

# 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.

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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 we have not commented on the specific barriers mentioned in the Options Paper, we agree with MBIE's comments.

Barrier: It is hard for consumers to know where to seek financial advice from

We agree that the legislation uses terminology that is unclear and confusing. Terms used to describe the types of advice and advisers available to consumers are difficult to interpret. We agree that the terms 'authorised', 'registered' and 'QFE adviser' mean little to consumers and have different meanings in other industries when compared to financial services, and that this confuses matters further.

Our view is that often, consumers lack the knowledge to know where to go to get financial advice, or that it is available to all (as demonstrated by the numbers of KiwiSaver members who remain in conservative funds with default providers). Part of this issue stems from a lack of financial literacy, which could be addressed by schools but also there appears to be a belief that financial advice is only available for wealthy people. This, we believe, could start to be addressed if focused, limited advice could be given to clients on one area of their finances, or one product. Disclosure would be key here to ensure the consumer understood whether they were being 'sold' to (where the salesperson worked for an organisation and could only provide information on a specific suite of products and could not compare providers) or were being given 'advice' (which would indicate something more was being offered perhaps in terms of choices of products and providers but also a personalised service).

Barrier: Certain types of advice aren't being provided

We would like to see the review process to clearly address the differences between class, limited and personalised advice and what the obligations are on the adviser in each scenario. FMA's Sale and Advice Report seemed to indicate that even when providing simple, personalised advice on a specific subject that had been defined by the adviser and agreed by the client, the adviser had an obligation to take into account all elements of a client's circumstances to be sure this was the most suitable approach. Our view is that consumers want the option to access focused advice, sometimes without having to disclose unrelated

information. We would imagine that this would also work very well with KiwiSaver, although this is an area where only one of our business units (for high net worth individuals) can offer personalised financial advice.

Barrier: Consumers don't always understand the limitations of different types of advice

We agree that the disclosure requirements for all advisers should be the same and should disclose information on remuneration, qualifications, and conflicts of interest. Standardising disclosure would make it easier for clients to compare adviser types and individuals. Commission payments and conflicted remuneration or soft-dollar arrangements should be disclosed every time by every type of adviser. It does not make sense that some advisers should put their client's interests first in this area, and yet others are not obligated to. However, we do wish to stress that there should be emphasis on a consumer to read and consider the disclosure documents as well as the adviser to provide them.

Our view is that there should be a clear distinction between a sales service and personalised advice and that this should be addressed via disclosure to the client. A sales person could provide an information only service, with no provider comparisons, on their employer's products whereas an adviser could either be licensed individually and be independent, or come under their employer's licence and provide advice on their employer's product suite. There should be clear limits on what each type of role can provide to a client and this must be disclosed upfront.

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

Enter text here.

## Chapter 4 – Discrete elements

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

Of the options highlighted we are very keen to see the distinction between class and personalised advice be removed. We feel that class advice can make a good introduction to a simple, focused personalised recommendation but that on its own it can be confusing for clients and difficult for an adviser to provide, while meeting a client's expectations.

If this distinction was removed, we would like to see some clear guidance provided to advisers to ensure that they know the regulator's expectations in this area as this would appear to contrast with FMA's approach outlined in its Sales & Advice Report (see comments above). We would also expect that if all advisers were able to provide personalised advice that the disclosure, competence and ethical requirements of all advisers should be standardised to protect consumers from unqualified or inexperienced advisers.

We also agree that the categorisation of clients should be removed as some Category 2 products are complex (for example insurance) and poor advice on these products can have an adverse outcome for consumers. However, again disclosure, qualification and ethical requirements should be standardised to ensure all advisers are providing competent advice across the product types.

The suggestion that wholesale clients should actively opt-in to the classification, rather than be passively categorised would be an excellent development. In our experience, just because a client can meet the wholesale definition does not make them a sophisticated investor. This would also bring the Financial Advisers Act in line with the Financial Markets Conduct Act 2013.

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

We would expect that ensuring that all advisers are subject to the same competency and ethical obligations would be involve an increased cost burden to some smaller adviser firms, or one man bands. However, we do not think this should be a reason not to pursue this route as it would raise the standards of professionalism within the industry and improve outcomes for all consumers.

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?

Please see the comment in answer to question 3 above.

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

We can see a place for a financial adviser to be licensed for different product or advice areas, dependent on their qualifications and experience. However, we do not think this area has been sufficiently defined at this time. There are many unanswered questions raised by the suggestion outlined in the Options Paper. Whilst it may be a workable solution for the future, and appears to be based on the UK system for financial advisers, it appears to need further thought and consultation prior to implementation. We support the raising of professional standards and creation of a career pathway for advisers.

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?

Rather than having a negative implication for advisers, in our view, the emphasis should be on the positive outcome for consumers. Presumably those clients who truly meet the criteria for a wholesale client would have no objection to declaring this to be the case, and so we are not sure what other negative impact there would be in this area.

#### 4.2 Advice through technological channels

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

Advice platforms should ensure that clients actively opt-in to provision of service in this way. There should be sufficient disclosure to ensure that clients understand that they are interacting with an online advice platform and so will need to have a certain level of responsibility for choosing that route. There is certainly a market for this type of platform but it could introduce a risk that providers encourage consumers to use a service like this, rather than talking to a 'real person', in order to reduce costs. This could potentially lead to poor advice for consumers or no advice when it was required.

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

There should be no difference in the core standards. In our view the provision of financial advice should be measured equally across providers, no matter how it is delivered. This type of option could be a useful addition to a licensed entity for them to provide online financial advice to those that want it.

We also think it is important that any online advice platform provides the consumer with the option of talking to a 'real person' if they want, or need to. Whilst innovation is important in this area, we question whether an online service could solely provide good outcomes for all client types.

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?

We agree with the principles of Code Standard 1 and that it should remain the overarching principle of any advisers approach to their clients. Impartial advice does not always result in a 'sale' because sometimes the most suitable advice for a client will be to maintain their current arrangements, or consider a product-type not offered by your firm. Needs-based advice (rather than product based) will usually result in a solution being recommended which is suitable for the client.

Monitoring and enforcing AFAs to meet their Code Standard 1 obligations is conducted by FMA, and it seems that extending this obligation to all RFAs would be possible by standardising the competency and ethical expectations across the industry. Requiring all advisers to follow a professional code would bring financial advisers in line with other professions.

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

Having an obligation to provide a client with a written recommendation outlining the rationale for the recommended solution or product and justifying its suitability for the client would differentiate 'sales' from 'advice'. We would have thought that when advice is being provided by an adviser there should also be an obligation to compare one product with another where a recommendation was being made to replace a product.

Salespeople should have to disclose how they are paid, and whether they have any conflicts of interest.

We support a model where the entity is licensed (similar to a QFE arrangement) and advisers working for that entity come under its licence. The advisers in this case disclose who they work for and what types of products they can and cannot provide advice on. They would be obligated to provide a written recommendation to a client. Sales people could also come under this entity's licence but they would provide an information only service on their entity's products only. They too would need to disclose the limits of their service up front to a client.

Individual advisers who did not work for a licensed entity could be individually licensed and be termed an 'independent' adviser. In this model, those advisers would provide written, personalised advice and would still need to disclose to clients whether there were any restrictions on their suite or panel of products they select from or whether they provided advice on the universe of providers and products.

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

cover?

Enter text here.

#### 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?

It should be possible to phase advisers into the profession by requiring them to have sufficient supervision by an experienced adviser until they meet certain criteria. This is outlined in Option 2 in the Options Paper. This would mean standards could be raised whilst still allowing new industry starters to earn a living. This could be extended in future to promote career progression by introducing formal levels of qualification as you see in other countries.

In terms of continuation of the profession, perhaps requirements could be phased in over a period of time to allow those in the twilight of their career to continue with their current competency requirements. Or new requirements could apply to those who had been practising for a shorter period. This would be similar to the grandfathering provisions that applied to those seeking to become an AFA when that designation was first introduced.

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 should be subject to minimum entry requirements to the profession. The current requirements of Standard Sets provides a good basis for entry to the industry, we do not believe it is necessary to raise the level of entry to mirror that required by lawyers or accountants. Training should cover not only product knowledge and legal and regulatory requirements but should also include ethics training and how to identify and mitigate conflicts of interest.

#### 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?

See our response to Q13.

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

Enter text here.

#### 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?

Clients should be given the opportunity to choose the option that they prefer, however our view is that any verbal disclosures should be followed up in writing.

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

We believe that it would lead to a more level playing field and would mean consumers could make more meaningful comparisons between firms and between adviser types (including sales people).

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

By including how an adviser is paid in their disclosure statement and making it an obligation that advisers explain that to a client would make it easy to understand. Where advisers are paid commissions for decisions made by consumers, they should be disclosed with a \$ amount and a % rate.

#### 4.7 Dispute resolution

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

We do not believe so, however having more than one may be confusing for consumers as they are not sure who to approach and what is the difference between one scheme and another.

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)?

An online portal in the same vein as the Disclose website would not, in our view, be a good solution here given the clunky interface and difficult navigation. It is difficult to use and difficult to find documents.

We think something along the lines of the Sorted website is a good idea. However, at the moment we believe there is an undesirable slant towards some criteria as being more important than others. Because of this, we would like to see industry consultation on what information, and how it is presented.

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

The term 'adviser' implies advice is being given and consumers expect this to be tailored to them. This means that an RFA giving class advice could be misunderstood by consumers, as their title suggests they are advising the client. In the case of a QFE adviser, we would suggest that the word 'agent' be introduced along with the QFE firm's name, for example an ANZ agent, or ASB agent.

## 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?

We would like to see entities licensed in a similar way to QFEs, where the licensed entity is responsible for all its advisers under the licence (including their disclosure, oversight of their compliance obligations, training and CPD). This would mean the licensed entity could direct



clients to the appropriate person (including sales people selling the licensed entity's own products with no advice) to deal with them. Where a client did not want advice this could be catered for, but equally a full, personalised service would be available and variations in between.

The entity would be responsible for monitoring its advisers and sales people to ensure the appropriate level of advice or non-advice was being given. Consumers could interact with the entity on different levels depending on their needs and level of expertise. Costs could be managed by the firm by offering a range of services to different groups.

## 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

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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:

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