

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?
[Should the exception be limited to unsolicited meetings with existing clients, the definition of existing clients should not be linked to clients holding products with the Financial Advice Provider \(FAP\). This is because a sole trader FAP \(previously an AFA\) will maintain a customer relationship with the client, but this will not be a product-based relationship.](#)

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?
Enter text here.
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?
[We agree with the wording and the proposed definition of inappropriate, but consider that the duty would be more easily translated into practical application by industry if examples of inappropriate were given, as without examples, there could be confusion on whether a particular type of incentive would be inappropriate.](#)
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?
Enter text here.

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?
[Yes, they should be able to run this defence.](#)

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?

[We agree it should expire on the date on which the AFA's current authorisation to provide DIMS expires.](#)

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?

We have some difficulty with the wording of 'by or for any employer'. As currently drafted, this could cause confusion around persons providing financial advice 'for any employer'. The exemption has clear justification where the financial advice is provided by employer staff. But in some instances, employers contract these services out to specialist providers who are in the business of providing financial services, but look to exclude themselves from taking on any obligations to consumers by providing 'information only' services. It appears to put consumer interests at risk if these providers, whose remuneration is linked to the offer of financial products to employees, should be able to disclaim all responsibilities. It would be preferable that some obligations, such as exercising a duty of care, are applied to commercial providers, because consumers would reasonably expect that they are receiving financial advice from such specialist providers.

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?

We agree that FADC should be able to consider complaints against FAPS as well as those against financial advisers, this would provide a more level approach to disciplinary matters and would, in the matter of an individual adviser operating as a FAP, recognise the reality of the situation.

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?

We are concerned that as currently drafted, the transitional rules seem to prohibit the freedom of initial movement of individual advisers in the transitional phase, e.g. a QFE adviser at the commencement of the transitional period would not be able to move out of the QFE, as their regulatory standing is tied solely to that of their QFE provider. Further, the current proposals potentially put QFE advisers and their clients at a disadvantage, by restricting QFE advisers' freedom of movement. We suggest that QFE advisers should have the same transitional rights and freedom of movement as those granted to RFAs.

Proposed transitional arrangements

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

Enter text here.

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?

We support the six-month period provided that the transitional licensing requirements and process are made clear to participants. We would expect that, as with FMCA licensing, FMA is empowered to engage sufficient resources to process transitional licence applications and engage with participants in their journey to licensing.

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?

Refer to answer for Q33.

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

38. 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?

We would support this option. AFAs have proven their commitment to both establishing and maintaining competency since the introduction to FAA in 2011, through completing initial competency training and meeting CPD requirements. Given the gap from current state to meeting competency requirements will be greater for

RFA and some QFE advisers, it makes sense to allow these advisers full access to available training and competency providers to meet the new requirements. AFAs will continue to meet CPD requirements in this period and so will be demonstrating ongoing commitment to competency.

39. Would it be appropriate for the exemption to expire after five years? If not, what timeframe do you suggest and why?
Enter text here.
40. 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?
No.
41. 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?
Agree that the Code is the better place to put it.
42. Do you support the option of a competency assessment process for existing AFAs and RFAs? Why or why not?
We would support a competency assessment process for existing AFAs and RFAs, and would argue that it should be extended to QFE advisers. The cohort of existing advisers in New Zealand should benefit from a mechanism allowing them to prove their competency and transition into the new regime with minimum disruption. It is important that disruption to the existing advised customer base in New Zealand be minimised.
43. 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?
We would suggest that 5 years' experience would be sufficient, particularly given the low numbers of advisers who have entered the industry since 2011. Further, 5 years ties with the authorisation period for AFAs.
44. 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?
Agree that the Code is the better place to put it.

Phased approach to licensing

45. What would be the costs and benefits of a phased approach to licensing?
Enter text here.
46. 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.
47. Do you have any other comments or suggestions regarding the proposed transitional arrangements?
Enter text here.

Demographics

48. Name:
Tristan Armitage
The Association
49. Contact details:

REDACTED

50. Are you providing this submission:

On behalf of an organisation

I am providing this submission on behalf of The Association which is a non-profit organisation representing businesses and advisers in the AMP Financial Advice Network (AFAN). The Association currently represents 65 adviser businesses and 220 advisers. (Describe the nature and size of the organisation here)

51. 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.