

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?
[Agree](#)
2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.
[No comment](#)

Chapter 4 – Discrete elements

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

In the Snapshot on page 7 of the Paper, it is stated that “The aim is to promote more confident and informed consumers and investors”.

While it is acknowledged that the current system of “registered” and “approved” Financial Advisers is preventing consumers from knowing where to seek advice from, the proposed options do not sufficiently clarify this for the consumer.

The option under 4.1 – option 3 – to “restrict the provision of certain complex or high-risk services to certain advisers” will certainly be no less confusing to the consumer than the current “registered” and “approved” and probably more so. This is covered in more detail in my answer to point 7 in the Templated Submission attached.

If it truly is the intention to promote informed consumers, they first need to know which advisers provide the sort of service they need.

The first point to make is that, in my experience of over 40 years, consumers seldom want advice on the whole possible range of “financial advice”. More likely, at any one time, they will want advice on a specific area such as saving for retirement, getting or restructuring a mortgage, getting some personal or ‘fire and general’ insurance.

The second is that the majority of “Financial Advisers” operate in a limited range of skill-sets. Some will deal solely in Life Insurance and many of the current RFAs will be in

this category, while others deal predominantly in investments but may also do some life insurance work whether they are well-qualified to do so or not. Yet others may be mortgage brokers who do some life insurance. Only a minority deal in all areas of advice.

So, to achieve the goal of being able to access the advice and assistance they need, consumers have to know what the adviser's skill-set is. Are they really an investment adviser who dabbles in insurance and/or mortgages or are they a life-insurance specialist who might do a bit of savings planning?

Therefore, as many of the submissions to the Issues Paper recommended, it would seem logical to use this opportunity to create absolute clarity for consumers so they can identify which advisers will be able to provide the service they require and whether they are qualified to give advice or are restricted to pure sales.

The first part of this would be to create 2 distinct classes of "adviser"; the first being a true adviser who would be classified as a Licensed Adviser and the second a Salesperson.

Licensed Adviser

A person who offers financial advice to consumers and who meets the following criteria;

1. Is not employed by a "manufacturer" of financial products.
2. Has attained the required level of qualification in a given discipline.
3. Has completed the required period of experience under the supervision of an adviser Licensed in the same discipline. This might be 2 years' experience and could be "waived" for current advisers who have been advisers for a minimum time – maybe 4 years.

A Licensed Adviser will be required to comply with the Code of Conduct appropriate to their discipline. This will provide the "rules" around disclosure, continuing professional development, always putting the client's interests first etc.

Salesperson

A person who provides financial advice to consumers and who is not is not a Licensed Adviser

The Salesperson designation would not carry these requirements but they would be required to clearly spell out to the potential client exactly what their role is.

The second part would be to delineate the Licensed Advisers by the disciplines in which they have passed the relevant NZFCS papers; viz. Investment, Life Insurance, Mortgages, General Insurance etc. Advisers would then be called Licensed Investment Adviser, Licensed Life Insurance Adviser, Licensed Investment and Life Insurance Adviser etc. While there could be a temptation to use a term such as 'Licensed Financial Adviser' to apply to someone who is qualified in all the disciplines, in my opinion, this would potentially create similar problems as the current RFA/AFA as we would then have to assume a consumer would know what this designation refers to. The same argument holds with Licensed Financial Planner.

Not only will this designation very clearly indicate to consumers just what the adviser can cover, it will also mean that qualifications for each discipline can be tailored to the particular discipline rather than the current broad brush-stroke approach. Qualification will, therefore, be much more meaningful and can be improved discipline-by-discipline when appropriate. This could even reduce the cost of qualification to advisers as they would need only cover the particular discipline they select. This is very much along the lines of the new NZCFS qualification.

The last point I would make on this proposed regime is that, to be licensed in a designated discipline, the adviser must have achieved all qualifications, including any monitoring/mentoring that might be deemed necessary. Advisers working in a field without these qualifications must do so under the umbrella of a Licensed Adviser and all work would need to be signed off by the Licensee. This would further ensure that a non-qualified adviser receives proper mentoring.

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

Enter text here.

5. Are there any other viable options? If so, please provide details.

As per question 3

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?

Not sure

7. Should high-risk services be restricted to certain advisers? Why or why not?

This is totally the wrong approach as it will set up the same sort of problems currently faced with having the AFA/RFA distinction. In fact it would be even worse since a client will not necessarily know at the initial engagement whether the advice they will be looking for will cover the so-called "High-Risk" or not. Therefore, they could be well into a discovery session with an adviser only to find out that what they will be needing falls into the "high risk" category and, therefore, outside the scope of the adviser. This means wasted time and work both the consumer and the advisers which then has to be duplicated with an appropriately qualified adviser.

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?

I believe that an OPT-OUT approach would be better.

To make this work would require a simple written statement along the lines of: "I will be treating you as a Wholesale Investor because (state reasons). The ramifications of this for you are (list ramifications)". By taking this approach there will be absolutely NO confusion in the investor's mind about the reasons or the consequences.

I believe that an OPT-OUT approach would be better

4.2 Advice through technological channels

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

Enter text here.

10. How, if at all, should requirements differ between traditional and online financial advice?

Enter text here.

11. Are the options suggested in this chapter sufficient to enable innovation in the adviser

industry? What other changes might need to be made?

Enter text here.

4.3 Ethical and client-care obligations

12. If the ethical obligation to put the consumers' interests first was extended, what would the right obligation be? How could this be monitored and enforced?

All people offering 'advice' should be covered by the same obligations along the current requirements for AFAs. The current methods for monitoring and enforcement that currently applies to AFAs would, therefore, be appropriate.

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

A simple way of ensuring the distinction is there to be 2 distinct categories of provider; an Adviser and a Salesperson and each would have very distinct titles as outlined in my answer to question 7

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

In my opinion, there is no problem with an adviser receiving commissions from a 'supplier' provided it is clearly disclosed. The one area I believe that can be seen as encouraging behaviour that may not be in the client's best interest is in what are known in the profession as soft dollars. This is especially true for any reward that is based on volume of business the worst example of which would be the trips offered by some suppliers. Even seemingly trivial rewards such as entry into a draw for an iPad or such can potentially give rise to a conflict in interest. Perhaps the simple solution would be to ban ALL such incentives from suppliers.

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?

Require a minimum entry requirement for ALL Licensed Advisers specific to their discipline of work. While this would require separate qualifications for each discipline such as Investment, Life Insurance, Mortgages, General Insurance etc. there will be areas that will be common. This way the qualifications will be specific to the discipline and can, therefore, be both more relevant and less general resulting in a more streamlined set of qualifications. Until an "adviser" has achieved the required entry qualification, they would be required to work under supervision (as per Option 2 in the paper) with the supervisor being held responsible and accountable (i.e. must sign off all work) during the period of supervision.

This approach would have 4 benefits;

1. The consumer/customer would know that any advice they received would have been carried out or vetted by an adviser who was suitably qualified in the area of "financial advice" relevant to their enquiry.
2. It would minimise the barriers to people wanting to join the profession. In fact it would encourage more to join as they would know that the 'industry' was professional, they would be mentored/supervised and, once fully qualified, they could become a Licensed Adviser.
3. By splitting the requirements into discipline, the requirements for each would be minimised and, therefore, less costly in both time and money for the adviser.
4. Separate qualifications for each discipline would also allow changes to a specific area not impact on the others. This would allow greater flexibility in the qualification regime when, for instance, a new product or accepted method of approach was introduced in a specific discipline so that only the qualification in that discipline would be impacted.

Note that this regime would NOT apply to a Salesperson.

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?

Yes - as per the previous answer.

The minimum entry requirement would be similar to the current requirements for an AFA but with qualifications appropriate to their discipline.

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?

Under the proposed reclassification into Adviser and Salesperson, many of the large entities such as banks will opt for the majority of their staff to be classified as Salespeople. In fact, it would be hard to justify any of their staff being classified as Licensed Advisers since there will always be an unresolvable conflict of interest between client and the company they work for. Indeed Sovereign's current QFE is restricted to RFAs. As soon as an individual becomes an AFA they are automatically excluded from the QFE.

Some larger "Financial Service" practices might opt for an entity designation but, as it places a very high level of potential risk in that an errant adviser could, in an extreme case, effectively close them down, this is probably not going to be the case.

Therefore, I can see no practical reasons for entity licensing but rather all Advisers should be required to be licensed.

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

I believe it is very important for industry bodies such as PAA, IFA to be left entirely out of the equation other than as lobbyists for their members. I definitely see a role for them in helping their members comply and in working very closely with the FMA to assist them in setting the structures and competency requirements etc.

4.6 Disclosure

19. What do you think is the most effective way to disclose information to consumers (e.g. written, verbal, online) to help them make more effective decisions?

As I propose there be 2 classifications: Adviser and Salesperson with Advisers being denoted by the discipline in which they are qualified and, therefore, licensed, ALL Advisors should be required to provide a client with a written disclosure statement – whether this is hard copy or digital.

Each discipline would have its own templated disclosure statement.

By this I mean that there would be mandatory headings with guide-lines about the content required under each of the headings. The actual detail entered could be in the adviser's own style.

Where an adviser is licensed in more than one discipline, there need be only 1 disclosure document so there is no duplication but it must contain all the headings required for each discipline.

The content should include ALL the information listed in Option 2.

It could also include a statement outlining the manner in which the adviser does business; i.e. the methodology they use. This would allow a degree of personalisation but retain a consistent format between advisers so a potential client can make direct comparisons.

While there would be some minimal costs involved for an adviser in redrafting their disclosure statement, most would be very happy with the trade-off of being able to include content that shows how they differentiate themselves from other advisers.

The disclosure statement should also be available via the FSPR which would also include the disciplines in which the adviser was licensed to operate.

Salespeople would need a very different disclosure statement.

Besides stating the areas of financial service their "group" had approved the to work in, the most important thing that their disclosure MUST contain is a statement along the lines that they are restricted to selling products from (list companies), that the products they are recommending may not be as fit-for-purpose as any product the client may already have and **THAT THIS RECOMMENDATION COMES WITH NO OBLIGATION TO PUT THE CONSUMER'S INTEREST FIRST** (in capitals and, preferably in bold type at several points higher than other text.

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

Yes, provided it was along the lines detailed in answer 19

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

A simple statement that the adviser is;

1. Charging a fee for service along with the structure of fees OR
2. Is receiving a commission from the supplier along with the scale of those commissions including any additional bonuses etc. OR
3. A combination of 1 and 2 including, possibly, a fee that is offset by commission.

I see no real need to express any commissions as dollar amounts but as percentages of premium.

Where commission is being received, the adviser need only show the range of rates payable in initial disclosure. At the point an actual product and supplier is recommended, the commission rates for that particular case MUST be clearly disclosed to the consumer.

4.7 Dispute resolution

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

Not that I am aware of.

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?

Enter text here.

24. Should professional indemnity insurance apply to all financial service providers?
Definitely. As far as Life Insurance goes, advisers cannot get agencies with suppliers without having PI cover

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)?

Via the FSPR – but consumers need to be educated to this.

In believe that the added information recommended elsewhere in this submission would make this a very valuable source of information for consumers.

In summary, in addition to the information already included on the FSPR, this information need to show:

1. Discipline(s) the adviser is licensed in.
2. Any groups the adviser is affiliated with, whether they are industry bodies such as IFA, PAA etc. or groups like KEPA etc.
3. Access to a copy of their Disclosure Statement
4. Access to any other document(s) the adviser may wish to be made available to consumers. The number of such documents should be restricted and/or a fee imposed for additional documents.
5. Clear designation if they are a salesperson for a supplier; e.g. ANZ Salesperson

26. What terminology do you think would be more meaningful to consumers?
Clearer “labelling”. I.e. Designation along the lines of Licensed Investment Adviser, Licensed Life Insurance Adviser, Life Insurance Salesperson etc

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’?
Making a very clear distinction between advise and sales would be the only caveat to this

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.

Totally. I have had Accountants state to clients that “they don’t need all that cover”. Why should those currently exempt not to be included within the scope of the Acts.

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?

The comment in the Paper concerning “difficulty in monitoring and enforcing compliance with New Zealand laws by overseas providers” is a very real one in much the same way as purchasing goods on-line from an overseas company. Perhaps the answer is to NOT try to include them in the legislation AND THEN, AS PART OF AN OVERALL EDUCATION CAMPAIGN, HIGHLIGHT THIS FACT – GO OVERSEAS FOR ADVICE AND YOUR’E NOT PROTECTED.

30. How can we better facilitate the export of New Zealand financial advice?
No thoughts

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 comments

Chapter 5 – Potential packages of options

32. What are the costs and benefits of the packages of options described in this chapter?
Enter text here.
33. How effective is each package in addressing the barriers described in Chapter 3?
Enter text here.
34. What changes could be made to any of the packages to improve how its elements work together?
Enter text here.
35. 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

36. Do you agree with our assessment of the pros and cons of the options to overcome misuse of the FSPR?
Enter text here.
37. What option or combination of options do you prefer and why? What are the costs and benefits?
Enter text here.
38. What are the potential risks and unintended consequences of the options above? How could these be mitigated?
Enter text here.
39. Would limiting public access to parts of the FSPR help reduce misuse?
Enter text here.

Demographics

1. Name:

Michael Lay

2. Contact details:

Redacted

3. Are you providing this submission:

As an individual

On behalf of an organisation

(Describe the nature and size of the organisation here)

4. Please select if your submission contains confidential information:

I would like my submission (or specified parts of my submission) to be kept confidential, and attach my reasons for this for consideration by MBIE.

Reason: Enter text here.