Submission template

Treatment of intermediaries under the new regime for the conduct of financial institutions

Instructions

This is the template for those wanting to submit their response to the *Treatment of intermediaries under the new regime for the conduct of financial institutions* discussion document.

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the discussion document by 5pm on Friday 18 June 2021. Please make your submission as follows:

1. Fill out your name, organisation and contact details in the table, "Your name and organisation".
2. Fill out your responses to the discussion document questions in the table, "Responses to discussion document questions". Your submission may respond to any or all of the questions in the discussion document. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.
3. If you would like to make any other comments that are not covered by any of the questions, please provide these in the "Other comments" section.
4. When sending your submission, please:
    a. Delete this first page of instructions.
    b. If your submission contains any confidential information:
        i. Please state this in the cover page or in the e-mail accompanying your submission, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 that you believe apply. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act.
        ii. Indicate this on the front of your submission (eg the first page header may state "In Confidence"). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).

    Note that submissions are subject to the Official Information Act and may, therefore, be released in part or full. The Privacy Act 2020 also applies.
5. Send your submission as a Microsoft Word document to ***financialconduct@mbie.govt.nz.***

Please direct any questions that you have in relation to the submissions process to ***financialconduct@mbie.govt.nz.***

Submission template

Treatment of intermediaries under the new regime for the conduct of financial institutions

Your name and organisation

Name	Lifetime Group Limited
Email	Privacy of natural persons
Organisation/Iwi	Lifetime Group Limited

[Double click on check boxes, then select 'checked' if you wish to select any of the following.]

☐ The Privacy Act 2020 applies to submissions. Please check the box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

☐ MBIE intends to upload submissions received to MBIE's website at ***www.mbie.govt.nz***. If you do not want your submission to be placed on our website, please check the box and type an explanation below.

I do not want my submission placed on MBIE's website because… [Insert text]

Please check if your submission contains confidential information:

☐ I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

I would like my submission (or identified parts of my submission) to be kept confidential because… [Insert text]

Option 1: Amend definition of intermediary to focus on sales and distribution	
	Do you have any comments on Option 1: 'Amend definition of intermediary to focus on sales and distribution'?
1	We agree the scope of intermediary should focus on sales and distribution. However, we believe the definition should exclude those that provide regulated financial advice, eliminating Financial Advice Providers (FAP's) and Financial Advisers (FA's). This would remove concerns we have of the bill introducing supervision, monitoring, and training as these overlap FSLAA duties, obligations and full licensing standard conditions.
2	Do you think the scope of the proposed definition of an intermediary is comprehensive enough to capture the variety of sales and distribution methods and to avoid gaps and risks of arbitrage?
	Yes
Option 2: Refine scope of who is covered as an agent	
3	Do you have any comments on Option 2?
	No Comment
4	Do you think Option 2 would adequately exclude advisory services (e.g. lawyers, accountants) and other service providers to the financial institution who are not involved, directly or indirectly, in providing any part of the financial institution's relevant service or associated products to consumers?
	No Comment
5	Do you think any explicit exclusions are needed for particular occupations or activities? If so, which ones, and why?
	No Comment
Objectives	
6	Do you have any comments on the objectives regarding the treatment of intermediaries?

1. *"Ensure that financial institutions are taking appropriate responsibility for the fair treatment of consumers in all circumstances, including where their services and products are distributed and serviced through intermediaries."*

We believe financial institutions should not be responsible for the fair treatment of consumers where a FAP or FA provide regulated financial advice to their clients.

FAP's and FA's providing regulated financial advice should be excluded from these objectives as treating clients fairly would then exist as a requirement under two separate pieces of legislation.

Reference: FSLAA: Code of Professional Conduct for Financial Advice Services
Part 1 of the Code covers ethical behaviour.
Note: Standard 1: Treat Clients Fairly

> *PART 1: ETHICAL BEHAVIOUR, CONDUCT, AND CLIENT CARE*
> 1. ***Treat clients fairly***
> 2. *Act with integrity*
> 3. *Give financial advice that is suitable*
> 4. *Ensure that the client understands the financial advice*
> 5. *Protect client information*
>
> *COMMENTARY What is fair depends on the particular circumstances, including the nature and scope of the financial advice. Treating clients fairly should include: › treating clients with respect › listening to clients, considering their views and responding to their concerns and preferences › communicating with clients in a timely, clear and effective manner › not taking advantage of clients' lack of financial knowledge or other vulnerabilities › not applying undue pressure on clients.*

We believe duplicating this requirement via CoFI for an intermediary providing regulated financial advice governed by FSLAA will cause confusion for the FAP and FA and, importantly the client.

The consumer needs to easily understand who is responsible for the delivery of advice. The bill creates confusion for redress for the consumer specifically who is responsible to respond and under which legislation.

2. *"minimise uncertainty and unnecessary duplication of regulatory obligations".*

We believe there is significant overlap between CoFI and FSLAA which will cause confusion and negative consumer outcomes.

Please refer to the points made above.

Option 3: Minimal changes to intermediaries obligations (remove 446M(1)(b) only)	
7	Do you have any comments on Option 3: 'Minimal changes to intermediaries obligations'?

It is not logical for FAP's or FA's who provide regulated financial advice under FSLAA to follow *"the procedures or processes that are necessary or desirable to support the financial institutions compliance with the fair conduct principle"* Ref: 446m(1)(b).

- FAP's and FA's are required to have their own processes and controls to ensure clients are treated fairly under FSLAA
- FAP's and FA's use many product providers when recommending suitable solutions to consumers. It would create confusion to add the requirement for FAP's and FA's to adhere to Product Providers legislation (and the Providers differing interpretation of such)
- The FMA have stated they do not want to add to add additional compliance cost to the sector - How can FAP's and FA's incorporate Product Provider processes and controls with their own existing ones without enduring additional cost / resource.?
- Where is the redress for the consumer - Under which legislation would this sit?
- Historically under FA Act the industry reports low volumes of consumer complaints reported by disputes resolution schemes against advisers, who follow their own advice processes. As at March 15 these processes are now regulated under FSLAA more robustly and we believe adding compliance to Product Provider fair conduct principles under CoFI would not enhance this.

8	If Option 3 were pursued, do you think any other obligations in section 446M(1)(bb), (bc), (bd) or (bf) would need clarifying or amending? Why/why not?

FAPs and FAs regulated by FSLAA have different legislative and regulatory standards than those who are not. The two types of advisers need to be identified and split as in Option 5.

The following points relate to FAPs and FAs regulated by FSLAA, providing regulated financial advice

S446M(1)(bb),(bc),(bd),(bf) should all be removed.

S446M(1)(bb) – should be removed. This requirement of ongoing training is a duplication of legislative requirements under FSLAA

Reference: FSLAA: Code of Professional Conduct for Financial Advice Services
Part 2 of the Code covers Competence, Knowledge and Skill
Note: Standard 9: Keep competence, knowledge, and skill up-to-date

> *Standard 9 - KEEP COMPETENCE, KNOWLEDGE, AND SKILL UP-TO-DATE*
>
> *COMMENTARY: A person who gives financial advice must undertake continuing professional development as follows:*
>
> *Individuals must, at least annually, plan for and progressively complete learning activities designed to ensure that they maintain: › the competence, knowledge, and skill for the financial advice they give › to the extent relevant to the financial advice they give, an up-to-date understanding of the regulatory framework for financial advice in New Zealand.*
>
> *Entities must, at least annually, review their procedures, systems and expertise to ensure that they maintain the capabilities for the financial advice they give.*

We do not believe there is any evidence, via complaints, declined claims or other reportables of harm to consumers from advisers' lack of understanding of products available across the sector.

In recent years Product Providers have worked continuously with advisers providing regular training in many ways including the need for competency assessments – this has been a requirement under agency agreements.

We believe the current training is more than adequate for a Fap and FA to keep up to date. Adding this as a legislative requirement for institutions will shift the focus of Product Providers to "educators" with strict training and testing of advisers, which will be labour intensive to design and monitor.

We also believe that given there are no standards in place for this type of training the quality and effectiveness of such will vary across the industry and be repetitive in many instances, taking time away from FAPs and FAs working with the consumer and adding undue cost

We feel it would be more appropriate for Product Providers to assist with training in a different light by having up to date information regarding their product suite(s) available and easily accessible to FAPS and FAs in order for them to meet the regulatory requirements under FSLAA – Standard 9, mentioned earlier.

S446M(1)
(bc) ***Checking that each of those employees, agents, and intermediaries has completed that training and has a reasonable understanding of the matters***

As per commentary above we believe training requirements should not sit as a legislative requirement for FAPs and FAs to be trained and checked by a Product Provider

Option 4: More significant changes to intermediaries obligations	
9	Do you have any comments on Option 4: ‘More significant changes to intermediaries obligations’?

We believe the two types of advisers need to be identified and split as in Option 5.

FAPs and FAs regulated by FSLAA have different legislative and regulatory standards than those who are not.

We believe the removal of the requirements in section 446M(1) for financial institutions is required:

446M(1)(b) requiring intermediaries to follow procedures or processes that are necessary or desirableto support FI's compliance with the fair conduct principle.

446M(1)(bb)(ii) requiring training for the intermediary on the FI's fair conduct programme and "procedures and processes

446M(1)(bc)checking that intermediary has completed training and has a reasonable understanding of it

446M(1)(bd).managing or supervising intermediaries to ensure they are supporting the financial institution's compliance with the fair conduct principle

446M(1)(bf)Communicating with consumers

Product Providers should not have the ability to set the standards for FAPs and FAs who provide regulated financial advice under FSLAA. As these requirements are meet through the Code of Professional Conduct and the Duties and Obligations set out in the legislation.

The alternative under Option 4 has been stated as:

Would only require financial institutions to have effective processes etc for:

- ***requiring training for each intermediary in the financial institution's relevant services and associated products (to the extent relevant to the intermediary's involvement in the provision of the financial institution's services and products)***

We recommend: It would be more appropriate for Product Providers to assist with training in a different light by having up to date information regarding their product suite(s) available and easily accessible to FAPS and FAs in order for them to meet the regulatory requirements under FSLAA – Standard 9, *"Keep competence, knowledge, and skill up-to-date"*

We believe the minimum competency set out in the Code of Conduct followed by training the industry already provides is significant and adequate training for financial advisers to ensure they have the correct product knowledge to be able to provide relevant and suitable recommendations to clients.

We do not believe there is any evidence, via complaints, declined claims or other reportables of harm to consumers from advisers' lack of understanding of products available across the sector. We do not believe that there is any evidence this is happening therefore the training which the provider is currently providing is an adequate transfer of knowledge.

Historically under FA Act the industry reports low volumes of consumer complaints reported by disputes resolution schemes against advisers, providing incorrect advice, and now regulated more robustly by FSLAA would suggest this would decrease if anything

This would indicate that legislating training is not required.

	What do you think the level of responsibility should be for financial institutions' oversight of intermediaries? For example, "*managing or supervising* the intermediary to ensure they support the financial institutions compliance with the fair conduct principle", or "*monitoring* whether the intermediary is supporting the financial institution's compliance with the fair conduct principle", or something else?
10	Giving Product Providers the power to Manage and supervise FAPs and FAs through legislation of a Fair Conduct Principle seems a significant overlap when Conduct and Culture is already covered in FSLAA regime which has only just been implemented. The new regime for Financial adviser services is only in embryotic stages and has not yet had the time to show it is achieving what it set out to achieve and if there are any systemic concerns that need to be addressed. Adding additional legislation that "interferes" with what seems on the outset to be already robust will confuse not only the consumer but also FAPs and FAs who have been through extraordinary legislative changes over a 10-year period. We consider that the same arguments apply to the concept of "Monitoring" as we have already mentioned with FAPs and FAs already being monitored under FSLAA – this will not lead to better client outcomes The consumer would not know where to obtain redress – through the FSLAA or CoFI. This goes against the intend of both bills which is to obtain better outcomes for consumers.
	What standard do you think financial institutions should have to oversee their intermediaries to?
11	Product providers should not set standards for FAPs or FAs as this is already addressed under standards set by legislation and regulations. The standards that have been introduced under FSLAA have been through very long and robust consultation with stakeholders, industry and consumers – adding a multitude of differing standards per Product Provider will undermine the introduction of FSLAA and cause confusion for consumers.
Option 5: Distinguish between FSLAA and non-FSLAA intermediaries	
12	Do you have any comments on Option 5: 'Distinguish between FSLAA and non-FSLAA intermediaries'?

	We support Option 5 in splitting FAPs and FAs under the FSLAA legislation and those who provide financial advice outside of this legislation. FSLAA should be the primary legislation for conduct and culture for financial advisers and in particular Standard 1 - Treating clients fairly. Product Providers should not be able to "behave" like the regulator monitoring a Fair Dealing principle. The regulator for this standard should be the FMA alone.
13	How far do you think financial institutions' oversight of FSLAA intermediaries under Option 5 should extend? For example, should it cover the general conduct of the intermediaries, or more narrowly on product performance and related consumer outcomes (or something else)?

In alternative under Option 5 has been stated as:

Instead, this option would only require financial institutions to have effective processes etc. for:

- ***requiring training for each intermediary in the financial institution's relevant services and associated products (to the extent relevant to the intermediary's involvement in the provision of the financial institution's services and products)***

We believe this requirement of ongoing training is a duplication of legislative requirements under FSLAA

Reference: FSLAA: Code of Professional Conduct for Financial Advice Services
Part 2 of the Code covers Competence, Knowledge and Skill
Note: Standard 9: Keep competence, knowledge, and skill up-to-date

> *Standard 9 - KEEP COMPETENCE, KNOWLEDGE, AND SKILL UP-TO-DATE*
>
> *COMMENTARY: A person who gives financial advice must undertake continuing professional development as follows:*
>
> *Individuals must, at least annually, plan for and progressively complete learning activities designed to ensure that they maintain: › the competence, knowledge, and skill for the financial advice they give › to the extent relevant to the financial advice they give, an up-to-date understanding of the regulatory framework for financial advice in New Zealand.*
>
> *Entities must, at least annually, review their procedures, systems and expertise to ensure that they maintain the capabilities for the financial advice they give.*

We do not believe there is any evidence, via complaints, declined claims or other reportables of harm to consumers from advisers' lack of understanding of products available across the sector.

We believe the minimum competency set out in the Code of Conduct followed by training the industry already provides is significant and adequate training for financial advisers to ensure they have the correct product knowledge to be able to provide relevant and suitable recommendations to clients.

In recent years Product Providers have worked continuously with advisers providing regular training in many ways including the need for competency assessments – this has been a requirement under agency agreements.

We believe the current training is more than adequate for a FAP and FA to keep up to date. Adding this as a legislative requirement for institutions will shift the focus of Product Providers to "educators" with strict training and testing of advisers, which will be labour intensive to design and monitor.

We also believe that given there are no standards in place for this type of training the quality and effectiveness of such will vary across the industry and be repetitive in many instances, taking time away from FAPs and FAs working with the consumer and adding undue cost

We feel it would be more appropriate for Product Providers to assist with training in a different light by having up to date information regarding their product suite(s) available and easily accessible to FAPS and FAs in order for them to meet the regulatory requirements under FSLAA – Standard 9, mentioned earlier.

We recommend: It would be more appropriate for Product Providers to assist with training

Obligations in relation to employees and agents	
14	Do you have any comments on the proposals regarding obligations in relation to employees and agents?
	No Comment
15	Do you think there should be a distinction drawn between employees and agents? Why/why not?
	No Comment
16	Do you think any amendments should be made to the obligations in section 446M(1) that would apply to employees and agents?
	No Comment
17	Do you have any other comments or viable proposals?
	No Comment