



FACTSHEET:

REVIEW OF THE FINANCIAL ADVISERS AND FINANCIAL SERVICE PROVIDERS ACTS

July 2016

The Ministry of Business, Innovation and Employment (MBIE) has recently completed a review of the two Acts overseeing the provision of financial advice in New Zealand (the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008). The objectives of this review are to:

- Ensure consumers can access the advice they need
- Improve the quality of advice
- Be enabling and not impose any undue compliance costs, complexity or barriers to innovation
- Ensure access to redress.

The Government has approved a package of changes which will improve access to quality financial advice for all New Zealanders. The changes represent a shift away from the current regime which sought to professionalise a subset of advisers, towards a regime which establishes a level playing field of regulation of all who are providing advice.

The key changes are:

1. *Simplifying the regime by removing unnecessary complexity and regulatory boundaries*

The requirement for advice tailored for a consumer to be provided by a natural person will be removed, along with the definitions of class, personalised advice and the categorisation of products. These changes enable the provision of robo-advice and make it easier to give consumers tailored advice.

2. *Establishing an even playing field with more proportionate regulatory requirements*

All individuals or robo-advice platforms providing financial advice will be required to place the interests of the consumer first and to only provide advice where competent to do so. All financial advice will also be subject to a Code of Conduct, where standards will be set that are consistent with those legislative obligations. We expect the standards in the Code to vary for different types of advice. For example, competency standards would differ for general insurance and investment advice.

3. *Replacing current adviser designations*

The three current types of advisers, Authorised Financial Advisers (AFA), Registered Financial Advisers (RFA), and Qualifying Financial Entity (QFE) advisers, will be replaced. To improve consumer understanding, anyone providing financial advice will now be known as either a 'financial adviser' or an 'agent'. Financial advisers will be individually accountable for complying with the legislative and Code obligations whereas financial advice firms will be accountable for their agents.

4. *Improving consumer understanding through disclosure and client-care*

More meaningful disclosure requirements for all types of advice will also be introduced to improve consumer understanding and transparency. Disclosure will be simplified and shortened to include core information about the scope of service, remuneration (including commissions) and competence, and would be available in user-friendly formats. In addition a client-care obligation will also be introduced, requiring advisers and agents to ensure that consumers are aware of the limitations of their advice, such as how many products and how many providers they have considered.



5. Enabling lower cost fit for purpose licensing

Anyone (or any robo-advice platform) providing financial advice will need to be licensed. To ensure this does not impose undue costs on industry or Government, licensing will be required at the firm level. This approach replicates the efficiencies of the current QFE model and applies it to all. There will be flexibility, depending on the size and nature of the firm, in how prospective licensees will be expected to meet those requirements given a 'one size fits all' approach to licensing and reporting is unlikely to work.

6. Require businesses to have a stronger connection to New Zealand for registration on the Financial Service Providers Register

To maintain the integrity of the regulation of financial markets in New Zealand, entities will only be able to register if they are (or will be) either:

- in the business of providing financial services (not just back-office administrative services) from a place of business in New Zealand; or
- in the business of providing financial services to New Zealanders.

How will these changes make it easier for advisers to provide good quality financial advice?

- *Enabling innovation* – advisers will be able to provide robo-advice and a modernised financial advice market could develop here as is happening in other countries.
- *Enabling more sensible advice conversations* – by removing the distinctions between 'class' and 'personalised' advice, and 'Category 1' (complex) and 'Category 2' (simple) products, advisers won't be restricted from providing consumers with the advice they want and need when they have the competence to provide it.
- *Reducing compliance* – by simplifying disclosure requirements and streamlining licensing and reporting requirements, some compliance activities that are currently burdening advisers will be minimised.
- *Providing greater flexibility and choice* – financial advice firms will be able to provide advice through financial advisers, agents and/or platforms. Financial advice firms will be given flexibility in how they will be required to demonstrate compliance with the relevant competence, knowledge and skill standards and the licensing and reporting requirements are proportionate.

How will the changes make it easier for consumers to access good quality financial advice?

- *Enabling more types of advice to be provided* – consumers will be able to access financial advice via online platforms (robo-advice) and get more personalised advice on a specific matters for example, 'what KiwiSaver fund is right for me?'
- *Introducing simpler terminology and disclosure* – consumers will be provided with more useful information by advisers to help them make informed financial decisions. For example, all providers of financial advice would be required to disclose the same information regarding conflicts of interest and remuneration and be more transparent about limitations on their advice.
- *Improving the quality of advice* – all advisers (not just a sub-set) will be held to common competence and conduct requirements to ensure that they are competent to provide advice and to put the consumer's interests first.
- *Increased oversight of those providing financial advice services* – all providers of financial advice services will be subject to FMA regulatory oversight. This includes advice provided online via robo-advice platforms.



How will robo-advice work?

- Online advice (known as robo-advice) is emerging abroad and has the ability to provide consumers with a convenient, more affordable means of accessing financial advice.
- Firms wishing to provide advice through robo-advice platforms will need to obtain a licence from the FMA. Robo-advice will need to meet the same standards as a person providing advice; however the means of meeting these standards will differ. For example, while a financial adviser may be required to demonstrate competence through having passed a qualification, a robo-advice platform may have to demonstrate equivalent quality through algorithm and scenario testing.

What is the consumer-first obligation and how will it be policed?

There will be a universal obligation on all those providing financial advice to put the interests of the consumer first. Currently only some advisers have this obligation. All advisers and agents have limitations on the services they can provide. For example, some only provide advice on one or two providers' products. In putting the interests of the consumer first they would not be expected to consider the full range of products from across the market, but would be required to recommend the best product for the consumer from their suite and, if no product from those providers is genuinely suitable, to advise the consumer on that basis. In all cases, advisers and agents must put the consumers' interests ahead of their own regardless of the differing financial incentives offered by providers.

The consumer first obligation will be supported by FMA monitoring and enforcement, where any breaches of the obligation could be penalised. The FMA would continue its surveillance activities, such as setting reporting requirements for advisers. Reporting requirements could include things like:

- details of complaints;
- data on replacement and new business; and
- details of any commissions including soft-commissions received.

This sort of activity will allow the FMA to identify advice that may have breached the consumer-first standard and investigate further, through site visits or individual file audits.

MBIE is currently assessing the effectiveness and efficiency of the current range of compliance and enforcement tools, including disciplinary proceedings and penalties, and if any changes are required these will be considered by September 2016.

How will these proposals improve outcomes for consumers?

- Introducing clear conduct obligations on all financial advisers and agents (not just a sub-set) will help consumers by not requiring them to guess which advisers or agents are required to put their interests first.
- Increasing transparency by requiring conflicts of interest and conflicted remuneration to be disclosed clearly and consistently and by requiring providers to disclose details of soft commissions paid, such as overseas trips.
- Preventing firms from incentivising their agents to sell products without regard to consumers' interests.
- Improving the ability for the FMA to monitor and take enforcement action for breaches of those conduct obligations across all advisers – like insurance 'churn'.



Did the Government consider banning commissions as has happened overseas?

MBIE recommended focusing on the conduct of those providing financial advice, rather than imposing a ban or restriction on commissions. Banning commissions is not a 'silver bullet' that will improve the quality of advice, because:

- Commissions are not themselves harmful. They are a means of funding the distribution cost of the adviser channel. There is a risk that banning commissions in New Zealand would further limit access to advice.
- A ban on commissions would not directly target poor conduct, as the FMA noted in its recent review of insurance replacement business many advisers do not have high replacement business despite being paid on commission structure.
- It would not address conflicts of interest where financial products are sold through in-house distribution channels, such as bonuses or sales targets.
- The proposals represent a more prudent approach in the first instance. However, MBIE and the FMA will continue to monitor the conduct of advisers to ensure the measures are sufficient.

What is the difference between services an 'adviser' and an 'agent' can provide?

While there will be no legislative difference in the services financial advisers or agents could provide, in practice, agents will only be able to provide advice services where their firm has sufficient processes and controls in place such that the FMA is satisfied it is appropriate for the firm (and not the individual) to hold accountability.

It is therefore likely that, in practice, the services offered by an agent would be limited when compared to those offered by an adviser.

How will competency standards be set?

A Code Committee will develop a Code of Conduct which will include standards of competency, knowledge and skill that apply to particular parts of the industry. For example, life insurance advisers could be required to demonstrate knowledge of life insurance products and skill in managing replacement business. The Code Committee will be required to consult on the standards that should apply to different parts of the industry.

Who will or won't be able to register on the Financial Service Providers Register under this proposal?

In order to register, businesses must be (or will be):

- in the business of providing financial services, not just back-office administrative services, from a place of business in New Zealand, or
- in the business of providing financial services to New Zealanders, or
- otherwise required to be licensed under any other New Zealand legislation.

This will make it harder for entities that do not have a real connection with New Zealand to register on the FSP Register, and therefore reduce their ability to create a false impression that they are licensed or actively regulated in New Zealand.

What happens next?

The new regime will be refined further through consultation on an exposure draft of the new legislation and testing with consumers and industry this year. The aim is to introduce a Bill to the House at the end of 2016. The Government is still to make decisions on:

- Transitional arrangements
- Complementary measures which could help address misuse of the Financial Service Providers Register
- The membership and proceedings of the Code Committee
- The FMA's enforcement, monitoring and oversight.

MBIE will report back to Cabinet in more detail on these points later in the year.