

How to have your say

Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by **5pm on Friday 31 March 2017**.

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 attaching your submission as a Microsoft Word attachment and sending to faareview@mbie.govt.nz.
- By mailing your submission to:

Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
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 the development of the Financial Services Legislation Amendment Bill, decisions in relation to the outstanding policy matters, and advice to Ministers.

We may contact submitters directly if we require clarification of any matters in submissions.

Except for material that may be defamatory, MBIE intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

Release of information

Submissions are also subject to the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

If your submission contains any confidential information, please indicate this on the front of the submission. Any confidential information should be clearly marked within the text. If you wish to provide a submission containing confidential information, please provide a separate version excluding the relevant information for publication on our website.

Private information

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. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

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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?
Surely there is nothing wrong with discussing financial products at unsolicited meetings as the adviser will still be subject to full compliance and disclosure requirements.
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?
Yes – the client's best interest should always be paramount.
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?
Inappropriate payments or incentives should always be banned as they are clearly in direct conflict with putting the client's interest first.
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?
Almost by definition wholesale clients do not require the same level of protection.
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?
Presumably, by being in business as a broker / financial adviser and being on the FSPR in themselves state that a person is offering to provide financial advice?
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?
All advisers should have a prima facie liability for the advice they give. However, if they work for a financial advice provider they may be entitled to full or partial indemnity from that provider.
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?
Yes – but this defence could be defeated by proof of inadequate supervision.
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?
No comment
14. Do you have any feedback on applying the concept of a 'retail service' to financial advice services? Is it workable in practice?

I see no problem with this concept.

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?

For the protection of the general public and the country's reputation, I believe this provision should be introduced a.s.a.p. rather than wait the passing of the new Act.

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?

Disclosing the existence of a person's supervisor seems a sensible extension of the register.

Perhaps any past disciplinary matters should also be disclosed?

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?

It seems perfectly clear.

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?

Yes – it seems to work well.

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?

Yes.

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?

No comment

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?

I believe so.

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.

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?

No comment

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 – so there are no slip ups due to unseemly haste.

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?
Should be.
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 comment
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?
Should be.

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?
No comment
40. Would it be appropriate for the exemption to expire after five years? If not, what timeframe do you suggest and why?
No comment
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 comment
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?
No comment
43. Do you support the option of a competency assessment process for existing AFAs and RFAs? Why or why not?
Yes – experience is often better than simply passing an exam. And if a person fails the assessment they can simply be redirected down the education path.
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?
Seems reasonable.
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?
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: John Heritage
Enter your name and/or the name of the group of people, business, or organisation you are providing this submission on behalf of here.
50. Contact details:
REDACTED
51. Are you providing this submission:
REDACTED
(Describe the nature and size of the organisation here)
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