

How to have your say

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.
- 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.

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 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?

Consumers need to be encouraged to consider insuring their property, health and lives. Accordingly, barriers to insurance broking should be minimalised.

We agree that the terminology in the legislation needs to be simplified. In the insurance sector, the personalised/class advice distinction is not helpful, and the title “insurance agent” or “insurance broker” would seem a suitable replacement title to RFA, as it is the title most widely recognised and appropriate for someone selling insurance policies.

While there is an element of advice in the insurance agency/broking process, “advisor” seems less than an ideal title in the insurance agent/broker context. “Salesperson” understates the insurance agent’s or broker’s advisory role – providing advice on the most suitable policy for the customers’ objectives within the range offered by the agent/broker.

There may be a place for an “independent insurance agent” title for brokers who can canvass a representative range of products from multiple underwriters to recommend a preferred underwriter, and who are paid a fee for the recommendation. But mostly, insurance agents will not be independent and will be involved in introducing and servicing clients for a single underwriter or small group of underwriters, who pay commission or a salary. An insurance agent should not be required to compare the suitability of other underwriter’s products, however, it may be appropriate for insurance brokers to be required to canvas a representative range of policies and advise on the suitability from within that range.

Introducing an obligation to “put the clients’ interests first” would not resolve churn issues. Churn should be addressed by a prohibition targeting its incidence; not by a universal “put the client’s interest first” obligation, which would have unintended implications, such as:

- requiring the market to be scoured for a better policy;
- fully rebating commissions making broking uneconomic;
- impractical engagements generally; and
- a heavy handed regulatory burden.

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

Insurance is a unique market and the terminology used in the financial adviser sector is not

always suitable to describe the role of insurance practitioners.

Insurance policies (that have no investment component) have distinctive characteristics which are not comparable to financial products; there is no risk of financial loss or an expectation of financial gain in the same way as there are with other financial products. Insurance policies are not transferable and the policyholder can stop paying premiums at any time.

Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?

Section 4.1

AIL supports removing the distinction between class and personalised advice (Option 1). Insurance will always have a personalised component as an insurance policy (by its very nature) is a personalised product, so a distinction on this basis is unhelpful.

Broadly, AIL does not support removing distinction based on product category (Option 2). Insurance has unique characteristics which are not comparable to financial products and insurance should be regulated separately from other financial products (at a lower level). AIL supports that insurance agents should be required to have the minimum qualification threshold to advise on the insurance policies they are selling.

Section 4.2

AIL supports allowing insurance advice to be provided online by a licenced entity (Option 1).

Section 4.3

AIL does not support extending ethical requirements to insurance agents (Option 1). The risk of hindsight assessments that policy exclusions should not have been accepted would be significant.

AIL supports clearly distinguishing between sales and advice where there are clear distinctions between the two concepts in the financial advice field, and removing the concept of a registered financial adviser (RFI). (Option 2) AIL suggest adopting new and more appropriate terminology to suit the insurance sector. “Insurance agent” or “independent insurance agent” (when acting for insurers) or “insurance broker” (when acting for the policyholder) would seem to be widely recognised and appropriate for someone selling insurance policies.

AIL supports having a limited suitability requirement for sales of insurance (Option 3). An insurance agent would be required to ensure the product being sold is suitable for the consumer, provided that the insurance agent is able to rely on the information provided by the consumer and is not responsible for investigating a never-ending list of possible needs or potential health issues in order to recommend a policy. This would provide assurance to the consumer that the product they are being sold is suitable for them and fit for purpose. However, an insurance agent acting for a particular insurer(s) would not be required to canvass the entire market to find the most suitable product for the consumer.

AIL does not support banning or restricting remuneration (Option 4). AIL generally supports the obligation to disclose when the insurance agent is receiving a commission; however, AIL considers that there is no added benefit to the consumer in disclosing the actual amount or percentage of the remuneration. This would cause an unnecessary administrative burden on the insurance agent and would take the emphasis away from the actual message of the disclosure (i.e. simply that incentives exist (if they do) to broker a policy).

Section 4.5

AIL does not support the requirement of entity licensing for insurance agents (Option 1).

Insurance is not a complex financial product and the costs to the business of licensing would outweigh the benefits.

AIL does also not support individual licensing (Option 2) for the same reasons as above.

AIL does support a registration requirement for insurance agents if they are not within a QFE type arrangement (Option 3).

Section 4.6

AIL does not support having the same disclosure requirements for all advisers (Option 1). Disclosure documents in the insurance sector should be tailored to address the specific characteristics and risks relevant to insurance.

AIL supports streamlining the disclosures, provided that the disclosures are specific for the insurance sector (Option 2).

Section 4.8

AIL supports having a portal with information for consumers on insurance agents (Option 1).

AIL also supports making changes to terminology to make it more consumer friendly (Option 2). However, terminology adopted for the financial adviser section is not necessarily suitable to describe the insurance sector.

Please see further details and comments below.

4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?
Enter text here.
5. Are there any other viable options? If so, please provide details.
Enter text here.

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?
AIL supports removing the distinction between class and personalised advice (Option 1). The distinction between class and personalised advice is artificial, both for advisers and from the point of view of consumer. Also, insurance will always have a personalised component so a distinction on this basis is unhelpful. The FAA should regulate independent advice to retail clients, whether this is personalised or otherwise, if the agent/broker is holding out that it is independent or providing advice on the range of policies in the market.
7. Should high-risk services be restricted to certain advisers? Why or why not?
Enter text here.
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?
Enter text here.

4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?
Enter text here.
10. How, if at all, should requirements differ between traditional and online financial advice?
Enter text here.
11. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?
Enter text here.

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?

AIL does not support expanding the obligation to "put the client first" to insurance agents. It would require an RFI or a sales person to do extensive research on the market to ensure that a particular insurance product is the best one for the client before concluding the sale. Such market research would be costly, and would go well beyond the commissions paid to insurance agents.

Instead, AIL supports having a limited suitability obligation whereby the insurance agent would need to ensure that the insurance product they are selling is suitable for the client and fit for purpose. The suitability assessment would not, however, require comparing the insurance product to other similar products on the market in order to advise whether the particular insurance product is the best one for the client.

Having a limited suitability obligation would also have the benefit of ensuring that the insurance agent is familiar with all the aspects of the products he/she is selling.

Consumer protection for sales is and can be regulated by other consumer legislation, such as the Consumer Guarantees Act and the Fair Trading Act 1986 (FTA). Purchasers of insurance products (which are not covered under the fair trading rules in Part 2 of the Financial Markets Conduct Act 2013) have the benefit of other legislation. The FTA prohibits conduct by salespeople that is liable to mislead the consumer as to the nature, characteristics, and suitability for a purpose of an insurance product and any unsubstantiated representations. Consumers have also certain cancellation rights in respect of any sale done by way of an uninvited direct sale.

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

In AIL's view "independence" distinguishes an insurance agent (or sales person) from an adviser.

Insurance agents should be required to (where relevant) clearly disclose that they are selling insurance products provided by only one insurer, and are not providing a recommendation based on a comparison between insurance policies available on the market (which would be advice).

This could be achieved by including an express inclusion in the list of activities which do not

constitute advice for:

“where a person makes a recommendation or gives an opinion about acquiring or disposing of (including refraining from acquiring or disposing of) a financial product where that statement is accompanied by a statement in the prescribed form”.

The prescribed statement (which also includes a disclosure regarding commission) could be framed along the following lines:

Warning

I am an insurance agent and I am not providing you with financial advice.

The law normally requires people who provide financial advice to comply with certain duties. These duties do not apply to me.

I am paid a commission from the insurer in respect of your insurance contract.

Ask questions, read all documents carefully, and seek independent financial advice before committing yourself.

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

AIL does not support a ban or restriction on commissions. Currently many RFIs are remunerated primarily by commission. In the absence of commissions, the number of insurance agents or brokers would necessarily decrease to the detriment of consumers.

New Zealand has an under-insurance problem which would be exacerbated if commission based sales were prohibited. Policyholders are reluctant to pay for advice, particularly in the financial services and insurance markets, and so the economic void caused by a ban on commissions/ bonus sales incentives would be filled by salaried employees who would be unable to sell competitor products and are likely to still be rewarded for performance in the form of higher salaries reflecting their past success. In other words, the prohibition would not achieve its purposes and would be likely to make matters worse.

The solution to concerns that insurance agents may be incentivised to sell unsuitable policies would be to punish any inappropriate behaviour directly and to ensure that the consumer is aware that the insurance agent is incentivised to make sales.

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?

Enter text here.

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?

Enter text here.

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?

Enter text here.

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

Enter text here.

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?

From a practical and legal perspective, a written disclosure is preferred. A verbal disclosure, although effective, is difficult to evidence.

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

AIL supports a uniform system of disclosure for all insurance agents however there would need to be a difference between disclosures by financial advisers (more detailed) and insurance agents (see our response to question 13 regarding the prescribed disclosure for an insurance agent).

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

While AIL supports the obligation to disclose commissions received by insurance agents, the disclosure requirement should not include details of the amount of the remuneration. In AIL's view, the disclosure that a commission is received by the insurance agent is sufficient to address any issues with conflicts of interest. AIL considers that there is no added benefit to the consumer in further disclosure, however this would cause an unnecessary administrative burden on the insurance agent and would take the emphasis away from the actual message of the disclosure (i.e. that the insurance agent is incentivised to encourage policy sales).

Please see the suggested wording for the prescribed disclosure in our response to question 13.

4.7 Dispute resolution

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

Enter text here.

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?

Enter text here.

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

Enter text here.

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)?

Enter text here.

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

Enter text here.

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'?

Enter text here.

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.

Enter text here.

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?

[Click here to enter text.](#)

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

Enter text here.

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?

Enter text here.

Chapter 5 – Potential packages of options

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

Enter text here.

33. How effective is each package in addressing the barriers described in Chapter 3?
Enter text here.
34. What changes could be made to any of the packages to improve how its elements work together?
Enter text here.
35. Can you suggest any alternative packages of options that might work more effectively?
Enter text here.

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?
Enter text here.
37. What option or combination of options do you prefer and why? What are the costs and benefits?
Enter text here.
38. What are the potential risks and unintended consequences of the options above? How could these be mitigated?
Enter text here.
39. Would limiting public access to parts of the FSPR help reduce misuse?
Enter text here.

Demographics

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3. Are you providing this submission:
 As an individual
 On behalf of an organisation

American Income Life Insurance Company (AIL) is a life insurance company licenced by the Reserve Bank as an insurer in New Zealand and registered as a financial service provider. AIL's

principal place of business is in Waco, Texas. AIL provides life and health insurance products to individuals.

AIL's insurance products are currently distributed [solely] by RFA's, which are independent contractors and not employed by AIL.

4. Please select if your submission contains confidential information:

I would like my submission (or specified parts of my submission) to be kept confidential, and attach my reasons for this for consideration by MBIE.

Reason: Enter text here.