

Submission by

NZbrokers Management Limited

to

Ministry of Business, Innovation & Employment

on

Consultation Paper – New Financial Advice Regime

**Draft Financial Services Legislation Amendment Bill
and proposed transitional arrangements**

31st March 2017

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?

Offers through an unsolicited meeting should not be permitted however the new legislation should allow similar exceptions as were previously available. The buyer needs to be in a properly informed position before considering an unsolicited offer.

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?

Aside from ensuring the adviser is competent the only extra protection might be a cooling off period.

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

The new legislation is intended to be simpler for the public to understand therefore titles must be uncomplicated and relevant to one another. We suggest:

Financial Provider – entity providing the service.

Financial Adviser – competent adviser on behalf Financial Provider or as sole trader.

Financial Provider Representative – person working on behalf of the Financial Provider in a sales role with less advice associated with the role.

The terms Broker and Broking Service create confusion within the insurance industry and for insurance buyers because this is a common phrase used elsewhere than as an investment or share broker. In fact most insurance broker companies have 'broker' in their registered business name.

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?

The duty should apply in giving advice and in doing anything in relation to giving 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?

The term 'inappropriate' will be subjective and may require the regulators, who do not understand the cost of delivering some services, to allow latitude in some circumstances

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 are concerned that our advice and service should always be comprehensive and skilful therefore will make no distinction between retail and wholesale. The same level of 'client first' principals will apply.

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

The provision in 431H that extends the duty to conflicts with 'any other person' is not achievable. We suggest the duty be restricted to those related to or associated with the adviser.

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

14. Do you have any feedback on applying the concept of a 'retail service' to financial advice services? Is it workable in practice?

If we must have distinction between wholesale and retail services then it must be better defined. The bill provides that if a financial service is provided to any retail client then the entire service is deemed to be a retail service. As a consequence any provider that offers services to a single retail client it will be necessary comply with the retail obligations for wholesale clients (competence requirements, agreeing on nature and scope of advice and complying with the Code of Conduct). This is unnecessarily complicated and unlikely to be evident to any type of client.

Part 6 of the Bill amends the FSP Act

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?

The terms Broker and Broking Service must be replaced. They create confusion within the insurance industry and for insurance buyers because this is a common phrase used elsewhere than in the investment or share broker context. In fact most insurance broker companies have 'broker' in their registered business name.

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?

Yes.

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?

If we must have distinction between wholesale and retail services then the definition of 'wholesale investor' is not relevant in the context of insurance workers or insurance buyers. We prefer to retain the existing definition of 'wholesale client' as it currently stands in the FAA.

Proposed transitional arrangements

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

Yes, a staged transition will enable an orderly implementation of changes. Not all of the requirements of the new regime can be immediately achieved, in particular the competence standards will need time for individuals to achieve. There will be some significant business costs bringing the advisers (brokers to us) up to the prescribed competency standards.

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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?
12 months will be preferable because each business has different 'seasons' and will need the opportunity to schedule changes where it is most appropriate in a 12 month period.

Possible complementary options

43. Do you support the option of a competency assessment process for existing AFAs and RFAs? Why or why not?
We support a competency assessment process but it much include provision for experienced insurance brokers or advisers, say with 5 or 10 year experience. Our sector and insurance buyers value experienced practitioners, who can be recognised as having appropriate skills based on an assessment test.
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?
The assessment should be available to any broker or adviser who is at the required level of competency.

Demographics

45. Name:
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46. Contact details:
Simon Moss
REDACTED
47. Are you providing this submission:
 As an individual
 On behalf of an organisation
NZbrokers is a collaborative group of more than 85 independent insurance broker businesses throughout New Zealand. Within our group we handle the non-life insurance policies for 140,000 mostly retail clients. These client pay approximately \$550m premium to insurers plus more than \$23m in Fire Service Levies under the current regime.

There is no confidential information in this submission.

- I would like my submission (or specified parts of my submission) to be kept confidential, and attach my reasons for this for consideration by