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.

Permission to reproduce

Chapter 3 – Barriers to achieving the outcomes

1. Do you agree with the barriers outlined in the Options Paper? If not, why not?
   Broadly speaking, we agree with the barriers to achieving the outcomes identified in the option paper. In particular, we believe that the existing regulatory framework for financial advisers has, in many respects, created confusion for consumers who have no real understanding of what various terms, definitions and outcomes actually mean and how it relates to their own advice needs.
   Certain Conflicts of interest may be leading to sub-optimal outcomes for consumers is not, in our opinion a legitimate barrier to achieving the outcomes sought. In every sector, in every industry, conflicts of interest exist. From medicine to accounting to the building industry. The key is not to eliminate the conflicts but to understand their impact on consumer outcomes. We are not convinced that remuneration structures which lead to replacement business are necessarily sub-optimal from a consumers perspective. In many cases, the the client benefits from better more cost effective outcomes for their situation. The key is to put controls in place to ensure that where business is being replaced, the rationale for replacement is legitimately of benefit for the client. This can be achieved through, eg. Enforcing the completion of replacement business forms which would then be shared between outgoing and incoming providers. This would allow the outgoing provider to challenge the replacement and make the client aware of any negative implications of shifting their business.

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

Related to the barriers identified in the options paper, cross-selling of products has enabled QFEs in particular to exert undue influence on the financial product purchasing decision by the consumer. As a barrier to achieving the outcomes sought, this practice has led to a reduction in choice for consumers who are often placed under pressure to buy additional products from a QFE. E.g. We are aware of numerous cases where clients have been asked to take out insurance cover as a condition of taking out a mortgage with a QFE. KiwiSaver is another area where clients have told our members they have felt obligated to transfer to a QFE scheme in return for a favourable mortgage or loan decision.

Chapter 4 – Discrete elements

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

We believe that the following 4 options will be most effective in achieving the desired outcomes:

4.1 Restrictions on who can provide certain advice:

Option 1 – remove distinction between personalised and wholesale advice – will help to reduce confusion;,

Option 2 Remove distinction based on product category. This should be replaced with competence requirements based on demonstrable educational, qualification and professional developments standards. This will also have the effect of reducing confusion.

Option 4. Require client opt-in before being considered a wholesale client. This will help to provide protection for less-sophisticated higher net-worth clients.

4.2 Advice through technological channels.

Option 2 – hybrid model should be the preferred option. Overseas experience to date with Robo-Advice suggests that the most effective delivery of such advice occurs when delivered in conjunction with financial advisers. We believe the hybrid option suggested in the paper will enable technology platforms to deliver advice yet enhance consumer protection with minimal, if any, negative impact on innovation.

4.3 Ethical and Client Care obligations

We believe that ethical and client care obligations should be extended to ALL financial adviser services and, to the extent that a distinction is made between sales and advice, should be extended to the sales process as identified in option 3 – suitability requirement for sales of financial products. In terms of distinguishing between sales and advice, we believe that Sales should be execution only of a new product. If the client has an existing product, then advice should be mandated in any proposed replacement. Similarly, any comparison between products should fall under advice.

We emphatically do not support option 4 on the banning or restriction of conflicted remuneration. In our opinion such a move would reduce advice options for clients, reduce competition in the market and ignores other influencing factors such non-remuneration incentives used by other market participants (notably banks and other QFEs). Our view is that, if replacement business is deemed to be a problem for consumers (and we have some reservations that it is) then it could be addressed through other regulatory measure such as enforcing completion of replacement business forms which should be shared between both the outgoing and incoming provider. This would enable the outgoing supplier to legitimately challenge the basis of replacement.

4.4 Competency Obligations

Option 1 Minimum Entry Requirements. We fully support the adoption of minimum educational requirements for ALL financial advisers. However, we also believe that competency obligations should be minimised for experienced advisers through the competence alternatives framework. E.g. if Level 5 Certified is retained as the base level qualification, advisers with, say, 5 years or more experience would be able to from standard sets A, D and/or E based on a 'challenge' assessment designed to test the adviser's knowledge in these areas without needing to complete a course.

Option 2. Create a stepped pathway to adviser roles. We would also support this model which could, potentially, encourage younger advisers into the profession.

Option 3. Require mandatory and structured CPD. We fully support the adopted of structured CPD framework for ALL financial advisers.

4.5 Tools for ensuring compliance with ethical and competency requirements.

Option 1b. Greater role for industry bodies. If a model similar to that for accountants (through ACA) or Lawyers (through the law society) were to be implemented, our view is that a greater role for professional bodies could have significant benefits for consumers and enhance the professional credibility of the industry. However, as noted in the options paper, this would require the creation of a single industry body which, we also believe could have significant benefits for the sector.

Option 3 – Registration. Our preference is for a registration model as opposed to a licensing model which, in conjunction with a greater role for industry bodies and groups, could help to reduce compliance costs yet maintain some of the consumer protection concerns noted in the

options paper for this option.
Option 4 – Align regulatory powers with those in the FMC Act. We would support a model which provides regulatory bodies with more flexible administrative and non-litigation tools. One of the issues we have seen in recent years is that the publicity behind some of the actions by the regulator on some relatively high-profile cases has negatively impacted on public perception of the industry. We believe a softer more proportionate response to regulatory issues would help to limit the credibility impact and positively impact on the quality of advice.
4.6 Disclosure.
Generally speaking our view is that the current disclosure regulations are inconsistent and confusing for clients. We fully support all three options being proposed as a means to standardise disclosure whilst also providing more pertinent, meaningful information for consumers around; 1. Details of the adviser and the adviser practice, scope of engagement, risks, remuneration and conflicts of interest. Ideally this should be delivered in a 1 or 2 page document which could be delivered online.
4.7 Disputes Resolution
Our view is that the current disputes resolution model is fragmented and confusing for consumers. Furthermore, with multiple entities serving multiple different types of service, there no differentiation of dispute risk for pricing purposes, internal conflicts of interest arise with a DRS potentially representing two parties to the same dispute and varying outcomes for consumers. We believe that the DRS regime should be changed to address these issues. We would support the following changes;
a. Standardisation of scheme rules and processes
b. A requirement to adjust pricing and/or offset DRS fees through fund surplus. This should be combined with maxmimum fund balances based on DRS member bases.
c. Requiring mimimum Professional indemnity cover for all financial advisers. Quantums of cover should be risk-based according to the type of advice.
4.8 Finding an adviser. We are not supportive of a central body creating and maintaining a portal. Our view is that this should be the role of the industry through professional bodies, adviser groups, advisory practices and other commercial entities. However, the regulator and CFC could provide guidance on how to find an adviser, what to look for and questions to ask. This could be delivered through web and print channels and made available to advisers to share. A single directory would be expensive to maintain and would need some form of regulatory legitimacy with powers of enforcement to ensure that the directory was current. We believe that this could add to the compliance (and potential cost) burden of advisers. Furthermore, a directory of this nature would, of necessity, reduce the choice of adviser to a small subset of factors which may not accurately reflect the difference between advisers and their practices.
Option 2 Work with consumers and advisers to identify useful terminology. It is quite clear that the current regulatory framework and the terminology being used is confusing – particularly to consumers. We are very supportive of any changes designed to reduce (ideally eliminate) confusion for consumers.

3. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?
   We have noted these in our responses above.

4. Are there any other viable options? If so, please provide details.
   In respect of replacement business and concerns about churn we believe enforcement of a replacement business form for all replacement business which is shared with both supplier parties to the replacement business would go a long way towards addressing public concern. Controls would need to be implemented to enable the swift processing of disputes (perhaps through revised DRS provisions). Also, the basis on which disputes could be raised would need to be clearly defined. This could be supplemented with a legal obligation on the part of the new supplier to honour claims which would have been paid out under earlier policies.

4.1 Restrictions on who can provide certain advice

5. What implications would removing the distinction between class and personalised advice have on access to advice?
   Removing the distinction between class and personalised advice will help to reduce the currently confusing terminology which exists throughout the current regulatory framework for advisers. The current distinction between class and personalised advice is confusing for the consumer who is, typically, has no real concept of this distinction. A viable alternative is distinguishing between sales and advice as proposed in the options paper.

6. Should high-risk services be restricted to certain advisers? Why or why not?
   All types of advice have varying levels of risk depending upon the nature of the engagement. We generally support the proposed broad obligation for advisers to provide advice only in their areas of demonstrable competence. This is largely consistent with the current Care, Diligence and Skill obligation under the current Financial Advisers Act.

7. 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 would generally support an 'opt-in' provision for wholesale advice. While this would potentially increase the burden on financial advisers who offer a wholesale service, it would provide additional protection to less sophisticated, but wealthy, investors.

4.2 Advice through technological channels

8. What ethical and other entry requirements should apply to advice platforms?
   All advice platforms should be subject to the same entry and ethical obligations as non-platform advice.

9. How, if at all, should requirements differ between traditional and online financial advice?
   The same regulatory requirements should exist for both traditional and online financial advice. The only difference is the manner in which the advice is delivered. Furthermore, we support the option to require technology platforms to offer access to a financial adviser prior to completing a transaction.

10. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?
    Overseas experience with robo-advice suggests that it works best when delivered in conjunction with person-to-person channels. In this respect, we would favour option 2 whereby consumers are offered the choice of meeting with an adviser.

4.3 Ethical and client-care obligations

11. 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 extending the ethical obligation to put the consumers interest first to be extended to ALL types of advice. Monitoring and enforcement should be on an exceptions basis – ie monitoring should be through existing consumer complaints channels – internal, disputes resolution-FMA.

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

We are generally supportive of distinguishing between sales and advice. The key is to identify at what point product sales steps across the boundary to advice. Here are some of the key elements which we believe should be incorporated into the distinction;
- Sales involves the sale of a single product only and would generally only apply to QFE transactions.
- If a replacement of an existing product is involved or comparison between products then this should be deemed to be advice.
- Salespeople should have the same 'clients interest first' obligation as advisers to the extent that they should conduct sufficient inquiries to ensure that the product in question is suitable for the client..

13. If there was a ban or restriction on conflicted remuneration who and what should it cover?
    We do not believe that a ban or restriction on conflicted remuneration would have significant consumer benefit.See our notes ealire.

4.4 Competency obligations

14. How can competency requirements be designed to lift capability, without becoming an undue barrier to entry and continuation in the profession?
    We are generally supportive of establishing minimum competency requirements across the industry. However, this should be phased in over 3 years . Additionally, all advisers should be held to the same continuing professional development obligations as an AFA.

15. 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 believe that the current level 5 certificate in financial services and competence alternatives provide a good baseline qualification for all financial advisers.

4.5 Tools for ensuring compliance with the ethical and competency requirements

16. 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?
    The key benefits of shifting to an entity licensing model are largely around expanding the monitoring landscape. Individual advisers should have the same obligations as entities.

17. What suggestions do you have for the roles of different industry and regulatory bodies?
    Regulatory bodies should set the regulatory framework and act on complaints only. Adviser entities should be responsible for advisers (this would include individual advisers) with annual independent audit obligations. Professional associations should operate the continuing professional development and educational framework through the approval of courses and events as structured CPD.

4.6 Disclosure

18. 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?
Both written and online are the most effective ways to disclose information to consumers. However, it seems apparent that most consumers with have little to no interest in what is being disclosed and/or have little to no understanding of how the information being disclosed can affect advice.

19. Would a common disclosure document for all advisers work in practice?
We strongly support the adoption of a common disclosure document. However, the current AFA disclosure requirements are too onerous and the current RFA disclosure requirements have almost no value. We would support the introduction of a single page disclosure covering Scope, Risks, Remuneration and conflicts of interest. This should be supported by an explanatory sheet which outlines to clients what they need to consider when engaging an adviser.

20. How could remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?
A two-stepped approach whereby the initial disclosure outlines in broad terms, the nature of remuneration advisers receive (e.g. commissions, fees, etc) together with a range (or actual amount if a fee) of upfront and ongoing remuneration arising from placing business with the product providers that the adviser deals with. On recommendation, the adviser should follow up with a communication explaining the remuneration to be received if the recommendations are adopted. Finally in the follow-up communication (email or letter) sent to the client following placement of business with a product provider, the $ amounts (actual) upfront and percentage or renewal income.

4.7 Dispute resolution

21. Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?
There is some indication that the current disputes resolution framework is confusing – and who the client should contact in the event of a dispute – should it be the supplier scheme or the adviser scheme or both? Additionally, schemes can act for multiple parties to a dispute which can lead to conflicts of interest.

22. 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?
Disputes resolutions rules and processes should be standardised.

23. Should professional indemnity insurance apply to all financial service providers?
Yes.

4.8 Finding an adviser

24. 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 are two types of information consumers need; 1. general information about the industry and what to look for when engaging an adviser and 2. How to go about finding an adviser who can help them with their needs. The former should be the responsibility of government and professional bodies. The latter should be commericial and include professional bodies, suppliers and other commercial interests as well as the adviser themselves.

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

We agree with removing the term registered as it is confusing to consumers. Instead, we suggest that, in conjunction with increased competency obligations, all advisers are defined as Authorised for particular types of advice – e.g investments, insurance, mortgages, etc.

4.9 Other elements where no changes are proposed

The definitions of 'financial adviser' and 'financial adviser service'

26. Do you have any comments on the proposal to retain the current definitions of 'financial adviser' and 'financial adviser service'?
    We believe that the current definitions are reasonably effective and don't consider any change is necessary at this time.

Exemptions from the application of the FA Act

27. 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.
    We believe that all advisers who give advice should be subject to the same educational and professional development obligations as AFAs irrespective of their other qualifications. E.g. Accountants should not be exempt from level 5 certificate although some cross-credit entitlement should be available based on their accounting qualifications.

Territorial scope

28. 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?
    This could be facilitated through a requirement for foreign entities to register as such on the FSPR and be able to demonstrate specific consumer protection measures (e.g. Professional Indemnity cover, audited by a third party.)

29. How can we better facilitate the export of New Zealand financial advice?
    CER with Australia, Standardisation of qualifications across borders e.g. recognition of international designations such as CFP, CFA

The regulation of brokers and custodians

30. 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

What are the costs and benefits of the packages of options described in this chapter?
Enter text here.

In our view option 3 (with some adaptation) is most likely to achieve many benefit in terms of addressing the barriers identified. It addresses many of the issues identified under the current regulatory framework. However, we are concerned that the proposed licensing approach for all advisers

could lead to additional cost and compliance overhead for many RFAs. We believe that a register with minimum educational standards for all advisers is the better approach.

31. How effective is each package in addressing the barriers described in Chapter 3?
    Enter text here.

32. What changes could be made to any of the packages to improve how its elements work together?
    For option 2, we would recommend that all advisers RFAs and AFAs become financial advisers. We are not convinced of the need for 'Expert' financial advisers in the manner prescribed. This is likely lead to continued confusion for consumers. Instead, advisers should be required to maintain competence for the products and services they advise on.
    For option 3. The requirement for advice should extend to any activity where the client has an existing product which will be replaced by the proposed new product being sold..

33. Can you suggest any alternative packages of options that might work more effectively?
    No.

Chapter 6 – Misuse of the Financial Service Providers Register

34. Do you agree with our assessment of the pros and cons of the options to overcome misuse of the FSPR?
    Broadly speaking, we agree with your assessment of the options.

35. What option or combination of options do you prefer and why? What are the costs and benefits?
    We believe that Option 1 (with reduced licensing obligations for AFAs) is a cost effective option likely to enhance the effectiveness of FSPR with minimal compliance overhead for the industry.
    Option 2 should also be considered. However, this should be adapted to allow greater opportunity to re-registrater where de-registration can be demonstrably shown to have been inappropriate.
    Option 3 is critical to ensure the continued legitimacy of the registration system and limit potential misuse by overseas entities.
    Option 4 – agreed. We were unaware that trusts and companies subject to AML/CFT obligations were not registered.

36. What are the potential risks and unintended consequences of the options above? How could these be mitigated?
    Unknown.

37. Would limiting public access to parts of the FSPR help reduce misuse?
    No. Limiting public access could have the reverse affect.

Demographics

1. Name:
   David Yates, New Zealand Financial Advisers' Association Inc

2. Contact details:

Redacted +6421457692.

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

   Industry Association representing 200+ financial advisers.

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.