

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?
I agree with the identified barriers to outcomes identified in the options paper. Most notably, consumers unwittingly seek advice from people who may not be competent to provide it, and not knowing where to seek advice from.
2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.
I believe there are some barriers around adviser remuneration which could be further explored in this review.

Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?
Removal of any distinction based on product category is a suitable option, given that it does not require the subjectivity of defining what constitutes a “consumer demand”, particularly considering that a consumer often does not have a clear definition of that themselves- hence why they have sought advice prima facie. (Option 2, Issue 4.1)
4.2, I would recommend option one, as it is a more comprehensive approach to adopt, and in line with global best practice. It also ensures adequate regulation of the electronic advice through only permitting licensed entities to provide such advice.
4.3, I would recommend two options- those being option 1 and option 4. Option one adopts a consistent approach, and removes the confusion around ethical requirements from an industry perspective. However, the most appropriate way to enforce this from a practical perspective would be to ensure that advisers are indifferent on the basis of remuneration as to what advice they are providing, and thereby are only providing advice that is in the best interests of the consumer.
4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?
In terms of costs to the consumer, a standardised ethics approach could in my view only lead to

the gaining of efficiencies, and so these consistent ethical requirements should ultimately lead to flatter costs to consumers across the spectrum (of advisers), and this flatness should, I expect, have been passed on directly from advisers and their businesses.

5. Are there any other viable options? If so, please provide details.
I do not have any to divulge at present.

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 is a risk (mitigated in my response below) that advisers will be incapable of providing adequate advice on too complex a level. I also believe, however, that such a removal would lead to satisfaction of demand for personalised advice which is sorely missing in the current markets at reasonable prices.
7. Should high-risk services be restricted to certain advisers? Why or why not?
Provided there is a statutory obligation to be competent in advising on financial products, I see no need for restrictions, provided that the options for redress are adequate for the average consumer.
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?
I do not believe this to be necessary.

4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?
Such advice would presumably be generic and as such would need to be taken with a grain of salt.
I do, however, believe that strong ethical requirements are essential to protect consumers from accepting robo-advice as gospel.
10. How, if at all, should requirements differ between traditional and online financial advice?
I believe the two should be aligned, and where they cannot be, that clear and consistent disclosure should be made very available.
11. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?
I believe the proposals to be a very good start. As this practice is common abroad, perhaps an investigation into what happens in other countries is warranted.

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?
The right obligation is that consumers should have confidence that advisers are putting the needs of the consumer ahead of their own. Enforcement should be (as outlined in a previous answer) through the banning of commission-type remuneration for advisers.
13. What would be some practical ways of distinguishing 'sales' and 'advice'? What

obligations should salespeople have?

Sales people need to have a legal requirement to disclose that they are selling, and not necessarily acting in the best interests of the consumer.

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

Authorised Financial Advisers, and/ or those providing personalised financial advice to consumers.

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?

I believe this can be achieved through better promotion of the qualification as a career path- much like that of a Chartered Accountant. A formalised qualification, with requirements to attend ongoing development will add great value and attract people to this career path, whilst also not being too burdensome upon the profession.

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. These requirements should suffice to the extent that an adviser can adequately understand the products upon which they advise, rather than (in many cases) they can read a script prepared by their company.

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?

Not commented upon.

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

Industry bodies could offer a qualification similar to that of Chartered Accountancy, where ongoing study after tertiary pursuits would be required, combined with a practical element and some supervision and mentoring.

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?

It depends on the consumer. All of the above need to be available if we are truly to enhance and promote confidence in the financial markets, and hence, participation therein.

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

Yes, I believe it would, because the standardised approach would lead to more comprehensive disclosure. I also believe that it would create efficiencies through not needing prepare multiple

disclosure statements.

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

In a statement declaring if they receive performance-based remuneration, and what their performance indicators are.

4.7 Dispute resolution

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

Not that I am aware of at the present time.

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?

None that I am aware of at the present time.

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)?

Either industry or government. I believe something of this importance should be handled by government, who are seen as more independent, and thereby giving greater confidence to consumers.

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

Renaming RFA's to something less misleading. AFA would then be made more accurate and esteemed.

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'?

None.

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.

None.

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?

None

30. How can we better facilitate the export of New Zealand financial advice?

None

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

Chapter 5 – Potential packages of options

32. What are the costs and benefits of the packages of options described in this chapter?

The first package is probably the most cost effective in that it requires only a minor tweak to existing infrastructure around financial advice. In the long run, it gains efficiencies through consistent and standardised ethical and disclosure requirements.

33. How effective is each package in addressing the barriers described in Chapter 3?

I believe that, while all packages could go further, in reality option one is the most effective because of its ethical requirement to put the interests of the consumer first. This is fundamentally the meat of the issue before us that needs to be addressed in my view. The rest should fall into place around this, and may need adjusting at a later date once the effects have become more apparent.

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

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35. Can you suggest any alternative packages of options that might work more effectively?

I believe Option one, with a Ban on alignment and commissions (ergo, a greater emphasis on independence), and a qualification scheme similar to that of a Chartered Accountant where practical, supervised work with coaching and continued academic study would greatly enhance the regime as it stands. However, I fear this may have adverse effects on cost structures for participating firms which may price many out of the market for seeking advice, and this is an issue that would need to be addressed.

Demographics

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2. Contact details:

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3. Are you providing this submission:

- As an individual
 On behalf of an organisation

Not applicable.

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.](#)