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.

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Chapter 3 – Barriers to achieving the outcomes

1. Do you agree with the barriers outlined in the Options Paper? If not, why not?
   We agree with all of the barriers outlined in the Options Paper.

2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.
   We do believe there is one further barrier which should be included which is that Consumers don't understand why they need advice and therefore why they should seek it.

Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?
   We believe Options 1 & 2 will have the most impact in achieving the desired outcome as they collectively even the playing field for all advisers, mitigate the current reluctance around providing personalised advice, and also restrict advisers to only providing advice in their areas of competence.

4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?
   Assuming the introduction of a minimum competence standard is required before an adviser can provide any type of advice for any type of product, then there will be a cost required to create and implement the curriculum and a cost for then judging (or policing) whether an adviser is therefore competent to have provided the advice they have in the event of a dispute (or as a result of any audit investigations). As an alternative we have suggested below that it be made the adviser's obligation to prove/demonstrate to the FMA's satisfaction that they have sufficient qualifications and/or experience to be considered competent to provide advice about the applicable products, rather than requiring the FMA to prove that they don't. This would involve costs to the adviser but will minimise regulator costs. There could also be costs associated with changing the FSP register requirements to include disclosure of advice conflicts (as recommended below) which will then enable consumers to easily identify an adviser's areas

of competence. Advisers will therefore have additional costs to comply with the minimum competency standards i.e. to pay the training fees. The FMA will have the costs of any register changes and the cost of policing. We do not believe these costs should be prohibitive to any of these parties but the positive outcomes to the consumers would be material.

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?
   It would help minimise any confusion on the part of the consumer as to where to access personalised advice from, and any confusion about whether they are actually receiving personalised or class advice or are purely being provided with information only from which they must make their own decisions.

7. Should high-risk services be restricted to certain advisers? Why or why not?
   Only to the extent of a general requirement that any adviser must only provide advice that they are competent to provide by way of qualification and/or experience and be able to provide evidence to such competency as discussed below.

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?
   All advice should be subject to the same consumer protection requirements irrespective of whether it is delivered face to face or by electronic means. In respect of registration and competence, the entity should be registered in NZ as an FSP and should be required to demonstrate the competence of the people who create and maintain/amend the 'advice' inputs, logarithms and outputs. We do not believe a licensing regime (instead of the current registration regime) is required in NZ so rather than agree with the preferred option as it currently stands, we simply agree that the Act should be amended where necessary to ensure any electronic advice provider must effectively meet the same requirements and wear the same obligations as any other advice provider. Any electronic Sales transaction should also be subject to the same obligations as face to face sales people.

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?

We would recommend that the obligation to put the consumer's interests first be extended to the following:

To put the consumer's interests first to the extent that the recommended advice would be reasonably considered to be in the consumer's best interests by: a 'prudent adviser'; and/or by a knowledgeable industry expert; and/or by the FMA. (In other words the adviser has to be confident that their advice would be ratified by an objective, knowledgeable third party).

We agree that all people (or systems) providing advice should be bound by a Universal Code of Professional Conduct. In our view the Code of Conduct should be recognised in the Act as the measure of compliant advice.

We recommend the Code be extended to include a requirement to provide advice only in respect of products/services that the Adviser is able to prove/demonstrate their competence in, by way of qualifications and/or experience.

We also recommend the Code of Conduct be extended to specifically address 'replacement' business advice i.e. to set out an obligation for the adviser to identify and disclose replacement risks and then to find solutions to mitigate those risks prior to giving any replacement advice. To facilitate this a single definition of what constitutes replacement business should be set out in the Code. We have provided a suggested definition of "replacement business" that could be incorporated into the Code in **Appendix Five**. Further, we also propose specific obligations being placed on product providers in terms of replacement business (discussed further in **Appendix Six**).

Finally we believe that the Code should also include a requirement to disclose the list of product providers that an adviser is contractually able to recommend and those that they cannot. Explanation for why providers are on either list should either be prevented altogether or alternatively should have to meet a test of complete and accurate disclosure, meaning an adviser who has had an agency terminated must not pretend that they elected to cancel their agency with that company. Likewise if they are restricted from offering a product provider because of a mandate imposed by an employer/dealer group/QFE etc. then that should also be disclosed. The intention is to ensure that the Code makes it clear that an adviser cannot represent themselves as being able to make comparisons of the market if they actually can't or to imply that they are 'independent' if they are in fact tied or 'aligned' in some way.

As with our suggestion around minimum competence levels, we believe the regulations should require an adviser to demonstrate/prove to the FMA's satisfaction, that any disputed or audited advice was of sufficient quality to meet all of their obligations under the Code.

If they cannot do so then they should be in breach of the Act in respect of that advice and should be required to 'put right' all clients who have been or might be impacted by the same breach.

Policing of adviser compliance with the Act by the FMA should be by way of random adviser file audits. In addition we recommend that any advice complaint taken to any DRS be audited by the DRS against the Code obligations and, where potential Code breaches are identified by the DRS (irrespective of the outcome of the specific dispute), the FMA is notified so they can undertake an audit of that advice business.

We also suggest that where a product provider becomes aware of any non-compliant behaviour of an Adviser they are also obligated to notify the FMA.

We also agree that there should be a clear distinction between Sales and Advice as detailed below.

13. What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?
Advice and Sales should be clearly defined under the Act.

Advice includes any of the following:
*An assessment of the client's personal circumstances; and
*A recommendation about the needs of the client and the types and amount of products required to address those needs; and
*A comparison of some or all market available products; and
*A recommendation about the suitability of product providers to the clients product needs; and
*An assessment of the suitability of any existing products to the client's current needs; and
*A recommendation to replace or cancel existing products.

Sales cannot include any of the above.

I.e. someone who is transacting a sale rather than providing advice can only provide factual information about the product they are selling and take the client's order for that product. They cannot make any comparative statements or offer any comparative opinions regarding competitors /or their products, and they cannot suggest or recommend any replacement or cancellation of existing products. If this were to be implemented then sales people would not need to be held to the same obligations as advisers but should be required to prove competence in the product(s) they are selling and should disclose what they can and cannot do in respect of the above.

14. If there was a ban or restriction on conflicted remuneration who and what should it cover?
All remuneration including commissions, salaries, and bonuses where they are based on the sale of financial products and which are paid by the product provider to the adviser/sales person (rather than directly to the adviser/sales person by the consumer), could be considered to be conflicted, however given most clients are unlikely to want to, or be able to, pay advisers directly for their advice (particularly for insurances and mortgages), we do not believe any restriction on financial remuneration as a means to address advice conflicts would be beneficial.
We do agree, however, that any non-monetary, volume related incentives (currently called soft-dollar incentives) could be restricted/banned for advisers (i.e. people providing advice rather than making sales) as they are not contributing to the costs or profits of the adviser business (i.e. the health of the advice industry) yet they have the potential to unduly influence the advice provided and they are hard to justify in terms of consumer benefit.

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?
By the inclusion of a requirement into the universal Code of Conduct for advisers to limit the advice they provide specifically to areas/products where they can demonstrate their competence by way of qualifications and/or experience to the satisfaction of the FMA. This means there would not need to be a specified qualification or length of experience required by

regulation as the adviser has the onus to demonstrate/prove their competence to the FMA, which in turn has the final judgement about whether that proof is sufficient for the adviser to have claimed competence. It would be useful for there to be general guidelines issued by the FMA regarding the curriculum topics that a suitable qualification might contain and/or the length of specific industry experience that could be considered the equivalent of a formal qualification. Our suggestion would be 5 years as a practicing adviser in the specific area/product (as opposed to years of experience as a pure sales person). By shifting the burden of proof to the adviser, they should become much more motivated to access training/development in order to become confident that they can demonstrate competence to the FMA. We consider that appropriate curriculum topics would include those as proposed in our Universal Financial Adviser Competence Qualification Curriculum in **Appendix One**. As a further point of reference, we have provided part of Partners Life's curriculum for its training programme around life insurance for new RFAs in **Appendix Two**.

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?
    If there is to be a universal minimum entry requirement for all advisers (not including sales people) irrespective of industry (e.g. life insurance, Kiwisaver, etc.) then the curriculum should be focussed on the obligations of the Code of Conduct and the best practices to meet those obligations. Any product specific competence should not be included in a universal minimum entry requirement. They should form part of the adviser's individual obligation to prove themselves competent in the specific products they are advising on.

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?
    We do not believe there are any additional benefits which would arise out of a licensing model as opposed to amending the current registration model to address the identified issues. In fact, we would see a licensing model as being detrimental to the industry in terms of reducing client's access to advice which is independent of large institutions and/or product providers. It would create a significant imbalance in advice costs between small, high value, advice businesses, and large institutions delivering homogenised advice, to the detriment of the consumer. As has been evidenced historically institutions can be unduly influenced by profit demands, to the detriment of their clients. The idea that by forcing all advice into larger institutions (which has occurred in other markets where licensing regimes exist) will provide more protection for clients because of the size of the balance sheet available to 'put things right' is flawed if the end result is simply more things that must be put right! It is better for the emphasis to be put on consumer access to, and choice of, advice and on delivering competent and ethical advice in the first place, rather than to create legislation based on the ways things could get 'fixed' when they don't go right.

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?
We believe disclosure of all of the potential risks to the consumer in the advice they are about to receive is vital to addressing the imbalance of knowledge between an adviser and a consumer. Effective disclosure provides the consumer with an understanding of where an adviser may be conflicted and empowers them to ask sufficient questions to satisfy themselves that their interests are being put first.
The most effective forms for disclosure are made by way of a permanent, retrievable, re-visitable method e.g. in writing, through a website or by email. If there is no method to prove if, and what, disclosure was made, then effectively disclosure did not occur. It is essential that ALL potential clients are made aware that disclosure has to legally be made to them, why such disclosure is important for them to read/view, and where they can go to access it. In other words we believe it is essential that the consumer receives a universal/standardised general disclosure , which is separate from the actual disclosure, in a written format - whether in hard copy, through a website, or by email.

20. Would a common disclosure document for all advisers work in practice?
We strongly believe a standardised disclosure is a necessity to prevent advisers from disclosing too much or too little information – both of which can prevent a consumer from understanding the potential risks they need to be aware of. It is also hugely important to standardise the language used in disclosures to maximise the likelihood that consumers can understand those risks, irrespective of who they receive their advice from. It would be actually far easier in practice to police whether a prescribed disclosure has been made or not, rather than it would be to try to judge whether sufficient disclosure has been made if individual advisers all have their own bespoke disclosure documents. In our view the only disclosures that should be included are where a potential conflict of interest might be present e.g.
*Areas of competence of the adviser
*List of product providers which the adviser can contractually recommend and those that they can't
*Details of product research/comparative tools/engines which the adviser contractually has access to
*Where replacement/cancellation of existing business is recommended, full disclosure of all of the cover, price and claims risks involved and the ways in which those risks are to be mitigated.

We proposed two standardised disclosure documents in **Appendix Three** and **Appendix Four**.

21. How could remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?
We do not believe disclosure of remuneration details is necessary provided the recommended standardised disclosures listed above are made. The cost of remuneration to the client is already built into the premium they have agreed to pay. So the disclosure of conflicts would be sufficient protection for the consumer.

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)?
    We believe the industry itself is the most motivated body to ensure consumers can find advice if they are seeking it. The regulator controls the register – which should be available to the public but is unlikely to be a first port of call for them. It would be advisable for there to be a prescribed minimum amount of information which must be provided in any 'advertising' for advice and on any websites, brochures, etc. promoting advice e.g. FSP registration number and mandatory disclosure details as discussed above.

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?
    Enter text here.

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?
    Our recommendations above reflect a combination of your packages 1 & 3. We do not believe there is any major issues with the current Act and that a few adjustments to the Act will minimise the disruption and cost whilst effectively addressing most of the issues. We do not believe a licensing regime is required or is warranted. We strongly agree there should be a distinction between sales and advice and we also strongly agree that there should be a universal Code of Conduct. Finally we believe disclosure should play a significant role in addressing the imbalance of knowledge between an adviser and a consumer.

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?
    Enter text here.

37. What option or combination of options do you prefer and why? What are the costs and benefits?
    Enter text here.

38. What are the potential risks and unintended consequences of the options above? How could these be mitigated?
    Enter text here.

39. Would limiting public access to parts of the FSPR help reduce misuse?
    Enter text here.

Demographics

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

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.

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