

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.

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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?
I agree with barriers identified, though I don't agree that payment by commission automatically produces a conflict of interest; the majority of advisers will put the best interest of the client first.
2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.
No comment.

Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?
I believe packages 1 and 2 do not go far enough and that package 3 would provide the best solution. If the provision of advice to the public on any product were dependent on the adviser having demonstrable competency (ie holding a qualification/accreditation relative to that subject) there would be no need for a "subset of Expert Financial Advisers" as proposed in Package 2. Advisers would be subject to annual registration and/or licensing and their areas of competence would be shown on the public register.
4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?
For some there would be additional cost in obtaining suitable qualifications (others have already incurred them to become AFAs) but consumers would be far better served as it would no longer be possible for them to receive advice from someone not competent to give it. Providing advice outside one's areas of competency would become a disciplinary offence.
5. Are there any other viable options? If so, please provide details.
No comment.

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?
At present many consumers do not receive advice regarding provider and fund choices for KiwiSaver because RFAs are only allowed to provide class advice and AFAs usually wish to charge a fee that many consumers are unable or unwilling to pay. This either leaves them in a default fund or not in KiwiSaver at all. Given that KiwiSaver is highly regulated and the providers construct and manage the underlying portfolios, not the adviser, I believe RFAs should be able to advise on and put people into KiwiSaver; advice on reinvestment at retirement age should, however, be left to those with an investment qualification.
7. Should high-risk services be restricted to certain advisers? Why or why not?
Please refer to my answer to Chapter 4, Q3 above.
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?
Surely the answer is for all clients to sign something (presumably a Scope of Service) in which the parameters and ramifications of various levels of advice (or of no advice) could be set out? The wording to be used should be standardised as RFA disclosure statements are now.

4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?
Clearly many consumers prefer to deal direct by using online services and in doing so they are voluntarily giving up the rights and protections that would be available to them if they had taken advice. Clearly (save for fraud) online providers can have no liability if the product purchased subsequently turns out to be inappropriate or inadequate for the purchaser's needs. However, they should be obliged to display prominent warnings about these issues prior to final acceptance.
10. How, if at all, should requirements differ between traditional and online financial advice?
See above answer.
11. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?
No comment.

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?
All advisers should be required to act in the client's best interest – no question of that. Those who sell the products of only one provider (ie aligned or tied agents) are, by definition, not advisers but salesmen and as such need not be concerned as to whether anything more suitable is available elsewhere. This distinction should be made clear to the consumer. Those who purport to be advisers yet have an obligation to place x% (as high as 85% I believe) of their business to a single provider should have to disclose this as it may not be in the client's best interest.
13. What would be some practical ways of distinguishing 'sales' and 'advice'? What

obligations should salespeople have?

See previous answer.

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

It should cover all advisers but, presumably, would not apply to salesmen. In my opinion the receipt of commission does not automatically mean there is a conflict of interest. If the adviser has demonstrated that the product being sold is fit for purpose, if the client has elected for the adviser to receive commission and is happy to proceed – where is the conflict? There are many other occupations where commission is the accepted means of remuneration, yet there are no suggestions of conflict and no disclosure.

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?

Until suitably qualified / accredited no adviser should be allowed to give advice or sell product to the public unless subject to direct supervision of an adviser who is qualified and who would also need to sign off the advice being given. This would enable new advisers to gain experience, earn some money and gradually build up qualification/accreditation in different areas.

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?

Requiring all advisers to attain a minimum level of competency is highly desirable to reinforce trust. See also my answer to Q3 above.

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?

I believe that individual advisers (rather than their businesses) should be subject to annual licensing because it is they who provide the advice, not their limited company, and I say this as a sole trader. To become licensed and included on the public register an adviser would need to disclose relevant qualifications/accreditations, length of experience, any disciplinary black marks etc...so that consumers can make a fully informed decision when choosing an adviser. Tied or aligned salesmen would be shown as such along with the provider responsible for their conduct.

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

I believe it should be compulsory for all advisers to belong to a professional body – either PAA or IFA - which would be a further move towards professionalism. Those bodies already have codes of conduct and disciplinary procedures so could also replace the dispute resolution schemes, which would remove one layer of bureaucracy. Providers with tied/aligned salesmen would be responsible for their training and conduct. It should also be compulsory for all advisers to have professional indemnity cover, which again could be issued by the IFA or PAA. The PAA already offers such cover.

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?

Disclosure Statements should obviously be available from the adviser/salesman but should be included on the public register, with the adviser/salesman obligated to keep it up to date.

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

Yes – all advisers should have a common form of disclosure, which should be more extensive than the current version for RFAs (which, frankly, discloses little of substance) but far less extensive than the one for AFAs. Salesmen would have a slightly different form of course.

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

So far there seems to have been no recognition by MJW or MBIE that advising on insurance is totally different from advising on investments. With investments (except for KiwiSaver) any fee/commission comes directly out of the amount invested, either up front or annually, so its consideration and disclosure is very relevant. But with insurance the commission is a marketing expense of the insurer and, as such, is built into the premium. I accept there is perceived conflict where one company pays more than another but that would disappear if advisers were obliged to put the interest of the client first. In any event the exact amount of the commission is irrelevant because if the premium is too high the client will not buy the policy. All clients know that commission will be paid to the adviser but, in my experience, 99.9% prefer this to having to pay a fee. On the face of it the upfront commission amount may appear high but, sadly, journalists never bother to report that it has to subsidise the many cases that never make it on to the books but where the adviser has still done hours of work, nor that it represents revenue not profit. It is my belief that the exact dollar amount of the commission on insurance policies does not need to be disclosed. And speaking from my prior experience in the UK, when hard disclosure was introduced there it simply became an invitation to clients to shop around for the adviser who would give them the biggest discount. I believe that it is totally undesirable for such a situation to be allowed to develop here for it would surely drive advisers out of business and limit consumer choice, which is not what the Government wants.

4.7 Dispute resolution

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

I believe there is some anecdotal evidence that the different schemes do not operate to a common standard, nor do they have common levels of compensation. The consumer should expect consistency. Given the size of the NZ market I believe only one scheme is necessary – or perhaps IFA and PAA as per my answer to Q18. I also believe that the current system is totally unfair and biased in favour of the consumer. If the adviser is exonerated the consumer should have to bear some or all of the cost of the complaint process. At present a vexatious client can bring a complaint safe in the knowledge that they have absolutely nothing to lose - and I speak from personal experience.

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?

See above answer.

24. Should professional indemnity insurance apply to all financial service providers?
Yes – see answer to Q18.

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)?
Consumer groups and the Commission for Financial Capability could do more to educate the public.
26. What terminology do you think would be more meaningful to consumers?
The simplest thing would be to have two categories – Salesman (or perhaps Aligned Representative or Tied Agent) and Financial Adviser – so the consumer knows exactly what to expect. As previously discussed, Financial Advisers would disclose (on the public register) what they were accredited to advise on eg life insurance, medical insurance, mortgages, KiwiSaver, investments etc... That way the consumer would be much better able to choose a suitable adviser.

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.
Even if there is no risk there should be no exemptions. Anyone (inc accountants and solicitors) who provides financial advice to the public should be subject to the same licensing, accreditation and other provisions. I was a probate and trust lawyer for 25 years but am expressly prohibited from providing legal advice now. There is no question of me getting an exemption.

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?
Any foreign entity wishing to utilise the NZ system should have at least one financial adviser resident and licensed in NZ
.
30. How can we better facilitate the export of New Zealand financial advice?

No comment

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?

Enter text here.

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

Package 1 doesn't go far enough and would do very little to address the current problems.

Package 2 is better but still not quite right. See next answer.

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

If the subset of expert advisers were dropped from package 2 and the additional elements contained in package 3 were added that would provide an ideal solution.

35. Can you suggest any alternative packages of options that might work more effectively?

No comment.

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?

No comment.

37. What option or combination of options do you prefer and why? What are the costs and benefits?

See answer to Q18 and 36.

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

1. Name:

John Heritage, Redacted

2. Contact details:

Redacted

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.