

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 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?

I see no problem with this being allowed as long as the adviser meets the professional code of conduct and disclosure requirements

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?

I am concerned about the use of "Financial Adviser" to describe all those giving advice, be they AFA, RFA or QFE advisers. Whilst I applaud bringing all advisers under the code of professional conduct and making all adhere to the same conduct, competence and disclosure duties, the term Financial Adviser is a commonly used generic term and doesn't differentiate those of us that have experience, qualifications and meet ongoing standards i.e. current AFA's. We currently use the term AFA, so why not make all advisers LFA's i.e. Licenced Financial Adviser.

I am also concerned for small business owners who are sole traders. Most run a company structure and as such would require the company to become a Financial Service Provider and

Submission from Gary Morgan of Morgan Taylor Ltd

the adviser to become a Financial Adviser working on behalf of a provider. This leads to 2 layers of compliance whereas currently there is only the need for one i.e. the adviser is authorised and under the FAA has the ability to link their company to the adviser. I believe that this will lead to undue costs and increased time to administer and I would like to see sole traders being given some relief in this area.

I am also concerned about the overriding approach being taken here to move advisers from complying with FA Act to complying with both the FAA and the FMC Act. Clearly the FAA was developed specifically with advisers in mind, to bring advisers under the FMC Act seems unnecessary and case of cracking a walnut with a sledgehammer. It will also once again add costs and increase time for advisers to comply. A case in point would be professional indemnity premiums, which undoubtedly will increase substantially if advisers are caught under the FMC Act which carries a potential penalty for breaches of up to \$5 million for a Financial Advice Provider. Given that NZ is a country which celebrates small business, and the objective of this review is to improve access to financial advice for NZ consumers, I believe the end result will be more advisers being driven out of business as the risks and costs of business continue to escalate.

Part 2 of the Bill sets out licensing requirements

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

No

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?

Like David Ireland of the Code Committee, I too have a major problem with the proposal of moving "advisers must put the client's interests first" from a principles based code of professional conduct to being legislated within the FMC Act. The concept of "put the client's interests first" is a multi-faceted holistic approach which defies an easy definition. In your "Consultation Paper – New Financial Advice Regime" at the bottom of page 19 where this is discussed you seem to imply that this is simply a test of conflict of advice. It is far more reaching than that. To legislate this without a workable definition and no case law, is simply unworkable. We were lauded by other jurisdictions for taking a principles based approach and this has been working well. Why change this now?

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?

Enter text here.

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?

I do support this if the definition of wholesale client remains the same. Currently a client is a wholesale client if they have net asset of \$1 million or more. Clearly many ordinary New Zealanders are now caught by this test and potentially are not protected. Either increase the net assets test (a more appropriate figure would be \$5 million) or extend a professional code of conduct and client first duty provisions to providers dealing with wholesale clients.

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

I agree that the duty to put the client's interest first should apply both in giving the advice and

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doing anything in relation to the giving of advice.

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?
This is workable providing you look to re-define the definition of a wholesale client (see Part 3 question 7 above)
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 it does address misuse of the Register. It should take effect ASAP
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?
I don't believe this is necessary.
18. Do you consider that other measures are required to promote access to redress against registered providers?

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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?

Yes it is clear.

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?

I do support this.

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?

I believe the current FAA definitions are workable providing the net assets test is increased, \$1 million of net assets is too low in today's environment.

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?

Submission from Gary Morgan of Morgan Taylor Ltd

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?

Yes

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, only advisers otherwise sole practitioners would be caught twice

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?

See question 30 above.

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

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?

If using a staged transition process, then I would prefer to see a 12 month period from approval of the Code to shift to a transitional licence.

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

no

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?

If the shift to transitional licence is extended to 12 months then this time frame should be extended to 3 years.

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?

As a long standing adviser, many of my peer group undertook the Massey University Diploma in Financial Planning in the early '90's. We have since been told to re-qualify twice to meet the current regime, and now there is a proposal for us all to have to re-qualify for a third time! How many lawyers and accountants, having qualified, are then told that their qualification is no longer valid and they must re-qualify? Clearly if an adviser has met past requirements, and has continued to meet ongoing CPD requirements, this should be sufficient i.e. the status quo in regards to the current Code of Professional Conduct.

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

see question 39 above

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?

I do not support this. Often this simply feathers the nest of the training organisations. Often assessments are made by inexperienced personnel with little expertise or understanding of real life advising. Better to ensure that new entrants are properly qualified in the first instance and existing advisers will continue be tested by meeting ongoing standards of professional development and CPD requirements. I believe the current level 5 certificate to be appropriate for the educational requirement.

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?

I do not agree, see question 43 above.

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.

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Phased approach to licensing

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

The danger here is that under a phased approach to licensing, those selected for early licensing have a market advantage of those selected later. I do understand however, that by phasing the licensing there should be a cost saving which should be able to be passed to the licensee. I am all for keeping costs down. Remember, increase costs inevitably eventually get passed on to the end client.

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

An incentive would be to offer a discount on the licence fee.

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

Enter text here.

Demographics

49. Name:

Gary Morgan AFA, Director of Morgan Taylor Limited

50. Contact details:

REDACTED

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.