

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?

Yes

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

Churning of insurance policies for the purposes of double dipping on commission. One of the unintended outcomes of The Fair Trading Act was that an inter life office twisting agreement was deemed to be a restraint of trade. This agreement prevented an adviser from profiting from shifting a client's insurance business from one company to another for the sake of repeatedly receiving a high up front commission. This was an effective self-policing mechanism. In saying that there are circumstances where the client is better served by switching insurers.

Chapter 4 – Discrete elements

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

Mostly 3. There are complex areas and specialties in financial services. Proof of competence is essential. A recognized professional body which oversees and builds recognized tertiary training programmes and certification for its members would be helpful. At present the level 5 certificate is the bare minimum. Prior to the FAA advisers were seeking qualifications at level 7 or 8 through Massey & Waikato Universities.

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

RFA's need to invest in themselves and move away from a minimalistic approach. Big corporates don't want the cost and risk of certification or licencing. The regulations have in some ways dumbed down standard. While making it a higher entry level to give advice on Cat 1 products anyone can become an RFA.

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

Certification and licencing through a single professional body with various colleges in specialty areas e.g. Investment and Portfolio Construction, insurance and Risk, Mortgage and lending. Chartered by Act of Parliament. All inclusive with no exemptions for real estate investments, accountants and lawyers giving ancillary investment advice. All operate under the same Ethical, Competency and Client Care Code

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?
Adviser proving to professional body their competency. Regulator focuses on the markets, product providers and relevant agreements and treaties
7. Should high-risk services be restricted to certain advisers? Why or why not?
Yes proof of competency is critical for good client outcomes and confidence
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?
Not sure but think it won't make much difference

4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?
Should be standard across the industry whether face to face or Robo advice.
10. How, if at all, should requirements differ between traditional and online financial advice?
Robo may be an information tool with the ability for clients to game play or scenario model. Must be accompanied by suitable disclaimers. Financial outcomes for clients are 90% behavioural and 10% luck. Advisers role is to work with the client to help them make good financial decisions. This is a coaching mentoring role not easily done with Robo advice. Robo is a good general advice platform and will suit the DIY customer.
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 and disruption is good. Too much emphasis on investment performance and short term results not enough on behaviour and long term goals.

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?
It should apply to all advice and advisors. Product sellers should have to disclose that their product may not be best for the client in their mandatory primary disclosure and at point of sale. Where an adviser helps to implement that advice by selling a product the same should apply.
13. What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?
Advice is advice. Charged by the hour and documented. Selling may arise from advice and takes place whenever a product or service is sold/implemented. Most advisers will move from one to the other.

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

Don't agree with banning as there may be unintended consequences. The simplest solution is that remuneration by all advisers and product sellers must be disclosed in writing and signed off by the client whether that remuneration is derived directly or indirectly from the client.

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?

Licensing can help. If the practice holds a licence and a practitioner in the practice has proven capability/competency by way of certification, qualification and assessment then this capability vests to the licensee. This is the accounting model where various skills and competencies are referred to different partners and associates within the practice. A junior could be doing a lot of the grind work behind the scenes but the relevant partner, associate and licensee is responsible.

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. If it is to be a profession. As well as passing competency tests in specialist college knowledge requirements everyone should know the regulatory and ethical requirements.

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?

Licensing allows various competencies and skills to reside in the organization. It is too much to expect an adviser to know everything there is to know about everything. It is more important for them to realize what they are not competent in and know where to go to obtain that competency. It's the specialist and general practitioner model. It promotes internal and external referrals.

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

The industry bodies should be merged under charter into one body with different specialist colleges. This will allow more self-regulation to occur and internally driven pursuit of excellence. The regulator should set the framework for this to operate and focus on fine tuning and policy promoting efficient and effective markets

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?

Written

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

Yes

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

See 14

4.7 Dispute resolution

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

None 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?

Yes. A single professional body should be able to accommodate this.

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

Ideally yes. Insurers however have the last say as to what risk they will assume.

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 think the CFFC may be onto something here. Together with a unified professional body designated to promote its members.

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

Certainly not the jargon of the stock market. Words such as soar and plummet, crash and boom are emotive and scary. Simple plain English financial literacy programmes

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'?

No comment

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.

Yes. They are able to mislead example advertising campaigns run by Propellor Properties.

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 UK's HMRC requires clients to work with advisers in both jurisdictions for pension transfers
30. How can we better facilitate the export of New Zealand financial advice?
Co-licencing, cross border agreements, recognition of international best practice and standards.
A reputable global organization that can certify and audit to these standards

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?
None at present

Chapter 5 – Potential packages of options

32. What are the costs and benefits of the packages of options described in this chapter?
Package 3 delivers the simplest most flexible option. Package 2 resounds well for ethical reasons
33. How effective is each package in addressing the barriers described in Chapter 3?
All are an improvement. Package 3 more so.
34. What changes could be made to any of the packages to improve how its elements work together?
FMAs role too large. A big issue is the turnover of FMA staff and the constant need for relearning by the new intake. Serious consideration should be given to self-regulation through a chartered professional body with the FMA having an auditors oversight
35. Can you suggest any alternative packages of options that might work more effectively?
As above

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?
Yes
37. What option or combination of options do you prefer and why? What are the costs and benefits?
Not sure
38. What are the potential risks and unintended consequences of the options above? How could these be mitigated?
Not sure
39. Would limiting public access to parts of the FSPR help reduce misuse?
Defeats the purpose of transparency if adopted

Demographics

1. Name: Richard Holden, Milestone Financial Services (Canterbury) Limited
Enter your name and/or the name of the group of people, business, or organisation you are providing this submission on behalf of here.
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