



INDUSTRY FAQ:

REVIEW OF THE FINANCIAL ADVISERS AND FINANCIAL SERVICE PROVIDERS ACTS

August 2016

Types of advisers

What will happen to AFAs under the future regime?

- Current AFAs will need to operate under a financial advice firm as either a financial adviser or agent. The term 'AFA' will no longer be used. Licensing will be coordinated at the firm level to reduce compliance costs.
- The future regime introduces conduct and competency standards for all providing advice. Anyone providing advice will be held to a competency obligation, to only provide advice where competent to do so.
- The competency standards for everyone providing financial advice will be determined by the Code Committee and through the licensing process. We do not know whether this will be the current Level 5 qualification. The Code Committee will consult with industry to determine the competence standards for each part of the industry and for the delivery of advice on different products or services.
- Advisers may continue to use aspirational qualifications or other descriptors to distinguish themselves provided they are demonstrably qualified and competent, and that the descriptor is not misleading or deceptive.
- The transitional arrangements for the future regime are yet to be determined, but these will be designed to minimise disruption and cost to industry to the extent possible. It is likely that the transitional period for getting a financial advice firm licence will take into account AFA's most recent authorisation renewal.
- We encourage those currently undertaking a Level 5 qualification (or working towards renewal) to continue, as this is likely to be considered as part of the transition to the future regime.

What will happen to RFAs under the future regime?

- RFAs will need to comply with competence, conduct and client care standards, as set out in the new statute and Code of Conduct. RFA's will also have to operate under a financial advice firm licence. The term 'RFA' will no longer be used, and RFAs will instead operate as a financial adviser or agent, depending on the nature of their financial advice firm.
- We understand that the future regime introduces a number of new obligations for RFAs, particularly around competency. The transitional arrangements are yet to be determined, but will allow RFA's sufficient time to demonstrate competence and move into the new regime.

What will happen to QFEs under the future regime?

- The future regime retains the broad approach to regulating QFEs, for example, the ability for QFEs to take responsibility for their staff. QFEs will be required to have a financial advice firm licence. The term 'QFE' will no longer be used.



- Employees of a QFE (or financial advice firm moving forward) will be subject to legislative obligations and the new Code of Conduct. If they are employed as agents, the firm will take accountability for them. This is because the firm will have demonstrated that they have sufficient processes and controls in place such that the firm should be answerable to the consumer, not the agent.

Will financial advice firms be able to employ advisers and agents?

- Yes. It will be up to each firm whether to employ agents, financial advisers or a mix of both. A sole trader (who would likely be a financial adviser) would also be licensed as a financial advice firm.

The term 'agent' has a different common usage in the financial services industry – won't this cause further confusion?

- We have heard concerns that the term 'agent' could cause confusion and complications for some business arrangements, because it already has common usage in both the financial services industry and in a legal sense. We are considering whether an alternative term could replace the word 'agent' as used in the future regime (although the agent concept would remain the same).

What is proposed for renaming 'broker'?

- MBIE is considering whether brokers could be renamed to remove current confusion. We continue to welcome suggestions for improvements.

Types of advice

What services will agents be able to provide?

- Agents must only provide services where competent to do so. These services will be set through the licensing process. Services that cannot be prescribed by set processes, or require a large amount of individual discretion, would not be able to be provided by agents. In these circumstances it would be inappropriate for an agent's firm to take accountability for them.

How will robo-advice work?

- The legislation will be technologically neutral, meaning that the broad legislative obligations for advice will apply regardless of whether advice is provided by a natural person or a robo-advice platform.
- Under the future regime, firms will be able to provide robo-advice through a financial advice firm licence. A financial advice firm could be licensed to provide advice only through platforms (robo-advice), or financial advisers and/or agents, or a mix of both.
- Firms holding a licence for robo-advice platforms will be accountable for the obligations of the robo-advice platform.
- Following the passage of the legislation and the new Code of Conduct, it is expected that financial advice firms will be able to become licensed and provide robo-advice as soon as it is practicable for the FMA to process applications.

How will scopes of practice be determined?

- With the class/personalised and Category 1/Category 2 distinctions removed, advisers, agents and financial advice firms will be able to provide advice across the spectrum, provided they have demonstrated that they are competent to do so.



Will there be firms who can sell without providing financial advice?

- Yes. Just like the current regime, the future regime will not capture information and execution only services. Therefore, firms will be able to operate information and execution only business models as they currently do, and sell financial products without advice.

How do wholesale clients fit into the future regime?

- The definition of wholesale client will remain the same as the status quo. However, the legislative obligations for conduct and competence – to place the interests of the client first and to only provide advice where competent to do so – will apply to both wholesale and retail clients.
- Advisers and agents will also be required to ensure that consumers are aware of the limitations of their advice. This means ensuring that wholesale investors understand what being a wholesale client means, and where protections are less than for a retail client.
- Disclosure requirements are still to be determined, but are expected to differ for retail and wholesale clients.

Competence

What will the future competency standards look like? Will the current AFA Level 5 requirement be a minimum requirement?

- All advisers and agents will be subject to competence, knowledge and skill standards. These will be developed by a Code Committee following industry consultation, and then set out in a new Code of Conduct and determined through licensing.
- Some standards may be relevant to all providing advice, while some will be specific to particular parts of the industry or products or services, recognising that different skills will be required for different types of advice. The Code Committee will be required to consult on the standards that should apply to different parts of the industry.
- MBIE does not know whether the current AFA Level 5 qualification will be a requirement for some in the future. However, feedback on the Options Paper indicates that many in the industry support it. Regardless, those currently undertaking a Level 5 qualification may wish to continue, as this is likely to be considered as part of the transition to the future regime.

Will there be different competency requirements for new entrants vs existing advisers?

- In developing transitional arrangements for those already operating under the FA Act regime, we will consider whether, and to what extent, there should be flexible arrangements around competency. New advisers would be expected to move straight into the new Code requirements.
- The Code of Conduct will set out the competency standards, and prescribed courses or qualifications that will be deemed to comply with those standards. However, as part of the licensing process, a firm will be able to demonstrate alternative ways that their advisers and agents meet the competency standards. The FMA will have discretion in approving this.



Licensing

It is likely that the transitional period for getting a financial advice firm licence will take into account an AFA's most recent authorisation renewal and a QFE's most recent status renewal.

What will the licensing requirements be? Will they differ based on the size of the business?

- The particular licensing requirements will be determined by the FMA.
- What prospective licensees would need to provide to the FMA to meet the licensing requirements will be flexible, and depend on factors such as:
 - the nature and size of the firm and the services it provides, and
 - whether the firm engages financial advisers, agents or if the firm is a sole trader.
- For example, the licensing requirements will be more comprehensive for a financial advice firm with agents, as the firm will need to demonstrate that it has the systems in place for it to be appropriate for the firm to be accountable for its agents. It will also need to demonstrate that it has processes to ensure it does not incentivise its agents to sell products without regard to the consumer's interests.

What will the cost of licensing be?

- The direct cost for a financial advice firm licence is yet to be determined, but we want to ensure that costs are proportionate. The cost of licensing is expected to reflect the factors outlined above.
- For example, the direct cost of a licence for a one or two person financial advice firm will be less than that for a large firm seeking a licence for one hundred employees.

Will advisers and agents have to register on the Financial Services Provider Register (FSPR)?

- All financial advice firms will be registered on the FSPR. Those wanting to become a financial adviser will also have to be individually registered on the FSPR (just like AFAs and RFAs are currently). Agents will not have to be individually registered on the FSPR (just like QFE advisers now).

Disclosure

Disclosure is being 'simplified' but what does that mean? Are you thinking of having a universal prescribed template for disclosure?

- Disclosure will be simplified, but exactly what this will mean and look like is yet to be determined. We want to achieve shorter documents that only include the information consumers want and need to know to in order to make good financial decisions. They should be easy for the adviser to explain and consumers to understand, and must be equally effective through different advice channels.
- A universal prescribed template for disclosure is one option; however, we also recognise that what needs to be disclosed may vary for different services and situations.
- We will be engaging with industry and running focus groups with consumers towards the end of the year to test some alternative forms of disclosure.

How will disclosure of commissions work?

- It has not been decided how commissions will be disclosed, for example whether they will be disclosed as a dollar or percentage value, or in some other way.



- We understand that commission structures are very complicated and cannot always be communicated in a way that is easy for the consumer to understand. The owners of commission structures may have a role to play in disclosure going forward, and we are currently exploring options in this space.

Enforcement

How will the future regime ensure 'unnamed' agents with poor conduct history cannot easily move from firm to firm?

- Under the future regime, agents of financial advice firms will not have to be individually registered, and the firm will take accountability for their obligations. This is similar to the current QFE and QFE adviser arrangement. However, we have heard concerns that this currently enables individuals with poor conduct history and no individual accountability to move from firm to firm with no transparency. This issue is being considered through our assessment of the efficiency and effectiveness of compliance and enforcement tools.

Transitional arrangements and next steps

Will there be arrangements to enable transition to the future regime?

- Yes. We are engaging with industry representatives to determine appropriate transitional arrangements for the future regime.
- We want transition to be smooth and create as little disruption to industry and consumers as possible. It is likely that the regime will have a staged transition. Some requirements, such as competency and licensing, will need to be phased in, while others may be able to take effect immediately upon passage.

What are the next steps?

- MBIE is doing further policy work on transitional arrangements, compliance and enforcement tools, and the membership and proceedings of the Code Committee.
- It is anticipated that an exposure draft of the Bill will be released for consultation later this year. We will invite submissions on the exposure draft, so we can address any potential issues with legislative drafting before it is introduced to Parliament.
- We understand the nature of change does create some uncertainty. However, it is important to remember that the current legislative requirements will continue to apply until the future regime takes effect. We want to ensure the transition to the future regime is as smooth as possible and arrangements will be developed to enable this.