

# 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](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.

## Permission to reproduce

The copyright owner authorises reproduction of this work, in whole or in part, as long as no charge is being made for the supply of copies, and the integrity and attribution of the work as a publication of MBIE is not interfered with in any way.

## Chapter 3 – Barriers to achieving the outcomes

1. Do you agree with the barriers outlined in the Options Paper? If not, why not?  
Yes, having a 3 tier system for advice is very confusing to the public....assuming they even know that there are differences. It strikes me that one issue is that whilst the Government wants the public to be more aware they have seemingly done little to educate that public to understand how the financial advice process works in NZ.
2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.  
It seems that the industry itself does not always know when it needs to alert a potential client to who they are and what they do and what their limitations are on giving advice. This could best be resolved by EVERYONE providing disclosure documents.

## Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?  
Package 3 seems to be getting toward the right balance....BUT....in reality none of them totally meet the needs of the public and again without proper public highlighting and education then no matter what we do it will still not be “out there” for members of the public to readily see and understand the issues and options. Firstly we need to see some proper education of the public. We then need to simplify the financial advice arena – call everyone the same, have everyone authorised, ensure everyone [individuals, groups, companies] have a simple and compliant Disclosure Document which states very clearly what areas they are authorised and competent to give advice on and ensure that everyone complies. Make no distinction between types of advice; but ensure that there is an emphasis on the adviser giving advice on the area that is required to be met by the client.....this does not always absolve the need for a full or detailed fact-find nor the ability for an adviser to highlight any shortfalls that the client should consider seeking advice on. Allow great input from industry bodies both in terms of compliance and in ensuring that the needs of the industry/public are met as time evolves and things change.

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.  
Enter text here.

#### 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?  
I would suggest next to nothing as I am not convinced that the public know or understand that there is a distinction now or what/how that works.
7. Should high-risk services be restricted to certain advisers? Why or why not?  
There are definitely some areas where a specialisation is critical – e.g. share purchasing, UK Pension transfers] and those with the expertise and experience should be highlighted, perhaps on a specialist register. Any/all registers should be highlighted and accessible from any Government website linked to financial services. The register should be broken down by regions/towns and have a subset for specialists.
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?  
Surely as a competent adviser knowing your client is key. In knowing your client you should then know whether they will/would be a wholesale client or not and the adviser should act accordingly. Requiring opt-in and opt-out seems too controlling!

#### 4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?  
With Robo-advice I feel the issue is when is advice actually given, if at all. I am not convinced that a series of questions answered by a client would be sufficient for a system to then produce advice and in that lies the dilemma. If things turn to custard where does the fault lie – with the “robo-advice” system or with the client – did they actually understand what they were being asked and did they answer “truthfully” at the time. I believe that there are some areas where robo-advice will work [such as car/house/content insurance and potential lump sum life cover and potentially medical and income cover but certainly I cannot readily see it working with any investments.
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?  
Innovation will happen in the adviser industry and as long as there is some level of “peer” review before anything goes live I cannot see the need to be too heavy handed in “controlling” that innovation.

#### 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 channels are required to operate on a "client first basis" where there is a clear and discernible benefit to that client – e.g. fees are lower, better policy terms, provable better performance etc.....seeing your Kiwisaver value on your bank statement would NOT be a sufficient benefits to justify a Kiwisaver transfer!

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

I would suggest the difference between a sale and advice is that the client pretty much knows what he wants when he buys something [i.e. the sale] and he is simply looking at the provider to have that need covered. Advice is when a client does not readily know what he needs or where any shortfalls might be and seeks professional input. Sales people should be required to issue a Disclosure Statement stating what they offer, that it is not necessarily the only one in the market but is all they can offer.

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

I am unsure where there is ever a conflict. If a client knows that an adviser's fee is paid in the form of commission by an NZ provider and they agree too that fee where is the issue. If an adviser is restricted to recommending a certain provider through any contractual agreements then that should be clearly explained in any Disclosure Statement the client should have seen and signed. In my opinion closing down ways in which advisers can be remunerated actually harms the public more than the adviser. Ensuring the client knows what the fees are and how they are paid is critical. Restrictions, to my mind, are NOT needed.

#### 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?

Completing certain educational pathways a good adviser does not make – they may be able to pass exams etc but still not be a good adviser. Certainly there needs to be a standard to be met to be able to call yourself an adviser and I feel the requirements currently in place for AFA status should be extended to everyone. If the adviser then wishes to specialise/focus on one or more areas then they should show a competence in that area. Regulation has been an immensely positive thing in the NZ Adviser arena and a clear route to a competency level to become an adviser will help to bring people into the industry but constant change and over regulation and cost of that regulation will not be beneficial!

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?

All advisers, in my opinion, should have to complete the full range of entry requirements imposed on those wishing to be designated an AFA

#### 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?

To be fair I cannot actually see or understand what this does for anyone in our industry other

than generate more paperwork and further costs!

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

Having a close connection between industry bodies and the regulator I think has been one the biggest success of the NZ regulatory regime and we should maintain that linkage and enhance it to include a greater input into future change and into monitoring advisers – i.e. perhaps the industry body does more monitoring and thus reduce the interaction and paperwork and reporting between the adviser and the regulator.

#### 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?

I think disclosure should be in writing and I think a client should always sign to say they have received a disclosure document and that they have read it.....too often verbal disclosure comes back to be a he said/she said issue in times of trouble. We should require clients to take some responsibility to read information and for the actions they take – we do NOT need to “nanny state” people by removing their responsibilities.

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

In general I cannot see why not especially if everyone is moving to a “same basis” – if an adviser specialises in some way [i.e. UK pension transfers] then additional comments can/must be included!

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

Remuneration should be set out in any recommendation letter and should clearly state any fees to be paid by the client and when and if commissions are payable then either the amount payable or the percentage should again be clearly spelt out and signed off by the client.

#### 4.7 Dispute resolution

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

Not as far as I am aware.

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?

Yes

#### 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)?

Websites, info-mercials, financial press statements from all the above – Government, industry,

consumer groups – ALL have a role to play.

26. What terminology do you think would be more meaningful to consumers?  
Enter text here.

## 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’?  
Enter text here.

### ***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.  
Enter text here.

### ***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?  
Click here to enter text.
30. How can we better facilitate the export of New Zealand financial advice?  
Enter text here.

### ***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?  
Enter text here.

## 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:  
Mike Cole, AFA
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.