

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.

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.

Permission to reproduce

The copyright owner authorises reproduction of this work, in whole or in part, as long as no charge is being made for the supply of copies, and the integrity and attribution of the work as a publication of MBIE is not interfered with in any way.

Chapter 3 – Barriers to achieving the outcomes

1. Do you agree with the barriers outlined in the Options Paper? If not, why not?
Yes
2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.
No

Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?
Option 1 - Removing the distinction between personalised and class advice. There is significant confusion as to where the line between the two is. For example, an Adviser giving class advice may be asked a question about a product and be given personal information from the client in the process. It is not clear as to when class advice needs to be converted into a personalised service.

Option 2 - Removing any distinction based on category. This distinction unnecessarily complicates the system. We agree that the requirement should be that advisers can only provide advice within their area of competence.

Option 4 - Requiring a client to opt in before being considered wholesale. This would address any lack of consumer understanding of the implications of being classified as wholesale.
4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?
Fundamentally, these options would benefit all stakeholders.
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?
From our perspective, it would improve access significantly.
7. Should high-risk services be restricted to certain advisers? Why or why not?
High risk services should not be restricted to a certain category of adviser, but rather to those who are competent to deliver them. This would re-introduce unnecessary complexity rather than reducing it.
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?
These platforms should have the same accountability as financial advisers.
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?
If these platforms are to have the same levels of accountability as financial advisers, FMG prefers Option 2 as it gives the consumer a choice to proceed with pure robo advice or where the robo advice has raised issues for them they have the option of getting advice from an 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?
In principle we agree that there should be an obligation to put the consumers' interest first.
13. What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?
Overall, the distinction between Salespeople and Financial Adviser seems sensible and workable for short-tail products. However, the one area that causes us concern is how this distinction will play out in the life and health insurance sectors (long tail /non-cancellable products) in relation to ethical obligations if there is not a universal requirement to put the client's interest first.

As was identified in the initial Discussion Paper, replacement business or churn is real issue for the life insurance industry. This industry operates with extremely high-front commissions and low renewal commissions. The behaviour this drives is that once the claw-back period has expired, advisers target existing business and replace it with a new provider to reap the benefits of further higher up-front commissions.

In the vast majority of cases, this practice is, without a doubt, not in the best interest of the client. Underwriting terms will get more restrictive as a client ages and as time passes they may have new health issues that were not present when they took out their first policy. Consequently the terms and exclusions invariably get worse over time.

Our concern is that in Package 3 the ethical requirements around replacement life products would be different depending on whether the adviser was only able to offer one provider's product or multiple providers' products. In the former there would be no requirement to act in the client's best interest; in the latter there would not yet the risk to the client is the same. We don't believe that 'product suitability' will address this issue as the new product itself may be appropriate if the client didn't already have existing cover.

Perhaps one way to address this issue if there is not a universal requirement to act in the client's best interest is for Salespeople is to set the ethical obligation according to the tail of the product or if client would not be able to obtain the same product on the same terms in the future. Regardless of the fact they are only offering one providers' product, if the product falls into the aforesaid categories they must put the consumer's interest first.

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

The issue of churn in the life insurance industry could be addressed by capping up-front commissions with higher renewal commissions. This would drive persistency of cover and focus the adviser on servicing the existing book rather than trying to replace it.

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?

The financial services industry is far too big to set minimum competency requirements across the board. Competency standards need to be well targeted and the best way to set those through the licensing process.

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?

As indicated in the Options paper, all advisers should be subject to a principles-based competency requirement to ensure they are competent to provide their services which would be best addressed through the licensing process.

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?

The current QFE model is working very well and should be retained in the form of entity licensing. From FMG's perspective, compliance costs are significantly lower than they would be if Advisers were regulated directly. We also believe it has achieved its goals in terms of consumer protection because it is the QFE's obligation and consequently it becomes an organisational focus. Further, generally speaking organisations are better resourced than individual Advisers to undertake activities related to training and process improvement which

ultimately enhance consumer protection.

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?

A short verbal disclosure followed with a more comprehensive Disclosure statement.

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

The level of disclosure needs to be relevant to the services being provided. While a base disclosure document that is consistent across the industry would work (as is the case now for QFE Disclosure Statements), there would need additional disclosure depending on the services provided.

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

Enter text here.

4.7 Dispute resolution

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

There is a risk that without consistency across schemes that some Schemes could be targeting participants to join as they are seen to have softer rulings for participants which could be at the detriment to 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?

Yes there should be a level of consistency across schemes to ensure participants do not switch providers to one that is seen as softer on participants and therefore harsher on consumers.

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

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)?

Enter text here.

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

We agree with the proposal set out in Option 2.

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'?

No

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.

Not that we are aware of.

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?
[Package 1 is so close to the status quo that the benefits of changing from the current regime are negligible.](#)

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

[Package 3 is the most effective followed by Package 2.](#)

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

[Overall, FMG favours Package 3 subject to our comments in paragraph 13 that a product suitability requirement is not appropriate for long tail products.](#)

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?
Yes.
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:
Lisa Murray on behalf of FMG
2. Contact details:
Redacted
3. Are you providing this submission:
 As an individual
 On behalf of an organisation
Mutual insurance association
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: Enter text here.