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## Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the questions raised in this document.

- Submissions on the questions in Part 3 of this paper (relating to the Financial Service Providers Register) are due by **5pm on Friday 29 January 2016**.
- Submissions on the questions in Part 1 and Part 2 of this paper are due by **5pm on Friday 26 February 2016**.

Your submission may respond to any or all of these questions. We also encourage your input on any other relevant work. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please include your name, or the name of your organisation, and contact details. You can make your submission:

- By filling out the submission template online.
- By attaching your submission as a Microsoft Word attachment and sending to [faareview@mbie.govt.nz](mailto:faareview@mbie.govt.nz).
- By mailing your submission to:

Financial Markets Policy  
Ministry of Business, Innovation & Employment  
PO Box 3705  
Wellington  
New Zealand

Please direct any questions that you have in relation to the submissions process to:

[faareview@mbie.govt.nz](mailto:faareview@mbie.govt.nz).

## Use of information

The information provided in submissions will be used to inform MBIE's policy development process, and will inform advice to Ministers on the operation of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

We may contact submitters directly if we require clarification of any matters in submissions.

Submissions are subject to the Official Information Act 1982. MBIE intends to upload PDF copies of submissions received to MBIE's website at [www.mbie.govt.nz](http://www.mbie.govt.nz) and will do so in accordance with that Act.

Please set out clearly with your submission if you have any objection to the release of any information in the submission, and in particular, which part(s) you consider should be withheld, together with the reason(s) for withholding the information under that Act.

If your submission contains any confidential information, please indicate this on the front of the submission, mark it clearly in the text, and provide a separate version excluding the relevant information for publication on our website.

MBIE reserves the right to withhold information that may be considered offensive or defamatory.

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review.

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## Chapter 3 – Barriers to achieving the outcomes

1. Do you agree with the barriers outlined in the Options Paper? If not, why not?

With regards to the public not knowing where to get Financial Advice from, the idea of the FSPR being a starting point for finding an adviser is difficult if the public isn't aware of it in the first place. A simple Google search for financial adviser with a location will throw up most of the main players. Consumers need a starting point and it's usually from friends, family, advertising or Google search.

Agree with the confusing distinction between Authorised and Registered. There is also confusion between sales and advice.

Agree some types of advice are not being offered. One thing regulation won't change is that if consumers don't want to pay for advice it won't be provided. Robo-advice is a common sense solution to increase the number of people getting some very basic advice even if it is not the ideal being a face to face discussion.

Agree with comments made about the other three barriers.

2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.

No none identified

## Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?  
Option 4.3 in that it creates a level playing field and ensures there is some ethical obligation on everyone in the industry.
4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?

All proposed options would benefit consumers with the only cost being the compliance burden passed on to clients. The expense and on-going time involved in licencing both advisers and adviser businesses would be expensive without adding extra protection to consumers.

5. Are there any other viable options? If so, please provide details.

If one option were to be chosen, then licencing financial advice businesses is preferable as some economies of scale could be achieved unlike the current model.

#### 4.1 Restrictions on who can provide certain advice

6. What implications would removing the distinction between class and personalised advice have on access to advice?

It would allow advisers to better meet the needs of clients without self-censoring in order to avoid non-compliance.

7. Should high-risk services be restricted to certain advisers? Why or why not?

Yes they should be restricted. Advisers should only advise on areas in which they are competent. The client is paying for the expertise so it must be able to be demonstrated by the adviser either by designation or qualification.

8. Would requiring a client to 'opt-in' to being a wholesale investor have negative implications on advisers? If so, how could this be mitigated?

The criteria for wholesale investors are broad strokes that assume a level of competence due to wealth. Basic disclosure should be a minimum for due diligence for a wholesale investor and yet it does not appear to be standard practice thus the consumer uses this method is at a disadvantage.

#### 4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?

The same simple disclosure requirement should apply to robo advice. Especially so given many will be vertically integrated wholesale providers looking for distribution. This should be accompanied by a disclaimer about the limitations of robo advice and why a person would seek a human adviser to deal with.

10. How, if at all, should requirements differ between traditional and online financial advice?

The main disclosure would need to be whether the online service is recommending a range of product or just one supplier. Secondly a warning about the limitations of dealing with a computer program rather than a person that can think abstractly and explain concepts to different competence levels. Furthermore dispensing with advice for marital, company or trust structures is inherently difficult by way of robo advice.

11. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?

On balance the options presented allow for innovation while providing some protection for clients. The option to speak to a real person is an important one even though it would increase costs. As noted above dispensing with advice for marital, company or trust structures is inherently difficult by way of robo advice.

#### 4.3 Ethical and client-care obligations

12. If the ethical obligation to put the consumers' interests first was extended, what would the right obligation be? How could this be monitored and enforced?

The concept of acting in the clients best interest is paramount although can be difficult to define. Another way of looking at it is whether a change to a client's product ownership strengthens their position. This test could look at issues like whether a client has changed insurers but added exclusion to their policy they did not have before the change. This forces advisers to justify any churn.

Did the advice provided materially change the clients end position after cost, or was the probability of the client reaching their goals and objectives now higher (note that understanding a client's goals and objectives is a code requirement)

If advisers were required to document the rationale and/or show a cost benefit analysis that could be of use should issues arise at a later date.

13. What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?

The obligation of the salesperson 'agent' is to advise the client that they can only sell their own product and that they are not providing impartial advice.

14. If there was a ban or restriction on conflicted remuneration who and what should it cover?

In the case of insurance limiting or banning commissions will have a devastating effect on the availability of advice. Numerous regulatory changes globally to this effect have shown this to be the case. The requirement to justify 'churn' would be better for the insurance industry than a blanket reduction in revenue. All other sectors can easily be covered by way of full disclosure.

#### 4.4 Competency obligations

15. How can competency requirements be designed to lift capability, without becoming an undue barrier to entry and continuation in the profession?

The RFA status, if retained, needs to have some sort of competency requirement. There is no way to avoid cost in this space. If Financial Advisers are to gain credibility as a profession then a requirement around gaining experience working under another adviser could lift the level of competence of new entrants.

16. Should all advisers be subject to minimum entry requirements (Option 1)? What should those requirements include? If not, how should requirements differ for different types of advisers?

Training and expertise need to match the level of advice given. If an RFA is giving insurance advice they need to be able to demonstrate some qualification being either from study or experience. This needs to be coupled with the code of ethics that currently applies to AFA's.

#### 4.5 Tools for ensuring compliance with the ethical and competency requirements

17. What are the benefits and costs of shifting to an entity licensing model whereby the business is accountable for meeting obligations (Option 1)? If some individual advisers are also licensed (Option 2), what specific obligations should these advisers be accountable for?

There is an element of double handing if both entities and individuals are required to be licenced. Especially in the case of the sole trader entities that only have themselves to manage. From a regulatory point of view the resources required to audit both entities and advisers will stretch current FMA resources. The alternative is to just regulate the financial advice businesses who in turn regulate their advisers. This would align NZ with the Australian dealer

group model. Such a move would see further adviser attrition.

18. What suggestions do you have for the roles of different industry and regulatory bodies?

The more support in the form of concise best practice guides the better.

#### 4.6 Disclosure

19. What do you think is the most effective way to disclose information to consumers (e.g. written, verbal, online) to help them make more effective decisions?

Verbally is the best way to ensure the message gets across but this too difficult to enforce and monitor. Secondly a succinct one page document would have the greatest chance of being read and understood.

20. Would a common disclosure document for all advisers work in practice?

The more prescribed the disclosure document are the more comparable they will be for consumers.

21. How could remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?

For insurance a percentage of the premium (net of policy fee and GST) showing both initial and on-going percentages so client can compare like with like when looking at what an adviser is paid. For investment advisers, the fees charged / earned by the adviser and the advice entity should be disclosed but also the brokerage charged. Brokerage is somewhat hidden from view and is not deductible and frequently equates to more than the fees.

#### 4.7 Dispute resolution

22. Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?

None noted. It appears to be working better than the Australian market which has one scheme and dissatisfaction for both consumers and advisers.

23. Assuming that the multiple scheme model is retained, should there be greater consistency between dispute resolution scheme rules and processes? If so, what particular elements should be consistent?

Criteria for awarding reparation must be consistent to avoid favouritism towards lenient schemes.

24. Should professional indemnity insurance apply to all financial service providers?

Yes, this protects the consumer as well as the adviser.

#### 4.8 Finding an adviser

25. What is the best way to get information to consumers? Who is best placed to provide this information (e.g. Government, industry, consumer groups)?

Sorted.org.nz is an established resource for the public to gain knowledge about financial matters. Using that site as a starting point to get to resources such as the FMA and FSPR is a useful resource for consumers.

26. What terminology do you think would be more meaningful to consumers?

Clearly differentiating between advice and sales is imperative. The term 'agent' to describe a tied adviser could be useful and appropriate. The current scenario is akin to seeking property advice from a real estate agent.

## 4.9 Other elements where no changes are proposed

### The definitions of 'financial adviser' and 'financial adviser service'

27. Do you have any comments on the proposal to retain the current definitions of 'financial adviser' and 'financial adviser service'?

No

### Exemptions from the application of the FA Act

28. Are those currently exempt from the regime posing undue risk to consumers through the provision of financial advice in the normal course of their business? If possible, please provide evidence.

We have seen evidence to suggest that it does occur, in particular when the exempt professional is acting also as a trustee or Director. In some cases the professional has a financial interest in some investments. It seems inconsistent to suggest limiting qualified financial advisers to giving advice only on areas where they have expertise and then allowing an entirely separate profession to provide that advice with the same or likely less knowledge.

### Territorial scope

29. How can the FA Act better facilitate the provision of international financial advice to New Zealanders, without compromising consumer protection? Are there other changes that may be needed to aid this, beyond the technological options outlined in Chapter 4.2?

No comment

30. How can we better facilitate the export of New Zealand financial advice?

Using robo-advice to create first class online service.

### The regulation of brokers and custodians

31. Do you have any comments on the proposal to retain the current approach to regulating broking and custodial services?

Broking cost needs to be clearly disclosed to clients when an active approach to funds management is used. Custodial services need to be retained and encouraged given the security they provide to clients. Globally and in NZ had a custodial service been in place the issues borne by consumers would not have occurred. (Madoff, Ross Asset Management etc)

## Chapter 5 – Potential packages of options

32. What are the costs and benefits of the packages of options described in this chapter?

In addition to the impacts laid out in the option paper there must be some consideration given to the cost and resource required to regulate and enforce the proposed changes. With RFA's currently in such high numbers being largely unregulated it would take a lot of resource from the FMA to enforce a greater compliance requirement. But such a move is appropriate as our

financial advice market develops and the advice expectations and demands of NZ investors grows.

33. How effective is each package in addressing the barriers described in Chapter 3?  
The issue of consumers often being unwilling to pay for financial advice will not be addressed by these measures. This is an attitudinal and educational issue.

The concept of having financial advisers and expert financial advisers could have the same issues as the AFA RFA confusion. A better distinction would be adviser and agent.

34. What changes could be made to any of the packages to improve how its elements work together?  
Review the requirement to licence both advisers and businesses at the same time. Presently many firms are in effect regulated by way of DIMS and then they are regulated again with AFA's. RFA's or holding a QFE status.

35. Can you suggest any alternative packages of options that might work more effectively?  
Take the base option three package introduce a distinction between adviser and agent and remove the concept of business licencing on top of existing adviser compliance obligations.

## Chapter 6 – Misuse of the Financial Service Providers Register

36. Do you agree with our assessment of the pros and cons of the options to overcome misuse of the FSPR?  
No comment
37. What option or combination of options do you prefer and why? What are the costs and benefits?  
No comment
38. What are the potential risks and unintended consequences of the options above? How could these be mitigated?  
No comment
39. Would limiting public access to parts of the FSPR help reduce misuse?  
No comment

## Demographics

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3. Are you providing this submission:

As an individual

On behalf of an organisation

Sole practitioner AFA providing investment advice.

4. Please select if your submission contains confidential information:

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Reason: Enter text here.