

# 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.

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.

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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?

Where is the evidence to support the suggested barriers? There is only one that I agree with, that being consumers understanding of different types of advice.

2 Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.

Yes. Banks are relative newcomers to the life insurance industry. Their philosophy seems to be very much sales driven, with products that are in almost all cases inferior to those available through insurance companies. This comment is supported by a substantial amount of anecdotal evidence from RFAs, and from data supplied by Quality Product Research Ltd, an Auckland based company specialising in the comparison of life insurance products. These inferior products act as a barrier because once bank customers are signed up, they believe they have proper coverage and don't need to seek further advice. Bank staffs have comparatively little experience in providing comprehensive advice on insurance. Insurance is very much a second tier service for the banks rather than a mainstream service.

In contrast, the life insurance sector in NZ can trace its origins back to 1849, when the first insurance policy was issued by AMP in Wellington. Ever since then insurance companies have continually improved and fine-tuned their product lines. This process continues today.

The banking sector is a very large and extremely well organised lobby group. Collectively the banks 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 our 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 their products are inferior and their advisers less well trained and less experienced in insurance than other advisers. The fact the banks continue to offer inferior products is an indication of what could happen if they were allowed to dominate.

## Chapter 4 – Discrete elements

1. Which options will be most effective in achieving the desired outcomes and why?  
All sections would be effective and we believe all sections should be addressed:  
Section 4.2 Robo-advice is happening and should be subject to the same controls as personal advice.  
Section 4.3 All financial advisers should be required to place consumer's interest first; there should be clarification of the difference between sales and advice; RFAs should be required to disclose commission and benefits in the same way that AFAs are required to do.  
Section 4.4: Yes, agree  
Section 4.5: Yes, all good points  
Section 4.6: Yes, good idea, but the longer a document is, the less likely people are to read it, so less is more. A good format might be a summary page at the front followed by detailed pages.  
Section 4.7: Well worth reviewing these schemes  
Section 4.8: Very good ideas
2. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?  
Consumers are unlikely to suffer extra costs. There would be extra costs for RFAs and their businesses through the education needed to bring themselves up to the required standard
1. Are there any other viable options? If so, please provide details.  
YES - If the FAA required anybody giving FA to be qualified to a minimum level 5 Certificate irrespective of current status and be individually licenced by the FMA. All FA's could offer advice in areas they are qualified in and all are covered by minimum ethical standards.

Remove all sales people from the FAA as they are not advising, and include them under the FMCA via their licenced employers. Licence appropriate professional bodies (LPB) and have the roles of the CC and FADC included under the LPB's, this would reduce costs, confusion and the opportunity for any double jeopardy while being more efficient and effective.

### 4.1 Restrictions on who can provide certain advice

2. What implications would removing the distinction between class and personalised advice have on access to advice?  
There should always be the opportunity to provide general advice at things such as seminars but this should only be able to be done by LICENCED ADVISERS, not SALESPeOPLE.
3. Should high-risk services be restricted to certain advisers? Why or why not?  
Yes, through the licensing process you suggest under Section 5.3

4. Would requiring a client to 'opt-in' to being a wholesale investor have negative implications on advisers? If so, how could this be mitigated?  
Again, if you identified advice and licenced advisers individually, then you could remove the distinction between wholesale and retail completely.

## 4.2 Advice through technological channels

5. What ethical and other entry requirements should apply to advice platforms?  
All forms of advice should be held to the same standard of ethics so any Robo-advice systems should be able to show they meet this requirement.
6. How, if at all, should requirements differ between traditional and online financial advice?  
There should not be any difference between the various forms of delivery of financial advice.
7. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?  
YES - Robo-advice systems should simply assist an adviser to deal efficiently with smaller clients, not replace personal advice. Systems such as data collection and analysis with completion done by a real person. Experience overseas (US and Aussie) has highlighted concerns around this form of advice delivery suggesting an increased proportion of the promoters product which creates a significant conflict of interest.

## 4.3 Ethical and client-care obligations

8. 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?  
Clients' needs should always come before advisers or sales organisation. I cannot see any advantage to the clients in extending this further beyond a 'fiduciary-like' responsibility. This could be monitored and enforced by requiring all advisers to belong to an appropriately structured and licenced professional body. Banning or restricting conflicted remuneration, while "flavour of the month" in some quarters, is not a meaningful issue in our view, as long as advisers (all advisers) disclose it up front. NZ consumers are not silly. They know there are incentives in almost all industries to encourage the successful marketing of products and services and our industry should be no different. In our view virtually 100% of clients will not care in the slightest about the adviser's remuneration, but they should know about it up front from the adviser so it is out in the open.

9. What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?  
Sales people should be defined as those who can only offer the products provided by their QFE. They should be required to disclose to their clients up front that they are restricted to recommending certain products only.

Financial advisers should be defined as those able to offer product lines from at least two different providers, and preferably more. It's very important in our view that if advisers are under a QFE and the QFE incentivises them to use the QFE's products (as often happens) then they should be designated as sales people. . I therefore suggest that following the structure proposed in Q5 above the FMA would find it much easier to monitor sales activities. Obligations for sales people should be the current consumer legislation such as FT Act, CG Act and FMC Act.

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

This question applies mainly to the insurance market. While some up front remuneration may seem substantial, remember that the adviser, particularly if new to the industry but often if not so new, needs to make presentations to several prospective clients in order to obtain one successful outcome. This means there are significant marketing and administrative costs to the adviser associated with obtaining one successful outcome and the adviser needs to be compensated somehow for this.

If commission rates were forcibly reduced, advisers would need to be compensated by the insurance company for their marketing and administration costs. The outcome for the client would be unchanged, and the outcome for the insurance company would be unchanged. The only change would be that part of the adviser's remuneration would be called by a different name.

My view is that as long as insurance companies can afford to, and are willing to, pay higher remuneration, it could be successfully argued that the market is operating efficiently. There should simply be a requirement to document any remuneration with the advice or sale.

#### 4.4 Competency obligations

1. How can competency requirements be designed to lift capability, without becoming an undue barrier to entry and continuation in the profession?  
Competency requirements are never an issue for any real profession. The current minimum requirements of NZCFS Level 5 should simply be that, a minimum. Any and every professional adviser should meet this requirement and for the so called high-risk products the competency level should be set accordingly higher. While I am in favour of raising standards, my fear is that if the transition isn't handled properly then we will lose many more senior and highly experienced RFAs from our industry. We can ill afford to lose this depth of knowledge and expertise.

These advisers may understandably take the view: "Well look, we've been doing this for xx years, producing large volumes of high quality business that stays on the books year after year, our clients love us to bits, we've never had a single complaint against

us, and if that's not good enough for you then we'll just go and do something else." We don't believe this is an exaggeration of the effect a draconian transition period would have. We believe however that there does need to be a transition to higher education levels and, handled sensitively, it would be positive. We suggest a five year transition.

2. 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?

For advisers new to the industry, we believe that in every case there should be a designated course or courses of study they are required to complete before being eligible to operate as an adviser. NZCFS Level 5 is an example of what might be required.

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

1. What are the benefits and costs of shifting to an entity licencing 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?

There would only be a benefit in licencing if all those advising needed to be licenced at an individual level as this is how a professional is managed. Broadening this would simply create many more QFE's and there is no evidence to date that QFE's are befitting consumers.

The licencing requirements should initially align with the current requirements for authorisation, to require more would become far too burdensome.

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

All those providing advice should be required to be members of an appropriately licenced professional body, if the individual or the professional body fall short of eligibility requirements they should not be able to be licenced. Standards would need to be set for assessing licenced professional bodies.

#### **4.6 Disclosure**

3. 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?

While we believe verbal is not appropriate, online should certainly be an option in this day and age. As mentioned above, people are far more inclined to read a shorter document than a longer one, so we recommend a front page summary followed by pages showing more detailed information. The document could be in hard copy or online. If sent online, a return email from the client stating they have received it should be sufficient record for the adviser to retain.

4. Would a common disclosure document for all advisers work in practice?  
As long as you define advisers as anyone providing financial advice, a financial product or a course of action to meet a need of a client. Sales people should also have to have a disclosure document that outlines how they work and who they are working for along with how they and or their employer gets paid.

1. How could remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?  
For insurance – as a percentage of the annual premium; for investments – the fee charged plus other remuneration from the provider if appropriate; for mortgages – as a percentage of the mortgage amount.

As mentioned above, the vast majority of clients will not care how much or how little the adviser receives. This whole debate about insurance commission is a red herring fostered by certain elements within the industry who are acting in their own interests. They are not acting in the interests of clients because the amount of commission paid to the adviser makes no difference to the outcome for the client.

#### 4.7 Dispute resolution

2. Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?  
Not that I am aware of. They all do the same things in much the same way. However when the product provider and the adviser are with differing schemes, this simply makes the management of any complaint slightly more complex. I see no benefit in having as many schemes as we have.
3. 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?  
Yes, there should be no opportunity to arbitrage between schemes, cover limits should be standardised at a defined optimum level.
4. Should professional indemnity insurance apply to all financial service providers?  
No, not as a mandatory requirement, it should be up to the individual adviser or business.

#### 4.8 Finding an adviser

5. What is the best way to get information to consumers? Who is best placed to provide this information (e.g. Government, industry, consumer groups)?  
I feel the best is a combination of all including professional bodies. The FSPR should be more useful and provide information on all advisers and their competencies

6. What terminology do you think would be more meaningful to consumers?  
All advisers are licenced to operate, they are licenced to provide advice in the areas they hold recognised qualifications, these being Insurance, Investments, KiwiSaver and Mortgage advice etc.

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

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

7. Do you have any comments on the proposal to retain the current definitions of 'financial adviser' and 'financial adviser service'?  
Keep them. They are simple, easily understood, and difficult to misconstrue

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

1. 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.  
**Absolutely YES** Simply look back at the many examples of fraud charges laid against Accountants and Lawyers as opposed to AFA's or RFA's.
2. Examples:
3. **David Ross \$139m** - Accountant,
4. **Gary Soffe \$6m** - Accountant,
5. **Finance company directors \$100'sm** - many of who were accountants or lawyers.  
They also pose extreme risks to the public perception of and confidence in all financial advisers and therefore financial advice.  
**I suggest that you look at Australia and the issues they are currently going through along with ASIC's requirement for Accountants giving financial/investment advice need to be licenced. One rule for all participants.**

##### *Territorial scope*

6. 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?  
I find this difficult to determine without knowing if international law requires residency or tax residency in any particular country to be covered by the laws of that country, let alone the ability to gain any sort of redress across borders. This is probably best dealt with via IOSCO and agreements through that entity.

Robo-advice is not appropriate to be provided on its own unless it is through and in support of a licenced adviser. See Q11 and 17.



7. How can we better facilitate the export of New Zealand financial advice?  
I feel that any adviser, whether a NZ adviser advising clients offshore or an overseas adviser advising clients here, should meet the educational and ethical requirements of the jurisdiction in which the client resides, as this will best protect the consumer.

#### The regulation of brokers and custodians

8. 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

9. What are the costs and benefits of the packages of options described in this chapter?  
All three options as described I feel will both increase costs to advisers, consumers and the market as a whole and not providing any really clear benefits.
10. How effective is each package in addressing the barriers described in Chapter 3?  
If we numbered the barriers in order 1 – 5 and checking each suggested barrier against each option: I can't see how option 1,2 or 3, fixes suggested barriers 1,2,3,4 or 5.
11. What changes could be made to any of the packages to improve how its elements work together?  
See below
1. Can you suggest any alternative packages of options that might work more effectively?  
A single package that requires,  
1/All advisers and those providing financial strategies to be qualified to the minimum level appropriate to the area and product or service provided, no lower than NCFS Level 5.  
2/ Each individual to be licenced to provide advice irrespective of employment arrangements.  
3/Common disclosure requirements across all advisers.  
4/ Impacts of any Robo-advice system used and the outcomes become the responsibility of the licence holder.  
5/ All advisers are obliged to be a member of an appropriately licenced professional body that upholds the requisite standards as a minimum and provides ongoing ethics professional development.  
This package I feel would  
A /Allow consumers to know where to get the advice they need,  
B/ Advice limitations would reflect competencies, but would require public education  
C/ There would be reduced possibility that consumers would get what they thought was advice from inappropriate advisers,  
D/All types of advice could be available with the assistance of Robo-advice systems, and  
E/The perception of conflicts would be reduced as consumer confidence grows.  
and those providing financial strategies to be qualified to the minimum level appropriate to the area and product or service provided, no lower than NCFS Level 5.

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

2. Do you agree with our assessment of the pros and cons of the options to overcome misuse of the FSPR?  
Unsure on This
3. What option or combination of options do you prefer and why? What are the costs and benefits?  
Require the entity to be NZ domiciled – either branch group member.
4. What are the potential risks and unintended consequences of the options above? How could these be mitigated?  
Unsure about this
5. Would limiting public access to parts of the FSPR help reduce misuse?  
Possibly Yes, if it was only able to be accessed domestically it is less likely to be misused overseas. A clear notification needs to be provided when access is denied.

### Notes

1. It seems to me that these options are extremely limiting and look like they are designed to corral people into taking the least difficult one for them rather than really looking to simplify and improve the status quo.
2. There are far too many assumptions being made around the barriers without any empirical evidence being quoted, this makes it extremely hard to consider any of the current options viable. A greater focus on the Act's desired outcomes would be better.
3. By requiring all advisers to be members of an appropriately licenced professional body, as defined by strict requirements, the overall professionalism of advisers would improve in a much shorter period than otherwise.
4. Absorbing the role of the Code Committee and the FA Disciplinary Committee into the licenced professional body structure would improve the minimum standards overall as well as reduce barriers to financial planning/advising becoming a profession and at the same time reduce costs for virtually all participants including FMA.
5. The concept of allowing salespeople to sell product unrestricted is a recipe for disaster as well as an insult to all professional advisers but is likely to be welcomed by product providing QFE's. The better result would be to remove sales from the FAA and incorporate it under the FMCA with the existing consumer protection legislation such as Fair Trading Act, Consumer Guarantees Act and the FMC Act. This would keep the Financial ADVISERS Act for those providing ADVICE.
6. Remove the exemption in the FAA provided to Accountants and Lawyers – As per the ASIC experience.
7. Robo-advice platforms are causing concerns already in the US and Australia where they fear it is allowing the platform owners to overload the advice (investment

portfolios) with their own product, increasing risk exposure to unwitting consumers.

- a. What happens for other forms of financial advice such as Insurance and Cash Management advice?

How could ethical requirements be met?

## Demographics

1. Name:

Kathy Wright-St Clair of Wright Financial Solutions Ltd I give advice on Insurance, Mortgages & Investments & KiwiSaver. I have completed and passed all the competency levels for all the above fields.

2. Contact details:

Redacted

& 07 834 0661 .

3. Are you providing this submission:

As an individual

On behalf of an organisation

I have worked in the Financial Services industry for over 19 years and as an AFA for the past 4 years. Wright Financial Solutions Ltd has been operating since 2001 and I have two new advisers who started in the Financial Services Industry in 2015. So I feel the options for the future of the Industry needs to be clearly defined as in Salesperson under the FMCA and those that are Professional Financial Advisers come under the FAA and are Licenced. This option makes it clear for Consumers and all current advisers.

ie: ADVICE = Licensed Financial Adviser

NO Advice = Salesperson and they are NOT called Financial Advisers.

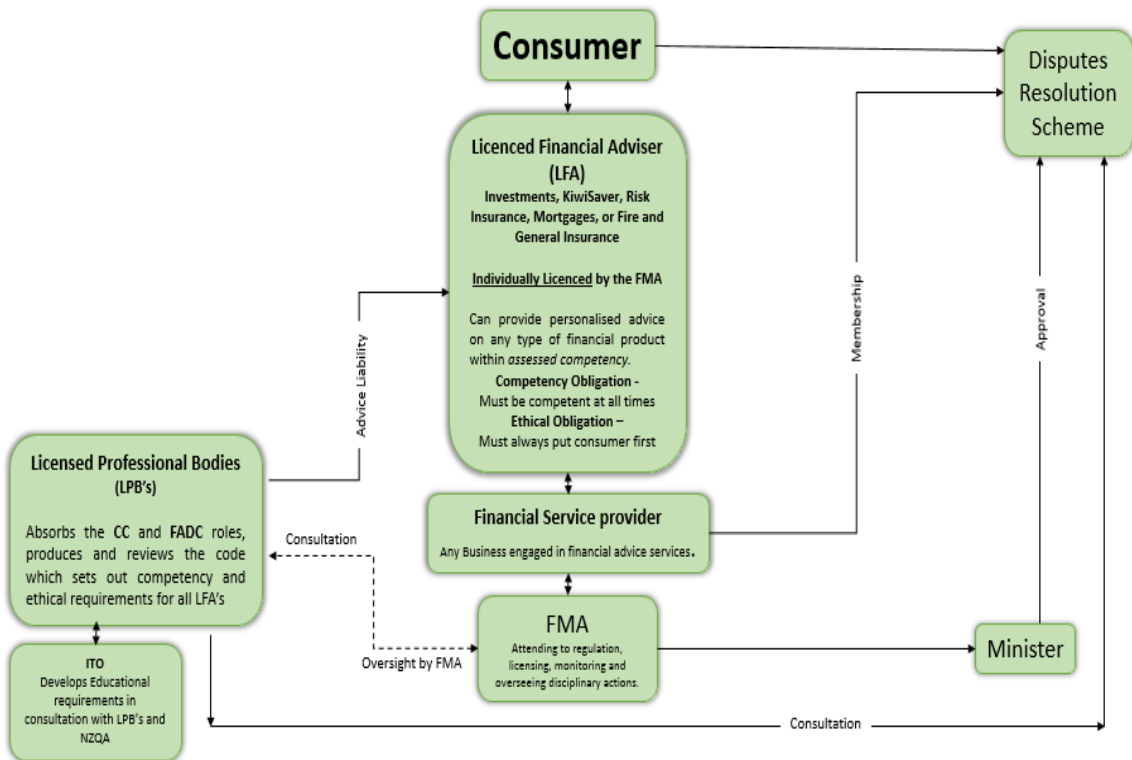
Please see diagram below.

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.

## Advice under the FAA



## Sales under the FMCA

