

Guidance note: Financial Markets Conduct (Australian Licensees) Exemption Notice 2020

This guidance note provides an overview of the exemption notice relating to Australian advice businesses giving advice to New Zealand retail clients, and the circumstances in which a business may be able to rely on it.

The [Financial Markets Conduct \(Australian Licensees\) Exemption Notice 2020](#) (the notice) comes into force on 15 March 2021 and will expire on 14 March 2026, unless revoked earlier. It replaces the [Financial Advisers \(Australian Licensees\) Exemption Notice 2011](#).

Australian advice businesses may be able to rely on the notice to provide certain financial advice services in New Zealand without getting a Financial Advice Provider (FAP) licence. This is only available for businesses with an Australian financial services licence granted by ASIC that licenses or authorises the business to provide financial product advice to retail clients in Australia. The terms and conditions under the notice must be complied with.

Exempt financial advice

The notice only applies to 'exempt financial advice' (see clause 4 of the notice). Advice will only be exempt financial advice if it meets certain criteria. One of these is that advice can only be given to the following types of New Zealand retail client:

- existing clients (i.e. clients to whom the Australian licensee provided financial adviser services in accordance with the Financial Advisers Act 2008 or the [Financial Advisers \(Australian Licensees\) Exemption Notice 2011](#))

that are on the client list provided to the FMA – see below

- Australian clients who have moved to New Zealand
- clients of another Australian licensee relying on the notice (to whom the Australian licensee intends to provide services in future)
- new clients who approached the Australian licensee without any solicitation or inducement by the Australian licensee or any of its representatives.

In addition, financial advice can only be given by the Australian licensee and its representatives from offshore, and they must not have a place of business in New Zealand. Any representative must be registered on the Australian Register of Relevant Providers.

Digital advice is not covered by the notice.

The main effects of the notice

The notice provides certain exemptions from requirements in the Financial Markets Conduct Act 2013 (FMC Act). The main effects are:

- Australian licensees do not need to get a FAP licence to provide exempt financial advice or exempt financial advice services.

- An Australian licensee's representatives are not subject to the restrictions on who can give regulated financial advice to retail clients on behalf of a FAP.
- Australian licensees and their representatives are exempt from certain statutory duties i.e.:
 - the duty to meet standards of competence, knowledge, and skill provided in the Code of Professional Conduct for Financial Advice Services (the code)
 - the duty to comply with the other standards in the code
 - the duty to make prescribed information available.
- a list of its current retail clients in New Zealand (make sure you protect your clients' personal information by sending your client list to us via a secure file transfer or password encrypted file).
- The Australian licensee is registered as a Financial Service Provider on the Register of Financial Services Providers.
- The Australian licensee has joined a dispute resolution scheme in New Zealand and this covers any advice given to any of its specified representatives.
- The Australian licensee has submitted irrevocably to the non-exclusive jurisdiction of the New Zealand courts and taken all reasonable steps to ensure that its specified representatives have also done so.

Note: Australian licensees and their representatives still need to comply with certain other statutory duties under the FMC Act including the duty of care, diligence and skill, the duty to give priority to clients' interests and the duty to ensure clients understand the nature and scope of advice being given.

Preconditions

The notice will only apply if the following preconditions have been met:

- The Australian licensee has given the FMA:
 - written notice that the Australian licensee intends to rely on this notice
 - written notice of any exemptions or relief under Australian law that the Australian licensee relies on in relation to providing financial product advice to retail clients under its Australian financial services licence
 - particulars of any material investigation, enforcement, or disciplinary action that has been taken by ASIC or any other overseas regulatory authority against the Australian licensee or any of its specified representatives

These preconditions apply even if the Australian licensees used to rely on the Financial Advisers (Australian Licensees) Notice 2011.

How to notify the FMA of intention to rely on notice

Email your written notice to us at compliance@fma.govt.nz with:

- the name of the notice in the subject line of your email
- the full name and address of the Australian licensee and its licence number
- the name and contact details for an individual who is authorised to be a contact for communications in relation to the notice.

List of current retail clients in New Zealand

Make sure you protect your clients' personal information by sending your client list to us via a secure file transfer or password encrypted file.

This list should include current New Zealand retail clients of the Australian licensee, as at the date the notice of intention to rely is given, who received

financial adviser services from the Australian licensee in accordance with the Financial Advisers (Australian Licensees) Exemption Notice 2011 or otherwise in accordance with the Financial Advisers Act 2008.

If a retail client of the Australian licensee is not on the list then the client will not be within paragraph (a)(i) of the definition of 'exempt financial advice'.

Who is relying on the notice?

A list of Australian licensees that have notified the FMA that they are relying on the notice is available [on the exemption page](#) on our website.

Obligations under the notice

- Australian licensees and their representatives must be adequately trained and competent under Australian law to provide exempt financial advice.
- A prescribed written disclosure statement must be given to a New Zealand client before any financial advice is given. This must be clear, concise and effective. See the notice for the information it must include.
- The Australian licensee must be satisfied on reasonable grounds that it has procedures in place that give reasonable assurance that disclosure, conduct and other Australian regulatory requirements are complied with (as if that advice was being given to a retail client in Australia), and for identifying deficiencies in the effectiveness of those procedures and promptly remedying them.
- Australian licensees and their representatives are prohibited from engaging in conduct that is intended to induce or solicit New Zealand retail

clients, or is likely to have that effect.

- Additional duties (requiring notifications, reporting and other matters) must be complied with (see the notice for further details).

Determining whether conduct is intended to induce or solicit retail clients in New Zealand

We will look at all the circumstances relating to any conduct by the Australian licensee or its representatives to determine whether it was intended to induce or solicit retail clients in New Zealand.

However, in general, we will consider whether any measures have been taken to attract New Zealand clients that are distinct from general promotional activities undertaken by the Australian licensee outside of New Zealand in respect of its general market outside of New Zealand.

The following activities are examples of conduct that we consider is likely to be conduct intended to solicit retail clients in New Zealand:

- Active marketing of the Australian licensee's financial adviser services in New Zealand media.
- Advertisements or promotional material on an Australian licensee's website or elsewhere on the internet specifically relevant to New Zealand persons or in relation to New Zealand financial products.

Further advice or information

We encourage you to carefully read the notice and seek your own legal advice where necessary. This guidance note is not intended to provide legal advice or provide a complete summary of the notice. Contact us if you have any questions about this notice.

 fma.govt.nz

 0800 434 566

 questions@fma.govt.nz