99, 262, 265, or 427 or clause 27 of Schedule 1 of the Financial Markets Conduct Act 2013 even if the conduct does not constitute an offence, or does not lead to any liability, because of the availability of a defence.”

9 Transitional provision for existing offences and contraventions

(1) This section applies to an offence committed under, or a contravention of, the principal Act before the commencement of section 7.

(2) The principal Act continues to have effect as if it had not been amended by sections 7 and 8 for the purpose of—

- (a) investigating an offence or a contravention to which this section applies:
- (b) commencing or completing proceedings for an offence or a contravention to which this section applies:
- (c) imposing a penalty or other remedy, or making an order, in relation to an offence or a contravention to which this section applies.

Amendments to Financial Advisers Act 2008

10 Principal Act amended

Sections 11 to 61 amend the Financial Advisers Act 2008.

11 Purpose of Act

(1) Section 3 is amended by inserting the following subsection after subsection (1):

- “(1A) That purpose is additional to the purposes of the Financial Markets Conduct Act 2013 set out in sections 3 and 4 of that Act (and those purposes apply to this Act also).”
- (2) Section 3(2) is amended by omitting “To this end, the Act—” and substituting “To those ends, this Act (without limitation)—”.
- (3) Section 3(2)(b) is amended by inserting the following subparagraph after subparagraph (ii):
- “(iia) ensures that appropriate governance arrangements apply to services to allow for effective monitoring and reduce governance risks; and”.

12 Interpretation

- (1) Section 5 is amended by repealing the definitions of **call building society share** or **call credit union share**, **client money**, **client property**, **futures contract**, **investment statement**, **issuer**, **promoter**, **prospectus**, **registered exchange**, **related body corporate**, and **security**.
- (2) Section 5 is amended by inserting the following definitions in their appropriate alphabetical order:
- “**acquire** includes obtain by buying, subscribing, entering into the relevant legal relationship, or taking an assignment of
- “**call building society share** means a share issued by a building society under which—
- “(a) the shareholder has a right to demand repayment of the value of the share in full at any time; and
- “(b) the building society has an obligation to repay the value of the share in full not later than 1 working day after the demand is made; and
- “(c) the rate of dividend or interest payable or any other benefit provided does not alter as a result of the demand being made; and
- “(d) no fee or other amount is payable as a result of the principal sum not having been held by the building society for a particular period of time

“**call credit union share** means a share referred to in section 107 of the Friendly Societies and Credit Unions Act 1982, and issued by a credit union, under which—

- “(a) the member has a right to demand repayment of the value of the share in full at any time; and
- “(b) the credit union has an obligation to repay the value of the share in full in accordance with section 107(4) of the Friendly Societies and Credit Unions Act 1982; and
- “(c) the rate of dividend or interest payable or any other benefit provided does not alter as a result of the demand being made; and
- “(d) no fee or other amount is payable as a result of the principal sum not having been held by the credit union for a particular period of time

“**client money** has the meaning set out in section 77B

“**client property** has the meaning set out in section 77B

“**custodial service** has the meaning set out in section 77B

“**DIMS facility** means an agreement, arrangement, or understanding for the provision of a discretionary investment management service under an investment authority

“**DIMS licensee** has the same meaning as in section 392(3) of the Financial Markets Conduct Act 2013

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

“**FMCA financial product** means each of the following within the meaning of the Financial Markets Conduct Act 2013:

- “(a) an equity security;
- “(b) a debt security;
- “(c) a managed investment product;
- “(d) a derivative

“**information** includes a document

“**investment authority** has the meaning set out in section 12(3)

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

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

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

“**personalised DIMS** has the meaning set out in section 15

“**product disclosure statement** or **PDS** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

“**promoter** means, in relation to an FMCA financial product, a person who is instrumental in the formulation of a plan or programme pursuant to which the product is offered

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

“**related**, in relation to a body corporate, has the same meaning as in section 12(2) of the Financial Markets Conduct Act 2013”.

- (3) Section 5 is amended by repealing the definition of **category 1 product** and substituting the following definition:

“**category 1 product** means—

- “(a) an FMCA financial product (other than a product that is a category 2 product); or
- “(b) a DIMS facility (other than a facility that is a category 2 product); or
- “(c) an investment-linked contract of insurance; or
- “(d) any other product specified by the regulations; or
- “(e) a renewal or variation of the terms or conditions of an existing category 1 product”.

- (4) The definition of **category 2 product** in section 5 is amended by inserting the following paragraph after paragraph (j):

“(ja) a DIMS facility, if the investment authority covers only category 2 products; or”.

- (5) Paragraph (a) of the definition of **product provider** in section 5 is repealed and the following paragraph substituted:

“(a) the issuer, in the case of an FMCA financial product:”.

- (6) The definition of **product provider** in section 5 is amended by inserting the following paragraph after paragraph (c):

“(ca) the person to whom the investment authority is granted, in the case of a DIMS facility:”.

13 Who are clients

Section 5A(1)(b) is amended by omitting “the financial product is acquired or disposed of or the client money or client property is held” and substituting “the client money or client property is received, held, paid, or transferred under the service”.

14 Who are wholesale clients

- (1) Section 5C(1)(c) is repealed.
- (2) Section 5C(1)(d) is amended by inserting “(except in respect of a discretionary investment management service)” before “an entity”.
- (3) Section 5C(1) is amended by repealing paragraphs (f) and (g) and substituting the following paragraphs:
 - “(f) a person who is a wholesale investor within the meaning of clause 3(2) of Schedule 1 of the Financial Markets Conduct Act 2013 (*see* subsection (3)):
 - “(g) a person who is, in relation to an offer of FMCA financial products, a wholesale investor within the meaning of clause 3 of Schedule 1 of the Financial Markets Conduct Act 2013 if the service relates to that offer or to FMCA financial products that have been acquired by that person under that offer:
 - “(ga) a person who is, in relation to an offer of FMCA financial products, a close business associate of the offeror, or a relative of the offeror or of a director of the offeror, within the meaning of clauses 4 and 5 of Schedule 1 of the Financial Markets Conduct Act 2013 if the service relates to that offer or to FMCA financial products that have been acquired by that person under that offer:
 - “(gb) a person who is, in relation to a DIMS facility provided by a DIMS licensee, a wholesale investor under clause 36(b) of Schedule 1 of the Financial Markets Conduct Act 2013 if the service relates to that DIMS facility:”.
- (4) Section 5C(3) is repealed and the following subsection substituted:
 - “(3) The relevant time, for the purposes of applying Schedule 1 of the Financial Markets Conduct Act 2013 under subsection

(1)(f), must be treated as the time immediately before the service is received by the client.”

15 Who are eligible investors

Section 5D(1)(a) is amended by repealing subparagraph (i) and substituting the following subparagraphs:

- “(i) the client has sufficient knowledge, skills, or experience in financial matters to assess the value and risks of financial products; and
- “(ia) the client has sufficient knowledge, skills, or experience in financial matters to assess the merits of the service or services to be provided (including to assess its value and the risks involved); and”.

16 How to opt out of being wholesale client

Section 5G(5) is amended by adding “under section 5D”.

17 When person provides discretionary investment management service

- (1) Section 12(1) is amended by inserting “FMCA” before “financial products” in both places where it occurs.
- (2) Section 12 is amended by adding the following subsection:
- “(3) For the purposes of this Act, the authority referred to in subsection (1)(b) is the **investment authority**.”

18 Other exemptions

- (1) Section 14(1) is amended by inserting the following paragraph after paragraph (k):
 - “(ka) a person providing a relevant service that is—
 - “(i) covered by a market services licence for discretionary investment management services under the Financial Markets Conduct Act 2013; or
 - “(ii) exempted, by section 389 (other than by section 389(2)(b)) of that Act or otherwise by or under that Act, from the licensing

requirement under section 388(c) of that Act.”.

- (2) Section 14(1) is amended by repealing paragraphs (m) and (n) and substituting the following paragraph:

“(m) any form of communication made by or on behalf of an issuer or offeror to a person that is contained in, or given in connection with, an offer of FMCA financial products to that person that does not require disclosure under Part 3 of the Financial Markets Conduct Act 2013 because of any 1 or more of clauses 3 to 5 of Schedule 1 of that Act.”.

- (3) Section 14(1)(o) is amended by repealing subparagraph (i) and substituting the following subparagraph:

“(i) a product disclosure statement, a disclosure document under clause 26 of Schedule 1 of the Financial Markets Conduct Act 2013, information from a register entry (within the meaning of that Act), information under subpart 4 of Part 3 of that Act, or an advertisement referred to in section 89 of that Act.”.

- (4) Section 14 is amended by inserting the following subsection after subsection (2):

“(2A) However, subsections (1)(ka) and (2) do not limit the application of the terms and conditions of authorisation or the code to an authorised financial adviser (*see* sections 55(2) and 86(6)).”

19 When financial adviser service is personalised service or class service

Section 15 is amended by inserting the following subsection after subsection (2):

“(2A) Subsection (1) does not apply to a discretionary investment management service and, in this case, the service is a **personalised service** or a **personalised DIMS** if—

“(a) the service is provided to a named client or a client who is otherwise readily identifiable by the financial adviser exercising the investment authority under that service; and

“(b) the investment strategy implemented in, or to be applied under, the investment authority has been designed to take account of the client’s particular financial situation and goals or any 1 or more of them (rather than merely being customised from an investment strategy that applies to a class of clients, for example, by selecting options or by making minor changes to the class strategy or authority).”

20 Who may provide financial adviser service

Section 17 is amended by inserting the following subsection after subsection (1):

“(1A) Sections 18 to 20 only permit a person to provide a service to the extent that the service is within the scope of the person’s authorisation, registration, or grant of QFE status (including, in the case of a QFE adviser, taking into account any limitation imposed under section 67A or 75B(4)).”

21 Who is permitted to provide personalised service to retail clients

(1) Section 18(1)(a) is amended by omitting “or providing a discretionary investment management service”.

(2) Section 18(1)(a) is amended by repealing subparagraph (ii) and substituting the following subparagraph:

“(ii) a QFE adviser (but only if the QFE or a member of the QFE group is the product provider (or, in the case of an FMCA financial product, a promoter) of the relevant category 1 product):”.

(3) Section 18(1)(c) is amended by omitting “or providing a discretionary investment management service”.

(4) Section 18(1) is amended by adding the following paragraph after paragraph (c):

“(d) if providing a discretionary investment management service, an authorised financial adviser.”

(5) Section 18 is amended by repealing subsection (2).

22 Who is permitted to provide class service to retail clients

Section 19 is amended by adding the following subsection as subsection (2):

“(2) However,—

- “(a) subsection (1) does not permit a person to provide a class service that is a discretionary investment management service; and
- “(b) *see* Part 6 of the Financial Markets Conduct Act 2013 under which persons may be licensed as DIMS licensees or services may be exempted.”

23 Who may hold themselves out as authorised financial adviser

Section 20A is amended by inserting the following subsection after subsection (1):

“(1A) A person (**A**) must not hold out (whether directly or indirectly) that A, or any other person (**B**), is authorised for any financial adviser service unless that service is within the scope of A’s or B’s (as applicable) authorisation.”

24 Financial adviser must make disclosure before providing personalised service to retail client

Section 22 is amended by inserting the following subsection after subsection (1):

“(1A) However, an authorised financial adviser who provides a personalised DIMS to a retail client must instead disclose prescribed information to the client, in accordance with this Act and the regulations,—

- “(a) both—
 - “(i) before the investment authority is granted; and
 - “(ii) before any exercise of the investment authority (unless there has been previous disclosure that is not out of date under section 29); or
- “(b) if not practicable before, as soon as practicable after the time applying under paragraph (a).”

25 What financial adviser must disclose

Section 23(2) is amended by inserting the following paragraph after paragraph (c):

“(ca) information relating to any discretionary investment management service or any broking service provided.”.

26 No compliance with disclosure obligation if disclosure out of date

(1) Section 29(1) is amended by adding “or, in the case of a discretionary investment management service, the investment authority is exercised”.

(2) Section 29(2)(b)(iv) is amended by adding “or, in the case of a discretionary investment management service, change any instruction in relation to the service”.

27 New section 29A inserted

The following section is inserted after section 29:

“29A Further prescribed information to be made available to clients of discretionary investment management service

“(1) An authorised financial adviser who provides a personalised DIMS to a retail client must, at the request of the client or at the prescribed times or on the occurrence of the prescribed events, make available to the client the information that is required to be made available under this section by the regulations.

“(2) The information must be made available in the prescribed manner.

“(3) The information must, if required by the regulations, be presented, calculated, or prepared in accordance with the frameworks and methodologies specified in notices issued by the FMA under subpart 4 of Part 9 of the Financial Markets Conduct Act 2013 (if any).”

28 What is conduct obligation and when does it apply

Section 32(2) is amended by repealing paragraph (c) and substituting the following paragraph:

“(c) sections 37 to 45A apply to an authorised financial adviser.”.

29 Financial adviser must exercise care, diligence, and skill

Section 33 is amended by adding the following subsection:

- “(3) This section does not apply to a service to the extent that section 40 (which relates to discretionary investment management services) applies to the service.”

30 New section 38 substituted

Section 38 is repealed and the following section substituted:

“38 Authorised financial adviser must not recommend acquisition of FMCA financial products if offer contravenes financial markets legislation

- “(1) An authorised financial adviser (A) must not recommend to a person that that person acquire FMCA financial products if,—
- “(a) when the FMCA financial products were or are offered under a regulated offer, the offer contravened or contravenes any financial markets legislation; and
 - “(b) the contravention has not been remedied; and
 - “(c) A knows or ought to know that, when the FMCA financial products were or are offered, the offer contravened or contravenes any financial markets legislation.
- “(2) A person who contravenes subsection (1) commits an offence (*see* section 121).
“Compare: 1988 No 234 s 41S”.

31 New sections 39 to 44 inserted

The following sections are inserted after section 38:

“39 Duties when providing discretionary investment management service to retail clients

An authorised financial adviser, when providing a personalised DIMS to a retail client, must—

- “(a) act honestly in providing that service; and
- “(b) in exercising any powers under or performing any duties under the client agreement or investment authority for the service, act in the best interest of the client; and
- “(c) not make use of information acquired through providing that service in order to—
 - “(i) gain an improper advantage for the adviser or any other person; or

“(ii) cause detriment to the client.

“40 Duty to comply with professional standard of care in providing discretionary investment management service to retail clients

An authorised financial adviser who provides a personalised DIMS to a retail client must, in exercising any power or performing any duties under the client agreement or investment authority for the service, exercise the care, diligence, and skill that a prudent person engaged in that profession would exercise in the same circumstances.

“41 Need for client agreement with retail client for discretionary investment management services

- “(1) An authorised financial adviser must ensure that there is a client agreement governing a personalised DIMS provided to a retail client.
- “(2) The client agreement must be entered into at the same time as or before the investment authority is granted by the client.
- “(3) The authorised financial adviser must provide the discretionary investment management service to the client in accordance with that client agreement and an investment authority that complies with section 43.

“42 Contents, form, and effect of client agreement

- “(1) A client agreement required by section 41 must provide adequately for the matters prescribed by regulations.
- “(2) The client agreement is treated as containing any provision that is implied into it by or under this Act.
- “(3) The client agreement must be in writing and be contained in 1 or more documents that are legally enforceable as between the retail client and the authorised financial adviser (or the business on whose behalf the authorised financial adviser is providing the service).
- “(4) The client agreement has no effect to the extent that it contravenes, or is inconsistent with, this Act or any term implied into it by or under this Act.

“43 Requirement for agreed investment authority with retail client

- “(1) An authorised financial adviser must ensure that there is a written investment authority granted by the client for a personalised DIMS provided to a retail client.
- “(2) The authorised financial adviser must ensure that the investment authority—
 - “(a) clearly discloses the scope of the investment authority, including any limits on the nature or type of investments and on the proportion of each type of asset invested in; or
 - “(b) if there are no limits on any of the matters referred to in paragraph (a), or the authority can be changed without the prior written consent of the client, clearly discloses that fact.
- “(3) The investment authority must provide for the matters set out in this section in accordance with the frameworks and methodologies specified in notices issued by the FMA under subpart 4 of Part 9 of the Financial Markets Conduct Act 2013 (if any).

“44 Custodial duties under discretionary investment management service provided to retail client

- “(1) An authorised financial adviser who provides a personalised DIMS to a retail client must ensure that the client money and client property that is held under the service is held on behalf of the client by 1 or more persons that meet the custodianship requirements set out in subsection (2).
- “(2) A custodian of the client money and client property—
 - “(a) must be a separate body corporate that the financial adviser believes, on reasonable grounds, to be appropriate to hold, and safeguard, the money or property; and
 - “(b) may be an associated person of the financial adviser (or the business on whose behalf the financial adviser is providing the service), other than by virtue of the custodianship, only if—
 - “(i) that is permitted by conditions of the authorisation of the authorised financial adviser; and
 - “(ii) those conditions are observed.
- “(3) This section does not apply—

- “(a) to the extent that money or property is held directly by the client:
- “(b) in the prescribed circumstances.”

32 Eligibility to be authorised

- (1) Section 54 is amended by inserting “for a financial adviser service” after “to be authorised”.
- (2) Section 54(a) is amended by inserting the following subparagraph after subparagraph (iii):
 - “(iia) A meets the eligibility criteria (if any) that are prescribed by the regulations for that kind of financial adviser service; and”.

33 FMA must approve or decline application for authorisation

- (1) Section 55(1)(b) is amended by omitting “a discretionary investment management service on behalf of clients” and substituting “a personalised DIMS”.
- (2) Section 55 is amended by inserting the following subsection after subsection (1):
 - “(1A) If the scope of discretionary investment management services that may be authorised under this Act is limited by the regulations, a new or renewed authorisation for that service under subsection (1)(b) must not exceed that prescribed scope.”
- (3) Section 55(2) is amended by adding “(and may apply to services provided by an authorised financial adviser even if the adviser is providing that service as, or on behalf of the business of, a DIMS licensee under the Financial Markets Conduct Act 2013)”.
- (4) Section 55(5)(a) is amended by inserting “(in whole or in part)” after “application”.

34 FMA’s powers in relation to default by authorised financial adviser

Section 59 is amended by adding the following subsection:

- “(6) The FMA may act under this section in respect of the authorisation in whole or in part.”

35 What is broking service

- (1) Section 77B(1) and (2) are repealed and the following subsections substituted:

“(1) **A broking service—**

- “(a) is the receipt of client money or client property by a person and the holding, payment, or transfer of that client money or client property; and
- “(b) includes the holding of client money or client property by a person (**A**) in trust for, or on behalf of, a client (**C**), or another person nominated by **C**, under an arrangement between **A** and **C** or between **A** and another person with whom **C** has an arrangement (whether or not there are also other parties to any such arrangement).

“(2) In this Act,—

“**client money** means money—

- “(a) received in connection with acquiring, holding, or disposing of a financial product or otherwise in connection with a financial product; and
- “(b) received from, or on account of, a client by a person (**A**) (and not on **A**’s own account)

“**client property** means property (other than money) to which the following applies:

- “(a) the property is a financial product, is a beneficial interest in a financial product, or is received in connection with a financial product; and
- “(b) the property is received from, or on account of, the client by a person (**A**) (and not on **A**’s own account)

“**custodial service** means the type of broking service referred to in subsection (1)(b).”

- (2) Section 77B is amended by adding the following:

“Compare: Corporations Act 2001 s 766E(1) (Aust)”.

36 Other exemptions

Section 77C(1) is amended by repealing paragraph (d) and substituting the following paragraph:

- “(d) a person providing a relevant service in the course of acting as a derivatives issuer under a licence under Part 6 of the Financial Markets Conduct Act 2013.”.

37 What broker must disclose and form of disclosure

Section 77F(1) is amended by repealing paragraph (g) and substituting the following paragraph:

“(g) information relating to the broking service provided.”.

38 What is conduct obligation and when does it apply

Section 77J(3) is amended by repealing paragraph (a) and substituting the following paragraphs:

“(a) apply to broking services provided to a retail client; and

“(ab) apply to custodial and other broking services provided to every investor under a retail service of a DIMS licensee (as provided by section 446 of the Financial Markets Conduct Act 2013); and

“(ac) otherwise apply to broking services provided to a wholesale client only if provided by the regulations; and”.

39 Section 77N repealed

Section 77N is repealed.

40 New section 77O substituted

Section 77O is repealed and the following section substituted:

“77O Broker must not receive client money if offer contravenes financial markets legislation

“(1) A broker (A) must not receive client money or client property from a person for the acquisition of FMCA financial products if,—

“(a) when the FMCA financial products were or are offered under a regulated offer, the offer contravened or contravenes any financial markets legislation; and

“(b) the contravention has not been remedied; and

“(c) A knows or ought to know that, when the FMCA financial products were or are offered, the offer contravened or contravenes any financial markets legislation.

“(2) Contravention of this section may give rise to an offence (*see* section 134B).”

41 Heading above section 77P substituted

The heading above section 77P is repealed and the following heading substituted:

“Obligations for handling client money and client property”.

42 Broker must pay client money into separate trust account

(1) The heading to section 77P is amended by adding “**and hold client property on trust**”.

(2) Section 77P(1) is amended by omitting “retail”.

(3) Section 77P(1) is amended by repealing paragraph (b) and substituting the following paragraph:

“(b) must ensure that the client money is paid promptly into a bank in New Zealand (or into any other prescribed entity) to—

“(i) a trust account of the broker or of a related person or entity specified in the regulations; or

“(ii) (if section 44 of this Act or section 445 of the Financial Markets Conduct Act 2013 applies) a trust account of a person permitted to hold the money under that section.”

(4) Section 77P is amended by inserting the following subsection after subsection (1):

“(1A) A broker must ensure that the client money and client property are held separate from money or property held by or for the broker, or other person referred to in subsection (1)(b)(i) or (ii), on its own account.

“(1B) A broker must comply with any prescribed duties and other requirements in relation to the client money and client property held on trust under this section.”

43 Broker must account for client money and client property

Section 77Q(1) is amended by omitting “retail”.

44 Broker must keep records of client money and client property

(1) Section 77R(1) is amended by omitting “retail”.

(2) Section 77R(2) is amended by omitting “retail”.

- (3) Section 77R(2)(c) is amended by omitting “where” and substituting “when”.
- (4) Section 77R is amended by inserting the following subsection after subsection (2):
“(2A) The broker must also keep all other prescribed records.”
- (5) Section 77R(3) is repealed and the following subsection substituted:
“(3) The broker must—
 - “(a) keep the records required by this section, or ensure that they are kept, in a manner that enables those records to be conveniently and properly audited, reviewed, or inspected; and
 - “(b) comply with the prescribed requirements (if any) relating to those records and their audit, review, or inspection.”

45 New section 77RA inserted

The following section is inserted after section 77R:

“77RA Broker must report on client money and client property

- “(1) A broker must, in the prescribed circumstances, provide confirmation information to a client or other prescribed persons in respect of client money or client property received or held on behalf of the client.
- “(2) The confirmation information must be provided in the prescribed manner.
- “(3) In this section, **confirmation information** means the information relating to the client money or client property, or transactions relating to it, that is prescribed.”

46 Restrictions on use of client money and client property

Section 77S(1) is amended by omitting “retail”.

47 Protection of client money and client property held on trust

Section 77T is amended by omitting “retail”.

48 Content of code

Section 86 is amended by adding the following subsection:

“(6) The code may specify that minimum standards apply to services provided by an authorised financial adviser even if the adviser is providing that service as, or on behalf of the business of, a DIMS licensee under the Financial Markets Conduct Act 2013.”

49 Section 120 repealed
Section 120 is repealed.

50 Offence of recommending offer of securities when subscription illegal
The heading to section 121 is amended by omitting “**of securities when subscription illegal**” and substituting “**that contravenes financial markets legislation**”.

51 Offence of receiving client money if offer for subscription illegal
The heading to section 134B is amended by omitting “**for subscription illegal**” and substituting “**contravenes financial markets legislation**”.

52 Offence of contravening requirement to pay client money into separate trust account
The heading to section 134C is amended by adding “**and hold client property on trust**”.

53 New section 134EA inserted
The following section is inserted after section 134E:
“**134EA Offence of failing to report on client money and client property**
A person who contravenes section 77RA commits an offence and is liable on conviction to a fine,—
“(a) in the case of an individual, not exceeding \$5,000;
“(b) in the case of an entity, not exceeding \$25,000.”

54 Heading to subpart 4 of Part 4 amended
The heading to subpart 4 of Part 4 is amended by omitting “, banning orders,”.

55 Sections 137C to 137J and heading repealed

Sections 137C to 137J and the heading above section 137F are repealed.

56 Pecuniary order for contravening wholesale certification requirement

- (1) The heading to section 137K is amended by adding “**or conduct obligations related to discretionary investment management service**”.
- (2) Section 137K(1) is amended by adding “or a conduct obligation under any of sections 39 to 44”.
- (3) Section 137K(5) is repealed.
- (4) The heading above section 137K is consequentially amended by adding “*or conduct obligations related to discretionary investment management service*”.
- (5) Section 137L(1) is consequentially amended by inserting “or a conduct obligation related to a discretionary investment management service” after “certification requirement”.

57 When FMA may make temporary banning orders for financial adviser services or broking services

Section 137M(a) is amended by omitting “Securities Act 1978” and substituting “Financial Markets Conduct Act 2013”.

58 Approval of standard conditions for incorporation in authorisations and grants of QFE status

Section 147A(3) is amended by adding “; or” and also by adding the following paragraph:

- “(f) is necessary or desirable in order to ensure timely and consistent implementation of changes to standard conditions for discretionary investment management services in connection with the commencement or implementation of the Financial Markets (Repeals and Amendments) Act 2013.”

59 FMA may grant exemptions

Section 148 is amended by inserting the following subsection after subsection (1):

“(1A) To avoid doubt, an exemption may extend to exempt from compliance with any obligation under any provision that is implied into an agreement by the regulations.”

60 New section 150 inserted

The following section is inserted after section 149:

“150 Implied provisions

A provision that is implied into an agreement by the regulations—

- “(a) applies despite anything to the contrary in the agreement; and
- “(b) is enforceable by the parties or by any person on whom the provision confers, or purports to confer, a benefit; but
- “(c) applies subject to any exemption granted by the FMA under section 148.”

61 General regulations

- (1) Section 154(1)(b) is amended by omitting “a security” and substituting “an FMCA financial product”.
- (2) Section 154(1) is amended by inserting the following paragraphs after paragraph (g):
 - “(ga) prescribing the information that must be made available under section 29A, the time or events referred to in that section, and the manner of making the information available (including prescribing the manner in which the information is to be presented, calculated, or prepared);
 - “(gb) prescribing the matters that must be contained in a client agreement required for the purposes of section 41 and prescribing provisions to be implied in a client agreement (which may, without limitation, specify duties under the client agreement, including by supplementing, or adding to, any duties prescribed by this Act);

- “(gc) prescribing circumstances for the purposes of section 44:
 - “(gd) prescribing eligibility criteria for authorisation for a service (including any preconditions or requirements that apply, or could be imposed by regulations, in relation to an application for a licence under subpart 2 of Part 6 of the Financial Markets Conduct Act 2013 if the service was a market service):”.
- (3) Section 154(1)(h) is amended by adding “and, for the purposes of section 55(1A), limits on the scope of discretionary investment management services (whether by funds under management, number of clients, nature of services, or other matters) that may be authorised under this Act”.
- (4) Section 154(1)(l) is amended by repealing subparagraphs (i) and (ii) and substituting the following subparagraphs:
- “(i) that any or all of sections 77P to 77T to apply to wholesale clients and the extent to which and the circumstances in which they so apply:
 - “(ia) the duties and obligations of brokers in relation to client money and client property, provisions specifying who may be a related person or entity for the purposes of section 77P and what entities are prescribed for the purposes of the trust account, and other provisions regulating the establishment and operation of the trust account and the receipt, handling, and application of client money and client property by a broker (including requirements relating to the investment of money that is held in trust and providing for how interest or other income from that investment is to be paid, retained, or otherwise dealt with):
 - “(ii) provisions regulating the keeping, retention, reconciliation, inspection, and audit or review of trust account records and other records and procedures of brokers:”.
- (5) Section 154(1)(l)(iii) is amended by adding “(including prescribing what confirmation information must be made available and to whom, when, where, and how it must be provided, and any other matters for the purposes of section 77RA)”.

- (6) Section 154(1)(l) is amended by adding the following subparagraph:
 - “(iv) provisions regulating the delivery of client money or client property to the person on whose behalf they are held, and other steps to be taken or provisions to apply, in connection with the termination of any broking service.”.
- (7) Section 154(5) is amended by adding “or (gc)” after “(1)(a)”.
- (8) Section 154(5)(a) is amended by omitting “exemption is” and substituting “regulations are”.
- (9) Section 154(5)(b) is amended by omitting “exemption relates” and substituting “regulations relate”.
- (10) Section 154(5) is amended by repealing paragraph (c) and substituting the following paragraph:
 - “(c) the extent of the exemption, or the extent to which requirements are disapplied, under the regulations is not broader than what is reasonably necessary to address the matters that gave rise to the regulations.”

*Amendments to Financial Markets Authority
Act 2011*

62 Principal Act amended

Sections 63 to 72 amend the Financial Markets Authority Act 2011.

63 Interpretation

- (1) Section 4 is amended by repealing the definition of **dealings in securities** and substituting the following definition:

“**dealing**, in relation to financial products, has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013”.
- (2) Section 4 is amended by inserting the following definitions in their appropriate alphabetical order:

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

“**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

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

“**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”.

- (3) Paragraph (b) of the definition of **financial markets participant** in section 4 is amended by repealing subparagraphs (i) to (iii) and substituting the following subparagraphs:

“(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):”.

- (4) Paragraph (c) of the definition of **financial markets participant** in section 4 is amended by repealing subparagraph (i) and substituting the following subparagraph:

“(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”.

- (5) Section 4 is amended by repealing the definition of **securities**.

64 FMA's functions

- (1) Section 9(1)(a) is amended by adding the following subparagraph:
 “(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):”.
- (2) Section 9(1)(c) is amended by inserting “or an involvement in a contravention” after “contravention”.

65 Power to enter and search place, vehicle, or other thing

- (1) Section 29(1) and (3)(a) are amended by inserting “, or being involved in a contravention,” after “constitute a contravention”.
- (2) Section 29(1)(a) is amended by inserting “or involvement” after “constitute such a contravention”.

66 FMA may exercise person's right of action

- (1) Section 34(2)(b) is amended by omitting “fraud, negligence, default” and substituting “a contravention, an involvement in a contravention, fraud, negligence”.
- (2) Section 34(3) is amended by repealing paragraph (c) and substituting the following paragraph:
 “(c) if person A is an issuer, any product holders of financial products issued by person A.”
- (3) Section 34(4) is repealed.

67 FMA may accept undertakings

Section 46 is amended by inserting the following subsection after subsection (1):

- “(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)).”

68 New section 46A inserted

The following section is inserted after section 46:

**“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.”

69 New heading and section 48A inserted

The following heading and section are inserted after section 48:

*“Power to appear and be heard and adduce
evidence*

“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.”

70 FMA may require its warning to be disclosed

- (1) Section 49(1) is amended by repealing paragraph (b) and substituting the following paragraph:
- “(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.”.
- (2) Section 49(1)(c) is amended by inserting “disclosure document or other” after “ensure that any”.
- (3) Section 49(7)(a)(ii) is amended by omitting “securities” and substituting “financial products”.
- (4) Section 49(7) is amended by repealing paragraph (b) and substituting the following paragraph:
- “(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):”.
- (5) Section 49(7)(c) is amended by omitting “securities” and substituting “financial products”.
- (6) Section 49(7) is amended by repealing paragraph (d) and substituting the following paragraph:

“(d) **offer, restricted communication, associated person,** and **distributed** have the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013.”

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

Section 68 is amended by repealing subsection (10) and substituting the following subsection:

- “(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.”

72 Schedule 1 amended

- (1) Part 1 of Schedule 1 is repealed and the following Part substituted:

“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”.

- (2) Part 2 of Schedule 1 is amended by inserting the following item in its appropriate alphabetical order:
- “Trustee Companies Management Act 1975”.

Amendments to KiwiSaver Act 2006

73 Principal Act amended

Sections 74 to 109 amend the KiwiSaver Act 2006.

74 Purpose

Section 3(2) is amended by omitting “enables the establishment of schemes” and substituting “provides for schemes”.

75 Interpretation

- (1) Section 4(1) is amended by repealing the definitions of **administration manager**, **complying superannuation fund**, **defined contribution scheme**, **department**, **exempt employer**, **fee subsidy**, **independent trustee**, **investment manager**, **investment statement**, **KiwiSaver scheme**, **KiwiSaver schemes register**, **manager**, **member’s accumulation**, **member’s interest**, **Minister**, **nominated person**, **nominee**, **promoter**, **registered superannuation scheme**, **related company**, **restricted KiwiSaver scheme** or **restricted scheme**, **trust deed**, **trustee corporation**, **trustees**, and **umbrella trust**.

- (2) Section 4(1) is amended by inserting the following definitions in their appropriate alphabetical order:

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

“**complying superannuation fund** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

“**department** means the department of State that, with the authority of the Prime Minister, is responsible for the administration of Part 4 and Schedule 1

“**exempt employer** means an employer—

- “(a) who was approved as an exempt employer under section 30 (before its repeal), or who has been approved to succeed to exempt employer status under section 152; and

- “(b) whose approval has not been revoked

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

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

“**managed investment scheme** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

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

“**member’s accumulation**, in relation to a member of a scheme, means the net value of the total of—

- “(a) the member’s contributions; and
- “(b) any vested employer contributions in respect of the member; and
- “(c) any fee subsidies paid in respect of the member under regulations made under section 228(1)(n) or (o) before the revocation of those regulations; and
- “(d) the Crown contribution paid in respect of the member

“**member’s interest**, in relation to a member of a scheme, means the net value of the total of—

- “(a) the member’s accumulation; and
- “(b) any unvested employer contributions

“**Minister**, in Part 4, sections 228 and 230, and Schedule 1,—

- “(a) 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 Part 4 and Schedule 1; and
- “(b) includes, for the purposes of subpart 2 of Part 4 (and any regulations made under section 228 or 230 for the purposes of a matter dealt with in that subpart), any Ministers of the Crown who are jointly responsible for making an appointment under section 132 (if more than 1 Minister is authorised to act jointly)

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

“**register of managed investment schemes** means the register of managed investment schemes kept under Schedule 2 of the Financial Markets Conduct Act 2013

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

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

“**scheme** means any type or form of managed investment scheme

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

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

“**trust deed**, in relation to a scheme, means the governing document of the scheme within the meaning of section 6(1) of the Financial Markets Conduct Act 2013

“**workplace savings scheme** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013.”

- (3) The definition of **default investment product** in section 4(1) is amended by omitting “section 177” and substituting “section 132”.
- (4) The definition of **default KiwiSaver provider** in section 4(1) is amended by omitting “section 177” and substituting “section 132”.
- (5) The definition of **default KiwiSaver scheme** in section 4(1) is amended by omitting “section 177” and substituting “section 132”.
- (6) Paragraph (a) of the definition of **defined benefit scheme member** in section 4(1) is amended by omitting “registered superannuation scheme” and substituting “superannuation scheme”.
- (7) Paragraph (a)(i) of the definition of **defined benefit scheme member** in section 4(1) is amended by inserting “, section 119G of this Act, or section 179(2)(b) of the Financial Markets Conduct Act 2013” after “section 9BAA of the Superannuation Schemes Act 1989”.
- (8) Paragraph (d) of the definition of **fee** in section 4(1) is amended by omitting “referred to in section 200 or charged under regulations made under section 228(c)” and substituting “referred to in section 67 of the Financial Markets Authority Act 2011 or charged under regulations made under section 228(1)(a)”.
- (9) The definition of **KiwiSaver scheme rules** in section 4(1) is amended by omitting “section 126” and substituting “section 116”.

76 Meaning of provider

Section 5 is amended by repealing subsections (1) and (1A) and substituting the following subsection:

- “(1) For the purpose of anything that must or may be done by or to or in relation to a scheme, **provider**, unless the context otherwise requires,—
- “(a) means the person who is the manager of the scheme; and
 - “(b) in the case of a restricted scheme, includes any person to whom the manager has made a lawful delegation to do any thing (for example, an administration manager).”

77 Outline

- (1) Section 8(3) is amended by omitting “regulates” and substituting “contains additional governance provisions relating to”.
- (2) Section 8(5) is amended by omitting “and Schedules 2 and 3 contain” and substituting “contains”.
- (3) Section 8(6) is amended by omitting “and the Superannuation Schemes Act 1989”.
- (4) Section 8 is amended by adding the following subsection:

“(7) Also, other rules about KiwiSaver schemes and complying superannuation funds are contained in the Financial Markets Conduct Act 2013 (for example, rules about registration, governance, and offers of interests).”

**78 Outline of how people become members of overall
KiwiSaver scheme**

Section 9(2) is amended by omitting “This subpart” and substituting “Subpart 4 of Part 4”.

79 Extension of opt-out period

Section 18(1)(b) is amended by omitting “an investment statement” in each place where it appears and substituting in each case “the product disclosure statement”.

80 Sections 24 to 32 and heading repealed

Sections 24 to 32 (which relate to exempt employers) and the heading above section 24 are repealed.

81 Employer must also supply investment statement for employer's chosen KiwiSaver scheme (if any)

- (1) The heading to section 43 is amended by omitting “**investment statement**” and substituting “**product disclosure statement**”.
- (2) Section 43(a) is amended by omitting “an investment statement for” and substituting “the product disclosure statement for the offer of interests in”.

82 Effect of employer choice of KiwiSaver scheme

Section 48 is amended by repealing subsections (2) to (6) and substituting the following subsections:

- “(2) On the first day that this section applies to an employee, the employee is treated, for the purposes of this Act and the Financial Markets Conduct Act 2013, as having—
 - “(a) been given a product disclosure statement for the offer of interests in the employer's chosen KiwiSaver scheme; and
 - “(b) immediately after, applied to become a member of that scheme; and
 - “(c) become a member of that scheme.
- “(3) The provider of the employer's chosen KiwiSaver scheme must accept that application and register the employee as a member of the scheme.
- “(4) The membership contract of the KiwiSaver scheme is binding on the employee and the provider, and enforceable as if it were a contract that was freely and voluntarily entered into.
- “(5) The contract may be varied, replaced, cancelled, or otherwise terminated, and the managed investment products may be returned,—
 - “(a) to the extent permitted by section 131; and
 - “(b) except as provided by that section, in the same way as if the contract were freely and voluntarily entered into.”

83 Effect on existing members of change, etc, in employer chosen scheme

Section 49(2) is amended by omitting “section 119G (which provides for transfers without consent in certain circum-

stances)” and substituting “section 181 of the Financial Markets Conduct Act 2013 (which provides for transfers with FMA consent in certain circumstances)”.

84 Commissioner provisionally allocates certain people to default KiwiSaver schemes and sends investment statement

- (1) The heading to section 50 is amended by omitting “**investment statement**” and substituting “**product disclosure statement**”.
- (2) Section 50(3)(c) is amended by omitting “investment statement” and substituting “product disclosure statement”.
- (3) Section 50(4) is amended by repealing paragraphs (b) to (c) and substituting the following paragraphs:
 - “(b) the Commissioner receives notice under section 212(1)(b) of the Financial Markets Conduct Act 2013 (which relates to transfers to another scheme on a scheme’s winding up) and paragraph (ba) does not apply; or
 - “(ba) a scheme winds up, if that winding up is after the Commissioner receives notice under that section; or
 - “(c) the Commissioner receives notice under section 131(1); or”.

85 New section 52 substituted

Section 52 is repealed and the following section substituted:

“52 Effect of completion of allocation

- “(1) A person whose allocation is completed under section 51 is treated, for the purposes of this Act and the Financial Markets Conduct Act 2013, as having—
 - “(a) been given a product disclosure statement for the offer of interests in the default KiwiSaver scheme; and
 - “(b) immediately after, applied to become a member of that scheme; and
 - “(c) become a member of that scheme.
- “(2) The provider of the default KiwiSaver scheme to which the person has been allocated must accept that application and register the person as a member of the scheme.

- “(3) The membership contract of the default KiwiSaver scheme is binding on the person and the provider, and enforceable as if it were a contract that was freely and voluntarily entered into.
- “(4) The contract may be varied, replaced, cancelled, or otherwise terminated, and the managed investment products may be returned,—
 - “(a) to the extent permitted by section 131; and
 - “(b) except as provided in that section, in the same way as if the contract were freely and voluntarily entered into.”

86 Notification of transfers and requirement to transfer funds and information

Section 56 is amended by repealing subsection (6) and substituting the following subsection:

- “(6) The circumstances are that—
 - “(a) members have been notified of a proposal to transfer all of the members of the old scheme to another scheme under section 180 of the Financial Markets Conduct Act 2013; or
 - “(b) a copy of a winding-up order or resolution of the old scheme has been given to the FMA under section 212 of that Act.”

87 Involuntary transfers

- (1) Section 57(1) is amended by repealing paragraphs (b) to (c) and substituting the following paragraphs:
 - “(b) the Commissioner receives notice under section 212(1)(b) of the Financial Markets Conduct Act 2013 (which relates to transfers to another scheme on a scheme’s winding-up) and paragraph (ba) of this section does not apply; or
 - “(ba) a scheme winds up, if that winding-up is after the Commissioner receives notice under section 212(1)(b) of the Financial Markets Conduct Act 2013; or
 - “(c) the Commissioner receives notice under section 131(1); or”.

- (2) Section 57(2) is amended by omitting “if section 119G applies” and substituting “to a transfer to which section 181 of the Financial Markets Conduct Act 2013 applies”.

88 Compulsory employer contribution amount: general rule

- (1) Section 101D(5)(b) is amended by—
- (a) omitting “registered superannuation scheme” and substituting “retirement scheme”; and
 - (b) inserting in subparagraph (i) “or section 179(2)(b) of the Financial Markets Conduct Act 2013” after “or section 119G of this Act”.
- (2) Section 101D(6) is amended by omitting “registered superannuation scheme” and substituting “retirement scheme”.
- (3) Section 101D(8)(b) is amended by omitting “registered superannuation scheme” and substituting “retirement scheme”.

89 De minimis: other contributions and hybrid schemes amount

Section 101FC(a) and (b) are amended by omitting “registered superannuation scheme” and substituting in each case “retirement scheme”.

90 Sections 101H to 101K and heading repealed

Sections 101H to 101K (which relate to complying superannuation funds) and the heading above section 101H are repealed.

91 Implied provision as to transfer of members, etc

Section 119C(2) is amended by inserting “and regulations made under section 230” after “section 119G”.

92 Part 4 substituted

Part 4 is repealed and the following Part substituted:

“Part 4

“Additional governance provisions

“115 Overview of Part

This Part contains governance provisions relating to schemes that are additional to those contained in the Financial Markets

Conduct Act 2013, and other matters related to the functions of the Financial Markets Authority, as follows:

- “(a) subpart 1 provides for implied terms in trust deeds and regulates other scheme matters:
- “(b) subpart 2 provides for default KiwiSaver schemes:
- “(c) subpart 3 provides for certain schemes to continue to be complying superannuation funds:
- “(d) subpart 4 provides for certain employers to continue to be exempt employers, with the effect that the automatic enrolment rules will not apply to their employees when they start new employment:
- “(e) subpart 5 contains miscellaneous matters.

“Subpart 1—Implied terms and other
regulation of schemes

“KiwiSaver scheme rules

**“116 KiwiSaver scheme rules are implied in trust deeds
establishing KiwiSaver scheme**

- “(1) The provisions set out in Schedule 1 are to be known as the KiwiSaver scheme rules.
- “(2) The KiwiSaver scheme rules set out in Schedule 1 are implied in every trust deed that establishes a KiwiSaver scheme in relation to the KiwiSaver scheme.
- “(3) The KiwiSaver scheme rules—
 - “(a) apply despite anything to the contrary in the trust deed; and
 - “(b) are enforceable by the manager, the supervisor, or any member of the scheme.

“Compare: 2006 No 40 s 126 as at October 2011

*“Provisions about unreasonable fees that apply
to both KiwiSaver schemes and complying
superannuation funds*

“117 Duty to give notice to FMA about fee increases

- “(1) Any person who increases a fee must give notice of the increase to the FMA before or as soon as is reasonably practicable after the increase takes effect if—

- “(a) the person is referred to in clause 2 of the KiwiSaver scheme rules (which relates to a requirement that fees not be unreasonable), and that clause applies to the fee; or
 - “(b) (in the case of a complying superannuation fund) the person would be referred to in clause 2 of the KiwiSaver scheme rules, and that clause would apply to the fee, if the complying superannuation fund were a KiwiSaver scheme.
- “(2) Every person commits an offence, and is liable on conviction to a fine not exceeding the amount set out in subsection (4), who refuses or fails without reasonable excuse to give notice to the FMA of a fee increase as and when required by this section.
- “(3) If any body corporate commits an offence under this section, every officer of the body corporate who knowingly authorises or permits the offence also commits the offence.
- “(4) A person who is convicted of an offence under this section is liable,—
- “(a) the first time that the person is convicted, to a fine not exceeding \$25,000; and
 - “(b) on every other occasion that the person is convicted, to a fine not exceeding \$50,000.
- “Compare: 1989 No 10 s 39; 2006 No 40 ss 189B, 199 as at October 2011

“118 Exercise of functions by FMA about unreasonable fees

In considering whether a fee is unreasonable in relation to the provision of a KiwiSaver scheme or a complying superannuation fund, the FMA—

- “(a) must have regard to any prescribed matter; and
- “(b) may have regard to any other matter that the FMA considers relevant; and
- “(c) may make decisions in accordance with any prescribed process.

“Compare: 2006 No 40 s 127 as at October 2011

“119 Powers of High Court in relation to unreasonable fees

- “(1) If the High Court is satisfied, on the application of a member of a scheme or the FMA, that any of the persons referred to in

section 117(1)(a) or (b) has charged a fee that is unreasonable, it may order that the fee be annulled or reduced.

- “(2) The High Court may make any other order it thinks fit for the purpose of giving effect to an order under subsection (1).
- “(3) An application for an order may be made within 1 year of the day that the fee is imposed or debited.
- “(4) In determining whether a fee is unreasonable for the purposes of this section, the High Court—
 - “(a) must have regard to any prescribed matter; and
 - “(b) may have regard to any other matter it thinks fit.

“Compare: 1989 No 10 s 40; 2006 No 40 s 189C as at October 2011

“Other implied terms

“120 Terms relating to backdated validation implied into trust deeds of KiwiSaver schemes

- “(1) Terms necessary for giving effect to the law relating to backdated validation of invalid membership under subpart 4 of Part 2 are implied into the trust deed that establishes a KiwiSaver scheme in relation to the KiwiSaver scheme.
- “(2) The terms—
 - “(a) apply despite anything to the contrary in the trust deed of the scheme; and
 - “(b) are enforceable by the manager, the supervisor, or a member of the scheme.

“Compare: 2006 No 40 s 128B as at October 2011

“121 Terms relating to members’ tax credits implied into trust deeds of KiwiSaver schemes and complying superannuation funds

- “(1) Terms necessary for giving effect to the law relating to the tax credits described in section MK 1 of the Income Tax Act 2007 are implied into the trust deed that establishes—
 - “(a) a KiwiSaver scheme in relation to the KiwiSaver scheme;
 - “(b) a complying superannuation fund in relation to the complying superannuation fund.
- “(2) The terms—

- “(a) apply despite anything to the contrary in the trust deed of the scheme; and
- “(b) are enforceable by the manager, the supervisor, or a member of the scheme.

“Compare: 2006 No 40 s 128A as at October 2011

“122 Terms relating to compulsory employer contributions implied into trust deeds of KiwiSaver schemes and complying superannuation funds

- “(1) Terms necessary for giving effect to the law relating to compulsory employer contributions are implied into the trust deed that establishes—

- “(a) a KiwiSaver scheme in relation to the KiwiSaver scheme;
- “(b) a complying superannuation fund in relation to the complying superannuation fund.

- “(2) The terms—

- “(a) apply despite anything to the contrary in the trust deed of the scheme; and
- “(b) are enforceable by the manager, the supervisor, or a member of the scheme.

“Compare: 2006 No 40 s 128D as at October 2011

“123 Terms relating to lump sum payments by complying superannuation funds

- “(1) Terms necessary for giving effect to clause 2(c) of Schedule 28 of the Income Tax Act 2007 are implied into the trust deed that establishes a complying superannuation fund in relation to the complying superannuation fund.

- “(2) The terms—

- “(a) apply despite anything to the contrary in the trust deed of the scheme; and
- “(b) are enforceable by the manager, the supervisor, or a member of the scheme.

“Compare: 2006 No 40 s 128C as at October 2011

“Other regulation of schemes

“124 Requirement for annual return

- “(1) The manager of a KiwiSaver scheme and the manager of a complying superannuation fund must provide an annual return to the FMA that—
- “(a) is in the prescribed form; and
 - “(b) meets any further prescribed requirements.
- “(2) The prescribed requirements may include a requirement to provide statistical information in relation to the KiwiSaver scheme or complying superannuation fund.
- “(3) The annual return must be provided before the prescribed date and relate to the prescribed 12-month period.
- “(4) Nothing in this section requires the manager to provide—
- “(a) information about an identifiable individual; or
 - “(b) information that is not in the possession or control of the manager; or
 - “(c) information that is not reasonably ascertainable from information that is in the possession or control of the manager.
- “(5) Every person commits an offence, and is liable on conviction to a fine not exceeding the amount set out in subsection (7), who refuses or fails without reasonable excuse to provide an annual return under this section as and when required by this Part or any regulations made under section 228.
- “(6) If a body corporate commits an offence under this section, every officer of the body corporate who knowingly authorises or permits the offence also commits the offence.
- “(7) A person who is convicted of an offence under this section is liable,—
- “(a) the first time that the person is convicted, to a fine not exceeding \$25,000; and
 - “(b) on every other occasion that the person is convicted, to a fine not exceeding \$50,000.

“Compare: 2006 No 40 ss 125, 199 as at October 2011

“125 Unclaimed money held in KiwiSaver scheme

- “(1) Section 77 of the Trustee Act 1956 applies subject to this section in relation to a member’s interest in a KiwiSaver scheme

held by, or in the control of, the supervisor or manager of that scheme.

“(2) Section 77 of the Trustee Act 1956 applies to the member’s interest only if, at the time that section is applied,—

“(a) the member of the scheme in respect of which the trust exists is able to be identified, according to the information held by or available to the manager, as being at least 5 years older than the date on which a withdrawal is permitted under clause 4 of the KiwiSaver scheme rules; and

“(b) the manager has ensured that reasonable efforts have been made to locate the member but the member is unable to be found; and

“(c) there has been no contribution made to the member’s account in the preceding 5 years, excluding any Crown contribution.

“Compare: 2006 No 40 s 195 as at October 2011

“126 Restrictions on transactions for scheme with fewer than 20 members

“(1) This section applies to a KiwiSaver scheme if the scheme has fewer than 20 members, treating all interests in the scheme held by persons associated under subpart YB of the Income Tax Act 2007 as being held by 1 person.

“(2) The provider must not lend money or provide financial assistance to—

“(a) a member:

“(b) a person associated (under subpart YB of the Income Tax Act 2007) with a provider or member.

“Compare: 2006 No 40 s 117A as at October 2011

“127 Member’s interest in KiwiSaver scheme not assignable

“(1) Except as expressly provided in this Act, a member’s interest or any future benefits that will or may become payable to a member under the KiwiSaver scheme must not be assigned or charged or passed to any other person whether by way of security, operation of law, or any other means.

“(2) However, subsection (1) does not prevent a member’s interest or any future benefits that will or may become payable to

a member under the KiwiSaver scheme from being released, assigned, or charged, or from passing to any other person if it is required by the provisions of any enactment, including a requirement by order of the court under any enactment (including an order made under section 31 of the Property (Relationships) Act 1976).

“Compare: 2006 No 40 s 196 as at October 2011

“128 Application of Financial Transactions Reporting Act 1996 to default allocation of members to KiwiSaver schemes

- “(1) This section applies in respect of any allocation of a person (A) to, or any application by a person (A) to become a member of, a KiwiSaver scheme under sections 50 to 52.
- “(2) For the purposes of section 6 of the Financial Transactions Reporting Act 1996, an application or allocation to which this section applies is not a request to a financial institution for the person to become a facility holder as defined in section 2(1) of that Act.
- “(3) Despite subsection (2),—
- “(a) a provider of a KiwiSaver scheme must make reasonable efforts to verify A’s identity at the time that A becomes a member of a KiwiSaver scheme; and
 - “(b) if A makes a voluntary payment into the KiwiSaver scheme, the payment must, for the purposes of section 6 of the Financial Transactions Reporting Act 1996, unless the provider has already verified A’s identity, be treated as a request to a financial institution for the person to become a facility holder within the meaning of that Act.
- “(4) In this section, **voluntary payment** means,—
- “(a) in relation to a member of a KiwiSaver scheme who has become a member of that scheme under section 48 or 52, a payment made by or for the benefit of that person into the KiwiSaver scheme that is not a deduction from salary or wages made under subpart 1 of Part 3; and
 - “(b) in relation to a member of a KiwiSaver scheme to whom paragraph (a) does not apply, a payment made by or for the benefit of that person into the KiwiSaver scheme that is in excess of the amount the member is contrac-

tually bound to pay into the scheme within a defined period.

“Compare: 2006 No 40 s 204 as at October 2011

“129 Product disclosure statements must contain responsible investment statement

“(1) Every product disclosure statement relating to an offer of interests in a KiwiSaver scheme or a complying superannuation fund must contain a statement in the following form if it is a scheme that takes responsible investment, including environmental, social, and governance considerations, into account in the investment policies and procedures of the scheme:

“ ‘Responsible investment, including environmental, social, and governance considerations, is taken into account in the investment policies and procedures of the scheme as at the date of this product disclosure statement. You can obtain an explanation of the extent to which responsible investment is taken into account in those policies and procedures at the issuer’s Internet site at [*specify Internet site address*].’

“(2) Every product disclosure statement relating to an offer of interests in a KiwiSaver scheme or a complying superannuation fund must contain a statement in the following form if it is a scheme that does not take responsible investment, including environmental, social, and governance considerations, into account in the investment policies and procedures of the scheme:

“ ‘Responsible investment, including environmental, social, and governance considerations, is not taken into account in the investment policies and procedures of the scheme as at the date of this product disclosure statement.’

“(3) A failure to comply with this section must be treated as if it were a failure to comply with the requirements of regulations made under the Financial Markets Conduct Act 2013 as to the information that a product disclosure statement must contain.

“Compare: 2006 No 40 s 205A as at October 2011

“Interface with securities law

“130 Application of Financial Markets Conduct Act 2013

- “(1) An employer does not contravene the Financial Markets Conduct Act 2013 by reason only that, acting as an employer, that person—
- “(a) complies with the person’s responsibilities as an employer under this Act; or
 - “(b) chooses a KiwiSaver scheme as the employer’s chosen KiwiSaver scheme under section 47.
- “(2) No act or omission by the Crown, or any officer or employee of the Crown, that occurs during the performance or exercise, or intended performance or exercise, of any functions, duties, or powers in respect of KiwiSaver schemes and complying superannuation funds, gives rise to any civil or criminal liability of the Crown or those officers or employees under the Financial Markets Conduct Act 2013.

“Compare: 2006 No 40 s 209 as at October 2011

**“131 Certain sections of Financial Markets Conduct Act 2013
modified in relation to KiwiSaver scheme**

- “(1) The manager of a KiwiSaver scheme must provide the Commissioner with notice of—
- “(a) any member—
 - “(i) who has given notice under section 35(2) or 54(2) of the Financial Markets Conduct Act 2013; or
 - “(ii) to whom money would have had to have been repaid under section 80(1)(a) or 85(3)(a) of that Act, but for subsection (2) of this section; or
 - “(iii) who has not confirmed that he or she still wants to acquire the financial products under section 80(2) or 85(4) of that Act; and
 - “(b) if all or part of the consideration for the issue of financial products to that member was the transfer of the member’s accumulation from another KiwiSaver scheme, the name of that scheme from which the member’s accumulation was transferred; and
 - “(c) the name, address, and tax file number of the member.
- “(2) If a member is notified to the Commissioner under subsection (1),—

- “(a) the following do not apply:
 - “(i) any right of the member under the Financial Markets Conduct Act 2013 to withdraw from holding the financial product and to have the relevant money repaid; and
 - “(ii) any duty of the issuer or any other person to repay any contribution under section 36, 55, 80, or 85 of the Financial Markets Conduct Act 2013; and
- “(b) instead, the following both apply:
 - “(i) a process for the person to be allocated to a new scheme (*see* sections 50 to 52 and 211); and
 - “(ii) a process for the person to be transferred to a new scheme (*see* section 57).

“Compare: 2006 No 40 s 210 as at October 2011

“Subpart 2—Default KiwiSaver schemes

“132 Appointment of default providers

- “(1) The Minister may appoint 1 or more managers for a specified term to provide—
 - “(a) a default KiwiSaver scheme that is specified in the instrument of appointment; and
 - “(b) a default investment product of that default KiwiSaver scheme that is specified in the instrument of appointment.
- “(2) The appointment may be made subject to such terms and conditions as the Minister considers fit.
- “(3) The instrument of appointment must—
 - “(a) identify the default KiwiSaver scheme and the default investment product of the scheme;
 - “(b) state any terms and conditions of the appointment;
 - “(c) state any prescribed information.
- “(4) In determining whether to appoint a manager as a default KiwiSaver provider under this section, the Minister must seek the advice of the FMA.
- “(5) A restricted scheme is not eligible to be a default KiwiSaver scheme.

“Compare: 2006 No 40 s 177 as at October 2011

“133 Provisions of instrument of appointment to prevail over provisions of trust deed

- “(1) The manager and the supervisor must take all reasonable steps to ensure that the trust deed of a default KiwiSaver scheme is consistent with the instrument of appointment.
- “(2) The provisions of the instrument of appointment prevail over the terms of the trust deed establishing the KiwiSaver scheme that relate to the KiwiSaver scheme.
- “(3) A product disclosure statement relating to an offer of interests in a KiwiSaver scheme to which an instrument of appointment under section 132 relates must draw attention to the implications of this section.

“Compare: 2006 No 40 s 178 as at October 2011

“134 Effect of appointment under section 132

If a person is appointed as a provider of a default KiwiSaver scheme under an instrument of appointment under section 132,—

- “(a) the default KiwiSaver scheme must be shown as a default KiwiSaver scheme on the register of managed investment schemes; and
- “(b) the Commissioner may nominate the default investment product of the scheme as a default investment product to which persons may be allocated for the purposes of sections 50 to 52.

“Compare: 2006 No 40 s 179 as at October 2011

“135 Appointment must be notified

- “(1) The Minister must, as soon as practicable after an appointment under section 132 has been made, notify the FMA, the Commissioner, and the Registrar of Financial Service Providers (for the purposes of making the appointment available and updating the register of managed investment schemes) that the appointment has been made, and provide each of them with a copy of the instrument of appointment.
- “(2) This section also applies to any variation, renewal, or revocation of the instrument of appointment.

“Compare: 2006 No 40 s 180 as at October 2011

“136 Power of High Court to act in respect of terms and conditions of appointment as default KiwiSaver scheme and regulations relating to default KiwiSaver schemes

- “(1) This section applies if the High Court is satisfied that the manager of a default KiwiSaver scheme appointed under section 132 intends to engage, or is engaging or has engaged, in conduct that constitutes, or would constitute,—
- “(a) a breach of the terms and conditions of the instrument of appointment referred to in section 132; or
 - “(b) a breach of regulations made under section 230.
- “(2) Sections 480 and 481 of the Financial Markets Conduct Act 2013 (which relate to injunctions) apply as if that conduct or intended conduct were a contravention of that Act or regulations made under that Act.
- “(3) Without limiting those sections, the High Court may make any orders on any terms and conditions that it thinks appropriate, including—
- “(a) an order to restrain the manager or the supervisor of the scheme, or both, from engaging in conduct that constitutes, or would constitute, the breach:
 - “(b) an order to require the manager or the supervisor of the scheme, or both,—
 - “(i) to do a particular act or thing:
 - “(ii) to comply with the conditions of the instrument of appointment:
 - “(c) an interim order.

“Compare: 2006 No 40 s 183 as at October 2011

“137 Revocations, etc, of instruments of appointment

- “(1) An instrument of appointment may provide for its renewal or variation or expiry or revocation by the Minister or the provider.
- “(2) Despite any matter provided for in an instrument of appointment as to its expiry or revocation, the Minister may, by notice in writing to a provider, revoke an instrument of appointment if—
- “(a) the FMA directs that a scheme’s registration as a KiwiSaver scheme be removed under section 134 of the Financial Markets Conduct Act 2013; or

- “(b) the FMA directs that a scheme’s registration as a managed investment scheme be cancelled under section 195 of that Act; or
 - “(c) an order or resolution to wind up the scheme is made as referred to in section 212 of that Act; or
 - “(d) the Minister is satisfied that—
 - “(i) the provider is not operating in accordance with the terms and conditions of the instrument of appointment; and
 - “(ii) the failure to operate in accordance with the terms and conditions of the instrument of appointment is a significant breach as prescribed in regulations made under section 230.
 - “(3) The appointment of the provider under section 132 ceases on revocation of the instrument of appointment.
 - “(4) The Minister must notify the FMA, the Commissioner, and the Registrar of Financial Service Providers (for the purpose of updating the register of managed investment schemes) as soon as practicable after an instrument of appointment is revoked.
- “Compare: 2006 No 40 s 184 as at October 2011

“138 Duration of obligations as default provider after terminating event

- “(1) In this section,—
- “**reporting obligations**, in relation to a provider and the provider’s scheme, means—
- “(a) any requirement for the provider to report to persons specified in an instrument of appointment; and
 - “(b) any requirement for the provider to produce to any persons specified in an instrument of appointment any papers, documents, records, or things in respect of the scheme (and the power of any person to require production of those papers, documents, records, or things)
- “**terminating event** means—
- “(a) the revocation of an instrument of appointment by the provider or the Minister under the terms and conditions of the instrument of appointment; or
 - “(b) the revocation of an instrument of appointment in accordance with section 137(2); or

- “(c) the expiry of the term of appointment (as specified in the instrument of appointment and in accordance with any renewal of the term of appointment).
- “(2) Despite any terminating event,—
 - “(a) any terms and conditions of the instrument of appointment that relate to a provider’s reporting obligations in respect of the provider’s scheme continue to apply until the date when the term of appointment would have expired but for the terminating event; and
 - “(b) regulations made under section 230 continue to apply in relation to the provider until the provider has completed every act or thing that the regulations require the provider to do following any terminating event.

“Compare: 2006 No 40 s 185 as at October 2011

“Subpart 3—Complying superannuation funds

“139 Outline of subpart

- “(1) This subpart contains rules relating to complying superannuation funds (which are schemes that were approved for the purposes of the Income Tax Act 2007 under section 35 of the Superannuation Schemes Act 1989 before its repeal) as follows:
 - “(a) the rules that apply to complying superannuation funds:
 - “(b) the rules relating to revocation of approval of complying superannuation funds.
- “(2) These rules are in addition to rules elsewhere in this Act that apply to complying superannuation funds (for example, in relation to implied terms and unreasonable fees).

“140 Failure to pay: provider notice

- “(1) This section applies if the provider of a complying superannuation fund knows that an employer has failed to pay to the provider an amount of compulsory employer contribution in accordance with subpart 3A of Part 3.
- “(2) The provider must, as soon as practicable, give a notice to the employer requesting the payment of the amount of compulsory

employer contribution. The provider must send to the FMA a copy of the notice.

- “(3) If the employer does not pay the amount of compulsory employer contribution to the provider within 1 month of this section first applying for the amount, and the total of the amounts of compulsory employer contributions unpaid is more than \$500, then the provider must immediately give a notice to the FMA.
- “(4) A notice under subsection (3) must specify the following:
 - “(a) the name of the employer; and
 - “(b) the amounts of compulsory employer contributions unpaid; and
 - “(c) the employer’s name, address, and tax file number (if known); and
 - “(d) the relevant employees to whom the failure to pay relates and their tax file numbers and addresses; and
 - “(e) the pay periods and relevant amounts for the employees to whom the failure to pay relates; and
 - “(f) other information required by the FMA.
- “(5) If the employer pays an amount of compulsory employer contribution remedying a failure to pay that was notified to the FMA under subsection (3), the provider must immediately give a notice to the FMA showing relevant details of the employer’s payment.

“Compare: 2006 No 40 s 101H as at October 2011

“141 Failure to pay: FMA’s duties

- “(1) If the FMA receives a notice under section 140(3), the FMA must decide the amount of compulsory employer contribution that an employer to which the notice relates has failed to pay for the relevant calendar months.
- “(2) The FMA may use any power (with necessary modifications for complying superannuation funds) that the FMA has in respect of KiwiSaver schemes in the performance of the duty to decide imposed by subsection (1).
- “(3) As soon as practicable, the FMA must give a notice to the employer showing the information described in subsection (4).
- “(4) A notice under subsection (3) must—

- “(a) require the payment of the amount (the **liable amount**) that the FMA has decided, under subsection (1), that an employer has failed to pay to the provider; and
 - “(b) specify the relevant calendar months and related amounts; and
 - “(c) specify that the employer must pay the liable amount within 28 days after the notice is given; and
 - “(d) specify the employer’s name, address, and tax file number (if known); and
 - “(e) specify the relevant employees to whom the failure to pay relates and their tax file numbers and addresses; and
 - “(f) specify the pay periods and relevant amounts for the employees to whom the failure to pay relates; and
 - “(g) inform the employer that failure to comply with the notice will result in the Commissioner receiving notice of the failure to comply; and
 - “(h) show other information required by the Commissioner.
- “(5) If the employer does not pay the liable amount in the period specified in subsection (4)(c) and the employer has not appealed against the FMA’s decision under subsection (1) within the time allowed under section 156, the FMA must immediately—
- “(a) give to the Commissioner a notice showing the information described in subsection (6); and
 - “(b) send to the provider a copy of the notice.
- “(6) A notice under subsection (5) must—
- “(a) state that the employer has failed to comply with notices under section 140(2) and subsection (3) of this section; and
 - “(b) show the information described in subsection (4); and
 - “(c) specify the extent to which an amount of compulsory employer contributions remains unpaid for the liable amount; and
 - “(d) specify the relevant employees to whom the unpaid amounts relate and their tax file numbers and addresses; and
 - “(e) specify the pay periods and relevant amounts for the employees to whom the unpaid amounts relate.

“Compare: 2006 No 40 s 101I as at October 2011

“142 Failure to pay: Commissioner

- “(1) If the Commissioner receives a notice under section 141(5), the amount of compulsory employer contributions unpaid for the liable amount, specified in that notice, is treated as an amount due and payable by the employer to the Commissioner on the 20th working day after the Commissioner receives the notice under section 141(5).
- “(2) The Commissioner must send the employer a notice of the amount due and payable, and the due date, specified in subsection (1).

“Compare: 2006 No 40 s 101J as at October 2011

“143 Recovered amounts

An amount of compulsory employer contribution for an employee’s complying superannuation fund that is received by the FMA or the Commissioner by virtue of subpart 3A of Part 3 or this subpart must be paid by them to the relevant provider. The relevant amount of compulsory employer contributions remaining unpaid for the relevant liable amount is consequentially reduced.

“Compare: 2006 No 40 s 101K as at October 2011

“144 Reduction of scheme insurance upon transfer out of complying superannuation fund

- “(1) This section applies to a complying superannuation fund (**scheme A**) if—
- “(a) scheme A provides or facilitates the provision of insurance (the **scheme insurance**) to a member or other beneficiary (the **person**); and
 - “(b) the benefit of the scheme insurance is calculated by reference to contributions for the person held by a complying superannuation fund (the **contributions**); and
 - “(c) an amount of contributions is transferred out of the complying superannuation fund to a complying superannuation fund or KiwiSaver scheme (other than scheme A).
- “(2) A term is implied into the trust deed of scheme A. That term must have the effect of allowing the benefit of the person’s scheme insurance to be reduced in proportion to the amount of contributions transferred out of the complying superannuation fund.

ation fund to a complying superannuation fund or KiwiSaver scheme (other than scheme A).

“Compare: 1989 No 10 s 9D

“145 Revocation of approval of complying superannuation funds

“(1) The FMA may revoke the approval of a scheme as a complying superannuation fund if—

“(a) the FMA is satisfied that the scheme no longer meets the requirements in subsection (2); or

“(b) the manager of the scheme makes an application for revocation.

“(2) The requirements are that—

“(a) the complying superannuation fund section of the scheme and any relevant participation agreement must contain rules that subject the following to complying fund rules (as defined in section YA 1 of the Income Tax Act 2007):

“(i) relevant contributions:

“(ii) returns on relevant contributions:

“(iii) relevant benefits; and

“(b) the scheme must have at least 20 members, treating all interests in the scheme or account held by associated persons within the meaning of section YA 1 of the Income Tax Act 2007 as being held by 1 person; and

“(c) the fund must have rules that meet all the requirements set out in Schedule 28 of the Income Tax Act 2007 (requirements for complying fund rules) and do not detract from those requirements.

“(3) The FMA must not exercise a power under subsection (1)(a), or refuse an application for a revocation made by a manager of a scheme, unless—

“(a) the FMA gives the manager of the scheme no less than 10 working days’ written notice of the following matters before it exercises the power:

“(i) that the FMA may exercise the power or refuse the application (as the case may be); and

“(ii) the reasons why it may do so; and

- “(b) the FMA gives the manager or the manager’s representative an opportunity to make written submissions on the matter within that notice period.
 - “(4) The FMA must, as soon as practicable after revoking the approval, give notice to—
 - “(a) the manager of the scheme; and
 - “(b) the Registrar of Financial Service Providers, for the purpose of updating the register of managed investment schemes; and
 - “(c) any person who originally applied for approval under section 34 of the Superannuation Schemes Act 1989; and
 - “(d) the Commissioner.
 - “(5) The manager of a scheme who is notified that approval is revoked must immediately—
 - “(a) give notice of that revocation to each member who may be affected, and to their employers; and
 - “(b) give notice to the Commissioner of each member who may be affected, and of their employers.
 - “(6) Each of those notices must specify an effective revocation date.
- “Compare: 1989 No 10 ss 35, 36

“Subpart 4—Exempt employers

“146 Effect of being exempt employer and outline of subpart

- “(1) A person who starts new employment with an exempt employer is exempt from the automatic enrolment rules.
- “(2) For the avoidance of doubt, subsection (1)—
 - “(a) does not prevent an employee of an exempt employer from opting in under subpart 1 of Part 2; and
 - “(b) does not prevent a person who is already a member of a KiwiSaver scheme from becoming liable for automatic deduction of contributions from the salary or wages paid in respect of employment with an exempt employer under section 15(1)(a)(ii) or 36(1)(a)(ii).
- “(3) This subpart contains rules relating to exempt employers (as approved under section 30 before its repeal by the Financial Markets Conduct Act 2013) as follows:

- “(a) the rules that apply to exempt employers:
 - “(b) the rules relating to revocation of approval of exempt employers.
 - “(4) These rules are in addition to rules elsewhere in this Act that apply to exempt employers.
- “Compare: 2006 No 40 s 24 as at October 2011

“147 Eligibility to continue to be exempt employer

- “(1) An employer is eligible to continue to be an exempt employer if the FMA is satisfied that the employer provides access to a superannuation scheme or workplace savings scheme for its employees that complies with the following rules:
 - “(a) every person who becomes a permanent employee (including a part-time employee) of that employer, and who is aged 18 or over but less than the New Zealand superannuation qualification age, must be eligible, in practice, at the time when the person so becomes an employee,—
 - “(i) to become a member of the scheme; and
 - “(ii) to transfer to the scheme the member’s accumulation in relation to other superannuation schemes or workplace savings schemes (to the extent that transfers are available from those other schemes); and
 - “(b) the trust deed of the scheme must have the effect that each member who satisfies the scheme’s requirements for a withdrawal benefit, and who elects to withdraw from membership of the scheme, may transfer the member’s accumulation to another superannuation scheme, workplace savings scheme, or KiwiSaver scheme (to the extent that transfers are available to those other schemes); and
 - “(c) the trust deed of the scheme must provide for an amount equal to at least 4% of annual gross base salary or wages to be contributed to, or otherwise credited within, the scheme in respect of each person who becomes a permanent employee of that employer and a member of the scheme.
- “(2) However, subsection (1)(c) does not apply—

- “(a) to the extent that an employee is, in accordance with the terms of the scheme, temporarily relieved from contributions at that rate (for example, in the event of financial hardship); or
 - “(b) if the scheme is a defined benefit scheme of a type that does not satisfy the 4% minimum amount rule in subsection (1)(c), and if the actuary of the scheme certifies, to the satisfaction of the FMA, that the value of each employee’s accrued benefits to be provided by the scheme is, as a matter of fact, increasing, during each membership period, by an amount at least equivalent to such minimum amount that would otherwise be required by this section and section 148.
- “(3) In this section,—
- “**defined benefit scheme** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013
 - “**permanent employees** means employees—
 - “(a) who are not employed in temporary employment (as described in section 12); and
 - “(b) to whom the automatic enrolment rules would apply, but for the application of this section.
- “Compare: 2006 No 40 s 25 as at October 2011

“**148 How 4% minimum amount may be calculated for exempt employer defined contribution schemes**

- “(1) For the purposes of section 147(1)(c),—
- “(a) the minimum amount required by section 147(1)(c) may be made up—
 - “(i) entirely of contributions by the employee; or
 - “(ii) entirely of contributions by an employer; or
 - “(iii) partially of contributions by the employee and partially of contributions by an employer; and
 - “(b) the minimum amount required by section 147(1)(c) must be treated as satisfied if the sum of the following amounts is equal to at least 4% of annual gross base salary or wages:
 - “(i) the minimum prescribed amount that the employee must contribute:

- “(ii) the maximum prescribed amount that the employer would be required to contribute if the member were to contribute the maximum prescribed amount:
 - “(c) any amount contributed to the scheme by an employer in respect of an employee does not count towards the minimum amount required by section 147(1)(c) unless—
 - “(i) the employee is legally entitled to require the employer to contribute that amount on his or her behalf; and
 - “(ii) the trust deed of the scheme provides for the minimum amount required by section 147(1)(c) to vest completely in the employee no later than the time when the employee begins his or her sixth year as a member of the scheme; and
 - “(d) any amount contributed to the scheme by an employer in respect of an employee must be calculated, for the purposes of the minimum amount required by section 147(1)(c), before any ESCT payable under the ESCT rules is deducted.
- “(2) Subsection (1)(b) does not limit subsection (1)(c) or (d).

Example

Company A provides access to a superannuation scheme for its employees. The trust deed provides that employees, if they decide to become members, must contribute at either 1% or 3% of annual gross base salary. The employer is obliged to match the employee's contributions (eg, if employee contributes 1%, the company must contribute 1%).

The scheme complies with the rule as to the 4% minimum contribution as follows:

Minimum amount employee member must contribute	1%
Maximum amount that employer must contribute in respect of employee member	3%
	<hr/>
	4%

“Compare: 2006 No 40 s 26 as at October 2011

“149 Exempt employers who provide access to more than 1 scheme

An employer who provides access to more than 1 superannuation scheme or workplace savings scheme for its employees is eligible to continue to be an exempt employer if the FMA is satisfied that, if all of those schemes were considered as a whole (as if they were 1 scheme), the rules in section 147 would be complied with.

“Compare: 2006 No 40 s 27 as at October 2011

“150 Exempt employers who have schemes established under master trusts

An employer who provides access to a superannuation scheme or workplace savings scheme for its employees that is established under a master trust is eligible to continue to be an exempt employer if the FMA is satisfied that the rules in section 147 would be complied with if the FMA considered only—

- “(a) the master trust in so far as it relates to the employer’s scheme; and
- “(b) the participation agreement executed by the employer in relation to the membership of the employer’s employees in the scheme; and
- “(c) anything else that the FMA decides is relevant to evidencing compliance with the rules in section 147, in respect of the employer’s employees.

“Compare: 2006 No 40 s 28 as at October 2011

“151 Employers may apply to succeed to former employer’s exempt employer status

- “(1) A person may make an application to the FMA for approval to succeed to an exempt employer’s exempt employer status if the person is a succeeding employer for that exempt employer.
- “(2) The application must be accompanied by—
 - “(a) information that satisfies the FMA that the rules in section 147 (or, if applicable, section 149 or 150) are complied with; and
 - “(b) the names, addresses, and tax file numbers of each employer in respect of whom the application is made; and

“(c) if the application is made in respect of an employer that is part of a group of companies, any details of the names, addresses, tax file numbers, and payroll arrangements of any other members of the group that the FMA may request.

“(3) In this section, **succeeding employer** means an employer who succeeds an exempt employer because of a merger with, or an acquisition of, the exempt employer.

“Compare: 2006 No 40 s 29 as at October 2011

“152 How applications to succeed to former employer’s exempt employer status must be dealt with

“(1) The FMA must, within 20 working days after receiving an application made under section 151(1) and the documents required under section 151(2) to accompany the application,—

“(a) consider whether the FMA is satisfied that each employer in respect of whom the application is made complies with the rules in section 147 or, if applicable, section 149 or 150; and

“(b) if so satisfied, approve the employer as an exempt employer and register the employer on the register of exempt employers kept under section 155.

“(2) The FMA must—

“(a) give notice to the employer as soon as practicable after approving, or declining to approve, the employer as an exempt employer; and

“(b) specify in that notice an effective date after which an employee who starts new employment with the employer will be exempt from the automatic enrolment rules (unless those rules do not otherwise apply).

“Compare: 2006 No 40 s 30 as at October 2011

“153 Revocation of exempt employer approval

“(1) The FMA may revoke an approval as an exempt employer given under this Act if—

“(a) the FMA is satisfied that the employer is no longer eligible to be an exempt employer because the employer no longer provides access to a scheme for its employees

- that complies with the rules in section 147 or, if applicable, section 149 or 150; or
- “(b) the employer makes an application for revocation.
- “(2) The FMA must not exercise a power under subsection (1)(a), or refuse an application for a revocation made by an employer, unless—
- “(a) the FMA gives the employer no less than 10 working days’ written notice of the following matters before it exercises the power:
- “(i) that the FMA may exercise the power or refuse the application (as the case may be); and
- “(ii) the reasons why it may do so; and
- “(b) the FMA gives the employer or the employer’s representative an opportunity to make written submissions on the matter within that notice period.
- “(3) The FMA must—
- “(a) give notice to the employer as soon as practicable after revoking the approval; and
- “(b) specify in that notice an effective revocation date after which an employee who starts new employment with the employer will be subject to the automatic enrolment rules (unless those rules do not otherwise apply); and
- “(c) ensure that the employer is removed from the register of exempt employers kept under section 155.
- “Compare: 2006 No 40 s 31 as at October 2011

“154 FMA must give notice to Commissioner of exempt employers

The FMA must give notice to the Commissioner as soon as practicable after an employer is approved under section 152 or an approval is revoked under section 153.

“Compare: 2006 No 40 s 32 as at October 2011

“155 Register of exempt employers

- “(1) The FMA must ensure that a register is kept by the FMA or under subsection (2) that contains the names of employers who are exempt employers.

- “(2) That register may be part of the register of managed investment schemes, in which case the Financial Markets Conduct Act 2013 applies to the keeping of the register accordingly.

“Subpart 5—Miscellaneous

“**156 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 141 (failure to pay: FMA’s duties):
 - “(b) section 145 (revocation of approval of complying superannuation funds):
 - “(c) section 152 (how applications to succeed to former employer’s exempt employer status must be dealt with):
 - “(d) section 153 (revocation of exempt employer approval).
- “(2) A decision against which an appeal is lodged under this section continues in force unless the High Court orders otherwise.

“Compare: 2006 No 40 s 186 as at October 2011

“**157 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 or complying superannuation funds 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 or complying superannuation funds 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 Kiwi-

Saver schemes or complying superannuation funds under this Act or any other enactment.

- “(3) This section applies despite anything to the contrary in any contract, deed, or document.

“Compare: 2006 No 40 s 188 as at October 2011

“158 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.

“Compare: 2006 No 40 s 189 as at October 2011

“159 Annual report by FMA

- “(1) The FMA must, within 3 months after the end of every financial year, report to the Minister on the principal matters transacted under this Act during that year.

- “(2) Every report must be presented to the House of Representatives by the Minister as soon as practicable after it has been received by that Minister.

“Compare: 1989 No 10 s 28; 2006 No 40 s 194 as at October 2011

“160 Offence to supply false or misleading information, etc

- “(1) Every person commits an offence, and is liable on conviction to a fine not exceeding the amount set out in subsection (3), who makes any statement or supplies any paper, document,

record, report, copy, thing, or certificate required by this Act knowing that it is false or misleading.

- “(2) If a body corporate commits an offence under this section, every officer of the body corporate who knowingly authorises or permits the offence also commits the offence.
- “(3) A person who is convicted of an offence under this section is liable to a fine not exceeding \$300,000.

“Compare: 2006 No 40 ss 198(1)(f), 199 as at October 2011

“161 No Crown guarantee of KiwiSaver schemes or products

- “(1) There is no Crown guarantee in respect of any KiwiSaver scheme or investment product of a KiwiSaver scheme.
- “(2) Every product disclosure statement relating to an offer of interests in a KiwiSaver scheme must contain a statement to that effect.

“Compare: 2006 No 40 s 205 as at October 2011

“162 Factual description of, or transmission of information about, KiwiSaver scheme not financial adviser service

For the avoidance of doubt, the Crown or any other person does not perform a financial adviser service for the purposes of the Financial Advisers Act 2008 if the Crown or that person—

- “(a) supplies an information pack as required or authorised by this Act; or
- “(b) gives a factual description to another person of the features of a KiwiSaver scheme or of KiwiSaver schemes (for example, information about admission as a member or termination of membership); or
- “(c) gives information of the type referred to in paragraph (b) in the course of promoting the benefits of retirement savings in general; or
- “(d) acts only as an intermediary who transmits information about a KiwiSaver scheme; or
- “(e) otherwise exercises or carries out a function, duty, or power under this Act.

“Compare: 2006 No 40 s 206 as at October 2011”.

93 Sections 205 to 206 repealed

Sections 205 to 206 are repealed.

94 Sections 209 and 210 and heading repealed

Sections 209 and 210 and the heading above section 209 are repealed.

95 Duty of Commissioner under section 50 modified in certain cases in which section 210 applies

- (1) The heading to section 211 is amended by omitting “**section 210**” and substituting “**section 131**”.
- (2) Section 211(1)(a) is amended by omitting “section 210(2)” and substituting “section 131(1)”.

96 Section 220 substituted

Section 220 is repealed and the following section substituted:

“220 Special rules about giving of product disclosure statements
Sections 217 to 219 apply to the giving or supplying of a product disclosure statement under this Act (including for the purposes of the Financial Markets Conduct Act 2013) as if it were the giving of a notice.”

97 Administration of Act

- (1) Section 224(1) is amended by omitting “and Schedule 3”.
- (2) Section 224(2) is amended by omitting “Schedules 1 and 2” and substituting “Schedule 1”.

98 Section 225 repealed

Section 225 is repealed.

99 Status of Crown contribution and fee subsidy for tax purposes

- (1) The heading to section 227 is amended by omitting “**and fee subsidy**”.
- (2) Section 227 is amended by omitting “or a fee subsidy paid in respect of a member of a KiwiSaver scheme under regulations made under section 228(n)”.

100 Section 228 substituted

Section 228 is repealed and the following section substituted:

“228 Regulations

- “(1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
- “(a) prescribing fees payable to the Commissioner or the FMA in respect of any matter under this Act or the manner in which fees may be calculated:
 - “(b) prescribing the information or matters that must be included in the information packs referred to in Part 2:
 - “(c) prescribing provisions to be implied in the trust deed of a KiwiSaver scheme (*see* subsection (3)):
 - “(d) providing for operational matters and electronic compatibility between the Commissioner and all or any class of providers, including—
 - “(i) requiring the Commissioner and all or any class of providers to sign scheme provider agreements before registration of a scheme as a KiwiSaver scheme; and
 - “(ii) providing for the updating of those agreements after registration; and
 - “(iii) specifying the matters that may be required to be covered in all or any of those agreements:
 - “(e) prescribing requirements in relation to annual returns for the purposes of section 124, including the date by which the return must be provided and the 12-month period to which it must relate (by reference to annual dates):
 - “(f) prescribing what must be treated as reasonable efforts for the purposes of section 128:
 - “(g) prescribing the maximum number of persons that the Minister may appoint under section 132:
 - “(h) specifying information that must be contained in the instrument of appointment referred to in section 132:
 - “(i) providing for fees or charges that must be treated as fees for the purposes of this Act:
 - “(j) prescribing matters that are relevant to a determination or consideration as to whether a fee is unreasonable for

- the purposes of clause 2 of the KiwiSaver scheme rules or section 118:
- “(k) prescribing circumstances in which the purchase of an estate in land enables a withdrawal under clause 8 of the KiwiSaver scheme rules:
 - “(l) prescribing circumstances for the purposes of clause 8(3)(a) of the KiwiSaver scheme rules or prescribing who is a qualifying person for the purpose of clause 8(3)(c)(ii) of the KiwiSaver scheme rules:
 - “(m) prescribing matters that may be regarded as matters from which significant financial difficulties have arisen for the purposes of clause 11 of the KiwiSaver scheme rules:
 - “(n) recognising specific foreign superannuation schemes or classes of specific foreign superannuation schemes that are based in named countries as schemes to which funds can be transferred on permanent emigration under the provision implied by clause 14 of the KiwiSaver scheme rules:
 - “(o) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- “(2) Regulations may be made under this section for the purpose of a matter dealt with in Part 4 only on the recommendation of the Minister.
- “(3) A provision prescribed for the purposes of subsection (1)(c) may, without limitation, do any of the following (including to supplement, or to add to, duties and powers prescribed by this Act):
- “(a) specify the duties and powers of the supervisor of the scheme:
 - “(b) specify the duties of the manager of the scheme.
- “(4) A provision implied in the trust deed under this section—
- “(a) does not apply to the extent that it is inconsistent with provisions implied in the trust deed by this Act; but
 - “(b) applies despite anything to the contrary in the trust deed of the scheme; and

“(c) is enforceable by the manager, the supervisor, or a member of the scheme, unless the regulations provide otherwise.”

101 Regulations relating to default KiwiSaver providers

- (1) Section 230(1)(a) is amended by omitting “section 184(2)” and substituting “section 137(2)”.
- (2) Section 230(1)(b)(iii) is amended by omitting “section 184(2)” and substituting “section 137(2)”.
- (3) Section 230(1) is amended by inserting the following paragraph after paragraph (b):
 - “(ba) providing for the following matters in relation to all or any class of default members of a scheme that is subject to a terminating event under section 185:
 - “(i) requiring those default members to be reallocated and transferred to a default KiwiSaver scheme and providing the method of determining, terms of, and procedures for the reallocation and the transfer (or providing for the Minister to require or determine any of those matters by direction to the scheme provider or providing for another person or method to determine any of those matters):
 - “(ii) requiring the reallocation and transfer to be carried out in accordance with that method, those terms, and those procedures:”.
- (4) Section 230(1)(ba) (as inserted by subsection (3)) is amended by omitting “section 185”, and substituting “section 138”.
- (5) Section 230(1)(c) and (d) are amended by omitting “section 185” and substituting in each case “section 138”.
- (6) Section 230(1)(c)(iii) is amended by adding “, regulations made under paragraph (ba), or the Financial Markets Conduct Act 2013”.
- (7) Section 230 is amended by inserting the following subsection after subsection (1):
 - “(1A) In this section, **default members** means members that were allocated to a scheme under sections 50 and 51 and are in a default investment product of a scheme.”

102 Sections 231 to 237 repealed

Sections 231 to 237 are repealed.

103 Amendments to Schedule 1 (KiwiSaver scheme rules)

- (1) The Schedule 1 heading is amended by omitting “ss 4, 126” and substituting “ss 4, 116”.
- (2) Clauses 1 to 1E of Schedule 1 are repealed and the following clause is substituted:

“1 Application

The KiwiSaver scheme rules apply to all KiwiSaver schemes.”

104 Amendments to Schedule 1 (KiwiSaver scheme rules)

Clause 2 of Schedule 1 is amended by repealing subclause (1) and substituting the following subclauses:

- “(1) The following persons must not charge a fee that is unreasonable:
 - “(a) the manager of the scheme:
 - “(b) the supervisor of the scheme:
 - “(c) the administration manager of the scheme:
 - “(d) the investment manager of the scheme:
 - “(e) any other person who charges a fee for services in relation to the provision of a KiwiSaver scheme.
- “(2) For the purposes of subclause (1), all fees charged by the manager, supervisor, administration manager, or investment manager of a related underlying fund, and by any other person who charges a fee for services in relation to the provision of a related underlying fund, must be treated as being included in the fee charged by the manager of the KiwiSaver scheme.
- “(3) In this clause,—
 - “**associated person** has the same meaning as in section 12 of the Financial Markets Conduct Act 2013
 - “**fund** means a defined pool of assets that are held for the benefit of a group of investors and that are managed together under a single investment mandate

“**related underlying fund** means, in relation to a KiwiSaver scheme,—

- “(a) an underlying fund that is managed by the manager of the KiwiSaver scheme (**A**) or by an associated person of A; and
- “(b) if a fund of the KiwiSaver scheme is managed as a whole by a person other than A, an underlying fund that is managed by that person or that person’s associated persons

“**underlying fund** means, in relation to a KiwiSaver scheme or a fund of that KiwiSaver scheme (**KiwiSaver fund**), a fund in which the KiwiSaver fund, or any part of that KiwiSaver fund, is invested, whether directly or indirectly through a number of layers of funds.

- “(4) For the purposes of this clause, the terms **manager**, **supervisor**, **administration manager**, and **investment manager** apply in relation to an underlying fund as if it were a scheme.”

105 Amendments to Schedule 1 (KiwiSaver scheme rules)

- (1) Clause 4(2) of Schedule 1 is amended by repealing paragraph (c).
- (2) Clause 4(6) of Schedule 1 is amended by omitting “earlier” and substituting “earliest”.
- (3) Clause 4(6) of Schedule 1 is amended by adding “; or” and also by adding the following paragraph:
 - “(c) the date that is 5 years after the day on which the member first became a member of a complying superannuation fund, if the member has become a member of the KiwiSaver scheme as a result of a transfer from a complying superannuation fund.”

106 Amendments to Schedule 1 (KiwiSaver scheme rules)

Schedule 1 is amended by inserting the following clause after clause 4:

“4A No external financial advantages from funds

- “(1) The manager must ensure that the entire value, benefit, or other return derived in respect of the member’s accumulation

is credited to the member's accumulation and is not received as an external financial advantage.

- “(2) In this clause, an **external financial advantage**—
- “(a) means any direct or indirect financial advantage payable to or derived by the member or any associated person of the member; and
 - “(b) includes the value of a reduction or an avoidance of a financial liability (such as a financial advantage obtained by using any part of the member's accumulation to offset, or to reduce the interest payable on, a loan); but
 - “(c) to avoid doubt, excludes permitted withdrawals.
- “(3) This clause does not prevent minor financial advantages that are incidental or secondary to a KiwiSaver scheme membership from being provided to or in respect of a member, including such advantages in the form of—
- “(a) an inducement or incentive or other form of reward to contribute to, or be a member of, the scheme; or
 - “(b) a reduction or rebate of the fees or commission payable to a financial adviser, or for financial adviser services, that takes into account the member's accumulation; or
 - “(c) rewards such as discounts on fees payable in respect of non-KiwiSaver services or products.
- “(4) In this clause, **associated person** has the same meaning as in section 12 of the Financial Markets Conduct Act 2013.”

107 Amendments to Schedule 1 (KiwiSaver scheme rules)

- (1) Clause 8(7)(a) of Schedule 1 is amended by omitting “the member's solicitor” and substituting “a practitioner (within the meaning of section 6 of the Lawyers and Conveyancers Act 2006) acting on behalf of the member”.
- (2) Clause 8(7)(b) of Schedule 1 is amended by omitting “the member's solicitor” and substituting “that practitioner”.

**108 Further terminology amendments to Schedule 1
(KiwiSaver scheme rules)**

- (1) Clause 4B of Schedule 1 is amended by omitting “trustees (in the case of a restricted KiwiSaver scheme) or the manager

- (in the case of any other KiwiSaver scheme)” and substituting “manager”.
- (2) The heading to clause 5 of Schedule 1 is amended by omitting “**Trustees and managers**” and substituting “**Manager**”.
 - (3) Clause 5(1) of Schedule 1 is amended by omitting “trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme)” and substituting “manager”.
 - (4) The heading to clause 6 of Schedule 1 is amended by omitting “**Trustees and managers**” and substituting “**Manager**”.
 - (5) Clause 6 of Schedule 1 is amended by omitting “trustee (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme)” and substituting “manager”.
 - (6) Clause 7(1) of Schedule 1 is amended by omitting “trustees of a restricted KiwiSaver scheme and the manager of any other KiwiSaver scheme” and substituting “manager”.
 - (7) Clause 7(1) of Schedule 1 is amended by omitting “them” and substituting “the manager”.
 - (8) Clause 8(7)(b) of Schedule 1 is amended by omitting “trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme)” and substituting “manager”.
 - (9) Clause 8(7)(b)(ii) of Schedule 1 is amended by omitting “trustees or the manager (as the case may be) make” and substituting “manager makes”.
 - (10) Clause 8(7)(b)(iii) of Schedule 1 is amended by omitting “trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme)” and substituting “manager”.
 - (11) Clause 9 of Schedule 1 is amended by omitting “trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme)” and substituting “manager”.
 - (12) Clause 10 of Schedule 1 is amended by repealing subclause (1) and substituting the following subclause:
“(1) If the manager (in the case of a restricted KiwiSaver scheme) or the supervisor (in the case of any other KiwiSaver scheme)

is reasonably satisfied that a member is suffering or is likely to suffer from significant financial hardship, the member may, on application to that manager or supervisor in accordance with clause 13, make a significant financial hardship withdrawal in accordance with this clause.”

- (13) Clause 10(2) of Schedule 1 is amended by omitting “the trustees’ approval” and substituting “the manager’s approval (in the case of a restricted KiwiSaver scheme) or the supervisor’s approval (in the case of any other KiwiSaver scheme)”.
- (14) Clause 10(3) of Schedule 1 is amended by omitting “trustees” and substituting “manager (in the case of a restricted KiwiSaver scheme) or the supervisor (in the case of any other KiwiSaver scheme)”.
- (15) Clause 10(3)(b) of Schedule 1 is amended by omitting “trustees’ opinion” and substituting “opinion of the manager (in the case of a restricted KiwiSaver scheme) or the supervisor (in the case of any other KiwiSaver scheme)”.
- (16) Clause 12(1) of Schedule 1 is amended by omitting “trustees are” and substituting “manager (in the case of a restricted KiwiSaver scheme) or the supervisor (in the case of any other KiwiSaver scheme) is”.
- (17) Clause 12(1) of Schedule 1 is amended by omitting “trustees in” and substituting “manager (in the case of a restricted KiwiSaver scheme) or the supervisor (in the case of any other KiwiSaver scheme) in”.
- (18) Clause 13(1) of Schedule 1 is amended by omitting “trustees” and substituting “manager (in the case of a restricted KiwiSaver scheme) or the supervisor (in the case of any other KiwiSaver scheme)”.
- (19) Clause 13(2) of Schedule 1 is amended by omitting “trustees” and substituting “manager (in the case of a restricted KiwiSaver scheme) or the supervisor (in the case of any other KiwiSaver scheme)”.
- (20) Clause 14(1) of Schedule 1 is amended by omitting “trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme)” and substituting “manager”.

- (21) Clause 14(2) of Schedule 1 is amended by omitting “trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme)” and substituting “manager”.
- (22) Clause 14(2) of Schedule 1 is amended by omitting “trustees or manager (as the case may be)” and substituting “manager”.
- (23) Clause 14(3) of Schedule 1 is amended by omitting “trustees or manager (as the case may be)” and substituting “manager”.
- (24) Clause 14(3)(b) of Schedule 1 is amended by omitting “trustees or manager (as the case may be)” and substituting “manager”.
- (25) Clause 14(4) of Schedule 1 is amended by omitting “trustees or manager (as the case may be)” and substituting “manager”.
- (26) Clause 14B(1) of Schedule 1 is amended by omitting “trustees or the manager (as the case may be)” and substituting “manager”.
- (27) Clause 14B(2) of Schedule 1 is amended by omitting “trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme), have the trustees or the manager (as the case may be)” and substituting “manager, have the manager”.
- (28) Clause 14B(3) of Schedule 1 is amended by omitting “trustees or the manager (as the case may be)” and substituting “manager”.
- (29) Clause 14B(4) of Schedule 1 is amended by omitting “trustees or the manager (as the case may be)” and substituting “manager”.
- (30) Clause 14B(4)(b) of Schedule 1 is amended by omitting “trustees or the manager (as the case may be)” and substituting “manager”.
- (31) Clause 14B(5) of Schedule 1 is amended by omitting “trustees or the manager (as the case may be)” and substituting “manager”.
- (32) Clause 16(1) of Schedule 1 is amended by omitting “trustees, apply to have the trustees” and substituting “manager, apply to have the manager”.
- (33) Clause 16(2) of Schedule 1 is amended by omitting “trustees” and substituting “manager”.

- (34) If section 189 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 is not in force on the date on which this section comes into force, subsections (1) and (26) to (31) of this section take effect only on the date on which section 189 of that Act comes into force.
- (35) If section 189(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 replaces clause 14(1) and (2) of Schedule 1 after the date on which subsections (20) to (22) of this section come into force, clause 14(1) and (2) as replaced are amended in accordance with subsections (20) to (22) on the date on which they are replaced.

109 Schedules 2 and 3 repealed

Schedules 2 and 3 are repealed.

*Amendments to Securities Trustees and
Statutory Supervisors Act 2011*

110 Principal Act amended

Sections 111 to 147 amend the Act that was previously called the Securities Trustees and Statutory Supervisors Act 2011.

111 Name of principal Act changed

- (1) As from the commencement of this section,—
 - (a) the Securities Trustees and Statutory Supervisors Act 2011 is called the Financial Markets Supervisors Act 2011; and
 - (b) every reference in any enactment and in any document to the Securities Trustees and Statutory Supervisors Act 2011 must, unless the context otherwise provides, be read as a reference to the Financial Markets Supervisors Act 2011.
- (2) Section 1 is amended by omitting “Securities Trustees and Statutory” and substituting “Financial Markets”.

112 New section 3 substituted

Section 3 is repealed and the following section substituted:

“3 Purpose

- “(1) The purpose of this Act is to protect the interests of product holders, and of residents of retirement villages, and to enhance investor confidence in financial markets and retirement villages, by—
- “(a) requiring persons who wish to be appointed as supervisors to be capable of effectively performing the functions of supervisors; and
 - “(b) requiring supervisors to perform their functions effectively; and
 - “(c) enabling supervisors to be held accountable for any failure to perform their functions effectively.
- “(2) That purpose is additional to the purposes of the Financial Markets Conduct Act 2013 set out in sections 3 and 4 of that Act (which apply to this Act also).”

113 Interpretation

- (1) The definitions of **deed of participation**, **governing document**, **issuer**, **issuer obligation**, **KiwiSaver scheme**, **KiwiSaver trustee**, **licensee**, **licensee obligation**, **restricted scheme**, **security**, **statutory supervisor**, **supervised issuer**, **trust deed**, **trustee**, and **unit trustee** in section 4(1) are repealed.
- (2) Section 4(1) is amended by inserting the following definitions in their appropriate alphabetical order:
- “**debt security** has the same meaning as in section 8 of the Financial Markets Conduct Act 2013
 - “**financial product** has the same meaning as in section 7 of the Financial Markets Conduct Act 2013
 - “**governing document** means, as the context requires,—
 - “(a) a governing document within the meaning of section 6(1) of the Financial Markets Conduct Act 2013;
 - “(b) a deed of supervision
 - “**issuer**,—
 - “(a) in respect of a debt security, means the issuer of the debt security within the meaning of section 11 of the Financial Markets Conduct Act 2013;

“(b) in respect of a registered scheme, means the manager of the scheme within the meaning of section 6(1) of the Financial Markets Conduct Act 2013

“**issuer obligation** means an obligation imposed on the issuer of a financial product by or under any or all of the following:

“(a) the governing document that relates to the product:

“(b) the terms of any offer of the product:

“(c) a court order relating to the product:

“(d) this Act:

“(e) the Financial Markets Conduct Act 2013:

“(f) the KiwiSaver Act 2006:

“(g) Part 5D of the Reserve Bank of New Zealand Act 1989

“**licensee**—

“(a) means a supervisor that holds a licence; and

“(b) includes an FMA appointee, whether or not that appointee holds a licence

“**licensee obligation** means an obligation imposed on a licensee by or under any or all of the following:

“(a) every governing document:

“(b) the terms of the offer of the financial product:

“(c) a court order relating to a supervised interest:

“(d) this Act:

“(e) the Financial Markets Conduct Act 2013:

“(f) the KiwiSaver Act 2006:

“(g) Part 5D of the Reserve Bank of New Zealand Act 1989:

“(h) the Retirement Villages Act 2003

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

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

“**supervised issuer**, in relation to a supervisor of a debt security or registered scheme, means the issuer of the debt security or managed investment products in the scheme

“**supervisor or statutory supervisor** means,—

“(a) in relation to a debt security or registered scheme, a supervisor within the meaning of section 6(1) of the Financial Markets Conduct Act 2013:

- “(b) in relation to a retirement village, a statutory supervisor as defined in section 5 of the Retirement Villages Act 2003”.
- (3) Paragraph (a) of the definition of **material change of circumstances** in section 4(1) is amended by omitting “trustee or statutory supervisor in respect of a security” and substituting “supervisor in respect of a debt security or registered scheme”.
- (4) The definition of **supervised interest** in section 4(1) is amended by repealing paragraph (a) and substituting the following paragraph:
- “(a) in relation to a supervisor of a debt security or registered scheme (S), a debt security or scheme in respect of which S is the supervisor:”.
- (5) Section 4(2) is amended by omitting “Securities Act 1978 (in relation to securities)” and substituting “Financial Markets Conduct Act 2013 (in relation to financial products)”.

114 **Heading to Part 2**

The heading to Part 2 is amended by omitting “**trustees and statutory**”.

115 **Heading to subpart 1 of Part 2**

The heading to subpart 1 of Part 2 is amended by omitting “trustees and statutory”.

116 **New section 6 substituted**

Section 6 is repealed and the following section substituted:

“**6 Supervisor must be licensed**

- “(1) A supervisor in respect of a debt security must hold a licence that covers supervision of the security.
- “(2) A supervisor in respect of a registered scheme must hold a licence that covers supervision of the scheme.
- “(3) A statutory supervisor in respect of a retirement village must hold a licence that covers supervision of the retirement village.
- “(4) A contravention of this section may give rise to a pecuniary penalty under section 41.”

117 New section 7 substituted

Section 7 is repealed and the following section substituted:

“7 Licensee must comply with conditions imposed on licence

A licensee must comply with—

- “(a) every condition imposed on the licence by the FMA under section 11; and
- “(b) every condition imposed on the licence by regulations made under this Act (if any).”

118 New section 8 substituted

Section 8 is repealed and the following section substituted:

“8 Prohibition on holding out

- “(1) A person must not represent that the person is licensed to be a supervisor in respect of a debt security, registered scheme, or retirement village if the person does not hold a licence that covers supervision of the debt security, registered scheme, or retirement village.
- “(2) A contravention of this section may give rise to a pecuniary penalty under section 41.”

119 Requirement to be licensed: exception for certain FMA appointees

Section 9 is amended by omitting “Sections 6 and 8(1) and (2) do” and substituting “Section 6 does”.

120 New section 10 substituted

Section 10 is repealed and the following section substituted:

“10 FMA may license supervisors

- “(1) The FMA may license a person to be 1 or more of the following:
 - “(a) a supervisor in respect of debt securities:
 - “(b) a supervisor in respect of registered schemes:
 - “(c) a statutory supervisor in respect of retirement villages.
- “(2) A licence may cover supervision of all debt securities, all registered schemes, all retirement villages, or any 1 or more of the following:
 - “(a) debt securities of 1 or more classes:
 - “(b) 1 or more particular issues of debt securities:

- “(c) registered schemes of 1 or more classes:
 - “(d) 1 or more particular registered schemes:
 - “(e) retirement villages of 1 or more classes:
 - “(f) 1 or more particular retirement villages.
- “(3) A class may be defined (to include or exclude supervision of a debt security, registered scheme, or retirement village) in any way, including, without limitation, by reference to—
- “(a) a particular issuer or operator; or
 - “(b) a particular class of issuer or operator.”

121 FMA may impose conditions on licence

- (1) Section 11(2)(b) is amended by repealing subparagraph (i) and substituting the following subparagraphs:
- “(i) supervisor in respect of a particular debt security or class of debt security; or
 - “(ia) supervisor in respect of a particular registered scheme or class of registered scheme; or”.
- (2) Section 11(4) is amended by repealing paragraphs (a) and (b) and substituting the following paragraphs:
- “(a) limiting the number of appointments as supervisor that may be held by the licensee:
 - “(b) setting a maximum value for supervised interests that are debt securities or registered schemes.”.

122 Information to be stated in licence

- (1) Section 13 is amended by repealing paragraphs (b) and (c) and substituting the following paragraphs:
- “(b) in the case of debt securities, the debt security or debt securities the supervision of which is covered by the licence:
 - “(c) in the case of registered schemes, the scheme or schemes the supervision of which is covered by the licence:
 - “(ca) in the case of retirement villages, the retirement village or villages the supervision of which is covered by the licence.”.
- (2) Section 13(d) is amended by inserting “by the FMA under section 11” after “licence”.

123 FMA must send licence and details to licensee and others

- (1) Section 14(4)(a) is amended by omitting “security” and substituting “debt security or registered scheme”.
- (2) Section 14(4)(b) is amended by omitting “trustee of” and substituting “supervisor of a debt security issued by”.

124 Decision on application for, or to vary, licence

- (1) Section 16 is amended by repealing subsection (1) and substituting the following subsection:
“(1) The FMA may issue or vary a licence only if the FMA is satisfied that, having regard to any conditions imposed on the licence, the applicant is capable of effectively performing (or will, after the variation, be capable of effectively performing)—
“(a) the functions of a supervisor in respect of debt securities or registered schemes the supervision of which is covered by the licence:
“(b) the functions of a statutory supervisor in respect of retirement villages the supervision of which is covered by the licence.”
- (2) Section 16(2) is amended by repealing paragraph (c) and substituting the following paragraph:
“(c) in the case of an applicant for a licence that covers supervision of a debt security or a registered scheme, the applicant is, or will be, registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 on and from commencing to perform the functions of a supervisor:”.
- (3) Section 16(2)(d) is amended by inserting “supervision of” after “covers”.
- (4) Section 16(3)(e) is amended by repealing subparagraph (i) and substituting the following subparagraph:
“(i) in the case of a licence relating to debt securities or registered schemes, issuers of those debt securities or of managed investment products in those schemes comply with the issuer obligations; and”.

- (5) Section 16(3) is amended by repealing paragraph (i) and substituting the following paragraph:

“(i) other prescribed matters that relate to the applicant, to debt securities, registered schemes, or retirement villages the supervision of which is covered by the licence, and to issuers or operators covered by the licence.”.

125 Application to cancel licence

Section 17(2) is amended by omitting “trustee or statutory”.

126 Notice, consultation, and submissions concerning decision under section 16(1)

Section 18(1)(a) and (b) are amended by inserting “supervision of” after “covers”.

127 Appeal to High Court against FMA’s decision on application

Section 19 is amended by repealing subsection (2) and substituting the following subsection:

- “(2) If a supervisor in respect of a debt security, registered scheme, or retirement village lodges an appeal against a decision not to issue a new licence that covers supervision of the debt security, scheme, or retirement village, the court may extend the validity of the supervisor’s current licence, to the extent that it covers supervision of the debt security, scheme, or retirement village, until the appeal has been determined or withdrawn.”

128 Heading above section 20 amended

The heading above section 20 is amended by adding “*and temporary appointment powers for expiries and other vacancies*”.

129 Effect of expiry of licence

Section 20(1) is amended by omitting “trustee or statutory”.

130 Licensee must apply for new licence or notify issuer or operator before licence expires

Section 21 is amended by repealing subsection (1) and substituting the following subsection:

- “(1) A licensee appointed as a supervisor in respect of a debt security, registered scheme, or retirement village must, between 9 and 12 months before the expiry date of the licence,—
- “(a) make an application under section 15 for a new licence that covers supervision of that debt security, scheme, or retirement village; or
- “(b) notify the issuer of the debt security or managed investment products in the scheme or the operator of that retirement village (as the case may be) and the FMA, in writing, that the licensee does not intend to make the application referred to in paragraph (a).”

131 Rejection of application for new licence: FMA may replace existing appointee

- (1) Section 22 is amended by omitting the heading and substituting the following heading: **“FMA may make temporary appointment”**.
- (2) Section 22 is amended by repealing subsections (1) and (2) and substituting the following subsections:
- “(1) This section applies if—
- “(a) all of the following are satisfied in relation to a supervisor in respect of a debt security or registered scheme or a statutory supervisor in respect of a retirement village (the **existing appointee**):
- “(i) the FMA rejects an application by the existing appointee for a new licence that covers supervision of the debt security, scheme, or retirement village; and
- “(ii) the existing appointee no longer holds a licence that covers supervision of the debt security, registered scheme, or retirement village; and
- “(iii) the existing appointee has not been replaced; or
- “(b) the existing appointee wishes, at any time, to resign, ceases to carry on business, refuses to act as a supervisor, or is for any reason incapable of acting as a supervisor and the existing appointee has not been replaced; or
- “(c) a debt security, a registered scheme, or a retirement village does not, for any reason, have a supervisor.

- “(2) The FMA may,—
- “(a) in the case of subsection (1)(a) or (b), remove an existing appointee as supervisor in respect of the debt security or registered scheme, or as statutory supervisor in respect of the retirement village, by written notice to the existing appointee; and
 - “(b) in any case, appoint a person (the **FMA appointee**) to the position of supervisor of the debt security, registered scheme, or retirement village for a period of 6 months; and
 - “(c) if the FMA considers it necessary or desirable in the circumstances, reappoint the FMA appointee (as an FMA appointee) to the position of supervisor of the debt security, registered scheme, or retirement village for a further period that the FMA thinks fit (and a reappointment under this paragraph may be made on 1 or more occasions).”
- (3) Section 22(3) is amended by omitting “(2)(b)” and substituting “(2)(b) or (c)”.
- (4) Section 22 is amended by inserting the following subsection after subsection (3):
- “(3A) The FMA’s ability to set preconditions on requests to it under subsection (1)(b) includes (without limitation) a discretion to set preconditions that satisfy the FMA that—
- “(a) it is appropriate for the replacement of the existing appointee to be done under this section rather than by means of another power or process; and
 - “(b) the FMA appointee’s costs and charges (including for any appointment on a continuing basis referred to in subsection (9)(b)), and any costs of the FMA in connection with the appointment, will be met by the issuer or operator, under subsection (5), or by the existing appointee; and
 - “(c) a suitable bond has been, or will be, paid to secure—
 - “(i) the performance of any indemnity or other obligation in connection with the costs or changes referred to in paragraph (b):
 - “(ii) compliance with any other preconditions.”

- (5) Section 22(4) is amended by omitting “of the security, or the operator of the retirement village,” and substitute “or the operator”.
- (6) Section 22 is amended by repealing subsection (5) and substituting the following subsections:
 - “(5) The issuer or operator must reimburse the FMA for—
 - “(a) the FMA appointee’s costs and charges that are paid by the FMA; and
 - “(b) any costs of the FMA in connection with the appointment.
 - “(5A) An amount payable under subsection (5) must be paid by the date specified for payment in an invoice given to the issuer or operator by the FMA and is recoverable as a debt due to the FMA.”
- (7) Section 22(6) is amended by omitting “under which the existing appointee was appointed” and substituting “relating to the debt security, registered scheme, or retirement village”.
- (8) Section 22(7)(b) is amended by omitting “of the security” and substituting “of the debt security or managed investment product”.
- (9) Section 22(9) is amended by omitting “Before the end of the 6-month appointment” and substituting “Before the appointment of the FMA appointee under subsection (2) finally comes to an end (taking into account any reappointment under subsection (2)(c))”.
- (10) Section 22(9) is amended by repealing paragraph (b) and substituting the following paragraph:
 - “(b) appoint the FMA appointee as the supervisor on a continuing basis (provided that the FMA appointee holds a licence that covers supervision of the debt security, registered scheme, or retirement village).”
- (11) Section 22 is amended by adding the following subsection:
 - “(11) If the FMA appointee does not hold a licence, the FMA appointee must, for the purposes of the Financial Markets Conduct Act 2013 and the Retirement Villages Act 2003, be treated as holding a licence that covers supervision of the debt security, registered scheme, or retirement village (as the case may be).”

132 Expiry of licence: issuer or operator may replace existing appointee or FMA appointee

- (1) The heading to section 23 is amended by omitting “**Expiry of licence: issuer**” and substituting “**Issuer**”.
- (2) Section 23 is amended by repealing subsections (1) and (2) and substituting the following subsections:
 - “(1) This section applies if—
 - “(a) the licence of a supervisor in respect of a debt security or registered scheme or of a statutory supervisor of a retirement village (the **existing appointee**) is due to expire; and
 - “(b) the existing appointee will, on the expiry of the licence, no longer hold a licence that covers supervision of the debt security, registered scheme, or retirement village.
 - “(2) For the purposes of subsection (1)(a), a licence is due to expire if—
 - “(a) the licensee has given notice in accordance with section 21(1)(b) (notice that the licensee does not intend to apply for a new licence that covers supervision of the debt security, registered scheme, or retirement village); or
 - “(b) the FMA has given notice in accordance with section 18(3)(b) (notice that the FMA will not be issuing a new licence as proposed in the application).”
- (3) Section 23(3) is amended by omitting “22(2)(b)” and substituting “22(2)(b) or (c)”.
- (4) Section 23 is amended by repealing subsection (4) and substituting the following subsection:
 - “(4) If the issuer of the debt security or managed investment products, or the operator of the retirement village, appoints a person (the **new appointee**) as the supervisor in place of the existing appointee or the FMA appointee, and the new appointee accepts the appointment, the issuer or operator may remove the existing appointee or the FMA appointee by written notice to the existing appointee or the FMA appointee.”

133 Expiry of licence: existing appointee must provide documents

- (1) The heading to section 24 is amended by omitting “**Expiry of licence: existing**” and substituting “**Existing**”.
- (2) Section 24 is amended by repealing subsection (4) and substituting the following subsection:
“(4) An existing appointee or an FMA appointee to whom a notice is given under subsection (1) or (2) must comply with the notice.”
- (3) Section 24 is amended by repealing subsection (6) and substituting:
“(6) A contravention of subsection (4) or (5) may give rise to a pecuniary penalty under section 41.”
- (4) Section 24(7) is amended by repealing the definition of **existing appointee** and substituting the following definition:
“**existing appointee**—
“(a) has the meaning given in section 22(1)(a) or 23(1)(a); and
“(b) includes, in relation to an FMA appointee who is appointed in the circumstances referred to in section 22(1)(c), the person who held the position of supervisor of the debt security, registered scheme, or retirement village before the FMA appointee was appointed”.

134 FMA may vary licence because of material change of circumstances, etc

- (1) Section 30(1)(c)(iii) is amended by omitting “, 36, or 49” and substituting “or 36”.
- (2) Section 30(1)(c) is amended by inserting the following subparagraph after subparagraph (iii):
“(iiia) fails to comply with a direction of the FMA under section 205 of the Financial Markets Conduct Act 2013 by the date specified in the direction; or”.
- (3) Section 30(3) is amended by omitting “a trustee or statutory supervisor in respect of securities” and substituting “a supervisor in respect of debt securities or registered schemes”.

135 FMA's powers if action plan not submitted, etc

- (1) Section 32(1)(c) is amended by omitting “, 36, or 49” and substituting “or 36”.
- (2) Section 32(1) is amended by inserting the following paragraph after paragraph (c):

“(ca) fails to comply with a direction of the FMA under section 205 of the Financial Markets Conduct Act 2013 by the date specified in the direction; or”.

136 Removal notice

- (1) Section 33 is amended by repealing subsection (4) and substituting the following subsection:

“(4) The removal of the existing appointee as supervisor in respect of an affected debt security or scheme, or as statutory supervisor of an affected retirement village, takes effect on the final removal date unless the existing appointee is removed from that appointment before that date (whether under section 38(1) or otherwise).”
- (2) Section 33(5) is amended by repealing the definition of **affected person** and substituting the following definition:

“**affected person** means—

 - “(a) the issuer in respect of an affected debt security or scheme;
 - “(b) the operator of an affected retirement village”.
- (3) Section 33(5) is amended by repealing the definition of **affected security** and inserting in its appropriate alphabetical order the following definition:

“**affected debt security or scheme** means a debt security or registered scheme to which a removal notice applies”.

137 Removal notice: FMA may give direction to existing appointee

- (1) Section 36(1) is amended by omitting “trustee or statutory supervisor in respect of an affected security” and substituting “supervisor in respect of an affected debt security or scheme”.
- (2) Section 36 is amended by repealing subsection (5) and substituting the following subsection:

- “(5) A person who refuses or fails, without reasonable excuse, to comply with a direction under subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$300,000.”

138 Removal notice: FMA may replace existing appointee

- (1) Section 37(1) is amended by omitting “trustee or statutory”.
- (2) Section 37 is amended by inserting the following subsection after subsection (1):

“(1A) If the FMA considers it necessary or desirable in the circumstances, the FMA may reappoint the FMA appointee (as an FMA appointee) to the position of supervisor for a further period that the FMA thinks fit (and a reappointment under this subsection may be made on 1 or more occasions).”
- (3) Section 37(2) is amended by omitting “subsection (1)” and substituting “subsection (1) or (1A)”.
- (4) Section 37(2) is amended by omitting “relevant issuer or operator” and substituting “affected person”.
- (5) Section 37 is amended by repealing subsections (4) and (5) and substituting the following subsections:

“(4) The affected person must reimburse the FMA for—
“(a) the FMA appointee’s costs and charges that are paid by the FMA; and
“(b) any costs of the FMA in connection with the appointment.
“(4A) An amount payable under subsection (4) must be paid by the date specified for payment in an invoice given to the affected person by the FMA and is recoverable as a debt due to the FMA.
- “(5) The FMA appointee is bound by the terms of the governing document under which the existing appointee was appointed (subject to subsection (6)).”
- (6) Section 37(6)(b) is amended by omitting “security” and substituting “debt security or managed investment products”.
- (7) Section 37(8) is amended by omitting “Before the end of the 6-month appointment” and substituting “Before the appointment of the FMA appointee under this section finally comes

to an end (taking into account any reappointment under subsection (1A))”.

- (8) Section 37(8) is amended by repealing paragraph (b) and substituting the following paragraph:

“(b) appoint the FMA appointee as the supervisor on a continuing basis (provided that the FMA appointee holds a licence that covers supervision of the debt security, registered scheme, or retirement village).”

- (9) Section 37 is amended by adding the following subsection:

“(10) If the FMA appointee does not hold a licence, the FMA appointee must, for the purposes of the Financial Markets Conduct Act 2013 and the Retirement Villages Act 2003, be treated as holding a licence that covers supervision of the debt security, registered scheme, or retirement village (as the case may be).”

139 Replacement notice: affected person may replace existing appointee or FMA appointee

- (1) Section 38(1) is amended by omitting “trustee or statutory”.

- (2) Section 38(3) is amended by omitting “6-month”.

140 Notice requiring documents: existing appointee, etc, must provide documents

- (1) Section 39(4)(b) and (6)(a) are amended by omitting “trustee or statutory supervisor in respect of the affected security” and substituting in each case “supervisor in respect of the affected debt security or scheme”.

- (2) Section 39 is amended by repealing subsection (5) and substituting the following subsection:

“(5) An existing appointee, an FMA appointee, or a new appointee to whom a notice is given under any of subsections (1) to (3) must comply with the notice.”

- (3) Section 39 is amended by repealing subsection (7) and substituting:

“(7) A contravention of subsection (5) or (6) may give rise to a pecuniary penalty under section 41.”

141 New heading and section 40A inserted

The following heading and section are inserted after section 40:

“FMA appointee’s powers and duties

“40A FMA appointee has powers and duties of supervisor

- “(1) An FMA appointee (whether appointed under section 22 or 37) has all of the powers and duties of the supervisor of the debt security, registered scheme, or retirement village that are conferred or imposed by the governing document or by law.
- “(2) This section is subject to sections 22(7) and 37(6).”

142 New section 41 substituted

Section 41 is repealed and the following section substituted:

“41 Pecuniary penalty orders

- “(1) The High Court may, on application by the FMA, order a licensee or other person to pay a pecuniary penalty to the Crown if the court is satisfied that—
- “(a) the licensee or other person has contravened section 6, 8, 24(4) or (5), or 39(5) or (6); or
 - “(b) the licensee has contravened a licensee obligation.
- “(2) In determining whether or not to make a pecuniary penalty order and (if an order is to be made) the amount of the penalty to be imposed, the court must have regard to all relevant matters, including—
- “(a) the nature and extent of the contravention:
 - “(b) in the case of a contravention relating to a debt security or registered scheme, the likelihood, nature, and extent of any damage to the integrity or reputation of New Zealand’s financial markets as a result of the contravention:
 - “(c) the nature and extent of any loss or damage suffered by product holders or residents because of the contravention:
 - “(d) the circumstances in which the contravention occurred:
 - “(e) whether or not the licensee or other person has previously contravened this Act or a licensee obligation:

- “(f) the public benefit in encouraging prompt and honest self-reporting of breaches or possible breaches of licensee obligations:
- “(g) any other circumstances that the court considers relevant.
- “(3) The maximum amount of a pecuniary penalty under this section is \$600,000.
- “(4) If conduct by a person constitutes a contravention of 2 or more provisions referred to in subsection (1) or licensee obligations, proceedings may be brought against that person for the contravention of any 1 or more of the provisions or obligations, but a person is not liable to more than 1 pecuniary penalty order for the same conduct.”

143 Compensation orders

Section 42 is amended by repealing subsection (1) and substituting the following subsection:

- “(1) The High Court may, on application by the FMA, a product holder, or a resident, order a licensee to pay compensation to any product holder or resident (the **aggrieved person**) if the court is satisfied that—
 - “(a) the licensee has contravened a licensee obligation; and
 - “(b) the aggrieved person has suffered, or is likely to suffer, loss or damage because of the contravention.”

144 Part 3 repealed

Part 3 is repealed.

145 FMA may vary or cancel direction

Section 51(1) is amended by omitting “, 36, or 49” and substituting “or 36”.

146 New section 52 substituted

Section 52 is repealed and the following section substituted:

“52 Protection for supervisor who complies with FMA’s direction

- “(1) No civil, criminal, or disciplinary proceedings may be brought against a supervisor in respect of a protected act.

- “(2) No person may terminate the appointment of a supervisor by reason of a protected act.
- “(3) No tribunal, body, or authority that has jurisdiction in respect of the professional conduct of a supervisor may make an order against, or do any act in relation to, the supervisor in respect of a protected act.
- “(4) In this section, **protected act**, in relation to a supervisor, means an act of, or omission to act on the part of, the supervisor in compliance in good faith with a direction under section 29 or 36.
“Compare: 1989 No 157 s 157ZH”.

147 Regulations

Section 53(1) is amended by inserting the following paragraph before paragraph (a):

- “(aa) prescribing conditions that licences are subject to, including (without limitation) providing for conditions that require a licensee to accept an appointment as an FMA appointee under section 22 or 37:”.

Transitional provisions

148 FMA may vary licences under Financial Markets Supervisors Act 2011

- (1) The FMA may, by written notice to a licensee, vary a licence if the FMA is satisfied that the variation is necessary or desirable in connection with the orderly implementation of the Financial Markets Conduct Act 2013 or this Act (for example, to change the matters referred to in section 10 of the principal Act or impose further conditions as referred to in section 11 of the principal Act).
- (2) A power under subsection (1) may be exercised—
 - (a) only on or before the date that is 2 years after the commencement of this section:
 - (b) despite anything to the contrary in the principal Act.
- (3) The FMA may vary a licence under this section only if the FMA gives the licensee—
 - (a) at least 10 working days’ written notice of the following matters before the FMA varies the licence:

- (i) that the FMA may vary the licence; and
 - (ii) the reasons why it is considering taking that action; and
- (b) an opportunity to make written submissions and to be heard on the matter within that notice period.
- (4) The notice under subsection (3) must state—
 - (a) the FMA's reasons for varying the licence; and
 - (b) the date on which the variation takes effect.
- (5) In this section and section 149,—
licence means a licence issued under the principal Act before the commencement of this section
licensee means a person who holds a licence.

149 Appeal against licence decision

- (1) A licensee who is dissatisfied with the FMA's decision under section 148 may appeal to the High Court no later than 20 working days, or such further period as the court may allow, after receiving written notice of the decision.
- (2) A decision against which an appeal is lodged remains valid pending the determination of the appeal unless the court orders otherwise.

Amendments to other enactments

150 Amendments to other enactments

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

Schedule
Consequential amendments

s 150

Part 1

Amendments to Acts

Accident Compensation Act 2001 (2001 No 49)

Section 11(1)(g): repeal and substitute:

“(g) any pension from a superannuation scheme, or pension fund, that is not a retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) nor a superannuation scheme registered under the Superannuation Schemes Act 1989; or”.

Section 321(5)(b): omit “registered superannuation scheme” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Airport Authorities Act 1966 (1966 No 51)

Definitions of **debt security** and **equity security** in section 2: repeal and substitute:

“**debt security** has the same meaning as in section 8 of the Financial Markets Conduct Act 2013

“**equity security** has the same meaning as in section 8 of the Financial Markets Conduct Act 2013”.

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

Section 5: insert in their appropriate alphabetical order:

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

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

“**workplace savings scheme** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013”.

Paragraph (b)(ii) of the definition of **facility** in section 5: repeal and substitute:

“(ii) membership of a superannuation scheme, workplace savings scheme, or KiwiSaver scheme.”.

Part 1—*continued*

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

Paragraph (c) of the definition of **facility holder** in section 5: repeal and substitute:

- “(c) if that facility consists of membership of a superannuation scheme, workplace savings scheme, or KiwiSaver scheme, means the product holder of the managed investment product in the scheme (within the meanings of product holder and managed investment product in section 6(1) of the Financial Markets Conduct Act 2013)”.

Section 18(2)(a): repeal and substitute:

- “(a) a listed issuer (within the meaning of the Financial Markets Conduct Act 2013) that is the issuer of quoted voting products (within the meaning of that Act):”.

Section 48(b)(vi) and (vii): repeal and substitute:

- “(vi) the Financial Markets Conduct Act 2013.”

Section 130(1)(b): repeal and substitute:

- “(b) for persons referred to in subsection (1A) (other than banks, life insurers, and non-bank deposit takers), the Financial Markets Authority is the relevant AML/CFT supervisor:”.

Section 130: insert after subsection (1):

“(1A) For the purposes of subsection (1)(b), the persons are any of the following:

- “(a) persons registered, or required to be registered, under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 by virtue of providing any of the services referred to in—
 - “(i) section 5(1)(a), (ab), (d), or (i) to (id) of that Act; or
 - “(ii) section 5(1)(k) of that Act (but only to the extent that it relates to the service of trading in financial products on behalf of other persons):
- “(b) statutory supervisors within the meaning of section 5 of the Retirement Villages Act 2003.”

Part 1—*continued*

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

Section 137(4) and (5): omit “Securities Act 1978, the Securities Markets Act 1988” and substitute in each case “Financial Markets Conduct Act 2013”.

Section 140(2)(k) and (l): repeal and substitute:

“(k) the Financial Markets Conduct Act 2013:”.

Armed Forces Canteens Act 1948 (1948 No 51)

Section 15A(1): omit “superannuation scheme which is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Auditor Regulation Act 2011 (2011 No 21)

Definition of **director** in section 6(1): omit “section 2 of the Securities Act 1978” and substitute “section 6(1) of the Financial Markets Conduct Act 2013”.

Insert after section 10:

**“10A Licence and registration requirements do not apply if
FMA exemption applies**

Sections 8 and 9 do not apply to an issuer audit if—

- “(a) the FMA has granted an exemption under the Financial Markets Conduct Act 2013 that applies in relation to the issuer audit; and
- “(b) the effect of the exemption is that, for the purposes of that Act, the issuer audit is not required to be carried out by a qualified auditor (within the meaning of that Act); and
- “(c) the terms and conditions of the exemption are complied with.”

Part 1—*continued*

Bank of New Zealand Officers’ Provident Association Act 1971 (1971 No 3 (P))

Insert after section 9:

“9A Application of Financial Markets Conduct Act 2013

The Financial Markets Conduct Act 2013 applies to the Association as follows:

- “(a) the Association must be treated as if it were a trust established and governed by a trust deed that is interpreted and administered in accordance with New Zealand law for the purposes of section 129(1)(a) and as a defined benefit scheme for the purposes of section 129(1)(e) and otherwise for that Act; and
- “(b) this Act and the rules of the Association must be treated as if they were the trust deed of the scheme; and
- “(c) the members of the Board of Management of the Association must be treated as if they were the trustees of the scheme; and
- “(d) accordingly, to avoid doubt, on and after its registration under clause 22 of Schedule 4 as a restricted scheme, the Association may be the custodian of the scheme under section 156(2)(a).”

Building Act 2004 (2004 No 72)

Clause 2(2)(b) of Schedule 3: omit “Securities Act 1978, or the Securities Markets Act 1988” and substitute “Financial Markets Conduct Act 2013”.

Building Societies Act 1965 (1965 No 22)

Definition of **debt security** in section 2(1): repeal and substitute:

“**debt security** has the same meaning as in section 8 of the Financial Markets Conduct Act 2013”.

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

Section 113I(1) and (2): omit “debt or participatory securities” and substitute in each case “debt securities”.

Section 113J(1), (2), and (3)(b): omit “debt or participatory securities” in each place where it appears and substitute in each case “debt securities”.

Part 1—*continued*

Charities Act 2005 (2005 No 39)

Section 16(2)(d): omit “Securities Act 1978, the Securities Markets Act 1988” and substitute “Financial Markets Conduct Act 2013”.

**Chartered Professional Engineers of New Zealand Act 2002
(2002 No 17)**

Clause 2(b) of Schedule 1: omit “Securities Act 1978, or the Securities Markets Act 1988” and substitute “Financial Markets Conduct Act 2013”.

Children’s Commissioner Act 2003 (2003 No 121)

Clause 6(1) of Schedule 1: omit “superannuation scheme that is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Commerce Act 1986 (1986 No 5)

Section 10(5): omit “superannuation scheme which is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Companies Act 1993 (1993 No 105)

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

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

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

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

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

“**stock exchange** means—

“(a) a licensed market; or

“(b) a financial product market that is authorised to operate in an overseas jurisdiction in accordance with the laws of that jurisdiction”.

Part 1—*continued*

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

Section 40: omit “securities” and substitute “financial products”.

Section 46: omit “securities” and substitute “financial products”.

Section 47(8)(a): omit “securities” and substitute “financial products”.

Heading to section 49: omit “**securities**” and substitute “**financial products**”.

Section 49: omit “securities” in each place where it appears and substitute in each case “financial products”.

Section 61(7): repeal and substitute:

“(7) Nothing in subsections (5) and (6) applies to an offer to a shareholder by a company if—

“(a) the company is a listed issuer; and

“(b) the offer is to acquire fewer of the quoted shares of the company than the minimum holding of those shares in the company determined by the operator of the relevant licensed market.”

Section 67C(2): omit “section 7 of the Securities Transfer Act 1991” and substitute “section 376 of the Financial Markets Conduct Act 2013”.

Section 67C(4): repeal and substitute:

“(4) A company must not grant an option to acquire a share it holds in itself or enter into any obligations to transfer such a share if—

“(a) the company has received notice in writing of a takeover offer made under the Takeovers Code in force under the Takeovers Act 1993; or

“(b) in the case of shares that are quoted on a stock exchange, the stock exchange makes a public release that a takeover offer for more than 20% of the quoted shares is to be made.”

Section 85(1) and (2): omit “section 7 of the Securities Transfer Act 1991” in each place where it appears and substitute in each case “section 376 of the Financial Markets Conduct Act 2013”.

Part 1—*continued*

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

Section 95(2): omit “authorised or approved under the Securities Transfer Act 1991” and substitute “approved under section 376 of the Financial Markets Conduct Act 2013”.

Section 95(6A): omit “section 54 of the Securities Act 1978” and substitute “section 100 of the Financial Markets Conduct Act 2013”.

Section 147(1)(b): repeal and substitute:

- “(b) that person is authorised to undertake trading activities on a licensed market and has the relevant interest by reason only of acting for another person to acquire or dispose of that share on behalf of the other person in the ordinary course of business of carrying out those trading activities; or”.

Section 149(1), (2), (4), and (5): omit “securities” in each place where it appears and substitute in each case “financial products”.

Section 149(3): omit “security” and substitute “financial product”.

Section 149(6): repeal and substitute:

- “(6) Nothing in this section applies to financial products that are quoted on a licensed market.”

Section 151(2)(ea): omit “Securities Act 1978 or the Securities Markets Act 1988” and substitute “Financial Markets Conduct Act 2013”.

Section 225A(3): omit “security” in each place where it appears and substitute in each case “financial product”.

Section 225A(4): repeal.

Section 237(1)(b): omit “securities” and substitute “financial products”.

Section 239AI(1)(b)(ii) and (iii): repeal and substitute:

- “(ii) the Financial Markets Conduct Act 2013.”.

Definition of **promoter** in section 239AM(3): repeal.

Definition of **promoter** in section 245A(3): repeal.

Section 258A(1)(b) and (c): repeal and substitute:

- “(b) the Financial Markets Conduct Act 2013.”.

Part 1—*continued*

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

Section 266(4): omit “section 60A of the Securities Act 1978, section 43F of the Securities Markets Act 1988” and substitute “subpart 6 of Part 8 of the Financial Markets Conduct Act 2013”.

Section 280(1)(ka): omit “Securities Act 1978, or the Securities Markets Act 1988,” and substitute “Financial Markets Conduct Act 2013”.

Section 371A(3): omit “Securities Act 1978” and substitute “Financial Markets Conduct Act 2013”.

Section 373(1)(3): omit “securities” and substitute “financial products”.

Section 374(2)(7): omit “securities” and substitute “financial products”.

Section 383(1)(c)(i): omit “or the Companies Act 1955, the Securities Act 1978, the Securities Markets Act 1988” and substitute “, the Financial Markets Conduct Act 2013”.

Section 383(1): omit “for such period not exceeding 10 years as may be specified in the order” and substitute “permanently or for a period specified in the order”.

Section 383: insert after subsection (1):

“(1A) The court may make an order under this section permanent or for a period longer than 10 years only in the most serious of cases for which an order may be made.”

Section 383(4A): omit “section 43F of the Securities Markets Act 1988, section 44F of the Takeovers Act 1993, and section 60A of the Securities Act 1978” and substitute “section 44F of the Takeovers Act 1993, and subpart 6 of Part 8 of the Financial Markets Conduct Act 2013”.

Section 385(3): omit “5 years” and substitute “10 years”.

Paragraph (da) of Schedule 2: omit “securities” and substitute “financial products”.

Paragraph (h) of Schedule 4: omit “if the company is a party to a listing agreement with a registered exchange (within the meaning of section 2(1) of the Securities Markets Act 1988)” and substitute “in respect of shares of the company that are quoted on a stock exchange”.

Part 1—*continued*

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

Paragraph (i) of Schedule 4: omit “if the company is not a party to a listing agreement with a registered exchange (within the meaning of section 2(1) of the Securities Markets Act 1988)” and substitute “in respect of shares of the company that are not quoted on a stock exchange”.

Schedule 4: insert after paragraph (j):

- “(ja) a statement as to whether the company at any time since the last annual return or, in the case of the first annual return, since the date of registration has been the offeror of financial products under a regulated offer (as defined in section 41 of the Financial Markets Conduct Act 2013):
- “(jb) a statement as to whether the company at any time since the last annual return or, in the case of the first annual return, since the date of registration has been the offeror of financial products for which a disclosure document was required to be provided under clause 26 of Schedule 1 of the Financial Markets Conduct Act 2013, and, if so, the exclusion under that schedule that the offeror relied on:
- “(jc) a statement as to whether the company at any time since the last annual return or, in the case of the first annual return, since the date of registration has been the offeror of financial products and has knowingly relied on an exclusion under clause 3(2)(b) or (3), 4(3), 8, 10, 11, 12, 15, 16, or 19 of Schedule 1 of the Financial Markets Conduct Act 2013, and, if so, which of those exclusions the offeror relied on:”.

Construction Contracts Act 2002 (2002 No 46)

Section 7(1)(a)(ii): omit “section 5B(2) of the Securities Markets Act 1988” and substitute “section 12(2) of the Financial Markets Conduct Act 2013”.

Definition of **control right** in section 7(2): omit “voting security” and substitute “voting product”.

Part 1—*continued*

Construction Contracts Act 2002 (2002 No 46)—*continued*

Section 7(3): repeal and substitute:

- “(3) For the purposes of this section, a person has a control right if the person would have a relevant interest, under sections 235 to 238 of the Financial Markets Conduct Act 2013, in the voting products that confer that right,—
- “(a) if voting product, in relation to a body, meant a financial product of the body that confers a right to vote at meetings of members (whether or not there is any restriction or limitation on the number of votes that may be cast by, or on behalf of, the holder of the financial product); and included a financial product that, in accordance with the terms of the financial product, is convertible into a financial product of that kind; and
 - “(b) if references in those sections to a number or percentage of voting products were references to the number or percentage of the votes conferred by those financial products.
- “(4) In subsection (3), **financial product** has the same meaning as in section 7 of the Financial Markets Conduct Act 2013.”

Co-operative Companies Act 1996 (1996 No 24)

Section 26(3): repeal and substitute:

- “(3) A company must not grant an option to acquire a share it holds in itself or enter into any obligations to transfer such a share if—
- “(a) the company has received notice in writing of a takeover offer made under the Takeovers Code in force under the Takeovers Act 1993; or
 - “(b) in the case of shares that are quoted on a stock exchange, the stock exchange makes a public release that a takeover offer for more than 20% of the quoted shares is to be made.”

Heading above section 29: omit “*and Securities Act 1978*”.

Section 29A: repeal.

Part 1—*continued*

Crimes Act 1961 (1961 No 43)

Section 242(1): omit “, whether in any prospectus, account, or otherwise,”.

Section 242(1)(a): repeal and substitute:

- “(a) to induce any person, whether ascertained or not, to acquire any financial product within the meaning of the Financial Markets Conduct Act 2013; or”.

Crown Entities Act 2004 (2004 No 115)

Section 12(3): omit “securities, borrowing, derivatives” and substitute “financial products, borrowing”.

Paragraph (b)(i) and (ii) of the definition of **natural person act** in section 24: repeal and substitute:

- “(i) acquisition of financial products or borrowing.”.

Section 30(2)(b): omit “Securities Act 1978, or the Securities Markets Act 1988” and substitute “Financial Markets Conduct Act 2013”.

Definitions of **debt security**, **derivative transaction**, and **security** in section 136(1): repeal.

Section 136(1): insert in their appropriate alphabetical order:

- “**debt security** has the same meaning as in section 8 of the Financial Markets Conduct Act 2013

- “**derivative**—

- “(a) has the same meaning as in section 8 of the Financial Markets Conduct Act 2013; and

- “(b) includes a foreign exchange transaction

- “**financial product** means any of the following:

- “(a) an equity security (within the meaning given in the Financial Markets Conduct Act 2013):

- “(b) a debt security:

- “(c) a managed investment product within the meaning of that Act (except a managed investment product in a superannuation scheme, a workplace savings scheme, or a KiwiSaver scheme):

- “(d) a derivative”.

Part 1—*continued*

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

Heading above section 159: omit “*securities, borrowing, guarantees, indemnities, and derivative transactions*” and substitute “*financial products, borrowing, guarantees, indemnities, and derivatives*”.

Heading to section 159: omit “**securities, borrowing, guarantees, indemnities, and derivative transactions**” and substitute “**financial products, borrowing, guarantees, indemnities, and derivatives**”.

Heading to section 160: omit “**securities, borrowing, guarantees, indemnities, and derivative transactions**” and substitute “**financial products, borrowing, guarantees, indemnities, and derivatives**”.

Heading to section 161: omit “**securities**” and substitute “**financial products**”.

Section 161(1): omit “acquire securities” and substitute “acquire financial products”.

Section 161(2): omit “security” and substitute “financial product”.

Section 161: insert after subsection (2):

“(2A) This section does not apply to derivatives.”

Section 164: repeal and substitute:

“164 Restrictions on use of derivatives

A Crown entity must not enter into an agreement constituting a derivative, or amend the terms of that agreement, other than as provided in section 160.”

Section 173(1)(c): repeal and substitute:

“(c) prescribing the nature and extent of the acquisition of financial products that may be undertaken by Crown entities, the financial products that Crown entities may acquire, the persons with whom a Crown entity may enter into agreements that constitute financial products, and any other matters relating to the acquisition of financial products or entering into those agreements:”.

Section 173(1)(f): repeal.

Section 173(1)(i): omit “securities” and substitute “financial products”.

Part 1—*continued*

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

Column headings in Schedule 1 and Schedule 2: omit “**securities**” in each place where it appears and substitute in each case “**financial products**”.

Schedule 3: omit “securities, borrowing, guarantees, indemnities, and derivative transactions” in the first place where it appears and substitute “financial products, borrowing, guarantees, indemnities, and derivatives”.

Schedule 3: omit “Restrictions on acquisition of securities, borrowing, guarantees, indemnities, and derivative transactions” and substitute “Restrictions on acquisition of financial products, borrowing, guarantees, indemnities, and derivatives”.

Crown Research Institutes Act 1992 (1992 No 47)

Paragraph (d) of the definition of **assets** in section 23(1): omit “securities within the meaning of the Securities Act 1978” and substitute “financial products within the meaning of the Financial Markets Conduct Act 2013”.

Paragraph (b) of the definition of **liabilities** in section 23(1): omit “Securities Act 1978” and substitute “Financial Markets Conduct Act 2013”.

Crown Retail Deposit Guarantee Scheme Act 2009 (2009 No 30)

Definition of **debt security** in section 3: repeal and substitute:

“**debt security** has the same meaning as in section 8 of the Financial Markets Conduct Act 2013”.

Dairy Industry Restructuring Act 2001 (2001 No 51)

Definition of **listed** in section 5(1): repeal.

Section 5(1): insert in their appropriate alphabetical order:

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

“**quoted** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013”.

Part 1—*continued*

Dairy Industry Restructuring Act 2001 (2001 No 51)—*continued*

Definition of **market maker in co-operative shares** in section 5(1):
repeal and substitute:

“**market maker in co-operative shares** means a person who is continuously active in making bids and offers on co-operative shares on the licensed market on which those shares are quoted during the periods that the licensed market is in operation”.

Definition of **registered market** in section 5(1): repeal.

Definition of **relevant interest** in section 5(1): repeal and substitute:

“**relevant interest** has the same meaning as in sections 235 to 238 of the Financial Markets Conduct Act 2013”.

Definition of **trade** in section 5(1): repeal and substitute:

“**trade** has the same meaning as in section 241(3) of the Financial Markets Conduct Act 2013, and for the avoidance of doubt includes exchange”.

Section 5(2)(b): omit “voting securities” and substitute “voting products (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Section 72(5A): omit “registered market and there is established a fund (the new co-op fund) the securities of which are listed on a registered market” and substitute “licensed market and there is established a fund (the new co-op fund) the securities of which are quoted on a licensed market”.

Section 102(3): repeal and substitute:

- “(3) New co-op may not issue capital notes under section 101 if,—
- “(a) during the month immediately before the capital notes are to be issued, capital notes of the same class as the capital notes to be issued have not been traded on a licensed market; or
 - “(b) capital notes of the same class as the capital notes to be issued have not been quoted continuously on the licensed market for 6 months or more.”

Part 1—*continued*

Dairy Industry Restructuring Act 2001 (2001 No 51)—*continued*

Section 106(2) and (3): repeal and substitute:

“(2) New co-op must ensure that the terms and effect of financial products offered or issued in new co-op are the same for new entrants as for shareholding farmers.

“(3) In this section, **financial products** has the same meaning as in section 7 of the Financial Markets Conduct Act 2013.”

Section 109D(1)(a): omit “listed on a registered market” and substitute “quoted on a licensed market”.

Section 109D(1)(b)(i)(A): omit “listed on a registered market” and substitute “quoted on a licensed market”.

Section 109D(2)(a): omit “registered exchange” and substitute “licensed market operator”.

Section 109F(1)(a): omit “registered market” and substitute “licensed market”.

Section 109F(1)(b): omit “listed on a registered market” and substitute “quoted on a licensed market”.

Section 109I(2)(a): omit “registered market” and substitute “licensed market”.

Section 109I(2)(b): omit “listed on a registered market” and substitute “quoted on a licensed market”.

Section 109J(1)(a) and (b): omit “listed on a registered market” and substitute “quoted on a licensed market”.

Section 109L(1): omit “registered market on which the co-operative shares are listed” and substitute “licensed market on which the co-operative shares are quoted”.

Section 116(2): repeal and substitute:

“(2) Nothing in Part 3 of the Financial Markets Conduct Act 2013 applies to the disclosure of information required by regulations made under subsection (1).”

Section 161B(6): omit “registered market on which co-operative shares are listed” and substitute “licensed market on which co-operative shares are quoted”.

Part 1—*continued*

Dairy Industry Restructuring Act 2001 (2001 No 51)—*continued*

Section 161B(8)(n): repeal and substitute:

“(n) the reference in section 65(2) to each stock exchange on which the shares of the company are listed were a reference to each licensed market on which co-operative shares are quoted and each licensed market on which new co-op fund securities are quoted.”.

Section 161B(8)(q): omit “registered market” and substitute “licensed market”.

Section 161D(1)(a)(i): omit “registered market” and substitute “licensed market”.

Defence Act 1990 (1990 No 28)

Section 73A: omit “has the same meaning as in the Superannuation Schemes Act 1989” and substitute “means a retirement scheme within the meaning of section 6(1) of the Financial Markets Conduct Act 2013”.

Section 73C(a): repeal.

Education Act 1989 (1989 No 80)

Section 67B(2): omit “a derivative transaction, or amend the terms of that transaction,” and substitute “an agreement constituting a derivative, or amend the terms of that agreement,”.

Section 103(1)(d): omit “Securities Act 1978, or the Securities Markets Act 1988” and substitute “Financial Markets Conduct Act 2013”.

Paragraph (d) of the definition of **assets** in section 216(1): omit “securities within the meaning of the Securities Act 1978” and substitute “financial products within the meaning of the Financial Markets Conduct Act 2013”.

Paragraph (b) of the definition of **liabilities** in section 216(1): omit “Securities Act 1978” and substitute “Financial Markets Conduct Act 2013”.

Part 1—*continued*

Education Act 1989 (1989 No 80)—*continued*

Paragraph (b)(i) and (ii) of the definition of **natural person act** in clause 1C(2) of Schedule 6: repeal and substitute:

- “(i) acquisition of financial products (within the meaning of section 7 of the Financial Markets Conduct Act 2013) or borrowing of money; or”.

Electoral Act 1993 (1993 No 87)

Clause 4(1) of Schedule 1: omit “superannuation scheme that is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Electricity Industry Act 2010 (2010 No 116)

Clause 4(1)(c) of Schedule 2: repeal and substitute:

- “(c) that person is authorised to undertake trading activities on a licensed market (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) and has the involvement by reason only of acting for another person to acquire or dispose of a financial product on behalf of the other person in the ordinary course of business of carrying out those trading activities; or”.

Clause 5(1) of Schedule 2: omit “voting security” and substitute “voting product”.

Clause 5(2) of Schedule 2: repeal and substitute:

- “(2) A person has a control right if the person would have a relevant interest, under sections 235 to 238 of the Financial Markets Conduct Act 2013, in the voting products that confer that right,—
 - “(a) if voting product, in relation to a body, meant a financial product of the body that confers a right to vote at meetings of members (whether or not there is any restriction or limitation on the number of votes that may be cast by, or on behalf of, the holder of the financial product); and included a financial product that, in accordance with

Part 1—*continued*

Electricity Industry Act 2010 (2010 No 116)—*continued*

the terms of the financial product, is convertible into a financial product of that kind; and

“(b) if references in those sections to a number or percentage of voting products were references to the number or percentage of the votes conferred by those financial products.

“(3) In subclause (2), **financial product** has the same meaning as in section 7 of the Financial Markets Conduct Act 2013.”

Clause 8(1)(a)(ii) of Schedule 2: omit “section 5B(2) of the Securities Markets Act 1988” and substitute “section 12(2) of the Financial Markets Conduct Act 2013”.

Energy Companies Act 1992 (1992 No 56)

Definition of **debt security** in section 2(1): repeal and substitute:

“**debt security** has the same meaning as in section 8 of the Financial Markets Conduct Act 2013”.

Definition of **equity security** in section 2(1): repeal and substitute:

“**equity security** has the same meaning as in section 8 of the Financial Markets Conduct Act 2013”.

Estate and Gift Duties Act 1968 (1968 No 35)

Paragraph (c) of the definition of **group superannuation scheme** in section 2(1): repeal and substitute:

“(c) any registered scheme within the meaning of section 6(1) of the Financial Markets Conduct Act 2013 that—

“(i) is a superannuation scheme, workplace savings scheme, or KiwiSaver scheme within the meaning of section 6(1) of the Financial Markets Conduct Act 2013; and

“(ii) is established for the benefit of contributors to the scheme otherwise than as employees of any employer”.

Part 1—*continued*

**Films, Videos, and Publications Classification Act 1993 (1993
No 94)**

Clause 5(1) of Schedule 1: omit “superannuation scheme that is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Finance Act (No 2) 1990 (1990 No 73)

Section 3(1): omit “established under the Unit Trusts Act 1960” and substitute “(within the meaning of section YA 1 of the Income Tax Act 2007)”.

Section 5(3): repeal.

Section 8: repeal.

Section 9A: repeal.

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

Definition of **director** in section 4: repeal and substitute:

“**director** has the meaning given by section 6(1) of the Financial Markets Conduct Act 2013”.

Section 5(ab): add “(including a custodial service)”.

Section 5(i) and (ia): repeal and substitute:

- “(i) participating in an FMC offer as the issuer or offeror of the financial products:
- “(ia) acting in any of the following capacities in respect of regulated products or financial products offered under an FMC offer:
 - “(i) as an issuer:
 - “(ii) as a supervisor:
 - “(iii) as an investment manager:
- “(ib) a licensed market service:
- “(ic) acting as a custodian in respect of a registered scheme or a discretionary investment management service provided by a DIMS licensee:
- “(id) operating a financial product market.”.

Part 1—*continued*

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

Section 5(k): repeal and substitute:

“(k) trading financial products or foreign exchange on behalf of other persons:”.

Section 5: add as subsections (2) and (3):

“(2) In this section, **custodian, DIMS licensee, discretionary investment management service, financial product, financial product market, investment manager, issuer, licensed market service, offeror, registered scheme, regulated products**, and **supervisor** have the same meanings as in section 6(1) of the Financial Markets Conduct Act 2013.

“(3) In this section, **FMC offer** means any of the following kinds of offers:

“(a) a regulated offer within the meaning of section 41 of the Financial Markets Conduct Act 2013:

“(b) an offer of financial products referred to in clause 19 or 21 of Schedule 1 of that Act.”

Section 7(2)(d): add “(other than Public Trust)”.

Section 7(2)(j): repeal and substitute:

“(j) an employer while providing services to enable employees of the employer to obtain rights or benefits under a retirement scheme (as defined in section 6(1) of the Financial Markets Conduct Act 2013), being a scheme in which that employer participates for the benefit of its employees:”.

Section 8A: add “; or” and also add the following paragraph:

“(c) is required to be registered under this Act by any other enactment.”

Section 14(2)(b) and (c): omit “Securities Act 1978, the Securities Markets Act 1988” and substitute in each case “Financial Markets Conduct Act 2013”.

Section 14(2): insert after paragraph (c):

“(ca) a person who is prohibited from 1 or more of the following under an order made, or a notice given, under a law of a country, State, or territory outside New Zealand

Part 1—*continued*

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

that is prescribed for the purposes of section 151(2)(eb) of the Companies Act 1993:

- “(i) being a director of a body corporate incorporated outside New Zealand (an **overseas company**):
- “(ii) being a promoter of an overseas company:
- “(iii) being concerned in or taking part in the management of an overseas company:”.

Section 44(1)(a): omit “5(n)” and substitute “5(1)(n)”.

Section 48(3): repeal and substitute:

- “(3) However, this obligation does not apply to—
- “(a) a financial service provider in relation to providing a financial service referred to in section 5(1)(i) or (ia)(i) if providing that service is not the provider’s only or principal business; or
 - “(b) a financial service provider in relation to the financial service of operating a financial product market (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013); or
 - “(c) a financial service provider (whether generally or in respect of a particular financial service or class of financial service) if it is exempted from the obligation by or under any other Act or by regulations made under section 79.”

Section 49(2)(b): repeal.

Section 49(2)(d) to (f): repeal and substitute:

- “(d) a related body corporate (within the meaning of section 12(2) of the Financial Markets Conduct Act 2013) of an entity to which paragraph (c) applies:
- “(e) a person who is a wholesale investor (within the meaning of clause 3(2) of Schedule 1 of the Financial Markets Conduct Act 2013, except that the relevant time for the purpose of applying that schedule under this paragraph must be treated as the time immediately before the service is received by the client):

Part 1—*continued*

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

- “(f) a person who is, in relation to an offer of financial products, a wholesale investor (within the meaning of clause 3 of Schedule 1 of the Financial Markets Conduct Act 2013), if the service relates to that offer or to financial products that have been acquired by that person under that offer:
- “(fa) a person who is, in relation to an offer of financial products, a close business associate of the offeror (within the meaning of clause 4 of Schedule 1 of the Financial Markets Conduct Act 2013), if the service relates to that offer or to financial products that have been acquired by that person under that offer:
- “(fb) a person who is, in relation to an offer of financial products, a relative of the offeror or of a director of the offeror (within the meaning of clause 5 of Schedule 1 of the Financial Markets Conduct Act 2013), if the service relates to that offer or to financial products that have been acquired by that person under that offer:”.

Definition of **private offer of securities** in section 49(4): repeal.

Schedule 2: item relating to the Securities Trustees and Statutory Supervisors Act 2011: omit and substitute:

Financial Markets Authority	Licensed supervisors in respect of debt securities and managed investment schemes	Financial Markets Supervisors Act 2011
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Schedule 2: add:

Financial Markets Authority	Persons who hold, or are authorised bodies under, a market services licence	Financial Markets Conduct Act 2013
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Financial Transactions Reporting Act 1996 (1996 No 9)

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

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

Part 1—*continued*

Financial Transactions Reporting Act 1996 (1996 No 9)—*continued*

“**workplace savings scheme** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013”.

Paragraph (b)(ii) of the definition of **facility** in section 2(1): repeal and substitute:

“(ii) membership of a superannuation scheme, workplace savings scheme, or KiwiSaver scheme.”.

Paragraph (d) of the definition of **facility holder** in section 2(1): repeal and substitute:

“(d) if that facility consists of membership of a superannuation scheme, workplace savings scheme, or KiwiSaver scheme, means the product holder of the managed investment product in the scheme (within the meanings of product holder and managed investment product in section 6(1) of the Financial Markets Conduct Act 2013)”.

Definition of **superannuation scheme** in section 2(1): repeal and substitute:

“**superannuation scheme** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013”.

Section 3(1)(h) to (i): repeal and substitute:

“(h) a supervisor or a manager of a registered scheme (within the meanings of those terms in section 6(1) of the Financial Markets Conduct Act 2013):”.

Section 55A: repeal.

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

Section 78(2)(a) and (b): repeal and substitute:

- “(a) a member, or a person claiming through a member (unless that member or person is a supervisor appointed for the purposes of subpart 1 of Part 4 of the Financial Markets Conduct Act 2013) or under the rules of a registered society or branch, and the society or branch or an officer of the society or branch; or
- “(b) any person aggrieved who has ceased to be a member of a registered society or branch, or any person claiming through such person aggrieved (unless that person

Part 1—*continued*

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

aggrieved or other person claiming through that person is a supervisor appointed for the purposes of subpart 1 of Part 4 of the Financial Markets Conduct Act 2013), and the society or branch or an officer of the society or branch; or”.

Section 99(1)(d): repeal.

Section 107A(5): repeal and substitute:

“(5) To avoid doubt, credit union securities do not include shares under section 107.”

Section 109A: repeal and substitute:

“109A Power of credit union to appoint supervisor for debt securities

“(1) A credit union may appoint a supervisor and sign or amend a trust deed for the purposes of subpart 1 of Part 4 of the Financial Markets Conduct Act 2013.

“(2) This section applies regardless of anything to the contrary in the rules of a credit union.”

Section 112(1A): repeal and substitute:

“(1A) However, regardless of the rules of a credit union, if a supervisor has been appointed in respect of a debt security for the purposes of subpart 1 of Part 4 of the Financial Markets Conduct Act 2013, then that supervisor may exercise any rights it has under that Act in respect of the property of the credit union.”

Goods and Services Tax Act 1985 (1985 No 141)

Section 3(1)(j): omit “superannuation scheme” in each place where it appears and substitute in each case “retirement scheme”.

Section 3(1)(ka): omit “superannuation scheme” and substitute “retirement scheme”.

Part 1—*continued*

Goods and Services Tax Act 1985 (1985 No 141)—*continued*

Section 3(2): insert in its appropriate alphabetical order:

“contributory scheme—

- “(a) means any scheme or arrangement that, in substance and irrespective of the form of the scheme or arrangement, involves the investment of money where—
 - “(i) the investor acquires or may acquire an interest in or right in respect of property; and
 - “(ii) that interest or right will or may be, under the terms of investment, used or exercised in conjunction with any other interest in or right in respect of property acquired in similar circumstances, whether at the same time or not; but
- “(b) does not include a scheme or arrangement described in paragraph (a) that has 5 or fewer investors, provided that neither the manager of the scheme nor any associated person of the manager is the manager of another such scheme or arrangement”.

Definition of **participatory security** in section 3(2): omit “(as defined in section 2 of the Securities Act 1978); and includes an interest in a unit trust within the meaning of the Unit Trusts Act 1960;” and substitute “; and includes an interest in a unit trust (within the meaning of section YA 1 of the Income Tax Act 2007);”.

Definition of **superannuation scheme** in section 3(2): repeal and substitute:

“retirement scheme has the meaning given in section 6(1) of the Financial Markets Conduct Act 2013”.

Section 3(3)(d): omit “superannuation scheme” and substitute “retirement scheme”.

Government Superannuation Fund Act 1956 (1956 No 47)

Section 15C(1)(c): repeal and substitute:

- “(c) enter into an agreement constituting a derivative (within the meaning of section 8 of the Financial Markets Conduct Act 2013) or amend the terms of that agreement.”

Part 1—*continued*

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

Section 19H: repeal and substitute:

**“19H Application of Part 4 of Financial Markets Conduct Act
2013**

Each of the schemes must be treated for the purposes of this Act and any other Act as if it is registered on the register of managed investment schemes under the Financial Markets Conduct Act 2013 as a superannuation scheme, but Part 4 of that Act otherwise does not apply to it.”

Section 61S(1)(c): omit “superannuation scheme nominated by the contributor that is approved by the Authority and is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) that is nominated by the contributor and approved by the Authority”.

Section 71K(3): omit “superannuation scheme nominated by the contributor that is approved by the Authority and is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) that is nominated by the contributor and approved by the Authority”.

Section 81P(1)(b): omit “superannuation scheme nominated by him or her that is approved by the Authority and is approved under the Superannuation Schemes Act 1976 and classified under that Act as an employee pension superannuation scheme or a personal pension superannuation scheme or is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) that is nominated by him or her and approved by the Authority”.

Health and Disability Commissioner Act 1994 (1994 No 88)

Clause 4(1) of Schedule 2: omit “superannuation scheme that is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Part 1—*continued*

Health Sector (Transfers) Act 1993 (1993 No 23)

Paragraph (c) of the definition of **assets** in section 2(1): omit “securities within the meaning of the Securities Act 1978” and substitute “financial products within the meaning of the Financial Markets Conduct Act 2013”.

Paragraph (b) of the definition of **liabilities** in section 2(1): omit “Securities Act 1978” and substitute “Financial Markets Conduct Act 2013”.

Housing Restructuring and Tenancy Matters Act 1992 (1992 No 76)

Paragraph (c) of the definition of **Corporation assets** in section 2(1): omit “securities within the meaning of the Securities Act 1978” and substitute “financial products within the meaning of the Financial Markets Conduct Act 2013”.

Paragraph (b) of the definition of **liabilities** in section 2(1): omit “Securities Act 1978” and substitute “Financial Markets Conduct Act 2013”.

Human Rights Act 1993 (1993 No 82)

Section 70(5): insert “, the supervisor, or the manager” after “the trustees” in each place where it appears.

Section 70(5)(d): omit “section 9C of the Superannuation Schemes Act 1989” and substitute “section 183 of the Financial Markets Conduct Act 2013”.

Section 72: insert “, or the manager of the scheme with the supervisor’s consent,” after “the trustees of the scheme”.

Clause 6(1) of Schedule 1: omit “superannuation scheme that is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Clause 6(1) of Schedule 2: omit “superannuation scheme that is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Part 1—*continued*

Human Rights Amendment Act 1994 (1994 No 138)

Section 2(1): insert “, the supervisor, or the manager” after “the trustees”.

Section 2(5): insert “, the supervisor, or the manager” after “the trustees” in each place where it appears.

Income Tax Act 2007 (2007 No 97)

Section EY 11(3): repeal and substitute:

“(3) At all times in the income year, the fund must be registered as a superannuation scheme or a workplace savings scheme on the register of managed investment schemes (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013).”

Heading above section EY 11(13) and section EY 11(13): repeal and substitute:

“Objection against FMA decision

“(13) A person dissatisfied with the FMA’s decision may appeal against the decision to the High Court and has no right of objection under the Tax Administration Act 1994.

“(13A) A decision against which an appeal is lodged under subsection (13) continues in force unless the High Court orders otherwise.”

Section HM 18(1)(c): omit “prospectus” and substitute “product disclosure statement”.

Section HM 19B(2)(a): omit “to which the Unit Trusts Act 1960 applies”.

Section RH 3(2)(b)(iv): omit “under the KiwiSaver Act 2006”.

Definition of **complying superannuation fund** in section YA 1: repeal and substitute:

“**complying superannuation fund** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013”.

Definition of **defined benefit fund** in section YA 1: repeal and substitute:

“**defined benefit fund** means a superannuation scheme or workplace savings scheme (within the meaning of section

Part 1—*continued*

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

6(1) of the Financial Markets Conduct Act 2013) that operates on the principle of unallocated funding”.

Definition of **KiwiSaver scheme** in section YA 1: repeal and substitute:

“**KiwiSaver scheme** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013”.

Paragraph (a) of the definition of **public unit trust** in section YA 1: omit “that offers securities to the public under the Securities Act 1978” and substitute “in respect of which regulated offers are made under the Financial Markets Conduct Act 2013”.

Paragraph (b)(vi) and (vii) of the definition of **public unit trust** in section YA 1: omit “if the unit trust offers securities to the public under the Securities Act 1978” and substitute in each case “if regulated offers in respect of the unit trust are made under the Financial Markets Conduct Act 2013”.

Paragraph (c) of the definition of **relative** in section YA 1: repeal.

Definition of **superannuation fund** in section YA 1: repeal and substitute:

“**superannuation fund** means—

- “(a) a retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013); and
- “(b) for a retirement scheme that is a trust, the trustees of the retirement scheme”.

Clause 1(a) of Schedule 28: omit “196” and substitute “127”.

Clause 1(b) of Schedule 28: insert “4(6),” after “4(1) to (4),”.

Independent Police Conduct Authority Act 1988 (1988 No 2)

Section 11: omit “superannuation scheme that is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Part 1—*continued*

Insolvency Act 2006 (2006 No 55)

Paragraph (w)(v) of Schedule 1: repeal and substitute:

- “(v) financial products (within the meaning of section 7 of the Financial Markets Conduct Act 2013) if sold on a stock exchange (within the meaning of section 2(1) of the Companies Act 1993).”

Insurance Intermediaries Act 1994 (1994 No 41)

Section 15(1): omit “section 2 of the Securities Act 1978” and substitute “section 8 of the Financial Markets Conduct Act 2013”.

Insurance (Prudential Supervision) Act 2010 (2010 No 111)

Section 6(1): insert in its appropriate alphabetical order:

“**derivative transaction** means—

- “(a) a transaction that is a rate swap transaction, swap option, basis swap, forward rate transaction, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, forward purchase or sale of a security, or commodity or other financial instrument or interest (including an agreement or option that relates to any of these transactions); or
- “(b) a transaction that is similar to any transaction referred to in paragraph (a) that—
 - “(i) is currently, or in the future becomes, recurrently entered into in the financial markets; and
 - “(ii) is a forward, swap, future, option, or other derivative on 1 or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, environmental or climatic variables,

Part 1—*continued*

Insurance (Prudential Supervision) Act 2010 (2010 No 111)—*continued*

or other benchmarks against which payments or deliveries are to be made”.

Section 7(3)(a): omit “(within the meaning of section 136(1) of the Crown Entities Act 2004)”.

Section 7(3)(e): omit “superannuation scheme (within the meaning of section 2A of the Superannuation Schemes Act 1989) or a KiwiSaver scheme (within the meaning of section 4(1) of the KiwiSaver Act 2006)” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Section 99(8): repeal and substitute:

“(8) In this section, **public issuer** means a person who is a party to a listing agreement with, or whose securities are otherwise quoted on,—

- “(a) a licensed market (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013); or
- “(b) a securities market that is authorised to operate in an overseas jurisdiction in accordance with the laws of that jurisdiction.”

Judicature Act 1908 (1908 No 89)

Section 24B(1)(e): omit “Securities Act 1978 or the Securities Markets Act 1988” and substitute “Financial Markets Conduct Act 2013”.

Section 26G: omit “registered superannuation scheme” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Lawyers and Conveyancers Act 2006 (2006 No 1)

Section 322(5)(d): omit “body that is a party to a listing agreement with a stock exchange” and substitute “listed issuer”.

Paragraph (c) of the definition of **company** in section 322(6): omit “party to a listing agreement with a stock exchange” and substitute “listed issuer”.

Part 1—*continued*

Lawyers and Conveyancers Act 2006 (2006 No 1)—*continued*

Section 322(6): add:

“**listed issuer** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013.”

Clause 9(1) of Schedule 5: omit “scheme registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Local Government Act 2002 (2002 No 84)

Definition of **equity security** in section 5(1): repeal and substitute:

“**equity security** has the same meaning as in section 8 of the Financial Markets Conduct Act 2013”.

Section 71A(1): omit “listed on a stock exchange” and substitute “quoted on a licensed market (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Section 122: repeal and substitute:

“**122 Disclosure document and loan documents to contain statement that the Crown does not guarantee financial products or loan**

- “(1) If a local authority is named as the issuer, or is otherwise named with its consent, in a disclosure document, that disclosure document must, unless the financial products being offered under the disclosure document are expressly guaranteed by the Crown under the Public Finance Act 1989, contain a statement that the financial products being offered under the disclosure document are not guaranteed by the Crown.
- “(2) In subsection (1), **disclosure document** means a product disclosure statement (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) or a disclosure document under clause 26 of Schedule 1 of that Act.
- “(3) If a local authority enters into any loan agreement or incidental arrangement, that agreement or arrangement must include a statement that the loan or other liability under the incidental arrangement is not guaranteed by the Crown.

Part 1—*continued*

Local Government Act 2002 (2002 No 84)—*continued*

“(4) Subsection (3) does not apply in relation to liability for any sum of a kind described in section 49 of the Public Finance Act 1989.”

Clause 21(5)(c)(ii)(D) of Schedule 7: omit “Securities Act 1978” and substitute “Financial Markets Conduct Act 2013”.

Local Government (Auckland Council) Act 2009 (2009 No 32)

Clause 5(2)(c) of Schedule 2: omit “Securities Act 1978, or the Securities Markets Act 1988” and substitute “Financial Markets Conduct Act 2013”.

Local Government Borrowing Act 2011 (2011 No 77)

Heading above section 8 and section 8: repeal and substitute:

*“Application of Financial Markets Conduct
Act 2013*

**“8 Financial Markets Conduct Act 2013 applies to Funding
Agency as if it were local authority**

The Financial Markets Conduct Act 2013 applies to the Funding Agency as if it were a local authority.”

Mackelvie Trust Act 1958 (1958 No 2 (P))

Section 7(2): omit “stock, shares, or debentures of any company quoted on a registered exchange’s securities market (within the meaning of section 2(1) of the Securities Markets Act 1988)” and substitute “quoted financial products of a listed issuer”.

Section 7(3): omit “a registered exchange’s securities market (within the meaning of section 2(1) of the Securities Markets Act 1988)” and substitute “a licensed market”.

Section 7: add:

“(4) In this section, **quoted, financial products, listed issuer, and licensed market** have the same meanings as in section 6(1) of the Financial Markets Conduct Act 2013”.

Part 1—*continued*

Māori Language Act 1987 (1987 No 176)

Clause 10(1) of Schedule 2: omit “superannuation scheme that is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Maori Reserved Land Amendment Act 1997 (1997 No 101)

Section 8(1) to (3) and (5)(d): omit “voting securities” and substitute in each case “voting products”.

Section 8(5)(a): repeal and substitute:

“(a) **company** includes any body corporate with voting products; but does not include a company that is a listed issuer (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013):”.

Section 8(5)(c): omit “sections 5 to 5B of the Securities Markets Act 1988” and substitute “sections 235 to 238 of the Financial Markets Conduct Act 2013”.

Section 8(5)(e): repeal and substitute:

“(e) **voting product** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013.”

Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003 (2003 No 21)

Clause 2(2)(b) of Schedule 2: omit “Securities Act 1978, or the Securities Markets Act 1988” and substitute “Financial Markets Conduct Act 2013”.

Masterton Trust Lands Act 2003 (2003 No 1 (L))

Clause 8(1) of Schedule 2: omit “superannuation scheme which is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Part 1—*continued*

**Methodist Charitable and Educational Trusts Act 1911 (1911
No 1 (L))**

Section 30(1)(e): omit “company that is party to a listing agreement with a registered exchange (within the meaning of section 2(1) of the Securities Markets Act 1988)” and substitute “listed issuer”.

Section 30(1)(f): omit “the securities of any company whether incorporated in New Zealand or elsewhere, which are listed on a registered exchange’s securities market (within the meaning of section 2(1) of the Securities Markets Act 1988)” and substitute “quoted financial products of any listed issuer that is a company whether incorporated in New Zealand or elsewhere”.

Section 30(2) and (6): omit “securities” and substitute in each case “financial products”.

Section 30: add:

“(7) In this section, **listed issuer**, **quoted**, and **financial products** have the same meanings as in section 6(1) of the Financial Markets Conduct Act 2013.”

Motor Vehicle Sales Act 2003 (2003 No 12)

Section 24(i): omit “Securities Act 1978, or the Securities Markets Act 1988” and substitute “Financial Markets Conduct Act 2013”.

Section 68(1)(c)(i): omit “Securities Act 1978, or the Securities Markets Act 1988” and substitute “Financial Markets Conduct Act 2013”.

**Museum of New Zealand Te Papa Tongarewa Act 1992 (1992
No 19)**

Clause 7(1) of Schedule 1: omit “superannuation scheme that is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

**National Heart Foundation of New Zealand Empowering
Act 1970 (1970 No 3 (P))**

Section 3(1): omit “the securities of any company, whether incorporated in New Zealand or elsewhere, which are officially listed on a

Part 1—*continued*

**National Heart Foundation of New Zealand Empowering
Act 1970 (1970 No 3 (P))—*continued***

registered exchange's securities market (within the meaning of section 2(1) of the Securities Markets Act 1988 and which comprise" and substitute "quoted financial products of any company whether incorporated in New Zealand or elsewhere and that comprise".

Section 3(2) and (3): omit "securities" and substitute in each case "financial products".

Section 3: add:

"(6) In this section, **quoted** and **financial products** have the same meanings as in section 6(1) of the Financial Markets Conduct Act 2013."

National Provident Fund Restructuring Act 1990 (1990 No 126)

Definition of **debt security** in section 2: repeal and substitute:

"**debt security** has the same meaning as in section 8 of the Financial Markets Conduct Act 2013".

Definition of **equity security** in section 2: repeal and substitute:

"**equity security** has the same meaning as in section 8 of the Financial Markets Conduct Act 2013".

Section 2: insert in their appropriate alphabetical order:

"**managed investment product** has the same meaning as in section 8 of the Financial Markets Conduct Act 2013

"**registered scheme** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013".

Paragraph (b) of the definition of **market value** in section 2: omit "under section 14 of the Superannuation Schemes Act 1989".

Definition of **superannuation scheme** in section 2: omit "has the same meaning as in section 2 of the Superannuation Schemes Act 1989" and substitute "means a retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)".

Section 20(3): omit "a trustee of a superannuation scheme registered under the Superannuation Schemes Act 1989" and substitute "a trustee of a registered scheme that is a restricted scheme under the Financial Markets Conduct Act 2013".

Part 1—*continued*

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

Section 24(3): add “; and” and also add the following paragraph:

“(c) to avoid doubt, are managed investment products on and after the global asset trust is treated as a registered scheme under section 59A.”

Section 25(1)(a): repeal and substitute:

“(a) be treated as a registered scheme under section 59A; and”.

Section 41(2)(c): repeal.

Section 42(2): omit “Notwithstanding section 9B of the Superannuation Schemes Act 1989” and substitute “Despite sections 178 to 182 of the Financial Markets Conduct Act 2013”.

Section 43(b): repeal.

Section 45(2): repeal.

Section 53(1) and (2): omit “participatory securities” and substitute in each case “managed investment products”.

Section 53(4): omit “section 8 of the Superannuation Schemes Act 1989 or”.

Section 57(1)(a): repeal.

Section 57(2): repeal.

Part 4: insert after section 59:

*“Application of Financial Markets Conduct
Act 2013*

“59A Application of Financial Markets Conduct Act 2013

“(1) The Financial Markets Conduct Act 2013 applies to the global asset trust, an existing scheme, and any other scheme established under this Act (each called a **scheme** in this section) on and after the effective date for the scheme in accordance with clause 19 of Schedule 4 of that Act (or any later date on which the scheme is established) as follows:

“(a) the scheme must be treated, for the purposes of that Act, as a trust established and governed by a trust deed that is interpreted and administered in accordance with New Zealand law, rather than under this Act; and

Part 1—*continued***National Provident Fund Restructuring Act 1990 (1990
No 126)**—*continued*

- “(b) the scheme must be treated for the purposes of that Act and any other enactment as if it is registered on the register of managed investment schemes under the Financial Markets Conduct Act 2013 as a restricted scheme that is a superannuation scheme; and
- “(c) the Board is the manager of the scheme for the purposes of that Act; and
- “(d) the following provisions of Part 4 of that Act, but no other provisions of that Part, apply in respect of the scheme:
 - “(i) section 133, but only in respect of the requirement under section 127 that its governing document comply with the provisions of sections 135 to 137 that apply to it:
 - “(ii) sections 135 (other than subsection (1)(a), (d), (g), (j), and (k)) to 141 (governing documents), except that the documents referred to in section 141 must be lodged with the FMA rather than the Registrar:
 - “(iii) sections 142 to 147, and 151 (manager functions and duties), but subject to paragraphs (e) and (f):
 - “(iv) section 169 (actuarial examinations):
 - “(v) section 171 (limits on reversion of scheme property in certain schemes to non-scheme participant contributor):
 - “(vi) sections 178 to 181 (transfer of scheme participants):
 - “(vii) section 183 (deferred benefits):
 - “(viii) sections 205, 206, and 212 to 214 (intervention in debt securities offered under regulated offer or registered schemes):
 - “(ix) subpart 4 (registers and keeping copies of documents):
 - “(x) section 228, in respect of the provisions of Part 4 that apply to it.

Part 1—*continued*

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

- “(e) the duty on the manager under section 143(1)(b) of that Act applies only after taking account of the Crown’s interest as guarantor of the benefits and liabilities under the existing scheme and investment arrangements; and
 - “(f) the duty under section 144 of that Act is subject to section 53 of this Act.
- “(2) On and after the effective date for an existing scheme, every reference in the trust deed of the scheme to—
- “(a) participatory securities must be read as a reference to managed investment products; and
 - “(b) a registered superannuation scheme or a superannuation scheme registered under the Superannuation Schemes Act 1989 must be read as a reference to a retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013).
- “(3) This Act continues to apply to a scheme, as if it had not been amended by the Financial Markets (Repeals and Amendments) Act 2013 (except in respect of this subsection and subsection (4)), until the effective date for the scheme.
- “(4) Schedule 4 of the Financial Markets Conduct Act 2013 applies to the global asset trust and an existing scheme (other than clauses 21 to 25, 27 and 28, 30, and 31 of that schedule).”

**National Provident Fund Restructuring Amendment Act 1997
(1997 No 83)**

Section 17(3): repeal.

Section 20(4)(b): repeal.

Section 27(3): omit “the Superannuation Schemes Act 1989 or any other” and substitute “any”.

Section 30(1): omit “, the Superannuation Schemes Act 1989,”.

Section 30(2): omit “, the Superannuation Schemes Act 1989,”.

Clause 3(c) of Schedule 1: repeal.

Part 1—*continued*

New Zealand Antarctic Institute Act 1996 (1996 No 38)

Clause 16(1) of Schedule 1: omit “superannuation scheme that is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

New Zealand Council for Educational Research Act 1972 (1972 No 35)

Section 15(2): omit “superannuation scheme which is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

New Zealand Horticulture Export Authority Act 1987 (1987 No 93)

Section 19: omit “superannuation scheme which is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

New Zealand Maori Arts and Crafts Institute Act 1963 (1963 No 51)

Section 18(3): omit “superannuation scheme which is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

New Zealand Public Health and Disability Act 2000 (2000 No 91)

Clause 45A(2) of Schedule 3: omit “a derivative transaction” and substitute “an agreement constituting a derivative”.

New Zealand Stock Exchange Restructuring Act 2002 (2002 No 1 (P))

Section 12(1): repeal and substitute:

“(1) There must be a control limit under section 344 of the Financial Markets Conduct Act 2013 in respect of the Company on and from the commencement of this subsection.”

Part 1—*continued*

**New Zealand Stock Exchange Restructuring Act 2002 (2002
No 1 (P))—*continued***

Section 12(8): repeal.

Section 12(9): omit “section 28 of”.

**New Zealand Superannuation and Retirement Income Act 2001
(2001 No 84)**

Clause 1(1) of Schedule 6: omit “superannuation scheme that is registered under the Superannuation Schemes Act 1989 and” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) that is”.

Ombudsmen Act 1975 (1975 No 9)

Section 12: omit “scheme that is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Personal Property Securities Act 1999 (1999 No 126)

Definition of **futures contract** in section 16(1): repeal.

Paragraph (a)(i) of the definition of **investment security** in section 16(1): omit “futures contract” and substitute “derivative (within the meaning of section 8 of the Financial Markets Conduct Act 2013)”.

Section 17A(b): omit “security (as defined in section 2D of the Securities Act 1978)” and substitute “financial product (within the meaning of section 7 of the Financial Markets Conduct Act 2013)”.

Port Companies Act 1988 (1988 No 91)

Definition of **debt security** in section 2(1): repeal and substitute:

“**debt security** has the same meaning as in section 8 of the Financial Markets Conduct Act 2013”.

Definition of **equity security** in section 2(1): repeal and substitute:

“**equity security** has the same meaning as in section 8 of the Financial Markets Conduct Act 2013”.

Section 13: omit “listing of the shares of a port company on a registered exchange’s securities market (within the meaning of section

Part 1—*continued*

Port Companies Act 1988 (1988 No 91)—*continued*

2(1) of the Securities Markets Act 1988)” and substitute “quotation of the shares of a port company on a licensed market (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Privacy Act 1993 (1993 No 28)

Clause 4(1) of Schedule 1: omit “superannuation scheme that is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

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

Financial Markets Conduct Act 2013	Section 215 and clauses 1 and 4 of Schedule 2
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Items relating to the Securities Act 1978 in Part 1 of Schedule 2: repeal.

Property Law Act 2007 (2007 No 91)

Section 167(1)(b)(ii): omit “Securities Act 1978” and substitute “Financial Markets Conduct Act 2013”.

Property (Relationships) Act 1976 (1976 No 166)

Section 44D(4): omit “section 2 of the Securities Act 1978” and substitute “section 8 of the Financial Markets Conduct Act 2013”.

Public Finance Act 1989 (1989 No 44)

Section 1A(2)(f)(iii): omit “derivative transactions” and substitute “derivatives”.

Definition of **derivative transaction** in section 2(1): repeal and substitute:

“**derivative**—

- “(a) has the same meaning as in section 8 of the Financial Markets Conduct Act 2013; and
- “(b) includes a foreign exchange transaction”.

Part 1—*continued*

Public Finance Act 1989 (1989 No 44)—*continued*

Definitions of **relevant interest** and **security** in section 45P(2): repeal and substitute:

“**relevant interest** has the meaning given to it by sections 235 to 238 of the Financial Markets Conduct Act 2013

“**security** means a financial product within the meaning of section 7 of the Financial Markets Conduct Act 2013”.

Section 45U(1)(a)(ii): omit “section 31(1)(b) of the Securities Markets Act 1988” and substitute “section 285(1)(b) of the Financial Markets Conduct Act 2013”.

Section 45U(1)(b): omit “section 5B of the Securities Markets Act 1988” and substitute “section 237 of the Financial Markets Conduct Act 2013”.

Heading to Part 6: omit “**derivative transactions**” and substitute “**derivatives**”.

Heading to subpart 3 of Part 6: omit “Derivative transactions” and substitute “Derivatives”.

Heading above section 65F: omit “*derivative transactions*” and substitute “*derivatives*”.

Heading to section 65F: omit “**derivative transactions**” and substitute “**derivatives**”.

Section 65F: omit “derivative transaction” and substitute “derivative”.

Heading to section 65G: omit “**derivative transactions**” and substitute “**derivatives**”.

Section 65G(1) and (2): omit “derivative transaction” and substitute in each case “derivative”.

Heading above section 65H: omit “*derivative transactions*” and substitute “*derivatives*”.

Heading to section 65H: omit “**derivative transactions**” and substitute “**derivatives**”.

Section 65H: omit “derivative transaction” in each place where it appears and substitute in each case “derivative”.

Part 1—*continued*

Public Trust Act 2001 (2001 No 100)

Section 66: add:

“(5) In this section, **stock exchange** has the same meaning as in section 2(1) of the Companies Act 1993.”

Section 71(2): insert after paragraph (b):

“(ba) a product disclosure statement in relation to the investment of that money in the fund has been lodged in accordance with the requirements of Part 3 of the Financial Markets Conduct Act 2013 and regulations made under that Act; or”.

New section 72C: insert after section 72B:

“72C Public Trust may not make regulated offer of managed investment products in certain group investment funds

“(1) Public Trust may not make a regulated offer of managed investment products in a group investment fund established by it under this Part if the fund was established after the date on which this section comes into force.

“(2) Nothing in subsection (1) affects the rights, powers, and duties of Public Trust under sections 61 to 72B.

“(3) In this section, **regulated offer** and **managed investment products** have the same meanings as in section 6(1) of the Financial Markets Conduct Act 2013.”

Heading above section 166 and section 166: repeal.

Racing Act 2003 (2003 No 3)

Clause 31 of Schedule 1: omit “superannuation scheme that is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Clause 7(1) of Schedule 3: omit “superannuation scheme that is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Part 1—*continued*

Real Estate Agents Act 2008 (2008 No 66)

Section 37(1)(g): omit “Securities Markets Act 1988” and substitute “Financial Markets Conduct Act 2013”.

Section 137(2)(i): repeal and substitute:

- “(i) an entity that has an interest in the licensee or an entity in which the licensee has an interest (except where either interest is in quoted financial products within the meaning given for those terms in section 6(1) of the Financial Markets Conduct Act 2013).”

Receiverships Act 1993 (1993 No 122)

Section 5(1)(k): omit “Securities Act 1978, or the Securities Markets Act 1988” and substitute “Financial Markets Conduct Act 2013”.

Section 28(1)(b): omit “Securities Act 1978” and substitute “Financial Markets Conduct Act 2013”.

Section 28: insert after subsection (1A):

“(1B) If a report is made under subsection (1) in respect of a financial markets participant (within the meaning of section 4 of the Financial Markets Authority Act 2011), the Registrar may supply a copy of the report to the Financial Markets Authority (the **FMA**).

“(1C) Any communications between—

- “(a) the Registrar and the FMA that relate to that report are protected by absolute privilege:
- “(b) the receiver and the FMA that relate to that report are protected by absolute privilege.”

Remuneration Authority Act 1977 (1977 No 110)

Section 2: insert in its appropriate alphabetical order:

“**retirement scheme** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013.”

Section 12(2A)(a) and (b) and (2B): omit “registered superannuation scheme” and substitute in each case “retirement scheme”.

Section 12(2C): repeal.

Section 12AA(1)(a) and (b) and (6)(c): omit “registered superannuation scheme” and substitute in each case “retirement scheme”.

Part 1—*continued*

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

Section 12AA(7): repeal.

Section 12B(3)(a) and (b) and (7): omit “registered superannuation scheme” and substitute in each case “retirement scheme”.

Section 12B(8): repeal.

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

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

“**debt security** has the same meaning as in section 8 of the Financial Markets Conduct Act 2013

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

“**managed investment scheme** has the same meaning as in section 9 of the Financial Markets Conduct Act 2013”.

Paragraph (e) of the definition of **foreign exchange** in section 2(1): omit “security” and substitute “debt security”.

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

Section 2(3)(a) and (b): omit “securities” and substitute in each case “financial products”.

Heading to section 35: omit “**Securities**” and substitute “**Financial products**”.

Section 35(1): omit “securities” in each place where it appears and substitute in each case “financial products”.

Section 35(1)(c): omit “security” and substitute “financial product”.

Section 35(2): omit “Securities” and substitute “Financial products”.

Section 39(b): omit “securities” and substitute “financial products”.

Section 46(1)(j): omit “Securities Act 1978, or the Securities Markets Act 1988” and substitute “Financial Markets Conduct Act 2013”.

Section 58(h): omit “Securities Act 1978, or the Securities Markets Act 1988” and substitute “Financial Markets Conduct Act 2013”.

Section 64(3): omit “unit trust of which the registered bank is a trustee or a manager within the meaning of the Unit Trusts Act 1960” and substitute “managed investment scheme of which the registered

Part 1—*continued*

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

bank is a supervisor or a manager within the meaning of section 6(1) of the Financial Markets Conduct Act 2013”.

Section 65(1)(e): omit “unit trust of which the registered bank or the associated person is a trustee or manager within the meaning of the Unit Trusts Act 1960” and substitute “managed investment scheme of which the registered bank or the associated person is a supervisor or a manager within the meaning of section 6(1) of the Financial Markets Conduct Act 2013”.

Section 156K(2): omit “Securities Act 1978” and substitute “Financial Markets Conduct Act 2013”.

Definition of **Minister responsible for the Securities Act 1978** in section 156M(1): repeal and substitute:

“**Minister responsible for the Financial Markets Conduct Act 2013** 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 the Financial Markets Conduct Act 2013”.

Section 156N(1): omit “Securities Act 1978” and substitute “Financial Markets Conduct Act 2013”.

Section 156P(1)(g): omit “Securities Act 1978” and substitute “Financial Markets Conduct Act 2013”.

Section 156Y(3)(d): omit “Securities Act 1978” and substitute “Financial Markets Conduct Act 2013”.

Section 156ZA(1)(a): omit “Securities Act 1978” and substitute “Financial Markets Conduct Act 2013”.

Section 156ZD: omit “Securities Act 1978” and substitute “Financial Markets Conduct Act 2013”.

Section 156ZE: omit “Securities Act 1978” and substitute “Financial Markets Conduct Act 2013”.

Section 156ZG(3): omit “Securities Act 1978” and substitute “Financial Markets Conduct Act 2013”.

Definitions of **collective investment scheme**, **debt security**, **trust deed**, and **trustee** in section 157B(1): repeal.

Section 173(f): omit “securities” and substitute “financial products”.

Part 1—*continued*

Retirement Villages Act 2003 (2003 No 112)

Section 5: insert in its appropriate alphabetical order:

“**financial product** has the same meaning as in section 7 of the Financial Markets Conduct Act 2013”.

Definition of **security interest** in section 5: repeal and substitute:

“**security interest**, in relation to a retirement village, means an interest that a person has in all or any part of the retirement village as a consequence of a mortgage (within the meaning of the Property Law Act 2007) over that part of the retirement village”.

Section 38(1): omit “Securities Trustees and Statutory Supervisors Act 2011 that covers” and substitute “Financial Markets Supervisors Act 2011 that covers supervision of”.

Section 39(3): omit “Securities Trustees and Statutory Supervisors Act 2011” and substitute “Financial Markets Supervisors Act 2011”.

Section 43(1)(c): repeal and substitute:

“(c) apply to the court for an order under section 43A.”

New section 43A: insert after section 43:

“43A Court may make orders

“(1) The court may, on application by a statutory supervisor under section 43(1)(c) and after giving the operator and any other person that the court thinks fit the opportunity to be heard, make 1 or more of the orders listed in subsection (2).

“(2) The orders may—

“(a) amend the provisions of the deed of supervision:

“(b) impose restrictions on the activities of the operator (including restrictions on advertising) that the court thinks are necessary to protect the interests of the residents:

“(c) direct that no offer of occupation of the kind specified in the order be made while the order is in force:

“(d) direct the operator to convene a meeting of the residents (and give any other directions it thinks fit relating to the conduct of that meeting) for the purpose of—

“(i) having placed before the residents by the statutory supervisor the information or proposal that the court or the statutory supervisor thinks ne-

Part 1—*continued*

Retirement Villages Act 2003 (2003 No 112)—*continued*

cessary or appropriate and that relates to the residents' interests; and

- “(ii) obtaining the opinions or directions of the residents:
- “(e) give directions in relation to the conduct of any meeting convened in accordance with paragraph (d):
- “(f) stay any civil actions or civil proceedings before the court by or against the statutory supervisor or the operator:
- “(g) restrain the transfer of an interest in all or any part of the retirement village:
- “(h) appoint a receiver or manager of the property that constitutes the retirement village (with any powers that the court orders):
- “(i) remove a receiver or manager of the property that constitutes the retirement village:
- “(j) give any other directions that the court considers necessary to protect the interests of the residents or the public.
- “(3) The court may vary or cancel an order made under this section.
- “(4) In exercising its powers under this section, the court must have regard to the interests of all creditors of the operator.”

Section 107(1): omit “the Securities Act 1978” and substitute “Parts 3 and 4 of the Financial Markets Conduct Act 2013”.

Section 107(2): repeal and substitute:

- “(2) Subsection (1) does not exempt any person from the application of any provision of Parts 3 and 4 of the Financial Markets Conduct Act 2013—
- “(a) in relation to the offer of any financial products (other than a financial product arising out of a matter referred to in subsection (1)(a))—
- “(i) in the retirement village; or
- “(ii) by any operator of a retirement village; or
- “(b) in relation to an offer of financial products to any person who is already a resident and who is not obliged to acquire the products by an occupation right agreement.”

Part 1—*continued*

Royal Society of New Zealand Act 1997 (1997 No 2 (P))

Clause 6(1) of the Schedule: omit “superannuation scheme that is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Sale and Supply of Alcohol Act 2012 (2012 No 120)

Section 69: insert after subsection (6):

“(7) In this section, **stock exchange** has the same meaning as in section 2(1) of the Companies Act 1993.”

Social Security Act 1964 (1964 No 136)

Section 3(3)(c): omit “superannuation scheme registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Paragraphs (a) and (ab) of the definition of **cash assets** in section 61E(1): omit “the KiwiSaver Act 2006” and substitute in each case “subpart 2 of Part 4 of the Financial Markets Conduct Act 2013”.

Paragraph (ea) of the definition of **exempt assets** in clause 4 of Schedule 27: omit “the KiwiSaver Act 2006” and substitute “subpart 2 of Part 4 of the Financial Markets Conduct Act 2013”.

Paragraph (ea)(ii) of the definition of **exempt assets** in clause 4 of Schedule 27: omit “that Act” and substitute “the KiwiSaver Act 2006”.

Sports Anti-Doping Act 2006 (2006 No 58)

Section 11(1): omit “superannuation scheme that is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Stamp and Cheque Duties Act 1971 (1971 No 51)

Section 86IB(1)(b)(i): repeal and substitute:

“(i) was under a regulated offer for the purposes of the Financial Markets Conduct Act 2013, an offer

Part 1—*continued*

Stamp and Cheque Duties Act 1971 (1971 No 51)—*continued*

referred to in clause 19 of Schedule 1 of that Act, or an offer to the public for the purposes of the Securities Act 1978; and”.

Section 86IB(1)(e)(i): repeal and substitute:

- “(i) is quoted on a licensed market (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013):”.

State Sector Act 1988 (1988 No 20)

Definition of **superannuation scheme** or **scheme** in section 84: repeal and substitute:

“**superannuation scheme** or **scheme** means any retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013).”

Section 84B(a): repeal.

State Sector Amendment Act 1990 (1990 No 78)

Section 3: omit “superannuation scheme which is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

St John’s College Trusts Act 1972 (1972 No 6 (P))

Section 11(1)(c): omit “securities of any company, whether incorporated in New Zealand or elsewhere, which is officially listed on a registered exchange’s securities market (within the meaning of section 2(1) of the Securities Markets Act 1988)” and substitute “financial products of a company, whether incorporated in New Zealand or elsewhere, that is a listed issuer (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Section 11(1)(c): omit “made in the securities” and substitute “made in the financial products”.

Part 1—*continued***State-Owned Enterprises Act 1986 (1986 No 124)**

Section 12(2)(c): omit “Securities Act 1978” and substitute “Financial Markets Conduct Act 2013”.

Section 18(4) and (5): omit “Securities Markets Act 1988” and substitute in each case “Financial Markets Conduct Act 2013”.

Paragraph (d) of the definition of **assets** in section 29(1): omit “securities within the meaning of the Securities Act 1978” and substitute “financial products within the meaning of the Financial Markets Conduct Act 2013”.

Paragraph (b) of the definition of **liabilities** in section 29(1): omit “Securities Act 1978” and substitute “Financial Markets Conduct Act 2013”.

Summary Proceedings Act 1957 (1957 No 87)

Definition of **infringement notice** in section 2(1): insert after paragraph (b):

“(baa) section 514 of the Financial Markets Conduct Act 2013; or”.

Takeovers Act 1993 (1993 No 107)

Definitions of **quoted**, **registered exchange**, **registered exchange’s securities market**, and **security** in section 2(1): repeal.

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

“**financial product**, in relation to a code company,—

“(a) means—

“(i) an equity security within the meaning of section 8 of the Financial Markets Conduct Act 2013, whether or not the security carries voting rights:

“(ii) a debt security, within the meaning of section 8 of the Financial Markets Conduct Act 2013, that carries the right to vote at any annual or general meeting of the code company:

“(iii) a managed investment product, within the meaning of section 8 of the Financial Markets Conduct Act 2013, that carries the right to vote at any

Part 1—*continued*

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

annual or general meeting of the code company;
and

“(b) includes a financial product that is convertible, at the option of the product holder, into a financial product of the type referred to in paragraph (a)(i), (ii), or (iii)

“**licensed market** has the meaning set out in section 6(1) of the Financial Markets Conduct Act 2013

“**licensed market operator** has the meaning set out in section 6(1) of the Financial Markets Conduct Act 2013

“**listed issuer** has the meaning set out in section 6(1) of the Financial Markets Conduct Act 2013

“**quoted**, in relation to financial products of a person, means financial products of the person that are approved for trading on a licensed market (and, to avoid doubt, financial products do not cease to be quoted merely because trading in those financial products is suspended)”.

Paragraphs (a) and (b) of the definition of **voting right** in section 2(1): omit “security” and substitute in each case “financial product”.

Section 2A(1)(a): repeal and substitute:

“(a) is a listed issuer that has financial products that confer voting rights quoted on a licensed market; or”.

Section 2A(3): omit “security” and substitute “financial product”.

New section 15C: insert after section 15B:

“15C Sharing of information and documents with licensed market operators

“(1) The Panel may provide to a licensed market operator 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 licensed market operator in the exercise of the operator’s powers, or the performance of its functions and duties, under any enactment or any market rules (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013).

Part 1—*continued*

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

“(2) The Panel may use any information, or a copy of any document, provided to it by a licensed market operator under section 357 or 358 of the Financial Markets Conduct Act 2013 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 20(1)(c) and (e): omit “securities” and substitute in each case “financial products”.

Section 21(b), (c), and (f): omit “security” in each place where it appears and substitute in each case “financial product”.

Section 21(e) and (f): omit “securities” and substitute in each case “financial products”.

Section 22(b): omit “securities” and substitute “financial products”.

Section 22(c): omit “security” and substitute “financial product”.

Section 23(a) and (b): omit “securities” and substitute in each case “financial products”.

Section 33(a) to (c) and (e) to (g): omit “securities” in each place where it appears and substitute in each case “financial products”.

Section 33C(1)(a)(ii): omit “, the Securities Act 1978, or the Securities Markets Act 1988” and substitute “or the Financial Markets Conduct Act 2013”.

Section 33J(a) to (h): omit “securities” in each place where it appears and substitute in each case “financial products”.

Section 33J(e): omit “public”.

Section 33M(c)(ii): omit “securities” and substitute “financial”.

Section 33Q(c): omit “securities” and substitute “financial”.

Section 35(1)(b): repeal and substitute:

“(b) if the code company’s financial products are, or were at any material time, quoted on a licensed market, the licensed market operator:”.

Section 35(1)(d) and (e): omit “security” and substitute in each case “financial product”.

Part 1—*continued*

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

Section 35(1)(f): omit “securities” and substitute “financial products”.

Section 35(3)(a): repeal and substitute:

“(a) if the code company’s financial products are, or were at any material time, quoted on a licensed market, the licensed market operator:”.

Section 35(3)(c) and (d): omit “security” and substitute in each case “financial product”.

Section 35(3)(e): omit “securities” and substitute “financial products”.

Heading to section 42: omit “**securities**” and substitute “**financial products**”.

Section 42(1)(a) and (b): omit “security” and substitute in each case “financial product”.

Example in section 43: omit “securities” in each place where it appears and substitute in each case “financial products”.

Section 44B(1)(b)(i) and (ii) and (2): omit “securities” and substitute in each case “financial products”.

Section 44F(b)(i): omit “the Securities Markets Act 1988, the Securities Act 1978, the Securities Trustees and Statutory Supervisors Act 2011,” and substitute “the Financial Markets Conduct Act 2013, the Financial Markets Supervisors Act 2011,”.

Section 44G: omit “for a period stated in the order of 10 years or less” and substitute “permanently or for a period specified in the order”.

Section 44G: add as subsection (2):

“(2) The court may make a management banning order permanent or for a period longer than 10 years only in the most serious of cases for which an order may be made.”

Section 44I: omit “section 60A of the Securities Act 1978, section 43F of the Securities Markets Act 1988,” and substitute “subpart 6 of Part 8 of the Financial Markets Conduct Act 2013,”.

Heading to section 44L: omit “**securities**” and substitute “**financial products**”.

Part 1—*continued*

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

Definition of **associated persons** in section 44L(3): repeal and substitute:

“**associated person** has the same meaning as in section 12(1) of the Financial Markets Conduct Act 2013”.

Definition of **liable** in section 44L(3): omit “securities” and substitute “financial products”.

Section 44M(1)(a), (c), (e), and (f): omit “securities” in each place where it appears and substitute in each case “financial products”.

Section 44V(c): repeal and substitute:

“(c) if the code company’s financial products are, or were at any material time, quoted on a licensed market, the licensed market operator:”.

Section 44V(f): omit “security” and substitute “financial product”.

Section 44V(g): omit “securities” and substitute “financial products”.

Tarawera Forest Act 1967 (1967 No 45)

Section 10(3): omit “Securities Act 1978” and substitute “Financial Markets Conduct Act 2013”.

Tax Administration Act 1994 (1994 No 166)

Section 81(4)(r)(i): omit “section 4(1) of the KiwiSaver Act 2006” and substitute “section 6(1) of the Financial Markets Conduct Act 2013”.

Trustee Act 1956 (1956 No 61)

Section 42E: omit “, in the Superannuation Schemes Act 1989,” and substitute “, in the Financial Markets Conduct Act 2013,”.

Section 46(4) to (7): repeal and substitute:

“(4) If the court, on an application under subsection (2) by a trustee other than a supervisor, appoints Public Trust as the replacement trustee, Public Trust must accept the appointment.

“(5) In subsection (4), **supervisor** means a person appointed as a supervisor within the meaning of section 6(1) of the Financial Markets Conduct Act 2013.”

Part 1—*continued*

Trustee Companies Act 1967 (1967 No 35)

Section 7(2)(m): omit “Securities Trustees and Statutory Supervisors Act 2011” and substitute “Financial Markets Supervisors Act 2011”.

Section 7(2)(p): repeal and substitute:

“(p) supervisor (as defined in section 4(1) of the Financial Markets Supervisors Act 2011) in respect of a financial product or scheme the supervision of which is covered by the trustee company’s licence under that Act.”.

Section 31: add:

“(4) In this section, **stock exchange** has the same meaning as in section 2(1) of the Companies Act 1993.”

Section 32A(2): insert after paragraph (b):

“(ba) a product disclosure statement in relation to the investment of that money in the fund has been lodged in accordance with the requirements of Part 3 of the Financial Markets Conduct Act 2013 and regulations made under that Act; or”.

New section 33C: insert after section 33B:

“33C Trustee company may not make regulated offer of managed investment products in certain group investment funds

“(1) A trustee company may not make a regulated offer of managed investment products in a group investment fund established by it under this Part if the fund was established after the date on which this section comes into force.

“(2) Nothing in subsection (1) affects the rights, powers, and duties of a trustee company under sections 29 to 33B.

“(3) In this section, **regulated offer** and **managed investment products** have the same meanings as in section 6(1) of the Financial Markets Conduct Act 2013.”

Veterinarians Act 2005 (2005 No 126)

Clause 22 of Schedule 1: omit “superannuation scheme that is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Part 1—*continued*

Wellington Methodist Charitable and Educational Trusts Act 1916 (1916 No 13 (L))

Section 31(1)(b): omit “securities of any company, whether incorporated in New Zealand or elsewhere, which are officially listed on a registered exchange’s securities market (within the meaning of section 2(1) of the Securities Markets Act 1988)” and substitute “financial products of any company, whether incorporated in New Zealand or elsewhere, that is a listed issuer”.

Section 31(2) and (6): omit “securities” and substitute in each case “financial products”.

Section 31: add:

“(7) In this section, **financial products** and **listed issuer** have the same meanings as in section 6(1) of the Financial Markets Conduct Act 2013.”

Winston Churchill Memorial Trust Act 1965 (1965 No 39)

Section 27(3): omit “superannuation scheme which is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Schedule Part 1 Reserve Bank of New Zealand Act 1989: amended, on 1 May 2014, by section 102 of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Part 2

Amendments to regulations

Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011 (SR 2011/222)

Regulation 8(b): omit “the Securities Markets Act 1988” and substitute “section 12(2) of the Financial Markets Conduct Act 2013”.

Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations 2011 (SR 2011/223)

Regulation 16(1): omit “section 5B(2) of the Securities Markets Act 1988” and substitute “section 12(2) of the Financial Markets Conduct Act 2013”.

Part 2—*continued*

Building Societies Regulations 1989 (SR 1989/33)

Definition of **equity security** in regulation 17(1): revoke and substitute:

“**equity security** has the same meaning as in section 8 of the Financial Markets Conduct Act 2013”.

Definition of **security** in regulation 17(1): revoke and substitute:

“**security** means any financial product within the meaning of section 7 of the Financial Markets Conduct Act 2013”.

Regulation 31(b)(v): omit “other bodies corporate that are parties to listing agreements with a registered exchange (within the meaning of section 2(1) of the Securities Markets Act 1988)” and substitute “listed issuers (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Climate Change (Unit Register) Regulations 2008 (SR 2008/357)

Paragraph (c)(ii)(F) of the definition of **qualified person** in regulation 3: omit “Securities Act 1978, the Securities Markets Act 1988,” and substitute “Financial Markets Conduct Act 2013”.

Deer Industry New Zealand Regulations 2004 (SR 2004/323)

Definition of **associated persons** in regulation 3: omit “section 2 of the Securities Act 1978” and substitute “section 12(1) of the Financial Markets Conduct Act 2013”.

Electricity (Statistics) Regulations 1996 (SR 1996/17)

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

“**equity security** has the same meaning as in section 8 of the Financial Markets Conduct Act 2013”.

**Financial Advisers (Definitions, Voluntary Authorisation,
Prescribed Entities, and Exemptions) Regulations 2011 (SR
2011/50)**

Regulation 4(3): revoke and substitute:

“(3) Unless the context otherwise requires, any term or expression that is defined in the Financial Markets Conduct Act 2013 or

Part 2—*continued*

**Financial Advisers (Definitions, Voluntary Authorisation,
Prescribed Entities, and Exemptions) Regulations 2011 (SR
2011/50)—*continued***

the regulations made under that Act and used, but not defined, in this regulation has the same meaning as in that Act or those regulations.”

Regulation 6(2)(a) and (b): revoke and substitute:

- “(a) associated persons within the meaning of section 12(1) of the Financial Markets Conduct Act 2013 (whether or not that Act otherwise applies to those persons); or
- “(b) related bodies corporate within the meaning of section 12(2) of the Financial Markets Conduct Act 2013 (whether or not that Act otherwise applies to those bodies corporate); or”.

Regulation 7: revoke.

**Financial Service Providers (Exemptions) Regulations 2010
(SR 2010/423)**

Regulation 5(2): omit “section 5B(2) of the Securities Markets Act 1988” and substitute “section 12(2) of the Financial Markets Conduct Act 2013”.

Gas Governance (Compliance) Regulations 2008 (SR 2008/253)

Regulation 63(b): omit “Securities Act 1978, or the Securities Markets Act 1988” and substitute “Financial Markets Conduct Act 2013”.

Gas (Information Disclosure) Regulations 1997 (SR 1997/127)

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

“**equity security** has the same meaning as in section 8 of the Financial Markets Conduct Act 2013”.

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

“**security** means any of the following within the meanings given in section 8 of the Financial Markets Conduct Act 2013:

- “(a) an equity security:

Part 2—*continued*

Gas (Information Disclosure) Regulations 1997 (SR 1997/127)—*continued*

“(b) a debt security:

“(c) a managed investment product”.

Gas (Statistics) Regulations 1997 (SR 1997/128)

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

“**equity security** has the same meaning as in section 8 of the Financial Markets Conduct Act 2013”.

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

Definition of **registered superannuation scheme** in regulation 2(1): omit “superannuation scheme that is registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Health Entitlement Cards Regulations 1993 (SR 1993/169)

Paragraph (c) of the definition of **net income** in regulation 2(1): omit “superannuation scheme registered under the Superannuation Schemes Act 1989” and substitute “retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Lawyers and Conveyancers Act (Lawyers: Nominee Company) Rules 2008 (SR 2008/213)

Paragraphs (e) and (f) of the definition of **lawyer attorney** and **lawyer trustee** in rule 3.1: omit “party to a listing agreement with a stock exchange” and substitute in each case “listed issuer”.

Rule 3.1: insert in its appropriate alphabetical order:

“**listed issuer** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013”.

Part 2—*continued*

Overseas Investment Regulations 2005 (SR 2005/220)

Regulation 33(1)(l): omit “trustee of a superannuation scheme registered under the Superannuation Schemes Act 1989” and substitute “supervisor or manager of a retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Public Trust Regulations 2002 (SR 2002/198)

Paragraph (a) of the definition of **continuing investment** in regulation 13(2): insert after subparagraph (i):

“(ia) a product disclosure statement has been lodged in accordance with the requirements of Part 3 of the Financial Markets Conduct Act 2013 and regulations made under that Act; or ”.

Regulation 15: revoke and substitute:

“15 Dispensation from ongoing disclosure

Public Trust is not required to make ongoing disclosure in respect of a qualifying beneficiary to whom, in accordance with the requirements of—

- “(a) Part 3 of the Financial Markets Conduct Act 2013 and regulations made under that Act, a product disclosure statement was given; or
- “(b) sections 33 and 37A of the Securities Act 1978 and regulations made under that Act, an investment statement was issued.”

Real Estate Agents (Duties of Licensees) Regulations 2009 (SR 2009/281)

Paragraph (i) of the definition of **related person** in form 2 of the Schedule: revoke and substitute:

- “(i) an entity that has an interest in the licensee or an entity in which the licensee has an interest (except where either interest is in quoted financial products within the meanings given for those terms in section 6(1) of the Financial Markets Conduct Act 2013).”

Part 2—*continued*

Real Estate Agents (Licensing) Regulations 2009 (SR 2009/282)

Paragraph 11 of form 5 in Schedule 2: omit “Securities Markets Act 1988” and substitute “Financial Markets Conduct Act 2013”.

Reserve Bank of New Zealand (Designated Settlement System—NZCDC) Order 2010 (SR 2010/277)

Paragraph (d) of the definition of **NZCDC settlement system** in clause 3: omit “securities” and substitute “financial products”.

Clause 1(h) of the Schedule: omit “securities” and substitute in each case “financial products”.

Paragraph (d) of the definition of **specified agreements** in clause 2 of the Schedule: omit “securities” and substitute “financial products”.

Securities Transfer (Approval of Austraclear New Zealand Electronic Registries Interface System) Order 2010 (SR 2010/4)

Clause 3: omit “Securities Transfer Act 1991” and substitute “Financial Markets Conduct Act 2013”.

Heading to clause 4: omit “**securities**” and substitute “**financial products**”.

Clause 4: omit “securities” and substitute “financial products to which subpart 9 of Part 5 of the Financial Markets Conduct Act 2013 applies”.

Clause 1 of the Schedule: insert in its appropriate alphabetical order:

“**security** means a financial product to which subpart 9 of Part 5 of the Financial Markets Conduct Act 2013 applies”.

Clause 2(o)(iii) of the Schedule: omit “conduct rules of an exchange registered under Part 2B of the Securities Markets Act 1988” and substitute “market rules of a licensed market (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013)”.

Securities Transfer (Approval of FASTER System) Order 2001 (SR 2001/238)

Clause 3: omit “Securities Transfer Act 1991” and substitute “Financial Markets Conduct Act 2013”.

Heading to clause 4: omit “**securities**” and substitute “**financial products**”.

Part 2—*continued*

Securities Transfer (Approval of FASTER System) Order 2001 (SR 2001/238)—*continued*

Clause 4: omit “securities” and substitute “financial products to which subpart 9 of Part 5 of the Financial Markets Conduct Act 2013 applies”.

Definition of **securities** in clause 1 of the Schedule: omit “securities within the meaning of section 2 of the Securities Transfer Act 1991” and substitute “financial products to which subpart 9 of Part 5 of the Financial Markets Conduct Act 2013 applies”.

Securities Transfer (Approval of System for Electronic Transfer of Securities on Australian Stock Exchange) Order 1997 (SR 1997/102)

Clause 2: omit “Securities Transfer Act 1991” and substitute “Financial Markets Conduct Act 2013”.

Heading to clause 3: omit “**securities**” and substitute “**financial products**”.

Clause 3: omit “securities on the Australian Stock Exchange, the essential requirements of which are described in the Schedule, is approved for the transfer of securities” and substitute “financial products on the Australian Stock Exchange, the essential requirements of which are described in the Schedule, is approved for the transfer of financial products to which subpart 9 of Part 5 of the Financial Markets Conduct Act 2013 applies”.

Definition of **approved security** in the Schedule: omit “means a security” and substitute “means a financial product”.

Social Security (Income and Cash Assets Exemptions) Regulations 2011 (SR 2011/287)

Definition of **non-KiwiSaver scheme** in regulation 32: revoke and substitute:

“**non-KiwiSaver scheme** means a scheme that is registered as a superannuation scheme under subpart 2 of Part 4 of the Financial Markets Conduct Act 2013”.

Part 2—*continued*

**Social Security (Income and Cash Assets Exemptions)
Regulations 2011 (SR 2011/287)—*continued***

Definition of **scheme** in regulation 32: revoke and substitute:

“**scheme** means a retirement scheme within the meaning of section 6(1) of the Financial Markets Conduct Act 2013 (for example, a KiwiSaver scheme or a non-KiwiSaver scheme)”.

**Social Security (Long-term Residential Care) Regulations 2005
(SR 2005/183)**

Regulation 10(1D): omit “subclause (1)(i)” and substitute “this subclause and in subclause (1)(i)”.

Regulation 10(1D): insert in its appropriate alphabetical order:

“**benefit** means any lump sum, annuity, pension, allowance, refund, or other payment arising from membership of a superannuation scheme”.

Paragraph (a) of the definition of **specified non-KiwiSaver scheme** or **scheme** in regulation 10(1D): revoke and substitute:

“(a) is registered as a superannuation scheme under subpart 2 of Part 4 of the Financial Markets Conduct Act 2013; and”.

Paragraph (a) of the definition of **withdrawal** in regulation 10(1D): omit “(as defined in section 2(1) of the Superannuation Schemes Act 1989)”.

**Social Security (Temporary Additional Support) Regulations
2005 (SR 2005/334)**

Definition of **non-KiwiSaver scheme** in regulation 8B(5): revoke and substitute:

“**non-KiwiSaver scheme** means a scheme that is registered as a superannuation scheme under subpart 2 of Part 4 of the Financial Markets Conduct Act 2013”.

Definition of **scheme** in regulation 8B(5): revoke and substitute:

“**scheme** means a retirement scheme within the meaning of section 6(1) of the Financial Markets Conduct Act 2013 (for example, a KiwiSaver scheme or a non-KiwiSaver scheme)”.

Part 2—*continued*

Trustee Companies (Group Investment Funds: Disclosure of Expenses and Management Fees) Regulations 2003 (SR 2003/121)

Paragraph (a) of the definition of **continuing investment** in regulation 13(2): insert after subparagraph (i):

- “(ia) a product disclosure statement has been lodged in accordance with the requirements of Part 3 of the Financial Markets Conduct Act 2013 and regulations made under that Act; or”.

Regulation 15: revoke and substitute:

“15 Dispensation from ongoing disclosure

The trustee company is not required to make ongoing disclosure in respect of a qualifying beneficiary to whom, in accordance with the requirements of—

- “(a) Part 3 of the Financial Markets Conduct Act 2013 and regulations made under that Act, a product disclosure statement was given; or
“(b) sections 33 and 37A of the Securities Act 1978 and regulations made under that Act, an investment statement was issued.

“Compare: SR 2002/198 r 15

Schedule: amended, on 1 April 2014, by section 62 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Reprints notes

1 *General*

This is a reprint of the Financial Markets (Repeals and Amendments) Act 2013 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*

Financial Markets Legislation (Phase 2) Commencement Order 2014 (LI 2014/325): clause 3

Financial Markets Legislation (Phase 1) Commencement Order 2014 (LI 2014/51): clause 3

Non-bank Deposit Takers Act 2013 (2013 No 104): section 102

Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102): section 62
