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# How to have your say

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## Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by **5pm on Friday 31 March 2017**.

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 attaching your submission as a Microsoft Word attachment and sending to [faareview@mbie.govt.nz](mailto:faareview@mbie.govt.nz).
- By mailing your submission to:  
Financial Markets Policy  
Building, Resources and Markets  
Ministry of Business, Innovation & Employment  
PO Box 1473  
Wellington 6140  
New Zealand

Please direct any questions that you have in relation to the submissions process to:  
[faareview@mbie.govt.nz](mailto:faareview@mbie.govt.nz).

## Use of information

The information provided in submissions will be used to inform the development of the Financial Services Legislation Amendment Bill, decisions in relation to the outstanding policy matters, and advice to Ministers.

We may contact submitters directly if we require clarification of any matters in submissions.

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If your submission contains any confidential information, please indicate this on the front of the submission. Any confidential information should be clearly marked within the text. If you wish to provide a submission containing confidential information, please provide a separate version excluding the relevant information for publication on our website.

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### Part 1 of the Bill amends the definitions in the FMC Act

1. If an offer is through a financial advice provider, should it be allowed to be made in the course of, or because of, an unsolicited meeting with a potential client? Why or why not?

Yes. The offer is being made through a financial advice provider appropriately qualified and regulated to make the offer. The financial advice provider will need to comply with the duties that apply to giving financial advice and the Code of Conduct, including the duty to put the client's interests first.

2. If the exception allowing financial advice providers to use unsolicited meetings to make offers is retained, should there be further restrictions placed upon it? If so, what should they be?

No, for the reasons set out in question 1 above

3. Do you have any other feedback on the drafting of Part 1 of the Bill?

We propose that the definition of 'financial advice' be clarified further as it remains open to interpretation by providers as to whether an activity is giving financial advice or not.

The giving of factual information vs non-factual information is also open to interpretation and requires further clarification.

The labels 'Financial Adviser (FA)' and 'Financial Advice Representative (FAR)' may need revising as are seen to be too similar and may lead to customer confusion.

A person may fall under the revised definition of a 'FAR' but may only occasionally be providing

financial advice, i.e. their role may constitute the selling of one providers' product without providing advice. As such we propose that the name of the title be revised to 'Name of provider' Representative' or that the providers are able to choose a term that is deemed to be clear. Including 'adviser' in role titles such as this could be misleading and confusing for customers.

## **Part 2 of the Bill sets out licensing requirements**

4. Do you have any feedback on the drafting of Part 2 of the Bill?  
We do not have any specific feedback on the drafting of Part 2 of the Bill.

## **Part 3 of the Bill sets out additional regulation of financial advice**

5. Do you agree that the duty to put the client's interest first should apply both in giving the advice and doing anything in relation to the giving of advice? Does this make it clear that the duty does not only apply in the moment of giving advice?  
It is clear that the duty to put the clients' interest first is deemed 'in totality' and not only at the moment of sale.  
Given the importance of this duty, we submit that the core duty be included in the legislation with the details set out in the code of conduct. This would give opportunity for further consultation and consideration of the practical application of the duty. We also have concerns on how this duty would apply in practice where a Representative, or online sale tool, only sells products of one provider.
6. Do you have any comments on the proposed wording of the duty that a provider must not give a representative any kind of inappropriate payment or incentive? What impacts (both positive and negative) could this duty have?  
We support disclosure, but caution on placing restrictions on the types of remuneration that providers can provide.  
We are in support of remuneration incentives that are effectively managed by Financial Advice providers and disclosed to customers in order to make an informed choice.  
Financial Advice providers should have clear and effective policies, controls and procedures in place to manage any conflicted remuneration. Conduct obligations would rest with the provider.
7. Do you support extending the client-first duty to providers who do not provide a retail service (i.e. those who only advise wholesale clients)? Why or why not?  
We do not have any specific feedback
8. Do you have any other feedback on the drafting in Part 3 of the Bill?  
Further information would need to be provided on how a beach is defined and determined before feedback on civil liability can be provided.

## **Part 4 of the Bill sets out brokers' disclosure and conduct obligations**

9. What would be the implications of removing the 'offering' concept from the definition of a broker?  
no comment

10. Do you have any other feedback on the drafting of Part 4 of the Bill, for example any suggestions on how the drafting of broker provisions could be simplified or clarified?  
no comment

### Part 5 of the Bill makes miscellaneous amendments to the FMC Act

11. Should financial advisers have direct civil liability for breaches of their obligations, if the financial advice provider has met its obligations to support its advisers? Why or why not?  
Yes. We consider that this level of accountability is in keeping with the purposes of the legislation.
12. Should the regime allow financial advice providers to run a defence that they met their obligations to have in place processes, and provide resources to enable their advisers to comply with their duties?  
Yes. We consider that this is appropriate as even with the most robust processes in place by a financial advice provider an individual financial adviser could breach their duties
13. Is the designation power for what constitutes financial advice appropriate? Are there any additional/different procedural requirements you would suggest for the exercise of this power?  
This reflects the current position under FMCA. The FMA is required to consult with those who would be substantially affected by the declaration. Further details should however be provided on what the consultation should entail, the timing allowed and the impact of objecting to a particular procedural requirement.
14. Do you have any feedback on applying the concept of a 'retail service' to financial advice services? Is it workable in practice?  
no comment
15. Do you have any other feedback on the drafting of Part 5 of the Bill?  
no comment

### Part 6 of the Bill amends the FSP Act

16. Does the proposed territorial application of the Act set out above help address misuse of the FSPR? Are there any unintended consequences? How soon after the passing of the Bill should the new territorial application take effect?  
no comment
17. Do you support requiring further information (such as a provider's AML/CFT supervisor) to be contained on the FSPR to help address misuse?  
Further consideration is needed as not all Companies are subject to the same requirements due to their differing businesses. Customers may select a company based on their disclosures without knowing if the company is subject to AML etc or not.
18. Do you consider that other measures are required to promote access to redress against registered providers?  
no comment

19. Do you have any comments on the proposed categories of financial services? If you're a financial service provider, is it clear to you which categories you should register in under the proposed list?

We support the proposed approach to changes in categories of financial advice as this is clearer than the current categories.

20. Do you support clarifying that schemes must provide information to the FMA if they believe that a provider may be involved in conduct that constitutes breach of relevant financial markets legislation?

Further clarification is not required as the current FSP Act (section 67) requires reporting above a threshold to the relevant licensing authority (this may not be the FMA e.g., it may be the Reserve Bank). We submit that it would be appropriate for the scheme to notify the licensed provider that they are communicating information to the licensing authority before they do so.

21. Do you have any other feedback on the drafting of Part 6 of the Bill?

No comment

### **Schedule 1 of the Bill sets out transitional provisions relating to DIMS and the code of conduct**

22. When should an FMC Act DIMS licence granted to AFAs who provide personalised DIMS expire? For example, should it expire on the date on which the AFA's current authorisation to provide DIMS expires?

no comment

23. Do you have any other feedback on the drafting of Schedule 1 of the Bill?

no comment

### **Schedule 2 of the Bill creates a new schedule to the FMC Act with detail about the regulation of financial advice**

24. Should the FMC Act definition of 'wholesale' be adopted as the definition of wholesale client for the purposes of financial advice? Why or why not?

no comment

25. We understand that some lenders consider that they may be subject to the financial adviser regime because their interactions with customers during execution-only transactions could be seen to include financial advice. Does the proposed clarification in relation to execution-only services help to address this issue?

We consider the addition of execution-only services is useful. However, the term execution-only and the description in schedule 2 clause 6(b) is generally associated with investment and lending products.

We submit there should be an additional exclusion in schedule 2 clause 6 which covers sales of financial products where only information is given and there is no financial advice. We consider this is another form of execution only and it would be helpful if this was specified in the legislation. It would also be helpful in addressing issues raised in the ongoing debate of sales versus advice. An example of where this exclusion would be applicable is in the sale of general insurance products. Such products can often be purchased without a recommendation or opinion being given. Customer are asked a series of factual questions to determine a premium. Employees are trained to not answer any questions regarding whether the customer should

acquire or dispose of the product or which policy options they should select but instead to refer the customer to a financial adviser in such instances.

26. Are there any unintended consequences resulting from the minor amendments to the exclusions from regulated financial advice, as detailed above?

no comment

27. Do any of the membership criteria or proceedings for the code committee require further clarification? If so, what?

no comment

28. Does the drafting of the impact analysis requirement provide enough direction to the code committee without being overly prescriptive?

no comment

29. Does the wording of the required minimum standards of competence knowledge and skill which 'apply in respect of different types of advice, financial advice products or other circumstances' adequately capture the circumstances in which additional and different standards may be required?

Yes. The words "or other circumstances" means the provision is sufficiently broad for all matters to be considered

30. Should the Financial Advisers Disciplinary Committee consider complaints against financial advice providers as well as complaints against financial advisers? Why or why not?

No. Financial advice providers that are sole traders will in effect be subject to the Financial Advisers Disciplinary Committee. For entities that are financial advice providers, we consider that many would already be licenced and regulated by the Reserve Bank or the Financial Markets Authority. Further, such entities would be subject to industry codes of practice and be members of a dispute resolution scheme under the Financial Service Providers (Registration and Dispute Resolution) Act.

31. If the jurisdiction of the Financial Advisers Disciplinary Committee is extended to cover financial advice providers, what should be the maximum fine it can impose on financial advice providers?

The maximum fine should be consistent with the maximum fine for financial advisers (being \$10,000)

32. Do you have any other feedback on the drafting of Schedule 2 of the Bill?

We submit that three additions should be made to clause 6 as exclusions from the definition of financial advice. There should be specific exclusions for:

- (a) Annual offers of renewal for general insurance products;
- (b) Advertisements for financial products that are not specifically addressed to any person, eg, website, television or print advertisements. These advertisements potentially come within the broad definition of “financial advice”. Under the current Financial Advisers Act they would be considered class advice and therefore require the entity making the advertisement to be registered on the FSPR. However, under the new regime the entity would be required to be licenced. If this is the only type of financial advice the entity gives (because they do not directly engage financial advisers or make direct sales), then it does not seem necessary for the entity to be licenced given all advertising would be subject to current consumer protection and trade practices laws including the fair dealing provisions under FMCA.
- (c) Sales made without any financial advice (please see our response to question 25 above).

### About transitional arrangements

33. Are there any other objectives we should be seeking to achieve in the design of transitional arrangements?

no comments

### Proposed transitional arrangements

34. Do you support the idea of a staged transition? Why or why not?

Yes. This will minimise disruption for both industry participants and customers.

35. Is six months from the approval of the Code of Conduct sufficient time to enable existing industry participants to shift to a transitional licence?

We would prefer a 12 month time period post approval of the code of conduct as we have no certainty as to what requirements will be included in it. Entities may need sufficient time in order to consider implications and implement change (if needed).

36. Do you perceive any issues or risks with the safe harbour proposal?

no comment

37. Do you think there are any elements of the new regime that should or shouldn't take effect with transitional licences? What are these and why?

no comment

38. Is two and a half years from approval of the Code of Conduct sufficient time to enable industry participants to become fully licensed and to meet any new competency standards?

This sounds sufficient in principle. We need further detail in order to provide a view however.

### Possible complementary options

39. Do you support the option of AFAs being exempt from complying with the competence, knowledge and skill standards for a limited period of time? Why or why

not?

Yes. AFAs are currently sufficiently qualified to meet the purposes of the legislation

40. Would it be appropriate for the exemption to expire after five years? If not, what timeframe do you suggest and why?

no comment

41. Is there a risk that this exemption could create confusion amongst industry and for consumers about what standards of competence, knowledge and skill are required?

No. We expect that the disclosure requirements will clarify the position for customers.

42. If you support this option do you think it should be set in legislation or something for the Code Working Group to consider as an option as it prepares the Code of Conduct?

no comment

43. Do you support the option of a competency assessment process for existing AFAs and RFAs? Why or why not?

no comment

44. Is it appropriate for the competency assessment process to be limited to existing AFAs and RFAs with 10 or more years' experience? If not, what do you suggest?

no comment

45. If you support this option do you think it should be set in legislation or something for the Code Working Group to consider as an option as it prepares the Code of Conduct?

No comment

### Phased approach to licensing

46. What would be the costs and benefits of a phased approach to licensing?

We would like to better understand how it would be determined as to who has to apply for a full licence and by when, ie, who will have less than two years to get their full licence, how much time they would have and how long the licensing process will take. Given the potential costs and resources required to become licensed, it is important that this is clarified.

47. Do you have any suggestions for alternative options to incentivise market participants to get their full licences early in the transitional period?

no comment

48. Do you have any other comments or suggestions regarding the proposed transitional arrangements?

no comment

### Demographics

49. Name:

AA Insurance Ltd

50. Contact details:

Jacqui Thomson. Head of Finance Risk and Compliance  
REDACTED

Donna Everett, Risk and Compliance Manager



REDACTED

51. Are you providing this submission:

- As an individual
- On behalf of an organisation

AA Insurance Ltd is the direct personal lines insurance joint venture between Suncorp Group (Suncorp) and the New Zealand Automobile Association (NZAA). The effective ownership of AA Insurance is 68% Suncorp (shareholding via Vero NZ) and 32% NZAA. AA Insurance currently employs around 650 employees.

52. 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.