

## How to have your say

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

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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?

We agree and whilst the 5 “barriers” highlighted are evident it has not affected the volume of business being transacted since the implementation of the FAA, in either the Category 1 or Category 2 markets. We feel that advisers, both AFA’s and RFA’s have worked diligently at upskilling themselves and that “advice” for consumers has improved .

However we would attest that the major barrier to achieving the outcomes of “access to advice” and “improving consumer’s financial outcomes” has a major shortfall in the promotion of financial advice generally. Various surveys still show reluctance by consumers to seek out advice and to a degree a continued mistrust of financial advisers.

Whilst the CFFC is doing work in the area of Consumer Financial Literacy there needs to be more promotion of the financial advice industry/ profession.

We believe the barriers can be addressed under two issues, resolving consumer confusion and changing advice or sales behaviour. We have discussed how our submission will assist in the attached paper, “Addressing the outcomes and barriers. “

2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.

An additional and somewhat obvious barrier is the number of AFA’s in the market. Originally it was thought that AFA’s would number close to 5,000 but the number has never climbed above 2,000. The major reason for the reduced number in our view has been the regulatory process barriers and costs. Prior to the FAA’s implementation there were many more advisers providing advice on what are now Cat 1 products. The costs and complexity of complying has seen many step back from progressing to AFA status.

## Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why? Please read this in conjunction with our paper on “Addressing the Outcomes and Barriers” at question 35. Our “most effective” options are:

### 4.1 Restrictions on who can provide certain advice

We agree with Option 1 – removal of class/personalised distinction.

We agree with Option 2 – removal of distinction between Category 1 and 2 products

We do not agree with Option 3 – which is the introduction of a proposed EFA

We agree with Option 4 – requiring a client to opt in but do feel that this is still a grey area to implement.

#### 4.2 Advice through technological channels

We agree with Option 1 – (licensed entity) but also refer to our response in question 9

#### 4.3 Ethical and Client Care obligations

We agree with Option 1 – Extend ethical requirements to all financial services.  
We agree with Option 2 – Clearly distinguish between sales and advice and would refer you to our Spectrum of Advice chart as part of our answer to Q 35.

#### 4.4 Competency obligations

We agree with Option 1 – minimum entry requirements  
We agree with Option 3 – mandatory and structured CPD ( in combination with individual licensing )

#### 4.5 Tools for ensuring compliance with ethical and competency requirements.

We agree with Option 1b – Greater role for industry bodies – see our paper on “Addressing the Outcomes and Barriers” at Q 35  
We agree with Option 2B – Individual Licensing supported by The Code, Code Committee and Disciplinary Committee

#### 4.6 Disclosure

We agree with Option 2 – making disclosure more meaningful for consumers.

#### 4.7 Dispute resolution

We agree with the only option here

#### 4.8 Finding an Adviser

We agree with Option 1 – but make the comment that in order for this to work effectively there must be sensible dialogue with adviser bodies and industry and consumer groups.

4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?

The final costs to all 3 parties mentioned will depend on how extensive, or not, the changes are. As each “party” will be affected cost wise in different ways it is impossible to estimate. Similar comments apply to benefits

5. Are there any other viable options? If so, please provide details.

YES – All advisers giving Financial Advice to be qualified to a relevant minimum level 5 Certificate irrespective of current status and be individually licenced by the FMA for their ethical behaviour but may be entity licensed for practice, compliance and reporting purposes. All financial advisers could offer advice in areas they are competent and qualified in and all are covered by minimum ethical standards.

Remove all sales people from the FAA as they are not advising, and include them under the FMCA via their licenced entities, holding the directors of the entities in account for the ethical behaviour of their sales people.

These “sales people” could sell any product within the employers stable. They would have Competency Obligations governed by existing Consumer legislation. The entity would be

required to 'put right' for consumers who have been sold a product that is not fit for purpose.

These "sales people" would not be individually licensed and the responsibility for them would fall to the Licensed entity under the FMCA incorporating existing QFE's).

Licence appropriate professional bodies (LPB). These bodies would provide best practice guidance templates, consult on competency level requirements, enable career pathways and conduct peer reviews of advisers' processes. This is no different to the similar requirements that exist under current QFE rules.

In return for the LPB's providing these services in particular peer reviews members receive reduced compliance costs.

See attached diagrams.

#### 4.1 Restrictions on who can provide certain advice

6. What implications would removing the distinction between class and personalised advice have on access to advice?

Consumer experience would be improved and confusion removed by removing the distinction.

7. Should high-risk services be restricted to certain advisers? Why or why not?

No – there is already confusion in the market for consumers (RFA/AFA/QFE world) and the introduction of a new designation (EFA) would continue to confuse. In the absence of a clear definition of "high risk services" this is impossible to answer definitively. However advice on any service should be restricted to those that are competent and qualified to provide it. The onus should be on the adviser to identify whether they are sufficiently competent and qualified, and refer on if they are not. The same would apply for sales people.

8. Would requiring a client to 'opt-in' to being a wholesale investor have negative implications on advisers? If so, how could this be mitigated?

No, however the situation for institutional investors would need to be addressed. The balance point must be a consideration of potential consumer harm.

#### 4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?

There needs to be individual ethical licensing of an adviser, who gives advice, or a director of an entity where no adviser exists. All forms of advice should be held to the same standard of ethics so any platform should be able to show they meet this requirement. The current Code of Conduct would have to include any advice provided in this manner and add other standards that would apply to the delivery of technology financial advice choices.

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

There should not be any difference between the various forms of delivery of financial advice. However personal advice is face to face and technology /robo advice is remote. There will be a need for some specific benchmarks for technology advice to comply with

11. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?

YES - Robo-advice systems should simply assist an adviser to deal efficiently with smaller clients, not replace personal advice. Systems such as data collection and analysis with completion done by a real person. Experience overseas (US and Australia) has highlighted concerns around this form of advice delivery suggesting an increased proportion of the promoters product which creates a significant conflict of interest.

### 4.3 Ethical and client-care obligations

12. 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?

Clients' interests should always come first before advisers, sales organisations or product providers.

The obligation therefor must be to have all advisers comply with the Code of Conduct rules: Code Minimum Standards of Ethical Behaviour 1-5  
The Financial Advisers Disciplinary Committee (FADC) should also be extended to all advisers. The issue at present we believe is that there is not enough resource in the FMA to conduct a regular and therefore meaningful monitoring requirement and if there is an adoption in the review for all advisers to comply with the Code of Conduct then the problem only grows. Currently the bi-annual AML/CFT audit process for those AFA's required to complete has seen a number of AML specialist businesses established. This would suggest that new businesses could be established for the audit of all AFA's over a similar period. FMA would set the rules and standards of required audits and also "licence" those businesses who wished to focus in this area,

We would also suggest that appropriately Licenced Professional Bodies would also be able to provide this service. This would be no different to the current QFE situation where the QFE's are responsible for the advice given under their entity.

13. What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?

While sales is an integral part (implementation) of an advice process and shouldn't therefore be separated out, it has become very difficult to identify the "bright line" between the two. Acting in the client's best interests therefore a sale would be defined as when a person offers a product from their employer or product provider with no alternatives. We therefore suggest that following the structure proposed in Q5 above the FMA would find it much easier to monitor these "sales" activities by having all such salespersons operating under an employer Entity Licence and the FMC Act. Obligations for sales people should be the current consumer legislation such as Fair Trading Act, Consumer Guarantee Act and FMC Act. A client would need to be given specific and understandable information that they were not receiving advice. We have included in this submission a "Spectrum of Advice figure" where we have attempted to provide a clearer picture of where sales and advice sit.

14. If there was a ban or restriction on conflicted remuneration who and what should it cover?

The problem with this question is to examine just what conflicted remuneration is. There are many ways that remuneration is paid to those who distribute financial products and it would be a complicated process to have a set of rules. It would be far more effective to ensure that simple disclosure of remuneration is made to consumers in a manner that is understandable. Discussions we have been involved in with our members has had the emphasis clearly on advisers' qualifications, on-going training and conduct. It is felt strongly that ensuring that all advisers are operating within a code of conduct and in an ethical manner is more important than this question. It should also be noted that in many cases where clients purchase retail products without an adviser involved there is little or no difference in the product pricing.

#### 4.4 Competency obligations

15. How can competency requirements be designed to lift capability, without becoming an undue barrier to entry and continuation in the profession?

Competency requirements should never be an issue for any real profession. The current minimum requirements of NZCFS Level 5 should simply be that, a minimum and every professional adviser should meet this requirement. All Financial Advisers should also be required to complete the necessary CPD requirement. We do recognise however that there may be a very large number of RFA's who may be required to attain a Level 5 qualification. The Code Committee needs to be able to consider how these RFA's move to a new financial adviser competency level and it may be a mixture perhaps of an assessment examination for current "experienced" RFA's and or ensuring that CPD requirements for a period contain appropriate content that would allow advisers to move to the required level.

16. 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?

Currently an AFA has minimum entry requirements, Level 5 ( or equivalent ) and these need to be extended to the current RFA status. As we have mentioned in Q15 that we recognise that perhaps there is a large number of existing RFA's who should have a different journey to Level 5 status. For new advisers we feel that they should have a more prescriptive learning calendar that brings them to Level 5 over a shorter period. All advisers should be required to show educational competence in all of the areas they advise.

#### 4.5 Tools for ensuring compliance with the ethical and competency requirements

17. 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?

There would only be a benefit in licencing if all those advising needed to be licenced at an individual level as this is how a professional is managed.

There would still be an opportunity for an entity licensing regime where an adviser business (Entity) could take control of the advisers businesses compliance practices. This would see some savings in time and money for individual advisers. But we must reiterate that the purpose of the FAA - "to promote the sound and efficient delivery of financial adviser and broking services, and to encourage public confidence in the professionalism and integrity of financial advisers and brokers" is about individual responsibility and should not be lessened.

Broadening entity licensing to entities only would simply create many more QFE's and there is no evidence to date that QFE's are benefitting consumers.

The licencing requirements should initially align with the current requirements for authorisation, to require more would become far too burdensome.

18. What suggestions do you have for the roles of different industry and regulatory bodies?

Our paper attached to this submission – Addressing the outcomes and barriers" makes mention of professional bodies in regards the future and a transition period. We are not suggesting that membership of professional bodies be compulsory but we do consider they should have a role in monitoring – see our comments in Q 12.

#### 4.6 Disclosure

19. What do you think is the most effective way to disclose information to consumers (e.g. written, verbal, and online) to help them make more effective decisions?

We would agree with Option 1 – particularly a "shortened" version.

Online - the current FSPR needs a complete review. This register should be a prime facility for consumers to search, identify and choose an adviser from. This register should contain more information on an adviser for it to be an effective tool for consumers and should therefore contain information on qualifications, areas of competence and membership of a professional body.

Verbal - Any verbal disclosure should only be seen as part of an adviser's verbal communication with a client on a variety of issues but should never replace a written disclosure

Written – whilst it is suggested in the Options paper that there will likely be costs associated with redrafting disclosure document this would be welcomed by advisers at large. More importantly however is to have a disclosure document that is meaningful and succinct with information and results in it being easier for a client to interpret.

20. Would a common disclosure document for all advisers work in practice?

We support options 1 and 2 that have all advisers with the same disclosure requirements. This would be easier for consumers to compare – not only fees and commissions but also the services offered.

Sales people should also have to have a disclosure document that outlines how they work and who they are working for along with how they and or their employer gets paid.

21. How could remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?

Remuneration is extremely difficult to articulate consistently in any meaningful way when you have differing models of distribution and standards of advice. The simplest way given this is to provide all benefits received by either the individual or the employer together. This would gain equilibrium between both employed advisers/salespeople such as bank staff and self-employed advisers, tied or independent.

#### 4.7 Dispute resolution

22. Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?

There are a few occasions that come to mind when the product provider and the adviser are with differing schemes, however this simply makes the management of any complaint slightly more complex. To our knowledge we are not aware of any poor outcomes.

23. 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, there should be no opportunity to arbitrage between schemes, cover limits should be standardised at a defined optimum level.

24. Should professional indemnity insurance apply to all financial service providers?

No, not as a mandatory requirement, it should be up to the individual adviser or business.

#### 4.8 Finding an adviser

25. What is the best way to get information to consumers? Who is best placed to provide this information (e.g. Government, industry, consumer groups)?

It is abundantly clear from the various consumer surveys that the public do have issues around finding and identifying advisers.

Again we repeat the purpose of the FAA - "to promote the sound and efficient delivery of financial adviser and broking services, and to encourage public confidence in the professionalism and integrity of financial advisers and brokers."

What we have at present is not working and the Government should engage with advisers associations, other industry groups and consumer groups to improve on what is available at present and develop a better outcome.

26. What terminology do you think would be more meaningful to consumers?

To move from Authorised Financial Adviser, Registered Financial Adviser and QFE Adviser to more descriptive titles could create an even more confusing landscape for consumers if we were to have:

Insurance Advisers – what discipline in a wide field.

Investment advisers and possibly "brokers" and what's the difference?

Financial Planners – describing their overall spread of advice

The list could go on. We would suggest that an adviser should only provide advice in their area of competence but the terminology best left to the Code Committee

#### **4.9 Other elements where no changes are proposed**

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

27. Do you have any comments on the proposal to retain the current definitions of 'financial adviser' and 'financial adviser service'?

Generally Yes but I would like to see advice about a "course of action" included as advice somehow, it doesn't always mean a financial product is purchased or disposed of.

##### **Exemptions from the application of the FA Act**

28. 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.

We can see no reason why an accountant or lawyer who went beyond "discuss and consider" situations and made specific recommendations about an investment portfolio or insurances should not be subject to AFAs' requirements.

This would obviously require some work to be done at the Law Society and NZICA but would suggest that this is definitely an issue and that you look at Australia and the issues they are currently going through along with ASIC's requirement for Accountants giving financial/investment advice needing to be licenced. We would certainly support a "one rule for all participants who provide financial advice"

In regard evidence – we have collected none other than referring to the high profile and publicly known recent cases where clients have lost significant monies through professionals who are "exempt.

##### **Territorial scope**

29. 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?

It is difficult to determine without knowing if international law requires residency or tax residency in any particular country to be covered by the laws of that country, let alone the ability to gain any sort of redress across borders. This is probably best dealt with via IOSCO and agreements through that entity.

Robo-advice is not appropriate to be provided on its own unless it is through and in support of a licenced adviser. See Q11 and 17.

30. How can we better facilitate the export of New Zealand financial advice?

Our opinion is that any adviser, whether a NZ adviser advising clients offshore or an overseas adviser advising clients here, should meet the educational and ethical requirements of the jurisdiction in which the client resides, as this will best protect the consumer.

**The regulation of brokers and custodians**

31. Do you have any comments on the proposal to retain the current approach to regulating broking and custodial services?

The current regulation is adequate in our view.

**Chapter 5 – Potential packages of options**

In answering the following question we have prepared the following tables.

In answering question 32 -35 we considered the outcomes and barriers you raised in your options paper. At the beginning of our submission we have condensed our thinking in terms of addressing the barriers and outcome you outline.

While package 3 is our preferred option, we have identified and make comments on several changes which in our view impact all stakeholders – Consumers, advisers, QFE's, FMA and MBIE.

**Table 1: Benefits to Consumers**

<b>Suggested changes to Package 3</b>	<b>Benefit to consumers</b>
<p>All advisers are individually licensed</p> <p>Within a license it should be possible for advisers to contract out to an entity (if they so choose) their compliance, practice and reporting functions, while remaining individually accountable for their ethical behaviour.</p> <p>Where an entity does not employ an adviser, then the director should be required to be ethically accountable.</p>	<p>More advisers on register to choose from with wider scope or type of advisers than current</p> <p>Ability to access advice under various business models but still have the assurance of their adviser or entity, be held to account for the ethical behaviour.</p> <p>Consumers can look in membership of an LPB, or other entity, for an adviser, if the entity demonstrates its membership offers a consistent and higher level of compliance and practice through membership</p>
<p>Licencing of Professional Bodies (LPBs) within the entity licence structure.</p> <p>This would require the regulator to set and monitor a set of standards, for example current QFE licensing.</p>	<p>Public assured of higher professionalism of the financial services sector.</p> <p>Lifting standards and building a profession, getting the industry to act accordingly will be the biggest thing to improve confidence in advice.</p> <p>The more professional that consumers see advisers, the more likely they will seek advice.</p>
<p>Advisers will only be able to provide advice within their area of competency, which must be backed by a recognised level of qualification, and must ensure ongoing competency thru the CPD process.</p>	<p>Public assured that all advisers have both a minimum level of qualification and maintain competence standard, which they are accountable to.</p>

<p>One 'Standards and Guidance' Committee.</p> <p>Currently this exists as the Code committee and FMA.</p> <p>These roles could be combined into the Code Committee, ideally in the future into a committee that includes a formal relationship with Licensed Professional bodies.</p> <p>However this evolution would require some development and demonstration of ability before it could operate effectively.</p>	<p>Public have better outcomes with the alignment of principle based and practice based guidance to advisers.</p> <p>Having all advice models feed into guidance will enable more robust and responsive approach to standard setting.</p>
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**Table 2: Benefits to Advisers**

<b>Suggest change to Package 3</b>	<b>Benefit to advisers</b>
<p>Add to definition of financial advice on page 49</p> <p><i>'as those able to provide a range of financial advice services, from advice on a discrete matter to full financial plans'</i></p> <p>with criteria:</p> <p>Financial advice always entails the element of <i>suitability</i> for the customer, whether the consumer is considering a financial product, a financial service or a <i>course of action</i> involving financial assets and or products.</p> <p>Advisers will only be able to provide advice within their area of competency, which must be backed by a recognised level of qualification, and must ensure ongoing competency thru the CPD process.</p> <p>This would not mean that licenced financial advisers could not perform non-advice services for clients, however they would be required to provide the same disclaimer for the services as a salesperson.</p>	<p>One class of adviser creates an even playing field for all advisers</p> <p>Create an 'even playing field' for all advisers regardless of employment status and establish universal entry standards with regard to minimum qualifications</p> <p>Clearer career and qualification pathways within financial services attract new opportunities and new entrants.</p> <p>Increase in uptake of young people into financial services certificates and tertiary qualifications.</p> <p>All advisers answerable to the same Code of Conduct and standards</p> <p>Advice definition is widened to include advice regarding <i>courses of action</i> rather than just product or services.</p> <p>Clear delineation of where advice starts and sales ends resulting is less antagonism between smaller advisers and practices of QFE advisers.</p>

<p>Define "salesperson" within the FMC Act, and control conduct under that Act and the four guarantees of Consumer Guarantees Act 1993 Care and Skill, fit for purpose, reasonable time, price agreed or reasonable. Accept page 49 definition of 'salesperson' with important deletion of reference to suitability of product sold for the customer- to 'product being sold is fit for purpose'.</p> <p>To ensure the behaviour of salespeople is appropriate, entities should have ethical accountability at director level and be held to "put right" the consumer where they have been mis-sold.</p>	<p>FA Act is very much simplified only deals with financial advisers.</p> <p>Entities and their employees are held accountable through FMC Act licence, and consumer protection laws, if they are salespeople, FAA if they are advisers.</p> <p>Allows adviser businesses to retain and train sales people purely for that task and provide added access to product and a new business opportunity.</p> <p>Creates the opportunity for stepped career entry and advancement.</p>
<p>All advisers individually licensed.</p> <p>Within a license it should be possible for advisers to contract out to an entity (if they so choose) their compliance, practice and reporting functions, while remaining individually accountable for their ethical behaviour.</p> <p>Where an entity does not employ an adviser, then the director should be required to be ethically accountable</p>	<p>Ability to be a sole trader or part of an entity as it suits the range of services or products you wish to offer.</p> <p>Ability of enjoy economy of scale or skill to support the advice activity.</p> <p>Licence regime much simplified and covers all areas of financial advice.</p> <p>Licence costs also depending on whether the compliance and accountability role is taken direct by the FMA or managed by an entity – e.g. QFE or LPB* (if the adviser is a member).</p> <p>Note: room to reflect degree of risk within the licence fee. The true cost to the FMA where direct monitoring and compliance is required relative to empowering a n entity to conduct monitoring and compliance and report back to the FMA.</p>
<p>Licensing of Professional Bodies (LPBs) within the entity licence structure.</p> <p>This would require the regulator to set and monitor a set of standards, for example current QFE licensing.</p>	<p>Adviser practice will improve because of direct involvement in peer review and monitoring, Advisers will become their own source of best practice, overseen by the FMA, who the standard and monitor the licensee.</p> <p>Reduced duplication of compliance time and costs to advisers for CPD.</p>

	<p>If there was a change to the current exemptions, other professionals (Accountants, lawyers, property advisers) could also be licenced through their entities or LPB, with FMA oversight and accountability thru their entity.</p>
<p>One 'Standards and Guidance' Committee. Currently this exists as the Code committee and FMA.  These roles could be combined into the Code Committee, ideally in the future into a committee that includes a formal relationship with Licensed Professional bodies.  However this evolution would require some development and demonstration of ability before it could operate effectively.</p>	<p>LBP provide opportunity for practitioners to input directly in standards, best practice and guidance notes – leading to more workable, relevant standards.  Higher level of sector input to professional standards.</p>

**Table 3: Benefits to QFE's, or Entities**

<b>Suggested changes to Package 3</b>	<b>Benefit to QFEs</b>
<p>Add to definition of financial advice on page 49</p> <p><i>'as those able to provide a range of financial advice services, from advice on a discrete matter to full financial plans'</i></p> <p>with criteria:</p> <p>Financial advice always entails the element of <i>suitability</i> for the customer, whether the consumer is considering a financial product, a financial service or a <i>course of action</i> involving financial assets and or products.</p> <p>Advisers will only be able to provide advice within their area of competency, which must be backed by a recognised level of qualification, and must ensure ongoing competency thru the CPD process.</p> <p>This would not mean that licenced financial advisers could not perform non-advice services for clients, however they would be required to provide the same disclaimer for the services as a salesperson.</p>	<p>Allow clarity in business models around sales versus advice services.</p> <p>Clear career pathways and opportunities within the QFE and help recruitment of new graduates.</p> <p>Assist entities in complying with the FMA's strategic risk outlook on replacement business.</p>

<p>Define “salesperson” within the FMC Act, and control conduct under that Act and the four guarantees of Consumer Guarantees Act 1993 Care and Skill, fit for purpose, reasonable time, price agreed or reasonable. Accept page 49 definition of ‘salesperson’ with important deletion of reference to suitability of product sold for the customer- to ‘product being sold is fit for purpose’.</p> <p>To ensure the behaviour of salespeople is appropriate; entities should have ethical accountability at director level and be held to “put right” the consumer where they have been mis-sold.</p>	<p>Simplify training and accountability requirements when in a sales situation.</p> <p>Reduction of risk and compliance costs in the no-advice space of selling financial products as no requirement to assess product suitability only ‘fit for purpose’ test.</p>
<p>Licencing of Professional Bodies (LPBs) within the entity licence structure.</p> <p>This would require the regulator to set and monitor a set of standards, for example current QFE licensing</p>	<p>QFEs could hold their employees accountable, and /or through the LPB to professional standards.</p> <p>QFE’s to contract out some of their compliance and monitoring costs for their advisers, resulting in a reduction in internal compliance costs.</p>

**Table 4: Benefits to FMA and MBIE**

Suggested changes to Package 3	Benefit to FMA and MBIE, Companies office
<p>Add to definition of financial advice on page 49</p> <p><i>‘as those able to provide a range of financial advice services, from advice on a discrete matter to full financial plans’</i></p> <p>with criteria:</p> <p>Financial advice always entails the element of <i>suitability</i> for the customer, whether the consumer is considering a financial product, a financial service or a <i>course of action</i> involving financial assets and or products.</p> <p>Advisers will only be able to provide advice within their area of competency, which must be backed by a recognised level of qualification, and must ensure ongoing competency thru the CPD process.</p>	<p>Greater legislative consumer protection through:</p> <p>Simplified and focussed FA Act for financial advisers.</p> <p>Alignment of the FMC Act to existing and Consumer Act provisions as it applies to sales of financial products or service.</p> <p>One clear qualification process and entry test for all financial advisers.</p> <p>Clear career and qualification pathways for new people aspiring to study to entry financial services in New Zealand.</p>

<p>This would not mean that licenced financial advisers could not perform non-advice services for clients, however they would be required to provide the same disclaimer for the services as a salesperson.</p>	
<p>Licencing of Professional Bodies (LPBs) within the entity licence structure.</p> <p>This would require the regulator to set and monitor a set of standards, for example current QFE licensing</p>	<p>Reduce monitoring regime and costs for the FMA</p>
<p>One 'Standards and Guidance' Committee.</p> <p>Currently this exists as the Code committee and FMA.</p> <p>These roles could be combined into the Code Committee, ideally in the future into a committee that includes a formal relationship with Licensed Professional bodies.</p> <p>However this evolution would require some development and demonstration of ability before it could operate effectively.</p>	<p>Reduced FMA costs to monitor adherence to Code Standards and guidance notes</p> <p>Aligns with FMA's strategic risk outlook on replacement business and provides a solution.</p> <p>More relevant guidance notes with better buy in from advisers.</p>
<p>Define "salesperson" within the FMC Act, and control conduct under that Act and the four guarantees of Consumer Guarantees Act 1993 Care and Skill, fit for purpose, reasonable time, price agreed or reasonable. Accept page 49 definition of 'salesperson' with important deletion of reference to suitability of product sold for the customer- to 'product being sold is fit for purpose'.</p> <p>To ensure the behaviour of salespeople is appropriate, entities should have ethical accountability at director level and be held to "put right" the consumer where they have been mis-sold.</p>	<p>Clarity of adviser and sales roles and potential harm to consumers reduced or removed.</p>

32. What are the costs and benefits of the packages of options described in this chapter?

Answered above

33. How effective is each package in addressing the barriers described in Chapter 3?

Answered above

34. What changes could be made to any of the packages to improve how its elements work together?

Answered above

35. Can you suggest any alternative packages of options that might work more effectively?  
See Introductory comments titled 'Addressing the outcomes and barriers'

## Addressing the outcomes and Barriers

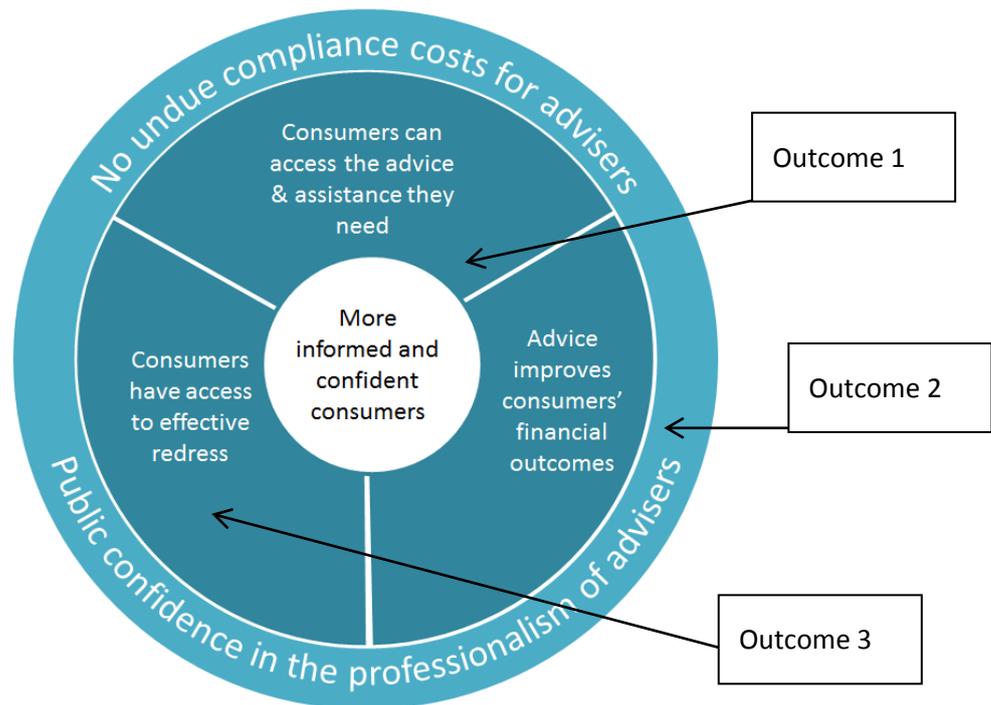
### Areas for improvement

After five years of operation, Ministry of Business Innovation and Employment (MBIE) propose to consolidate the progress that has been made and continue to ensure New Zealand's financial adviser regime is supporting well-functioning financial markets. The intent is to reduce the barriers that remain or have emerged and address any unintended boundary issues and anomalies that have arisen. This will be done by updating the Financial Adviser Act (FAA) and Financial Service Providers Act to ensure they can cater for the new ways in which advice will be provided. To ensure the FAA will lift consumer and investor confidence and participation in financial markets, consistent with the objectives of the Financial Markets Conduct Act 2013 (FMCA).

### Outcomes sought

As prepared by MBIE below, the long-term outcome is to promote the confident and informed participation of investors and consumers in financial markets.

**Figure 1: Outcomes sought**



To promote the confident and informed participation of investors and consumers in financial markets, this review is seeking to achieve the three consumer outcomes depicted in the middle ring above. These outcomes have evolved from the three goals outlined in the Issues Paper on the basis of feedback we received. The outer ring illustrates the importance of providing a fit-for-purpose regulatory environment for advisers to operate in, for example by reducing the complexity of regulation and removing barriers to innovation. Institute of Financial Advisers (IFA) have considered this in their submission and believe change can be effected to promote those outcomes in the long term, but it will require the industry to transition with demonstrated behaviour to move to the point of a profession.

## **Outcome 1: Consumers can access the advice and assistance they need**

All consumers are able to access the right kind of advice to meet their needs and wants. For advice to be accessible it must be offered through different channels, easy to understand and available in a variety of ways (e.g. from simple targeted advice to more detailed comprehensive financial plans).

We believe consumers want a range of access services;

- Some want just information,
- Some assistance with transactions,
- Some want to know if what they have selected is right for what they want to do with it,
- Some want help to decide of all the products available which will best suit their needs,
- Some want to know if they have prioritised the right things,
- Some want to contract a person to design a plan for a part of their financial lives,
- Some want to contract a person to design a complete plan for their financial lives.

Some of these services can be considered transactions, some sales and some advice, the degree of potential consumer harm is the basis for determining how much a service is advice and therefore should be activity controlled under the FAA.

## **Outcome 2: Advice improves consumers' financial outcomes**

When consumers receive advice it is good quality. Advisers have the right skills, competencies and ethics to provide advice that makes consumers better off. In turn, consumers have high levels of satisfaction from their dealings with financial advisers and have confidence that advisers are held to certain standards.

The Financial Markets Authority (FMA) monitoring report shows this has been achieved under the current regime in as far as the evidence of AFA behaviour. There are critical elements that have to be retained in the current regime such as- the Code with its ethical requirements, competency and qualification requirements, however these should apply to all advisers rather than some.

All advisers must be directly accountable to the FMA for their ethical obligations; they may be accountable directly to the FMA or to their licensing entity for their advice obligations depending on the advice model they choose or entity they belong to.

Ensuring peer reviews are completed - the standard of advice is raised.

Having one standard of ethical obligation, consumers will be able to determine what the conflicts of interests and incentives are present for the adviser, how these have been managed so they can place the right amount of trust in their adviser.

When dealing with sales people it must be clear to consumers no advice is given.

## **Outcome 3: Consumers have access to effective redress**

If something goes wrong consumers are easily able to seek effective redress in a timely way.

It has been evidenced that the current FADC and dispute resolution is effective, however we believe this should continue to be reviewed as the legislation is still relatively new and consumers are only starting to explore the forums available to be heard in.

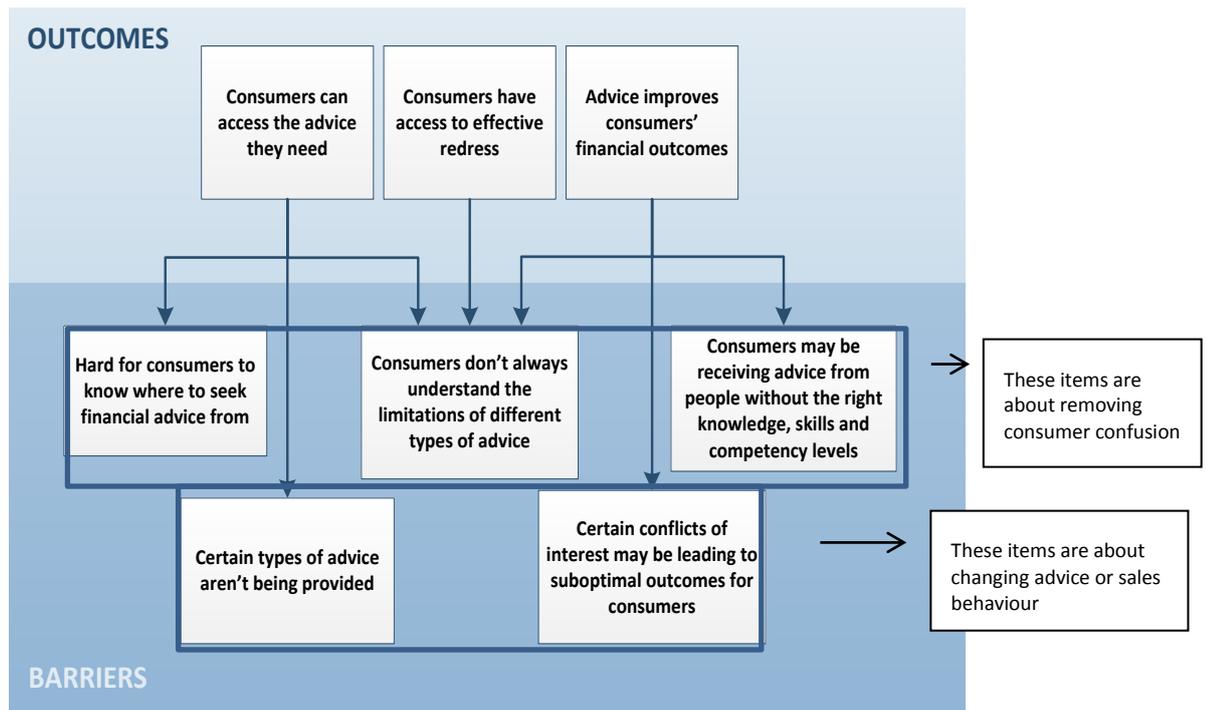
With all advisers bound to code of conduct they will be required to place client interest first, where an adviser is not present in a business model then this accountability must be required of the director of an entity.

To ensure sales people do not cross a line ethically an entity should be required to put a consumer right for a loss when they have been sold a product or service and lost an existing benefit, such as replacement of business.

### Chapter 3 – Barriers to achieving the outcomes

MBIE defined five key issues with the regime which are acting as barriers to achieving the stated outcomes can be divided between items to reduce consumer confusion and items to affect adviser or salesperson behaviour.

**Figure 2: Barriers to achieving the outcomes**



IFA felt these could be further refined into two approaches to address the barriers.

**The first three barriers are overcome by removing consumer confusion.**

Removing distinctions between advice, advisers and products will remove confusion.

If there was no personal versus class, cat 1 versus cat 2, wholesale versus retail, AFA's, RFA's or QFE advisers then there would be little confusion.

However we understand the need for simple processes for corporates to conduct transaction critical to their business, hence some form of wholesale should exist.

We also acknowledge some client situations and products are more complex than others, hence an adviser competent in complex advice should be involved where the client requires advice.

We also acknowledge advice is not always sought or appropriate for a transaction, therefore it would offer more choice to consumers if they could conduct business electronically or through sales. It should be made very clear in these transactions that no advice is given, this will means consumers are not confused about the service they have received.

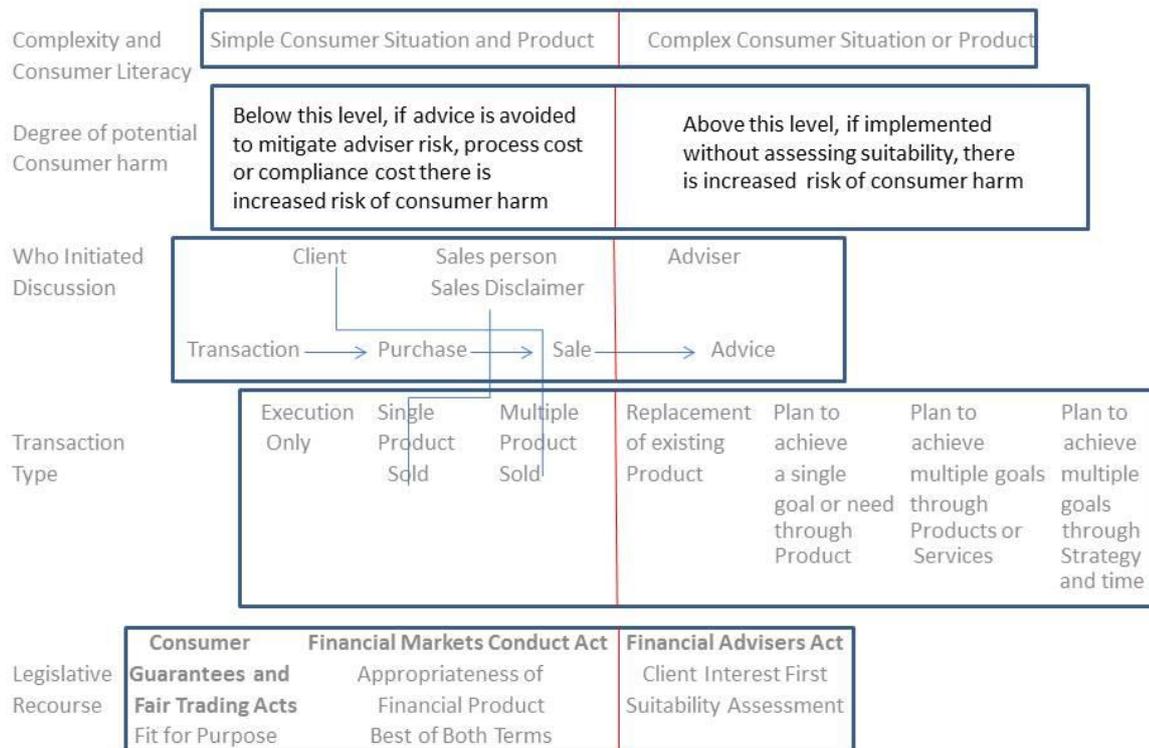
**The second barrier is resolved by changing how adviser or sales person behaviour.**

It has been proved that the disclosure and code of conduct works. The FMA, monitoring reports reflect there is little issue with AFA behaviour, therefore if all advisers were bound by the same ethical code, which allowed varying standards for how they advise on the product or service they offer, then the same outcome could be expected.

In resolving sales person behaviour it becomes more difficult if it is accepted that they are not competent to provide advice.

In the picture below we consider the various factors that may be involved in part or whole in a transaction which could lead to advice, we offer this as start point to work out what activity a salesperson should be able to conduct and at what point an advice should be involved in a transaction.

## Spectrum of Financial Advice



We accept that this has many layers and can be complex to follow, it not intended to guide a consumer rather to understand where legislation should err on the side of caution and where it is plain there is little potential for harm.

Additionally as it is not possible to hold a sales person ethically accountable, it should be imposed on the director of an entity to be held accountable ethically for the processes the sales people follow, this talks to the culture of an entity.

Also if an entity were to held responsible and required to 'put a consumer right' if a product has been replaced and caused the consumer harm, then entities would endeavour to avoid this through appropriate replacement policies, or escalate such transaction to an adviser.

### **Barrier: It is hard for consumers to know where to seek financial advice from**

Many consumers would benefit from financial advice as not everyone is equipped with the knowledge and skills to make informed investment and complex financial decisions on their own. Unfortunately it is hard for consumers to know where to seek financial advice from. As a result consumers are more likely to receive financial advice from someone they already know (e.g. from family, friends or an existing provider) which might not be the best place for them to get the advice they need.

- It is reasonable for consumers to expect that the FSPR should give them guidance on who they can speak to, where they could find them and what advice they could get. If we look at internet use for the majority of people they look for a product or service first then find a local supplier then settle on a choice or compare suppliers. This would be the most logical purpose for a register. It would be expected that the regulator site only holds details of ethical and compliant licensed operators.
- For those seeking information or help with a transaction then the legislative requirements should not replace existing legislation under Fair Trading Act, Consumer Guarantees Act and FMCA. Sales people should be required to give a disclaimer - covering the scope and limitation of the service, the risks arising from the service being limited, and the responsibility thereby left with the consumer to ensure that the (product, service or advice) is suitable and meets the consumers objectives and needs. This will open up opportunities for consumers to engage as they wish and understand the limitations of a sale or transaction and that it is not advice.
- Advice activities should be controlled by the FAA, sales activities should fall to the FMCA.

### **Barrier: Certain types of advice aren't being provided**

Consumers' advice needs and wants vary greatly from person to person. While some types of advice can be accessed with relative ease other types are largely inaccessible. This means some consumers might not be getting the right kind of advice or any advice at all.

- By differentiating between sales and advice consumers will be able to engage in the type or service they want, advisers will be able to alter the service to suit the consumers requirement, however sales people will not be able to escalate into advice, this would need to be referred on to advisers, internally or externally.
- The FAA should treat all advisers equal in regard to ethical obligations and recognise advisers may want to pursue a general or specialist career pathway, and enable them to offer a niche service if they believe there is sufficient demand or broad general low cost services if there is demand.
- The FMCA should control entities that wish to offer transactional or sales services in a cost effect model.
- Where there is increased risk of consumer harm around suitability assessment, complexity or literacy these cases should require referral to licensed advisers to ensure the code of conduct applies to the service. The ideal way to influence sales people is through their employing entity, therefore by imposing conditions on the entity to 'Put things right for the consumer'.
- The entity will ensure processes prevent their brand or license being damaged. If an entity is bound to honour the best terms in the case of replacement for example they will adapt their processes to avoid the instance.

**Barrier: Consumers may be receiving advice from people without adequate knowledge, skills and competence levels**

For consumers to make good financial decisions they must receive advice from people with adequate knowledge, skills and competence levels. While the regime has introduced some competency requirements for some advisers, feedback through the Issues Paper suggests some consumers may still be receiving advice from some people without the right levels of competence.

- With advisers held to the same level, and competency set depending on the discipline – Investment, Risk, Estate, Cash and Debt management. Recognising that more complex consumer situations and products will require higher level of competency and qualification to offer advice. Consumers will receive higher quality of advice and advisers will determine their own career path and service they wish to offer.

**Barrier: Certain conflicts of interest maybe leading to suboptimal outcomes for consumers**

For financial advice to facilitate good outcomes for consumers, either advisers should place consumers' interests above their own or consumers should be able to understand where this is not happening. There is currently no across-the-board requirement to put consumers' interests first or to disclose conflicts of interest to consumers, which may be leading to suboptimal outcomes. This includes consumers being churned between insurance policies and sold replacement products, when this is in the interest of the adviser rather than the consumer.

- All advisers should have the same ethical obligations that require them to place consumers' interests first. Further, there should be the same disclosure requirements across all advisers.

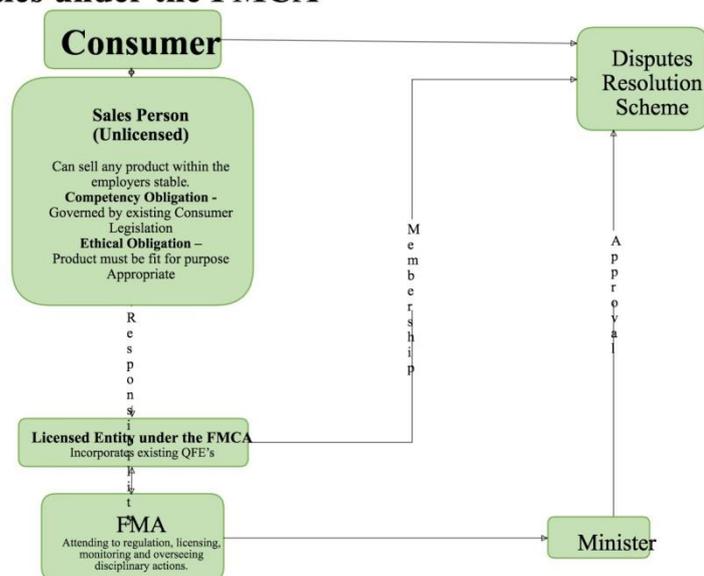
**Barrier: Consumers don't always understand the limitations of different types of advice**

Making good financial decisions is important as it affects quality of life, future opportunities and the overall wellbeing of New Zealanders. To be able to make good financial decisions consumers must be able to understand the limitations of the advice they are receiving.

- The above distinctions should make it clear whether a consumer is receiving advice or assistance with a transaction or sale.

Looking at how a model to our proposal may look we have prepared the following.

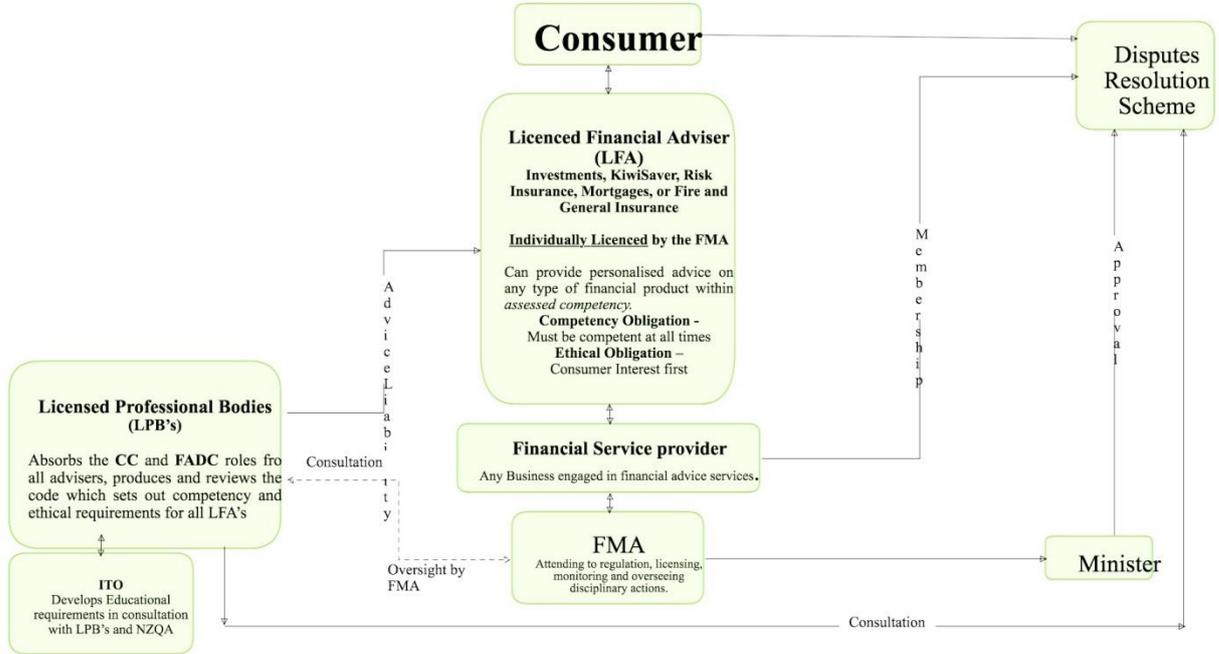
**Sales under the FMCA**



The above looks at how sales people would be controlled.

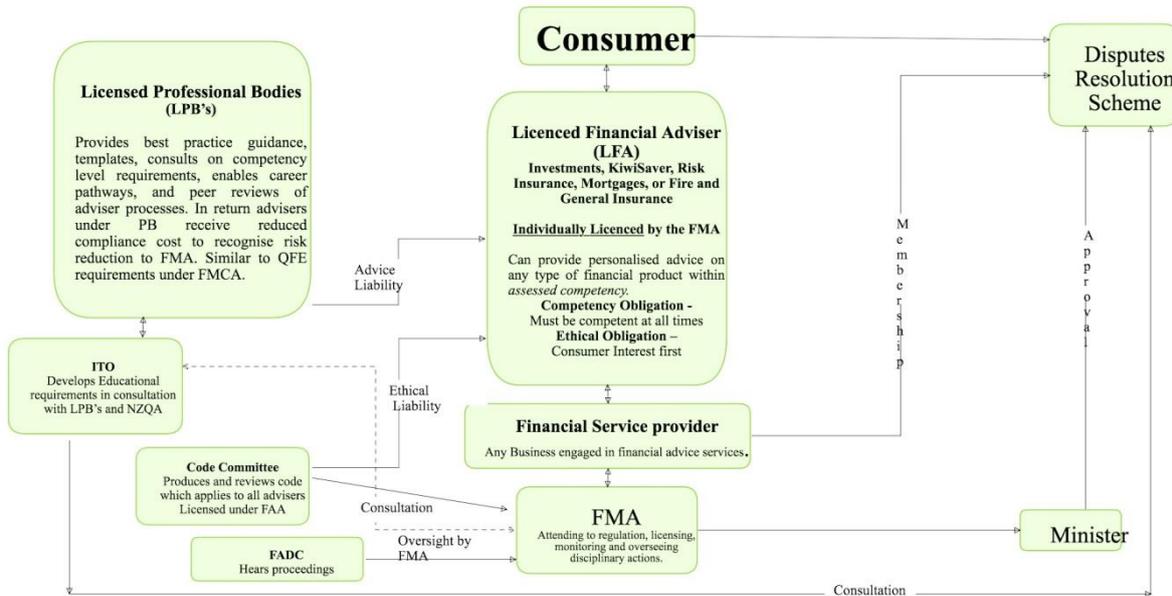
Ideally we see professional bodies having a more crucial role in the practical guidance, ethical accountability and discipline of Financial Advisers. However we acknowledge this would not be practical with the number of bodies that exist today and the without demonstration of competence. While both Lawyers and Accountants have these structures in place, it will require Financial Advisers to evolve as a profession before this can be attempted.

### Advice under the FAA Future



Therefore we propose a transition structure be implemented with the Code Committee and FADC in place, until such time as the industry meets the measure of a profession and demonstrates it has the appropriate process and structure in place to achieve reliable and robust self-regulation.

### Advice under the FAA Transition



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2. Are you providing this submission:  
 As an individual  
 On behalf of an organisation

Background information on the Institute of Financial Advisers

The Institute of Financial Advisers is the professional body for some 750 members, representing financial advisers in New Zealand. All members are individual members, not corporate members. We estimate that our members provide advice to some 130,000 New Zealanders each year, many of whom would be couples rather than individuals, with an overall client base of around 400,000.

Our members provide advice to their clients in the areas of insurance, investments, financial planning, work-based savings and insurance, retirement planning, estate planning and financial services generally. Their professional practices reflect the broad spectrum of New Zealand businesses – they operate as local SME's, are part of large regional or national dealer groups, are associated with strong financial organisations, services companies in banking, funds management, or insurance, work in employee benefits organisations, or sometimes practice as lawyers, accountants and other professional advisers.

The Institute reinforces compliance with a code of ethics and practice standards, runs a Professional Conduct Committee and Disciplinary Tribunal that are independently chaired, offers education pathways that can lead to professional designations and the attainment of internationally recognised adviser marks, maintains and ensures compliance with a continuing professional development programme, and provides networking, education, development, and business practice forums at a national and regional level for members.