

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.

The

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?
If the outcome that you are wanting to achieve is that consumers get access to qualified, knowledgeable advisers, who give good advice and act professionally, then the system is completely flawed. You capitulated when you allowed QFEs and RFAs. Now you are trying to fix the 'problem.' You are the problem because you created it! Why did you not simply set a standard that all persons associated with financial services would have to meet – if they cannot pass the exams or meet those standards, then they cannot work in the profession? Simple!
2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.
Nothing has changed – if this is what you are after except more compliance and fees to the FMA. A person can still be mowing lawns one week in New Zealand and the following week set themselves up as a 'Financial Adviser.' We must be the only country in the world that allows this! The FMA has not stopped unqualified advisers using the term RFA, so the public does not know the difference. What a joke!

Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?
4.4 – if we are to create a professional career for a financial adviser, then there must be minimum education standards and regular compliance. Those of us doing the role well are simply hamstrung by those cowboys who are unqualified and should not be near a customer. Change the entry requirements and up the standard – the rest will fall into place.
4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?
The cost to consumers now is that they are getting variable and often poor financial advice from unqualified and inexperienced people.
5. Are there any other viable options? If so, please provide details.

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Get every adviser who wants to work in the profession up to the level of an AFA. Don't reduce the standard! That is crazy!

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?
This is dangerous! When is it class advice and when is it personalised advice? I hear of RFAs selling KiwiSaver under Class advice. How can this be? This is exactly why the Financial Services Act was created – to protect consumers, especially investors, from unscrupulous or inexperienced advisers. It can only ever be personalised advice, otherwise it is NOT advice!
7. Should high-risk services be restricted to certain advisers? Why or why not?
Of course! The move towards DIMs is a step in the right direction. If you want to give advice on complicated financial products, you must be well qualified to do so and must be authorised to do so. Otherwise, there is no protection to the consumer. It is common sense!
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. If a client wants to consider themselves knowledgeable and therefore does not need advice i.e wants an execution only service, then they should be able to do so with a simple declaration being signed, indicating that no advice was wanted or has been offered, with the usual disclosures.

4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?
I think the whole concept is dangerous. Whilst technology can and is used by advisers to do their role, having a technology system with a robotised response is crazy! If people were the same, no problem, but they are not. You can never replace real people and professional advisers, just like you can never replace real doctors and judges! I think this is a cop out and simply a way for tech geeks to get in on the act and make money.
10. How, if at all, should requirements differ between traditional and online financial advice?
Use technology for communication and gathering information, but it should never replace actual conversations and questions which give insight and possible solutions.
11. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?
Serious disclosure that using this system is dangerous and does not replace advice from a qualified financial adviser.

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?
What a cop out – how can you have a financial services industry where only some of the advisers were required to place the consumer's interest first! We must be all insane! How is this going to change anything unless it is a cornerstone of the profession? If you are serious about protecting all consumers of financial services products (we are talking about people's financial lives here!) then surely an adviser has to act in their best interest – if not, whose

interest are they acting in? Monitor it by requiring all life insurance companies to report all churn and impose heavy penalties – it will soon stop it.

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

There is no such distinction! How can someone be sold a financial services product if it is not suitable for them. Go back to why you wrote the Act in the first place – financial protection from inexperienced or unscrupulous advisers. If the salesperson is not qualified to give advice, they must undertake education and reach the standard or get out of the industry. You are taking the profession back to where financial advisers are seen as low as used car sales people! Stop it!

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

What are you talking about? All advisers should be paid for their time, service and dedication from initial advice, on-going advice and service and completion of advice – claims etc. The issue is that we do not have a professional industry because it is watered down with QFEs and RFAs. This is why you are trying to solve this ‘problem.’ There should be no issues with remuneration, because it all should be disclosed and transparent. Consumers can then see if the adviser is simply lining their own pockets or acting in the client’s best interest. Audits will reveal if the adviser is doing this or not.

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?

Again, why are you trying to reduce the standards? If you are in the military, do you reduce the standards to allow the unfit or overweight soldier’s room, or do you work them until they meet the minimum requirements? If you work them, you then have a fit and competent army of professional soldiers to do the job. Why are we trying to attract unfit, incompetent and unscrupulous people to our industry? Great, encourage those who should not be here to leave. That is exactly what should be happening, because we need people who will do the right thing by the consumer, and who can prove that they are competent.

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?

Of course they should! Existing advisers should have to pass an AFA equivalent exam for their chosen competency and be subject to that field’s required standards. This will allow you to be a mortgage broker, investment adviser, insurance adviser, share market adviser etc. Discretion may be given to experience or other qualifications already held, but for someone new coming in, they should not be able to give advice without passing that minimum qualification and adhering to the code.

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 advisers should be accountable for their own advice, and should hold a relevant licence. Who pays the bill for the training or licence is irrelevant.

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

They are useful supportive bodies, but they should not replace the role of the FMA in regulating the industry and ensuring compliance. They are useful for education and training and should comply with a national framework for their chosen competency.

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?

Must be a written document which the client must sign to say that it has been explained to them. Can be on-line, as long as a copy is signed or an e-mail received saying that they understand the disclosure.

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

No. I think you need a common disclosure document for all competencies. For example, if you are a mortgage broker and an insurance adviser, then certain clauses disclosing information must be in your disclosure statement. But the document must be uniform like a Primary Disclosure statement

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

Get everyone to produce a Remuneration Disclosure Statement, which must be sent to the client and held on file.

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?

No comment. I think they all do a good job.

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

Of course!!!

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)?

Joint effort from all parties

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

Reference to the FSPR website with meaningful information should suffice

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'?

I am sure the public don't know the difference! You are either a qualified financial adviser or you are not?

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.

Yes, common situation "I don't contribute to KiwiSaver because my accountant said it was a waste of time." Other instances, "I don't want to invest in managed funds, because my accountant said that I am better off in term deposits for my long term future." I have had lawyers tell clients to go with another mortgage provider because they felt that they would get cheaper rates, without any relationship with the provider. I have had real estate agents convince a client to invest in property as opposed to managed funds because 'they cannot possibly lose on property!'

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?

I think that Financial Advice should only be given if the client is purchasing NZ products. Again their whole situation must be taken into account before recommendation is given. If they wish to have advice regarding overseas products, they should only receive advice on those persons suitably qualified to give that advice, whether they go to an adviser based overseas or someone in NZ who has sufficient experience to give suitable advice.

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

I think lets sort out advice in New Zealand before attempting to do anything else!

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?

No

Chapter 5 – Potential packages of options

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

Option 3 exists now! That is a vote for no change! The benefits to the consumer of having qualified, knowledgeable and competent advisers must be better protection with their financial affairs.

33. How effective is each package in addressing the barriers described in Chapter 3?
1 is what we have now and 3 is still the same. Until you get people suitably qualified, you are simply playing with the deck-chairs!
34. What changes could be made to any of the packages to improve how its elements work together?
Minimum entry requirements for anyone working in the financial services industry. Lift the standards for all. Judge competency by experience and education and insist on basic competency in their profession.
35. Can you suggest any alternative packages of options that might work more effectively?
See 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?
No comment
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

1. Name:
Redacted
2. Contact details:
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3. Are you providing this submission:
 As an individual
 On behalf of an organisation
(Describe the nature and size of the organisation here)

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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: **Redacted**