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# Regulatory Impact Statement: Standard conditions Financial advice provider transitional licences

This paper is for financial advice providers, their advisers and other interested parties. It discusses standard conditions for financial advice provider transitional licences

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# Executive summary

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This Regulatory Impact Statement (RIS) discusses two new standard conditions for financial advice provider (FAP) transitional licences, to be imposed by the FMA. The conditions relate to record-keeping and internal complaints resolution process requirements.

This RIS summarises the problem we are seeking to address, our objectives, the options and their associated impacts, and the consultation process we undertook before deciding to impose the conditions.

Imposing the conditions will improve conduct and consumer outcomes by ensuring there are adequate records of advice and services provided by FAPs and that customer complaints are dealt with in a fair, transparent and timely manner.

Record-keeping benefits consumers and FAPs. It assists FAPs in the conduct of their business, consumers in relation to their investment or other activities, and FAPs and consumers in the event there is a dispute. It also improves the FMA's ability to monitor and enforce compliance with the obligations relating to financial advice services under the new regime.

There are benefits for consumers and FAPs if complaints are dealt with in a fair, timely and transparent manner through an internal complaints resolution process. This promotes efficiency and reduces the likelihood that complaints will lead to serious disputes that require external intervention. Complaints provide useful feedback for the FAP's business, hopefully leading to improved conduct and better consumer outcomes.

Without the conditions, there would be no regulatory requirement for FAPs to keep records (other than in relation to disclosure) or have an internal complaints resolution process. While FAPs may keep records and have an internal complaints resolution process, there would be less certainty that the benefits noted above would apply.

In this RIS our analysis considers whether imposing the conditions would be consistent with, and promote, the objectives on page 6.

## Standard conditions imposed

After carefully considering both regulatory and non-regulatory impacts, we decided to impose the two standard conditions in the Schedule. These conditions will require FAPs to maintain adequate records in relation to their financial advice service and have a fair, timely and transparent internal process for resolving client complaints.

# Background

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The Financial Services Legislation Amendment Act 2019 (**FSLAA**) amends the Financial Markets Conduct Act 2013 (**FMC Act**) to introduce a new regulatory regime for financial advice.<sup>1</sup> When the new regime comes into force on 29 June 2020, providing a financial advice service to retail clients will require a FAP licence under the FMC Act. There will be two phases to FAP licensing: transitional and full. FAPs will be able to operate under a transitional licence from 29 June 2020 and will have up to two years to obtain a full licence.

The FMA can impose conditions on transitional licences under the FMC Act by written notice to the applicant or licensee. Conditions that may be imposed include conditions relating to the transitional licensing requirements (for example, to ensure the requirements continue to be satisfied or to require verification that those conditions continue to be satisfied).

On 25 June 2019, we released a consultation paper [Proposed standard conditions for financial advice provider transitional licences](#) seeking feedback on our proposals to impose two standard conditions on transitional licences, relating to record-keeping and internal complaints resolution process requirements. See that paper for the wording of the proposed standard licence conditions we consulted on.

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<sup>1</sup> In this RIS references to the FMC Act mean the FMC Act as amended by FSLAA.

# Problem definition, objectives and relevant stakeholders

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## Problem definition

There is no specific record-keeping requirement for FAPs (or most other market services licensees) under the FMC Act or its Regulations.<sup>2</sup> The current Code of Professional Conduct for Authorised Financial Advisers (current code) imposes a record-keeping requirement on Authorised Financial Advisers. However, this has not been included in the new Code of Professional Conduct for Professional Advice Services (new code).

If FAPs are not required to keep records then information about the financial advice services provided to retail clients will be patchy or may not be available. Lack of records may negatively impact customers (e.g. if they rely on their adviser having information or if they change advisers). In a dispute, FAPs or customers may be adversely affected by a lack of records or inadequate records if this means it is difficult to establish how the service was provided or what advice was given. Lack of records will make it difficult for the FMA to effectively monitor compliance with and enforce the obligations under the new regime. Lack of effective monitoring and enforcement may lead to poor conduct and poor customer outcomes.

Similarly, there is no requirement for FAPs to have an internal complaints resolution process under the new financial advice regime. The current code has an internal complaints resolution process requirement but this has not been included in the new code. FAPs may be required to have an internal complaints resolution process as a condition of being a member of an external dispute resolution scheme (DRS). However, if there is no regulatory requirement for FAPs to have an effective internal complaints resolution process then there will be less certainty that customers will be dealt with by all FAPs in a fair, timely and transparent way. This will mean some customers do not have access to an effective way to raise complaints and have them resolved. It will also mean there may be no record of the issues arising in relation to financial advice services.

## Objectives

We have chosen the following statutory purposes of the FMC Act as objectives against which to measure the possible options:

- Ensuring the availability and quality of financial advice and services
- Avoiding unnecessary compliance costs
- Promoting and facilitating the development of fair, efficient and transparent financial markets

## Relevant stakeholders

The conditions will require businesses and individuals who get an FAP transitional licence to keep adequate records and have a fair, timely and transparent internal complaints resolution process. This will impact a range of businesses including sole adviser businesses, broking firms, banks, insurers, investment planners and other FAPs. In considering the options, we considered the interests of stakeholders, including FAPs and retail customers.

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<sup>2</sup> We anticipate that the draft disclosure regulations will include a proposed record-keeping requirement in relation to disclosure obligations.

# Options and impact analysis

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We considered two options in relation to each problem identified:

- Option 1 (selected): Condition
- Option 2 (not selected): No condition (status quo).

## Record-keeping

### Option 1 – Condition

#### Description

Impose a licence condition on FAP transitional licences that requires FAPs and their authorised bodies to keep adequate records (that may be electronic) in a form and manner that can be conveniently inspected and reviewed by the FMA for at least 7 years and make those records available for inspection by the FMA at all reasonable times.<sup>3</sup>

#### Impact analysis

##### Ensures the availability and quality of financial advice and services

Keeping adequate records is a standard minimum requirement for a good business and key to ensuring good conduct and culture. Given this, the condition is necessary to promote access to quality advice. Most submitters thought the condition would not create a barrier to entry for new businesses. For the few who did think the requirement could create a barrier, most thought all businesses should have adequate record-keeping processes in place in order to operate in the market.

##### Will not impose unnecessary compliance costs

Submissions indicated that many FAPs already keep records of client interactions. Therefore, any additional compliance costs created by a record-keeping condition will be minimal. We note, however, that some submitters indicated that the compliance costs of transcribing an exact written record may be impractical or costly. They also thought that compliance costs could increase if records must be in writing and therefore cannot be kept electronically or as a video or sound recording. We have amended the record-keeping condition with this in mind, to ensure it is expressed in technology-neutral language. This will allow FAPs to use the method of record-keeping they consider most efficient, provided that the records are kept in a way that ensures the integrity of the information and enables it to be conveniently inspected and reviewed by us. Other submitters thought compliance costs would be high if they could not rely on their systems, processes and controls to demonstrate compliance in conjunction with individual records. For example, the system design for a digital advice facility could be considered alongside the data captured to determine compliance. Similarly, rather than keeping individual copies of generic documents provided to a customer FAPs could rely on centralised records of these documents. We have amended the condition to make it clear these are factors that can be taken into account.

##### Promotes and facilitates the development of fair, efficient and transparent financial markets

The licence condition will promote transparency about the advice services provided by FAPs, for monitoring and enforcement purposes. FAPs will have standard record-keeping requirements. These will promote fairness but will also be flexible enough to suit the size and nature of individual FAPs' businesses, maintaining efficiency.

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<sup>3</sup> See the Schedule for full details.

## Option 2 – No condition (status quo)

### Description

Do not impose a formal record-keeping requirement as a licence condition. This would mean that while providers would still need to comply with the new advice regime requirements (e.g. the new code and the statutory duties) they would not be legally required to keep copies of advice or communications with customers, or to demonstrate through their records how they met those requirements.

### Impact analysis

This option is more likely to result in poor consumer outcomes. It is likely to be more difficult and require more resources for the FMA to monitor compliance with and enforce the new financial advice regime if FAPs do not keep adequate records. This may make it difficult to hold FAPs accountable for poor conduct and could affect the quality of financial advice services. Lack of records would also reduce the transparency of advice services. Lack of records is likely to negatively impact customers (e.g. if they rely on their adviser having information or if they change advisers). In a dispute, FAPs and customers may be adversely affected by a lack of records or inadequate records if this means it is difficult to establish how the service was provided or what advice was given. It will also be more difficult for FAPs to operate effectively and comply with their obligations if they do not have adequate records. While compliance costs may be reduced, costs would still be incurred to demonstrate how an FAP has complied with its obligations. We consider that any reduction in compliance costs would be outweighed by the negative impact on financial advice services overall.

## Internal complaints resolution process

### Option 1 – Condition

#### Description

Impose a licence condition on FAP transitional licences that requires them to have an internal process for resolving client complaints, which provides for complaints to be dealt with in a fair, timely and transparent manner and records to be kept of all complaints and any action taken in relation to them.<sup>4</sup>

#### Impact analysis

##### Ensures the availability and quality of financial advice and services

Effective handling of client complaints is a key aspect of good conduct. Feedback from client complaints is likely to improve the quality of financial advice and services. FAPs that are members of external dispute resolutions schemes may already have an internal complaints resolution process in place. The condition is not likely to require a complex or expensive overhaul of current processes. New advice businesses may find the condition imposes compliance costs. However, the process can be tailored to suit provider preferences, and the nature and scale of the business. This flexibility should mean compliance costs are low. Given this, we do not expect the condition would be a barrier to entry or affect the availability of advice services.

##### Will not impose unnecessary compliance costs

As noted above, we don't think this condition will impose significant compliance costs. Many FAPs will already have an internal complaints process. We expect that any costs incurred to upgrade existing complaints processes or create a new process will be reasonable in view of the benefits to the business (from client satisfaction and feedback), benefits to the market (from improved conduct) and benefits to customers (from access to a fair, timely and transparent process for resolving complaints).

##### Promotes the development of fair, efficient and transparent financial markets

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<sup>4</sup> See the Schedule for full details.



The licence condition will provide certainty that customers have access to a fair, timely and transparent process for resolution of complaints. This will promote fair, efficient and transparent financial markets. Issues that arise will be identified and resolved quickly between the customer and the FAP, promoting efficiency. All FAPs will be subject to the same requirements. The condition's principles-based approach will mean the process can be tailored to suit the size and nature of the business, ensuring efficiency.

## Option 2 – No condition (status quo)

### Description

Do not impose a formal internal complaints resolution process requirement as a licence condition. Many FAPs may still have a process. They may be required to do so as a term of membership of an external DRS. However, standard requirements will not apply consistently for all FAPs, so there will be no certainty that customers will have access to a fair, timely and transparent internal complaints resolution process. FAPs may not keep records of the complaints received and how they are resolved.

### Impact analysis

This option is more likely to result in poor consumer outcomes. Customers may not have access to an effective way to have their complaints resolved or be confident that they will be resolved in a fair, timely and transparent manner. There will be less certainty without a regulatory requirement to have an effective internal complaints resolution process. The FMA may not have access to valuable information about conduct and compliance from records kept in relation to the complaints received. Efficiency may be reduced if conduct issues are not identified and resolved early on between customers and the FAP. While compliance costs for setting up or modifying internal complaints processes to meet a regulatory standard under the condition may be avoided, consequential compliance costs may arise if customer complaints are not dealt with in a fair, timely and transparent manner.

## Summary assessment of options against objectives

We have assessed the options against the criteria below:

**KEY:**



Meets the policy objectives



Partially meets the policy objectives



Does not meet the policy objectives

Criteria	Record-keeping		Internal complaints resolution process	
	Option 1: Condition (preferred)	Option 2: No condition (status quo)	Option 1: Condition (preferred)	Option 2: No condition (status quo)
Ensures the availability of financial advice, and the quality of financial advice and financial advice services	Keeping records is key to ensuring good conduct and customer outcomes. Ensures quality of financial advice and services by facilitating effective monitoring and enforcement. Unlikely to affect availability of advice given no significant impact on compliance costs expected (see below). ✓✓	Good advice businesses may still keep records but no legal requirement. The quality of financial advice and services may be impacted if this results in less-effective monitoring and enforcement. No adverse impact on the availability of advice. ✓	Effective client complaint handling is a key aspect of good conduct and likely to improve quality of financial advice and services. Unlikely to affect availability of advice given no significant impact on compliance costs expected (see below). ✓✓	Complaints processes may not exist or not be standard across FAPs. The quality of financial advice and services may be affected where advice businesses do not effectively deal with client complaints. Not likely to affect availability of advice. ✓
Avoids unnecessary compliance costs	Many businesses already keep records so compliance costs are expected to be low. Technologically neutral and principles-based flexible approach will minimise compliance costs. Benefits for customers, FAPs and the market generally outweigh any additional compliance costs. ✓	No additional compliance costs to establish or change record-keeping process but may be other costs demonstrating compliance with new financial advice regime requirements. ✓	Costs not expected to be significant. The benefits for customers, FAPs and the market generally, where complaints are dealt with effectively will outweigh any additional compliance costs. ✓	No additional compliance costs for internal complaints process but may be consequential compliance costs if customer complaints not dealt with effectively. ✓

Criteria	Record-keeping		Internal complaints resolution process	
	Option 1: Condition (preferred)	Option 2: No condition (status quo)	Option 1: Condition (preferred)	Option 2: No condition (status quo)
Promotes and facilitates the development of fair, efficient and transparent financial markets	Records will provide information for effective monitoring and enforcement, promoting fair and transparent markets. Technology-neutral language and the principles-based approach will allow requirements to be tailored to the size and nature of a business and promote efficiency. ✓✓	Without adequate records there will be insufficient information for monitoring and enforcement. This will impair development of fair and transparent financial markets in terms of advice services. ✓	All FAPs will be subject to the same requirements and all customers will have access to a fair, timely and transparent complaints process. This will promote certainty and fairness. There will be more transparency about issues arising in respect of FAPs. Early identification and resolution of issues should promote efficiency. ✓✓	Many businesses will have a dispute resolution process. However, customers may not all have access to a complaints process that is fair, timely and transparent. This will mean less-fair markets and less certainty. There will also be less transparency about issues affecting FAPs and issues may be addressed later or less efficiently. ✓

# Consultation

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On 25 June 2019 we released a consultation paper [Proposed standard conditions for financial advice provider transitional licences](#) seeking feedback on our proposals to impose standard conditions on transitional licences. We received 30 written submissions from a wide range of stakeholders including financial advisers, product providers, dispute resolution schemes, industry bodies and law firms. We have carefully considered the feedback we received and the final conditions incorporate a number of changes that are a direct result of that feedback. The final conditions can be found in the Schedule to this RIS. A [submissions report](#) setting out the key themes raised in submissions and our response, as well as copies of the individual submissions, has been published at the same time as this RIS.

# Conclusion and reasons

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Having carefully considered regulatory and non-regulatory impacts and submissions received in consultation, we have decided that Option 1 (imposing conditions) in each case addresses the identified problems and will achieve the stated objectives.

Option 2 would not achieve these objectives and would continue the current environment. The status quo would impose a disproportionate burden on FMA resources to supervise compliance with the new financial advice regime and customers may not necessarily have access to fair, timely and transparent resolution of their complaints.

Our preferred option will add some compliance costs in some cases but these are not expected to be high and will be outweighed by improved ability to monitor and enforce compliance, customers having their complaints dealt with in a fair, timely and transparent manner and a record being kept of any issues arising in relation to the financial advice service. Imposing standard conditions strikes the best balance of stakeholder interests in promoting access to quality financial advice and financial advice services.

# Schedule

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## Final standard conditions

### Record-keeping

You must create in a timely manner and maintain adequate records in relation to your financial advice service.

Your records:

- (a) must be kept in a form (which may be electronic) and manner that ensures the integrity of the information and enables it to be conveniently inspected and reviewed by us;
- (b) may be in any language providing you create and keep an accurate summary of the record in English and, if required by us, provide a full translation of the record into English by a translator approved by us;
- (c) must be available for inspection by us at all reasonable times; and
- (d) must be kept for a period of at least 7 years from the later of:
  - (i) the date the record is made; and
  - (ii) the date the financial advice to which the record relates is given; and
  - (iii) the date any later record is made that refers to or relies upon information in the record.

### Explanatory note

In this condition 'you' means the person who holds the licence and each of the licence-holder's authorised bodies, and 'us' means the FMA. Records will be adequate if they clearly demonstrate (together with your systems, process and controls) how you and any person engaged by you, and the regulated financial advice given to your retail clients by you or on your behalf, met the requirements relating to financial advice and financial advice services in the Financial Markets Conduct Act 2013, the Financial Markets Conduct Regulations 2014 and the Code of Professional Conduct for Financial Advice Services. Your records should include a record of all regulated financial advice given to retail clients by you or on your behalf. Records may be kept by another person on your behalf providing you ensure that person complies with this condition.

### Internal complaints resolution process

You must have an internal process for resolving client complaints relating to your financial advice service that provides for:

- a) complaints to be dealt with in a fair, timely and transparent manner; and
- b) records to be kept of all complaints and any action taken in relation to them including the date on which each complaint was received and any action was taken in relation to that complaint.

### Explanatory note

In this condition 'you' means the person who holds the licence and each of the licence-holder's authorised bodies. A complaint relating to your financial advice service is an expression of dissatisfaction made to you or to a person engaged by you, relating to your financial advice service (including any regulated financial advice given to a retail client by you or on your behalf), or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected. A complaint includes a complaint about a failure to provide a service or give advice. Any disclosure requirements relating to your internal complaints resolution process are set out in the Financial Markets Conduct Regulations 2014.