

Part 1 of the Bill amends the definitions in the FMC Act

1. If an offer is through a financial advice provider, should it be allowed to be made in the course of, or because of, an unsolicited meeting with a potential client? Why or why not?

No comment

2. If the exception allowing financial advice providers to use unsolicited meetings to make offers is retained, should there be further restrictions placed upon it? If so, what should they be?

No comment

3. Do you have any other feedback on the drafting of Part 1 of the Bill?

No comment

Part 2 of the Bill sets out licensing requirements

4. Do you have any feedback on the drafting of Part 2 of the Bill?

No comment

Part 3 of the Bill sets out additional regulation of financial advice

5. Do you agree that the duty to put the client's interest first should apply both in giving the advice and doing anything in relation to the giving of advice? Does this make it clear that the duty does not only apply in the moment of giving advice?

No comment

6. Do you have any comments on the proposed wording of the duty that a provider must not give a representative any kind of inappropriate payment or incentive? What impacts (both positive and negative) could this duty have?

No comment

7. Do you support extending the client-first duty to providers who do not provide a retail service (i.e. those who only advise wholesale clients)? Why or why not?

No comment

8. Do you have any other feedback on the drafting in Part 3 of the Bill?

No comment

Part 4 of the Bill sets out brokers' disclosure and conduct obligations

9. What would be the implications of removing the 'offering' concept from the definition of a broker?

No comment

10. Do you have any other feedback on the drafting of Part 4 of the Bill, for example any suggestions on how the drafting of broker provisions could be simplified or clarified?

No comment.

Part 5 of the Bill makes miscellaneous amendments to the FMC Act

11. Should financial advisers have direct civil liability for breaches of their obligations, if the financial advice provider has met its obligations to support its advisers? Why or why not?

Yes – otherwise you don't have the "level playing field". The sole trader financial advice provider is personally liable but any other financial advice provider can hide behind a potentially limited liability veil. A rogue Financial Adviser or Financial Advice Representative could get away scot free, the financial advice provider is free if it can prove that it had appropriate processes in place – no-one is held liable. The Financial Advice Representative gets sacked by the financial advice provider and as there is no public record, is hired by the next bank down the road and does the same thing again.

Either hold the financial advice provider liable or make the financial adviser or Financial Advice Representative liable!

12. Should the regime allow financial advice providers to run a defence that they met their obligations to have in place processes, and provide resources to enable their advisers to comply with their duties?

No. Either make the financial advice provider liable or make the financial adviser or Financial Advice Representative liable or both. No level playing field if they can all get off scot free!

13. Is the designation power for what constitutes financial advice appropriate? Are there any additional/different procedural requirements you would suggest for the exercise of this power?

Yes

14. Do you have any feedback on applying the concept of a 'retail service' to financial advice services? Is it workable in practice?

No comment

15. Do you have any other feedback on the drafting of Part 5 of the Bill?

No comment

Part 6 of the Bill amends the FSP Act

16. Does the proposed territorial application of the Act set out above help address misuse of the FSPR? Are there any unintended consequences? How soon after the passing of the Bill should the new territorial application take effect?

No comment

17. Do you support requiring further information (such as a provider's AML/CFT supervisor) to be contained on the FSPR to help address misuse?

No comment

18. Do you consider that other measures are required to promote access to redress against registered providers?
No comment.
19. Do you have any comments on the proposed categories of financial services? If you're a financial service provider, is it clear to you which categories you should register in under the proposed list?
No comment
20. Do you support clarifying that schemes must provide information to the FMA if they believe that a provider may be involved in conduct that constitutes breach of relevant financial markets legislation?
Yes
21. Do you have any other feedback on the drafting of Part 6 of the Bill?
No comment

Schedule 1 of the Bill sets out transitional provisions relating to DIMS and the code of conduct

22. When should an FMC Act DIMS licence granted to AFAs who provide personalised DIMS expire? For example, should it expire on the date on which the AFA's current authorisation to provide DIMS expires?
No comment
23. Do you have any other feedback on the drafting of Schedule 1 of the Bill?
No comment

Schedule 2 of the Bill creates a new schedule to the FMC Act with detail about the regulation of financial advice

24. Should the FMC Act definition of 'wholesale' be adopted as the definition of wholesale client for the purposes of financial advice? Why or why not?
No comment
25. We understand that some lenders consider that they may be subject to the financial adviser regime because their interactions with customers during execution-only transactions could be seen to include financial advice. Does the proposed clarification in relation to execution-only services help to address this issue?
No comment
26. Are there any unintended consequences resulting from the minor amendments to the exclusions from regulated financial advice, as detailed above?
No comment

27. Do any of the membership criteria or proceedings for the code committee require further clarification? If so, what?
Yes. There are a number of quite different disciplines covered by the proposed Act. To ensure that each of these disciplines is appropriately represented on the Code Committee, the membership criteria should specify that there be at least one investment adviser, one life and health insurance adviser, one fire and general insurance adviser and one mortgage adviser. Failure to have balanced representation creates the risk that one occupational group could be inadvertently disadvantaged by a decision of the committee.
28. Does the drafting of the impact analysis requirement provide enough direction to the code committee without being overly prescriptive?
No comment
29. Does the wording of the required minimum standards of competence knowledge and skill which 'apply in respect of different types of advice, financial advice products or other circumstances' adequately capture the circumstances in which additional and different standards may be required?
This question should really be two questions!
1. Does the wording of the required minimum standards of competence knowledge and skill which 'apply in respect of different types of advice, financial advice products?
Answer: Yes – there are clear and obvious differences between the different types of advice.
2. Does the wording of the required minimum standards of competence knowledge and skill which 'apply in respect of other circumstances'?
Answer: This is quite a different issue to the first question. The route is "less certain and more flexible" and thus open to manipulation.
30. Should the Financial Advisers Disciplinary Committee consider complaints against financial advice providers as well as complaints against financial advisers? Why or why not?
Yes. Otherwise there is no level playing field!
31. If the jurisdiction of the Financial Advisers Disciplinary Committee is extended to cover financial advice providers, what should be the maximum fine it can impose on financial advice providers?
Clearly, the penalty for a financial advice provider would need to be meaningful - \$10,000 would be a joke! Maximum \$1,000,000
32. Do you have any other feedback on the drafting of Schedule 2 of the Bill?
No comment

About transitional arrangements

33. Are there any other objectives we should be seeking to achieve in the design of transitional arrangements?

No comment

Proposed transitional arrangements

34. Do you support the idea of a staged transition? Why or why not?

Yes – for the reasons outlined in the Consultation paper.

35. Is six months from the approval of the Code of Conduct sufficient time to enable existing industry participants to shift to a transitional licence?

I doubt that 6 months will be sufficient for large providers. I suggest that the timeframe should be set at 12 months. Further, as the proposed 6 months includes December and January, in effect, it is really only 4 months.

36. Do you perceive any issues or risks with the safe harbour proposal?

No

37. Do you think there are any elements of the new regime that should or shouldn't take effect with transitional licences? What are these and why?

No

38. Is two and a half years from approval of the Code of Conduct sufficient time to enable industry participants to become fully licensed and to meet any new competency standards?

As above, I consider the 6 months after approval of Code to be too short. Following that line of thought, I consider that the total period should be three years.

Possible complementary options

39. Do you support the option of AFAs being exempt from complying with the competence, knowledge and skill standards for a limited period of time? Why or why not?

Yes. AFAs have already completed the National Certificate in Financial Services (Financial Advice) (Level 5) which, based on the feedback received throughout the review, is considered by many to be broadly appropriate.

40. Would it be appropriate for the exemption to expire after five years? If not, what timeframe do you suggest and why?

Yes

41. Is there a risk that this exemption could create confusion amongst industry and for consumers about what standards of competence, knowledge and skill are required?

No.

42. If you support this option do you think it should be set in legislation or something for the Code Working Group to consider as an option as it prepares the Code of Conduct?

Set in legislation

43. Do you support the option of a competency assessment process for existing AFAs and RFAs? Why or why not?

Yes. I know many life and health insurance advisers who as RFAs have not passed the National Certificate in Financial Services (Financial Advice) (Level 5), but have voluntarily passed the examinations available during their career. Using the knowledge and skills gained in those exams and other training, they have gained experience that cannot be learned from a textbook or training course. To require such people to go back to school is unrealistic and would result in an exodus of experienced advisers.

I fit into this category. I have been an adviser for over 48 years. I (voluntarily) passed all education courses available in the first 25 of those 48 years. I would not go back to school.

I would, however, be happy to undergo a competency assessment.

44. Is it appropriate for the competency assessment process to be limited to existing AFAs and RFAs with 10 or more years' experience? If not, what do you suggest?

Yes – the assessment would be recognising experience as an alternative to book learning so time in the field is important. 10 years is probably an appropriate cut off point.

45. If you support this option do you think it should be set in legislation or something for the Code Working Group to consider as an option as it prepares the Code of Conduct?

Set in legislation.

Phased approach to licensing

46. What would be the costs and benefits of a phased approach to licensing?

No comment

47. Do you have any suggestions for alternative options to incentivise market participants to get their full licences early in the transitional period?

No comment

48. Do you have any other comments or suggestions regarding the proposed transitional arrangements?

No comment

Demographics

49. Name:

Graeme Lindsay

Strategy Financial Services Ltd

50. Contact details:

REDACTED

Are you providing this submission:

As an individual

**Private company. 1 Adviser. Life and Health Insurance.
Commenced January 1969 and continuous since**

51. 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: **No comment.**