MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HIKINA WHAKATUTUKI

Regulatory Impact Statement

Amendments to the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and Regulations

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Agency disclosure statement

This Regulatory Impact Statement has been prepared by the Ministry of Business, Innovation and Employment (**MBIE**). It supports a Cabinet paper that includes proposed amendments to the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSP Act**) and Regulations.

Part A

Part A provides an analysis of options to address the misuse of the Financial Service Providers Register (**FSPR**) by offshore-controlled firms.

The issue relates to risks to New Zealand's reputation as a well-regulated jurisdiction. As a result, many of the costs and benefits of the options are difficult to quantify.

The issue has arisen because the Registrar, the Financial Markets Authority (**FMA**), other government agencies or members of the public have identified instances of misuse of the FSPR by particular firms. However, it is likely that not all incidents of misuse of the FSPR have been identified and dealt with. As such, it is possible that the problem is larger than has been identified.

The preferred option (option 2) is to require entities to have a stronger connection to New Zealand before they are able to register and remain on the FSPR. The exact degree of connection to New Zealand has not yet been defined – these details will be refined through further work with relevant government departments and consultation with industry. Officials will also consider other measures to accompany the preferred option for addressing misuse.

Part B

Part B provides an analysis of options to improve consumer access to effective redress through an approved financial dispute resolution scheme.

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Part A: Misuse of the Financial Service Providers Register

Status quo and problem definition

Financial service providers are required to register in New Zealand

Anyone who is in the business of providing a financial service is required to be registered on the FSPR.

The registration system allows the identification of all those in the business of providing financial services in New Zealand. It assists regulators with carrying out their regulatory functions. The public can also search the FSPR for a financial service provider (**FSP**) to see whether the entity is registered, what financial services they are registered for, and their financial dispute resolution scheme.

The FSPR assists New Zealand to meet its obligations under the Financial Action Task Force (**FATF**) Recommendations. These Recommendations include requiring the licensing or registration of all financial institutions to ensure effective monitoring is in place to confirm financial institutions are meeting their anti-money laundering obligations.

Offshore firms are misusing the FSPR to the reputational detriment of New Zealand and New Zealand FSPs

There have been instances of offshore-controlled firms registering on the FSPR to take advantage of New Zealand's reputation as a well-regulated jurisdiction. These firms misrepresent to customers that they are licensed or actively regulated in New Zealand. This may enable these firms to enjoy a lesser degree of scrutiny than might otherwise be the case.

An underlying issue is that the public in New Zealand and overseas often misinterpret "registered" on the FSPR to mean that an entity is actively regulated in New Zealand.

These firms are able to register without being subject to pre-vetting or ongoing regulation by New Zealand regulators and without setting up substantive operations in New Zealand:

- *The firms that are of concern are registering for financial services which do not require licensing in New* Zealand (e.g. foreign exchange services). Other similar jurisdictions typically license all types of FSPs. For example, in Australia all entities that provide financial services are required to obtain an Australian Financial Service Licence.

  New Zealand does not license all financial service providers because licensing can impose significant costs, create a barrier to entry and reduce competition in the market. The qualification requirements for registration are similar to those for a director of a New Zealand company, for example a person convicted of a dishonesty offence in the previous

five years or an undischarged bankrupt cannot be involved in the management of a registered FSP.

- *The firms in question are setting up superficial New Zealand operations in order to fall within the currently wide scope of entities required to register.* The requirement to register applies to a person who is ordinarily resident in New Zealand or has a place of business in New Zealand, regardless of where they are providing financial services. The entities in question often lease an office and employ a person to provide back-office services. They generally do not make financial services available to New Zealand-based customers, and are therefore unlikely to be subject to oversight by New Zealand regulators.

Some offshore-controlled firms registered on the FSPR are alleged to have been connected to firms that engage in fraudulent activities overseas. The FMA receives large volumes of complaints from persons outside New Zealand, relating to offshore-controlled firms registered on the FSPR which have not paid out customer funds when required to. In another example, Vivier and Company Limited (the subject of a Court of Appeal case discussed further below) was linked to a company alleged by Irish media to have been involved in tax fraud and money laundering.

The issue is two-fold: registration on the FSPR can allow entities to create a false impression of legitimacy when marketing themselves offshore, and enable them to harm customers offshore; and registered entities alleged to have been engaged in dishonest conduct (and media reports of such allegations) brings the FSPR regime into disrepute. This issue is a risk to New Zealand's reputation as a well-regulated jurisdiction and to the reputation of legitimate FSPs based in New Zealand.

Existing powers to decline registration or deregister a Financial Service Provider require considerable resources

Current FMA powers to decline registration or deregister an entity

To address this issue, the FMA was given the power in 2014 to direct the Registrar to decline a registration application or deregister an entity if it considers that registration of that entity is likely to:

- create a false or misleading impression as to the extent to which an entity provides (or will provide) financial services in or from New Zealand, or is regulated in New Zealand; or
- otherwise damage the integrity and reputation of New Zealand's financial markets or regulation of those markets.

As at 27 May 2016, there were 12,360 entities registered on the FSPR. By this date, the FMA had directed that 67 entities be deregistered, and 15 entities voluntarily deregistered after FMA review of their registration. In addition, the FMA has directed that 27 entities be prevented from registering and 25 applications were voluntarily withdrawn or allowed to expire after FMA review of their application. [**WITHHELD**]

FMA's existing power to direct the Registrar to decline a registration application or deregister an entity has required a significant amount of resource. [**WITHHELD**][1] is required in each case, with some requiring even more time if the submission is lengthy

[1] In the context of the Financial Markets Conduct Act 2013, the FMA is entitled to charge applicants a fee based on hourly rates for certain matters, at a rate of $178.25 including GST per hour of staff time. Therefore

or the issues are complex. Responding to any appeals against deregistration or rejected applications require substantial staff time as well as legal costs including instructing external counsel.

The FMA, Registrar and Department of Internal Affairs (DIA) have also used significant resources to help identify potentially suspicious entities.

The Court of Appeal recently ruled on the scope of the FMA's powers

The effectiveness of the FMA's powers as a tool for dealing with misuse has varied over the course of the last year with different Court judgments finding different thresholds for when the FMA could exercise its powers.

The Court of Appeal in *FMA v Vivier* [2016] NZCA 197 recently stated the following in relation to the threshold for the FMA to exercise its power:

- The fact that all or most of the entity's services are being (or will be) provided overseas may itself be sufficient in context to deny registration.
- It is not necessary to have evidence that registration of the specific entity may be misleading or harm New Zealand's reputation. The FMA could in some contexts rely on general evidence that registration creates the impression of both services being provided from New Zealand and the registered entity being subject to regulation in New Zealand.

This was a lower threshold than that previously found by the High Court in the same case.

Limits to addressing misuse through existing powers

While the Court of Appeal decision in *Vivier* is helpful for clarifying the threshold when FMA can use its power, the FMA's powers do not affect who is entitled to register on the FSPR. There is little financial or other detriment to an entity that attempts to apply and is unsuccessful. There is therefore little to deter entities from attempting to register on the FSPR to facilitate misuse. There is also little to deter entities whose attempts are unsuccessful from attempting again using different details.

Given the resources required to address misuse using the FMA's existing powers, it is likely that those powers are not sufficient to deal with all attempts to misuse the FSPR.

One reason for the decision made in 2013 to address misuse through FMA powers was the expectation that in time, suspect applications would reduce as prospective applicants became aware of higher standards being applied. However, this does not appear to have eventuated. Since receiving its powers in 2014, the FMA's work has involved both deregistering entities that were registered before 2014 and declining new registration applications. The Registrar continues to identify a number of suspect registration applications.

There has been insufficient time to observe whether the Court of Appeal's decision in *Vivier* may deter applicants from seeking to misuse the FSPR. However, given the lack of penalties for failed attempts to register and FMA's resources, it appears unlikely that applicants seeking to misuse the FSPR would be deterred from applying for registration.

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the staff costs associated with each use of the deregistration powers could be characterised as ranging from [**WITHHELD**].

Other efforts do not appear to be wholly sufficient in addressing the problem

Non-regulatory efforts to educate consumers about the FSPR

Non-regulatory efforts have been taken to educate consumers about the purpose and limitations of the FSPR. In particular, a warning has been placed on the FSPR homepage stating that those on the FSPR are not actively supervised. This helps to increase awareness of the function and limits of the FSPR.

Operational measures taken by the Registrar and FMA

The Registrar, FMA and other government agencies have already taken a number of operational measures in an effort to easily identify instances of potential misuse. For example, the Registrar has been undertaking increased verification and risk profiling. The Registrar and FMA can now also refer to the *Vivier* decision when explaining the grounds for deregistration.

However, these efforts appear unlikely to deter offshore-controlled firms from applying to register on the FSPR.

Other initiatives unlikely to directly address misuse

The Government is currently undertaking other work that relate to the integrity and reputation of New Zealand's financial markets. This includes work on Phase II of the anti-money laundering and countering financing of terrorism (AML/CFT) regime and the review of foreign trust disclosure rules. However, proposals arising out of those work streams are unlikely to directly address the issue of foreign-controlled firms seeking to register on the FSPR in order to take advantage of New Zealand's reputation.

Objectives

Any measures should be effective in reducing misuse of the FSPR regime and therefore upholding the reputation of New Zealand's FSPR regime. Reducing misuse includes:

- deterring applications from those who intend to misuse the FSPR; and/or
- allowing regulators to effectively decline applications or deregister FSPs.

Any measures should capture the appropriate scope of entities on the FSPR. Measures should not be:

- unnecessarily requiring entities to register on the FSPR; or
- enabling New Zealand FSPs to avoid registration and associated requirements.

Any measures should facilitate fair, efficient and transparent financial markets. This includes:

- allowing regulators access to information about FSPs to assist their regulatory functions; and
- enabling public access to information about FSPs; and
- meeting New Zealand's obligations under the FATF Recommendations.

Any measures should not impose unnecessary costs to legitimate businesses.

Options and impact analysis

Option 1: Status quo

Benefits

The main benefit of this option is that the Registrar and the FMA would continue to have scope to deregister entities that may be creating the false impression that they are providing services from New Zealand or subject to New Zealand regulations. It allows the FMA and Registrar to deal with misuse in a flexible manner, without the potential unintended consequences of other options.

In substance, the Court of Appeal's interpretation of the FMA's powers means that it should be possible for the FMA to direct deregistration or decline registration of firms with no genuine connection to New Zealand.

Costs/risks

It is likely that the problems identified in the problem definition section above will remain. In particular, it is likely that:

- The FMA will continue to have insufficient resources to effectively deal with all cases of potential misuse of the FSPR. Resources will also still be required to help identify suspicious entities.
- Entities who apply for registration with the intention to misuse the FSPR are not prevented and unlikely to be deterred from attempting to register.
- There remains a risk to New Zealand's reputation as a well-regulated jurisdiction and the reputation of legitimate financial service providers based in New Zealand.

Option 1A: Status quo with additional registration fees

Minor adjustments could be made to the status quo with the aim of making the FMA's existing deregistration powers more effective. For example, additional fees could be applied in certain circumstances where referral to the FMA was considered necessary. Registration/continued registration would only occur if the fee was paid by the entity and the FMA did not decline registration or direct deregistration.

Entities who intend to misuse the FSPR may be deterred from making an application as there would be additional costs. Imposing a fee reduces the attractiveness of registration for offshore-based FSPs.

If the additional fee collected is provided to the FMA, the FMA would be better resourced to effectively deal with cases of potential misuse of the FSPR.

Depending on the criteria for defining when the fee is payable, additional costs would not be imposed on genuine New Zealand businesses. However, it may be difficult to design a fee that is only applied to those entities at the highest risk of misusing the FSPR. The fee could act as a barrier to entry to some smaller legitimate businesses and result in registration being delayed for other legitimate businesses.

Further, this option might not act as effective deterrent for an offshore entity who intends to misuse the FSPR if that entity has significant disposable resources. There is anecdotal evidence of offshore entities being willing to pay law firms and trust and company service providers significant amounts

to assist with registering on the FSPR. An additional fee may not be sufficient to deter such entities from registering.

Option 2: Amend the FSPR registration requirements to require a stronger connection to New Zealand *(preferred option)*

The territorial scope of FSP Act could be amended so that the requirement to register (and stay registered) only applies to entities with a stronger connection to New Zealand than is currently the case.

Instead of simply requiring a place of business in New Zealand, the legislation could provide that entities can only register (and stay registered) if they are or will be:

- in the business of providing financial services, not just back-office administrative services, from a place of business in New Zealand, or
- in the business of providing financial services to New Zealanders, or
- otherwise required to be licensed under any other New Zealand legislation.

The precise scope and threshold of the amendments to registration requirements will need to be determined through further analysis and consultation. For example, the scope should be defined in a way so that entities only taking one or two transactions in New Zealand are not required to register.

FMA's existing powers to direct de-registration/non-acceptance of registration would remain e.g. to tackle other incidences of misuse by entities that may fall within the new narrower scope of registration.

Benefits

Amending the territorial scope is likely to act as a greater deterrent against entities seeking to register for the purpose of misuse. For those entities, it would no longer be sufficient for registration to simply set up superficial back-office operations in New Zealand. The need to have more substantive operations in New Zealand would significantly reduce the ease and benefit of seeking registration for the purpose of misuse.

The Registrar and the FMA would have clearer legislative authority as to when they can decline registration or deregister an entity. This would enable them to more effectively address misuse of the FSPR.

Genuine New Zealand businesses are unlikely to bear additional costs.

Costs/risks

This option would still require time and resources in order to verify that an entity meets the increased requirements. It is possible that the FMA and Registrar will still not be able to respond to all potential incidences of misuse of the FSPR. However, this option is likely to improve on the status quo.

As this would involve a new legal test for territorial scope, there is a risk that the FSPR would no longer capture all entities that it should. For example, if the territorial scope required all entities providing services to New Zealand clients to register, it may impose compliance costs on overseas entities that could be required to register if they have one or two New Zealand clients. Conversely, depending on how the scope is defined, an entity seeking to misuse the FSPR could potentially still do so by undertaking one or two transactions in New Zealand. Further work will be undertaken to

refine the details of the proposed scope, including consultation with industry, in order to minimise the risk of unintended consequences.

A new scope for which entities are required to register could require changes to the registration application process. An initial quote for adding 4-5 new fields to the application process has estimated that the vendor costs could be [**WITHHELD**].

Option 3: Limit public access to all or parts of the FSPR

Under this option, all or parts of the FSPR would not be publically available. Non-public parts could include entities that are not licensed or those not proposing to provide retail services in New Zealand. The non-public parts would still be available to regulators and policy-makers. The register could also be converted into a non-public "notification list".

Benefits

This option could reduce the benefits of registration for offshore-controlled firms seeking to misuse the FSPR. Offshore-controlled firms would not be able to refer customers to a government website to check their registered status.

The FATF Recommendations do not appear to require a *public* register of financial institutions to assist with anti-money laundering monitoring purposes. A non-public register or notification list likely still meets New Zealand's obligations under FATF.

Costs/risks

Removing public access to the FSPR would reduce transparency. Non-public agencies use the FSPR for legitimate and beneficial purposes. For example, limiting/removing public access would limit/remove the ability for the public to check whether an entity was complying with its obligations to be registered on the FSPR. A reduction in public access could also have a negative impact on New Zealand's reputation for fair, efficient and transparent financial markets.

Limiting/removing public access to the FSPR does not in itself prevent entities from claiming they are registered or licensed. It is possible that offshore-controlled firms would still claim (in a strictly true sense) that they are registered in New Zealand even if the FSPR was not public.

A non-public "notification list" gives less impetus to keep the register updated and accurate. The list would likely become a less robust account of entities offering financial services to New Zealanders or from New Zealand. Entities may be less rigorous in ensuring that they have notified the correct details to the authorities and kept their notification up to date, given that there is no public use of the register.

Some resources would also be required to change the FSPR regime in these ways. Converting the FSPR into a non-public notification list particularly would require moderate change to the registration system. An initial quote for restricting public search, allowing full access to government agencies, and allowing application access for entities has estimated that this could cost [**WITHHELD**].

Option 4: Require all entities registered on the FSPR to be licensed

Under this option, all FSPs registered on the FSPR would be required to be licensed. Currently, all FSPs are required to be registered on the FSPR, but only those offering particular financial services are required to be licensed. Of more than 12,000 entities registered on the FSPR, there are over

2,000 entities[2] that are registered only for services that do not require licensing. This option may require many of these entities to become licensed.

Benefits

Offshore and New Zealand firms would be required to undergo additional vetting before they can register on the FSPR. This is likely to reduce incidences of misuse of the FSPR.

Requiring licensing of all FSPs would promote confidence in New Zealand's regulatory regime for financial services and in legitimate FSPs registered on the FSPR. Consumers could be confident that those registered on the FSPR are licensed and monitored under New Zealand law.

Costs/risks

A licensing regime would impose significant additional costs for legitimate FSPs, creating a barrier to entry and reducing competition in the market. At present, there are a number of services which registered entities can provide without holding a licence. They include being a creditor under a credit contract, changing foreign currency or operating money or value transfer service. Both New Zealand and offshore-controlled entities of these services would incur a number of direct and indirect additional costs associated with the licensing process and ongoing regulatory requirements.

There would also be additional costs to the FMA who would be required to expand its licensing processes. Although much of this could be recovered from licensing fees to be paid by applicants.

The costs associated with even a relatively light "fit and proper" licensing system for all FSPs would be significant and would only be justified if there were a broader public benefit in imposing further requirements. It would be disproportionate to license all New Zealand FSPs in order to address the identified misuse problem with offshore-based FSPs.

Other complementary measures

The Options Paper suggested a number of other options that may assist with reducing misuse of the FSPR and misunderstanding of what it means to be "registered". Those options included requiring applicants to provide information that they are licensed and/or supervised in their home jurisdiction and any jurisdictions they are proposing to provide services to; prohibiting firms from referring to their New Zealand registered status in any offshore advertising.

It was considered that those measures alone would not be sufficient for addressing misuse of the FSPR. However, further work on the issue will include whether these options could complement the preferred option in order to address misuse and misunderstanding.

[2] Some of these entities may in fact already hold a licence which is not captured on the FSPR. This figure does not include individual financial advisers that are not currently required to be licensed, as the Financial Advisers Act review has proposed that all financial adviser firms be licensed.

Assessment of options against criteria (relative to the status quo) and summary of cost/benefit/risk analysis

	Reduced misuse of the FSPR and uphold the reputation of New Zealand's FSPR regime	**Appropriately capture scope of entities on the FSPR**	**Facilitation of fair, efficient and transparent financial markets**	**Not impose unnecessary costs to legitimate businesses**
Option 1: Status quo	Misuse of the FSPR would likely continue. ~	~	~	~
Option 1A: Status quo with additional registration fees	Entities who intend to misuse the FSPR might be deterred from applying due to cost, unless they have significant disposable resources. FMA better resourced to efficiently deal with misuse cases. ✓	~	~	Depending on the criteria for defining when the fee is payable, additional costs would not be imposed on genuine New Zealand businesses. However, a fee could also be a barrier to entry to some smaller genuine businesses. ~
Option 2: Amend the FSPR registration requirements to require a stronger connection to New Zealand (preferred option)	Likely to deter as would preclude offshore entities who are not providing services to New Zealanders or from New Zealand. Clearer authority to decline registration or deregister. Resources still required to verify new scope. ✓✓	More difficult for offshore-controlled firms to register as need to have a genuine connection to New Zealand. Risk of some uncertainty or unintended consequences in terms of which entities are captured. Further work, including industry consultation, to minimise unintended consequences. ✓	~	Genuine New Zealand businesses are unlikely to bear additional costs. ~

Option 3: Limit public access to all or parts of the FSPR or convert FSPR into a non-public notification list	Reduces the benefits of registration for offshore-controlled firms as entities would be less able to leverage off reputation as no public government website. ✓	May provide a less robust account of entities offering financial services to New Zealanders or from New Zealand as less incentive to keep information up-to-date. ✗	Limits public access to information about FSPs, including check if an entity is complying with a requirement to be registered on the FSPR. Likely still meets New Zealand's international obligations under the FATF. ✗	~
Option 4: Require all FSPR-registered entities to be licensed	Would be subject to pre-vetting before being registered. ✓✓	This would not change who was captured by the FSPR but would change what is required of those registered. ~	~	Disproportionate to license all FSPs in order to address misuse problem with offshore-based FSPs. Creates a barrier to entry and decreases competition. ✗✗

Key
✓✓ Significant improvement on the status quo
✓ Improvement on the status quo
✗ Deterioration relative to the status quo
✗✗ Significant deterioration relative to the status quo
~ No impact relative to the status quo
Shaded row = preferred option

Part B: Redress for consumers

Status quo and problem definition

Under the FSP Act, all financial service providers who provide services to retail clients are required to be members of an approved dispute resolution scheme.

There are currently four approved schemes, all of which compete with each other for membership: the Banking Ombudsman Scheme (BOS), Insurance and Financial Services Ombudsman (ISFO), Financial Services Complaints Ltd (FCSL) and the Financial Dispute Resolution Service (FDRS). Each of the schemes has historically had different specialities, e.g. the IFSO focusing on insurance and the BOS focusing on banks, which has meant they were better equipped to deal with their particular member's issues. However, this has changed with the IFSO opening up its membership to a wider range of financial advisers in 2010.

The purpose of the schemes is to provide an avenue for consumers who have a dispute with their FSP to seek redress in a quick, efficient and cost-effective manner. Without dispute resolution, consumers' primary recourse for redress would be through the Courts. The particular procedures and jurisdiction of each scheme are set out in their individual scheme rules, which are approved by the Minister of Commerce and Consumer Affairs. The Minister can also recommend that Regulations be made that prescribe provisions to be implied into the scheme rules.

Related topic: refer to the RIS for the review of the Financial Advisers Act 2008 on enforcement for a discussion of options relating to the use of information arising from consumer disputes by the FMA as part of its ongoing monitoring and enforcement of conduct obligations.

Overall, we heard the dispute resolution regime is functioning well though there are opportunities to address minor concerns

The dispute resolution regime appears to be functioning well. MBIE largely received positive feedback about the regime and the schemes and their role in improving consumer access to redress. The proposed obligation on financial advisers to put the consumer's interests first also means that consumers will be able to seek redress in an increased number of circumstances. Notwithstanding this, there are opportunities to further promote access to fair and effective redress, by dealing with concerns about some inconsistent rules and low levels of public awareness (see below).

Other problems and associated options that do not appear in this RIS

Throughout the Issues Paper and Options Paper consultations, MBIE sought feedback on the effects of the existence of multiple schemes. Given the current lack of evidence of negative impacts of competition, it is not included as a problem in this RIS. MBIE will continue to examine the performance of the multiple scheme model as part of its ongoing role in administering the FSP Act.

In the Options Paper, MBIE asked whether professional indemnity insurance should be mandatory for all financial service providers. Our research has indicated since that professional indemnity arrangements are common place and there is no evidence to suggest that consumer redress has been compromised due to a lack of adequate professional indemnity cover. Given the current lack of

evidence of a link between professional indemnity insurance and access to redress, it is not included as a problem (with associated options) in this RIS.

MBIE has also consulted on whether the current $200,000 cap for disputes is a barrier to the resolution of some disputes. MBIE found insufficient evidence to show that the current cap is a barrier to effective dispute resolution. Moreover, an increase could result in dispute resolution schemes being required to assess technical evidence beyond current expertise and resourcing levels (i.e. there is a reason why these matters are passed to the Courts). It is therefore not included here.

Jurisdictional differences between schemes may be limiting access to redress in some circumstances

Under the status quo, with dispute resolution schemes setting their own (slightly different) rules, situations can arise where a consumer's access to redress is limited.

Firstly, differences in scheme rules could result in a consumer losing access to redress if the provider moves to a different scheme. For example, if a provider terminates their membership of a given scheme after the conduct in question, but before a complaint is made, the current rules are unclear as to whether the old or new scheme (or either) has jurisdiction to handle the consumer's complaint. Under this scenario, it will also be unclear to the consumer which scheme has jurisdiction of the complaint, and hence where to go for redress. This confusion and inconsistency is confirmed from reading the different scheme rules and discussions with the dispute resolution schemes.

Secondly, there is a risk that differences in rules could create an incentive for a financial service provider to choose one scheme over another in their own interest rather than in the interest of their customers. For example, the time frame in which a complaint must be received by the scheme after the complainant receiving a decision notice or deadlock notice varies between schemes, and whether or not the scheme might consider a complaint outside these time limits may also vary between schemes. We are also aware of instances of different schemes applying the $200,000 cap differently, for example, some schemes considering higher value claims provided that the amount claimed is less than $200,000.

Consumers may not be sufficiently aware of complaint handling processes and the dispute resolution schemes

For consumers to seek a low cost remedy if things go wrong and know that financial service providers will be held to account, they must be aware of the dispute resolution mechanisms available to them, and the general process through which they may progress a dispute with a financial service provider.

The Code of Banking Practice obliges banks to provide information about the BOS to their customers including providing information on the bank's website. Other annual reports outline some scheme's consumer awareness initiatives such as distributing information sheets and brochures, media interviews and website video clips.

However, respondents to the Issues Paper Consumer Questionnaire expressed the need for publicity around dispute resolution schemes and that the financial service providers should be required to openly discuss them rather than simply disclose them. The FDRS' annual report (1 July 2014 – 30 June 2015) states that "consumer awareness of financial dispute resolution schemes and ability to make complaints to their provider remains very low".

Although details of what a consumer should do if something goes wrong would be included in the disclosure statement provided to consumers before advice is provided, the relevant details of the disclosure may be forgotten by the consumer should a problem arise down the track. Some FSPs include details on how to make a complaint on their websites.

Objectives

Any measures should:

- promote consumer access to fair and effective redress;
- contribute to the achievement of best practice regulatory design principles; and
- result in a positive net assessment of costs, benefits and risks.

Options and impact analysis

Option 1: Regulations made to align certain scheme rules *(preferred option)*

Under this option Regulations would be made to align scheme rules where concerns have been raised about their inconsistency, in particular:

- to address uncertainty about who has jurisdiction of a complaint should a participant change schemes;
- to address differences in rules that could create an incentive for a financial service provider to choose one scheme over another in their own interest, such as the time frame in which a complaint must be received by the scheme after the complainant receiving a decision notice or deadlock notice.

If this option was progressed, MBIE would consult further with the schemes on the specific rules that need to be aligned.

This could be done under existing Regulation making powers.[3]

Benefits

This option would improve access to redress for consumers.

Costs/risks

Dispute resolution schemes would bear a low one-off cost of updating their scheme rules and associated material (e.g. their websites).

Option 2: Obligation to provide information about dispute resolution at time of complaint *(preferred option)*

Under this option, Regulations would be made to ensure that financial service providers are required to provide to consumers, at the time of their complaint, information about the providers' complaints-handling process and how to raise a complaint with the dispute resolution scheme.

[3] Section 79(1)(cb) of the FSP Act allows regulations to be made prescribing provisions to be implied into rules about dispute resolution schemes.

Benefits

This option would remind consumers of the availability of dispute resolution at the time the complaint arises, thereby improving access to redress for consumers.

Costs/risks

Financial service providers would bear the costs of updating their processes to ensure that consumers are given information about their complaints handling processes.

Assessment of options against criteria (relative to the status quo) and summary of cost/benefit/risk analysis

	Promote consumer access to fair and effective redress	Contributes to the achievement of best practice regulatory design principles	Net assessment of costs, benefits and risks
Option 1: Regulations made to align certain scheme rules	Improvement on status quo. ✓ ✓	Expected to improve consumer access to redress compared to the status quo. ✓	Overall, the alignment of scheme rules is expected to improve consumer access to redress, with relatively low one-off costs to the schemes.
Option 2: Obligation to provide information about dispute resolution at time of complaint	Improvement on status quo. ✓ ✓	Expected to improve consumer access to redress compared to the status quo. ✓	Overall, the alignment of scheme rules is expected to improve consumer access to redress, with relatively low one-off costs to providers.

Key
✓✓ Significant improvement on the status quo
✓ Improvement on the status quo
× Inferior to the status quo
~ No impact relative to the status quo
Shaded row = preferred option

Part C: Consultation, Implementation, and Monitoring

Consultation

MBIE has carried out public consultation on these issues

MBIE sought submissions on this issue as part of a public consultation:

- An Issues Paper on the FA Act/FSP Act review, for which 172 submissions were received.[4] 248 respondents completed the questionnaire attached to a consumer brochure;
- An Options Paper, for which 149 submissions were received.[5] 545 respondents completed the questionnaire attached to the consumer brochure.

Thirty eight submissions were received from the Options Paper in relation to the misuse of the FSPR. Submitters included a range of financial service providers such as financial advisers, banks and insurers. Law firms, consumer representatives and financial dispute resolution schemes also submitted.

Most submitters supported some combination of imposing more stringent registration requirements, amending the territorial scope of the FSP Act to require registered entities to have a closer connection to New Zealand, and providing additional grounds for de-registration. MBIE's preferred option reflects this.

The majority of submitters were opposed to limiting public access to all or parts of the FSPR, or converting the FSPR into a non-public notification list. Those submitters generally considered that a public register provided transparency and information.

Consistent with the preferred options in Part B, submitters generally supported greater consistency between dispute resolutions scheme rules and increasing consumer awareness of schemes.

MBIE will follow up with interested parties as the preferred options are developed.

Implementation plan

The Bill and regulations are expected to come into force in 2017. There is expected to be a transition period to comply with the new requirements (including for existing registered FSPs).

[4] See http://www.mbie.govt.nz/info-services/business/business-law/financial-advisers/review-of-financial-advisers-act-2008/submissions-received .

[5] See http://www.mbie.govt.nz/info-services/business/business-law/financial-advisers/review-of-financial-advisers-act-2008/submissions-received-on-the-options-paper.

The successful implementation of the preferred option in relation to misuse of the FSPR is reliant on the FMA and Companies Office (the office of the Registrar) developing processes for checking and verifying that applicants meet the amended scope of the FSPR. MBIE will work alongside the FMA and Companies Office to do so. It is anticipated that this would build on existing processes in relation to the exercise of FMA's powers to direct that the Registrar de-register an entity or decline a registration application.

Monitoring, evaluation and review

As with the proposed changes to the FA Act, the impact of the proposals in this RIS will be monitored by MBIE on an ongoing basis as part of MBIE's ongoing regulatory stewardship obligations. Evidence as to the effectiveness of the FSP Act is continuing to evolve so MBIE will continue to monitor new reports emerging from industry, FMA and overseas governments to ensure the entire regime remains fit for purpose.

Data is already collected by the Registrar and FMA on the number of entities who are registered, deregistered and declined registration. This will continue to be a valuable source of information to assist in monitoring levels of misuse and attempted misuse of the FSPR.

MBIE will also continue to examine the performance of the multiple dispute resolution scheme model as part of its ongoing role in administering the FSP Act.