

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?

Enter text here.

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?

Enter text here.

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

The focus of the Bill appears to fall into two camps, “financial advice providers (FAP)” who deliver products and services through the “provider” entity and “financial advisers (FA)”. In the context of the FAP, much commentary with regard to the Bill seems to focus on the current QFE structure where the primary end purpose is the distribution of the FAP’s products or service. This delivery process is typically more readily associated with a “sales” exercise where the product is “fit for purpose”. This poses problems with assessing client interest first, with fit for purpose.

The FA designation provides for putting client interest first, with less contestability in that there is no resulting delivery of his/her own product suite. Camelot NZ Limited (CNZL) is a business model in which the Financial Advisers are employees of CNZL, however CNZL and its FA’s are

non-aligned to the product providers. Under the proposed Bill, CNZL would logically align to the FAP designation and its' 32 employee Advisers would become "financial advice representatives" (FAR). Alternatively CNZL may want to register each Adviser as a FA. The concern here is that as an FAR, the underlying division implies that we are similar to the QFE model in that the advice is structured around the delivery of the FAR product or service suite eg fit for purpose as opposed to clients interest. If, however we register each Adviser as an individual FA, we duplicate significant costs and resources in an attempt to illustrate to the consumer that we do in fact place the clients interest first and are not selling our own products.

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?

Agree in principal, but then challenge on the basis that and FAP or FAR has conflict where such advice results in the sale of its own product. Does this not imply a "sales" process (fit for purpose) as opposed to an "advice" process where client interest first can be deliverable?

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?

Most industries and professions are remunerated on the basis that the most efficient product or service providers are rewarded by consumers, if they can illustrate the value they provide for the cost of the product or service. With clear disclosure and education around adviser remuneration, including incentives, the consumer can make judgement on the appropriateness of the fees vs the value of the service being received. Transparency of payments and incentives need to be clearly disclosed however, as part of this exercise.

Removal of, or regulation on fees and incentives, appears to go against all the basic principles of a free market economy.

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?

Enter text here.

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

As I read the draft wording, a financial advice representative would appear to operate without any individual responsibility mandate. This would imply that with no disciplinary process in place a FAR could change employment from FAP to FAP whilst potentially transferring "bad" practices, without recourse.

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?
Enter text here.
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?
Enter text here.
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?
Enter text here.
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?

Enter text here.

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?

Enter text here.

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?

Enter text here.

30. Should the Financial Advisers Disciplinary Committee consider complaints against financial advice providers as well as complaints against financial advisers? Why or why

not?

Enter text here.

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?

Enter text here.

Proposed transitional arrangements

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

Yes, it provides time time for the adviser community to adapt with minimal disruption to the end consumer/cleint

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?

Yes

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

Enter text here.

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?

Difficult to assess without full knowledge of the new competency standards, however 2 and a half years does seem a lengthy period.

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?

Enter text here.

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

Enter text here.

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

Phased approach to licensing

46. What would be the costs and benefits of a phased approach to licensing?
There has and will be increasing cost for both FA's and FAP's to upskill to new competency levels as well as whatever costs come out of the proposed licensing options. Clearly this cost will have to be either absorbed by the FA's or FAP's or passed onto clients of the FA's or FAP's. Neither option is desirable and thus the new licensing regime should not impose significant additional costs onto financial industry participants.
47. Do you have any suggestions for alternative options to incentivise market participants to get their full licences early in the transitional period?
Reduced licensing costs
48. Do you have any other comments or suggestions regarding the proposed transitional arrangements?
Potential concern as to costs, liability and administration should CNZL wish to apply as a financial advice provider license, but then have to have all existing RFA's and AFA' registered separately during the transitional period, whilst still recruiting new Advisers to its business. This could result in confusion to both CNZL stakeholders as well as the CNZL clients as to who is licensed and responsible for the advice delivery.

Demographics

49. Name:
Peter Cave AFA, CFP, CLU,
50. Contact details:
REDACTED

51. Are you providing this submission:

As an individual

On behalf of an organisation

Camelot NZ Ltd, a financial advice organisation employing 32 financial advisers, and 25 support staff, providing client advice in areas of insurance, investment and mortgage lending

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.