

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?
Yes.
2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.
Not aware of any. However public are generally resistant to seeking advice and paying for it.

Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?
See Chapter 5 answers
4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?
As a QFE with some AFAs our additional costs would be limited. Benefits would be that consumers receive a higher level of expertise. Also it would raise industry standards. A new subset of Expert Advisers would potentially incur greater recruitment and training costs. Licensing obligations are likely to increase costs, e.g. registration, reporting & filing and record keeping.
5. Are there any other viable options? If so, please provide details.
Consider the suggestion in the workshop of individual limited registration, coupled with entity licensing, so that there is a way to also track the advisers working within entities and where they move to. If advisers were individually licensed in some manner, they could then become accountable if they continually provide inappropriate advice, no matter whose employment they were in.

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?
Could potentially increase access, however research has suggested that public don't want to

pay for advice. As mentioned in the Option Paper, this option would only be suitable if accompanied with changes to competence and ethical requirements.

7. Should high-risk services be restricted to certain advisers? Why or why not?
Yes, but only if it is sensible and clear as to what is considered high-risk. Eg foreign exchange trading.
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?
Should be considered part of relationship building with client, rather than compliance, so shouldn't add any burden.

4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?
Rules that put client first (eg no commissions). Compulsory to utilise technology available to try and increase the reading of disclosures. Robust, external risk profile questionnaires (rather than in-house).
10. How, if at all, should requirements differ between traditional and online financial advice?
Should be held to same high standard in the "advice" process. FMA monitoring early on, with recommendations for improvements to be carried out within short but reasonable time-frame.
11. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?
Power for the regulator to amend some rules without full statutory change if need arises (eg some major unanticipated technological shift).

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?
Putting the clients interest before the advisers and the businesses and manage any conflicts that may influence recommendations is appropriate, but should apply to all industry participants (be that adviser level or licensed entities).
13. What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?
We don't support this distinction.
14. If there was a ban or restriction on conflicted remuneration who and what should it cover?
Support full disclosure (including rates where applicable) but not outright ban.

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?
Allow work experience to be recognised and some product provider accreditations.

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?
Yes, National Certificate Level 5 (or equivalent) with ability to relevant work experience (which would need to be defined and classified) and producer accreditation.

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?
Entity licensing, so long as small entities have the ability to provide simplified reporting similar to the reduced requirements for small DIMS providers, seems preferable. Costs then should be similar to individual registration/licensing. The benefits of considered, documented processes outweigh the time and effort required to develop and record policies and processes.
18. What suggestions do you have for the roles of different industry and regulatory bodies?
The current structure (regulator, Code Committee, Disciplinary Committee, dispute resolution providers) seems to be working well and should be given time to develop.

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?
Whichever option the consumer chooses. All options should be made available, and should be considered an essential part of relationship building, not just a compliance exercise.
R&C Comment – Disclosure in current form is too onerous for client to read.
20. Would a common disclosure document for all advisers work in practice?
Yes, if well-written template formats are developed.
21. How could remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?
Materiality-based. Eg if commissions make up only a tiny percentage (definition would be required), they shouldn't have to be disclosed.

4.7 Dispute resolution

22. Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?
Not aware of any.
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?
Yes there should be consistency but have limited knowledge of others. Clients complaints should be treated the same, especially timeframes and deadlines.

24. Should professional indemnity insurance apply to all financial service providers?
Yes.

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)?
Government
R&C Comment – All i.e. Government, industry and consumer groups
26. What terminology do you think would be more meaningful to consumers?
Area-specific eg Insurance Adviser, Mortgage Adviser, Investments Adviser

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’?
No

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.

Our submission with regard to exemption is that no change should be made to the overall exemption provided by Section 14(1)(h) but some of the wording could be altered to provide clearer guidance as to the parameters of the exemption.

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?
Ensure through strengthened enforcement and monitoring that providers interacting with New Zealanders are bound by NZ law.
30. How can we better facilitate the export of New Zealand financial advice?
By way of technically enabled confidence in the competency of NZ advisers to advise international clients.

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?
No.

Chapter 5 – Potential packages of options

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

We support Package 2.

(As with Package 1) All advisers would be on equal footing regarding ethical and (simple) disclosure obligations. The placing of client interests first and removal of some of the confusing complexities, plus identifiable experts, is also good for the consumer. Requiring all advisers to meet minimum competency requirements will be good for the consumers and the profession.

Entity licensing will be good for the regulator, and in the long run (providing simplified versions are available for small entities, similar to DIMS license applications) will be a good outcome for industry participants, as robust, well-documented and reviewed processes ultimately will make them more efficient and effective.

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

See above.

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

Need a better (more specific perhaps) name for Expert Financial Adviser and careful consideration and consultation as to which areas are classified as high-risk.

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

N/a

Demographics

1. Name:

The New Zealand Guardian Trust Company Limited and Perpetual Trust Limited trading as Perpetual Guardian.

2. Contact details:

Kelly-Ann Harvey, Product Manager Investments, **Redacted**
John McFetridge, Personal Client Services Director, c/- above.

3. Are you providing this submission:

As an individual

On behalf of an organisation

Trustee corporations, approximately 250 staff across 15 locations.

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:

