

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.

Permission to reproduce

The copyright owner authorises reproduction of this work, in whole or in part, as long as no charge is being made for the supply of copies, and the integrity and attribution of the work as a publication of MBIE is not interfered with in any way.

Chapter 3 – Barriers to achieving the outcomes

1. Do you agree with the barriers outlined in the Options Paper? If not, why not?
Generally 'yes' however some additional ones are
 - a. clients need/want only limited advice but don't know that but at the moment they are meant to be the ones who stipulate the limitation. Better Disclosure for all Advisers & ability for an Adviser to express any limitations would be more suitable
 - b. Some discussion suggests specifying areas of Advice as a specialty however there are Advisers who have competency & skills in more than one area of advice
2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.
The misuse by some entities/Advisers of their power/influence position related to other transactions/services being provided and or client access to give an environment where they can make product sales that exclude any advice but which the client may view as having been given advice. Eg. Replacement of risk and Kiwisaver product by Banks without following the FMA Guidelines on Replacement Business

Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?
Option 3 is most likely to be successful but requires modifying further
4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?
No comment
5. Are there any other viable options? If so, please provide details.
No comment

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?
Every discussion around taking, amending, replacing or stopping a financial service product involves (by a large majority) options – be it a sale or a sale resulting from Advice. Therefore – other than in a strictly ‘execution only’ transaction – there is a sales/advice/persuasive element. The key is in the individual Adviser disclosing any limitations on their capacity as to who they represent or options they can provide or what they can advise on.
7. Should high-risk services be restricted to certain advisers? Why or why not?
Yes – there is a case for a graduated approach but the term ‘Expert Adviser’ is rubbish & not practical
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?
No comment

4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?
Any Robo Advice platform should have directly comparable standards and responsibilities for Advice provided as applicable to an individual Adviser.
10. How, if at all, should requirements differ between traditional and online financial advice?
Regulation should position individual, personalised advice from a qualified individual adviser as almost always superior to an algorithm driven robo advice platform. Online tools typically assume a level of knowledge or self needs analysis that clients do not necessarily possess.
11. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?
no comment

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?
All Advisers (incl advice platforms) should be held to the same standard
13. What would be some practical ways of distinguishing ‘sales’ and ‘advice’? What obligations should salespeople have?
See 3.2 and 4.1.6 Conceptually differentiating between sales & advice is easy to say but difficult to define.
14. If there was a ban or restriction on conflicted remuneration who and what should it cover?
Disclosure & management of conflict is the key not the existence of conflicted remuneration which exists in all industries.

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?

By providing sensible grandfathering on qualifications & a graduated implementation for existing Advisers. Otherwise the same situation as occurred with the introduction of AFA will occur and we will lose capacity to provide the NZ public with good quality, experienced & personalised advice

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?

Yes

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?

All individual Advisers should be on a centralised register & subject to common standards even if operating under any umbrella entity which itself may be registered

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

There is potential for Professional Bodies to play an active role within provision & monitoring of CPD requirements however no professional body should be able to become a monopoly provider in a given advice stream. The government would require Associations undertaking such a role to be able to demonstrate competence & skill along with a commercially sustainable business model

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?

A centralised, searchable Disclosure register for all individual Advisers (such as the Companies office)

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

The current RFA disclosure template has not met its objectives at all in allowing consumers to compare Advisers. A minimum templated requirement plus the ability to include supplementary disclosure is required for all Advisers. In theory that exists now but it is not used and it should be a requirement. Disclosure under the pre 2008 regulations was more informative to clients.

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

No comment

4.7 Dispute resolution

22. Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?
No
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?
Limits should be common
24. Should professional indemnity insurance apply to all financial service providers?
Absolutely yes

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)?
see 4.16.19
26. What terminology do you think would be more meaningful to consumers?
There should be two types of Financial Adviser across all advice streams & structures (i) A 'Financial representative' whose role & advice is limited by the nature of their employment contract or agency agreement(s) with suppliers (ii) 'Authorised Financial Adviser' with capacity to add one or more designated advice stream specialty

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'?
See 4.8.26 in respect of Financial Adviser. Types of Financial Adviser should not be defined by product types such as Cat 1 & Cat 2. There are too many contradictions of complex products that exist in Cat 2 products

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.
Financial Journalists often provide the same advice as a Financial Adviser does and we know that individual public take that as advice even though it is subject to a disclaimer. Similarly there are websites that use calculators & analysis to provide advice that are exempt as not for profit however if an individual adviser provides the same advice using the same formulae & rationale then they have individual responsibility – that does not seem fair.
Lawyers/Accountants have an exemption yet are not often well equipped by their professional education or training for the areas of personalised advice in some financial services. They should be subject to the same skills, diligence & competency if operating in these areas as

would apply if I was to seek to operate in their core areas.

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?

No comment

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?

Only comment is that there is a mismatch between the strict definition of a 'Broker' in the current regulations that is in conflict with the consumers view of the world. The use of the term Insurance Broker or Mortgage Broker are examples where public (& industry) use has defied the regulation in practise.

Chapter 5 – Potential packages of options

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

No comment

33. How effective is each package in addressing the barriers described in Chapter 3?

Option 3 should be the basis for the future with modification following further consultation with practising individual Advisers based on the submissions & feedback.

34. What changes could be made to any of the packages to improve how its elements work together?

Covered in a number of previous sections

35. Can you suggest any alternative packages of options that might work more effectively?

as above

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?

Yes

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?

Enter text here.

39. Would limiting public access to parts of the FSPR help reduce misuse?
No comment

Demographics

1. Name:

Andrew Kerr AFA
Managing Partner
Seneca Group (Insurance : Investment : Mortgages)

2. Contact details:

ark@senecagroup.co.nz

3. Are you providing this submission:

- As an individual
 On behalf of an organisation

(Describe the nature and size of the organisation here)

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.