

Regulations setting out disclosure requirements in the new financial advice regime – overview

The information in this document is provided for general information only, and is not legal advice. Please refer to the regulations and seek legal advice in relation to how the regulations apply to your circumstances.

1. The Financial Services Legislation Amendment Act 2019 introduces a range of new duties that will apply to those who give regulated financial advice. These duties will come into force on 15 March 2021. The duties include new section 431O which requires a person who gives regulated financial advice to make prescribed information available in the prescribed manner when required to do so by the regulations.
2. The Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020 prescribe the relevant requirements for the purpose of section 431O. It sets out:
 - 2.1. the points at which information must be disclosed and how it must be disclosed (see new regulations 229B to 229J)
 - 2.2. the information that must be disclosed (see new Schedule 21A).
3. The regulations require:
 - 3.1. *Information to be made publicly available on a website (if the provider has one) or on request.* This information is to help the public with choosing a financial advice provider that meets their needs. The information to be disclosed includes the provider's licence status, the types of products they advise on, the fees that may be payable, and commissions or conflicts of interest that may apply.
 - 3.2. *Information to be given to the client when the scope of advice to be given becomes known.* This information is disclosed to help clients decide whether to seek, obtain or act on advice from a particular provider. The information to be disclosed includes material limitations on the scope of advice, disciplinary history of the person giving advice, and the fees, commissions or conflicts of interest that may apply.
 - 3.3. *Information to be given to the client when the advice is given.* This information is disclosed to help clients decide whether to act on the advice given. The information to be disclosed includes any changes from the information referred to in 3.2 above along with confirmation of fees payable and applicable commissions and conflicts of interest, and the legal duties of the provider.
 - 3.4. *Information to be given if a complaint is received.* This includes information about the provider's internal complaints handling process and how to access its external dispute resolution scheme.

Note the above is not an exhaustive list of the information to be disclosed at each stage.

4. Different information is required to be disclosed at different stages of the advice process so that clients receive information as it becomes relevant to them. There is however flexibility to combine the disclosures referred to in 3.2 and 3.3 in some circumstances. This means that quick advice conversations (e.g. a call centre operator answering a question about term deposit options) can take place without disclosure information being required both before and after the advice is given.

Summary of changes in final regulations compared to October 2019 exposure draft

Clause ref	Change made
Preliminary provisions	
Regulation 2	<i>Regulations to commence 15 March 2021 when new financial advice regime commences.</i> Transitional provisions not included given there will now be more than 8 months until new regime commences.
Previous draft record keeping requirement	<i>Record keeping requirement removed</i> in response to feedback that it would be difficult to comply with, particularly for businesses with a high volume of client interactions. The record keeping obligation (including in respect of compliance with these regulations) is already covered in a more flexible way by the FMA’s standard licence condition for transitional licences relating to record keeping.
Regulations 5-11, 13	<i>Headings inserted</i> to assist with organisation of the regulations in anticipation of forthcoming unrelated regulations about administrators of financial benchmarks and other technical matters. No substantive effect.
Regulation 12	
229B and various	<i>Minor drafting change:</i> references to “initial information” and “additional information” removed to improve readability/reduce multiple layers of cross-referencing
229B(3)	<i>Added materiality threshold to disclosure of material changes.</i> Disclosure only required if a reasonable client would expect the change to, or to be likely to, “materially influence” the relevant decision.
229B and 229C	<i>Rearrangement of drafting and removal of duplication.</i> Definition of publicly available moved to 229B. General requirements relating to the form and manner of disclosure have been streamlined and moved to new 229H. See new 229H for changes to form requirements where information is requested in writing.
229D(1)	<i>Changes to clarify that purpose of 229D</i> is to help decisions about whether to seek <u>or act</u> on advice from a particular person or provider. Some overlap with purpose of 229E to recognise that 229D information will also help decisions about whether to act on the advice given, and to reflect greater flexibility in timing of 229D disclosure as noted below in relation to 229D(5).
229D(2)	<i>Changes so that 229D is also triggered when a provider gives unsolicited advice which a client may not have been “seeking”.</i> The intent of this change is to clarify that regulation 229D is triggered irrespective of whether a provider is providing advice proactively, or in response to a client request. All that is required in either circumstance is that the provider knows or ought reasonably to know the nature and scope of that advice that the provider gives or intends to give to a client. Under the October 2019 exposure draft, arguably only regulation 229E would have been triggered. The change ensures that clients receive the same disclosures in relation to financial advice regardless of whether the client sought the advice or not. The change also ensures that regulation 229D (as well as 229E) would be triggered in relation to advertising that contains regulated financial advice (i.e. that contains a recommendation about acquiring, disposing or holding a financial advice product). It is already the case that any advertising containing regulated financial advice will be subject to duties in the Financial Services Legislation Amendment Act 2019, including duties to comply with the Code of Conduct, and to take reasonable steps to ensure the client understands the nature and scope

	of the advice. We consider it is appropriate for any advertising (or other type of 'mass market' regulated financial advice) containing a specific recommendation (e.g. you should get personal loan from XYZ Loans if you need to borrow money to buy a car) is regulated in the same way as all other specific recommendations. However, many advertisements may not be regulated financial advice (e.g. call us today about obtaining a personal loan from XYZ Loans), in which case the duties in the Act and the disclosure regulations would not apply.
229D(2)(a)	<i>Minor drafting change:</i> reference to "general" nature and scope of the advice removed in response to feedback that this could cause confusion.
229D(5), and 229E(3) and (4)	<i>Changes to provide greater flexibility on timing of 229D and 229E disclosure</i> so that disclosures can fit better with the flow of an advice interaction, particularly quick and simple advice interactions. For example, in some cases it may be clunky if a client who calls with a simple question has to listen to all the 229D disclosure information first. It may be that the 229D and 229E disclosures could be given together in some cases.
229F(1)	<i>Minor changes to make dispute resolution disclosure more helpful to clients.</i>
229F(2) and (3)	<i>Changes so that disclosure of complaint information only required if complaint remains unresolved after two business days.</i> Change in response to submissions that providers should not be required to give complaints disclosure immediately if a complaint can be resolved almost immediately.
229F(4)	<i>Definition of complaint amended</i> to align with FMA's standard licence condition and the definition used by the approved dispute resolution schemes and in the Credit Contracts Legislation Amendment Act 2019.
229G	<i>12 month time limit for relying on previous disclosures removed</i> so that new disclosures only required if there has been a material change to the information previously provided, or if requested by the client.
229H	<i>Removed requirement to provide information as hard or electronic copies if requested by client.</i> This is in response to feedback that hard copies may not be appropriate in some cases (e.g. digital advice providers, providers with paper-free policy). The requirement has instead been simplified to providing information 'in writing' if requested. These regulations will operate in conjunction with the general law in the Contract and Commercial Law Act 2017, which includes provisions relating to when information can be provided in electronic form to meet a legal requirement that information be provided 'in writing'. <i>Other changes to support flexibility in how disclosure is given</i> e.g references to disclosures being "worded" in a clear, concise and effective manner removed.
229I(2)	<i>Requirement to inform client of ability to request information in writing moved</i> from schedule to avoid possibility of client being informed multiple times in quick succession about ability to request information in writing.
Schedule /New Sch 21A	
Cl 1, 2 and various	<i>Added materiality threshold to disclosures of limitations, conflicts, commissions and incentives</i> to avoid over-disclosure. Disclosure only required if a reasonable client would expect the information to, or to be likely to "materially influence" the relevant decision.
3	<i>Narrowing the range of regulatory actions and proceedings that need to be disclosed</i> to avoid over-disclosure. Successful proceedings and regulatory actions only required to be disclosed if these would materially influence a client's decision to seek or obtain advice and if regulatory action is not confidential.

4(1) (and 5(1))	<i>Removed references to “types of advice” to avoid confusion and duplication with other disclosures required in relation to the nature and scope of advice.</i>
4(1)(d) (and 5(1)(d))	<i>Drafting changes to clarify that disclosure only required if advice limited to products from particular providers.</i>
4(1)(e)	<i>Minor drafting change to replace ‘nature and scope of the advice’ with ‘scope of financial advice service’ to differentiate from the disclosures required under 229D.</i>
4(1)(f)	<i>Amended to require disclosure of fees to “P, or another person connected with the advice” for consistency with other disclosures.</i>
4(1) (and 5(1))	<i>Removed requirement for a statement explaining the purpose of the disclosure in response to feedback that this would lead to clunky advice conversations.</i>
4(1)(l)	<i>Added requirement to disclose duties information as part of publicly available information given information is same for all clients. When giving 229E disclosure, can refer to website.¹</i>
4(1)	<i>Removed requirement to state that a copy of the publicly available information can be requested as a client who sees the statement will have already been able to access that information.</i>
4(1) (and 5(2))	<i>Various changes to provide that only ‘brief’ explanations and descriptions are required.</i>
5(1)	<i>Removed requirement to disclose licensing information as part of 229D disclosure. Not necessary to require this disclosure as the Amendment Act requires all those giving advice to retail clients to operate under a licence and providers can voluntarily give this information.</i>
5(1)(b)	<i>Changes so that product providers whose products are being advised on do not always have to be named individually. Sufficient if there is a description that identifies or allows for the identification of relevant product providers. For example, this could refer to the ‘NZX Top 50’ rather than listing the names of the top 50 companies trading on the NZX.</i> <i>Minor wording change to clarify that 5(1)(d) is intended to apply where advice is being given in relation to only a limited range of product providers (or some of the advice is being given in relation to a limited range of product providers e.g. the insurance advice is limited to particular providers but not the mortgage advice).</i>
5(2)(a)	<i>Removed requirement to provide individual contact details and to identify individual nominated representatives. This is in response to feedback that the previous requirement would have added compliance cost and added little value, particularly in high-volume straightforward advice situations. We expect FMA’s standard licence condition for transitional licences relating to record keeping means that the individual who gave advice can be identified if needed for monitoring and enforcement purposes.</i> <i>Note if a person is a financial adviser, clause 5(2) still requires a statement that the person is a financial adviser giving advice on behalf of the provider.</i> <i>Regulation 229I(5) also requires the form or manner of giving the information to adequately identify the financial advice provider who is giving the advice.</i>
5(3)	<i>Clarify that disclosure can relate to more than one individual who is likely to give advice to the client.</i>
6	<i>Makes clear that fees and conflict information only needs to be disclosed to the</i>

¹ Note cl 6(2) of the regulations does not currently allow providers giving disclosure under regulation 229E to refer to their website in respect of information about relevant legal duties. We are working on getting the regulations amended prior to 15 March 2021 so that providers are able to refer to their website for that disclosure.

	<i>extent not already disclosed under 229D.</i>
6(1)(a) and (b)	<p><i>Removed requirement to disclose fees for ‘acting on the advice’ in response to feedback that it could require disclosure of product fees charged by unrelated third parties (e.g. insurance premiums or MIS manager fees) which details we did not intend to require to be disclosed. Have therefore removed requirement to disclose fees for ‘acting on the advice’.</i></p> <p>However a requirement has been added in clause 6(1)(b) that if any fees other than those required by clause 6(1)(a) may be payable by the client in relation to acting on the advice, the person giving advice must give a statement to that effect (but disclosure of the nature or amount of such fees is not required). This is to avoid the client getting the wrong impression that fees disclosed under clause 6(1)(a) are a complete picture of all fees that would apply.</p> <p>For example, Alice could disclose to Claire in accordance with clause 6(1)(a) that Alice will charge Claire a fee equivalent to 0.5% of Claire’s portfolio for giving Claire the advice. If Claire will also have to pay investment management fees to a third party in relation to the investments recommended by Alice, clause 6(1)(b) would require Alice to state something like “Further fees may be applicable if you follow this advice” or “XYZ will also charge you fees if you follow this advice”.</p>
6(1)(d) (and 5(2)(d))	<i>Examples inserted to clarify disclosure of commissions, including to clarify that a specific commission figure must be disclosed at the point of giving advice if known, even if the range was already disclosed earlier and the final figure is within the range.</i>
6(2)	<i>Permit providers to inform clients that duties¹ and complaints information is available on the provider’s website, instead of providing it.</i>