

## MBIE Options Paper - FAA Review

### Questions

### Responses

1	Do you agree with our assessment of the Pros and Cons of the options to overcome misuse of the FSPR?	1	<p>No. Although I agree that there may be some consumer confusion over the difference between an AFA, RbnaA and QFE advisers. This, I feel, is mainly due to the lack of a public awareness campaign which the FMA should have funded. Instead, they paid for an advertisement stating “There is a new sheriff in town”. They would have served the consumer better by explaining the different types of advisers available to provide relevant financial advice.</p> <p>If this was done in the first place then barriers mentioned such as where to seek advice, finding the right adviser with the right knowledge, skills and competency would have been overcome.</p>
2	Is there evidence of other major barriers not captured here? If so, please explain.	2	No.
3	Which options will be most effective in achieving the desired outcomes and why?	3	<p>All of the options proposed will offer minimal improved benefits to the consumer. Adding a “sales only” category <b>will in fact cause an enormous amount of damage to consumers</b>. To be able to sell a product that does not require the clients interest to be placed first will only take us back to the dark old days of policy pedalling and snake oil sales.</p>
4	What would the costs and benefits of the various options be for different participants (Consumers, financial advisers, businesses)?	4	<p>Until changes are made I can’t comment only to say that the winner out of these changes appears to be the regulator. This is especially true if the licensing of entities only is chosen as the preferred option.</p>
5	Are there any other viable options? If so, please provide details.	5	<p><b>YES.</b> Establish a list of the types of advice we wish to cover and then determine who can provide that advice e.g <b>Investment Advice</b> (Adviser must be Authorised), <b>Retirement Planning Advice</b> (Adviser must be Authorised), <b>Financial Planning Advice</b> (Adviser must be Authorised), <b>Insurance Advice</b> (Adviser can be Authorised, Registered or QFE Adviser), <b>Mortgage Advice</b> (Adviser can be Authorised, Registered or QFE Adviser). Under each title would be details of the scope of advice offered.</p> <p>We could have several more if required and a person could then market themselves based on the area they advise in and not by the use of AFA or Licenced. <b>This will immediately clear up any consumer confusion.</b> Instead of a person being Joe Blogs AFA they would be Joe Blogs Investment, Insurance &amp; Mortgage Adviser.</p> <p>This change would not require any changes to the types of adviser as listed in the FAA 2008, just changing Category 1 &amp; 2 to become a list of advice activities.</p>

6	What implications would removing the distinction between class and personalised advice have on access to advice?	6	None, as long as those giving class advice are competent in the areas that the advice is given and as long as they are not just Sales People
7	Should high risk services be restricted to certain advisers? Why or why not?	7	This is dependent on what constitutes high risk services. As long as the advice is given by skilled & competent advisers it should not be a problem
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?	8	If a list of advice services was introduced we wouldn't need to differentiate between types of investors as long as only advisers qualified in the investments give advice.
9	What ethical and other entry requirements should apply to advice platforms?	9	All advice platforms should adhere to the same ethical standards.
10	How, if at all, should requirements differ between traditional and online financial advice?	10	See 9 above. There should be no difference.
11	Are the options suggested sufficient to enable innovation in the adviser industry? What other changes might need to be made?	11	Yes.
12	If the ethical obligation to put the clients' interests first was extended, what would the right obligation be? How could this be monitored and enforced?	12	I think that the obligation to <b>place clients' interests first</b> and act with integrity (Code Standard 1) should apply to all advisers and would therefore extinguish any thoughts of having a Sales Only adviser.
13	What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?	13	One way of looking at this is to view sales as just that. The purchasing of a product without any advice would simply be a sale. A salesperson should still be required to put the <b>client's interest first</b> and only sell a product that is 'fit for purpose'.
14	If there was a ban or restriction on conflicted remuneration who and what should it cover?	14	If all advisers were required to place the <b>client's interests first</b> , and disclose remuneration which may be perceived as conflicted then there is no reason to ban or restrict remuneration.
15	How can competency requirements be designed to lift capability, without becoming an undue barrier to entry and continuation in the profession?	15	A requirement to start studying on entry to the financial advice industry would not be a barrier to entry or continuation in the profession and will only <b>help improve the confidence of the consumer</b>
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?	16	Yes. All advisers entering the industry or have less than 5 years' experience should be required to complete the NZCFS Level 5 course. Advisers who advise on more complex products should complete a Diploma Course. Advisers with more than 5 years' experience should be subject to competence testing/assessment or grandfathering due to existing qualifications such as Grad Diploma or Chartered or Certified Life Underwriter.

17	What are the benefits and costs of shifting to an entity licencing model whereby the business is accountable for meeting obligations (option 1)? If some individual advisers are also licenced (Option 2), what specific obligations should these advisers be accountable for?	17	<p>The only winner here is the Regulator who would pass on the policing duties to the licenced entity. I am opposed to licencing entities only and if this is the preferred option I would strongly recommend that advisers be licenced at an individual level, even if they are part of a licenced entity.</p> <p>If only the entity is licenced there is <b>a risk to the consumer</b> that a ‘dodgy’ adviser could operate within an entity. Another reason I am opposed to entity licencing is that it could lead to <b>poorer outcomes for consumers</b>. Advisers within the entity could be directed to place business with ‘preferred providers’ due to financial arrangements negotiated by the entity. These providers may not have products better suited to a client’s needs.</p>
18	What suggestions do you have for the roles of different industry and regulatory bodies?	18	<p>Presently we have a number of industry bodies including, IFA, PAA, NZFAA, Sifa and AAA. Although it would be good for the industry if there were fewer bodies and all advisers were required to belong to one, I don’t see this as providing <b>better outcomes for consumers</b>. I personally belong to two of the above bodies whose members are very active in promoting professional standards and behaviour. I wouldn’t like to see these organisations ‘hijacked’ by advisers forced into joining by legislation rather than desire.</p>
19	What do you think is the most effective way to disclose information to consumers (i.e. written, verbal, and online) to help them make more effective decisions?	19	<p>Disclosure should at all times be written and could be communicated to clients online and verbally as well.</p>
20	Would a common disclosure document for all advisers work in practice?	20	<p>Yes. The disclosure document should contain information on qualifications, experience and remuneration. If an adviser has no qualifications, they should be required to state “I have no formal qualifications relating to the advice I am giving”. This alone should be enough to prompt advisers to engage in education options pertaining to their area of advice.</p>
21	How would remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?	21	<p>Disclosure of remuneration to clients in a simple effective way is not easy, especially when it involves Life, Health &amp; disability insurance. If we decide that the actual commission receivable in the insurance space is to be disclosed to clients we must also have employee advisers on salary disclose what benefits they receive in lieu of commission. Employees should also have to state that they are subject to sales targets as a majority of them are.</p> <p>Any disclosure should also point out the total ‘commission’ is not earned until up to 3 years of the policy being in force and subject to recovery, unlike real estate commission which, once paid is non recoverable.</p>

22	Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?	22	Although there is no evidence to suggest that the number of schemes is leading to poor outcomes I firmly believe that the 'Default Scheme' should have been wound up once it became obvious to the regulators that there were enough schemes with the capacity to manage all participants. Instead, the Default Scheme started advertising and canvassing for members, even suggesting they had a better offering than the established schemes. I don't believe this was the intention of the Government and should not have been allowed to continue. However, we are stuck with this and probably too late to change.
23	Assuming that the multiple scheme model is retained, should there be greater consistency between scheme rules and processes? If so, what particular elements should be consistent?	23	Yes. To make sure <b>consumers receive consistent outcomes</b> all schemes should have the same rules and processes. As it is a regulatory requirement to belong to an approved scheme, there is an ample amount of business for them all.
24	Should professional indemnity insurance apply to all financial service providers?	24	Yes. There is a risk that consumers could be disadvantaged by advisers, who operate under a company structure or have transferred their assets into family trusts, not having Professional Indemnity Insurance.
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)?	25	If it is left to the Government we will always hear how little money is available to fund awareness campaigns. If we leave it to industry participants the information is usually slanted to each participant's products. Consumer groups quite often only present half the story so it probably needs to be a combination of all three. If there are to be changes to regulations then it is the Governments duty to inform the public. Not with a 'new sheriff in town' campaign but some meaningful and constructive promotion of the advice industry.
26	What terminology do you think would be more meaningful to consumers?	26	As referred to in Q5, Investment Adviser, Financial Planner, Retirement Planner, Insurance Adviser, Mortgage Adviser, KiwiSaver Adviser etc., the list could be greater. Each of these titles immediately lets consumers know what the adviser does.
27	Do you have any comments on the proposal to retain the current definitions of financial adviser and financial adviser services?	27	No. I think retaining the current definitions is fine.
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.	28	Yes. We have examples of Gary Soffe & David Ross, both accountants who between them cost consumers nearly \$150 million. I understand that ASIC in Australia requires Accountants to be licenced if giving investment advice.
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 in chapter 4.2?	29	No immediate opinion on this as it is an area I do not participate in (investment advice)
30	How can we better facilitate the export of New Zealand financial advice?	30	As long as advisers comply with the standards imposed by the territory they are giving advice in there is no need to facilitate.

31	Do you have any comments on the proposal to retain the current approach to regulating broker and custodial services?	31	No comment
32	What are the costs and benefits of the packages of options described below?	32	I can't see any <b>improved outcomes for consumers</b> in any of the three packages offered. I would suggest the options will only increase costs to both advisers and consumers whilst decreasing the costs and time expenditure of the regulator
33	How effective is each package in addressing the barriers described in chapter 3?	33	I would suggest that the so called "barriers" mentioned in chapter 3 have been arrived at from a very small number of responses and to have them influence the future advice models would not be a responsible course to take. Once again, I suggest that retaining to existing model coupled with advice designations would solve <b>barriers to consumers</b> with a minimum of change.
34	What changes could be made to any of the packages to improve how its elements work together?	34	If it is decided to stick with the plan and impose these options on advisers then I would firstly suggest that option 3 be discarded. Any person selling a product <b>without regard to the consumer</b> should not be regulated under the FAA 2008 but rather the FMCA. Secondly, licencing should be on an individual basis.
35	Can you suggest any alternative packages of options that might work more effectively?	35	A package that; <ol style="list-style-type: none"> <li>1. Identifies the area of advice an adviser is able to provide under regulation.</li> <li>2. Requires every adviser to adhere to the areas of the Code relevant to the advice being given (Especially Code Standard 1)</li> <li>3. Requires all new and recent entrants (less than 5 yrs.) to have the Level 5 certificate.</li> <li>4. Standard disclosure statement for all advisers.</li> <li>5. Requires all advisers to have Professional Indemnity Insurance.</li> </ol> <p>The above package would remove any confusion that consumers have as to where they can find the advice they are seeking. This, I believe is the main reason we are currently considering the various packages.</p>
36	Do you agree with our assessment of the pros and cons of the options to overcome misuse of the FSPR?	36	Any change that helps eliminate fraudulent activity would be welcomed.
37	What option or combination of options do you prefer and why? What are the costs and benefits?	37	Only approve New Zealand registered entities.
38	What are the potential risks and unintended consequences of the options above? How could these be mitigated?	38	One of the risks would be lessening the options consumers have.
39	Would limiting public access to parts of the FSPR help reduce misuse?	39	Maybe. If it wasn't able to be accessed outside of New Zealand it may assist.

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Comments:

I have been impressed by the consultation process undertaken by the MBIE staff members involved with this review. I understand the need for this review but can't quite get my head around the need to make substantive changes.

Over the past five years I haven't seen or heard of any major adverse outcomes in the area I am involved in, Life, Health & Disability insurance nor have I witnessed any barriers to obtaining advice by consumers. Every time a consumer enters a bank they are bombarded with literature and sales pitches from staff relating to insurance and KiwiSaver. One problem is that some of these organizations have inferior products that could result in **poor outcomes for consumers**.

Consumers wanting insurance products have no barriers to entry. They can go online to Trade me or company websites and obtain quotes and cover 24 hours a day. If they require advice from an adviser they usually ask a family member or work colleague to recommend someone, once again, no barrier.

The major barrier to obtaining life, health or disability insurance is the reluctance of the consumer to want to spend any money in these areas and quite often they put it off until someone close and dear to them suffers a claimable event. Rather than putting barriers in place for advisers with licencing, education and compliance, we should be looking at ways to help consumers identify who can give them the advice they seek and I believe that having Advice Designations will achieve that goal.

The major barriers are experienced by investment consumers and I believe that by changing the emphasis from AFA, RbnaFA & QFE to a list of advice activities will help reduce these barriers.

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