

# 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.

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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?

The barriers to entry outlined are probably reasonable. However we have made comment on these below.

#### CONSUMERS - WHERE TO SEEK ADVICE

It is no more difficult for a member of the public to find a suitable solicitor or accountant than finding an adviser. Referral from clients, friends, family and other professional advisers is common. But the FSPR and the adviser space MUST be better formalised and publicised by government.

A regulatory body for advisers would help. This body would drive training, education, ethics, compliance – so we all have somewhere to go to ensure we are meeting our obligations

One designation for advisers would help with specialty as an addition for complex securities, DIMS, Kiwisaver, mortgages, fire & general insurance and life & disability insurance. A common and single form of disclosure and disclosure in the FSPR would be helpful.

#### CERTAIN TYPES OF ADVICE

As an AFA I am not prepared to waste my client's (and my) time and money fluffing up reports about investment to just comply with the Code – so I won't provide advice. I will however provide service without fee or commission (except for some acquired managed funds clients) on the basis of education to a client and presentation of options on which the client must make their own decisions. On my specialty (life and disability insurance) I do provide advice. The concept of buyer beware MUST not evaporate from common sense AND SHOULD BE A CORNERSTONE OF ALL COMMERCIAL LAW MAKING.

#### COMPETENCY

All advisers must have the same base qualification with specialty as mentioned above. Therefore the public should assume competence (of the adviser) on the same basis of choosing any other professional adviser. But let the customer choose and buyer beware.

Continuing education should be mandatory for all advisers – broad education on the law, obligations, process, compliance, their niche specialty and products on an annual basis should

be determined by the regulator on basics and the individual adviser on areas they deem important for upskilling.

#### CONFLICTS

All advisers should have the same disclosure. Dispense with primary and secondary disclosures. Just have one full disclosure for all advisers which spells out the basics and details of their specialty.

On the subject of commission and or fee setting I think the disclosure should include details of how the adviser earns a living – commission or fees. The disclosure should summaries this concisely and clearly. In the end this matter relies upon the adviser putting the interests of the client first and acting in an ethical manner.

I'm an AFA and I disclose, to an insurance client, that I am conflicted on matters of remuneration by disclosing my commission and by explaining the more premium I sell the more commission I make. But I add that I am obliged to put the client interests first.

As one of the owners in a small adviser business I see large organisations (QFE's) as fantastic marketers of our product base (life and disability insurance). And the poor job they do of selling their wares only offers the adviser community tremendous opportunities to replace their sale with better advice (in the first instance) and better and more cost effective policies (in the second instance).

#### ADVICE

What we have now is unsatisfactory.

Lets keep this simple – there should be full advice or limited advice irrespective of the needs of the client.

Advice precedes a sale in the normal course of business – so the distinction between advice and sales becomes a red herring. Besides the disclosure statement will spell it out.

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

#### THE ADVISER

The public don't know when they are receiving advice in a large organisation or QFE setting (a bank teller plugging life insurance or Kiwisaver). Therefore designation of a "financial adviser" should rest with the individual and NOT QFE's. By having advice emanating from the individual adviser then there will be no need for QFE's and Robo advice does not amount to advice. A large organisation like a bank will clearly have to protect their brand in any event and adviser disclosure will close the loop.

#### ETHICS

Ethical obligations will fall equally on all advisers.

#### COMPLIANCE

Code standards, a helpful education oriented industry body (not policemen), a dovetailed regulator (FMA) with obligations to assist advisers at the top of the cliff (not waiting only at the bottom for those that breach the rules).

Therefore I think licensing will only be another unnecessary layer of expensive compliance. But large organisations with brands to protect may need to consider how to control their employee advisers with their employment contracts, training etc.

## Chapter 4 – Discrete elements

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

Now that the FAA is in place be careful NOT to make big changes. Make small changes when necessary and beware unintended consequences.

None of the 3 options as presented keep the process simple enough and I have made comment on this in 5 below.

A simplified and modified version of Option 1 is my preference at this point. Reasons:

- Lets be careful and move carefully with change
- One class of adviser (base level competence and specialty)
- Advice or Limited advice
- No licencing (all advisers have met the required standard (base & specialty))

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

Simplicity as set out above is the key – as this would reduce costs to all and make the advice space more easily understood by the public.

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

The consumer, the adviser, the regulator and organisations dealing with redress are the key groups with the consumer as the most important.

A more informed and confident consumer can only be developed with better education for the individual consumer at home and in our education system. An improvement in education will take a great deal of time and is likely to be generational.

### 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?

simplicity

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

Specialty advisers makes 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, as many customers with large sums to invest (\$1 million plus) would prefer to receive the personalised advice provided to a retail client and would be prepared to pay for it. This is positive for retail advisers.

### 4.2 Advice through technological channels

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

There is no place for robo advice. A good example is Doctor Google where self diagnosis of an ailment can lead to ignorant conclusions.

If the public want to buy insurance products or mortgages or complex securities over the internet then BUYER BEWARE. All NZ based businesses doing this should be required to have a banner "YOU ARE NOT RECEIVING ADVICE".

Advice must be from a natural person or it's simply information. With the prevalence of the internet the information available there will assist consumers in upskilling their knowledge and that coupled with advice from an adviser is likely to be commonplace going forward.

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

There should be no difference but we do not support online advice (refer above)

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

We do not support robo advice so no other changes need to be made

### 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 obligation is to utilise care, diligence and skill in providing fit for purpose advice . No change required.

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

Advice precedes a sale in our business (unless it's a limited advice transaction). If you are selling a financial product then the sale must be supported by the advice process in all cases except limited advice.

There should be no distinction between sale and advice – they go hand in hand (it's the same when you seek advice on which lawn mower to buy – if the customer wants to cut his hedge , don't sell him a lawnmower - get advice and buyer beware.

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

My business relies on commission income. A ban or restriction on commission income would have serious implications on the viability of my business and it's capital value. Like all businesses adviser businesses have significant and ongoing costs.

A legally imposed restriction on income could result in many adviser businesses being unable to meet their ongoing expenses and therefore having to exit the industry. We are totally opposed to this option for that reason.

### 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?

As an AFA and a CA – the education requirement is burdensome and expensive. However quality education will be a necessary factor in our industry going forward and should be designed to assist in building consumer confidence in advisers.

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?

Base qualification with additional specialty qualification to suit the product set.

#### 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?

One body for advisers would be helpful so long as it doesn't end up like the ICANZ which appears to me to be expensive and offers me no value. A combination of PAA, IFA, FMA, CLU and the like maybe worthy of consideration.

#### 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?

Written disclosure in one format only available online and at the FSPR. Simple and clear.

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?

The consumer does not need vast detail here – just simple practical disclosure.

RFA's resist disclosure of commissions. However my own experience as an AFA has led me to believe that disclosure of commission is of little moment to the consumer. In fact I have wondered even at the merit in the disclosure as it doesn't seem to influence a consumer at all.

If we have to disclose income arrangements going forward it will need to be brief and to the point. Here is our suggestion - Fees – set out how you charge in less than 3 lines. Commissions – set out the range of commissions for up front and trails. It should be noted that significant and ongoing costs exist in adviser businesses.

#### 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)?

See above – and buyer beware. There are plenty of poor quality lawyers and accountants. The internet (with appropriate searches) will list hundreds of advisers.

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’?

One PERSONAL designation and your specialty eg Doctor, Skin Specialist or Financial Adviser, Mortgage and Risk Specialist

##### ***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.

No idea

##### ***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

1. Name:  
Tom Fox, Canopy Group
2. Contact details:  
**Redacted** Enter your email address, or other contact details here.
3. Are you providing this submission:  
 As an individual  
 On behalf of an organisation  
Canopy Group has 7 advisers and a support team of 4



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.

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