

# 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.

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## Chapter 3 – Barriers to achieving the outcomes

Do you agree with the barriers outlined in the Options Paper? If not, why not?

1) Disagree – Certain types of advice aren't being provided "as a result many advisers have made a conscious decision to stick to being RFA's and provide RFA services, this contributes to an 'advice gap' for personalised advice". There is a significant advice gap for consumers on KiwiSaver. From our experience we believe this gap is for the full continuum of advice, the vast majority of consumer demand is for class and simple advice on discrete issues. We see very little demand for personalised advice when consumers are requesting advice on KiwiSaver. Research shows only 10-20% of Kiwis have ever received advice on their KiwiSaver accounts (Financial Advice and Asset Allocation Choices of Individual Investors: Evidence from New Zealand. A. Zhang). It is therefore not surprising that one out of three Kiwis do not know which fund they are in, three out of five do not fully understand Member Tax Credits (Mercer KiwiSaver Sentiment Index Study 2014) and 44% of all assets in KiwiSaver are held in Default, Cash and Conservative investment fund options (FMA KiwiSaver Report June 2015). These statistics suggest that many Kiwis do not fully understand how KiwiSaver works and may not be maximising the benefits of KiwiSaver.

Generate KiwiSaver has shown how positive outcomes can be achieved from providing class advice on KiwiSaver delivered through third party RFA and AFA advisers and our own QFE Advisers:

-Over 15,000 KiwiSaver members have been given class advice in two and a half years, including a risk profiler and 'active-fund choice' advice.

-Only 17% of the Generate scheme is in a conservative fund option versus the total KiwiSaver population of 44% in default, cash and conservative fund options.

Extremely low level of transfers out from Generate, 2.5% since inception. Implying our members have seen value in our advice and the 'active-fund choice' decision they made.

-Our new member client satisfaction survey of over 700 respondents reports; 98% said yes to "Did your adviser explain the type of advice provided to you?", 96% said yes to "Did your adviser talk you through the risk profiler and the different fund types - so that's Conservative, Growth, Focused Growth or Lifestages?", 94% (5=72%, 4=22%) answered very positively to "Can you rate the advice experience out of 5 - with 1 being 'not very informative or helpful' and 5 being 'really valuable information and a good use of my time'".

-Very low levels of complaints about Generate KiwiSaver.

-Generate has trained and accredited 120 AFA and 550 RFA Advisers to provide class and personalised advice on the Generate KiwiSaver Scheme product.

Generate has 17 QFE advisers. Those who have 'level 5' qualifications are able to provide personalised advice. To date we have two QFE advisers who are 'level 5' qualified and we have a

further four who are studying for the qualification.

-It is worth noting to date we have experienced a very low level of demand for personalised advice.

2) Disagree - "Consumers do not often understand the limitations of class advice and in receiving advice expect it to be personalised". This can be resolved through proper disclosure. We have provided class advice to over 15,000 of KiwiSaver clients. At the beginning of all advice meetings we ask clients to sign a confirmation as part of our disclosure process. This outlines the type of advice clients receive. Again from the new member survey results 98% of respondents said "yes" to the question "Did your adviser explain the type of KiwiSaver advice provided to you".

- Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.
  - 1) We agree "many consumers want relatively simple advice on which KiwiSaver provider or KiwiSaver fund is best for them." A major barrier to this type of advice being provided is that there is no "KiwiSaver Advice" qualification or competency within the AFA framework. KiwiSaver should have its own qualification and should be separate from the investment strand (including Set D). RFA's currently number 6,420, being approximately 20% of all advisers (FMA Sales and Advice Report – Nov 15) and they are competent and willing to provide class and simple advice on discrete KiwiSaver issues. They have no intention of providing full personalised investment plans to clients. They need the flexibility to be able to provide simple advice on discrete KiwiSaver issue where they are competent. A potential barrier will be created to this large segment of the adviser market if they are required to obtain the full investment strand qualification just to give simple advice on KiwiSaver.
  - 2) Advisers should be able to operate under more than one QFE. Many more third party QFE advisers would provide advice on KiwiSaver if they were not constrained by being under a QFE for a mortgage or insurance company that does not allow them to provide advice on KiwiSaver or is not willing to take that responsibility. QFE's should be able to nominate advisers and take responsibility only for the advice they give on their specific products and not be responsible for advice provided on other products. For example an Adviser should be able to be nominated under QFE Mortgage Company A for mortgages, QFE Insurance Company B for insurances and QFE KiwiSaver Company C for KiwiSaver. We should be careful not to create legislation that ties advisers into one QFE therefore restricting advice, competition, innovation, better product quality, cost reductions and performance.

## Chapter 4 – Discrete elements

- Which options will be most effective in achieving the desired outcomes and why?
  - 1) Remove distinction between class and personalised with all advisers subject to a broad obligation to only provide advice within areas of competence – all advisers should be able to provide class or personalised advice as long as it matches the consumer's need. Care must be taken to ensure the removal of the distinction doesn't unduly restrict QFE advisers and RFA's from providing class advice in the future.
  - 2) Remove any distinction based on product category - All advisers AFA, RFA or QFE need to be able to answer class and simple advice on discrete KiwiSaver issues if they are competent to answer those questions. Advisers need flexibility to provide the full continuum of advice and most advice meetings start within sales and then move up the continuum based on the client's needs.
- What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?

1) The advice gap on KiwiSaver is significant. The major demand for advice on KiwiSaver is for class and simple advice on discrete KiwiSaver issues, in particular on the how the product works, which provider and which fund. Only 10-20% of Kiwis have had advice on KiwiSaver which probably explains why 44% are in Default, Cash and Conservative, this is too high. Generate has conducted a public survey of approximately 900 respondents. The survey shows 52% do not know the difference between a default and growth fund, 41% do not know what fund they are in, 68% do not know how the MTC credits work and 67% do not know what their PIR rate is. We think those QFE and RFA advisers who are competent to give class and simple advice on discrete KiwiSaver issues should continue to be able to do so. We think this will set off a chain of events that starts with more consumers being educated about simple KiwiSaver issues resulting in those consumers moving to appropriate asset class funds. Over time this should create significant value for consumers resulting in increased trust in advisers and advice. Consumers should then be more likely to seek out more advice from the adviser. Advisers will then need to upskill to continue servicing their clients' needs or refer clients to a more competent adviser. Creating value in advice will lead to more advisers joining the profession and for current advisers to continuously improve.

2) Individual licensing of advisers within a QFE will be a significant barrier to QFE's operating efficiently and providing advice on KiwiSaver. If the QFE is operating correctly there should be no need for individual licensing, it just adds legislative complexity and cost and prohibits the promotion of financial advice.

- Are there any other viable options? If so, please provide details.  
No response provided.

#### **4.1 Restrictions on who can provide certain advice**

- *What implications would removing the distinction between class and personalised advice have on access to advice?*
  - 1) *Negative implication – Currently 6,420 RFA's can give class advice on KiwiSaver. Care must be taken in the FAA review that the new rules do not make it prohibitive for those advisers to continue providing simple advice on discrete KiwiSaver issues.*
  - 2) *Negative implication – Care must be taken in the FAA review that simple and personalised advice on discrete KiwiSaver issues does not become burdened with red tape and cost. Advisers must have flexibility to answer consumer's KiwiSaver questions efficiently and cost effectively.*
- Should high-risk services be restricted to certain advisers? Why or why not?  
No response provided.
- 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 response provided.

#### **4.2 Advice through technological channels**

- What ethical and other entry requirements should apply to advice platforms?
  - 1) Adequate disclosure about the advice provided and the possible risks of the investment should be presented up front and confirmed by the client.
  - 2) An adviser should be able to offer multiple licensed robo/online advice platforms to their clients, as different platforms will suit different clients. We should be careful not to create

legislation that ties advisers into one platform therefore restricting competition, innovation, better product quality, cost reductions and performance.

3) Robo/online advice platforms must be able to be used by third party advisers whether or not they are part of a QFE/licensed entity. If we restrict robo/online advice to QFE advisers who can only offer their own in house platforms then we impede the distribution and development of robo/online advice and subsequently lower the level of advice and service offerings to the consumer.

- How, if at all, should requirements differ between traditional and online financial advice?  
Adequate disclosure about the advice provided and the possible risks should be presented up front and confirmed by the client.
- Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?  
No response..

### 4.3 Ethical and client-care obligations

- 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?  
Anyone providing advice should have an ethical obligation to put the client's interest first. Any conflicts of interest should then be managed by disclosure. For example a bank QFE adviser only offers bank products to the client and discloses that up front.
- What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?
  - 1) The way to distinguish between Sales and Advice is through adequate disclosure about the type of advice being provided and the possible risks, this should be provided up front and confirmed by the client.
  - 2) An adviser should be able to offer the full continuum of advice to clients based on their needs. If we want more KiwiSaver advice to be provided then we need more advisers starting the KiwiSaver conversation with consumers. Advisers must be able to operate under the same requirements as Salespeople for a sales service on KiwiSaver. Most advice discussions start out as 'sales' and then move up the continuum. Starting in 'sales', then to class advice, then simplified discrete advice and up to full personalised advice.
  - 3) Salespeople should have the obligation to explain to clients where they can get a higher level of advice.
- If there was a ban or restriction on conflicted remuneration who and what should it cover?  
Conflicted remuneration is a disclosure issue. Advisers should explain how and what they get paid to clients.

### 4.4 Competency obligations

- How can competency requirements be designed to lift capability, without becoming an undue barrier to entry and continuation in the profession?

1) Stepped Pathway – Existing RFA or new advisers should be able to join a stepped pathway/apprenticeship under supervision of an AFA or QFE whilst they study towards the AFA equivalent qualification.

2) Competency standards set through licensing process – Existing RFA's and new advisers should be able to work under a principles-based obligation in legislation for advisers to be competent to provide the advice they are providing. Existing RFA's or new advisers should be competent to provide simple advice on discrete KiwiSaver issues under multiple QFE's or licensed entities. The QFE's or licensed entities should only take responsibility for the advice given on their product. This will allow more advisers to provide advice on KiwiSaver and not be locked into an Insurance or Mortgage QFE's that specifically do not provide KiwiSaver advice.

- 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?

Stepped Pathway – Existing RFA or new advisers should be able to join a stepped pathway/apprenticeship under supervision of an AFA or QFE whilst they study towards the AFA equivalent qualification. Those advisers on stepped pathway should be competent to provide the advice they are providing and the responsibility of their supervisor.

#### 4.5 Tools for ensuring compliance with the ethical and competency requirements

- 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?

Strongly disagree with individual licensing for advisers within a licensed entity as it would be prohibitively expensive to operate under this model. This is overregulation and a massive duplication of work and cost.

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

No response provided.

#### 4.6 Disclosure

- 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?

Key disclosure information needs to be simple and concise in any form. Who am I, what type of advice am I going to provide and how am I remunerated, what are my conflicts (if any). Client confirmation is an important tool for consumers to engage in the disclosure process.

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

Common disclosure document would need to be simple and concise for the public to understand. A common disclosure document could work if it is not overly prescriptive. (Who am I, what type of advice am I going to provide and how am I remunerated, what are my conflicts (if any)).

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

Consumers want to know how much the adviser is being remunerated to provide advice to them. That is the basis of any conflict and should be the basis for the disclosure. The detail should be flexible, i.e. it could be a range of remuneration. "I am paid commission of between \$X and \$Y to provide advice to you on C."

#### 4.7 Dispute resolution

- Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?  
None.
- 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 response provided.
- Should professional indemnity insurance apply to all financial service providers?  
Yes.

#### 4.8 Finding an adviser

- What is the best way to get information to consumers? Who is best placed to provide this information (e.g. Government, industry, consumer groups)?  
All three should be actively providing this information. The government should be responsible for a central register of all those licensed advisers and entities. Industry should be responsible for promoting themselves.
- What terminology do you think would be more meaningful to consumers?  
Remove Authorised and Registered and have terminology based on the competency "Financial Adviser, Insurance Adviser, Mortgage Adviser, KiwiSaver Adviser".

#### 4.9 Other elements where no changes are proposed

##### **The definitions of 'financial adviser' and 'financial adviser service'**

- Do you have any comments on the proposal to retain the current definitions of 'financial adviser' and 'financial adviser service'?  
[These definitions are useful and should be retained, along with new definitions/types.]

##### ***Exemptions from the application of the FA Act***

- 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 response provided.

##### ***Territorial scope***

- 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?  
No response provided.
- How can we better facilitate the export of New Zealand financial advice?  
No response provided.

#### ***The regulation of brokers and custodians***

- Do you have any comments on the proposal to retain the current approach to regulating broking and custodial services?  
No response provided.

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

- What are the costs and benefits of the packages of options described in this chapter?  
No response provided.
- How effective is each package in addressing the barriers described in Chapter 3?  
No response provided.
- What changes could be made to any of the packages to improve how its elements work together?  
No response provided.
- Can you suggest any alternative packages of options that might work more effectively?  
No response provided.

## **Chapter 6 – Misuse of the Financial Service Providers Register**

- Do you agree with our assessment of the pros and cons of the options to overcome misuse of the FSPR?  
No response provided.
- What option or combination of options do you prefer and why? What are the costs and benefits?  
No response provided.
- What are the potential risks and unintended consequences of the options above? How could these be mitigated?  
No response provided.
- Would limiting public access to parts of the FSPR help reduce misuse?  
No response provided.

## **Demographics**

1. Name:  
Henry Tongue on behalf of Generate Investment Management Ltd (part of the Generate QFE)



Group) and the Generate KiwiSaver Scheme.

2. Contact details:

Redacted

DDI 09 600 5101.

3. Are you providing this submission:

As an individual

On behalf of an organisation

The Generate KiwiSaver Scheme has over 15,000 members and \$150m invested. The Generate QFE Group has nominated representatives/ QFE Advisers providing advice on KiwiSaver nationwide.

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.