

# 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.

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](http://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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## General

Mercer (N.Z.) Limited (Mercer) has previously made submissions regarding proposed changes to the Financial Advisers Act and we are pleased to see that many of them have been carried through to the Financial Services Legislation Amendment Bill.

Mercer would be pleased to meet with the Ministry of Business, Innovation and Employment to discuss this submission.

### In particular, we support:

- putting clients' interests first - understanding their needs and the impact of any advice, both in the short and longer term
- having regard to the duty to put clients' interests first, consider adding a statement regarding the spirit of the amendment – along the lines of the Code of Professional Conduct for Authorised Financial Advisers (A. Background, paragraph 5 – “*The overarching purpose of the Act provides the spirit underpinning the Code. When considering their conduct and disclosure obligations under the Act and the Code AFAs should have that spirit in mind.*”)
- improved access to financial advice for retail investors
- the removal of unhelpful barriers such as confusing product, advice and adviser distinctions
- more relevant and simplified financial adviser designations
- the introduction of robo-advice which will foster innovation in the financial services sector
- more robust conduct obligations on all advisers
- adviser duties to be universal and adviser standards of competency to be addressed in the new Code

We anticipate that, when regulations supporting the Bill are drafted, they will provide for shorter, simpler forms of disclosure, which will be drafted in clear, concise and effective language. This will enable customers to make more informed decisions regarding financial products.

We expect that the regulations will also make the obligations regarding disclosure documents; determining the basis for advice; and record-keeping clear.

We look forward to greater clarity regarding the competency standards expected of advisers, as they relate to advice types and products, and support moves to provide for on-going professional development of advisers to ensure that their skills, both product-oriented and as they relate to advice processes, are maintained and enhanced.

## **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, Mercer is of the view that an offer through a financial advice provider should be allowed to be made in the course of or because of an unsolicited meeting with a potential client. This is because the financial advice provider will be required to comply with the new duty provision on persons giving regulated financial advice, including the duty to put the client's interests first.

As this duty is paramount, the channel through which customers receive advice becomes less important.

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?

There is no need for further restrictions as the new duty provisions and the amended Code should provide clients with more robust protections than are currently available.

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

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

Mercer supports the proposed advice model whereby a financial advice provider is licensed and is responsible for the conduct and competence of its financial advice representatives.

This model is consistent with both the current QFE model and the entity licensing model of the Financial Markets Conduct Act.

## **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?

Mercer agrees that the duty to put the client's interest first should apply to both giving the advice and doing anything in relation to the giving of advice.

We assume that this means the duty applies not only at the moment of giving advice but also in respect of pre-advice processes and post-advice execution of the customer's instructions.

Providers may seek clarity as to the nature and extent of "anything" and this could be covered in the amended Code.

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?

Whilst we support the underlying principle that providers must not give their representatives “inappropriate payments or incentives”, the duty is worded rather subjectively and is open to interpretation. We would be looking to the Code for further guidance on the interpretation of this duty.

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?

Mercer supports the concept of consistency across the spectrum of advice. Any additional costs to wholesale providers and their clients may need to be taken into account.

## **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?

Mercer is of the view that financial advice representatives (FAR) should not have direct civil liability for breaches of their obligations if the financial advice provider (FAP) has met its obligations to support its representatives.

The FAP is licensed on the basis that it provides a governance, compliance and assurance framework to ensure the delivery of regulated financial advice in accordance with the Act.

A failure on the part of the FAR is likely to reflect a failure of the FAP’s framework and that is where liability should reside.

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, the regime should 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.

## **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?

Yes, the FMCA definition of ‘wholesale’ should be adopted as the definition of wholesale client for the purposes of financial advice. This improves consistency of application of the Act and reduces complexity.

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 wording of the required minimum standards of competence, knowledge and skill are adequate to capture the differing standards which may be required in respect of different types of advice and products.

The wording also recognises the role that financial advice providers will have under the new regime in designing and developing training for certain of their staff in specific product and advice situations.

The flexibility in demonstrating compliance with competency standards potentially improves access

to financial advice whilst maintaining requisite competency and conduct standards.  
We would support a minimum number of CPD hours per annum being set for all advisers.

## Proposed transitional arrangements

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

Yes, we support the idea of a staged transition to allow financial advice providers time to develop, design and test appropriate frameworks, particularly with regard to adviser oversight and competency.

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, we support the proposed 6 month period from approval of the Code of Conduct to obtaining a provisional licence.

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?

Yes, we support the legislative intent to allow two and a half years from approval of the Code of Conduct to becoming fully licensed and meeting new competency standards.

## Phased approach to licensing

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

The benefit of a phased approach to licensing, as proposed in the draft legislation, is to allow industry participants time to consider their current advice models and the changes required to bring them into line with any new requirements, especially those pertaining to competency standards.

## Demographics

49. Name:

Mercer (N.Z.) Limited

50. Contact details:

Sarah Whitelock

Consumer Wealth Leader

Mercer (N.Z.) Limited

**REDACTED**

51. Are you providing this submission:

As an individual

On behalf of an organisation

Mercer has operated in New Zealand since 1957, providing investment and funds management services, primarily to managed investment schemes (MIS), particularly KiwiSaver and Restricted Workplace Savings Schemes. In addition to servicing the needs of approximately 100,000 Mercer KiwiSaver scheme members, we provide administration, investment management, and related services to a number of corporate clients' MIS. Whilst the majority of these MIS are defined contribution schemes, a number are either defined benefit or hybrid schemes.