

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?
We broadly agree that the barriers are correctly identified. Our particular view is in the area of competency, where the requirements vary significantly between different categories of advisers.
2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.
We are not aware of other major barriers.

Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?
Formal recognition of competence against common standards is critical to ensuring consumers are provided with competent advice. The financial services industry contributed heavily to a sector needs analysis and review or development of a suite of relevant qualifications from early 2011 to late 2015. Prior to that the industry contributed to the development of the initial National Certificate in Financial Services Level 4 and Level 5. Both the initial Level 5 qualification development and the review was focused on delivering an appropriate standard for the mainstream of financial advisers who provide personalised advice to retail clients. Such advisers may be operating on their own account, or within a range of organisation types. The key feature of this segment is that they have a degree of independence to develop their own solutions and the responsibility for dealing with any consequences of inappropriate advice.
4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?
Unless the current safeguards are maintained through such measures as the “capstone” content of the qualification there could be a risk of advisers seeking ways to find any ‘easy options’ for achieving the competency requirements. This happened in Australia but is much less a risk in New Zealand as the approach of specifying registered standards based qualifications embeds a much greater level of quality assurance in both qualification

development and ongoing delivery through a range of training delivery mechanisms.

Creating a two tier model (standard advice and complex advice) results in a model with similar complexity to the current RFA/AFA/QFE Adviser model.

5. Are there any other viable options? If so, please provide details.
No comments.

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 between class and personalised advice and creating a single set of requirements (at the level appropriate to the provision of personalised advice) would remove the barrier issues that currently cause advisers to restrict the services they offer (to either no advice or full advice). Minimum requirements would necessarily include client care, disclosure, competency, and continuing professional development.
7. Should high-risk services be restricted to certain advisers? Why or why not?
The nature of services provided should align with the competency of the provider of such services. It does seem appropriate to restrict the provision of ANY services (high risk or otherwise) to those who have demonstrated they are competent to do so. There is an opportunity for the competency requirements to specifically require advisers to hold evidence of competency in EACH area in which they provide advice and restrict the provision of advice to those who DO have such competency.
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?
Requiring a client to opt in to being a wholesale client should not have any implications on advisers. An early part of every advice giving engagement should be the establishment of the scope of services to be provided. This stage leads in a naturally occurring fashion to a discussion of the difference between a wholesale and retail level of advice services and the consequences of receiving one or the other. Requiring clients to actively opt in would more clearly and obviously engage them in understanding that they were receiving wholesale advice, with the attendant consequences.

4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?
There must be a distinction between the DEVELOPMENT of the advice and the DELIVERY of the advice. Robo-advice refers to the delivery mechanism for advice that is the outcome of a set of algorithms that have ultimately been derived from the financial advisory skills and knowledge of an individual or group of individuals. A mechanism should exist to identify this source and license it as the recognised responsible party. The options paper refers to 'licensed entities', it seems sensible that the individuals within such entities are required to have the requisite competency to develop the advice models that their platform delivers, in the same way as advisers who develop advice for delivery in face to face situations.
10. How, if at all, should requirements differ between traditional and online financial advice?
The distinction between the development and the delivery of advice makes it necessary that there is a way of identifying the individuals behind the development of provided advice, so that requirements around ethics, competency, disputes, and client care can be aligned with the responsibilities of 'traditional' advisers (to the extent that the difference in the delivery model

makes this reasonable).

11. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?

It seems likely that creating the flexibility that is described in the options paper will create an environment that allows for relevant innovation.

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?

Any client first ethical obligation is aspirational. It is therefore open to interpretation and different degrees of rigour at the point of actual application. The obligation in the current Code of Professional Conduct appears appropriate, moving that so that it was specifically contained in the reviewed Financial Advisers Act would serve to provide some appropriate emphasis, and ensure it applied to all. An alternative mechanism would be to make all advisers subject to a common Code of Professional Conduct, with the client first obligations embedded in that.

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

The distinction between advice and sales is one relating to whose needs are being served. Advice is intended to meet the needs of the client, sales are intended to meet the needs of the provider.

Advice might be indicated by the adviser having a range of alternative solutions available for each client situation and being paid directly by the client with the cost the same irrespective of the 'product' provided.

Sales might be indicated where there are different costs for similar products and this is not disclosed and alternative options not presented to the client. Sales would also be indicated where there is a significant proportion of adviser remuneration or benefits linked to business volumes. Remuneration indicators include "salary plus production bonus" structures and base commission plus volume bonus structures. Benefit structures include paid or subsidised conference events, education, and business sponsorship.

Sales people should have an obligation to make it clear to prospective clients what the situation and the relationships are, and who benefits in what way if business is done.

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

No comments.

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?

The existing structure that the Code uses is a workable model. New Zealand Certificate in Financial Services Level 5 is a sound base standard that was developed by the industry. Embedding this type of structure in the new act that covers all advisers, or in a new code with extended coverage, achieves the broader result. The requirements of level 5 are not onerous and should not be perceived as creating a barrier to entry or continuation. An appropriately limited range of competency alternatives is available to ensure a reasonable approach is available for those with aligned competency that has been demonstrated in a different way. Under an extended scope of coverage, it would be appropriate to require advisers to hold the competency standard in all areas of their advice. The present exemption for "full" AFAs who hold the investment unit standards from needing to hold the insurance or lending unit

standards even when providing insurance or lending advice is an example.

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 should face the same requirements. This is a matter that 'entity licensing' needs to consider and address.

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?

Business entities ultimately exist for the purpose of generating wealth for the owners. Any obligations that potentially or actually impact this wealth generation objective are problematical in terms of the rigour (or lack) with which they may be pursued. Retaining a model like the AFA model where the bulk of the obligations rest at individual level is a better option.

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

Industry bodies provide useful services in raising standards and providing professional development and support to their members. However they ultimately exist for the purpose of promoting the interests and facilitating the business success of their members. Retaining a model like the current AFA model where the bulk of the obligations rest at individual level is a better option.

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 disclosure is critical. Verbal disclosure can never be monitored and online disclosure can be 'undersold' to the consumer in a way that encourages them away from seeking it out.

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

A common disclosure for many details of an adviser's situation should work in practice by allowing easier like for like comparison. Fee and remuneration disclosure is less likely to be easily accommodated because models vary widely and many are complex (particularly in the insurance area).

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

No comments.

4.7 Dispute resolution

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

No comments.

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 comments.](#)

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

[No comments.](#)

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)?

[No comments](#)

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

[No comments](#)

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 comments](#)

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.

[No comments](#)

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?

[No comments](#)

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

[No comments](#)

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 comments.

Chapter 5 – Potential packages of options

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

No comments.

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

Due to the minor nature of the proposed changes, package 1 does not adequately address the identified barriers.

In package 2, the introduction of “expert” and standard financial advisers and complex and non-complex products or services seems to be retaining many of the confusions of the current Category 1/Category 2 RFA/AFA model.

In Package 3 the introduction of the distinction between sales and advice seems to be a useful approach, although vigilance is likely to be required to ensure definitional borders are not ‘managed’ by individuals or organisations to achieve unforeseen outcomes. Having licensed entities responsible for their advisers meeting the relevant requirements may lead to a downward ratcheting of adviser standards as entities compete for advisory talent by making the process ‘easier’.

A key barrier that was identified was access to competent advice. Package 3 removes any prescribed competency standards and takes this matter into the individual licensing arrangements for each licensed entity. The lack of any specified quality assured, minimum, common standard is a significant retrograde step if an objective of the review is to address the barrier of lack of competent advice.

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

In package 3, ensure that entity licensing includes very specific terms and conditions relating to the requirements of advisers that can and cannot be delegated to the entity, so that entity advisers are not held to lower standards than intended. The issue around competency standards mentioned above is a specific concern.

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

No comments

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?

No comments

37. What option or combination of options do you prefer and why? What are the costs and benefits?

No comments

38. What are the potential risks and unintended consequences of the options above? How could these be mitigated?

No comments

39. Would limiting public access to parts of the FSPR help reduce misuse?

No comments

Demographics

1. Name:
Colin James, Sector Lead Financial Services, The Skills Organisation

2. Contact details:
Redacted
Phone 09 583 1710.

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

The Skills Organisation is the Industry Training Organisation that holds gazetted coverage as the standard setting body for financial services. The Skills Organisation worked with the sector, including the regulator, to develop the National Certificate in Financial Services (Financial Advice) (Level 5) that is the current minimum competency standard for Authorised Financial Advisers. Delivery includes a centrally administered process for the assessment of the Capstone content that provides a robust mechanism to ensure consistency of outcomes. The new New Zealand Certificate in Financial Services was also developed in close consultation with the sector, including the Code Committee. That qualification provides enhanced competency requirements in the areas that were covered in the previous qualification. It also includes additional optional specialty strands to provide advisers working in areas that are not regulated with the opportunity to develop and evidence their competency in those areas. Delivery of the New Zealand Certificate Level 5 utilises the same centrally administered process for capstone assessment.

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.