



## FACTSHEET: A NEW FINANCIAL ADVICE REGIME

February 2017

The Ministry of Business, Innovation and Employment (MBIE) is consulting on a draft Bill that will amend the regulation of financial advice in New Zealand. MBIE is also seeking feedback on the proposed arrangements for existing industry participants to transition to the new regime to ensure they are fit-for-purpose.

The Government announced the design of the new regime for financial advice in July 2016, following a comprehensive review of the current legislation overseeing the provision of financial advice in New Zealand. In November 2016 the Government made further decisions that built on the July decisions.

The new regime aims to improve access to high quality financial advice for all New Zealanders. The changes represent a shift away from the current regime which sought to professionalise a subset of advisers, towards a regime which establishes a level playing field of regulation for all who are providing advice. In particular:

- Anyone providing financial advice will be required to put the interests of the client first and to only provide advice where competent to do so. All financial advice will also be subject to a Code of Conduct.
- Anyone (or any robo-advice platform) providing financial advice will need to operate under a licence granted by the Financial Markets Authority (FMA). To ensure this does not impose undue costs on industry or Government, licensing will be done at the firm level.
- The regime will be simplified and unhelpful barriers will be removed. For example, the requirement for advice to be given by a natural person will be removed, enabling robo-advice. The definitions of class and personalised advice and different categories of products will be removed, creating a level playing field for all types of advice.
- More meaningful disclosure requirements will be introduced to improve consumer understanding and transparency. Disclosure will be re-designed to ensure consumers receive core information such as remuneration (including commissions) at the time most relevant to their decision making.

The remainder of this Factsheet provides further information in relation to:

- (1) Consultation on the draft Bill
- (2) Consultation on the proposed transitional arrangements
- (3) The Government's November 2016 decisions

For further detail on any of this, or on the July 2016 announcements, please see the full set of consultation and review material available at [www.mbie.govt.nz/faareview](http://www.mbie.govt.nz/faareview).

### **(1) Consultation on the draft Bill**

The legislative elements of the new regime have been translated into a draft Financial Services Legislation Amendment Bill (the Bill) which is out for public consultation and submissions from Friday 17 February until Friday 31 March 2017 (refer to Part 2 of MBIE's Consultation Paper – *New Financial Advice Regime* for Commentary of the draft Bill). Consultation on the draft Bill allows the public and the industry to consider the practical implications of the proposals and bring any issues to light before the Bill is introduced to Parliament.

#### ***Why does the Bill move the regulation of financial advice into the FMC Act?***

The Bill will repeal the Financial Advisers Act 2008 (FA Act) and make changes to both the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act) and the Financial Markets Conduct Act 2013 (FMC Act).



The majority of the regulation of financial advice will sit within the FMC Act (rather than in a standalone Act as is currently the case). This legislative design decision avoids unnecessary duplication. For example, the FMC Act already includes a framework for licensing financial market services.

***If Government policy decisions have already been made, what do you want feedback on?***

The main purpose of consulting on the draft Bill is to check whether the drafting achieves the policy intent or could have any unintended consequences. In addition, some detailed policy questions remain and we are seeking feedback on these throughout the consultation document.

***The Bill refers to 'financial advice representatives'. Has this replaced the term 'agents' as previously announced?***

Yes. We received feedback that 'agent' is an existing and commonly used term in the financial services industry. In order to avoid confusion and retain the customer-focused language, this term has been replaced by 'financial advice representative'.

***When will the Bill be passed?***

We are not able to give a date for when the Bill will be passed. However, the process is as follows. After consultation on the draft Bill closes on Friday 31 March MBIE will analyse the feedback and submissions and resulting changes will be made to the way the Bill is drafted. Once the drafting of the Bill is complete it will be introduced to Parliament and the normal Parliamentary process for the passage of legislation will begin. This will include a select committee process which will provide a further opportunity for public submissions on the Bill.

## **(2) Consultation on the proposed transitional arrangements**

Alongside consultation on the Bill, MBIE is seeking feedback on proposed arrangements for the industry to transition to the new regime (refer to Part 3 of MBIE's Consultation Paper – *New Financial Advice Regime* for the proposed transitional arrangements). The proposed arrangements aim to bring each element of the new regime into effect as soon as practicable while ensuring existing industry participants have sufficient time to transition to the new regime smoothly.

***When will the new regime come into effect?***

Feedback is currently being sought on proposed transitional arrangements which will determine when specific elements of the new regime come into effect. This is to ensure that the benefits of the new regime can be realised as soon as possible, while minimising disruption to the industry and to consumers.

It is currently expected that the new Code of Conduct will be approved by August 2018 (see question below regarding the development of the Code of Conduct) and we are proposing that the new regime take effect six months after the Code of Conduct is approved. However, existing industry participants will have an additional two years to meet any new competence, knowledge and skill standards that are set in the Code of Conduct, recognising that some industry participants will likely need to undertake further training.

***What steps are involved for industry participants to transition to the new regime?***

To support the industry to move across to the new regime we propose that the transition happen in two main stages:

- STAGE 1: Anyone providing financial advice will need to be engaged by a firm with a transitional licence six months after the Code of Conduct is approved.

On this date (six months after the Code of Conduct is approved) the new regime will take effect. For example, from this date anyone providing financial advice will need to put the interests of the client



first. However, as above, existing industry participants will have an additional two years to meet any new competence, knowledge and skill standards.

The transitional licensing process will be determined in due course but it is expected to be simple and essentially involve notification to the FMA of the names of the firm and its financial advisers and the services that the firm will be providing.

- **STAGE 2:** Two years later (i.e. 2 ½ years after the Code of Conduct is approved), all transitional licences will expire and all industry participants will need to be operating under a full licence.

The process and requirements for full licensing will be determined in due course. But unlike transitional licensing it will be more comprehensive. What prospective licensees will need to provide to the FMA to meet the licensing requirements will depend on factors such as:

- The nature and size of the firm and the services it provides.
- Whether the firm engages financial advisers, financial advice representatives or is a sole trader.

Once operating under a full licence everyone must meet the standards of competence, knowledge and skill as set out in the Code of Conduct.

**NB: If you are an existing industry participant, e.g. an AFA, RFA, or QFE, and you have further questions about what the transition will mean for you, please refer to the Part 3 of the MBIE Consultation Paper – *New Financial Advice Regime*.**

#### ***What does this mean for New Zealanders looking for advice?***

It will be business-as-usual for consumers until the new regime comes into effect.

As above, we are proposing that the new regime take effect six months after the Code of Conduct is approved (based on current indicative timeframes this would be in February 2019). On that date, consumers shouldn't experience any upheaval, but will benefit from many features of the new regime. For example, from that date anyone providing financial advice will need to put the client's interests first and adhere to a Code of Conduct and disclosure material will be more consumer-friendly and transparent.

#### ***When will the Code of Conduct be developed?***

The new Code of Conduct will be a key part of the new regime as it will, amongst other things, set the standards of competence, knowledge and skill that apply to all types of advice.

It's important that industry has certainty about the content of the Code of Conduct as soon as possible. Therefore Cabinet has agreed that a Code Working Group be appointed by the Minister of Commerce & Consumer Affairs to begin development of the new Code of Conduct before the new legislation has been passed.

We currently expect the Code Working Group to be appointed in mid-2017 with a view to having the Code of Conduct approved by August 2018.

#### ***Who will sit on the Code Working Group to develop the Code?***

The membership of the Code Working Group will reflect the required composition of the Code Committee as outlined in the Bill. This includes two members with knowledge of consumer affairs or dispute resolution and other members with knowledge, skills and experience that will assist in the production of the Code of Conduct.

MBIE will seek expressions of interest for the Code Working Group around March 2017. We note that this is a new group, rather than a continuation of the current Code Committee (who currently produces the Code of Conduct for Authorised Financial Advisers) recognising the wider scope of the new Code of Conduct. However, members of the current Code Committee may apply for the Code Working Group.



### **(3) The Government's November 2016 decisions**

In July 2016 the Government announced the overarching design of an amended regulatory regime for financial advice. Further policy decisions have since been made, including in relation to the compliance and enforcement tools, mechanics of the Code Committee, and further measures to address misuse of the Financial Service Providers Register. In addition to the Q&As below refer to Annex 1 of MBIE's Consultation Paper – *New Financial Advice Regime* for an overview of the further decisions.

#### ***What do the changes to the compliance and enforcement mechanisms mean for advisers?***

Under the new regime, firms will be subject to the FMC Act's compliance and enforcement tools (such as civil pecuniary penalties and licensing actions), bringing them in-line with other licensed financial services. The Financial Advisers Disciplinary Committee is being retained for breaches by individual financial advisers.

#### ***What changes are being made to mechanics of the Code Committee and the Code of Conduct?***

During the review we received a lot of positive feedback regarding the Code of Conduct and Code Committee. For that reason, much of the detail around the operation of the Code of Conduct and Code Committee has been carried over, apart from minor amendments to ensure the settings reflect best practice and the Code Committee's new mandate. For example, reflecting best-practice, the Committee will be appointed by the Minister and there is a new requirement that the Code Committee publish a summary of the submissions received, their response to these submissions, and an impact analysis.

As above, a new Code Working Group will be appointed to develop the Code of Conduct.

#### ***What more is being done to address misuse of the Financial Service Providers Register?***

The Government agreed to complementary measures to help address misuse of the Financial Service Providers Register (FSPR). In particular:

- If an entity is not otherwise licensed in New Zealand, then if it refers to its New Zealand registered status (other than where required by law), it must make clear the limitations of being registered, i.e. that registration does not indicate the entity is licensed or monitored by a regulatory agency in New Zealand.
- In addition, the Government has decided to provide a power for the Registrar to require information from persons other than the provider, such as a director of the provider. This is intended to deter New Zealand individuals from helping to facilitate misuse of the FSPR by agreeing to act as nominee directors of offshore-controlled entities applying to be registered.

These measures are additional to the previously announced decision to amend the application of the FSP Act (i.e. entities will only be able to register if they are in the business of providing financial services and promote those services to persons in New Zealand).

#### ***What further work is being undertaken in relation to soft-commissions?***

MBIE has considered whether there should be formal reporting by product providers of soft-commissions (such as trips abroad and other non-monetary incentives), in addition to the information that will be contained in disclosure statements. For example, this could take the form of a public register of soft-commissions paid by providers to advisers.

In the first instance, the FMA will undertake further work on the impact of conflicted remuneration, including soft-commissions, on advice. This work will inform future policy decisions on whether additional disclosure and/or other actions are needed in relation to soft-commissions.