

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? **Yes, as long as the financial advice provider has to follow Code of Conduct standards 1-16 and make the 'offer' in writing. It should be noted that in some instances the client's circumstances may be unknown so an adviser must be able to demonstrate due care and that the clients' interests have been considered.**
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?
A written statement of advice needs to be the minimum requirement for a financial advice provider to make offers as a result of unsolicited meeting, as this protects consumer from over the counter verbal advice
3. Do you have any other feedback on the drafting of Part 1 of the Bill?
We have very real concerns with the term Financial Advice Representative. This will continue to cause deep confusion for the consumer with the term Financial Adviser. Consumers will not know the difference between the two as was borne out in an MBIE survey which found almost 90% of consumers said clarification of financial advisers would help them understand the industry. The term Financial Representative would clearly indicate to a client that such a person is selling a financial providers product. e.g. Westpac Financial Representative – Spicers

Financial Representative.

Part 2 of the Bill sets out licensing requirements

4. Do you have any feedback on the drafting of Part 2 of the Bill?
Changes overall must be cost effective and not prohibitive for sole traders or small independent financial advisers.

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 the duty should apply in giving advice and anything in relation to that 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?
[Representatives need to be remunerated effectively in some fashion. That said we support a regime whereby the customer is made aware in writing in a form that is transparent the amount the Representative is being remunerated for this advice. Consumers need to clearly be able to differentiate when they are being sold a financial product and be informed that the providers' Representative is being remunerated on sales volume or with other incentives.
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?
As per earlier submissions the clients interest should be paramount and this principle should apply in both wholesale and retail situations.
8. Do you have any other feedback on the drafting in Part 3 of the Bill?
The current Wholesale limit of \$1,000,000 needs to be increased to \$3,000,000. This will remove over 600,000 ordinary New Zealand consumers who have seen over the last 12 months their net worth increase through the value of their residential dwellings.

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?
Yes. This will ensure there is a whistle blowing incentive on the adviser to report poor behaviour by financial advice providers. Our understanding is that an adviser may have

brought the Ross Ponzi scheme to the attention of the FMA. If so this would be an example of the importance of considering whistle blowing incentives.

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?

No that will be insufficient. Will there be uniform checks & balances for all providers to follow, which will not leave individual advisers exposed?

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?

As per our earlier submissions we are still of the view that exceptions for lawyers, accountants, real estate agents will leave gaps in the regime that will have negative consequences for the consumer.

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

YES, as long as it applies to all forms of advice and therefore all are licenced so that in your example both the bank's Wealth banking division & Institutional banking division are covered under the same retail service concept. Lawyers do not have a separate designation for the legal advice they give an individual or corporate.

15. Do you have any other feedback on the drafting of Part 5 of the Bill?

Keep it simple for the consumer whether they retail or wholesale to ensure they both get "high quality financial advice".

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

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?

No

18. Do you consider that other measures are required to promote access to redress against registered providers?

No

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 the consultation paper clearly sets out which categories one needs to register under.

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?

Definitely

21. Do you have any other feedback on the drafting of Part 6 of the Bill?

We don't support a structure in which some 25,000 Financial Advice Representatives (ex-QFEs), can provide 'advice' on one provider's product and without individual accountability for the advice they provide. The consumer deserves a better outcome than this, because individual accountability is fundamental to ensure 'client-first' advice is provided.

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?

No comment on this as 99% of our members do not have their own DIMS licence.

23. Do you have any other feedback on the drafting of Schedule 1 of the Bill?

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Schedule 2 of the Bill creates a new schedule to the FMC Act with detail about the regulation of financial advice

1. 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?

We believe it's important to have a clear distinction between wholesale and retail advice. A key point for the future system to recognise is that personalised retail advice is different to wholesale clients/advice and the public could easily confuse what a wholesaler says (in the media for example) as being relevant for them.

2. 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.

3. Are there any unintended consequences resulting from the minor amendments to the exclusions from regulated financial advice, as detailed above?

Enter text here.

4. Do any of the membership criteria or proceedings for the code committee require further clarification? If so, what?

It will be important that small independent financial advisers are represented on the code committee otherwise the requirements will be shaped solely by the large players within the industry along with the FMA.

5. Does the drafting of the impact analysis requirement provide enough direction to the code committee without being overly prescriptive?

Yes, it is being overly prescriptive, because a Code of Conduct standard is an obligation where a disciplinary committee might be expected to take a broader consideration of a financial adviser's duties rather than what can be enforced through a court. This type of approach is taken by many other professionals, i.e. Law Society, Medical & Engineers etc.

6. 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?

No it does not and we feel MBIE have become confused in this area. In line with government policy almost every sector in New Zealand had insisted on both competency and NZQA framework based qualifications and going forward all financial advisers / representatives will need both. There has been a qualification standard in place - being Level 5 for the last 7 years, so why should New Zealand water down its financial services sector, when the rest of the world is setting higher standards?

7. Should the Financial Advisers Disciplinary Committee consider complaints against financial advice providers as well as complaints against financial advisers? Why or why not?

Yes. We strongly believe the FADC should be empowered to consider complaints against FAP, FA and FAR. In other words, all parties involved in the advice process.

8. 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?

\$50,000.

9. Do you have any other feedback on the drafting of Schedule 2 of the Bill?

Enter text here.

About transitional arrangements

10. Are there any other objectives we should be seeking to achieve in the design of transitional arrangements?

For sole traders and small independent advisers, it will be critical for them to know the detail of licensing and competency requirements as soon as possible including costs.

Proposed transitional arrangements

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

Yes see comments under question 33.

12. Is six months from the approval of the Code of Conduct sufficient time to enable existing industry participants to shift to a transitional licence?

No, it should be nine months from Code approval, because 6 weeks from any month in 2017 means the proposed 6-month period is going to occur over the December/January school and staff holidays.

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

No

14. 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?

No

15. Is two and a half years from approval of the Code of Conduct sufficient time to enable industry participants to become fully licenced and to meet any new competency standards?

No, it should be three years

Possible complementary options

16. 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?
Yes
17. Would it be appropriate for the exemption to expire after five years? If not, what timeframe do you suggest and why?
Yes, because at least 60% of the current 1800 AFA would have retired from the industry by 2026.
18. 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?
The biggest risk facing consumers from your proposed regime is that up to 25,000 QFE advisers have not had to demonstrate competence going forward under the revised FAA Act. Therefore there is very limited risk, for confusion amongst consumers or industry about AFAs competence, because they have been providing high quality advice to consumers since 2011 and the exemption is only for a limited period of time so not a critical concern.
19. 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?
Yes
1. Do you support the option of a competency assessment process for existing AFAs and RFAs? Why or why not?
Only for RFAs, because AFAs have met minimum qualification and professional standards and are authorised by FMA, where they can give personal advice on complex investment products and can also offer investment planning services.

Their renewal FMA license sets out the types of products and services they are authorised to provide.
2. 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?
Yes
3. 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?
Yes

Phased approach to licensing

4. What would be the costs and benefits of a phased approach to licensing?
See answer to question 33.
5. Do you have any suggestions for alternative options to incentivise market participants to get their full licences early in the transitional period?
No
6. Do you have any other comments or suggestions regarding the proposed transitional arrangements?

Transitional licence period should begin nine months from date of approved Code of Conduct and expire by June 2021, because the revised FAA Act is not likely to become a Bill until mid to late 2018 due to September 2017 election and it gives AFA and RFAs advisers ample time to assess their options on whether they will remain in the industry.

Demographics

7. Name:
Wayne Smith, Chief Executive, TripleA Advisers Association

8. Contact details:
REDACTED

9. Are you providing this submission:
 As an individual
 On behalf of an organisation

TripleA Advisers Association is an industry association established in 1947 representing around 200 small, independent financial advisers across New Zealand.

10. 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.