

JANUARY 2023

Consultation paper: Renewal of class exemption for dual language (English and te reo Māori) product disclosure statements

About this consultation

We are reviewing whether to renew for a further five years an existing class exemption notice that allows product disclosure statements to be provided in full in both te reo Māori and English (dual language PDSs). This exemption provides relief to issuers of financial products from the prescribed length limits and, if necessary, some prescribed statements and formatting. The two languages provided in the PDS must accurately and fully reflect each other, and both comprise the entire PDS.

We invite feedback to support our review of this exemption notice. Please use the feedback form provided.

Submissions close at 5pm on Wednesday, 1 March 2023.

Next steps

After considering submissions, we will finalise our policy proposals and aim to have any exemption in place prior to the expiry of the existing notice, on 31 October 2023.

This consultation is for issuers of financial products, investors, financial advisers and other interested parties.

It asks for feedback on whether the current exemption notice should be renewed and, if so, what changes (if any) should be made.

Contents

Review timing and process	2
FMA's power to grant class exemptions	3
Overview of class exemption	4
Feedback form	8

Review timing and process

We plan to complete our review of the *Financial Markets Conduct (Product Disclosure Statements in Te Reo Māori and English) Exemption Notice 2018* and have any replacement notice in place before the existing exemption expires on 31 October 2023.

An indicative timetable is noted below. This is subject to change.

Date	Step
1 March 2023	Consultation period closes
By end July 2023	Decision whether to renew the exemption notice made
August – September 2023	If the decision is made to renew the exemption notice, during this period we will draft a replacement notice to give effect to the policy decision. We will have this in place in advance of the expiry date of the existing notice.
1 November 2023	Replacement notice (if granted) comes into effect

FMA's power to grant class exemptions

We have powers to exempt persons from compliance with requirements in the Financial Markets Conduct Act 2013 (FMC Act) and associated regulations.

Before we do so, we must be satisfied that the exemption is not broader than is reasonably necessary to address the matters that gave rise to it. We must also be satisfied that the exemption is necessary or desirable to promote one or more of the following purposes of the FMC Act regime:

- To promote the confident and informed participation of businesses, investors and consumers in financial markets
- To promote and facilitate the development of fair, efficient and transparent financial markets
- To provide for timely, accurate and understandable information to assist investment decisions
- To ensure appropriate governance arrangements apply to financial products and services, and allow for effective monitoring and reduce governance risks
- To avoid unnecessary compliance costs
- To promote innovation and flexibility in the financial markets.

We can only renew exemptions where we are satisfied that the statutory requirements are met. We need information from you to support our decision-making, so we encourage you to provide feedback.

Overview of class exemption

Background

When an investor is deciding whether to invest in a financial product it is essential that information to help them make that decision is easily available. A product disclosure statement (PDS) does this by providing important information about the financial product in one document. A PDS includes information on how the product works, the potential risks and returns, any fees and charges, and the issuer's details. The issuer is the entity or individual that creates the financial product and provides it to investors.

The issuer of the financial product prepares the PDS, which must generally be provided to the investor before they invest so they have the information when deciding whether to invest in that product.

The FMC Act requires a PDS to be worded and presented in a clear, concise and effective manner. The Financial Markets Conduct Regulations 2014 (FMC Regulations) prescribe the form and presentation of the PDS, and the key information summary within the PDS. This includes prescribed length limits.

The FMC Regulations also contain prescribed wording that the issuer must include in the PDS. For example, specific headings are required for sections of the PDS, and specific statements are required at various points. The prescribed wording must be provided in English.

PDS length limits and other form requirements were included in the FMC Act and FMC Regulations to assist effective disclosure to investors. It is important that investors have all the relevant information available to them, and that this information is provided clearly, concisely and effectively.

Status of te reo Māori

Te Ture mō Te Reo Māori 2016/The Māori Language Act 2016 (Māori Language Act) affirms the status of te reo Māori as the indigenous language of New Zealand, an official language of New Zealand, and “a language valued by the nation”. Its purposes include to provide means to support and revitalise te reo Māori. The Māori Language Act also empowers the Māori Language Commission/Te Taura Whiri i te reo Māori (Te Taura Whiri) to certify te reo Māori translators and interpreters. The Courts will generally presume that Parliament intends to legislate in accordance with Treaty of Waitangi principles.¹ One of those principles has been described by the Courts and the Waitangi Tribunal as active protection of Māori interests, including the maintenance and development of te reo Māori.²

¹ *Attorney-General v New Zealand Maori Council* [1991] 2 NZLR.

² *He Tirohanga ö Kawa ki te Tiriti o Waitangi: A Guide to the Principles of the Treaty of Waitangi as expressed by the Courts and the Waitangi Tribunal*, Te Puni Kōkiri, Wellington (2001), p. 93-100.

Existing exemption notice – key effects and reasons

A PDS provided in full in two languages is unlikely to comply with the length restrictions and ordering requirements in the FMC Regulations. In 2018, following interest from a market participant, the FMA decided to grant an exemption to enable the provision of dual-language PDSs in both te reo Māori and English (the *Financial Markets Conduct (Product Disclosure Statements in Te Reo Māori and English) Exemption Notice 2018 (LI 2018/211) – New Zealand Legislation*).

The policy reasons why we granted the exemption can be summarised as follows:

- To enable PDSs to be provided in a way that can better assist decision making by investors who are more engaged and have a better understanding when information is provided in both te reo Māori and English.
- To promote the confident and informed participation of investors in financial markets who are more confident engaging with information provided in both te reo Māori and English.
- To be consistent with the purpose of the Māori Language Act to provide means to support and revitalise te reo Māori, and affirm the status of te reo Māori as the indigenous language of New Zealand and an official language of New Zealand.

We seek your feedback on whether the policy reasons for granting the exemption remain relevant and valid, which would support the renewal of the notice.

Specific questions for consideration

Subject	Question
Reliance on notice	Q1. To what extent do you, your clients or your members rely on the notice (or to what extent are you or they likely to rely on it in future)?
Support for renewal	Q2. Do you support the renewal of the notice or not? What are the reasons for your view? Q3. Do you think the original policy reasons for granting the exemption remain relevant and valid? Are you aware of anything that has changed during the period since the notice was granted that would affect or alter these reasons? Are there any additional policy reasons that would support granting, or not granting, the exemption? Q4. Please explain the impact of renewal on investors, including any benefit or detriment to protection of investors' interests or information available to investors?

Exemption conditions

The existing exemption is subject to the following conditions:

- All information in the PDS to be provided in both te reo Māori and English.
- Te reo Māori contained in the PDS must be, in all material respects, an accurate translation of the English text of the PDS.
- The issuer must obtain written confirmation from a certified translator that it is an accurate translation of the English text of the PDS, and must provide the confirmation to FMA as soon as practicable upon request by the FMA.
- The requirement to include information in te reo Māori includes the prescribed statements in the regulations; however, the statements may differ from the regulations to the extent necessary to enable a more comprehensible translation of the statement into te reo Māori, provided the issuer reasonably considers that the differences are not broader than reasonably necessary.
- The English text and key information summary must comply with the same word limits that are provided in the regulations, with some flexibility for English words used in the te reo Māori translation.
- The PDS must not contain any additional information unless it meets the length restrictions.

If the decision is made to renew the notice, our initial view is that the conditions in the existing exemption remain appropriate. We seek your feedback on this.

If the decision is made to renew the notice, we may seek further feedback at that time on any technical drafting issues that arise when we prepare the replacement notice.

Specific questions for consideration

Subject	Question
Conditions	Q5. Do you think the notice creates any unintended unnecessary compliance costs through its conditions? Please describe the compliance costs using actual or estimated dollar amounts.
Amendments needed	Q6. Do you think any amendments are needed to the notice if it is renewed? If so, please specify the amendments you propose, the reasons for these, and any impact of the amendments on participants or investors. Q7. Do you think any amendments are needed to the notice to solve technical or practical difficulties that could prevent intended reliance on the notice?
Other	Q8. Do you have any other comments?

Exemption – other languages

At the time the existing exemption was granted, we considered whether we should grant an exemption allowing dual-language PDSs in English and other languages. We ultimately decided that an exemption for languages other than te reo Māori would be broader than necessary, as there was no demand at the time. We signalled at the time that this exemption could provide insights for any future exemption for dual-language PDSs in other languages. We remain open to discussions with any providers who are interested in providing dual-language PDSs in other languages.

Specific question for consideration

Subject	Question
Other languages	Q9. Do you think the exemption should be extended to cover other languages?

Feedback form

Consultation paper: Renewal of class exemption for dual language (English and te reo Māori) product disclosure statements (dual-language PDSs)

Please submit this feedback form electronically in both PDF and MS Word formats by emailing it to consultation@fma.govt.nz with the subject line: 'Renewal of class exemption for dual language PDSs: [your organisation's name]' Thank you. **Submissions close at 5pm on Wednesday, 1 March 2023.**

Date: _____ Number of pages: _____

Name of submitter: _____

Company or entity: _____

Organisation type: _____

Contact name (if different): _____

Contact email and phone: _____

Question number	Response

Feedback summary – if you wish to highlight anything in particular

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.