

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.

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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.
No

Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?
It will be a mixture of options 2 & 3. There would be two levels. One relates to the requirements of the individual person and the other relates to the entity that employs that person.
Strategi believes that those who want to provide advice and want to be called a financial adviser would all need to be registered. These individuals would be called 'Registered Financial Advisers'. To be 'registered', an individual would need to be listed on a register, have attained their level 5 qualification and be subject to ongoing CPD. They would also be required to follow an amended Code of Professional Practice. These 'Registered Financial Advisers' would need to be employed by a licensed entity (be it a one person firm or a larger multi-adviser firm). The licensed entity would need to meet standards similar to what is required of a license holder under FMCA.
Those who do not want to provide advice and are only employed to sell products would be called 'investment product/insurance product/lending product/ sales persons. They would not need to hold the complete level 5 qualification but they would need to hold the 'core' part of the level 5 qualification plus would need to meet CPD requirements relating to product knowledge. However, their employer would need to be 'licensed' and part of that licensing would include ensuring that the sales persons had adequate knowledge competency and skill and that certain ethical standards were met.
All licensed entities – regardless of whether they employ financial advisers or sales persons- would need to meet similar standards and follow a licensed entity code of conduct.

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

For current AFAs who are currently personalised DIMS or hold a class DIMS license, then there is no increase in cost. There would be a small increase in cost for self-employed AFAs who are not DIMS but no increase in cost for AFAs who are employed by an entity. For current RFAs or firms that employ RFAs, then options 2 and 3 create greater costs if these entities provide financial advice and currently only employ RFAs or QFE advisers. However, if these entities decided to not provide advice and only sell their own products then they have no increased costs compared to what a QFE currently provides. The benefits to having options 2&3 is that there is good clarity for the public as to who is a financial adviser and who is a sales person. Additionally, FMA would be able to monitor and control standards across the entire industry and firms would have to meet minimum standards and have minimum controls/compliance and governance in place

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

See answer to question 3. This suggests that those who want to provide advice need to be called 'Registered Financial Advisers' but this status is more akin to that of a current AFA. All these 'registered financial advisers' would need to have attained a minimum of the level 5 qualification and undertake ongoing CPD. They would also need to be employed by a licensed entity (be it a one person firm or a multi-adviser firm) and that firm would need to meet a code of professional practice and meet minimum standards- similar to a FMCA license holder. Those who do not want to be providing financial advice would be called product sales persons and have to belong to a licensed entity and that entity must ensure the sales person is appropriately trained and supervised- similar to what a QFE does today.

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?

Removing the distinction would make it easier for people to receive advice provided that all financial advisers had the knowledge, competence and skill to provide the advice. However, there still needs to be a requirement for a financial adviser to clearly communicate to a client whether what he/she is saying is actual advice relating to the client or else generic comments. People who become sales persons should not be able to provide any advice. They just provide information and their opinions.

7. Should high-risk services be restricted to certain advisers? Why or why not?

Yes, certain high risk services and complex advice services should be restricted to those who have the appropriate knowledge competency and skill. Examples of high risk would include leveraged investing, use of derivatives, advice on pension transfers, direct share investing, business insurance. The current level 5 and the new level 5 qualification do not provide specific training on these sorts of topics and there is no need for all advisers to have to know this stuff. In the UK, financial advisers can obtain additional qualifications such as a 'Pension transfer specialist'. We should have this sort of additional qualification or designation for those who perform these higher risk services.

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?

There would be no negative implications for advisers. It would provide greater clarity for both the adviser and the client.

4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?
Providers of advice platforms where advice is actually provided vs just information, would need to be licensed and follow a set of protocols. Their advice model would need to be audited at least annually to ensure that the advice being provided is correct and not out of date.
10. How, if at all, should requirements differ between traditional and online financial advice?
It is essential that online financial advice tools clearly outline to the user their limitations, they must contain a facility for a user to click on requesting an adviser, and they must be kept up to date on the calculations etc. It is recommended a code be created that all online financial advice providers must follow.
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, it is sufficient

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?
Anyone who is deemed to be a financial adviser would have to put the client's interests first
13. What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?
Advice would only be provided by those who are 'Registered Financial Advisers'. Sales persons would need to be employed by a licensed entity that must follow certain standards. Obligations of sales persons would include providing correct and up to date information, not being misleading or deceptive, acting ethically, fully and correctly disclosing that they are sales persons and not financial advisers and the implication of that, having the knowledge, competency and skill to sell the products they are selling. Must meet a suitability requirement
14. If there was a ban or restriction on conflicted remuneration who and what should it cover?
The conflicted remuneration would only apply to those who are financial advisers and would not apply to sales persons. Commission is not something that should be banned but it needs to be better disclosed by advisers.

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 standards such as level 5 are not an undue barrier to entry for new advisers. It is only an issue for a small number of vocal older advisers who are reluctant to up-skill as they think they know it all and are not aware of what they do not know. The new level 5 qualification is larger and fit for purpose than the old level 5 qualification. If everyone did this qualification then the level of capability would improve for a short period but unless there was some form of ongoing compliance, then some advisers may slip back into their old ways.
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, all advisers need to meet the new level 5 qualification called the New Zealand Certificate in Financial Services (5) and then attain the relevant specialist subject endorsements. The New Zealand Certificate is absolutely fit for purpose. All those who would be financial advisers must attain the NZ Cert level 5. Those who wish to advise on specialist areas need to do the various strands plus there need to be additional strands for complex or high risk subject areas. Once the level 5 qualification is attained, then the adviser would go through the registration process and need to be part of a licensed firm.

Those who decide to be sales persons would also need to undertake the level 5 qualification. In both instances, advisers would be able to work under supervision whilst they obtained their qualification but they must attain the Core on entry to the industry and then complete their advice and other specialist strands at the rate of 1 strand every 3 months if operating in the industry under supervision. Having a time frame avoids a person perpetually staying under supervision rather than doing the qualification. CPD would be required by all but the topics need to be more prescriptive than at present

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?

All those who are financial advisers need to be registered which means they have the level 5 qual, meet a code standard and ongoing CPD. That covers the person side of things. They then need to belong to a licensed entity which is like undertaking a mini-DIMS licensing process. This might seem draconian to some small advisory businesses but in reality, licensing is simply ensuring that the business has in place good systems and processes. There will be a cost to small adviser firms in getting licensed but that will be less than \$5000 in fees and time and the upside for them in improved processes should offset that one off cost.

Having only entity licensing and not an individual obligation as well would be insufficient.

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

The professional bodies would have a limited role as they are currently fragmented and do not necessarily represent the entire industry. If they had a role, then it would be to work in association with the Regulator to decide what would be the main CPD topics for the following year plus to regularly review the currency of the level 5 qualification and recommend when and how it should be updated.

The FMA is the logical body to ensure compliance. The FMA may decide to have licensed compliance firms that then conduct annual compliance reviews of licensed entities.

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?

All financial advisers should have the same disclosure obligations. The primary disclosure statement should be more relevant and more comprehensive whilst the secondary disclosure statement should only really cover off on any conflicts of interest, whether the adviser has the knowledge competency and skill to advise on the topic and list the remuneration received by the entity (not the individual adviser)

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?

A percentage figure and if possible dollar value. Remuneration disclosure needs to be tailored to the advice provided

4.7 Dispute resolution

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

The existing multiple schemes appears to work fine at present

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?

No comment as see no current issues

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

The PI should apply to the licensed entity and not to the individual. The cost of mandatory PI cover is minimal and if an adviser licensed entity cannot afford \$1000-\$3000 in premiums pa then it should not be in 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)?

There needs to be a centralised registry which holds more information than just what is on the FSPR at present. It should also hold a copy of the adviser's primary disclosure statement and list what they can advise on.

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

Financial advisers to be called 'Registered Financial Advisers'. This aligns with registered nurses, registered engineers etc. The firms that employ financial advisers and sales persons would be called 'Licensed financial service providers'. The AFA designation would disappear as these people would be called 'Registered Financial Advisers'. The QFE term would disappear as a current QFE would become a 'Licensed financial service provider' and employ Registered Financial Advisers and/or Insurance Sales person, Investment Sales Person 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'?

No change required

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.

Areas of concern are around real estate agents touting property as a financial goal solution. No major issue at present with lawyers and accountants

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?

There is a need for financial advisers to provide advice and product information to New Zealanders who currently reside outside of NZ, and have existing NZ financial products and insurances. This would also apply to NZers who live overseas, currently do not have NZ products but intend to return to NZ in due course and now want advice on setting themselves up financially in NZ prior to their return. NZ advisers need to have the ability to communicate with these people personally or digitally so that advice can be provided.

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

Change the legs and regs to enable the above to take place. Additionally, permit NZ advisers to give advice to overseas investors who want to purchase investments in their own name. The adviser should be able to provide this advice remotely and the advice must be clear around what it is and is not covering – especially when it comes to the tax situation. The FMA would need to work with regulators in other jurisdictions to get approval for a limited type of advice to be provided to these overseas persons.

The regulation of brokers and custodians

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

Brokers should come under the same rules and requirements as financial advisers as they effectively provide advice to clients as to which solution/product is best. Current licensing of custodial services is fine.

Chapter 5 – Potential packages of options

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

Option 1 will not deliver the required outcome. There would be reduced costs for AFAs and increased costs for RFAs. Option 2 & 3 would meet the required outcomes but there is no need to individually license individuals. It should only be employer entities and sole traders who are licensed. All financial advisers would need to be registered and meet competency and code standards. Option 3 would only work if the competency requirements were incorporated in the new level 5 qualification and then there was some prescribed and some principles based CPD obligations. The cost of licensing would only be in the vicinity of \$5000 for a small adviser practice and then there would be ongoing external compliance review costs of approx. \$1,500-\$2000 plus GST pa. The cost for a person to complete the new level 5 qualification is approx. \$3500 plus GST plus the Skills Organisation exam fee of approx. \$400 plus GST.

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

Option 1 is not effective. Option 2 & 3 are effective but Option 3 is the most effective provided that the minimum competency is level 5

33. What changes could be made to any of the packages to improve how its elements

work together?

Have a mixture of options 2&3 so that we have a distinction between sales persons and financial advisers. All Financial Advisers would be called 'Registered Financial Advisers' and would not be licensed but must meet their registration standards. All sales persons and financial advisers would need to work for a licensed financial services provider. There would be a code of conduct for roboadvice providers, a different code for license holders and a different one for Registered Financial Advisers. The new level 5 qual (NZ Certificate in Financial Services level 5 is the minimum standard for everyone.

34. Can you suggest any alternative packages of options that might work more effectively?
see response to q 33

Chapter 6 – Misuse of the Financial Service Providers Register

35. Do you agree with our assessment of the pros and cons of the options to overcome misuse of the FSPR?
Yes
36. What option or combination of options do you prefer and why? What are the costs and benefits?
Option 1
37. What are the potential risks and unintended consequences of the options above? How could these be mitigated?
Enter text here.
38. Would limiting public access to parts of the FSPR help reduce misuse?
No

Demographics

1. Name:
David Greenslade. Strategi Limited
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 As an individual
 On behalf of an organisation

(Describe the nature and size of the organisation here)

Provider of compliance services and trainer of financial advisers

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