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?
   The TripleA Advisers Association agrees that the five barriers identified on p15, Chapter 3 of the Options Paper do prevent the system outcomes sought.

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

Which options will be most effective in achieving the desired outcomes and why?

The TripleA Advisers Association believes some agreed principles should underpin a system that encourages sufficient numbers of truly independent financial advisers to ensure consumers do actually have a pool of trusted advisers they can utilise. We have proposed the following four principles and have used these to guide the Associations feedback on the Ministry's Options Paper.

Consumer first. We strongly agree that the needs of the consumer should be first and that their interests are well served by a pool of genuinely independent professional financial advisers.

Transparency. We believe that transparency of all incentive payments to advisers whether direct or indirect in nature needs to be a core guiding principal.

Clear definition of financial advice. We believe there should be a clear definition of what comprises genuine financial advice, including how this differs from "sales", and that single standards (Code) should apply to all people providing advice including accountants and lawyers for example. The current exemption for accountants should be rescinded.

A level playing field and one clear standard for all. There is significant confusion for consumers as to the distinction between AFA's, RFA's and QFE's. By using commonly understood terms and simplifying the definitions it would make it simple and easy for the consumer to understand.

Individual responsibility is the key to the integrity of the Authorised Financial Adviser status.

With these as guiding principles the Association believes there are elements from all three options that should be taken forward into system / regulatory change.

3. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?
   Consumers – need to be encouraged to get financial advice and realise that because of the excellent quality of this advice within the revised FAA environment, consumers would be expected to pay a reasonable fee for this advice.

   Financial Advisers – if there ends up being one types of individual adviser i.e. Certified [combination or AFA & RFA] then the current costs charged by the FMA for AFAs are fair.

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

4.1 Restrictions on who can provide certain advice

5. What implications would removing the distinction between class and personalised advice have on access to advice?
   Principle 4 applies. The removal of this distinction would simplify the system increasing benefits for the consumer and reducing costs for the adviser.

6. Should high-risk services be restricted to certain advisers? Why or why not?
   We would suggest using the term “specialist” rather than “expert” as there are already a number of advisers that specialise in certain areas and this approach is consistent with the medical and legal professions. The base qualifications for an adviser should however be reasonably broad and the number of specialist areas kept to a minimum to reduce system complexity. The ability of an adviser to deliver complex products should be based upon their competency to do so and it’s likely that this would be evidenced by “specialist” training.

7. Would requiring a client to ‘opt-in’ to being a wholesale investor have negative implications on advisers? If so, how could this be mitigated?
   The current limit of $1,000,000 for an investor to be classes as ‘Wholesale’ is far too low, when considering now that over 400,000 home owners in Auckland, if they sold their home today would be classed a ‘Wholesale’ investors and have had no input into generating that amount of wealth other than owning a home.

4.2 Advice through technological channels

8. What ethical and other entry requirements should apply to advice platforms?
   The growth of so called “robo advice” is inevitable however there do need to be solid consumer safe guards. For start consideration should be given to referring to this as “Robo sales” as it’s unlikely to constitute genuine advice. These should not be a channel that allows providers (or others) to circumvent ethical obligations that apply to financial advisers. Consideration should be given to a requirement that consumers can link through to a directory of genuinely independent financial advisers and maintaining such a directory could be a role for industry professional bodies.

9. How, if at all, should requirements differ between traditional and online financial advice?

In terms of ethical standards, if the interests of consumers are to be protected, then requirements should not differ.

10. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?
    Guidance will need to be given for "no advice" platforms. The consumer will need to be made fully aware that they are receiving no financial advice in many instances. As above it may be worth considering having options for the consumer to contact a genuinely independent financial adviser if they require independent advice.

4.3 Ethical and client-care obligations

11. 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?
    The ethical obligation to put the consumer first should be extended. Professional Bodies should be given a formal role in monitoring their member's ethical standards. See response under question 17.

12. What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?
    Advisers provide advice across a range of product provider's offerings and what is then "sold" reflects that range. A sales person typically works for a single entity and primarily sells that entities products and is not providing any advice services. It's critical that the consumer is fully aware of the distinction.

13. If there was a ban or restriction on conflicted remuneration who and what should it cover?
    Transparency coupled with clear ethical standards for product providers, banks etc is as much if not more important than heavy regulatory requirements that fall on individual advisers. Setting high ethical standards for product providers and banks will help ensure transparency around commissions in the first instance but also that commission payments are not inappropriately shifted to other incentive payments. Over rider commission payments for example have been totally over looked through the current review and it's likely that these do force some less reputable dealer groups to drive the sales of particular products inappropriately at the expense of the consumers.

4.4 Competency obligations

14. How can competency requirements be designed to lift capability, without becoming an undue barrier to entry and continuation in the profession?
    For new advisers coming into the industry firstly there should be a standard NZQA recognised base qualification that applies to all financial advisers operating within New Zealand. That base qualification should be comprehensive enough to cover the bulk of financially advisory services although it could well have several "majors" i.e. Insurance, Investment or Mortgage strands to reflect the very different sub sectors that come under the quite broad term "financial adviser". The qualification should include on-the-job training and mentoring say for a period of 1-2 years to provide for career steps and entry into the industry / profession.

    A smaller subset of "expert" or "specialist" modules should then be available beyond this.

    It's quite important however that these are nationally recognised and NZQA based if the system is to move towards being a genuine profession.

There will need to be a migration strategy to recognise existing advisers and in many instances their very large investment in existing qualifications and training. That migration strategy may need to consider the needs of the large pool of RFA's if requirements on them do indeed change.

15. 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 all advisers should be subject to minimum entry requirements. This should be the base qualification outlined above.

4.5 Tools for ensuring compliance with the ethical and competency requirements

16. 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 are not convinced that entity licensing will be effective particularly for small adviser businesses. A mixed licensing model will be required. It may well be appropriate for large banks, product providers, QFE's or adviser businesses of 50 plus advisers. It should not remove responsibility from the individual adviser (to be licensed) which would be inconsistent with other professions. If in future banks or large providers were ever behaving badly (as per the Australian experience) there would be no incentive on an individual adviser to act as a whistle blower if all responsibility sat with the licensed entity. If the adviser also had risks to their ability to hold an individual license (and by default their career) there would be an appropriate incentive in place to whistle blow should the need ever arise.

    Entity licensing imposed on small independent adviser businesses will simply play into the hands of large players such as banks and product providers.

17. What suggestions do you have for the roles of different industry and regulatory bodies?
    The proposed changes around RFA and sales in particular may well require the large pool of current RFA's to make a decision to either (1) upskill to AFA level, (2) define themselves as sales people or (3) exit the profession. The result will be a further rationalisation and reduction of the number of financial adviser's particularly genuinely independent advisers across New Zealand.

    Their "voice" and ability to be heard by regulators currently is significantly less effective than the major banks and product providers all of which have much greater resources at their disposal. In the future New Zealand consumers will not be well served by a weak, fragmented pool of advisers largely captured by the major players in the system.

    We believe for the pool of remaining advisers, post review of the Act, membership of a genuine professional body should be considered as mandatory requirement. While we accept that is unlikely Professional Bodies, amongst other activities, should take a greater role in monitoring and enforcing compliance with ethical and educational standards. They should be given a role in entity licensing (if that occurs) and a formal role on the Code Committee for example. They should also have a formal role in producing best practice guidelines with the FMA at a system level. They also have a role in providing high quality professional indemnity group schemes that help protect the consumer.

    To take such a role the Ministry would need to recognise genuine professional bodies and

establish a definition for these. As a starting point the TripleA Advisers Association would suggest something like the following definition.

"An adviser professional body is a not-for-profit legal entity with a Board of Directors that has a publically available Code of Conduct (ethics) and Disciplinary Procedures adherence to which is a condition of membership. An adviser professional body is independent and has no involvement whatsoever in any payments to advisers including from product providers nor does it receive any sales linked remuneration (for example over rider payments) from product providers. A Professional Body has no role in incentivising or pressuring its members to sell particular products. A core role of adviser professional body is to make available to its member's adviser educational and on-going professional development opportunities that comply with national set standards."

A definition such as this coupled with formal recognition by the regulator and mandatory membership would ensure that independent advisers retain a role in the broader system. The Ministry should establish a definition and then consider applications from professional bodies to be recognised in such a manner. This would enhance the professionalism of the industry but also secure a pool of genuinely independent advisers and that outcome would be beneficial to the consumer.

4.6 Disclosure

18. 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.

19. Would a common disclosure document for all advisers work in practice?
    The Association believes a common and simplified disclosure document would be beneficial if this is feasible.

20. How could remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?
    It will be critical here to set clear standardised requirements and high ethical standards on the behaviour of large product providers and banks in the first instance. It is how they structure their payments and incentives spread across providers that create the high level of complexity and then near impossibility for an individual adviser to disclose in any sensible way. This is a point arguably not yet understood by the regulators.

    For individual financial advisers when conducting business with Insurance companies and KiwiSaver providers and Managed Investment funds, clearly outline to customers how they get paid through a written Remuneration Disclosure document, which has been in place since 2011.

4.7 Dispute resolution

21. Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?
    No

22. 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 consistency across schemes would be helpful.

23. Should professional indemnity insurance apply to all financial service providers?
    Yes this is another area where the review has over looked a key weakness in the system. It should be mandatory for an adviser to have professional indemnity insurance to ultimately protect the interests of the consumer. However the key weakness currently is that many professional indemnity insurance policies provide very limited cover. So while the regulators may enquire from an adviser through audits as to whether such a policy exists there has been no work done by the FMA on the relative quality of those policies. The reality is that when required many professional indemnity policies will provide such limited cover that the consumer is likely to be left out of pocket.

4.8 Finding an adviser

24. What is the best way to get information to consumers? Who is best placed to provide this information (e.g. Government, industry, consumer groups)?
    All groups will have a role. Professional Bodies will also have a role in promoting independent advisers.

25. What terminology do you think would be more meaningful to consumers?
    QFE should be renamed to that of Corporate Advisers or sales person.

    AFA & RFAs could be given a term such as Certified or licensed Financial Adviser possibly broken down to insurance, investment or mortgages as per an advisers training (see response to question 14 above).

4.9 Other elements where no changes are proposed

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

26. Do you have any comments on the proposal to retain the current definitions of 'financial adviser' and 'financial adviser service'?
    The issue here will be ensuring there is a clear boundary between and definition of financial advice and sales.

Exemptions from the application of the FA Act

27. 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.
    This is again an area of weakness in the current review. Exemptions exist for accounts. The review has asked for evidence of problems with that exemption and then used the lack of evidence coming forward as an argument for no change. The weakness with this approach is that most entities inputting into this review do not hold such evidence but that does not mean it doesn't exist. The FMA has requested a large body of information via their Section 25 requests from providers. It would be of interest to see whether that had shown any issues with accounts etc. If MBIE or FMA went to the Institute of Accountants and examined their record of disciplinary procedures further evidence might well also be unearthed. It's the responsibility of MBIE and / or FMA to seek proactively seek out this evidence and give it due consideration through the review process.

Territorial scope

28. 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?
    Careful consideration needs to be given to how the FSPR register currently operates and how it could be improved in future.

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

The regulation of brokers and custodians

30. 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

31. What are the costs and benefits of the packages of options described in this chapter?
    The "net" of the changes proposed will increase compliance costs for financial advisers. That in turn will lead to further rationalisation of the profession with less independent advisers able to operate effectively. New regulations should not over burden excessively the smaller players in the industry.

32. How effective is each package in addressing the barriers described in Chapter 3?
    The general sentiment is that we can do better than Package 1 and that it should be elements of Package 2 & 3 that are taken forward.

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

34. 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

35. Do you agree with our assessment of the pros and cons of the options to overcome misuse of the FSPR?
    Enter text here.

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

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

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

Enter text here.

Demographics

1. Name:
   Wayne Smith, Chief Executive of The TripleA Advisers Association.

2. Contact details:
   Redacted

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

   The TripleA Advisers Association is a Professional Body established in 1947 and has over 200 advisers across New Zealand

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.