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 22 July 2015.

Your submission may respond to any or all of these issues. We also encourage your input on any other relevant issues. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please also include your name, or the name of your organisation, and contact details.

Use of information

The information provided in submissions will be used to inform MBIE's policy development process, and will inform advice to Ministers on the operation of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

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 the **FAA page on MBIE's website**. 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 with your submission if you have any objection to the release of any information in the submission, and in particular, which part(s) you consider should be withheld, together with the reason(s) 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 your submission if you do not wish your name to be included in any summary of submissions that MBIE may publish.

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FAA Review Submissions

Role and regulation of financial advice

When providing your comments, we would particularly appreciate information about the relative benefits, costs (financial or otherwise) and any other impacts of these proposals on businesses, consumers or other stakeholders. This information will help us more fully understand the effects of the current regulation.

1. Do you agree that financial adviser regulation should seek to achieve the identified goals? If not, why not?

It's strikes us that the pursuit of these goals, while noble has lead to much of the current issue. For example in pursuit of the goal that "Consumers have the information they need..." we have inundated consumers with information. Shouldn't the objective be that "consumers have access to competent fiduciary financial advice"? And wouldn't another goal be, "provide clarity and transparency on the services, costs and quality of financial advice"? By making the focus "clarity and transparency" rather than "information" you get to the heart of what the information is there to do. That has been missed in round one of the legislation.

2. What goals do you consider should be more or less important in deciding how to regulate financial advisers?

The goal we consider to be most important is that "public confidence in the professionalism of financial advisers is promoted", however, that is currently not possible. The public will only have confidence when the industry behaves professionally. To behave professionally you must be acting solely in the interests of your client, such as accountants and lawyers act. Advisers are allowed currently to act against the interest of their client and in the interests of product providers or employers. Would you call doctors a profession if they were paid by the pharmaceutical industry to write prescriptions? As long as the equivalent is allowed by people calling themselves financial advisers, the idea that anyone will view the industry as a "profession" is hopeful thinking.

3. Does this definition adequately capture what financial advice is? If not, what changes should be considered?

No this definition is too narrow and focuses on the transaction. Often good advice is not to undergo any transactions, the FMC Act missed this in regards to rebalancing. A decision to not rebalance is just as much advice as a decision to transact. By making the emphasis the transaction, the element of advice was obscured. In our view financial advice is the business of providing guidance, recommendations and implementing solutions to matters involving money, interest, debt, insurance or investments.

4. Is the distinction in the Financial Advisers Act (FA Act) between wholesale and retail clients appropriate and effective? If not, what changes should be considered?

We believe that advisers may choose to try to force clients into a wholesale arrangement to exclude those clients from the protection of the law. The fact is, the amount of money you have does not equate necessarily into financial literacy. We believe that a wholesale client should be defined far more stringently so the FMA could be confident such a client really did not need the protection of the law.

5. Is the distinction in the Act between a personalised financial service and a class service appropriate and effective? If not, what changes should be considered?

We believe this used to be clear but is now confusing thanks to changes in the FMC Act. On the surface it is a useful distinction. For KiwiSaver, advisers may be able to deliver class advice more cost effectively and charge lower fees as a result. However, advisers are now in a position where their investment solution is called a class solution even when delivered on a personalised basis.

6. Is it appropriate to have different requirements on advisers depending on the risk and complexity of the products they advise upon?

We believe that the solution is to have separate categories based on the type of product rather than the complexity of product. If advisers give investment advice in any capacity they should be licensed as an investment adviser. If they give insurance advice they should be licensed as an insurance adviser. An adviser that did both would have both licences. An adviser that did investments but was paid or employed by the manufacturer should be called a "sales agent" and not be allowed to call themselves an adviser at all. The problem with "AFA" and "RFA" is that those doing risk and those doing investments are both called "financial advisers" when they are doing totally different things. That's like saying a vet and a chiropractor are both doctors. They do different things so their titles

7. Does the current categorisation system accurately reflect the level of complexity and risk associated with financial products? If not, how could it be improved?

We believe that Category 1 and Category 2 broadly capture the complexity and risk of the products. However, as we said before we believe that advisers giving ANY variety of investment advice should all be regulated the same and be subject to the same requirements.

8. Do you think that the term Registered Financial Adviser (RFA) gives consumers an accurate understanding of what these advisers are permitted to provide advice on and the requirements that apply to them? If not, should an alternative term be considered?

An alternative needs to be considered. The term RFA suggests that such a person is a financial adviser. It's very unclear what that means. Instead, a term should be be created such as "Registered Insurance Adviser" that makes clear that these individuals are experts in insurance. That implies accurately that they may not have any expertise in investments. It also implies that they should not be giving advice on issues like KiwiSaver, annuities and term deposits because that is not their area of expertise.

9. Are the general conduct requirements applying to all financial advisers, including RFAs, appropriate and adequate? If not, what changes should be considered?

No Comment

10. Do you think that disclosing this information is adequate for consumers? Should RFAs be required to disclose any additional information?

All advisers should be required to state in detail all the sources by which they are paid and the explicit terms of those arrangements. SENTENCE REMOVED

11. Are there any particular issues with the regulation of RFA entities that we should consider?

No Comment

12. Are the costs of maintaining an adviser business statement justified by its benefits? If not, what changes should be considered?

Adviser Business Statements add no value to advisers and should be discontinued. They are simply another compliance related document that advisers manage in order to 'tick the box'.

13. Is the distinction between an investment planning service and financial advice well understood by advisers and their clients? Are any changes needed to the way that an investment planning service is regulated?

This distinction is not well understood. We believe that unless investors specifically waive the right, all advisers should be required to give investment planning services in the provision of investment advice.

14. To what extent do advisers need to exercise some degree of discretion in relation to their clients' investments as part of their normal role?

There are a very few examples where advisers "need" to exercise discretion in our view. Instances where it is useful include rebalancing according to pre-approved allocations, corporate actions, simple withdrawal and deposit scenarios and the like.

15. Should any changes be considered to reduce the costs on advisers who exercise some discretion, but are not offering a funds management-type service?

No, we believe the requirements around advisers that offer a brokerage solution should be higher, not lower. The risk involved in their solution is greater as the investments are more concentrated and they make money based on transactions, which creates a potential conflict of interest.

16. Are the current disclosure requirements for Authorised Financial Advisers (AFAs) adequate and useful for consumers?

In our view consumers are overwhelmed by the amount and type of disclosure. The key for disclosure is that consumers understand exactly how the adviser is compensated, how much they are paid or have the potential to be paid via every source, including the investor him/herself, all conflicts of interests and limits regarding the type advice an adviser can give. In other words, clients should understand if the adviser is representing the investment industry to the client or representing the client to the investment industry.

Lastly, we believe investors should be told in the clearest possible way if the adviser has the ability

17. Should any changes be considered to improve the relevance of these documents to consumers and to reduce the costs of producing them?

There should be only one disclosure and it should be as standardised as possible so clients can effectively use them to compare fees. Investment advisers should be required to disclose the total cost to the client broken down into separate categories and displayed according to dollars and percentages. The categories should be:
- Advice
- Brokerage (estimate of year one and then ongoing)
- Platform/custody
- Investment products

18. Do you think that the process for the development and approval of the Code of Professional Conduct works well?

No Comment

19. Should any changes to the role or composition of the Code Committee be considered?

No Comment

20. Is the Financial Advisers Disciplinary Committee an effective mechanism to discipline misconduct against AFAs?

No Comment

21. Should the jurisdiction of this Committee be expanded?

No Comment

22. Does the limited public transparency around the obligations of Qualifying Financial Entities (QFEs) undermine public confidence and understanding of this part of the regulatory regime?

No Comment

23. Should any changes be considered to promote transparency of QFE obligations?

No Comment

24. Are the current disclosure requirements for QFE advisers adequate and useful for consumers?

No Comment

25. Should any changes be considered to improve the relevance of these documents to consumers or to reduce the costs of producing them?

No Comment

26. How well understood are the broker requirements in the FA Act? How could understanding be improved?

No Comment

27. Are these requirements necessary and/or adequate to protect client assets? If not, why not?

No Comment

28. Should consideration be given to introducing disclosure requirements for brokers? If so, what would need to be disclosed and why?

No Comment

29. What would be the costs and benefits of applying the broker requirements in the FA Act to insurance intermediaries?

No Comment

30. Are the requirements on custodians effective in reducing the risk of client losses due to misappropriation or mismanagement?

We use Aegis and FNZ and are very confident in those organisations to appropriately administer and custody assets.

31. Should any changes to these requirements be considered?

No Comment

32. Is the scope of the FA Act exemptions appropriate? What changes should be considered and why?

We believe that the exemptions are appropriate.

33. Does the FA Act provide the Financial Markets Authority (FMA) with appropriate enforcement powers? If not, what changes should be considered?

No Comment

34. How accessible and useful is the guidance issued by the FMA? Are there any improvements you would like to see?

The FMA needs an effective way to deliver key guidance. We've signed up to receive all announcements from the FMA and have subsequently found key information we were not notified of. The most recent example was information regarding DIMS limit breaks. A weekly bullet point summary with links categorised for different types of users would be useful.

We have also found it difficult to get guidance from the FMA on a number of issues, where they just advise us to get legal advice instead. On occasion we've had a very informative conversation with someone at the FMA but, when requesting a summary of the conversation to be issued in writing,

Key FA Act questions for the review

35. What changes should be considered to make the current regulatory regime simpler and easier for consumers to understand? For example, removing or clarifying the distinction between AFAs and RFAs.

We believe that ALL investment advisers should be regulated the exact same way and all insurance advisers should be regulated the exact same way. However we believe each type should be regulated differently. If you want to give insurance and investment advice you would need both registrations. Further, rather than calling everyone a "Financial Adviser" which creates confusion, the word "Investment" and "Insurance" should be used in the titles in order to create a meaningful distinction. "Insurance Advisers" should not be able to provide advice on anything investment related, including KiwiSaver or term deposits, without also qualifying as an "Investment Adviser". We believe that distinctions in regulations based on QFEs should be unwound. If an adviser working for

36. To what extent do consumers understand that some financial advisers' primary roles may be selling financial products, rather than solely acting as an unbiased adviser to their clients?

This is not well understood by consumers. The legislation should clearly distinguish between a salesperson who represents a product and a fiduciary adviser who represents an investor. The basis of the difference is the source of compensation. If an adviser is paid or owned by the investment, brokerage or custody solution, the adviser becomes a salesperson and should be clearly described as such. In that case the business is responsible and liable for its representative, rather than them being an adviser who should be regulated primarily as an individual.

37. Should there be a clearer distinction between sales, information provision, and advice? How should such a distinction be drawn? What should or should not be included in the definition of financial advice?

Yes, there should be a distinction. The distinction should be created around the source of compensation. If the adviser is paid or owned by the investment, brokerage or custody business the adviser becomes a salesperson.

In regards to the provision of information, we imagine this covers someone like a teller at a bank. Such a person should only be allowed to offer brochures or pass along other written information.

38. Do you think that current AFA disclosure requirements are effective in overcoming problems associated with commissions and other conflicts of interest?

No, investors do not understand the conflicts of interest and don't read or understand disclosure documents. Advisers do not have to be explicit about exactly what they are being paid by commissions nor what alternatives were available and what the commissions were or were not with those alternatives. Thus, clients are in no position to know the potential influence of conflicts of interest. Since clients trust their advisers they dismiss the impact of these conflicts.

39. How do you think that AFA information disclosure requirements could be improved to better assist consumer decision making?

There should be only one disclosure and it should be as standardised as possible so clients can effectively use them to compare fees. Investment advisers should be required to disclose the total cost to the client broken down into separately categories and displayed according to dollars and percentages. The categories should be:
- Advice
- Brokerage (estimate of year one and then ongoing)
- Platform/custody
- Investment products

40. Do you support commission and conflict of interest disclosure requirements being applied to all financial advisers? If so, what requirements are appropriate for different adviser types?

We believe that all advisers should be required to disclose commissions however the way disclosure works for insurance advisers should be separate. For insurance advisers they should be required to show the upfront commission and trail and they should be required to show this information for multiple providers so investors can see if there are meaningful differences that may be influencing advisers. Investment advisers should be required to disclose as well but the nature of the products they advise on are different. As we said above, they should be required to disclose on total compensation and total fees of their solution.

41. Do you think that commissions should be restricted or banned in relation to financial advice, and if so, in what way? What would be the costs and benefits of such an approach?

We believe that commissions should be banned for investment advisers but not for insurance advisers. We believe that banning for insurance advisers is misplaced because there are not adequate alternative compensation schemes available. For investment advisers all fees should be paid by investors in a clear and transparent manner. If not, then the adviser should be recategorised as a salesperson and not allowed to be called an investment adviser.

42. Has the right balance been struck between ensuring advisers meet minimum quality standards and ensuring there is competition from a wide range of providers (and potential providers)?

The FMA should not fear setting a high threshold to be an adviser. An example would be requiring higher education standards and issuing a difficult qualifying exam. Doing so, in combination with banning commissions, will help financial advice be considered a profession and will result in advisers being able to charge a premium for a professional level of service.

43. What changes could be made to increase the levels of competition between advisers?

The key is to clearly disclose the total costs of investment solutions and adviser compensation in a standardised way that is easy to compare between advisers.

44. Do you think that the Code of Professional Conduct for AFAs strikes the right balance between requiring them to understand their clients and ensuring that consumers can get advice on discrete issues?

We believe that advisers should be able to give discrete level advice on key issues clients are asking about but that clients should be required to specifically grant this - holistic advice should be default. The FMA has attempted to guide advisers on the provision of limited personalised advice. We believe that instruction has been adequate. Further, investment advisers should be allowed to state unequivocally that they do not provide insurance and/or estate planning advice. There are several reasons for this, the most important of which is that they may not be qualified to provide such advice. Investment advisers should be able to easily outsource such services to, for example, a qualified lawyer as an explicit part of the adviser's service proposition. The adviser in that case is a

45. To what extent do you think that the categorisation of types of advice and advisers is distorting the types of advice and information that is provided?

No Comment

46. Are there specific compliance requirements from the FA Act regulation that have affected the cost and availability of independent financial advice?

The government should want to see a healthy and flourishing independent financial advice sector. This sector is critical because they are not aligned with or paid by product manufacturers or custody and brokerage firms. Thus, they are not paid to transact or paid to sell. Independent advisers are uniquely paid to advise. However, this unaligned group also has the largest burden when it comes to compliance. The cost is often paid in time required to understand the requirements, make core business decisions and update the mountain of paper they must feed clients. As independent advisers are also entrepreneurs and business owners, time is more precious. They also tend to have specific expertise that is part of their differentiated proposition from banks that requires time and

47. How can regulatory requirements be made less onerous without reducing the quality and availability of financial advice?

Elimination of personal development plans (the plan not the CPD requirements) and adviser business statements would help. Both of these, advisers simply do to "tick the box", but neither of them are really accomplishing anything useful. As mentioned above, another consideration would be the consolidation of disclosure documents into a single document. This document should be standardised and thus more easily comparable between advisers, and would specifically require a laying out of total maximum fees across several fee categories.

That being said, we are in favour of having higher standards for becoming authorised to give

48. What impact has the Anti-Money Laundering and Countering Finance of Terrorism Act had on compliance costs for advisers? How could these costs be minimised?

We estimate that the typical independent adviser spent 6 weeks understanding and complying with the law in year one. Each week an adviser's admin team spends an additional 3 or 4 hours in order to comply with the laws on an ongoing basis. Most independent advisers know their clients intimately and undergo planning rather than transaction related work. We are unaware of a single instance where any of this work has resulted in uncovering money laundering. In order to reduce the time we recommend more reasonable rules around AML for directors of companies and those "acting on behalf", and proof of address for a trust which sometimes isn't even a practical question. A register on which trustee companies can submit their AML information so advisers can do a simplified AML

49. What impact do you expect that KiwiSaver decumulation will have on the market for financial advice in New Zealand? Are any specific changes to regulation needed to specifically promote the availability of KiwiSaver advice?

We believe KiwiSaver decumulation will increase the market for advice. There needs to be tiers of solutions for parties with different needs. The clients of a financial adviser often want their KiwiSaver to be managed in concert with their other investments. Giving such clients the ability to self-manage and thus bring in advisers to manage these investments cohesively will mean that the adviser can transition the investments to a custodian and manage them in line with the client's long term plans. Again, the key is that pre-retirement planning is aligned with post-retirement plans and there is no impetus to spend the KiwiSaver money unwisely. For those that will not take advice we believe that annuity options should be available. Our experience in Australia and America suggests annuities are

50. What impact do you expect that the introduction of the Financial Markets Conduct Act (FMC Act) will have on the market for financial advice in New Zealand? Should any changes to the regulation of advice be considered in response to these changes?

It has again increased the cost of getting advice and it will have no benefit to investors. Non-DIMS advisers will now require more approvals from clients and trustees that don't necessarily want to give them. DIMS firms are treated as product providers simply because they do class research on investments, which is actually prudent. They need to give clients more paper and wear higher compliance costs. The government should look carefully at the disclosures required for DIMS firms (primary and secondary disclosures, SDS, IP, client agreement, investment authority) and see that for clients this is overwhelming. It must be combined into a single, relevant document that has a much greater chance of being looked at.

51. Do you think that international financial advice is likely to increase? Is the FA Act set up appropriately to facilitate and regulate this?

No Comment

52. How beneficial are the current arrangements for trans-Tasman mutual recognition of qualifications? Should further arrangements be considered?

We have not heard yet of an instance where it has proved useful. However, time will tell.

53. In what ways do you expect new technologies will change the market for financial advice?

No Comment

54. How can government keep pace with technological developments to ensure that quality standards for advice are maintained, without inhibiting innovation?

The government should ensure that robo-advisers are subject to the same stringent requirements and encourage robo-advice solutions to work with rather than against advisers, lowering the cost of delivery and leading to lower fees for investors.

55. Are the minimum ethical standards for AFAs appropriate and have they succeeded in fostering the ethical behaviour of AFAs?

We obviously all have differing opinions about what it means to "place the interests of the client first and to act with integrity." We think this is contravened all the time by advisers who routinely place the interests of their product-producing employers, their commissions, their brokerage income and a number of other things before the investor. We believe that the standard is spot on, we just don't believe it means anything in application. It should.

56. Should the same or similar ethical standards apply to all types of financial advisers?

Absolutely. Should different types of doctors (GPs and surgeons for example) have different ethical standards? What about different types of accountants? If we want to be a profession then all advisers regulated together should have the same standard or they should be called a "sales professional" and we should all see such a person for who they really are. How would a patient feel if they knew that their doctor was paid by a pharmaceutical company when prescribing their drugs? That's what happens in our industry and as long as that's the case, we will never be a profession.

57. What is an appropriate minimum qualification level for AFAs?

A degree and pass a very difficult entrance exam which they have to re-sit every so many years.

58. Do you think that RFAs (for example insurance or mortgage brokers) should be required to meet a minimum qualification relevant to the area of advice they specialise in? If so, what would be an appropriate minimum qualification?

The problem here is we're calling everyone "Financial Advisers", but we're not all the same. Those who do insurance and those who do mortgages are different to those who do investments. For each profession a minimum qualification is appropriate, although we could not comment on what that is for insurance and mortgages.

59. How much consideration should be given to aligning adviser qualifications with those applying in other countries, particularly Australia?

We don't see that as a priority. We'd rather the FMA thought about what the best regulation is than to follow another country for the sake of alignment

60. How effective have professional bodies been at fostering professionalism among advisers?

Very ineffective. Firstly participation is voluntary so they don't represent the industry. Secondly, they have the impossible task of establishing professionalism amongst members allowed to act against the interest of their own clients by selling them products and being a distributor for manufacturers as long as it's disclosed. This is nearly an impossible task.

61. Do you think that professional bodies should play a formal role in the regulation of financial advisers and if so, how?

Yes because they are accountable directly to their members and understand industry issues at a much deeper level. However, participation would need to be compulsory like it is with accountants.

62. Should any changes be considered to the relative obligations of individual advisers and the businesses they represent? If so, what changes should be considered?

We believe that individual advisers working at a QFE need to be individually responsible and accountable for the advice they give as well as their employer.

63. Is the QFE system achieving its goals in terms of consumer protection and reducing compliance costs for large entities? If not, what changes should be considered?

The QFE system is a glorified selling model. QFEs intimidate advisers by telling them how onerous compliance is. Advisers at QFEs should be regulated exactly the same as non-QFE advisers, or labelled as sales people. They can then exist under a QFE model, the business will bear the liability of the advice, but they cannot call themselves advisers or pretend to give advice.

Role of financial service provider registration and dispute resolution

64. Do you agree that the Register should seek to achieve the identified goals? If not, why not?

No comment

65. What goals do you consider should be more or less important in reviewing the operation of the Register?

No comment

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66. Do you agree that the dispute resolution regime should seek to achieve the identified goals? If not, why not?

No comment

67. What goals do you consider should be more or less important in reviewing the dispute resolution regime?

No comment

How the FSP Act works

68. Does the FMA need any other tools to encourage compliance with financial service provider (FSP) registration? If so, what tools would be appropriate?

No comment

69. What changes, if any, to the minimum registration requirements should be considered?

No comment

70. Does the requirement to belong to a dispute resolution scheme apply to the right types of financial service providers?

No comment

71. Is the current framework for the approval of dispute resolution schemes appropriate? What changes, if any, should be considered?

No comment

72. Is the current framework for monitoring dispute resolution schemes adequate? What changes, if any, should be considered?

No comment

73. Is the existence of multiple schemes and the incentive to retain and attract members sufficient to ensure that the schemes remain efficient and membership fees are controlled?

No comment

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74. Should the $200,000 jurisdictional limit on the size of claims that dispute resolution schemes can hear be raised in respect of other types of financial services, and if so, what would be an appropriate limit?

No comment

75. Should additional requirements to ensure that financial service providers are able to pay compensation to consumers be considered in New Zealand?

No comment

Key FSP Act questions for the review

76. What features or information would make the Register more useful for consumers?

No comment

77. Would it be appropriate for the Register to include information on a financial adviser's qualifications or their disciplinary record?

Yes

78. Do you consider misuse of the Register by offshore financial service providers is a significant risk to New Zealand's reputation as a well-regulated jurisdiction and/or to New Zealand businesses?

No comment

79. Are there any changes to the scope of the registration requirements or the powers of regulators that should be considered in response to this issue?

No comment

80. What are the effects of (positive and negative) competition between dispute resolution schemes on effective dispute resolution?

No comment

81. Are there ways to mitigate the issues identified without losing the benefits of a multiple scheme structure?

No Comment

82. Are the current regulatory settings adequate in raising awareness of available dispute resolution options? How could awareness be improved?

No comment

Demographics

***83. Please provide your name and/or the name of the group of people, business, or organisation you are providing this submission on behalf of:**

Ben Brinkerhoff on behalf of Consilium

***84. Please provide your contact details:**

18(d)

85. Are you providing this submission:

- [ ] As an individual
- [x] On behalf of an organisation

Please describe the nature and size of the organisation:

We provide outsourcing and investment governance services to independent investment advisory firms. We currently work with 20 firms that manage in excess of $1B.

86. If submitting on behalf of an organisation:
How many people are in the organisation, or work in the organisation, that you are providing this submission on behalf of?

- [ ] 1-5
- [x] 6-19
- [ ] 20-49
- [ ] 50-99
- [ ] 100-250
- [ ] 251-500
- [ ] >500

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87. I would like my submission (or specified parts of my submission) to be kept confidential, and explain my reasons for this, for consideration by MBIE:

☐ Yes ☑ No

Explanation:

Thank you for your time. Please send your submission.