

# 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](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.

## 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?  
Agree but to a limited extent. Some barriers are overstated there are very good examples of where to get good basic advice from such as “Sorted”, Mary Holms weekly column and the internet in general . If the FSPR was to be a source of information then it should never have been done via the company’s office and the sooner a proper register managed by people who have some knowledge of the financial advice industry the better. As for consumers receiving advice from people without adequate knowledge, competency and skills levels you have omitted the major culprit QFE advisers. From my own personal knowledge of the industry participants ie AFAs, RFAs and QFE’s it is only the latter that is a problem.(Note I have worked in all areas for a minimum of 10 years in each and know what each culture is all about). The Banking (or Bank assurance) industry has a lot to answer for. The banking sector is a very large and extremely well organised lobby group. Collectively they have three to four times as many “advisers” as the rest of the industry put together and so it is only natural that MBIE would carefully consider their views. However, in my opinion it is critical to the functioning of an efficient insurance market that the banks’ advice to MBIE not be given undue weight, particularly in view of the fact that many of their products are inferior and their advisers less well trained and less experienced than other advisers. The fact the banks often continue to offer inferior products is an indication of what could happen if they became dominant in the industry.
2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.  
Yes the providers of Kiwisaver should be compelled by the fact that they are allowed to participate in this hugely profitable area, to commit a larger monetary contribution to Investor Education. This could be a certain number of basis points from the total funds under management. The Fund Manager could elect to utilise this to pay for public education, obviously audited by the regulator, or contract this out by paying the additional revenue share to advisers who can demonstrate that they are utilising the funds for education of the public. Currently advisers don’t see the value in Kiwisaver advice so make it more attractive.

## Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?
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?  
The distinction between “class” and “personalised” advice is simply not monitored rigorously and lacks guidance from the regulator; therefore there is a tendency for misunderstanding. The rules are too muddled and murky so advisers err on the side of caution and as a result often don’t give advice on products like Kiwisaver as they are too scared they will get it wrong (this applies mainly to RFAs). It is only Kiwisaver where this is a problem for other advice in other product areas it just doesn’t create any problems.
7. Should high-risk services be restricted to certain advisers? Why or why not?  
Of course there is a need for this as without it we’d go back to the pre regulatory times where any one could give advice - surely this is not a serious question?
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?  
This is probably the best idea so far. There are thousands of clients out there that are currently as by the definitions in the acts etc regarded as wholesale and I would wager that 90% have not opted out of being wholesale and have no conscious understanding that they should do to receive better protection as a “retail” customer. Of the hundreds of files I have audited where the person or entity is “wholesale” there has not been one instance of anything in writing on the file stating they have opted out of wholesale. Conversely there are quite a number of advisers who have wholesale clients and they class them as such but also do not have on file the pre requisite paperwork for compliance. SO simplify things so that those who want to be “wholesale” can opt in and in the absence of this they are treated as “retail” with all the requirements that a retail customer should have.

### 4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?  
No comment
10. How, if at all, should requirements differ between traditional and online financial advice?  
There should be no differential advice is advice and the tests should be the same. If you make the requirements for online advice any lessor then you’ll get an imbalance based on that. The

playing field should be level for all advice regardless of the medium used to deliver it.

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

This should not be limited to QFE's as implied on page 44. On page 47 it indicates that RFAs could provide Rabo-advice but then on page 50 you finally state that AFAs could provide Rabo-advice. All other reference where you mention QFEs the wording is "would" be able – why the difference for RFAs and AFAs where the word "could" is used? There seems to be some confusion about who would or could provide Rabo advice which doesn't help anyone to understand exactly what is being proposed in the option.

### 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 to ensure the product was suitable for the client's needs and if the advice was restricted in any way. There needs to be clear disclosure that this is the best option we can offer but as I only provide advice on XXXXX there may well be a better offerings provided by another provider/adviser. All advisers should provide more detailed disclosure including any limitations and or restrictions on products they are able to advise on.

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

QFE advisers should not be allowed to offer 'advice' unless their offering includes products for other providers.

Salespeople should also have to disclose remuneration including incentives for achieving targets etc and also suitable disclosure as mentioned in 12 above.

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

All advisers should be banned from receiving any soft dollar incentives excluding training provided by a product provider but including any costs to attend such training. Advisers attending any form of conference should not have costs paid for by any third party other than their employer.

### 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?

All new advisers (those with less than 5 years' experience) should be required to complete an appropriate level 4 qualification in their selected area of advice (separate areas of competency for Mortgage Brokers, General Insurance Brokers, Risk (Life) Advisers, and Kiwisaver Advisers. Investment advisers remain at the same level as now. All other advisers with 5+ years' experience should be tested. No grandfathering or exemptions and no alternative qualification credits unless they were obtained less than 5 yrs ago unless the applicant can demonstrate they have utilised the skills/knowledge and maintained the knowledge via acceptable continuing professional development that can be verified. .

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?

See comments above.

I also take issue with the comment on page 27 that RFAs don't have to meet minimum competency standards. Under section 33 all advisers have to exercise due care, diligence and skill that a reasonable adviser would exercise in the same situation. This surely is a default competency standard for RFAs.

Also on page 27 at the bottom you state that higher entry requirements may cause some advisers to leave and impose additional cost – again I disagree. Advisers who would leave are probably the ones that should, as they currently don't do any meaningful continuing professional development and for them it would cost time and perhaps money, so good riddance. They are not worthy of being advisers they are salespeople pushing product not advice. The advisers that stay despite the changes already do quite a lot of professional development so there would be no additional cost for them as they are already complying.

#### 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?

Entity licencing could encourage some advisers to develop from 1 man band businesses to larger groups that would be able to share the responsibilities, costs, achieve economies of scale and assist with business succession from older to younger advisers. If there were additional compliance obligations for "entity licencing" this could have a negative impact and drive more mature advisers out of the industry as many of them value their "independent" business set up.

Individual advisers should still be accountable for areas that an entity may not have control over eg disclosure, what is verbally conveyed to a client either face to face or by telephone.

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

There should be only one regulatory body the FMA and until we have a single industry body representing all "advisers" then the role of the current splintered groups should stay as they are. If "All" advisers (not salespeople which in my view includes all QFE staff) should be required to belong to a single professional body along the same lines as the Legal & Accounting professions. If they don't then they should not be allowed to practice as "advisers". The FMA could then decide to empower this body to carry out some basic functionality ie trust account auditing for brokers (similar to what the Law Society does) and would be able to engage with one entity to ensure appropriate standards were workable for the betterment of the industry as a whole.

#### 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 and online only

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?

Remuneration should be expressed as a dollar amount no percentages. If the remuneration is a range then that also should be in dollar terms.

#### 4.7 Dispute resolution

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

Nothing that is obvious – competition is good for the consumer (adviser).

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?

no comment

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

Yes as it would encourage professional conduct and also assist with pricing. A larger premium pool usually reflects into lower costing and healthy competition.

#### 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)?

More should be done by government agencies such as FMA and the Commission for Financial Literacy etc

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

The use of “Aligned” adviser to clearly demonstrate that the advisers advice will be limited to certain “product providers” as opposed to being “non-Aligned” for advisers who have no restrictions and can offer all options in the markets place.

#### 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.

Financial advice in the normal course of their business is too broad and allows those

professions to use it as a loop hole to provide services for which they are obviously not qualified for – this exemption should be removed. If evidence was available then it would be reported to the FMA for investigation – how many complaints has the FMA actually received and what was the outcome.

### ***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?  
“Provision of international financial advice” What do you mean? Surely not opening our markets to offshore advisers from anywhere in the global market place. Why is this even under your consideration?
30. How can we better facilitate the export of New Zealand financial advice?  
Advice should not be able to be exported as there are too many consumer protection issues. How can someone in NZ provide appropriate advice anywhere else without bringing into question the knowledge, competency and skill requirements for suitability etc etc. What a daft idea.

### ***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?  
This area seems to be working so if it's not broken don't try to fix it.

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

32. What are the costs and benefits of the packages of options described in this chapter?  
I don't like the idea of packages – if it's not working as it was intended fix it otherwise leave it. If there are gaps then fill them. Try applying the KISS principle.
33. How effective is each package in addressing the barriers described in Chapter 3?  
see above
34. What changes could be made to any of the packages to improve how its elements work together?  
see above
35. Can you suggest any alternative packages of options that might work more effectively?  
Don't have packages – advice isn't provided in packages so let's not go there (sorry it might be packaged by Banks/QFE's).

## **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?

No particular option – all have some merit

38. What are the potential risks and unintended consequences of the options above? How could these be mitigated?

no comment

39. Would limiting public access to parts of the FSPR help reduce misuse?

Definitely not – how else can a member of the public find out some basic information about who's out there and what they can do – if anything amend the FSPR content to be more consumer friendly.

## Demographics

1. Name:

Gavin Austin- Compliance Consultant

2. Contact details:

gavin@abcompliance.co.nz

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.

Reason: Enter text here.