

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.

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

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

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

People do not know what advice means and what they get for their money and this is the biggest barrier. We in the industry have not effectively defined what advice is or the value that can be obtained from receiving it. The difference between sales and advice is not clear and there is manipulation of advice to be sales to avoid compliance. The range of types of advice is so great across the disciplines with the industry. There is no clear brand on what advice is or what the public can expect, so they either do it themselves or don't bother obtaining it.

In addition, people do believe that advice is always attached to a product sell and so are afraid to get advice, because they are going to be pushed to buy something. We have not effectively created an environment where advice alone is valuable and people are willing to pay for it.

An example of a brand that appears to work more effectively is accounting. Accountants prepare a set of financial statements according to set standards (IFRS) and these standards are audited in some cases. The accountant can clearly show what the standard is, the value obtained by the client and the cost of receiving that information. They are then held accountable to those standards via various methods.

Our industry has no clear set of principles on which the client can rely on. There are general statements in law and the Code around advice, but it is not clearly defined further.

This leads on to New Zealanders being unwilling to pay for 'advice'. They will naturally not pay for something, where there is no visible tangible benefit to them.

Chapter 4 – Discrete elements

- Which options will be most effective in achieving the desired outcomes and why?

4.2 – This is an essential tool to open up the market and allow more people to obtain information or advice. It will make advice more accessible and affordable.

If we are to increase the financial capability of NZers, we need to provide them with the right guided tools to learn themselves and make decisions. This may or may not include face to face advice time. Regulation must find a balance between setting minimum standards, but not standing in the way of people's rights to choose how they manage their money and investments. It is well documented that people only change behaviour when they can engage in the process and technology can do this with the right guidance.

4.3 – The ethical and client care obligations should be standard across all who provide advice. When there is consistency, there can be a clear brand and understanding on what advice is and the minimum standards for advice, ethics, and client care.

We need to distinguish between sales and advice according to simple, measurable standards.

For example you could have three different categories

1. Sales - an exchange of public information only, statement of features and benefits but no interpretation against any personal requirements including discussions or questions on risk profile.

2. Self guided advice – allowing the robo-advice model. Minimum disclosures and levels of care should be part of the process the investor goes through, but it is a self guided journey by the client and the adviser cannot be expected to meet all of the standards of a full advice model.

Transparency is key to this but there is also an acknowledgement that if people want to do it themselves, you have to respect that.

3. Full face to face advice – minimum standards are set and can be measured and advisers held accountable to those.

At any stage, as soon as interpretation or analysis is required from a person (adviser) and that adviser offers an opinion on whether a product fits a need, this is advice.

This approach will allow organisations flexibility to sell a product, a consumer to take the responsibility for analysis themselves and a consumer to get full advice to a certain standard.

4.4 – Minimum entry requirements on advice not sales will assist in setting a clear brand for advice.

4.5 – Instead of individual license or entity license I suggest;

1. Minimum entry into the advice profession – minimum standards of technical, ethical, conduct and law are met plus a minimum level of supervised experience. This gives people the right to come into the industry to do any job related to advice. CPD is a requirement to stay in and disciplinary action ensures those breaching standards are removed.

2. To provide advice to a more technical level (investment or insurance), additional competencies must be obtained, like accountants do for audit or taxation.

3. To offer services to the public in one's own right, a type of practicing certificate or licence must be obtained and maintained. This would mean entities must obtain these and meet regulated standards.

By doing this, you provide a level of consistency that can be relied on by the consumer and everyone adheres to it regardless of the products or place of work. There is a career pathway for individuals and an even playing field for consumers regardless of where they obtain their advice from.

Industry bodies can be charged with training/monitoring and reporting incidents to the FMA for discipline. This will ensure there is a link to the industry via representatives, a forum for the industry to discuss and lobby but still oversight by the FMA. This will only work if providers do not dominate the professional bodies. They must have independence and be funded by the members and government only.

4.6 – Disclosure is key and it needs to be clear to consumers on 1. Sales – what is it and what are the minimum standards they must meet. 2. Advice – what is this, what can be expected and minimum standards to be met. 3. Fees. 4. Conflicts. 5. Dispute Resolution process. This should all be standard across all types of advisers no exceptions.

- What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?

Granted, developing specific standards on which advice is, will cost money, however there will be long term savings in holding advisers accountable to those, instead of trying to interpret grey areas of law.

Consumers will in time start to understand what the standards are (in simple terms) and see the value provided from that.

The industry may develop further in the future, to actually requiring certain types of advice to

be obtained in order for certain products to be sold.

When there is consistency, there may be opportunities. The allowance of Robo-advice will open up the market to people who may not have sought advice in the past. This will increase revenues.

- Are there any other viable options? If so, please provide details.
None

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 will remove the ability for people to 'manipulate' the way they do advice, to avoid compliance. This reduces the risks to clients of misunderstanding the service they are receiving and the costs of the FMA to monitor the industry.
- Should high-risk services be restricted to certain advisers? Why or why not?
The greater the complexity and technical know-how or risk to the client, the higher the competency level required, therefore yes.
- Would requiring a client to 'opt-in' to being a wholesale investor have negative implications on advisers? If so, how could this be mitigated?
There needs to be criteria for wholesale investors and an opt-in process and then accountability on the adviser to prove the person clearly understood the consequences.

4.2 Advice through technological channels

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

The key ethical considerations I see are around

1. Nudging or manipulation of the information towards a particular outcome in favour of the provider over the customer. The purpose needs to be clear i.e. is information provided for information sake only, will it lead to the client only buying certain products, where are the biases?
2. Responsibilities – where are the responsibilities? What is expected of the customer vs what can be expected from the on-line service i.e. is the customer expected to do a certain level of research themselves, what is the minimum level of information that should be provided by the on-line service?
3. Accountability – who is accountable at various stages? If something goes wrong or an expectation is not met, what happens?
4. Risks – where are the risks and what are the consequences of those to the customer?

On-line advice or information should have simple standards that can be understood very easily by the client. These could be around

1. Disclosure – what must be acknowledged by the customer before they fully engage? Disclosure needs to cover
Purpose of the service
Risks – explanation of the risks and responsibilities/expectations must be clear to the customer,
Fees – minimum standards on how these are explained
Process – what is the process?
Complaints and dispute resolution

2. Information to be collected before they can proceed, especially around risk tolerance and asset allocation

- How, if at all, should requirements differ between traditional and online financial advice?
Disclosure should be the same for any type of advice, regardless of the delivery vehicle. There should be minimum standards for how advice is provided as for face to face, but allowing for a different format through on-line. The minimum standards should be simple to allow for ease of measurement by the client and regulators.
- Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?
Yes innovation can still occur as long as the customer can see the conflicts/biases around the product or service and it is not used to manipulate the customer. Manipulation occurs when a person is kept in the dark about the purpose and alliances behind the service. So with full disclosure, manipulation will hopefully be reduced.

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?
There needs to be more work done on suitability and terms of engagement to reduce the likelihood of the customer being led by the adviser down the wrong path or a path that suits the adviser/provider over the client.

Being more prescriptive about the minimum standards to meet when providing different types of advice will also help.

Advisers will have a clear set of standards to explain to a client when defining the engagement and the client can agree or disagree on what they want.

This should be monitored or enforced with reviews done by a professional body that reports to the FMA (as in the practice review approach of the CAs).

However, there needs to be sufficient detail to allow qualified auditors to review as well. Perhaps applying the concepts around AML/CFT to advice where there is an independent auditor who must review everyone's work every 2 years would also be an option. But the standards must be in place first.

- What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?
Sales are merely a regurgitation of facts, features and benefits, with no interpretation for a person's situation.
Advice begins as soon as there is any application to a situation but can be differentiated between self guided advice and person to person advice.

Salespeople must make it clear that all they can do is tell the person about facts, features and benefits, they cannot analyse, interpret, relate etc to the person.

As soon as a person asks a question that involves them/their entity/trust/role in a charity etc, this steps into advice.

Kiwisaver – could be sold as a sales item as long as the person has received advice on their risk

profile or have determined it themselves. However, if they have not determined it themselves or had advice, they should work through a risk tolerance process. This could be done on-line using Sorted or another tool. The person could then agree with that or ask more questions and see an adviser if they need to.

Anything where there is a risk profile required is advice and cannot just be sold. This is not to say the provider can't use a standard risk profiling tool on line and then the client can choose based on that, with no further advice. However, if the person does not understand risk profiling or wants to look at more around their financial position, this is advice.

Term Deposits could be sales, as long as the person is not looking for advice on how to incorporate them into their overall investment portfolio and how much to allocate to cash vs shares for instance.

Share broking is sales as long as only the facts are given to the person and they make the call on what to buy, how much, when etc. Once they ask about more than that, it is advice.

Advice will have many different types. I believe there should be simple minimum standards set, so everyone knows what to expect. We don't want to stop very sophisticated people from investing, but we need to make sure some basics are covered. This can be done on-line or the people can opt out while understanding the consequences.

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

I am not convinced that banning conflicted remuneration is the answer but I recognise that there are too many people selling products based on what they are paid.

Requiring greater accountability of the companies who have incentives for product sales may be more effective. If a company is selling a high number of a particular product and it cannot be proven it is in the client's best interests, then they should be penalised for that. Where clients are being moved from product A to product B and the remuneration is higher on Product B, more scrutiny should come on the adviser around that decision.

Transparency of fees is helpful so people know where the loyalties lie and the biases they will encounter with a provider.

It is the same for any product ie if you go to a Cadbury's chocolate shop, you know they are all paid to sell Cadburys and they will have sales targets to do that. You still buy the chocolate even though the bias is all in favour of Cadburys. Only being offered one type of product is acceptable, as long as it is right for the client.

Accountability of an entity for its advice and very significant penalties when they are manipulating or taking advantage, may be more effective than banning.

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 requirements can be designed as follows

1. New entrants – minimum qualifications (Diploma for entry level and Degree for specialisation) plus X years work experience showing specific conduct and ethical behaviours with no issues around criminal convictions, disciplinary action etc

That allows you to work in the industry as an adviser, but not on your own, offering advice to the public.

People wanting to become a professional, expect to have to do a qualification and experience

of some sort and to then maintain a membership. This is not a barrier to entry, it is just essential to join a profession where you have a position of responsibility. It becomes part of your identity and gives a sense of achievement along with the right to earn better money and have a stronger future.

2. Existing members – need to demonstrate competence and conduct through accountability. All AFAs have their qualifications and this should be expanded to all who give advice. This can be done via on-line work, on the job training and using an NZQA approach of assessment of real live work, instead of just tests and assignments. Reviews/audits can be done for conduct to ensure standards are being met. This allows this person to stay in the industry or gain 'membership'. CPD should be compulsory for all giving advice.

3. Existing members – for all complex high risk work e.g. Insurance and investments, higher levels of skill need to be shown. If standards are set on the minimum requirements to give advice on an investment portfolio, then the person can provide proof against these standards.

Again, this is not a barrier; professionals should expect that to offer services of a greater risk, they need to have greater knowledge requirements and accountabilities. Brain Surgeons are held to higher levels of scrutiny than the local GP but they have the benefits of being trusted specialists in high paid roles.

There must also be an allowance for an adviser or adviser service (on-line) to be a general practitioner and outsource specialised areas. For instance, if an adviser wants to do comprehensive planning but outsource investment and insurance, the standards they need to meet should allow for this and not expect them to reach expert levels. But if an adviser is choosing the investments for the client and holding themselves out as an investment adviser, their qualifications, experience and CPD should reflect this.

- 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 if you give advice, you must meet minimum knowledge, conduct and ethical standards. If you specialise, you must meet higher ones.

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?

Entity licensing is positive but should only be part of a wider approach.

Individuals must prove they meet minimum standards to enter the industry. If they want to offer their services to the public in their own right, they must obtain a license. All entities that offer advice to the public should have a licence.

The benefits are around accountability –

1. By the individual to be part of the profession – personal responsibility for competence and accountability which can be lost if they break the rules,

Portability of a qualification for the individual so it doesn't matter where they work, they are still a professional.

2. By the entity who can now set further rules inside the organisation for best practice or to brand their product to customers.

The entities can hire professionals who already have a particular code they must adhere to and this should bring greater personal integrity and accountability.

The costs are shared by the individual to enter the industry and the entity to maintain their licence.

We wouldn't term the individual qualification as a licence, more of a 'membership' to the profession and they have all of the obligations that this brings. They must maintain their competence levels and prove good conduct and ethics with no disciplinary procedures.

- What suggestions do you have for the roles of different industry and regulatory bodies?
Professional bodies have a role to play in education, representation and auditing of professionals against standards. They can work with the FMA around reporting of incidents and disciplinary actions.

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?
In the first instance, on-line with the option to receive it in written form or they can print it out. But for on-line it must be clear what is involved and not expect a person to go through multiple screens or fine print to understand it.

For on-line, having the option of audio is important for the visually impaired or those that prefer to listen rather than read.

- Would a common disclosure document for all advisers work in practice?
Yes but with a different document for terms of engagement depending on the type of advice provided.
- How could remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?
Dollar amounts charged for the first year based on the products sold/services provided. This should be broken down into costs paid directly to the adviser; costs paid to others (management fees).

Then extra detail for performance fees or bonuses that directly affect products offered to the client. It needs to be clear on how the client is affected both directly and indirectly e.g. a lower return because costs have been charged.

4.7 Dispute resolution

- Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?
No
- 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

- Should professional indemnity insurance apply to all financial service providers?
No comment

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)?

There needs to be a proper branding exercise that clearly sets out what the client can expect and it needs to be co-ordinated with all relevant groups.

At the moment we have a very piecemeal approach with no clear body standing out and everyone doing their own thing. One message needs to be developed and run across all delivery methods – e.g. Sorted, Advisers, Accountants, Government, Professional Bodies.

Money management is such an important topic, everyone needs to be on board with the expectations and brand advisers and the types of advice the same so the public get a clear message.

- What terminology do you think would be more meaningful to consumers?
Financial Services Adviser – FSA – can cover all financial services disciplines but then you differentiate for specialties e.g. Financial Services Adviser (Budgeting), Financial Services Adviser (Insurance), FSA (Investment), FSA (Sharebroker), FSA (Currency) etc.

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’?
I believe the definitions of financial advice and financial adviser services are still too complicated and can be simplified. We need to be able to define what advice is in a sentence or two without adding layers that consumers have to try and decipher.

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.
Yes, particularly accountants, real estate agents and to a lesser extent lawyers. We have seen many examples of accountants telling clients to put money into property, without using an advice process to come to this conclusion. Anyone giving advice on what type/class of financial product to buy should be held accountable to the same standards. Accounting is a different discipline to financial advice and I struggle to see how you can say it is incidental to doing a set of accounts or advising on a sale of a business.

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?

Over time I believe that a common set of standards around giving advice would be beneficial, just as the International Financial Reporting Standards is trying to do for financial accounting.

- 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?

I believe they should be covered by the definition of sales vs advice and if they are giving advice, need to be accountable to those standards. We want to avoid leaving gaps in the law for sharebrokers to disguise advice as sales.

Chapter 5 – Potential packages of options

- What are the costs and benefits of the packages of options described in this chapter?
I prefer package 3 and my reasons are contained above and the competency standards used as stated above.

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

Enter text here.

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

Enter text here.

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

Enter text here.

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:**

Enter your name and/or the name of the group of people, business, or organisation you are providing this submission on behalf of here.

2. **Contact details:**

Enter your email address, or other contact details here.

3. **Are you providing this submission:**

As an individual

On behalf of an organisation

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: