

# How to have your say

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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?  
Broadly speaking, yes I do. Without doubt, consumers find it hard to know where to go to find good advice. To be honest, advisers themselves don't understand where to direct clients to go sometimes. I specialise in investments and have done for 35 years. Where am I best to send clients for risk advice? By and large, risk advisers are commission driven, which means they are not really advisers at all, but salespeople
2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.  
If the public is to receive advice in a clear, concise and pleasant manner, then the industry needs to untangle the web of commission payments, bonuses, penalties for non-sales performance, free overseas trips overseas and other producer driven incentives. It is a real problem. I know a large number of QFE advisers and RFA's. They cannot break the grasp that the larger producers (or their employers) have upon them, as they themselves have families to support. The foxes are guarding the chicken coop. I think the relationship between the FMA and advisers should be of mutual cooperation and enquiry. This is threatened by bank and non-bank employers who merely regard the FMA (and the impending changes to the FAA) as a threat to their existence.

## Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?  
You need to eliminate commissions in all forms. Advisers need to be free to advise. Sometimes, advice means no sale at the end of the process. For advisers, they should be remunerated in a neutral manner, not incentivised. Clients need to know that the adviser in front of them has their best interests at heart and no pressure from a third party to twist the discussions into a sale. Have sales people by all means, but make sure the advice itself is unhindered and unfettered. Also, license advisers.

4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?

I think the present system should be simplified and all people that give any sort of financial advice, licensed. Example, my company insists on 3 separate disclosure statements. Only a handful of clients ever read them. Another example – one of the most valuable assets a client will ever own is Kiwisaver, yet very few advisers want to give Kiwisaver advice as there is “nothing in it for them.” This is a real shame as, properly advised, Kiwisaver can literally change people’s lives. Standardising disclosure and encouraging experienced advisers into their own businesses specialising in the giving of advice would be a positive step. As to cost, well it’s expensive right now

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

I am quite happy with Option 3 – but ban commissions. They are a millstone round the industry’s neck

#### 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?

Not best qualified to comment. All my advice is personalised wherever possible

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

High risk services should be provided by properly qualified advisers, not by salespeople who are biased. Thus anybody who is sales incentivised or commission remunerated should automatically be excluded

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?

Have a Government body doing all the licensing and regulating. Don’t put it in the hands of the industry or you won’t achieve change. All advisers to put under the same obligations as an AFA. Scrap RFE’s and QFE advisers. National Certificate L5 compulsory for all advisers. Comparison, when did we have a partially qualified doctor, or lawyer, or actuary?.

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

It must be possible to have a system where the public can talk to an adviser without the fear or threat of a sale being the only method of paying the adviser. Once a fee enters into the equation, payable by the client, suddenly the adviser sits on the same side of the desk as the client and the relationship is improved. It becomes a real partnership. Those who derive a sale from the outcome, or those who initiate a sales process need to be very clearly identified. Also, so does the \$ earnings figure the salesman earns from that particular sale, including qualification for bonuses etc. Each client needs to be given and sign off disclosure that the salesperson's purpose is to sell product of which advice might be a secondary consideration to the sale

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

Everybody. No commissions and no exceptions.

#### 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?

AFA standard for anybody who gives financial advice. The barrier to the industry is the lack of perceived professionalism and the sales aspect, which puts off young graduates.

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?

I prefer Option 3. One overriding rule for advisers. For sales people, there will be different requirements. I like the idea of advisers charging for their services and only salespeople being incentivised – this needs to be clearly defined under separate legislation

#### 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?

Online disclosure (or acknowledged hard copy) is fine, but it needs to be more standardised so clients can compare/understand disclosure more easily. Disclosure shouldn't be a multi-page marketing document which acts as a smoke screen. Shorten, simplify and standardise

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

Yes

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

Consider my disclosure statement. At present, there is a mixture of advice fees, portfolio service fees (%), bonuses, soft commissions. It's hopeless. I'm not sure even I understand it. Break it down. Advisers charge advice fees. Spell out the dollar amount and give estimate of exact fee. For salespeople, force actual \$ earnings, not a percentage. Percentages can be used to hide real \$ amounts, so bring the \$ amounts on to the table. Force the adviser/salesperson to disclose what they actually earn for the service, not necessarily the general overall charge

#### 4.7 Dispute resolution

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

Can't really comment – no experience

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?

To anybody who gives advice -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)?

Whilst there is so much self interest in the industry, the Government needs to be heavier handed. Only when neutrality is achieved can the govt hand over to industry professionals. There is still much cleaning up to do.

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

Distinguish on a public register those who are independent (and define what those mean) and those who are not. Even list their preferred areas of expertise and interest and their industry experience

#### 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.

Yes indeed. There are whole segments of the advisory industry offering “class” advice when clearly the service should be personal. I come across this all the time. Also, many so called advisers never read, study, improve, involve themselves, strive to excel – so CPD hunting is something of a joke

### ***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?

Not really thought about this.

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

As for 29 above

### ***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?

I had lunch with a broker today. In reality, he is an adviser, yet he hides behind a broker license. Anybody who gives financial advice should be caught up in the need to serve the public well

## **Chapter 5 – Potential packages of options**

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

I am shortly to open my own advisory firm. I can't identify the costs, or even the benefits accurately. What I know is that New Zealand needs advisers who act only for clients, especially around long term retirement planning and affordability in retirement. I can't not go out on my own – the spirit of the FMA's aims dictate that I do it. My conscience dictates nothing less. Wiser heads than mine will have to fathom the cost benefit analysis

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

I like Option 3, split the advice and sales role, then you start to get to the heart of the problem

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

1. Name:

Redacted

2. Contact details:

Redacted

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.

Redacted