

# 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

1. Do you agree with the barriers outlined in the Options Paper? If not, why not?  
Yes, barriers mentioned have long been documented from the views of advisers, other stakeholders and the public at large.
2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.  
The barriers surveyed and mentioned were adequate. Lack of an effective regulatory programme to achieve professionalization.

## Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?  
Option 2 seems most suitable. Removing any distinction based on product category would alleviate some confusion among consumers. Medical doctors specialise or practice general medicine. Within the advice profession roles and competency should be clearly communicated and easily ascertained by clients of advice. Advisers need clear rules which allow them to state specialisations alongside the regulation around CBD to establish this. Exemptions need to be established for those who provide selected financial products like retail-related credit.
4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?  
Not certain of costs to each party.
5. Are there any other viable options? If so, please provide details.

### 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 think this would eventually have a positive effect on access to advice. Advisers would be accountable in the provision of advice; consumers would not have to be aware/knowledgeable on this distinction. Normative is vital - Advice is personal by definition; otherwise it's called 'information.'

7. Should high-risk services be restricted to certain advisers? Why or why not?  
Isn't this distinction somewhat in place already? The difference between Category 1 and 2 products? There should be no distinction. Anyone who has "adviser" attached to their professional credentials should abide by the same ethical standards and place the client's best interest first.
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?  
Current rules based on size of wealth are non-viable, as wealth is normally from activity which does not confer financial expertise. However, research does show that individuals fail to 'opt-out/opt-in' as that requires some action on their part. This is why 'default' accounts work—to combat inertia.

## 4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?  
Behind non-traditional channels of advice are people. In other words, there are individuals operating behind the scenes even if they are not directly communicating with consumers. As such, they should adhere to the same ethical and entry requirements as financial advisers. Robo-advice regulation does, however, raise two extra issues: (1) it can be created by companies, so there needs to be capacity for institutional liability. (2) it is inherently easier to internationalise. Thus an increased degree of international regulation harmonisation will be required. Successful robo advice platforms are likely to be omni-channel, with the capacity to contact a human adviser via the web page built in. This person may not necessarily be in NZ.
10. How, if at all, should requirements differ between traditional and online financial advice?  
There should be no difference. See above answer to previous question. Regulation needs the capacity to be applicable to both humans and entities. It is vital that this is done via regulation not legislation, so flexibility is retained.
11. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?  
Yes. As this is still a fairly new area, time will demonstrate further changes. Thus, there is a need to tread carefully and abstain from undue regulatory burden and costs. Massey offer further advice in this area.

## 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 put a client's interest first should be mandated among all advisers. Monitoring could be shared between industry groups (e.g. IFA, PAA) and MBIE. There should be disciplinary action ranging from dollar amounts to the permanent revocation of adviser qualification/certification.
13. What would be some practical ways of distinguishing 'sales' and 'advice'? What

obligations should salespeople have?

Up front and clear communication at the start of an engagement. Salespeople should give an outright disclaimer at the start of an engagement. Sales people need to make it clear that they are not advising, and that they are not offering the 'best' product, just their own.

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

There is no justification for soft-dollar commissions or volume based incentives or volume based disincentives, as these tend to create undue incentives for unethical behaviour around trigger levels.

#### 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?

An 'adviser' is someone who advises based on a specific level of knowledge, experience and competency. Anyone with 'adviser' attached to their professional credentials should adhere to a high standard of care in the provision of financial advice. Any 'lift' in capability will come with increased costs. However, in the long-run it should create a fairer environment and provide consumers with more capable professionals. The increasing complexities of international financial markets indicate that a minimum of a Level 7 qualification is required for general or investment advisers. It is vital that competency standards are aimed at the ultimate professionalisation of the industry.

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?

Option 1 and 2 should be combined. Yes, there should be minimum entry requirements for all advisers. It should include a mixture of qualification, experience and examination. There is usefulness in establishing an adviser class who have overall responsibility for all junior advisers under their supervision. Correspondingly there is merit in establishing a limited apprentice licencing group, where all work is signed off by a senior adviser.

#### 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?

An entity should be licensed (in addition to the individuals who work for the entity) when it exceeds a certain number of advisers. Therefore, with an increase in advisers within the entity and by natural progression, increased amount of clients, the cost burden should not be as burdensome as under a small number of advisers. See answer above. Also, see how medical doctors operate under "Cornerstone accreditation" as a professional model to learn from.

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

They should work together to provide enhanced structure and cohesiveness within the profession. Their measures should not 'counteract' the other if there are shared consumer goals. Shared roles should also increase professionalism as advisers may be accountable to

their industry body and the regulatory bodies depending on the breach in conduct. The FMA needs to start working proactively with the professional bodies to encourage their ultimate development into normal professional regulation bodies. Membership of an approved professional body should be compulsory.

#### 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 verbal. We are well-aware that many people do not read adequately. But if there are requirements for verbal and written disclosure, then there is little room for miscommunication.

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

Yes. Again, anyone who calls him/herself an 'adviser' should adhere to the same regulatory requirements.

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

A one-page chart should be sufficient. Production of remuneration should not be complex or difficult to demonstrate.

#### 4.7 Dispute resolution

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

No comment.

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 it is essential in promoting consumer trust and limiting liability of the government entities.

#### 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)?

Media promotion. See the USA CFP Board's public awareness campaign and its effects on American consumers of financial advice.

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

There should only be one type of "Financial Adviser." Other professionals within the field should not have 'financial adviser' within their professional label. Similar sounding terms need to be restricted, as per first submission.

#### 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 comment.

### **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.

Yes. For example, because many consumers do not know the scope of what a financial adviser does, they may seek the services of an accountant and think that ‘comprehensive planning’ is taking place when the accountant should be restricted in providing specific services. We hear individuals mention accountants dissuading them from seeking the service of financial advisers citing that contracting an adviser is unnecessary. It’s easy to persuade when there is a lack of/reduced knowledge. It is well noted worldwide that there are professionals who hold themselves out as ‘financial advisers’ in engagement and/or action with clients.

There is very limited scope within the role of a lawyer to provide financial advice, and extremely inadequate training with a legal education.

Both professionals need to learn to work as a team with financial advisers—while not compromising their professional role.

### **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?

No comment.

30. How can we better facilitate the export of New Zealand financial advice?

There is substantial scope within web-based or robo-based advice. International regulation harmonisation is required. A major hindrance to this is that NZ’s uniquely low level of education would not be acceptable to counterparties.

### **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?

No comment.

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

32. What are the costs and benefits of the packages of options described in this chapter?

Increased competency requirements will of course increase costs.

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

Somewhat effective.

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

work together?

See the answer to the following question.

35. Can you suggest any alternative packages of options that might work more effectively? A combination of package 2 and 3. The distinction between “Salespeople” and “Financial Adviser” is notable and perhaps effective. There is no need to add another terminology like ‘Expert Financial Adviser’. All ‘financial advisers’ under this combined option should be able to provide robo-advice. Current QFE advisers can be named ‘Salesperson’ or ‘Financial Adviser’—the former restricted to providing product information and recommendation of suitable firm-specific products after an upfront disclaimer (citing limitation in scope of service); there should be no distinction between product types. The broad ultimate aim of all regulation should be the professionalisation of the industry to a level where it can be left as largely self-regulating.

## 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?  
Option 1. Added oversight costs to the FMA and perhaps financial advice providers—but enhanced transparency.
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?  
No comment.

## Demographics

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2. Contact details:  
Redacted
3. Are you providing this submission:  
 As an individual  
 On behalf of an organisation

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