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

1. Do you agree with the barriers outlined in the Options Paper? If not, why not?
   Mercer agrees that the barriers outlined in the Options Paper present real impediments to the achievement of the goal of more informed and confident consumers.
   Retail consumers are challenged by the adviser, product and advice distinctions in the Act.
   In our experience, consumers often want personalised advice on a single product without having to submit to full enquiry as to their particular circumstances and goals.

2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.
   Low levels of financial literacy and engagement impede retail consumers' understanding of their investment choices and may deter many from taking an active interest in managing what may often comprise their retirement incomes.

Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?
   1. Ethical and client care obligations must form the bedrock of any retail advice occasion and addressing these issues would likely have the most impact on achieving desired outcomes.
   2. Removing current adviser, product and advice restrictions would better enable the consumer to engage advisers by eliminating complexity and confusion.
   3. Notwithstanding the above, retention of the current wholesale client definition and treatment of wholesale consumers is supported.

4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?
   Retail consumers could be expected to benefit from the removal of adviser, product and advice distinctions as few have any understanding of their existence and/or application.
   Such removals would likely have the effect of reducing the compliance burden on advisers and increasing their willingness to provide advice as complexity and uncertainty in lessened.
   This in turn could free adviser resources to focus on ethical and client care responsibilities.

5. Are there any other viable options? If so, please provide details.
   No.

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?
   The removal of the distinction between class and personalised advice would improve consumer access to advice by encouraging advisers to enter this space.
   At present, many advisers are reluctant to offer advice of any type -choosing to remain in the information only space - because of the challenges of identifying and complying with advice boundaries.
   The removal would also assist retail consumers who currently find the distinction unhelpful and confusing.

7. Should high-risk services be restricted to certain advisers? Why or why not?
   High risk services should be restricted to certain advisers but only where the service is demonstrably high risk and its use limited to a small number of informed consumers.
   Not all current category 1 products should be considered high risk e.g. KiwiSaver is a category 1 product but is a relatively simple long-term savings product which is generic in nature.
   Restricting advice on KiwiSaver to "expert advisers" would undermine many of the reforms intended to be achieved by the review of the Act.
   High risk (complex) products should include only those products with an inherent element of financial sophistication / high risk e.g. Interest rate swaps and should, in any case, exclude wholesale clients.
   We support the concept of an 'expert' financial adviser, offering either a full range of financial advice services or accredited to specialise in limited areas.

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?
   We see no utility in requiring clients to opt-in to being a wholesale investor. The Financial Markets Conduct Act and FAA already provide for clear definitions of such consumers and the primary focus of the FAA should be on the retail consumer.
   Requiring the wholesale consumer to opt-in adds unnecessary compliance activity for the adviser and the wholesale consumer.

4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?
   Technological advice platforms already exist in the class advice arena with a number of adviser entities providing modelling and retirement planning tools for their retail clients.
   We support licensing the entity which provides the personalised advice platforms.

10. How, if at all, should requirements differ between traditional and online financial advice?
    The personalised online advice tool for retail clients should be capable of producing an audit trail and/or automated report to enable validation of its technological/advice integrity.
    As above, we support licensing the entity providing online advice.

11. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?
    This is a relatively new area of advice and changes may be required as it evolves.

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?
    We support the the extension of the ethical obligation to put the consumer's interests first. The obligation could be monitored by testing the suitability of the advice provided. This could be tested and enforced by requiring all advisers to keep records of advice, which amongst other things, demonstrate the suitability element underpinning the advice.

13. What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?
    The only practical way to distinguish between sales and advice is to require the adviser to disclose to the consumer whether they are making a sale or providing advice.

14. If there was a ban or restriction on conflicted remuneration who and what should it cover?
    We do not believe that a ban on conflicted remuneration is necessary where the adviser is under an obligation to put the interests of the client first and their disclosure statement discloses the source of their income in relation to the particular advice.

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?
    We support Option 4 where competency standards are determined through a licensing process.

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?
    We are of the view that all advisers should be subject to at least a minimum entry requirement as per Option 1.
    Those requirements should include knowledge of the structure of the New Zealand financial services industry; applicable laws and regulations; and training in respect of disclosure practices.

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?
    Mercer supports entity licensing as the most cost-effective way to provide consumers with

access to advice within a proportionate compliance model.
We also support individual licensing along the AFA model for those advisers in the "expert" category. These individuals should be covered by the Code.

18. What suggestions do you have for the roles of different industry and regulatory bodies?
    One of the hallmarks of a professional adviser is membership of a professional body. We support option 1B which provides for a greater role for industry bodies, provided they can attract a wide membership base and operate in the interests of all their members.

4.6 Disclosure

19. What do you think is the most effective way to disclose information to consumers (e.g. written, verbal, and online) to help them make more effective decisions?
    We support all advisers having broadly the same and shorter disclosure requirements. Anecdotally, many consumers find the disclosure statements too long or do not always read their contents.
    We support written disclosure being available to consumers with the option to deliver it verbally, in hard copy or online.
    Option 2 is our preferred option with consistent documentation between advisers and the same requirements regarding the timing of disclosure.
    We don't support option 3 which introduces additional and unnecessary disclosure requirements.

20. Would a common disclosure document for all advisers work in practice?
    Yes, we believe a short form disclosure document for all advisers would work in practice. Key information points in the disclosure document should include who the adviser is and what redress is available to the consumer in the event they are dissatisfied with the advice.

21. How could remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?
    Advisers should be required to disclose the nature of their primary source of remuneration e.g. Salary v. Commission without a requirement to disclose the quantum of such remuneration.

4.7 Dispute resolution

22. Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?
    We are not aware that the existence of multiple dispute resolution schemes is having a detrimental effect on consumer outcomes.

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?

    There is little evidence to suggest that providers are shopping around for a 'soft' scheme or evidence that that the current structures are failing to meet consumer needs.Accordingly, we see no need to introduce greater consistency between dispute resolution schemes' rules and processes.

24. Should professional indemnity insurance apply to all financial service providers?
    Yes. It undermines the effectiveness of the disputes resolution system if the provider carries no

insurance.

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)?
    We don't support option 1 which would see the creation of an additional consumer portal which may only add to the 'noise' in the financial advice space.
    We support strengthening existing organisations dedicated to improving financial literacy e.g. Commission for Financial Capability.
    Many consumers may only ever interact in a meaningful way over a long period of time with a single financial services provider – their KiwiSaver scheme provider. As such, we believe that industry participants (e.g. KiwiSaver providers) also have a central role to play in getting information to consumers.

26. What terminology do you think would be more meaningful to consumers?
    We support the use of more meaningful terminology for consumers and would see a designation of 'Mercer Financial Adviser' as more meaningful to our consumers than 'QFE Adviser'.
    We support removing the term 'registered' which in some consumers' minds creates an impression that they are somehow recognised in an official capacity.
    As we support the removal of class and personalised advice distinctions, we don't support these terms being retained and/or renamed.
    We support maintaining the distinction between retail and wholesale investors.

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'?
    We support the current definitions of 'financial adviser' and 'financial adviser service'.

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.
    Mercer has no evidence to suggest that those persons currently exempt from the Act pose an undue risk to consumers.

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?
    Consumers have access to many and varied forms of international financial advice, some of which may be of dubious value. However, there is little if any scope for the FAA to attempt to regulate offshore providers.

Instead, any local initiatives which contribute to the development of greater financial literacy would assist consumers in filtering the advice received from international sources.

30. How can we better facilitate the export of New Zealand financial advice?
    By first constructing a robust, reliable financial advice delivery system for consumers resident in New Zealand.

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.

Chapter 5 – Potential packages of options

32. What are the costs and benefits of the packages of options described in this chapter?
    Option 1 represents only an incremental change to the current system which is likely to limit the Act's ability to achieve its stated objectives.
    Option 2 builds on the success of the QFE model within which the majority of category 1 product advisers operate. It also recognises the need for certain advisers to be individually licensed where high risk products are being offered by the adviser.
    This option is also consistent with consumers' expectations that certain standards of customer care apply irrespective whether they are receiving class or personalised advice (as well as eliminating these terms which have little consumer resonance.
    Option 3 appears to introduce additional compliance burdens on all advisers/sales persons without evidence of a corresponding demand or benefit for the consumer.

33. How effective is each package in addressing the barriers described in Chapter 3?
    Mercer is of the view that Option 2 would be the most effective in addressing the barriers in chapter 3 whilst also keeping the compliance burden proportionate to the risks.

34. What changes could be made to any of the packages to improve how its elements work together?
    There needs to be greater information as to what would likely constitute complex or high risk financial advice services, as these services are proposed to be excluded from the standard financial adviser model. There could potentially be scope for an entity to be licensed to provide such services.

35. Can you suggest any alternative packages of options that might work more effectively?
    No. The options included in the paper have been thoroughly and thoughtfully constructed.

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?
    We support any initiative to strengthen the FSPR.
    In our own experience, misuse of the Register has occurred as a result of unauthorised use of our FSPR registration number by an offshore entity.

37. What option or combination of options do you prefer and why? What are the costs and benefits?
    We support options 1 to 4, in particular requiring trust and company service providers to register.

38. What are the potential risks and unintended consequences of the options above? How could these be mitigated?
    As per 37 above, Mercer's problem with misuse of the FSPR register occurred as a result of an unrelated, unauthorised entity appropriating our FSPR number and using it on their own website. Because the website was hosted in a foreign jurisdiction, there was no easy way to stop the unauthorised use or to close down the website.
    The options which we support would impose a minor compliance burden on the adviser but would likely require more substantial resourcing of the FSPR registrar and FMA.

39. Would limiting public access to parts of the FSPR help reduce misuse?
    We don't see any utility in limiting public access to the FSPR.

Demographics

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3. Are you providing this submission:
   ☐As an individual
   ✓ On behalf of an organisation

4. Please select if your submission contains confidential information:

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