

# In Confidence

## OFFICE OF THE MINISTER OF COMMERCE AND CONSUMER AFFAIRS

The Chair  
Cabinet Economic Growth and Infrastructure Committee

### Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008: Terms of Reference

#### Proposal

1. I seek approval to publically release the attached terms of reference (see **Annex 1**) for the review of the operation of the Financial Advisers Act 2008 (FA Act) and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act).

#### Background

2. It is essential that New Zealanders have access to quality information and advice that allows them to make informed decisions about participating in financial markets. Investor confidence and participation in these markets provides funding for New Zealand businesses and is a vital tool for individuals in achieving their financial goals and accumulating wealth.
3. The FA Act and the FSP Act are integral in promoting sound investor decision-making and the appropriate regulation of New Zealand's capital markets:
  - The FA Act regulates professional providers of financial advice in the investment, insurance, mortgage broking and banking industries. It aims to encourage and promote public confidence in the professionalism and integrity of financial advisers and brokers.
  - The FSP Act requires financial service providers to be registered and (where applicable) to belong to a dispute resolution scheme. These requirements are aimed at promoting confident and informed participation of businesses, investors, and consumers in fair, efficient, and transparent financial markets.
4. The Ministry of Business, Innovation and Employment is required by statute to review and provide recommendations to me on each of these Acts within five years of the commencement of the relevant sections. Given the extensive inter-relationship between the two Acts, I propose they be reviewed at the same time.
5. A steering group comprising senior officials from MBIE, the Treasury, the Financial Markets Authority and the Commission for Financial Capability has been established to oversee the review. The review will fully identify the range of issues related to the way financial advice is regulated, providing an opportunity for meaningful engagement with consumers and the financial sector to determine if the current regulatory settings are fit for purpose.

## **Terms of Reference**

6. The terms of reference provide context on the Acts and developments that have occurred since their implementation. Their purpose is to set out the scope, objectives and key milestones of the review.
7. The review will analyse the role of financial advice, financial service provider registration and dispute resolution in improving financial outcomes for New Zealanders, and assess and update the objectives of, and rationale for, regulatory intervention in this area. The review will also focus on whether the different parts of the current regime justify the costs they place on the sector.
8. Following preliminary discussion with stakeholders, it appears that while the current regulatory settings may have improved the overall quality and consistency of financial advice, some people are finding it more difficult to access advice. The review will look at whether changes to these Acts are required to ensure that there is an appropriate balance between promoting public confidence in financial advisers and the economic costs of achieving this.

### *Key dates*

9. The terms of reference include a high-level timeline for the project. This will assist stakeholders in planning their responses to consultation documents and engaging constructively with officials.
10. I expect to seek Cabinet approval to release an issues paper for consultation in May 2015 to seek public views on the issues that are identified. This will be followed by an options paper in late 2015 that will outline potential directions for change.
11. The review's final findings will be presented to me by 1 July 2016. I will then report back to Cabinet with any legislative proposals.

## **Consultation**

12. The Treasury, the Financial Markets Authority, the Commission for Financial Capability and the Ministry of Justice have been consulted on the attached terms of reference.
13. The Department of Prime Minister and Cabinet has been informed.

## **Financial Implications**

14. There are no fiscal implications from the proposals in this paper.

## **Human Rights**

15. There are no human rights implications from the proposals in this paper.

## **Legislative Implications**

16. There are no legislative implications from the proposals in this paper.

## **Regulatory Impact Analysis**

17. Regulatory impact analysis requirements are not applicable to the proposal in this paper.

## **Publicity**

18. MBIE will publish the terms of reference on its website. I may also release a media statement that outlines the review and presents opportunities to comment.

## Recommendations

I recommend that the Committee:

1. **note** that the Financial Advisers Act 2008 and Financial Service Providers (Registration and Dispute Resolution) Act 2008 each include obligations on officials to review the Acts and report to the responsible Minister no later than five years after commencement of the relevant sections of these Acts;
2. **note** that the Acts are closely linked and a joint review would be more effective;
3. **note** that the review provides an opportunity to evaluate whether these Acts are working effectively and efficiently;
4. **agree** to the publication of the attached terms of reference for the review;
5. **note** that I expect to seek Cabinet approval to release an issues paper in May 2015;
6. **note** that we expect that concerns will be raised during the review with regard to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT). Officials will forward these concerns to the Ministry of Justice in the context of the planned review of the AML/CFT next year.

Hon Paul Goldsmith  
**Minister of Commerce and Consumer Affairs**

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## **Annex 1: Terms of Reference for the review of the Financial Advisers Act 2008 and Financial Service Providers (Registration and Dispute Resolution) Act 2008**

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### **Objectives of the review**

The objectives of this review are to:

- analyse the role of financial advice and financial service provider registration and dispute resolution in improving financial outcomes for New Zealanders, and to assess and update the objectives of, and rationale for, regulatory intervention in this area
- assess the performance of the Financial Advisers Act 2008 (FA Act) and Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act) against the updated objectives of, and rationale for, regulatory intervention in this area
- meet the statutory review requirements in section 161 of the FA Act by:
  - reviewing the operation of the FA Act since its commencement
  - preparing a report on the review for the Minister of Commerce and Consumer Affairs, including recommendations on whether any amendments to the FA Act are necessary or desirable by July 2016
- meet the statutory review requirements in section 45 of the FSP Act by:
  - reviewing the operation of Part 2 of the FSP Act since its commencement
  - preparing a report on the review for the Minister of Commerce and Consumer Affairs, including recommendations on whether any amendments to Part 2 of the FSP Act are necessary or desirable by August 2015.

### **Context**

The Ministry of Business, Innovation and Employment (the Ministry) is responsible for legislation regulating financial markets and financial service providers. It also has Crown entity monitoring responsibilities for the Financial Markets Authority (FMA) and Commission for Financial Capability (CFFC).

#### *Financial Advisers Act 2008*

Under the FA Act, persons in the business of providing financial advice are subject to a number of different regulatory requirements, depending on the topic of the advice, the nature of the advice and the type of client. Only persons who have been authorised by the Financial Markets Authority (FMA) are permitted to offer personalised advice on more complex or risky financial products to retail investors. These requirements were put in place with the intention of promoting the sound and efficient delivery of financial adviser services, and to encourage public confidence in the professionalism and integrity of financial advisers.

The FA Act is the result of a lengthy process, which included significant changes to the original regulatory structure at the select committee stage, along with a number of subsequent adjustments before its full commencement in 2011. This resulted in legislation which was relatively complex to implement and which has been the subject of various criticisms since its commencement.

An effective and well-functioning system of regulation for financial advice is important because:

- a healthy financial advice sector requires a level of public trust. This trust was undermined by real and perceived issues with financial advice prior to the implementation of the FA Act.
- clients expect a level of care, skill and diligence from financial advisers. Where advisers do not meet these expectations, or where they do not act in the client's best interests, this can lead to significant financial detriment to those clients.
- the costs imposed by regulation can make advice more costly and less attractive to consumers, reducing the number of people receiving advice about financial matters.

In addition, the Government has made a commitment to improve the quality of regulation. This commitment includes reviewing existing regulation to identify and remove requirements that are unnecessary, ineffective or excessively costly.

#### *Financial Service Providers (Registration and Dispute Resolution) Act 2008*

The FSP Act requires all financial service providers to be registered and, if they provide services to retail clients, to belong to a dispute resolution scheme. The FSP Act aimed to:

- facilitate efficient regulation and public access to information about financial service providers
- prohibit certain people from being involved in providing financial services in New Zealand
- meet New Zealand's international obligations under the Financial Action Task Force Recommendations
- ensure that consumers have access to effective dispute resolution mechanisms in respect of financial services, without the cost and complexity of the judicial system.

The substance of the FSP Act commenced in August 2010. There are currently four dispute resolution schemes:

- The Banking Ombudsman
- The Insurance and Savings Ombudsman
- Financial Services Complaints Limited
- Financial Dispute Resolution Scheme.

#### *Developments since 2011*

Since the commencement of the FA Act and FSP Act, a number of notable changes have been made to both Acts:

- significant changes were made to the FA Act by the Financial Markets (Repeals and Amendments) Act 2013. In particular, it aligned definitions with the Financial Markets Conduct Act 2013 and limited Authorised Financial Advisers to providing a narrower type of discretionary investment management services (DIMS) without the need for a separate licence. These changes came into force from 1 April 2014.
- The Financial Services (Registration and Dispute Resolution) Amendment Act 2014 strengthened the registration provisions in the FSP Act and removed the requirement for a government-run reserve dispute resolution scheme. These changes came into force on 1 June 2014.

A number of other changes have also impacted on the financial adviser sector, including:

- the creation of the Financial Markets Authority (FMA) in 2011, which, among other things, took over the functions of the Securities Commission, including the regulation of financial advisers.
- the commencement of the Anti-Money Laundering and Countering the Financing of Terrorism Act 2009 in 2012. Authorised Financial Advisers are reporting entities under this legislation, supervised by FMA.

The dispute resolution part of the FSP Act (Part 3) was reviewed by the Ministry in September 2013, in accordance with the statutory review requirement. This review focussed on issues of consumer awareness of dispute resolution schemes and on issues effecting accessibility. Given that the dispute resolution framework had only been operating for around three years at that point, and the FSP Act was in the process of being amended, the review recommended that financial service provider dispute resolution be re-evaluated as part of a broader review of the FSP Act and FA Act.

### **Approach to the review**

The review will be led by the Ministry in conjunction with FMA, CFFC and Treasury. We plan to run the review in an open and transparent manner and will actively seek input from stakeholders throughout the process. It will be important to ensure that not only do we understand the views of the sector, but that we also understand the changing needs and expectations of consumers of financial advice and other financial services. To this end, we plan to provide a number of different types of opportunities for input into the process, beyond formal consultation processes. We expect that this will include targeted focus groups and workshops, open forums and active engagement through online channels.

The initial focus of the review will be updating our understanding of the role of financial advice and financial service provider registration and dispute resolution in improving financial outcomes for New Zealanders. Our analysis will include consideration of changes to the regulatory environment, to consumer needs and expectations and to government priorities. This understanding will help us to test and update the objectives of, and rationale for, government intervention in this area.

Current regulatory settings will then be considered in light of this intervention logic in order to identify key issues for consideration. Our analysis of these issues will focus on areas where the FA Act and FSP Act may not be meeting the needs of consumers and where the benefits of their requirements may not be justifying their costs. This analysis will be informed by the government's best practice regulation guidelines.

The Ministry's analysis of objectives, intervention logic and issues will be consulted on in an issues paper planned for release in early May 2015. This will provide the opportunity for interested parties to comment on, correct and challenge the analysis. We will look to actively participate in a range of discussions on these issues during this time.

In August 2015 the Ministry intends to provide a report to the Minister of Commerce and Consumer Affairs outlining the progress of the review so far and providing further detail on the options identification process. The Ministry will also provide a standalone report on the operation of Part 2 of the FSP Act, in accordance with the requirements of section 45 of the FSP Act. We expect that this report will recommend carrying on further work in this area as part of the broader review.

We then expect to develop and consult on an options paper before the end of 2015. The options paper process will reflect the extent of the issues identified through the issues paper consultation process. Details of the options paper process will be updated accordingly and communicated through the Ministry's website.

The final report on the operation of both the FA Act and FSP Act will be provided to the Minister of Commerce and Consumer Affairs by 1 July 2016. This report will include any recommendations for changes arrived at after the options paper consultation process.

Indicative timing for the achievement of key milestones is set out below:

Key stages of the review process	Indicative timing
<p>1. <i>Research:</i></p> <ul style="list-style-type: none"> <li>• Analysis of the intervention logic</li> <li>• Literature review</li> <li>• Consumer focus groups</li> <li>• Consumer surveying</li> <li>• Adviser surveying</li> </ul>	<ul style="list-style-type: none"> <li>• <b>First half of 2015:</b> Consumer surveying, supplemented by consumer focus groups and adviser surveys</li> </ul>
<p>2. <i>Issues Identification:</i></p> <ul style="list-style-type: none"> <li>• Stakeholder meetings</li> <li>• Consultation on the intervention logic and issues</li> <li>• Open forums on issues paper</li> <li>• Engagement through stakeholder forums</li> <li>• Analysis of submissions</li> </ul>	<ul style="list-style-type: none"> <li>• <b>January-February 2015:</b> complete initial meetings with stakeholders</li> <li>• <b>February-April 2015:</b> development of issues paper</li> <li>• <b>May-July 2015:</b> public consultation on issues paper and ongoing stakeholder engagement</li> </ul>
<p>3. <i>Report to Minister</i></p> <ul style="list-style-type: none"> <li>• Report on the results of our research and issues identification and outlining the options identification process</li> <li>• Statutory report on Part 2 of the FSP Act, with the intention of further work in this area being undertaken as part of the broader review</li> </ul>	<ul style="list-style-type: none"> <li>• <b>By 15 August 2015:</b> statutory deadline for report on the operation of Part 2 of the FSP Act</li> </ul>
<p>4. <i>Options identification:</i></p> <ul style="list-style-type: none"> <li>• Development of options to address key issues identified</li> <li>• Discussions and workshops on options</li> <li>• Release options paper for consultation</li> <li>• Analysis of submissions</li> </ul>	<ul style="list-style-type: none"> <li>• <b>November 2015:</b> release options paper for public consultation</li> </ul>
<p>5. <i>Report to Minister:</i></p> <ul style="list-style-type: none"> <li>• Overall findings of the review</li> <li>• Recommendations on what, if any, legislative changes are needed and a plan for these changes</li> <li>• Tabling of report in the House of Representatives</li> </ul>	<ul style="list-style-type: none"> <li>• <b>1 July 2016:</b> statutory deadline for report to the Minister on the operation of the FA Act.</li> </ul>

**Scope**

The full operation of both Acts will be considered during the review, with consideration given to the impact of other related legislation.

We will seek to understand the impact of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 on the adviser sector and will work with the Ministry of Justice and FMA to ensure that any feedback is fed into any future changes to this Act.

If there are areas where this legislation is imposing undue compliance costs on the adviser sector, we may recommend that amendments or exemptions be considered.

The following areas are out of scope for the review:

- While we will seek to understand the relationship between financial literacy and financial advice, the development of strategies to promote financial literacy are outside of the scope of this review.
- We will not propose substantive changes to other financial markets legislation, other than those that are consequential to any changes proposed to the FA Act or FSP Act.