

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.

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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?
Yes mostly I do, but the fact remains at the stroke of a pen all advisors were deemed incompetent to give advice, and they had to prove competency by writing cheques and passing some papers that never improved knowledge or consumer protection. After 35 years in the industry, being a budget advisor since 1996, a Business mentor with BMNZ since 2000 and having 35 year industry experience, because I don't wish to write out bigger cheques and increase useless processes I am deemed incompetent to give some advice. I now have the level 5 cert, but it didn't increase my knowledge or my ability to show Care, Skill and Diligence (CSD) for my clients.
2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.
The biggest one to me is the pushing square pegs in round holes! By this I mean forcing finance brokers, of which I am one into doing a 6 step process with clients which clearly is only appropriate to financial planners. The legislation of various classes also misses the mark by making Kiwi saver complex advice!

Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?
Option 1, lets stick with the Kiss principle, but retain the requirement that all advisors maintain CSD when dealing with their clients
4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?
Clearly the costs/benefits should come after ensuring the client gets excellent advice. My observation was the Cowboys (in my eye anyway) were some of the first to get AFA status. The extra time and costs placed on me by the FSP legislation has me placing more focus on income generation than on working for my clients at minimal or no cost.

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

I believe, share brokers and financial planners need to be highly regulated, as it was their performance with finance companies which prompted this legislation in the first place. I believe each industry association produces a competency test (that get signed off by FMA or similar that test knowledge and finds knowledge gaps that need to be upskilled in
The requirement to complete professional development is great, but without a frame work of what to complete, update or upskill, we will find this becomes mere lip service

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?

I don't believe the clients would be any worse off than before legislation was in-acted, the requirement for an advisor to carryout CSD not be relaxed though.

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

Yes, as long as they are high risk, i.e. taking client funds and investing them but not kiwi saver.

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?

I don't think kiwis have the financial literacy to be able to make an informed decision on opting in or out yet. Advisors risk should be real and in the for front of mind when dealing with clients. We do have PI cover and also forced to belong to a disputes body.

4.2 Advice through technological channels

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

Advice platform used should make no difference to ethical and delivery of CSD requirements. Clients don't always fully disclose their situation which can make providing accurate advice difficult.

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

The same CSD should apply to all advice given.

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 are always going to have dishonest people in our midst, and legislating to lowest point, makes everything more bureaucratic and expensive, both in time and money. would it not be better to ensuring everyone is above a standard that is industry agreed?

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?

To an extent full disclosure should be made of commissions from the various providers, but at the same time, clients obligations and expectations should be as well.

We have to deal with lack of trust, but also the clients unwillingness to pay a reasonable fee for unbiased advice with a client focused best outcome. I feel the client is best placed to monitor and be given a vehicle to pursue enforcement. Maybe the complaints vehicle needs more

promotion.

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

I think the first step would be to place a greater differentiation on investment and those seeking finance. History tells us it is the investment area where people have suffered the greatest loss, which even the banks have contributed too.

Surely empowering the client makes the most sense.

If every recommendation covered what was being suggested, cost to client and financial reward to the advisor, then the client actually can make a fully informed decision. The penalty would be for nondisclosure

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

If full disclosure (as covered in 13), then the client makes an informed decision on what they wish to choose and are informed of what the advisor receives as commission

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?

I believe the professional bodies, together with product providers (Banks & Insurance companies etc) and FMA should ensure a qualification structure that can be progressed through.

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 absolutely minimum entry requirements should be adopted. ANZ has (or use to have) a test for advisers who wish to become accredited business lending introducers to them. It wouldn't take to much to have the lenders come up with something for the Financial Lending advisers.

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, period, should adhere to client first, CSD principals. Legislating competent honest advisors accomplishes nothing, other than increase cost and compliance. Legislation should focus on non compliance, not on straight jacketing process, arse covering actions.

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

To have any credibility, the advisors should be categorised something along these lines. Lending arrangers, Insurance arrangers and investment arrangers. Each of the professional bodies should be deemed to monitor compliance with accepted practice etc and have powers to

enforce, by expelling, retraining, restoration for loss and imposing penalty. Having multiple industry associations can lead to jumping so what one actions means the others have to be informed and respect to bar any jumping. The associations, or more to the point, its members have the greatest investment and the most to lose from industry cowboys so they should be provided with power of oversight.

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?
Whatever is most appropriate to the client should be used. An acknowledgement should always be obtained, whichever way is used. Verbal would be the most open to dispute though. .
20. Would a common disclosure document for all advisers work in practice?
A templated disclosure document would make sense but needs to be informative of each advisors uniqueness and experiences and ability to provide CSD that is required.
21. How could remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?
Easy, put it in dollar terms, for upfront and ongoing.

4.7 Dispute resolution

22. Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?
I don't believe so, poor outcomes are due to failure of "client first" and applying CSD to the service provided.
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?
Creating dispute resolution schemes, has just added another cost, with no added benefit, plus the basis of this question. The disputes tribunal could've sorted the disputes as already in existence and proving useful.
24. Should professional indemnity insurance apply to all financial service providers?
This has added millions to advisors costs, but how much has been paid out. Perhaps all these funds could be paid into a central fund that could ultimately be self funding. So I guess the answer is yes. Surely the object is to protect the client.

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)?
Where do clients look now? Word of mouth is probably the greatest source of business for advisors. The product providers perhaps should fund this advertising and promotion of where to look.
26. What terminology do you think would be more meaningful to consumers?
As it stands, Financial Advisor means not much to clients, registered and authorised even less. Everyone knew what a mortgage or insurance broker did. Not sure why new labels were introduced? Perhaps adding Lending, Insurance, Investment into the terminology would help

clarify what was being provided. Do away with Authorised and Registered, as this only confuses people. If authorised was cheaper than registered I would apply today. It amuses me I suddenly become more intelligent too

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'?
- Yes should be expanded for each area, as mentioned previously, Lending, Insurance and Investment should be added.

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.
- It wouldn't appear to have as I don't recall any media coverage to suggest an issue.

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 guess that NZ law applies to protect anyone, anywhere from poor advice when offered out of NZ based persons, or businesses.
30. How can we better facilitate the export of New Zealand financial advice?
- By making it simple, accurate, reliable and provided by professionals bound to put clients first and providing CSD advise

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 believe this is working, but outside of my area of knowledge.

Chapter 5 – Potential packages of options

32. What are the costs and benefits of the packages of options described in this chapter?
- Not enough information provided to answer this. The 3 options still miss the mark though.
33. How effective is each package in addressing the barriers described in Chapter 3?
- very poor in my opinion.
34. What changes could be made to any of the packages to improve how its elements work together?

See my comments though out this submission.

35. Can you suggest any alternative packages of options that might work more effectively?
Yes I have in above replies

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, offshore people/businesses should not be allowed to register.
37. What option or combination of options do you prefer and why? What are the costs and benefits?
Option 3 a very strong connection in not being based in NZ should be required.
38. What are the potential risks and unintended consequences of the options above? How could these be mitigated?
The greater risk is to NZ reputation if nothing is done, NZ doesn't benefit from international service providers registering on our FSPR now.
39. Would limiting public access to parts of the FSPR help reduce misuse?
Not sure.

Demographics

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