

Financial Markets Policy
Ministry of Business, Innovation & Employment
PO Box 3705
Wellington
New Zealand

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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.

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Submitted 25th February 2016 by:

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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?
I fully agree with the barriers outlined in the options paper. I strongly support the regulation of financial advice in New Zealand and believe the changes that were brought in with the Financial Advisers Act have been extremely positive and a spring board for future change. All 5 barriers that are noted I strongly agree need to be addressed if the financial services industry is going to move forward.
- Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.
Additional Barrier: Large financial institutions need to ensure that their business model fully supports the ethical and client care obligations that is expected from all financial advisers. For many institutions especially the insurance based companies, the “old model” of sales and remuneration practices suit their business model and any changes they may see as a threat rather than a positive outcome for all. If conflicts of interest and poor advice are going to be seriously tackled then a very careful look at industry practices from a manufacturer perspective needs to occur. A concern expressed by many through this conciliatory process has been that the large organisations with strong vested interests such as the banks may/will have a greater say in the final outcomes, all to the detriment of the wider audience we are trying to serve, our customers. From the Trowbridge Report (Review of Retail Life Insurance Advice 26th March 2015) out of Australia this was an area they highlighted and felt needed to be addressed by perhaps bringing in a code of practice for the life insurers. “The activities and the business practices of both licensees and advisers are heavily dependent on the way that life insurers choose to operate their businesses and the range of products that they offer.” (Page 59 – Review of Retail Life Insurance Advice Final Report 26th March 2015)

Chapter 4 – Discrete elements

- Which options will be most effective in achieving the desired outcomes and why?
I have found the two terms class and personalised advice quite useful. I do present to groups and the term and description given around class advice is a term most people can understand and see the rationale behind it. The term personalised advice again is clear and simply easy to explain that the customer can expect that the advice will be based on their personal circumstances and that a higher level of skill and competence will be used in making a recommendation. Using the terms Category 1 and Category 2 is both confusing and unnecessary and should be removed. Disclosure documents should be simplified into a more concise easy to read document that consumers can take meaningful information from. Improving the ability for consumers to find a suitably qualified adviser to match their needs is important. Any site which has this information must be consumer friendly with words they understand and free of any unnecessary jargon.
- What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?
Reducing the cost of unnecessary compliance for advisers and helping consumers understand our financial world and what is important to them with a more user friendly process would be a win win situation for all.
- Are there any other viable options? If so, please provide details.
Enter text here.

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?**

This is a tricky question. It pertains really to whether you are in a group situation eg financial seminar or providing personalised advice and taking in the relevant goals and objectives of the customer in front of you. This should not be confused with advice versus sales. If the term class advice was removed then what disclosure would you give in group presentations work? One of the difficulties also arises around corporate group schemes such as superannuation or health schemes. At times the line between personalised advice and class advice is also impossible to determine. The adviser may believe it to be class advice but the employee in front of you may have a totally different understanding, that you are taking in his/hers personal needs. Reducing complexity and unnecessary terms I fully agree with. The key here is to ensure personalised advice is done thoroughly and correctly.
- **Should high-risk services be restricted to certain advisers? Why or why not?**

I personally have trouble with what the term high risk services is and what it refers to. High risk advice surely comes from those who give advice either in the life insurance or investment that are not competent or skilled to provide this advice. Please do not bring into the legislation more confusing and unnecessary terms for the consumer to understand. To restate again, if we are all noted as financial advisers but each with different noted areas of expertise/competency then without using the term “high risk service” we are effectively managing the potential problem you are outlining without having to use this highly emotive phrase. High risk could easily be both be a result of poor insurance advice or an inappropriate asset allocation.
- **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

- **What ethical and other entry requirements should apply to advice platforms?**

Quite simply – all financial advisers should be required to uphold the ethical obligation and client care plus manage any conflicts of interest. If we are to move towards being truly recognised as a profession then we should be moving towards requiring all financial advisers (no matter what their area of competency or skill is) to hold a tertiary qualification. If higher than the present AFA minimum qualification (which I think all financial advisers should be required to move up to) then perhaps consideration should be given to a minimum 5-10 year timeframe to allow time for existing advisers to complete and also bringing in new entrants tertiary qualified advisers.
- **How, if at all, should requirements differ between traditional and online financial advice?**

Whether it be on line or traditional face to face advice the same ethical behaviour and client care should be required. I am sure many younger people would like to use robo advice to sort their financial affairs out but should be fully protected as if it were via the traditional human means.
- **Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?**

I do strongly agree that one of the requirements in establishing a robo platform would be a link for the consumer to have a qualified financial adviser available to provide additional advice or guidance. This would I am sure provide help and guidance plus ensure compliance and accountability for all involved. To assume that all consumers who use robo advice are financially savvy and capable of making well informed decisions, is based on a wealth of historical evidence, simply incorrect.

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?

At present the requirements of AFA's to fully disclose all relevant information through the use of primary and secondary disclosures while RFA's disclosure is nearly non-existent is simply ridiculous. All financial advisers should be under the same disclosure requirements and adhering to the principals of the Code in full. The legislation should change so that all financial advisers are required to adhere to the same fiduciary duties. Monitoring should be done and enforced.

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

Two clear and simple definitions here would help – firstly Financial Adviser – someone who is not linked in any way to a product manufacturer via quotas or soft dollar incentives and truly independent in their ability to use and chose a range of products and suppliers without bias. Secondly a Financial Representative could be defined as a sales representative who works under a specific contractual obligation. This information should be provided to the consumer so they clearly understand the difference of advice versus sales. Whether advice or sales, both of these groups should be subject to the same disclosure requirements, educational requirements and most importantly subject to all the ethical obligations to provide advice that is fit for purpose. Anything less would not be in the consumers interests.

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

Commission payments with regards to insurance only (investments should have no commission payments) are an acceptable practice as long as they are fully disclosed by all financial advisers to the consumer and in such a way that it is simple and easy to understand. My view is that commissions should be broken down into two clear and simple parts – upfront commission and renewal commission. There is far too many additional and confusing commission payments such as productivity bonus, persistency bonus which quite frankly is not only confusing but impossible to disclose accurately to the consumer. Unless there is found in the industry serious misuse and abuse of commission payments ie churning, I would leave it as is but for the purposes of customer understanding only have two clear commission payments, upfront and initial.

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?

Competency standards should be required by all financial advisers and set at a minimum level held by all. The present category of RFA should be removed and aligned to the one term financial adviser and with it all financial advisers meet the present minimum education and ethical standards. If we are to align with other professional groups such as lawyers and accountants the long term aim should be a specific tertiary education requirement as the entry level. I agree that to minimise the problems with transitioning to this standard some form of grandfathering provision should be looked at.

- 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?

Yes. All should hold the present minimum entry requirements to be an AFA with (as mentioned above) the aim to lift the minimum qualification to a university or tertiary qualification.

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?

Both the entity and individual should be licensed, although perhaps for the sole trader or small business (say 1-3 advisers) a single license could be granted so reducing unnecessary costs. In either case there should be the same standard requirements of care and due diligence, disclosure etc. The benefits of having entity licensing as well as individual licensing is that responsibility is held both jointly and severally which should provide greater consumer confidence and cost savings with compliance.

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

I do believe that professional bodies can have a practical and beneficial role in our industry today. Some professional bodies have been established around specific groups of advisers eg mortgage or risk writers and I do believe offer the opportunity to provide guidance and support to their members. I would like to see professional bodies work closely with the FMA in fully understanding their legal obligations and helping support businesses in producing best practice guidelines which they can use. Ideally at some future date perhaps a unified professional body may be set up representing all financial advisers. At present however I strongly support having a number of industry bodies working for both the betterment of their members and the public they advise to.

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?

The present form of disclosure plus the different set of disclosure requirements for RFA's and AFA's must change. All financial advisers should be required to have the same disclosure requirements. Secondly the disclosure should be one single document and information that is more simplified and meaningful for customers to understand.

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

Yes and should be brought in immediately. Having a primary and secondary disclosure is unworkable and customers simply find it too long and therefore hard to take useful meaning from it.

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

To make it meaningful and easy to understand commissions should have only two parts – initial and renewal commission. Ban the terms bonus, persistency payments, productivity bonus etc. Far too easy to “hide” future payment and incentives which cannot be accurately stated at the point of implementation. This would require product manufacturer's eg insurance companies to make some rapid changes but it should be done. If done correctly it should have little impact on the majority of those advisers whose revenue comes from commission based products.

4.7 Dispute resolution

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

No I do not believe so. Competition amongst the scheme providers I believe has driven DRS

fees down.

- 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?
Enter text here.
- Should professional indemnity insurance apply to all financial service providers?
Absolutely. Compulsory PI should be mandatory for the reason of both protecting the consumer from unintentional “errors” and possible severe financial consequences for the financial adviser business. Helping financial advisers in this area has been a big area for professional bodies many of which have established specifically designed schemes for their memberships businesses.

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)?
Enter text here.
- What terminology do you think would be more meaningful to consumers?
Eliminate terms – RFA, AFA and QFE. Simply confusing and meaningless to the consumer. Replace simply with Financial Adviser but with specific authorisations/skill sets underlined by minimum levels of competency for all eg insurance, mortgage or investment adviser. It may be that to help with clarity around your set area of competency the term Financial Insurance Adviser, Financial Investment Adviser or Financial Adviser (covering both areas) is used. Whatever term is used it should easily and simply be understood by the consumer.

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’?
Retaining these definitions I think needs to be aligned with any new definitions of financial advisers. Removing the terms AFA and RFA must happen. From here consideration needs to be given to any subset of areas of competency eg investment adviser or risk adviser and the way they are defined. These terms may be superfluous to requirements. Delete if not needed. See additional comments noted above in point 4.8.

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.
I have no evidence that there is undue risk here. Most lawyers and accountants (if not all) understand the line not to cross. This however has not stopped many lawyers and accountants from causing financial grief to their clients by inappropriate or illegal behaviour in the financial advice space.

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?

Click here to enter text.

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

Enter text here.

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?

Enter text here.

Chapter 5 – Potential packages of options

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

I am fully supportive of the recommended changes outlined in Option 3. These include: the removal of the distinction between class and personalised advice, removal of the terms RFA, AFA and QFE with all coming under the one term Financial Adviser, in addition to the removal of RFA and QFE both individual and entities should be licensed (consideration to small/medium sized business only to have individual licences, remove the distinction between products types ie Cat 1 and Cat 2, all financial advisers to come under full ethical obligations. I believe that these changes will provide greater simplicity to a system crammed with unnecessary and confusing acronyms and with it reduced compliance costs.

- How effective is each package in addressing the barriers described in Chapter 3?
Only Package 3 I believe truly addresses all the issues around the FAA that needs to be improved.
- What changes could be made to any of the packages to improve how its elements work together?
Just go to package 3
- Can you suggest any alternative packages of options that might work more effectively?
No

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?
Enter text here.
- What option or combination of options do you prefer and why? What are the costs and benefits?
Enter text here.
- What are the potential risks and unintended consequences of the options above? How could these be mitigated?
Enter text here.
- Would limiting public access to parts of the FSPR help reduce misuse?

Enter text here.

Demographics

1. Name:

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3. Are you providing this submission:

As an individual

On behalf of an organisation

John Wood & Associates Ltd has been providing financial services for over 25 years. Within our business there are 2 AFA's and one office manager.

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.