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.

Permission to reproduce

Submission from Stuart + Carlyon Limited – Options Paper

This submission is from Susanna Stuart and Deborah Carlyon of Stuart + Carlyon Ltd, PO Box 137-154, Parnell, Auckland. We are independent financial advisers and formed our company in December 2004 after 10 years of employment in the same field at PricewaterhouseCoopers in Auckland. We have worked as financial advisers since 1986 and 1988 respectively and are members of IFA and are both diploma qualified CFP practitioners.

We provide tailored financial solutions for clients with a range of needs. Our services are broad and often involve liaising with accountants and solicitors. We charge fees only, do not accept commissions and we are not tied to any investment product provider.

In considering the options put forward by MBIE, our present submission is framed by our views (which remain the same) as outlined in our submission of 17 July 2015.

We agree with the barriers MBIE has identified to achieving the outcomes sought. In principle the Package options 1, 2 and 3 comprise most of the elements to address those barriers, namely, higher ethical, competence and disclosure requirements and meaningful adviser designations for all providers of advice.

Below is a summary of the issues we wish to highlight.

1. Package 1 does not go far enough. With Package 2, introducing a subset of "Expert Advisers" will be problematic and perpetuates the same confusion caused by the RFA and AFA designations. Advisers can instead be differentiated by specialist type – Investment Planning, Insurance, Mortgage etc.

2. The Code could be expanded to include all advisers according to competence and qualifications, so there is a single code. All advisers have to "put the client first".

3. Full disclosure should include whether advice is being provided or whether a sale of a product is undertaken. Areas of competency should be clearly disclosed. Furthermore remuneration – fees and commission - should be stated in dollar terms.

4. We agree with minimum Qualifications to the level 5 National Certificate i.e. Core with specific qualification added for the area of speciality and the adviser designated accordingly. "Advice" requires competence and appropriate qualifications, whereas sales staff with lesser qualifications should disclose "no advice given".

5. We disagree with entity licensing proposed in Package 2 as this moves away from professionalism and individual accountability and could force smaller independent advisers into "dealer" groups. Existing "authorisation" for AFAs and adherence to the Code is sufficient. Individual licensing referred to in Package 2 seems to replace the AFA & RFA requirements and can be achieved by requiring RFAs to be "authorised". All RFAs should be brought into the current regime with requirement for an Adviser Business Statement. Entity licensing is appropriate for a robo advice platform because there is no individual adviser.

   QFEs are licensed already to monitor their staff and they employ both AFAs and RFAs. Some QFE advisers can become Financial Advisers while others would operate on the basis of a "no advice given" sales only service.

6. Package 3 suggests industry bodies should have direct input into the licensing process or setting professional standards. We agree with the Code Committee in not supporting any extension to the legislated role of professional bodies. Reasons include too many vested interests, too many bodies and lack of perceived transparency.

In summary Figure 5: Package 3 on page 48 of the options document is an excellent representation of how we see our profession operating. However, we are not comfortable with entity licensing – as a small company the compliance would be further increased. We think our internal procedures manual, Adviser Business Statement, governance by the Code of Conduct and use of a Custodian for clients' monies provide adequate regulation plus clarity for our clients. A licensing regime for all advisers will prove more burdensome than simply bringing RFAs into the current Code requirements and FMA "authorisation" requirements.

We have also responded to most of the questions below.

Chapter 3 – Barriers to achieving the outcomes

1. Do you agree with the barriers outlined in the Options Paper? If not, why not?
   Yes there is confusion over RFA, AFA and QFE advisers and what each can provide and what their motivation is. Difficult for investors with smaller sums or Kiwisaver only because not cost effective for AFAs to provide advice. RFAs may not have sufficient education/experience and don't have same disclosure requirements.

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?
   4.2, 4.3, 4.4, 4.6 and 4.8 as outlined on page 20 of the Options paper.

4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?
   See opening comments and Chapter 5.

5. Are there any other viable options? If so, please provide details.
   See opening comments and Chapter 5

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?
   Advisers will need the ability to provide limited advice i.e. to focus on a specific consumer need. Consumers will seek advice from a broader range of advisers but all advisers will need to reach minimum ethical and competence standards.

7. Should high-risk services be restricted to certain advisers? Why or why not?
   No, instead all advisers will be subject to the Code and minimum qualifications. Advisers may advise only on their areas of competence which must be fully disclosed.
   Removing the distinction between Category 1 & 2 products will remove a layer of complexity and consumer confusion. Minimum Level 5 education plus specialist designations and professional qualifications such as CFP and CLU, will further clarify to the consumer who to seek for advice. Introducing an "Expert Adviser" status will perpetuate confusion.

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?
   No, instead it will highlight that wholesale clients have limited redress compared to retail clients. If they do not already know this, they will by having to actively "opt-in". Otherwise the "wholesale client" regime may be used by some promoters to circumvent the need to issue an Investment Statement.

4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?
   Advice platforms should be licenced because there is no natural person providing advice, and licensing needs to ensure accountability and consumer redress.

10. How, if at all, should requirements differ between traditional and online financial advice?
    Clear disclosure that the robo-advice is reliant solely on input by the consumer with no personal adviser overview. There should be the option for personal consultation with a qualified adviser for an extra cost.

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

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 obligations which are set out in the existing Code of Conduct should apply to all financial advisers. To provide "advice" these obligations should be implicit and most consumers already expect that to be the case. In the same way they expect their lawyer or accountant to provide advice in the consumer's interest and to behave ethically, stating any conflicts.

13. What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?
    Sales people could be named by the product provider e.g. ANZ Adviser or Sovereign Adviser. Customer signs to acknowledge "no advice given". Obligations for sales people would be usual consumer right of "fit for purpose" i.e. suitable for their stated needs. For example, Kiwisaver fund sales based on timeframe and simple risk questionnaire, or bank term investment for period required.

14. If there was a ban or restriction on conflicted remuneration who and what should it cover?
    All advisers and sales people to disclose the dollar amount of any commission and/or disclose any sales targets or incentives resulting from the consumer investing. AFAs already do this. Ideally financial planning and investment advice should be fee only basis to enhance professional status.

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?
    Phasing in the requirement for all advisers to attain Level 5 (Core plus their specialty area) should not be onerous. Many have not done so because their RFA and QFE status has not demanded it. We submit that to be an "adviser" Level 5 should be the minimum. Those who do not wish to achieve this are more akin to sales people offering one product and should be designated as such.

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, the public should expect anyone providing "advice" to be appropriately qualified operating within their competence. Ideally, there should be supervision in the workplace during the education period and for a year afterwards. Similar to professional supervision for Certified Financial Planners, accountants and solicitors.

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 licenced (Option 2), what specific obligations should these advisers be accountable for?

There are no benefits to moving to an entity licencing model, except for the regulator (fewer numbers to "licence") AFAs are already essentially licenced via the authorisation process. There are 1,850 AFAs. RFAs can be brought under the same requirements via the Code of Conduct, Adviser Business Statement, Disclosure etc. QFEs can remain licenced and responsible for their staff who provide products on a "no advice basis" e.g. insurance, TDs, mortgages etc. But if any staff are "advisers" they must put the client first and be as if AFAs subject to the Code. The Code can be expanded to cover a range of advisers.

18. What suggestions do you have for the roles of different industry and regulatory bodies?
    - Code Committee & FMA to govern all advisers.
    - Industry bodies supporting via CPD and higher qualifications such as CFP and CLU.

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 and/or online

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

    Yes, initial disclosure followed by costs to client if they proceed with advice and/or investments:
    - Range of products and limitations of their advice
    - Nature of remuneration and cost to client
    - Any conflicts of interest
    - Experience and qualification.

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

    Listed with boxes to tick as per Primary Disclosure for AFAs:
    - Fees only paid by you
    - Fees plus other ways
    - Commissions paid by others depending on the decisions you make
    - Extra payments from my employer
    - Non-financial benefits from other organisations.

    Then followed by Secondary Disclosure stating the dollar amount of fees and/or commissions received by the adviser if the advice, insurance or investment takes place.

4.7 Dispute resolution

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

    None we are 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 there should be consistency

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)?
    - The FSPR could be expanded to provide a list of advisers with their areas of competence noted as per Level 5 qualifications.
    - Industry associations already list advisers (IFA website).

26. What terminology do you think would be more meaningful to consumers?
    - Renaming QFE advisers with the name of their employer e.g. ANZ adviser.
    - Removing "registered" and calling all advisers by their specialism e.g. Insurance Adviser; Mortgage Adviser; Financial and Investment Planning Adviser.
    - Sales people could be named "Customer Services".
    - Distinction between class and personalised can be replaced with scope of advice and limitations.
    - All consumers assumed retail unless they actively opt out of the protections afforded to them by agreeing to be "wholesale".
    - Information only and transactions only need to be covered also.

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'?
    We have always felt that the term financial planning should be included also to indicate a broader scope than investment products.

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.
    We see property companies promoting unlisted direct property syndicates to "wholesale" investors. These investors are encouraged by their accountants. One wonders how truly "wholesale" or sophisticated the investor is if they are asking us for an opinion.

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?

Why is this necessary?
Will international advisers be equipped to understand a NZ consumer's tax position?
International financial products listed on stock exchanges can be purchased by New Zealanders already e.g. ETFs and listed companies such as Apple in the United States so New Zealanders can invest internationally now.

30. How can we better facilitate the export of New Zealand financial advice?
    Most countries require authorisation of advisers locally so cross-jurisdiction advice is onerous.

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?
    No

Chapter 5 – Potential packages of options

32. What are the costs and benefits of the packages of options described in this chapter?
    Bringing RFAs into the current AFA regime will be less costly than licencing all entities.

33. How effective is each package in addressing the barriers described in Chapter 3?
    See our initial opening comments.

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

35. Can you suggest any alternative packages of options that might work more effectively?
    Package 3 but without entity licencing. All financial advisers authorised and subject to Code of Conduct, ethical and Disclosure regime. Clear designations as to area of specialisation/competence.
    QFEs employ advisers and sales people.

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?
    Options 1 & 2 seem to provide better flexibility for the FMA.

38. What are the potential risks and unintended consequences of the options above? How could these be mitigated?
    None other than greater time and resources for FMA

39. Would limiting public access to parts of the FSPR help reduce misuse?
    Potentially, but at the expense of a useful consumer tool.

Demographics

1. Name:
   Stuart + Carlyon Ltd

2. Contact details:
   Redacted

3. Are you providing this submission:
   ☐As an individual
   ☒On behalf of an organisation

   Our business comprises:
   Two directors who are CFP/AFA qualified.
   Five Staff
   We provide Financial Advice and Investment Planning; and a non-DIMs Portfolio Management Service via an independent custodian.

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.