How to have your say

Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the questions raised in this document.

- Submissions on the questions in Part 3 of this paper (relating to the Financial Service Providers Register) are due by **5pm on Friday 29 January 2016**.
- Submissions on the questions in Part 1 and Part 2 of this paper are due by **5pm on Friday 26 February 2016**.

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 filling out the submission template online.
- By attaching your submission as a Microsoft Word attachment and sending to ***faareview@mbie.govt.nz***.
- By mailing your submission to:

  Financial Markets Policy
  Ministry of Business, Innovation & Employment
  PO Box 3705
  Wellington
  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 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.

Submissions are subject to the Official Information Act 1982. MBIE intends to upload PDF copies of submissions received to MBIE's website at ***www.mbie.govt.nz*** and will do so in accordance with that Act.

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 under that Act.

If your submission contains any confidential information, please indicate this on the front of the submission, mark it clearly in the text, and provide a separate version excluding the relevant information for publication on our website.

MBIE reserves the right to withhold information that may be considered offensive or defamatory.

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.

Permission to reproduce

Chapter 3 – Barriers to achieving the outcomes

1. Do you agree with the barriers outlined in the Options Paper? If not, why not?
   Enter text here.

2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.
   Enter text here.

Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?
   Enter text here.

4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?
   Enter text here.

5. Are there any other viable options? If so, please provide details.
   Enter text here.

4.1 Restrictions on who can provide certain advice

6. What implications would removing the distinction between class and personalised advice have on access to advice?
   Enter text here.

7. Should high-risk services be restricted to certain advisers? Why or why not?
   Enter text here.

8. Would requiring a client to 'opt-in' to being a wholesale investor have negative implications on advisers? If so, how could this be mitigated?
   Enter text here.

4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?
   Enter text here.

10. How, if at all, should requirements differ between traditional and online financial advice?
    Enter text here.

11. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?
    Enter text here.

4.3 Ethical and client-care obligations

12. If the ethical obligation to put the consumers' interests first was extended, what would the right obligation be? How could this be monitored and enforced?
    Enter text here.

13. What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?
    Enter text here.

14. If there was a ban or restriction on conflicted remuneration who and what should it cover?
    Enter text here.

4.4 Competency obligations

15. How can competency requirements be designed to lift capability, without becoming an undue barrier to entry and continuation in the profession?
    Enter text here.

16. Should all advisers be subject to minimum entry requirements (Option 1)? What should those requirements include? If not, how should requirements differ for different types of advisers?
    Enter text here.

4.5 Tools for ensuring compliance with the ethical and competency requirements

17. What are the benefits and costs of shifting to an entity licensing model whereby the business is accountable for meeting obligations (Option 1)? If some individual advisers are also licensed (Option 2), what specific obligations should these advisers be accountable for?

Enter text here.

18. What suggestions do you have for the roles of different industry and regulatory bodies?
    Enter text here.

4.6 Disclosure

19. What do you think is the most effective way to disclose information to consumers (e.g. written, verbal, online) to help them make more effective decisions?
    Enter text here.

20. Would a common disclosure document for all advisers work in practice?
    Enter text here.

21. How could remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?
    Enter text here.

4.7 Dispute resolution

22. Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?
    Enter text here.

23. Assuming that the multiple scheme model is retained, should there be greater consistency between dispute resolution scheme rules and processes? If so, what particular elements should be consistent?
    Enter text here.

24. Should professional indemnity insurance apply to all financial service providers?
    Enter text here.

4.8 Finding an adviser

25. What is the best way to get information to consumers? Who is best placed to provide this information (e.g. Government, industry, consumer groups)?
    Enter text here.

26. What terminology do you think would be more meaningful to consumers?
    Enter text here.

4.9 Other elements where no changes are proposed

The definitions of 'financial adviser' and 'financial adviser service'

27. Do you have any comments on the proposal to retain the current definitions of 'financial adviser' and 'financial adviser service'?

Enter text here.

Exemptions from the application of the FA Act

28. Are those currently exempt from the regime posing undue risk to consumers through the provision of financial advice in the normal course of their business? If possible, please provide evidence.
    Enter text here.

Territorial scope

29. How can the FA Act better facilitate the provision of international financial advice to New Zealanders, without compromising consumer protection? Are there other changes that may be needed to aid this, beyond the technological options outlined in Chapter 4.2?
    Click here to enter text.

30. How can we better facilitate the export of New Zealand financial advice?
    Enter text here.

The regulation of brokers and custodians

31. Do you have any comments on the proposal to retain the current approach to regulating broking and custodial services?
    Enter text here.

Chapter 5 – Potential packages of options

32. What are the costs and benefits of the packages of options described in this chapter?
    Enter text here.

33. How effective is each package in addressing the barriers described in Chapter 3?
    Enter text here.

34. What changes could be made to any of the packages to improve how its elements work together?
    Enter text here.

35. Can you suggest any alternative packages of options that might work more effectively?
    Enter text here.

Chapter 6 – Misuse of the Financial Service Providers Register

36. Do you agree with our assessment of the pros and cons of the options to overcome misuse of the FSPR?
    Yes, by and large. We think that the options cover our concerns and remedies, but there could have been a greater discussion on how the FSP Register could be enhanced (rather than discussion focussing on limiting access or information on offshore providers). There could also be more discussion on how we manage trans jurisdiction

amid the reality of the web and needs of international investors / consumers.

1. What option or combination of options do you prefer and why? What are the costs and benefits?
   Option 1.

   Yes, we agree in every respect. The requirement of confirmation and proof of licencing or supervision in home jurisdictions is a good one. “Home” is usually their primary target market, despite almost universal access for world consumers via the internet. These on-line providers usually exclude New Zealand and US residents. Whilst this requirement will bring additional costs, the cost / benefits come down to the value the government places on New Zealand’s reputation.

   The proposal for a bond is reasonable. It is too easy to set up and operate an illegitimate or mal intended operation in New Zealand, then to liquidate and disappear without any recourse other than deregistration, as they fail to meet obligations to repay investments. There are no consequences for illegitimate operations. The fund / bond could be used to recompense otherwise unenforceable orders to repay investments and to pay for dispute fees (this scheme has written off almost $200,000 in the 6 months Ytd to offshore owned on line investment providers).

   The providers need “hurt money” and consequences.

   It may not prevent all but will almost certainly reduce misuse. There are some large operations and a bond of say $100,000 will not be onerous for them to pay for New Zealand’s badge of credibility and a “guarantee” of repayment if things go wrong by belonging to a dispute resolution scheme.

   We think that all financial service providers must prove they have and continue operate a New Zealand bank account when applying for registration and de-registration, and for the banks to notify the FSPR immediately there are any irregularities such as cease trading. They may do this already under the anti-money laundering regime.

   All financial service providers must make their services available to New Zealand residents. Presently many offshore owned on-line providers exclude New Zealand (and USA) residents’ access to the service. Why is that? One could speculate that they will want to avoid the attention of the authorities who would not be so interested in pursuing issues where its citizens are not affected. This has been so in New Zealand. However our interest is piqued where New Zealand’s reputation is at stake.

   How much rigour is put into checking the bona fides of directors? Do directors need to provide photo ID?

   The scheme recommends that the register details the type of financial service provided, for example Financial Adviser-Mortgages; Financial Adviser, Mortgage and Risk Insurance; Financial Adviser, Financial Planning, Investment, Risk Insurance, General insurance, and the FSPR regularly monitors home pages of websites to ensure ongoing primary disclosure matches registration application disclosures.

Option 2.

FMA needs the broad powers to deregister providers at its discretion. While extending definitions ("substantive amount") or introducing new grounds ("repeat offender") for de registration may on their face broaden powers, they serve to narrow the focus and give rise to challenges on definition. For example, "repeat offender previously de-registered". It is unlikely a de-registered entity will re-apply for registration. In our experience there will be a new entity created by same directors of a fraudulent de-registered entity. We have also found a number of entities changing names and directors soon after being set up by company service providers without notice to us or disclosure to consumers.

We are supportive of restrictions applying for how the fact of registration is reflected by the provider. Those restrictions will not require resources of the FMA or dispute providers necessarily, as it will be for each provider to ensure they are compliant. It will also provide further clarity to customers as to what registration means.

In the small minority of providers who act inappropriately or fraudulently, failure to comply with the marketing restrictions, would provide presumably a ground for deregistration.

We have in some cases, had considerable difficulty in having previous FDRS members who have been deregistered, or terminated from our scheme, remove references in their marketing to membership and registration from their internationally based websites. While we cannot see any way that could be addressed in a legislative context, certainly having obligations expressly stated in legislation or regulation, would assist to emphasise providers obligations.

This will also mitigate the difficulty of monitoring the territorial scope of the legislation with regards to location of directors and provision of service. The recent Vivier & Company Ltd v FMA is an example of the difficulty FMA experiences exercising the territorial scope.

Option 3.

There are too many loopholes in this option.

The suggestion here is that providers provide a financial service to clients in New Zealand only. While from our experience it would be convenient to not have to deal with non-residents of different jurisdictions, expectations, languages and ability to enforce orders, we are not sure the government would want to effectively exclude foreign investors.

On the other hand the FSPR could deny registration or de-register if it found that the providers excluded New Zealand residents from participating in the service.

Web based services - such as these offshore owned on-line providers by definition cross jurisdictions. Consumer expectations are that they can access services, including financial- from the web /across jurisdictions, even though they leave themselves

exposed with little recourse through lack of jurisdiction.

It seems incongruous that New Zealand would be imposing territorial restrictions as goods and services are increasingly provided via the web.

We need to learn to embrace this environment rather than put up barriers.

The risks to consumers can be mitigated by stronger registration requirements, warnings / notifications on the FSPR, having providers put some ”skin in the game” by way of a bond, and an ability for FMA to “damage” their reputation (for example, broadcast on web) in the event of fraud with broader powers / more discretion to deregister.

Education in an accessible format to all consumer sectors is perhaps the most effective strategy to mitigate risk to consumers and it is pleasing to note the initiatives of the Commissioner for Financial Capability, the Financial Markets Authority and the Commerce Commission. The dispute resolution schemes could be more effective with more data so as to monitor for systemic issues if complaint enquiries were directed to them in the first instance.

If New Zealand wants to participate in the international / on line financial markets it needs to commit the necessary resources to ensure it retains integrity and reputation.

Option 4

This is a very sensible option, especially as it aligns with the anti-money laundering legislation. It will give cause for trust and company service providers to reflect on their roles and responsibilities, and be subject to the probity checks by the FSPR on application for registration.

Option 5.

We don’t support this option. It would seem to counter one of the primary purposes of the register - to provide information to the consumer to make an informed choice about the provider.

It precludes bona fide providers in their rightful endeavours to promote their credibility.

We suggest the register highlights general warnings, indemnities and caveats against each applicable provider that it is not licensed or regulated.

Option 6

We do not support this option in balance. See comments under Options 3 & 5.

New Zealand, its consumers and providers are parties to the web. We need to embrace and put in place provisions to deal with that, managing issues across jurisdictions, clear disclosures and notifications on the website.

Consumers in New Zealand and overseas need access to information – the FSP Register-to make informed decisions.

If anything the Register needs to be enhanced so as to enable informed decisions.

2. What are the potential risks and unintended consequences of the options above? How could these be mitigated?

Option 1.

No risks or unintended consequences foreseen. It will require more resources to verify credentials and manage bonds, but would suggest CBA in favour.

Option 2.

Introducing more specific powers will narrow focus and provide subjective targets re definition to challenge. Need to broaden FMA powers to register at its discretion (with reason).

Restricting or limiting advertising will be resource hungry and difficult to manage and enforce.

We suggest better information / warning at FSPR. We can control that.

Option 3.

We become “fortress New Zealand” making it difficult for non - resident investors. Bona fide off shore owned providers will be adversely affected. Malefactors will still find a way through loopholes.

Option 4.

We don’t see any risk to this option.

Option 5.

Denies bona fide providers and for consumers, information for informed decisions. We suggest enhancing the information on the register.

Option 6.

This will deny non- resident consumers access to information to make informed choice and could result in New Zealand developing a “fortress” reputation, resulting in reduced investment in New Zealand.

We think paying a bond, having the ability to damage reputation and having a dynamic well managed and informative FSPR will mitigate most of the issues.

3. Would limiting public access to parts of the FSPR help reduce misuse?

Yes, to the extent that non-residents would not have the ability to check offshore owned on line traders claims to being registered, therefore could not authenticate claims and potentially not engage with provider. The provider would then not have the incentive to "use" New Zealand's system and reputation.

However as mentioned previously above, we think the public-including non- residents – are better serviced and informed with more and targeted information on the register.

Demographics

1. Name: Stuart Ayres, Scheme Director for Fairway Resolution Limited trading as Financial Dispute Resolution Scheme.

2. Contact details: Redacted

3. Are you providing this submission:
   ☐As an individual
   ☒On behalf of an organisation

   Approved Dispute Resolution Scheme

4. 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.