

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

- Do you agree with the barriers outlined in the Options Paper? If not, why not?
We agree that those listed are potential barriers to consumers receiving appropriate advice, but some of those barriers relate to the complexity of the current regime. Simplifying the designations, for example, would go a long way to helping people understand the different types of advice and where to access it. Insurance advice should be provided by an Insurance Adviser/Specialist, Investment Advice by an Investment Adviser/Specialist etc.
- Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.
We would also add two others – The lack of education and/or understanding of the need and value of advice can be a barrier and the cost of advice can as well.
If clients who have a need for financial services do not understand that need, or the dangers of not having it – whether that be an insured house, an insured income or a regular savings plan – then that ignorance has to be the first barrier. Education is the key, and whilst that should be the responsibility of the industry, the legislative regime should facilitate the provision of that education.

Another consideration is that if the regime changes in such a way that the price of the advice falls directly on the Consumer (by way of a fee/invoice) then that too will become a barrier. At the moment the cost of the advice is paid by the product provider, and recovered from the cost of the product over many years. In some cases it is paid to the Adviser as an initial payment to cover the cost of running their business, and in other cases it is paid as an ongoing fee which enables them to build equity in their advisory business over time. In either case it is part of the product pricing and is not paid direct by the client.

Regardless, there is a cost for Advice. The Consumer will have to pay up front, out of their pocket, or through the cost of the product over time. A recent survey suggested that Consumers expectations were that they would pay around \$60 to receive Financial advice – that is not enough to sustain a viable Advice industry.

Chapter 4 – Discrete elements

- Which options will be most effective in achieving the desired outcomes and why?
Reducing complexity, educating people about the value of advice and where to find it and finally ensuring that advice is appropriate to their needs and budget are the key considerations.
- What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?
There should be no cost to the consumer other than what is built into the product to cover administration, claims and profit/income for the company and adviser.

The industry should cover the cost of education (within a simplified legislative framework) and the Advisers should cover the cost of their own education – initial and continuing. Where those advisers operate under an employment relationship, those costs may be covered by the employer.

- Are there any other viable options? If so, please provide details.
There should also be a place for a professional body. If all advisers were obliged to belong to a professional body – one that was responsible for public awareness/education, training standards, complaint handling disciplinary procedures and customer redress – then that would do much to enhance the “professional standing” of the Financial Advice industry.

4.1 Restrictions on who can provide certain advice

- What implications would removing the distinction between class and personalised advice have on access to advice?
There should be no such thing as “class advice” – it should be simply education without the expectation of a sale being made or a product purchased.

It shouldn't matter whether it is a journalist, Consumer magazine, a Company website, a Social Service or a charitable foundation, we should lower the barriers to education being provided to ensure the public is aware of the purpose, need and value of financial advice and the various products and services available to meet their needs.

No financial advice should be given without taking a clients' personal circumstances into account – in other words it is all “personalised advice”. In order for any product or service to be sold, the client's needs and budget should be determined – otherwise it is not advice – it is just product flogging.

This should not reduce access to advice. There are many ways to deliver personalised advice – face-to-face, over the internet, seminars, skype etc. The simpler and more commoditised the product (eg KiwiSaver, Fire and General insurance, Mortgage Protection insurance) the more it lends itself to advice being given without a “real person” being involved, however a “real person” will have developed the algorithms that guided the customer through the personal questions to come up with a product that met their needs and fitted their budget.
As an example of a commoditised personal product, when was the last time anyone bought Travel Insurance other than on-line?

- Should high-risk services be restricted to certain advisers? Why or why not?
The risk is not related to the product or service – it is related to the impact on the client. If a client is sold a product that is inappropriate to their needs or beyond their budget and they suffer a financial loss, then depending on the client that could be catastrophic. For example, if a client travelling overseas does not have the right travel insurance for the country they are

travelling in they could be out of pocket by tens if not hundreds of thousands of dollars through medical costs. Similarly, with medical insurance, the wrong type of cover could see you having to pay out significant amounts to get access to non-pharmac approved drugs or treatments which could save your life.

Whilst both of these examples may be seen to be “low risk” compared to Investments, Commercial Fire and General, Business Insurance or Investment Real Estate they can have significant “high risk” impacts on individuals who do not have the resources to recover from the effects.

Financial advice on all products and services should be restricted to Advisers who have proven through training and education that they understand what they are talking about, who have audited sales processes to understand the client and provide researched solutions that meet their needs.

- **Would requiring a client to ‘opt-in’ to being a wholesale investor have negative implications on advisers? If so, how could this be mitigated?**
Just because a client has more money does not make them an expert on investing – training, education and experience makes you an expert.
All Financial advice should be personalised to meet the client’s needs, and based on their particular circumstances. The only exception is where the client has specifically indicated, in writing, that the advice is limited to an “execution only” service, where advice was not sought or offered. In that case the advice is “limited” and it should clearly be identified as such.

4.2 Advice through technological channels

- **What ethical and other entry requirements should apply to advice platforms?**
If they are pure advice/education with no expectation of a product sale (eg Sorted) then they just need to be accurate and fit for purpose.
If they purport to do product comparisons and/or recommendations, then they should meet the following -
 - They should clearly state what conflicts of interest or biases are involved – are they independent or promoted by a product or service provider.
 - They should be independently audited to ensure any calculations or needs analysis are accurate and actuarially supported.
 - They should capture personal information to ensure the suitability of a product before a transaction can be finalised.
- **How, if at all, should requirements differ between traditional and online financial advice?**
No difference. It is not the method of advice that is important, it is the client!
Regardless of the method of delivery Financial Advice should always have the client’s best interests at heart, and be relevant and appropriate.
- **Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?**
A competitive market will deliver innovation – whether that is in the product, pricing, promotion or delivery mechanism. As long as there is an identified customer need, one or more market participants will seek to fulfil that need. Legislation just needs to be a framework that ensures that there is a level playing field and that the customer receives quality advice and that they are at the heart of all decisions.

4.3 Ethical and client-care obligations

- 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 obligation must simply be to put the consumer's interest first – in all situations. Monitoring should be by audits – of individuals or the companies they work for – and by monitoring of complaints.

Enforcement should be by sanctions, fines and imprisonment for obvious, blatant, repeated and significant/serious offences.

The existing enforcement regime is adequate, there just needs to be more resources available for the FMA to investigate and take action.

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

There is no dichotomy between sales and advice. At the end of each advice process there is a sale. If the advice is good, then the sale is just a natural outcome of recommending a solution that meets the client's needs.

The dichotomy exists in defining who the "sales person" represents. If the person can only recommend one product line from one provider, then they are representing that provider as an employee or an agent. Whilst they may have (should have) the clients' interests at heart they can only do that within the limitations of the products and services they have available. Their primary loyalty is to their employer/product provider.

An adviser who can recommend products or services from a number of providers (at least four or 50% of the market) has the opportunity to present the best product in the market to meet their client's needs. They are representing the client, not the provider.

The former should be clearly defined as "Agents" or employees whose advice is conflicted by their relationship to the product provider. It is not necessarily "bad" advice, but it is limited, and the customer should be made aware of that.

The latter are "Advisers" or "Brokers" in that they are there to advise the client and are working on their behalf to find the best solution to their problem.

It is not a matter of remuneration (ie employees are paid by their employer and advisers are paid by their client) because in either case the cost of the advice (which is just one of the costs of distribution) is borne by the product, and thus the client.

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

All remuneration, by its nature, is conflicted. Remuneration is a reward for taking a certain course of action that benefits the person paying.

Bank staff are incentivised or motivated through KPI's or Sales Targets to achieve certain outcomes. If they are successful they may be rewarded by bonuses or promotion. The Banks have fixed costs (bricks and mortar, salaries, tool-of-trade cars etc), all Distribution costs that they have to recover.

Advisers are rewarded by Commissions and incentivised with competitions and conferences. These may appear to be high, but they have to pay for their own costs of doing business which typically run to 45% to 55% of their gross income, and then they have to pay the taxman.

It is simply a different Distribution method, and commissions etc are just a cost of Distribution, as much as salaries, bonuses, cars etc are. The Insurance Companies have just, over the years, shifted their fixed costs on to the adviser and replaced them with variable costs (ie Commission linked to production). Neither Distribution method is more efficient or effective than the other. If they were, then the product pricing or the product quality would be different, but it is not. A comparison of Advice products versus Bank products (from the same insurer) usually shows that the Bank product covers less benefits and is the same price or more expensive.

4.4 Competency obligations

- How can competency requirements be designed to lift capability, without becoming an undue barrier to entry and continuation in the profession?

Any person giving Financial Advice should be competent to give that advice. This should be by education, training and/or experience – and should be kept up to date through Continuing Education requirements. How can we hold ourselves out to be a “profession” unless we are held to the same standards as other professionals?

Any Adviser who cannot demonstrate that they understand the law, customer needs, their products and a satisfactory sales process designed to place the clients interest first does not deserve to be in the industry.

- 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?

The new Educational Pathway for AFA’s (New Zealand Certificate) is a good start. All Financial Advisers should have to do the Core, and then the additional modules for their area of expertise – Insurance, Investment, Lending etc. They would then be “Authorised” to give advice in that area. There may need to be some modification to differentiate between Personal and Business Insurance, Personal and Commercial lending etc, but that could be handled by a modular approach.

All Advisers would be required to be registered on the FSPR, and their area of Authorisation noted and defined. They would be a Personal Insurance specialist, or Lending specialist – or alternatively “Authorised to provide Insurance and Lending Advice and Services”

4.5 Tools for ensuring compliance with the ethical and competency requirements

- 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?

In the situation of an employee/agent (as described previously) the organisation or employer should take responsibility under the normal Employment Contracts Act requirements.

For Advisers, there should be a choice whether the individual or the entity is responsible for the advice given. But regardless of who takes the responsibility, the cost of compliance should not be onerous. There should be independent Audits of the sales process and files every two years as for AML/CFT.

- What suggestions do you have for the roles of different industry and regulatory bodies?
See our previous answer to this question in the second question (Chapter 3). If there is an audit/compliance function, then perhaps this could be provided by the professional bodies.

4.6 Disclosure

- 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?
The most effective way is the way the consumer prefers to receive it – it is their choice, and all options should be available, however written disclosure, or reference to an online written disclosure statement would be preferable to verbal to ensure proof of delivery.
- Would a common disclosure document for all advisers work in practice?
Yes, as long as it is clear, concise and simple for the client to understand.
- How could remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?
Whilst SHARE Advisers are happy to disclose their remuneration, and currently most do under their secondary disclosure requirements, it begs the question of “why should remuneration details be disclosed if it is built into the cost of the product?” If the Consumer is happy to pay the price for the product, as they are for a can of baked beans, then why does the adviser (or the shopkeepers) remuneration come into it?

If I am paying for some plumbing services, I am interested in the cost of the job, not how much the individual plumber gets paid. Similarly, if I need a lawyer to do conveyancing, they will break down the incidentals (photocopying, disbursements etc) but not the salaries of all of the people who had a hand in providing the service.

If there was remuneration disclosure, would this mean that the Bank teller has to disclose their salary? Or the online provider their profit margin?

There are many costs to distributing product from the manufacturer to the consumer, of which remuneration is only one – why single that one out. What about the costs associated with marketing and advertising for the Bank or the cost of the website for the online adviser?

And if remuneration disclosure is required, then why should it not be the net cost after expenses? The remuneration the adviser receives as a percentage of the premium may be two or three times what he or she gets in the hand after salaries, rental, administration costs are taken out.

4.7 Dispute resolution

- Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?
None that we are aware of. Competition is a good thing normally for keeping costs down and quality up. The only alternative should be if the Professional Body for Financial advisers took on the statutory responsibility for initial dispute resolution.
- 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?

The outcome for the consumer should be consistent. Did they get a fair result, but at the same time discouraging frivolous or vexatious complaints?

- **Should professional indemnity insurance apply to all financial service providers?**
Yes, and there should be consistent minimums required, dependent on the type of advice. As far as we are aware all Insurers and Lenders require the Advisers who hold agreements with them to have PI cover otherwise they are not able to place business with that particular supplier.

4.8 Finding an adviser

- **What is the best way to get information to consumers? Who is best placed to provide this information (e.g. Government, industry, consumer groups)?**
It should be a shared responsibility. The more sources of information that are available the better, as long as it does not lead to confusion. The better informed the consumers are, the better choices they will make.

The Government can lead the way with Financial Literacy education from schools through to websites like Sorted.co.nz. They can also have a role in ensuring that Consumers know where to go to get advice.

The Product providers need to educate consumers about their products through their websites, brochures and Investment Statements, and can also point consumers toward advisers who they have judged competent to market their products and services.

The Consumer groups can do independent research and comparisons between product features, benefits and price as well as outline the reasons for financial products in certain circumstances.

The Professional Body(s) should focus on education (of both Consumers and Advisers), as well as point the public to their closest Professional Adviser.

The Advisers themselves also have a role to play in educating the public as part of their advice process.

- **What terminology do you think would be more meaningful to consumers?**
The simpler the better, and make it say what it means. RFA, QFE and AFA mean nothing to the average consumer – but they would understand what an Authorised Insurance Specialist or Mortgage Broker is.

4.9 Other elements where no changes are proposed

The definitions of ‘financial adviser’ and ‘financial adviser service’

- **Do you have any comments on the proposal to retain the current definitions of ‘financial adviser’ and ‘financial adviser service’?**
Financial Adviser is a broad, generic term that covers a wide range of services and products. It is OK for Legislative purposes, but too broad for the Consumer. They need terms that more closely describe the type of Financial Advice being offered – eg. Insurance Adviser or Investment Adviser.

Exemptions from the application of the FA Act

- 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.

No examples available, however why shouldn't everyone who provides financial advice be subject to the same regime. If an Accountant or a Lawyer provides Financial Advice to a client, then surely they must have the client's best interests at heart and they must be competent to give that advice.

Territorial scope

- 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?

No Comment

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

No Comment

The regulation of brokers and custodians

- Do you have any comments on the proposal to retain the current approach to regulating broking and custodial services?

We believe the word "Broker" should have wider application.

In common language a Broker is an intermediary between a product provider and the consumer who facilitates the purchase of a product or service. The expectation is that they are working on behalf of the consumer to use their skills and experience to determine the right product or service from those available, given the consumers' needs and circumstances.

The word "Adviser" has similar connotations with the overlay that there may be a more holistic approach that takes into account the longer term needs of a client over time.

For example, Mortgage Broker, Share Broker and Fire& General Broker are well known terms that denote the slightly more transactional nature of the product, whereas Insurance Adviser and Investment Adviser indicate an understanding of the longer term goals of the client and the longer term nature of the product or service provided.

Chapter 5 – Potential packages of options

- What are the costs and benefits of the packages of options described in this chapter? The packages of options are useful to help focus the debate, but none of them describes exactly the regime we would like to see in place. We believe that -

- There should be a distinction between those advisers working on behalf of the product provider (agents?) and those working on behalf of the client (Advisers/Brokers?)

- All people selling a Financial product or service should be required to put the clients' interests first (particularly around product suitability and affordability), even if there are limitations to their advice with respect to the products available. That limitation should be made clear to the client, along with any other conflicts of interest.

- All people selling a Financial product or service should be knowledgeable in terms of the product features and benefits as well as the legislative environment within which they operate.
- Financial Advisers, who offer a range of products, should all have agreed competency standards evidenced by the appropriate qualifications in the product areas where they give advice and Continuing Education requirements. The word Authorised should be retained to denote the areas where an adviser has proven competence.
There should be clarity as to who holds the advice liability (the entity or the individual), and there should be PI cover in place in all cases.

- How effective is each package in addressing the barriers described in Chapter 3?
[See above](#)
- What changes could be made to any of the packages to improve how its elements work together?
[See above](#)
- Can you suggest any alternative packages of options that might work more effectively?
[See above](#)

Chapter 6 – Misuse of the Financial Service Providers Register

- Do you agree with our assessment of the pros and cons of the options to overcome misuse of the FSPR?
[No Comment](#)
- What option or combination of options do you prefer and why? What are the costs and benefits?
[No Comment](#)
- What are the potential risks and unintended consequences of the options above? How could these be mitigated?
[No Comment](#)
- Would limiting public access to parts of the FSPR help reduce misuse?
[No Comment](#)

Demographics

1. Name:
[Charles Scott Black, submitting on behalf of SHARE NZ Ltd.](#)
2. Contact details:
[Redacted](#)
3. Are you providing this submission:
As an individual
On behalf of an organisation

SHARE is a nationwide co-operative of 65 Financial Advisers giving advice on Insurance, Investment, Lending and Fire & General insurance. Over half of our Advisers are AFA, but many only give advice on Category 2 products.

We are not aligned to any product provider and have no arrangements or agreements to place a required amount or percentage with any one product provider. Our Advisers are free to place the business where it best meets the needs of the clients.

4. Please select if your submission contains confidential information:

would like my submission (or specified parts of my submission) to be kept confidential, and attach my reasons for this for consideration by MBIE. No confidential information provided.

Reason: Enter text here.