

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

## Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?  
Enter text here.
4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?  
Enter text here.
5. Are there any other viable options? If so, please provide details.  
Enter text here.

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

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?

Enter text here.

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

Enter text here.

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

Enter text here.

## 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?

Enter text here.

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?

Enter text here.

## 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?

We recommend the pre sale written disclosure per Package 2 for all advisers, and ongoing simplified disclosure per Package 1 on Home Page of their websites (with links) or in writing annually on anniversary of service / product sale (e.g. where they don't have websites), and on public display in office. The simplified disclosure (upfront writing, website, public display) must include disclosure of complaints process and external dispute resolution scheme so that consumers know what to do if things go wrong at any time. The initial disclosures are often discarded or forgotten when things go wrong, usually after initial sale.

We believe it is important the FSPR is maintained as a public register that consumers can rely upon for validity / currency of information. Therefore the Companies Office need to resource appropriately- e.g. ability to monitor websites / seek evidence of currency. Perhaps the professional associations could assist in this if resources are an issue. Apart from inherent disincentives such as reputational, there are ways to overcome perceived conflicts of interest of associations in any licensing or monitoring role.

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

Yes. It is important for the user-the consumer-to be familiar with requirements and expectations. One document that provided for all possibilities with ability to "delete clause as applicable"

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

Consumers should know the cost of what they are paying for-be it independent advice, fee for sale of own product. The present scenario of not disclosing the amount of commission lacks transparency and leads to distrust of the adviser /service provider. Not helpful to the underpinning purpose of the regime-to improve consumers' confidence in financial providers. What have advisers got to fear by disclosing if they are providing value? It is part of being a professional. The disclosure should be pre-sale –so that consumers can make truly informed decisions.

#### 4.7 Dispute resolution

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

We can find no evidence that multiple schemes have led to poor outcomes for consumers. The regime has brought about an avenue for redress for consumers' issues with providers that did not exist previously, so consumers can only be better off. This scheme believes that multiple schemes have led to lower costs for providers, therefore no issue about having to pass on costs to consumers. Customer (consumer) satisfaction is a Key Performance Indicator for the scheme which means "customer focus" resulting in good (fair) outcomes for all parties to a dispute, including providers. The effect of competition is avoidance of monopolistic complacency and

overhead, which anecdotally exists elsewhere.

This scheme (and others) publishes reports, case studies and decisions of resolved disputes to help consumers, providers, regulators and policy makers understand and calibrate appropriate conduct and expectations around the provision of a financial service in principles based legislation. Multiple schemes bring a breadth of experience, knowledge and perspective that may not be available under one scheme.

However cases numbers are low, likely due to low consumer awareness, largely brought about by poor promotion by providers. This scheme recommends that a specific requirement be added to the FSP Act for providers to promote and make their complaints process and dispute resolution scheme accessible. This requirement is in the schemes' rules, but they do not have the "teeth" of the peak legislation in which the requirement is presently rather obtuse.

Additionally, this scheme is an advocate for one 0800 "fronting" all schemes which could be funded by an independent body or central government or through member fees. There is little margin in membership fees (because of competition), for the schemes to resource an 0800 or promote awareness in mass media, or any more than they are doing now.

Consumer access to redress (and confidence) and systemic issue reporting would be improved significantly if the messaging were for consumers to direct initial complaint enquiry to the 0800 / schemes, who would "triage" back to the provider to try for early resolution between themselves. We would guess that the schemes see 2 out of 100 issues presently and are arguably not as effective as they could be with more in-depth capturing of data.

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?

This scheme believes that the processes among the schemes are converging toward a world class early resolution model described above. In summary, case managed from initial enquiry, through the providers complaint process for early resolution, then (if necessary) through the schemes' formal dispute process-early resolution (facilitation conciliation) to adjudication if necessary.

The schemes enjoy regular and effective collaboration around rules, processes, systemic issues and promoting consumer awareness. Remedies / decisions are discussed but there is no assurance of total consistency as the adjudicators consider the merits of each case and are not bound by precedent. The timeframes to resolution are consistent among schemes.

The schemes' existing rules are almost identical. This scheme is to change its interpretation of application of the \$200,000 threshold and the special expenses to align with the other schemes.

The schemes have agreed to align their customer /consumer satisfaction surveys and we find high satisfaction where we take on the case at the initial enquiry. All schemes publish case studies, and this scheme at least, some full decisions and position statements.

Perhaps another option could be for the schemes to submit a joint report quarterly.

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

Yes. It is unlikely the relatively low cost of P I insurance would be noticed if advisers passed on any fee increase. While not covering every situation P I insurance could mean an increase in consumer confidence for the likelihood of receiving compensation for any loss. In turn this will enhance the credibility of the provider. Such insurance should also cover the cost of dispute resolution fees. In the absence of P I insurance (for example for offshore owned providers) it is recommended a bond to be lodged with the dispute resolution scheme, or Financial Markets Authority.

## 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)?

Enter text here.

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'?

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.

Enter text here.

##### ***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?

With Package 1, the benefits to consumers (no cost) and advisers far outweigh the costs to advisers and entities, many of who would benefit from the ability to provide needed robo – advice( online advice) . Consumers awareness to the existence of independent advice -albeit robo advice, would increase significantly. So too awareness of complaints processes and disputes schemes as they promote the service and credibility of the platform. Robo advice (which is available already from offshore) needs to be enabled, legitimised and regulated for New Zealand providers.

At any rate the cost to advisers would be very small as most changes (to disclosure documents) could be done electronically. There will be a small cost to the government to change legislation. Simple universal disclosure and revelations of remuneration would increase consumer confidence and ultimately the credibility, professionalism and robustness of adviser /provider businesses.

Package 2 , with increased competency requirements / education does impose a greater cost on advisers, but necessary to be considered professionals-ultimately benefit the sector and their businesses, as well as consumers.

We have concerns about licencing all entities as many, if not the majority of sole trader advisers will be operating entities. We endorse the suggestion of licensing entities to enable robo advice, but the cost of effectively licensing all advisers would be prohibitive for them and government, resulting in another unwanted exodus of advisers from the sector and consumers being left with fewer options for independent advice when they need it. Large providers, e.g banks would be the only ones to benefit

Little cost is envisaged to advisers in implementing Package 3, and the benefit to consumers (no cost) is improving transparency.

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

Overall, well.

Barrier 1. "Hard for consumers to know where to seek financial advice from".

Knowledge will increase incrementally with the introduction of each package. For example the distinction between sales and independent advice won't really become apparent until Package 3. Robo advice (Package 1) will increase awareness about advice generally as providers promote it.

Barrier 2. "Certain types of advice aren't being provided."

Package 2 will address the concerning issue of providing simple advice to the wall of KiwiSaver maturities.

Barrier 3. "Consumers don't always understand the limitations of different types of advice".

This will become manifest incrementally from Package 1-robo advice will increase awareness of its limitation with independence and give pause to question other types of advice sales v independent, before the introduction of Package 3.

Barrier 4. "Certain conflicts of interest may be leading to suboptimal outcomes for consumers"

The simple disclosure of Package 1 will address conflicts of interest: consumers' interests, specifying conflicts of interest, limitations of service.

Barrier 5. "Consumers may be receiving advice from people without the right knowledge, skills and competency levels". Package 3 addresses this need.

Barrier 6. (new) We would suggest the low awareness of complaints processes and dispute resolution are another barrier to achieving the outcomes, particularly "consumers have access to effective redress". Suggested remedies are outlined above.

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

More needs to be made of ability to complain and seek redress for issues when things go wrong (see Barrier 6 above). As suggested 4.6.19 elevate specific requirement in FSP Act for providers' compliance to promote and make accessible their complaints process and dispute resolution scheme. Disclosure of the complaints process / dispute resolution scheme needs to be in the simplified and ongoing online / website disclosure. Little cost to adviser, no cost and significant benefits to consumer confidence and access to redress.

We are not comfortable with licensing sole trader advisers as it will drive many from the sector and leave consumers without independent advice.

35. Can you suggest any alternative packages of options that might work more effectively?  
Overall we consider the packages to be well considered and appropriate

## 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:  
Stuart Ayres (immediate past Scheme Director) and Jennifer Mahony, Scheme Director for Financial Dispute Resolution Scheme.
2. Contact details:  
Redacted
3. Are you providing this submission:  
  
On behalf of an organisation  
  
FairWay Resolution Limited, owners and operators of the Financial Dispute Resolution Scheme)
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: N/A