

# 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](mailto: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](mailto: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](http://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.

## Permission to reproduce

The copyright owner authorises reproduction of this work, in whole or in part, as long as no charge is being made for the supply of copies, and the integrity and attribution of the work as a publication of MBIE is not interfered with in any way.

### 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?

**Yes it should be allowed so long as it is made by an AFA; that way the consumer will get best advice by putting the client's interest first**

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 – I think the current legislation is enough**

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

**Yes – on page 13, the exposure draft states that “financial advice representatives will not be individually accountable for compliance with conduct and disclosure”.**

**Surely to increase public trust and confidence and to place the interests of the public first, ALL advisers must be individually accountable for their advice. Why should some 25,000 FARs (ex QFEs) be able to provide ‘advice’ on one provider’s product without individual accountability. If FARs are to provide ‘advice’, they should also be individually accountable for the advice they provide.**

**Surely the public deserves a better outcome than this. The structure proposed would**

more than likely impede the development of a professional advice sector in New Zealand; accountability is fundamental to providing client-first advice.

In addition, under the existing structure proposed, what would be the incentive for someone to register as a 'financial adviser', which brings with it compliance cost, obligation and accountability, when they could simply become a 'financial advice representative', with no accountability for compliance with conduct and disclosure under the protection of a licenced Financial Service Provider?

A level playing field in terms of accountability for those who provide 'advice' is essential in the development of a thriving advice sector, and a profession that achieves the goal of helping more New Zealanders access quality advice.

Another key area of concern here is the designations, Financial Adviser and Financial Advice Representative (FAR). Both must operate under a Financial Advice Provider Licence, but the obligations and transparency are very different. The FAR won't be individually registered on a public register and won't be individually accountable for their advice or conduct. Their advice services will be limited and the licence holder will be fully responsible. I believe this creates an issue where individuals could hide under this regime and potentially move from licence to licence without any transparency. This would be a bad outcome.

The draft could address this by having two types of licences. Financial Advice Providers Licence and a Financial Product Distributor Licence. Product providers who manufacture products should only have a distributor licence which clearly states that product advice and information are the limits of their services and sets the obligations of the entity and their advisers/distributors. Advisers under this licence should be classed as distributors and not advisers. This could also cover the majority of Robo-Advice services.

Anyone wanting to be a Financial Adviser is licensed under a Financial Advice Providers Licence. Each adviser under this licence is individually registered for the types of advice they give (any or all the ones listed above) in the products and/or services they cover. Then consumers would know when they see the word Financial Advice they are dealing with a licenced adviser who is individually responsible. Consumers currently don't understand the difference between sales and advice and the new regime does not adequately address this.

## **Part 2 of the Bill sets out licensing requirements**

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

**Yes I do so here goes....**

**Firstly, I do not agree with the freedom from liability which will be enjoyed by financial advice representatives of financial advice firms. That continues the current situation with QFEs, where the organization (usually a bank or vertically integrated product provider) will have the liability for the rep's advice.**

**FARs must be individually registered on a public register and should be individually accountable for their advice or conduct. To not do this creates an issue where individuals could hide under this regime and potentially move from licence to licence without any transparency. This would be a bad outcome.**

### 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?

**I agree 100% and as previously stated...**

**Another key area of concern here is the designations, Financial Adviser and Financial Advice Representative (FAR). Both must operate under a Financial Advice Provider Licence, but the obligations and transparency are very different. The FAR won't be individually registered on a public register and won't be individually accountable for their advice or conduct. Their advice services will be limited and the licence holder will be fully responsible. I believe this creates an issue where individuals could hide under this regime and potentially move from licence to licence without any transparency. This would be a bad outcome.**

**The draft could address this by having two types of licences. Financial Advice Providers Licence and a Financial Product Distributor Licence. Product providers who manufacture products should only have a distributor licence which clearly states that product advice and information are the limits of their services and sets the obligations of the entity and their advisers/distributors. Advisers under this licence should be classed as distributors and not advisers. This could also cover the majority of Robo-Advice services.**

**Anyone wanting to be a Financial Adviser is licensed under a Financial Advice Providers Licence. Each adviser under this licence is individually registered for the types of advice they give (any or all the ones listed above) in the products and/or services they cover. Then consumers would know when they see the word Financial Advice they are dealing with a licenced adviser who is individually responsible. Consumers currently don't understand the difference between sales and advice and the new regime does not adequately address this.**

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?

**It is crucial that this rule is introduced and implemented – client's interests must come 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?

**Yes I do – the whole purpose is to provide a level playing field across the board**

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

**No**

### 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 implications.**

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 issues here**

### **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 – make individuals accountable for their advice**

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**

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?

**Happy as proposed**

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

**No comments to make**

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

**None**

### **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?

**I like the new concept and feel that it is a big improvement**

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?

**Yes**

18. Do you consider that other measures are required to promote access to redress against registered providers?

**I believe that retail customers should have a redress option**

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?

**The proposed list of services will be much clearer to the general public and the proposal seems quite 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 I do**

21. Do you have any other feedback on the drafting of Part 6 of the Bill?

**I find it ironic that you want to simplify this area for providers (which I fully support) yet one of the biggest bones of contention lies in the terms used in an attempt to distinguish between true advisers and product salespeople.**

**Referring to Financial Advisers and Financial Advice Representatives. Including the word “Advice” along with “Representative” muddies the distinction to such an extent that the public will never be able to distinguish between the two.**

### **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?

**That would make sense to me**

23. Do you have any other feedback on the drafting of Schedule 1 of the Bill?

**No**

### **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 – one definition across the board will cause less confusion**

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?

**None that I can see**

27. Do any of the membership criteria or proceedings for the code committee require further clarification? If so, what?

**No**

28. Does the drafting of the impact analysis requirement provide enough direction to the code committee without being overly prescriptive?

**Yes**

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?

**Yes**

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 if you want to build trust with the public**

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?

**??????**

32. Do you have any other feedback on the drafting of Schedule 2 of the Bill?

**No**

### About transitional arrangements

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

**No**

### Proposed transitional arrangements

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

**No I do not – for once create a level playing field for all and set a date to which everyone must comply.**

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?

**Yes.**

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

**Creates confusion**

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?

**Most definitely**

### 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 I do due to the fact that we have already been through this in order to become AFAs under the current regime**

40. Would it be appropriate for the exemption to expire after five years? If not, what

timeframe do you suggest and why?

**Three years would be more than enough time in my opinion**

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?  
**I see confusion for consumers certainly. But this whole scenario will still be confusing for consumers with the proposed designations of Financial Adviser and Financial Advice Representative (FAR).**
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?  
**N/A**
43. Do you support the option of a competency assessment process for existing AFAs and RFAs? Why or why not?  
**I support this for RFAs only (bot not AFAs) because AFAs have already gone through the highest levels of competency to be AFAs in the first place. Surely you need to focus on bringing every one else up to the standard of existing AFAs**
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 it is appropriate for AFAs only**
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?  
**Yes it should be put in legislation otherwise people will not take notice of it**

### Phased approach to licensing

46. What would be the costs and benefits of a phased approach to licensing?  
**Easier to manage I suppose?**
47. Do you have any suggestions for alternative options to incentivise market participants to get their full licences early in the transitional period?  
**Lower costs**
48. Do you have any other comments or suggestions regarding the proposed transitional arrangements?  
**No**

### Demographics

49. Name:  
**Michael Lay – Foresight Financial Planning**
- Contact details:  
**REDACTED**
50. Are you providing this submission:  
**REDACTED**
- I am currently an AFA and try to provide good quality advice to my clients. There is**



**just myself and my PA in the practice and this is how we plan to stay. I guess this will depend on how things go with this submission and whether a fair and level playing field is actually introduced or whether us little guys get forced out and the banks can rough shod over everything and do what they like as the legislation tends to favour them in what they can and can't do. I have very little confidence that anything will really change with these proposals.**

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:  Enter text here.