

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?
No, not while there is a "may" in several of the barriers listed. Where is the evidence to support the suggested barriers? There is only one that I agree with, that being consumers understanding of different types of advice.
2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.
Confusion seems to be the greatest barrier. MBIE seem to be creating an element of doubt around certain so called conflicts.

Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?
None of those proposed. I cannot see how the options proposed will result in a better outcome for clients as there appears to be too much tinkering around the edges.
4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?
Cannot find any costs given so it is impossible to estimate. Also without clear benefits being shown there seems no clear C/B advantage to the proposed changes.
5. Are there any other viable options? If so, please provide details.
YES - If the FAA required anybody giving FA to be qualified to a minimum level 5 Certificate irrespective of current status and be individually licenced by the FMA. All FA's could offer advice in areas they are qualified in and all are covered by minimum ethical standards.

Remove all sales people from the FAA as they are not advising, and include them under the FMCA via their licenced employers. Licence appropriate professional bodies (LPB) and have the roles of the CC and FADC included under the LPB's, this would reduce costs, confusion and the opportunity for any double jeopardy while being more efficient and effective.

See attached diagrams.

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?
There should always be the opportunity to provide general advice at things such as seminars but this should only be able to be done by LICENCED ADVISERS, not SALESPEOPLE.
7. Should high-risk services be restricted to certain advisers? Why or why not?
There should always be the opportunity to provide general advice at things such as seminars but this should only be able to be done by LICENCED ADVISERS, not SALESPEOPLE.
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?
Again, if you identified advice and licenced advisers individually, then you could remove the distinction between wholesale and retail completely

4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?
All forms of advice should be held to the same standard of ethics so any Robo-advice systems should be able to show they meet this requirement.
10. How, if at all, should requirements differ between traditional and online financial advice?
There should not be any difference between the various forms of delivery of financial advice.
11. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?
YES - Robo-advice systems should simply assist an adviser to deal efficiently with smaller clients, not replace personal advice. Systems such as data collection and analysis with completion done by a real person. Experience overseas (US and Aussie) has highlighted concerns around this form of advice delivery suggesting an increased proportion of the promoters product which creates a significant conflict of interest.

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?

Clients' needs should always come before advisers or sales organisation. I cannot see any advantage to the clients in extending this further beyond a 'fiduciary-like' responsibility. This could be monitored and enforced by requiring all advisers to belong to an appropriately structured and licenced professional body.

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

While sales is an integral part (implementation) of an advice process and shouldn't therefore be separated out, it has become very difficult to identify the blight line between the two. I therefore suggest that following the structure proposed in Q5 above the FMA would find it much easier to monitor sales activities. Obligations for sales people should be the current consumer legislation such as FT Act, CG Act and FMC Act.

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

Every time any professional makes a recommendation there is a conflict and this is no different for financial advisers or product providers. As long as all forms of distribution meet the same ethical requirements (Q12) there should be no issue. There should simply be a requirement to document any remuneration with the advice or sale.

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?

Competency requirements are never an issue for any real profession. The current minimum requirements of NZCFS Level 5 should simply be that, a minimum. Any and every professional adviser should meet this requirement and for the so called high-risk products the competency level should be set accordingly higher.

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 - NCF5 Level 5 (or equivalent) as minimum and diploma level for more risky products advised on. All advisers should be required to show educational competence in all of the areas they advise.

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?

There would only be a benefit in licencing if all those advising needed to be licenced at an individual level as this is how a professional is managed. Broadening this would simply create many more QFE's and there is no evidence to date that QFE's are befitting consumers.

The licencing requirements should initially align with the current requirements for authorisation, to require more would become far too burdensome.

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

All those providing advice should be required to be members of an appropriately licenced professional body, if the individual or the professional body fall short of eligibility requirements they should not be able to be licenced. Standards would need to be set for assessing licenced professional bodies.

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?

Informed consent is a complex animal, each consumer will require a different form or combination to gain information but the minimum should be in written form supported verbally, visually and possibly electronically.

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

As long as you define advisers as anyone providing financial advice, a financial product or a course of action to meet a need of a client. Sales people should also have to have a disclosure document that outlines how they work and who they are working for along with how they and or their employer gets paid.

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

Remuneration is extremely difficult to articulate consistently in any meaningful way when you have differing models of distribution and standards of advice. The simplest way given this is to provide all benefits received by either the individual or the employer together. This would gain an equilibrium between both employed advisers/salespeople such as bank staff and self-employed advisers, tied or independent.

4.7 Dispute resolution

22. Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?
There are a few occasions that come to mind when the product provider and the adviser are with differing schemes, however this simply makes the management of any complaint slightly more complex. I see no benefit in having as many schemes as we have.
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?
Yes, there should be no opportunity to arbitrage between schemes, cover limits should be standardised at a defined optimum level.
24. Should professional indemnity insurance apply to all financial service providers?
No, not as a mandatory requirement, it should be up to the individual adviser or business.

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)?
I feel the best is a combination of all including professional bodies. The FSPR should be more useful and provide information on all advisers and their competencies.
26. What terminology do you think would be more meaningful to consumers?
All advisers are licenced to operate, they are licenced to provide advice in the areas they hold recognised qualifications, these being Insurance, Investments, KiwiSaver and Mortgage advice 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'?

Generally Yes but I would like to see advice about a "course of action" included as advice somehow, it doesn't always mean a financial product is purchased or disposed of.

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.

Absolutely YES, Simply look back at the many examples of fraud charges laid against Accountants and Lawyers as opposed to AFA's or RFA's.

Examples:

**David Ross \$139m - Accountant, Gary Soffe \$6m - Accountant,
Finance company directors \$100'sm - many of who were accountants or lawyers.**

They also pose extreme risks to the public perception of and confidence in all financial advisers and therefore financial advice.

I suggest that you look at Australia and the issues they are currently going through along with ASIC's requirement for Accountants giving financial/investment advice need to be licenced. One rule for all participants.

Equally I have very real concerns with the regulatory focus upon Financial Advisers when the FMA website shows in excess of 45 cases brought against company directors (many of whom are Lawyers and Accountants) when they only list two cases coming from the FADC, both of which are as a result of an Accountant (David Ross) stealing client money.

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?

I find this difficult to determine without knowing if international law requires residency or tax residency in any particular country to be covered by the laws of that country, let alone the ability to gain any sort of redress across borders. This is probably best dealt with via IOSCO and agreements through that entity.

Robo-advice is not appropriate to be provided on its own unless it is through and in support of a licenced adviser. See Q11 and 17.

30. How can we better facilitate the export of New Zealand financial advice?
I feel that any adviser, whether a NZ adviser advising clients offshore or an overseas adviser advising clients here, should meet the educational and ethical requirements of the jurisdiction in which the client resides, as this will best protect the consumer.

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 comment

Chapter 5 – Potential packages of options

32. What are the costs and benefits of the packages of options described in this chapter?
All three options as described I feel will both increase costs to advisers, consumers and the market as a whole and not providing any really clear benefits.

33. How effective is each package in addressing the barriers described in Chapter 3?
If we numbered the barriers in order 1 – 5 and checking each suggested barrier against each option in turn,

I can't see how option 1 fixes suggested barriers 1, 2, 3, 4 or 5

I can't see how option 2 fixes suggested barriers 1, 2, 3, 4 or 5

I can't see how option 3 fixes suggested barriers 1, 2, 3, 4 or 5

This is a fail on all counts for each option!!!

34. What changes could be made to any of the packages to improve how its elements work together?
See below

35. Can you suggest any alternative packages of options that might work more effectively?
A single package that requires,
- All advisers and those providing financial strategies to be qualified to the minimum level appropriate to the area and product or service provided, no lower than NCFS Level 5.**
 - Each individual to be licenced to provide advice irrespective of employment arrangements.**
 - Common disclosure requirements across all advisers.**
 - Impacts of any Robo-advice system used and the outcomes become the responsibility of the licence holder.**
 - All advisers are obliged to be a member of an appropriately licenced professional body that upholds the requisite standards as a minimum and provides ongoing ethics professional development.**

This package I feel would

- Allow consumers to know where to get the advice they need,**
- Advice limitations would reflect competencies, but would require public education**
- There would be reduced possibility that consumers would get what they thought was advice from inappropriate advisers,**
- All types of advice could be available with the assistance of Robo-advice systems, and**

- The perception of conflicts would be reduced as consumer confidence grows.

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?
Unsure on all
37. What option or combination of options do you prefer and why? What are the costs and benefits?
Require the entity to be NZ domiciled – either branch group member.
38. What are the potential risks and unintended consequences of the options above? How could these be mitigated?
Unsure on all
39. Would limiting public access to parts of the FSPR help reduce misuse?
Possibly Yes, if it was only able to be accessed domestically it is less likely to be misused overseas. A clear notification needs to be provided when access is denied.

Demographics

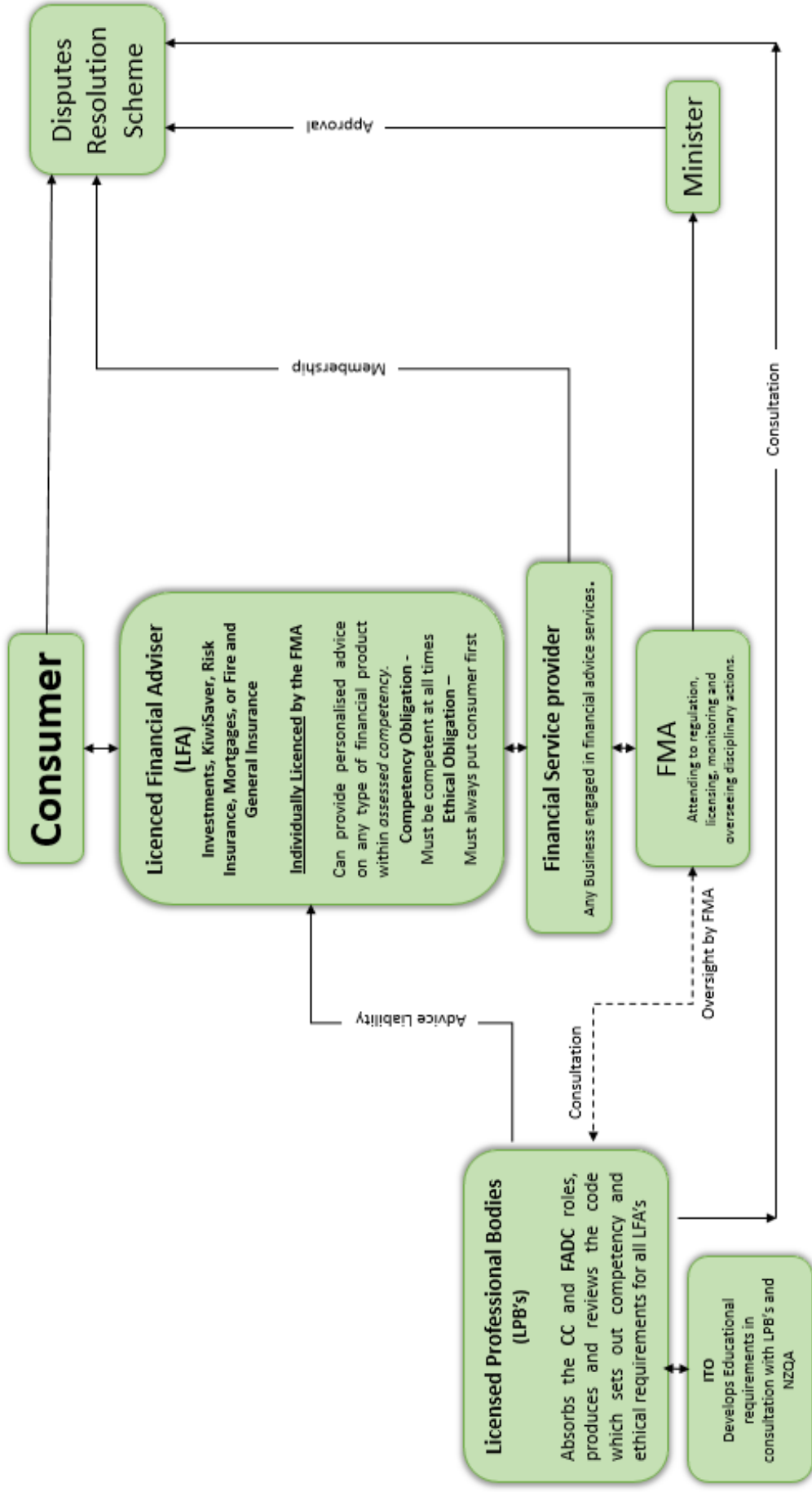
1. Name:
Nigel Tate JP, CFPcm, CLUcm, AFA,
2. Contact details:
Redacted
3. Are you providing this submission:
 As an individual
 On behalf of an organisation
(Describe the nature and size of the organisation here)
4. Please select if your submission contains confidential information:
- I would like my 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.

Notes

1. It seems to me that the proposed options are extremely limiting and look like they are designed to corral people into taking the least difficult one for them rather than really looking to simplify and improve the status quo.
2. There are far too many assumptions being made around the barriers without any empirical evidence being quoted, this makes it extremely hard to consider any of the current options viable. A greater focus on the Act's desired outcomes would be better.
3. **By requiring all advisers to be members of an appropriately licenced professional body, as defined by strict requirements, the overall professionalism of advisers would improve in a much shorter period than otherwise.**
4. Absorbing the role of the Code Committee and the FA Disciplinary Committee into the licenced professional body structure would improve the minimum standards overall as well as reduce barriers to financial planning/advising becoming a profession and at the same time reduce costs for virtually all participants including the FMA.
5. The concept of allowing salespeople to sell product unrestricted is a recipe for disaster as well as an insult to all professional advisers but is likely to be welcomed by product providing QFE's. The better result would be to remove sales from the FAA and incorporate it under the FMCA with the existing consumer protection legislation such as Fair Trading Act, Consumer Guarantees Act and the FMC Act. This would keep the Financial ADVISERS Act for those providing ADVICE.
6. **Remove the exemption in the FAA provided to Accountants and Lawyers – As per the ASIC experience.**
7. Robo-advice platforms are causing concerns already in the US and Australia where they fear it is allowing the platform owners to overload the advice (investment portfolios) with their own product, increasing risk exposure to unwitting consumers.
 - a. What happens for other forms of financial advice such as Risk Insurance and Cash Management advice?
 - b. How could ethical requirements be met?
8. **Upon recently reviewing the FMA website which provides a discussion around "Getting over the barriers to financial advice" quoting results of a survey done by the Commission for Financial Capability, it seems inconceivable that if this report was to be taken seriously we should be allowing sales people to be included under the FA Act at all as a fear of being "sold something that might not be right for them" appears to be one of the main reasons people do not seek financial advice.**

Advice under the FAA



Sales under the FMCA

