

How to have your say

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.
- 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.

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.

Except for material that may be defamatory, MBIE intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

Release of information

Submissions are also subject to the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

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.

Private information

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. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

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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. Not every meeting is pre-planned. A consumer should be able to receive advice in such a meeting and shouldn't be put off.

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?

Should a product sale result from such a meeting you can use a cooling off period and many life insurance products already have that provision

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

The use of the term 'Financial Advice Representative' should be changed as it sets up a similar confusion as exists with consumer views of the current RFA/AFA/QFEA designations.

Two better terms to use would be 'Financial Product Representative' or 'Financial Service Representative'. Either provides a clearer delineation between what is being provided and would shape the expectation of the consumer more clearly to their benefit. Including the term 'Advice' in the title is the source of that confusion with the consumer expecting 'Advice' when more often than not the topic & any transaction will be about a product, based on simple needs

or with only the representative's provider's products being the only solution available.

There are readily available examples available under the current regulations that demonstrate the consumers innocent perception that all products and providers are equal and they think they have received advice when in fact they have been sold to.

The term Broker and Broking Service is another area of confusion where the way it is defined currently runs against the consumer common understanding of what they understand an Insurance Broker or a Mortgage Broker is and what they do.

Part 2 of the Bill sets out licensing requirements

4. Do you have any feedback on the drafting of Part 2 of the Bill?
Enter text here.

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?
Yes the duty should apply in both giving Advice and in doing anything related to the giving of Advice.
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?
Incentives are a part of many working relationships where products need to be promoted & sold to consumers. The key term here is 'inappropriate' and can apply to both types of Adviser/Representative. A point of frustration for many self-employed commission based Advisers currently is that employed Advisers (in the likes of QFE) are somehow deemed as having more integrity when in fact they themselves operate under incentivised programmes
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?
Yes – the playing field should be level on this issue across retail and wholesale
8. Do you have any other feedback on the drafting in Part 3 of the Bill?
431H – the extension in 1(b) extending the duty to conflicts with 'any other person' is very wide and should be narrowed in its meaning to conflicts related to or associated with the Adviser

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?
Enter text here.
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?
Enter text here.

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?
Enter text here.
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?
Enter text here.
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?
Enter text here.
14. Do you have any feedback on applying the concept of a 'retail service' to financial advice services? Is it workable in practice?
'retail service' is perhaps a complexity not required from a client's perspective.
The standards applicable should be common across the transactions or services being offered.
15. Do you have any other feedback on the drafting of Part 5 of the Bill?
Enter text here.

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?
Yes to the proposed territorial application of the Act.
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?
Enter text here.
18. Do you consider that other measures are required to promote access to redress against registered providers?
Enter text here.
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?
Currently the term Broker/Broking Services leads to some confusion and at least hesitation when completing registration or renewal.
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?
Enter text here.

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

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

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?
It can be easy to consider what a 'Wholesale Investor' is but it's not a term that is widely applicable in areas such as general insurance or mortgages. There is an aspect of 'wholesale' service between providers & between providers/distributors when products are for instance white labelled as a scheme available through a specific channel.
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?
Enter text here.
26. Are there any unintended consequences resulting from the minor amendments to the exclusions from regulated financial advice, as detailed above?
Enter text here.
27. Do any of the membership criteria or proceedings for the code committee require further clarification? If so, what?
There is a concern as to the ability of the code committee in it's current size to handle the complexity across the range of areas of advice such as investment, risk, mortgage & general insurance. Consideration might be given to the code committee having the support of working groups specific to these areas. There is also a risk that the code committee lacks practical input from individuals involved in providing day to day Advice
28. Does the drafting of the impact analysis requirement provide enough direction to the code committee without being overly prescriptive?
Enter text here.
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?

This will be one of the most challenging areas in practical terms hence a concern expressed in #27 above about the scope & breadth of the code committee capacity.

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

Yes.

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?

Enter text here.

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

Enter text here.

About transitional arrangements

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

The risk should be assessed of the transitional arrangements being a cause of a further loss of experienced Advisers from the various industry sectors. E.g. the actual numbers of AFA's practising Advice on a day to day basis (estimated at about 20% of registered AFA's) is an outcome of the original regulations that is not necessarily desirable

Proposed transitional arrangements

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

Yes – it is important for the reasons outlined in #33 so that existing, experienced Advisers perceive the cost/benefit of making the transition is worthwhile.

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?

Not sure in light of the comments made under #27

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

Reasonable approach on a practical basis

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?

Enter text here.

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?

Enter text here.

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 – AFA's have operated under the current regulations & achieved Level 5 (or equivalent). Their competence, knowledge, skill has been established to a standard above the remainder of the advice industry. A period of exemption is reasonable in that context.

40. Would it be appropriate for the exemption to expire after five years? If not, what timeframe do you suggest and why?
Yes although 3 years would also be reasonable
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?
Some risk but acceptable.
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?
Legislation
43. Do you support the option of a competency assessment process for existing AFAs and RFAs? Why or why not?
A competency assessment option is strongly supported to assist transition and provide a pathway for existing practitioners.
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?
10 years is too limiting and should be made 2 years so that any individual believing they can meet the required level of competency can use this option
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?
Legislation

Phased approach to licensing

46. What would be the costs and benefits of a phased approach to licensing?
Enter text here.
47. Do you have any suggestions for alternative options to incentivise market participants to get their full licences early in the transitional period?
Enter text here.
48. Do you have any other comments or suggestions regarding the proposed transitional arrangements?
Enter text here.

Demographics

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51. Are you providing this submission:

As an individual

On behalf of an organisation

(Describe the nature and size of the organisation here)

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.