

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?
I agree the terms 'RFA' and 'AFA', 'Registered' and 'Authorised' and 'Broker' are confusing and inappropriate and that this is largely because they are not descriptive of the service provided.

Re: Barrier: Consumers may be receiving advice from people without adequate knowledge, skills and competence levels: page 17: I agree advisers should only provide services in respect of matters they are competent to advise on. However, it is false to assume an RFA is less qualified than an AFA. For example, an AFA is legally permitted to advise on all aspects of insurance even though it is entirely possible they have no competence at all in this area (AFAs are not required to demonstrate skill or understanding of insurance when applying to be Authorised and any such absence is no barrier to providing the advice). Unless an AFA has achieved Standard Set E, AFAs are in the same position as RFAs when it comes to advising on insurance, they can attain AFA status and provide insurance advice without having to pass the insurance standard set (standard set E). This is not to say there is an absence of legal requirement for advisers providing insurance advice to be competent, all advisers are subject to section 33 of the FAA which requires due care, diligence and skill from all advisers.

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)?

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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?

Removing the distinction between class and personalised advice will not increase the access to advice and is most likely to reduce it. Access to advice is driven by the consumer's understanding of the need for advice and the ease of finding suitable advisers. Personalised advice can and should only be provided by advisers competent in that field but class advice and greater generic discussion about financial matters in the public should be encouraged. Removing the distinction between class and personalised is unlikely to create additional or additionally competent advisers in any particular field. However, removing the ability of unqualified advisers to talk in general (class) terms about a particular field of advice and make the recommendation that suitably competent advice be sought, is most likely to result in no discussion at all and an increase of client ignorance of a need for specialised advice. It seems to me that as a Nation we would want financial matters to be discussed generally 'around the barbeque' not stifled for fear of contravention of law!

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

All advisers should be competent in their chosen fields of expertise (and no adviser should provide advice unless they are duly competent and have achieved the same competence standard – including QFE advisers). Creating 'expert' or superior classes of adviser will simply perpetuate the current inadequacies and confusion. Rather, I believe advisers should be ranked equally.

Financial advice does not uniformly rank as more or less important. The financial advice required by the client at the time is what is most important to them and therefore most important: this could be insurance, mortgage or investment advice, it depends on the client's needs. All advisers should be permitted only to provide services in their chosen field. Life Insurance advisers should be duly competent and 'entitled' as such and the same should apply to Fire and General Insurance advisers, Mortgage advisers, Investment advisers, Retirement Planners and so on.

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?

While I agree all advisers should have a general duty to put the client's interests first, this should not be absolute or a barrier to 'conflicted' advice. In other words, as long as there is suitable disclosure of the conflict of interest and this is understood and accepted by the client, the advice should still be capable of being given. Having to 'walk away' from important advice for a conflict of interest, that may be unimportant to the client, would be the least desired option.

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

I can only comment on life insurance in this regard. Ignoring 'robo-advice' (which must be 'self-advice', so the solution is not sold neither is personalised advice provided by a natural person) and possibly some fringe purely transactional life insurance products, such as funeral and credit card cover, I do not believe there can be a distinction between 'sales' and 'advice' that does not create significant danger for Insurance consumers. By its nature, a great deal of the advice necessary for competent insurance advice is 'suitability advice'. I believe strongly that all life insurance, including disability and health insurance cannot be 'sold', namely provided without full and proper advice as to the types of insurance required and the amounts of insurance required.

This is because almost no client ever seeks out to buy life insurance with an understanding of what type of insurance and the amounts they truly need. Life insurance should typically only be bought after a clear understanding of the need is understood and a suitable bespoke package of covers recommended. The consequences of being 'sold' life insurance without personalised advice (which is not likely to be adequate for the client's circumstances) can have very large financial consequences. Unfortunately much life insurance is sold as a condition of other services being provided (mortgage loans or other credit for example) and this is typically sufficient only to cover a small part of a client's overall financial risk.

The financial loss to a family of not having insurance, or not having the right insurance, is not the wasted premium paid, rather it is the value of the claim which is not paid when needed. To avoid this, personalised advice and tailoring a package of insurance advice dependent on each client's unique needs is necessary. All 'sellers' of life insurance should be required to be competent to provide personalised advice. The only obligation a 'seller' of life insurance should be free from (and then it should be accompanied by very strict warning and disclosure rules – possibly falling under the 'conflict of interest' rules) is the obligation to consider the most suitable of a range of products provided by alternative providers to their own.

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

A ban on, for example, insurance commission will simply result in insurance companies paying salaries to advisers tied to selling only their products. One of the great advantages to consumers of dealing with self-employed advisers who are not contractually obliged to place their business with any one particular provider, access to the most suitable policies from a range of insurance companies, would be lost – to the absolute detriment of consumers.

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?

Competence capability cannot be increased without competency requirements of some sort. Any participants unwilling to become suitably competent have no place becoming advisers. Competency requirements should be specific to the services provided and should differ depending on whether advisers are completely new to the field, have a moderate amount of experience or have many years' experience (at least 10 years). Such competency requirements as evidenced by assessments of some nature, must be relevant, seen to be valuable and necessary by participants, and, in fact, result in a lift in standards. There is some concern that the introduction of the current AFA minimum requirements (many of which did nothing more for most competent existing advisers than represent a cost and time imposition without teaching them anything more) have become the normal standard, which in many cases is lower than which might have otherwise been the case.

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?

The Financial Advisers Act already imposes a principles based obligation on advisers to act with due care, diligence and skill. Accordingly, all advisers should be competent to provide their chosen services and these should represent minimum entry requirements. The various financial disciplines (life insurance, fire and general insurance, mortgage advice, investment advice etc.) involve distinctly separate and very different skills and specialist knowledge. As such there can be no 'one-size-fits-all' approach. Insurance, mortgage, investment, financial planners etc. should all have their own targeted competency requirements based on the requirements of providing competent advice in that specific discipline. This should be an ongoing obligation, not merely a 'ticket to the game' entry requirement. Advisers should be required to pass competency assessments in their chosen field on entry and undertake continuing CPD (which should include updating product knowledge!). Existing competent advisers should not find this particularly onerous. New entrants would need substantial initial training.

Such competency assessments must be undertaken by experts in the respective field. In life insurance, for example, insurance companies could provide the necessary training and assessment once their programmes have been certified by NZQA.

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?

From a life insurance point of view there would be no benefit in shifting to an entity licensing model. Very many, if not most, life insurance advisers are individuals practicing for their own account. A great deal of life insurance adviser services are not provided by 'entities'. The time and costs of licencing thousands of individuals would appear to make individual and entity licensing a most expensive and unnecessary option. In my view, for life insurance advice, registration with suitable proof of competence and suitable legislation prohibiting non-compliance, is sufficient to ensure the necessary levels of compliant advice. I believe this system would work also for fire and general insurance and mortgage advice and relieve the FMA from the unnecessary burden of licencing thousands of individuals. See my suggestions under Question 32 below.

While I believe there is merit in all advisers being registered, I do not believe all advisers need to be authorised. Advisers should be registered and then competent in their field. Quite how they achieve 'competence' in their field can and probably should be different for each discipline. This way there is no 'authorised' and no 'registered only'. There would be 'registered insurance advisers', 'registered investment advisers', 'registered mortgage advisers', 'registered financial planners' etc.

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

I do not believe the current industry bodies or regulatory bodies have all the necessary expertise, resources or manpower, to assess the competence of thousands of individuals. Their primary capability I believe would lie in facilitating experts to provide education and training.

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?

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

Some of the detail could be the same, but other substantive detail would need to be different or qualified, depending on the service provided.

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

From an insurance point of view the method of remuneration should be disclosed along with any limitations/conflicts this may bring. For example a salaried adviser is usually unable to offer full advice because they are limited to the products of one provider – a potentially costly limitation for consumers. Actual dollar amounts should

not be required to be disclosed (in many cases the actual dollar amount will not be known until after the insurance application is assessed and issued, which could be many months after the advice is provided) – clients can ask about dollar amounts should they so desire.

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)?

I believe the Government has a significant role in promoting the need for and access to, all types of financial advice but in particular, insurance. This is because people with money to invest, or in need of finance, will often seek out advice because they realise they need it. When it comes to insurance however, most, including those who need it most, simply do not understand the risks or know to seek advice in the first place. Considering the enormous social benefit insurance claims paid into communities constitute and the associated reduction on the need for Government assistance and benefits, additional efforts by Governments to highlight the need for seeking advice is warranted.

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

It seems obvious to me that consumers would find terminology that aligns with the advice required/what the adviser does, as simple and intuitive. So for example, Insurance adviser/broker, Mortgage broker, Investment Adviser and Retirement Planner, is simple and easily understood.

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’?

Minor consequential changes may be needed to move away from the current system.

For instance, Investment Planning Service should simply be another financial discipline.

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.
29. For many of the professions exempt, their education and entry requirements and practical work experience, do not involve the skills and knowledge required to properly provide insurance, mortgage or investment advice. In my view all persons entitled to provide advice on the various different financial disciplines should be subject to the same competence standard and assessment.

Territorial scope

30. 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.](#)

31. How can we better facilitate the export of New Zealand financial advice?

[Enter text here.](#)

The regulation of brokers and custodians

32. Do you have any comments on the proposal to retain the current approach to regulating broking and custodial services?

The use of the term 'Broker' and Broking Services' should be changed. These terms should assume their usual usage to avoid confusion and allow advisers to call themselves insurance broker or mortgage broker, as appropriate.

Chapter 5 – Potential packages of options

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

The most expensive option is any that does not properly achieve the desired results. Similarly, unnecessary bureaucracy adds nothing but cost. Most advisers should not be required to be registered and licenced/authorised. Licencing/authorisation is appropriate when a client is placing their wealth (which they hope and expect to get back one day) at direct risk by making investments/ handing money over to be managed or invested.

The same is not necessary, when the client is borrowing money or paying for a service (Insurance). This is not to say the quality of advice can be any less important. From an insurance adviser perspective, registration should suffice with penalties for providing advice without the necessary competence certificate. My comments below are based on what I believe would be suitable having regard particularly to life insurance advice.

The proposed Package 1 could work well with the following change...
Ensure all who advise on life insurance meet a competence standard. The same standard should apply to RFA, AFA and QFE advisers. Should it be necessary, 'authorisation' could continue for investment advisers but they should be called 'investment advisers'. Investment advisers should not be able to advise on life insurance unless they have met the life insurance competency standard - in which case they could call themselves 'investment and insurance' advisers. The distinction between RFA and AFA should thus disappear. QFE advisers should similarly be required to meet the life insurance competency standard if they also advise on insurance (and would only need 'authorisation' if also providing investment advice) - they could also simply be called 'insurance advisers'. QFE insurance advisers could continue to be exempt from registration as is currently the case.

Life insurance companies could provide training, assess competence and issue competence certificates (most would likely do this at little or no direct cost to advisers).

Advisers who are aligned to a single provider should be required to explain the dangers and conflicts this creates and that this adviser is not able to act in the consumer's best interests.

The above approach would eliminate the need for the current distinction between Category 1 and Category 2 products.

I believe this approach would work equally well for mortgage and fire and general insurance advisers with training and competence being certified by the respective product providers.

The proposed package 2 simply continues the inefficiency and confusion of the current system. A non-descriptive term such as 'expert' will create consumer confusion and reticence to deal anyone other than a 'financial adviser' who by definition must clearly be 'not expert'. The concept of an 'expert financial adviser' ignores the fact that significant differences exist in the knowledge and the skills required to advise on a multitude of different financial disciplines. It is akin to allowing a medical doctor who achieves specialist qualification in one area of medicine to also perform all other specialist medical services. The assessment of and competence standards required to be achieved, to provide compliant advice in all financial disciplines would be a significant undertaking, aspired to by almost no advisers. It appears to me that increasingly (and appropriately) advisers are specialising in one or at most two disciplines (and where they do specialise in more than one, full competence in all disciplines they offer advice on is necessary).

The proposed licencing of and 'proactive engagement' with 'financial adviser' businesses (considering thousands of insurance advisers are sole traders with no employees and there are probably as least as many mortgage and fire and general insurance advisers again) would require the FMA to massively resource with suitably experienced staff (who must have met the competence standard concerned to have any credibility) at huge cost to the FMA and advisers and with almost no obvious increase in the quality of advice provided to consumers.

The proposed package 3 would be expensive for many of the same reasons mentioned under proposed package 2 above however, it may be a more workable option than

package 2 if...

All 'salespeople' who sell insurance are also properly competent and meet the same competence standard. As mentioned previously, I do not believe life insurance can be 'sold' by persons who are not properly competent to fully assess each client's unique risks, quantify those risks and then apply a range of different (and relatively complex life, disability, trauma and medical insurance) policies to cover each of those risks.

While the ability to select the most appropriate insurance from a range of providers is critical in ensuring consumers get the most appropriate advice and the inability to do this is an important limitation, which, the consumer should be fully aware of, the comparison of different providers products, while important and requires significant study and knowledge, is a relatively small portion of the overall skill and knowledge any life insurance adviser needs to adequately provide suitable life insurance advice. This is why the proposed 'selling' versus 'advising' cannot be justified!

People who 'sell' insurance, indeed all advisers who are aligned to a single provider should be required to explain the dangers and conflicts this creates and that this adviser is not able to act in the consumer's best interests notwithstanding their obligation to meet the full competence standard.

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

Enter text here.

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

Enter text here.

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

In my view, the concept of a 'general practitioner' financial adviser (no matter what they are called, 'AFA', 'expert adviser' 'financial adviser' or anything else), competent to provide suitably compliant advice (due care, diligence and skill) on all the various financial disciplines is tenuous: such a person simply does not exist.

I believe a system which recognises each of the major disciplines (Life Insurance, Fire and General Insurance, Investment and Mortgage advice and financial/retirement planning etc.) and their differences and which focusses on competence in each discipline as a requirement to advise thereon, would allow a focus on education and knowledge excellence.

I believe a relatively cost efficient system that would actually lift competence standards could look like this:

- Each discipline should have its own distinct competence standard;
- Competence standards could be set, and assessments and CPD, provided by industry associations or industry participants such as lenders, insurers etc.;
- No one discipline should rank higher than another and no person should be allowed to provide advice on a discipline unless they have achieved the competence standard and comply with the relevant CPD requirements. Achieving the competence standard allows a person to provide advice on that discipline and call themselves 'investment adviser' or 'life insurance adviser' or 'life insurance and mortgage adviser' and so on (no confusion for the consumer!);
- Registration should continue as it currently does and allows the removal of competent but otherwise disqualified persons;

- QFE efficiencies can continue but QFE advisers should not be exempt from the competence standards or from full disclosure of limitations or conflicts;
- Authorisation should be required only where clients are handing over their money on the expectation it will be returned (not where they merely pay a fee or premium for a service or product). Authorisation should have no bearing on, or responsibility for competence, but it could provide conditions upon which, or about which, advice can be given (investment advice may be limited to Kiwisaver advice, for example).
- Authorised advisers must still achieve all competence standards they wish to be providing advice on and will still be called investment advisers or insurance advisers.
- All advisers should be required to make sensible disclosure, in particular about conflicts of interest or where they cannot act in the client's best interests because they are restricted to one or a restricted list of products or providers (salespeople for example);
- Salespeople who require lower levels of competence should only be able to sell a very restricted list of typically transactional products not likely to be misconstrued as 'sufficient' or 'comprehensive' by consumers and all 'sales' should be accompanied by a recommendation to take appropriate advice;
- All advisers should be subject to a code of conduct with some universal principles based obligations and specific code sections tailored to specific disciplines as appropriate. These specific codes should be developed by each particular discipline's participants/associations with oversight by the code committee;
- Advisers should remain members of Dispute Resolution Schemes under current rules although at some stage it may be appropriate to concentrate knowledge and experience within schemes by creating separate schemes for each of the major disciplines.

Chapter 6 – Misuse of the Financial Service Providers Register

37. Do you agree with our assessment of the pros and cons of the options to overcome misuse of the FSPR?
Enter text here.
38. What option or combination of options do you prefer and why? What are the costs and benefits?
Enter text here.
39. What are the potential risks and unintended consequences of the options above? How could these be mitigated?
Enter text here.
40. Would limiting public access to parts of the FSPR help reduce misuse?
Enter text here.

Demographics

1. Name:
Steve Wright. B.Com (Hons economics), LLB, H Dip Tax Law

2. Contact details:

Redacted

3. Are you providing this submission:

As an individual

On behalf of an organisation

(Describe the nature and size of the organisation here)

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.