How to have your say

Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by 5pm on 22 July 2015.

Your submission may respond to any or all of these issues. We also encourage your input on any other relevant issues. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please also include your name, or the name of your organisation, and contact details.

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.

Except for material that may be defamatory, MBIE intends to upload PDF copies of submissions received to the **FAA page on MBIE's website**. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

Release of information

Submissions are also subject to the Official Information Act 1982. Please set out clearly 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. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

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

Private information

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate in your submission if you do not wish your name to be included in any summary of submissions that MBIE may publish.

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FAA Review Submissions

Role and regulation of financial advice

When providing your comments, we would particularly appreciate information about the relative benefits, costs (financial or otherwise) and any other impacts of these proposals on businesses, consumers or other stakeholders. This information will help us more fully understand the effects of the current regulation.

1. Do you agree that financial adviser regulation should seek to achieve the identified goals? If not, why not?

Yes
Should support development of a 'Trusted Adviser' result where the client relationship is the key based on respect and professional service. The regulations simply make that harder to achieve as they focus on technical issues which are measurable (easy for bureaucrats to manage) and allow many AFA's, RFA's and QFE's to focus on themselves and what works best for their employer organisations which is generally a focus on sales (especially multiple sales) which are short term budget achieving targets and not what is best for a client which is often long term and achieved over decades and outside an annual sales budget process which most financial firms favour and work to.

2. What goals do you consider should be more or less important in deciding how to regulate financial advisers?

Focus should be on promoting professionalism, know your client, building trust, earning respect, displaying integrity and putting the client's best interests first.
There is a danger Regulations divert adviser attention and resources away from serving client's best interests and into adviser self preservation and meeting regulation requirements that don't directly benefit clients, but checkoff regulation tick boxes.
The Public don't care about detailed Regulations and read them less. Most would not be aware of the FAA, Code of Conduct, FMA or Review Process. They simply want access to independent advisers they can trust and form an enduring client/adviser relationship with.

3. Does this definition adequately capture what financial advice is? If not, what changes should be considered?

Seems reasonable given above comments.

4. Is the distinction in the Financial Advisers Act (FA Act) between wholesale and retail clients appropriate and effective? If not, what changes should be considered?

Seems reasonable

5. Is the distinction in the Act between a personalised financial service and a class service appropriate and effective? If not, what changes should be considered?

Seems reasonable

6. Is it appropriate to have different requirements on advisers depending on the risk and complexity of the products they advise upon?

If we aspire to be a profession there should be an accepted professional standard and qualification as other professions have (lawyers, accountants, doctors etc).
Once qualified as a professional financial adviser then an adviser could specialize with higher specialized skills as other professionals do in their professions. For example Sir Geoffrey Palmer is a professional lawyer, but is also a respected specialist in say constitutional law.
The current focus based on product is below a professional level so not appropriate if we aspire to be accepted as professionals in our field of expertise.

7. Does the current categorisation system accurately reflect the level of complexity and risk associated with financial products? If not, how could it be improved?

See above.
The current categorization system simply confuses everyone and solves nothing.

8. Do you think that the term Registered Financial Adviser (RFA) gives consumers an accurate understanding of what these advisers are permitted to provide advice on and the requirements that apply to them? If not, should an alternative term be considered?

No.
Many seem to think Registered means more and is a more powerful, higher ranking than Authorized, so think an RFA is better than an AFA.
Yes there should be one professional term and standing which should be extensively promoted as the official standard and that is AFA.

9. Are the general conduct requirements applying to all financial advisers, including RFAs, appropriate and adequate? If not, what changes should be considered?

Yes but are they enforced equally at all levels?

10. Do you think that disclosing this information is adequate for consumers? Should RFAs be required to disclose any additional information?

Should be one professional standard and disclosure. You are either a qualified professional or not. Just like other professions.

11. Are there any particular issues with the regulation of RFA entities that we should consider?

Don't understand the question, what is an RFA entity?

12. Are the costs of maintaining an adviser business statement justified by its benefits? If not, what changes should be considered?

No
It is a statement for regulators more than clients. I have never been asked for it by any customer.
For the benefit of whom, I suspect mainly read by advisers and regulators.

13. Is the distinction between an investment planning service and financial advice well understood by advisers and their clients? Are any changes needed to the way that an investment planning service is regulated?

Not at all.

14. To what extent do advisers need to exercise some degree of discretion in relation to their clients' investments as part of their normal role?

I don't understand the question.
If referring to DIMS then I believe discretion with client investments is dangerous.

15. Should any changes be considered to reduce the costs on advisers who exercise some discretion, but are not offering a funds management-type service?

No

16. Are the current disclosure requirements for Authorised Financial Advisers (AFAs) adequate and useful for consumers?

I doubt many consumers are even aware of them.
I suspect most clients want a close professional relationship where they can respect and trust their advisers at all times.

17. Should any changes be considered to improve the relevance of these documents to consumers and to reduce the costs of producing them?

Yes
Ask consumers what they want.
I suspect they want something concise, easy to read & understand and relevant from their point of view and not from a regulator's compliance point of view.

18. Do you think that the process for the development and approval of the Code of Professional Conduct works well?

Reasonably well, though there seems to be few actual practicing advisers on the Committee.
Be aware though that I suspect only industry people actually read the Code.
I doubt the majority of the Public are even aware of the FAA, Code of Conduct, or FMA or diligently read their various papers?

19. Should any changes to the role or composition of the Code Committee be considered?

See above

20. Is the Financial Advisers Disciplinary Committee an effective mechanism to discipline misconduct against AFAs?

Seems reasonable

21. Should the jurisdiction of this Committee be expanded?

Seems okay as is, but hard to know what they do.

22. Does the limited public transparency around the obligations of Qualifying Financial Entities (QFEs) undermine public confidence and understanding of this part of the regulatory regime?

Yes, what do they do?
Generally I suspect most people would look at QFE's as corporate selling vehicles and their adviser teams as salaried selling agents selling the QFE's investment products, working to achieve and pass their sales budgets so as to access sales bonuses available to them.
I doubt many customers would really believe that QFE's put the client's best interests ahead of their own, or that their management put their client's best interests ahead of their own and their short term bonuses.

23. Should any changes be considered to promote transparency of QFE obligations?

Yes
I don't see any practical effort being made to ensure the principle code requirement to put client's best interests first is being effectively carried out by QFE's and other Institutional players such as bank, insurance and finance companies. The reality is these players:
1/ Put their generally short term interests first, if it is not good for the company then it will never see the light of day. Companies and their management operate on short term focus with at best annual budgets, results and bonuses often measured monthly.
2/ The second focus is management as above.

24. Are the current disclosure requirements for QFE advisers adequate and useful for consumers?

No, as above

25. Should any changes be considered to improve the relevance of these documents to consumers or to reduce the costs of producing them?

Yes, simplify and shorten them so consumers will actually choose to read them

26. How well understood are the broker requirements in the FA Act? How could understanding be improved?

Who knows? Not my field.

27. Are these requirements necessary and/or adequate to protect client assets? If not, why not?

No opinion

28. Should consideration be given to introducing disclosure requirements for brokers? If so, what would need to be disclosed and why?

All financial advisers should have the same responsibility/accountability.

29. What would be the costs and benefits of applying the broker requirements in the FA Act to insurance intermediaries?

No opinion

30. Are the requirements on custodians effective in reducing the risk of client losses due to misappropriation or mismanagement?

Trustee custodians are a good protection against misappropriation and mismanagement.

31. Should any changes to these requirements be considered?

No opinion

FAA Review Submissions

32. Is the scope of the FA Act exemptions appropriate? What changes should be considered and why?

Any body offering financial advice should be required to meet the same professional standards.

33. Does the FA Act provide the Financial Markets Authority (FMA) with appropriate enforcement powers? If not, what changes should be considered?

Seem to.

34. How accessible and useful is the guidance issued by the FMA? Are there any improvements you would like to see?

I think it has been steadily improving as they grow in to a new role.

Key FA Act questions for the review

35. What changes should be considered to make the current regulatory regime simpler and easier for consumers to understand? For example, removing or clarifying the distinction between AFAs and RFAs.

A very good question.
I believe the current regime is designed for regulators and their political agenda and Masters rather than consumers. This is evidenced by consumers lack of interest in it. So yes it should be simpler and easier
The AFA/RFA confusion is an excellent example and of absolutely no practical benefit to an AFA.

36. To what extent do consumers understand that some financial advisers' primary roles may be selling financial products, rather than solely acting as an unbiased adviser to their clients?

Most advisers are not unbiased and sell their own products for which they probably earn sales bonuses. Yet they claim or actively give the impression that they give independent financial advice.
I feel there should be a clear distinction between those that sell investment products and those that offer independent financial advice.
I don't believe many consumers understand the difference between a seller and an adviser.

37. Should there be a clearer distinction between sales, information provision, and advice? How should such a distinction be drawn? What should or should not be included in the definition of financial advice?

Yes.
I think advisers should be categorized as either a sellers agent who acts for the seller of investment product or a buyers agent who helps the buyer as their agent to seek out the most appropriate products to meet their needs and buy those products in a way that most benefits the client. They don't offer their own products as a seller.

38. Do you think that current AFA disclosure requirements are effective in overcoming problems associated with commissions and other conflicts of interest?

No

39. How do you think that AFA information disclosure requirements could be improved to better assist consumer decision making?

Simpler and easier.

40. Do you support commission and conflict of interest disclosure requirements being applied to all financial advisers? If so, what requirements are appropriate for different adviser types?

Yes
I don't know

41. Do you think that commissions should be restricted or banned in relation to financial advice, and if so, in what way? What would be the costs and benefits of such an approach?

Just need to be clearly disclosed up front.

42. Has the right balance been struck between ensuring advisers meet minimum quality standards and ensuring there is competition from a wide range of providers (and potential providers)?

The Regulation process has decimated many in the industry who were very experienced and professional, but simply didn't need to or could not be bothered jumping through all the pointless hoops the Regulations put in front of them.
As a result many retired at great loss to their clients and the industry and they have not been replaced. Now we have less than 2000 AFA's and many of those are not practicing as advisers or are acting as sellers agents (on sales bonuses) for QFE's or other Institution players who sell their own products. Very few are unaligned, unbiased and dare I say it independent.

43. What changes could be made to increase the levels of competition between advisers?

Have a single professional adviser designation and promote it as the only accepted professional standard.

44. Do you think that the Code of Professional Conduct for AFAs strikes the right balance between requiring them to understand their clients and ensuring that consumers can get advice on discrete issues?

The Code is too complex and I doubt many consumers have ever seen it let alone read it. It is a regulation document designed by regulators for regulators to enforce.
It contains some good stuff, but who else reads it or is aware of the provisions.

45. To what extent do you think that the categorisation of types of advice and advisers is distorting the types of advice and information that is provided?

I think most in the industry would struggle to understand many of these on a day to day basis and I suspect few consumers have much awareness at all.

46. Are there specific compliance requirements from the FA Act regulation that have affected the cost and availability of independent financial advice?

Yes.
I would be interested to see what the definition of 'independent' is, used in this context given financial advisers are forbidden to use the term.
Because of these requirements truly independent financial advisers are few and far between.

47. How can regulatory requirements be made less onerous without reducing the quality and availability of financial advice?

Cut back the red tape and let quality, experienced advisers work with their clients in the client's best interests without the interference and costs of unnecessary regulation put in place to achieve political goals as opposed to client's best interests.

48. What impact has the Anti-Money Laundering and Countering Finance of Terrorism Act had on compliance costs for advisers? How could these costs be minimised?

Has increased time and costs and has very little benefit for clients, but increases their costs.
Seems to be a political change for political benefits.

49. What impact do you expect that KiwiSaver decumulation will have on the market for financial advice in New Zealand? Are any specific changes to regulation needed to specifically promote the availability of KiwiSaver advice?

Should increase the need for independent financial advice, not sales advice.
No financial advice should be offered by independent, experienced, qualified advisers and not sales people.

50. What impact do you expect that the introduction of the Financial Markets Conduct Act (FMC Act) will have on the market for financial advice in New Zealand? Should any changes to the regulation of advice be considered in response to these changes?

Don't know

51. Do you think that international financial advice is likely to increase? Is the FA Act set up appropriately to facilitate and regulate this?

Don't know

52. How beneficial are the current arrangements for trans-Tasman mutual recognition of qualifications? Should further arrangements be considered?

No particular opinion

53. In what ways do you expect new technologies will change the market for financial advice?

Bound to have an effect.
Depends if relationship development based on trust and respect is required or simply transactional.

54. How can government keep pace with technological developments to ensure that quality standards for advice are maintained, without inhibiting innovation?

No opinion

55. Are the minimum ethical standards for AFAs appropriate and have they succeeded in fostering the ethical behaviour of AFAs?

Seem reasonable.

Many unethical people seem to have left the profession .

Ethical professionals already understand ethical behavior, you are either an ethical person or you are not.

56. Should the same or similar ethical standards apply to all types of financial advisers?

Yes

57. What is an appropriate minimum qualification level for AFAs?

In time should be a Degree.

58. Do you think that RFAs (for example insurance or mortgage brokers) should be required to meet a minimum qualification relevant to the area of advice they specialise in? If so, what would be an appropriate minimum qualification?

You are either a professional financial adviser or you are not.

Sales agents should be described as what they are.

59. How much consideration should be given to aligning adviser qualifications with those applying in other countries, particularly Australia?

There should be a Worldwide comparability and ability to cross credit to a degree as do other professions, though different jurisdictions will have differing expectations.

60. How effective have professional bodies been at fostering professionalism among advisers?

Not very effective as try and cover too many differing advisers.

Should be one professional body.

61. Do you think that professional bodies should play a formal role in the regulation of financial advisers and if so, how?

Yes.

As above.

62. Should any changes be considered to the relative obligations of individual advisers and the businesses they represent? If so, what changes should be considered?

Don't understand

63. Is the QFE system achieving its goals in terms of consumer protection and reducing compliance costs for large entities? If not, what changes should be considered?

Yes I do believe they protect the interests of large entities.

No I don't believe they protect the consumer or clients interests as much and certainly not first as they should be.

Role of financial service provider registration and dispute resolution

64. Do you agree that the Register should seek to achieve the identified goals? If not, why not?

Yes

65. What goals do you consider should be more or less important in reviewing the operation of the Register?

No opinion

FAA Review Submissions

66. Do you agree that the dispute resolution regime should seek to achieve the identified goals? If not, why not?

Yes

67. What goals do you consider should be more or less important in reviewing the dispute resolution regime?

No opinion

How the FSP Act works

68. Does the FMA need any other tools to encourage compliance with financial service provider (FSP) registration? If so, what tools would be appropriate?

No opinion

69. What changes, if any, to the minimum registration requirements should be considered?

No opinion

70. Does the requirement to belong to a dispute resolution scheme apply to the right types of financial service providers?

No opinion

71. Is the current framework for the approval of dispute resolution schemes appropriate? What changes, if any, should be considered?

No opinion

72. Is the current framework for monitoring dispute resolution schemes adequate? What changes, if any, should be considered?

No opinion

73. Is the existence of multiple schemes and the incentive to retain and attract members sufficient to ensure that the schemes remain efficient and membership fees are controlled?

Would appear to be

FAA Review Submissions

74. Should the $200,000 jurisdictional limit on the size of claims that dispute resolution schemes can hear be raised in respect of other types of financial services, and if so, what would be an appropriate limit?

No opinion

75. Should additional requirements to ensure that financial service providers are able to pay compensation to consumers be considered in New Zealand?

No

Key FSP Act questions for the review

76. What features or information would make the Register more useful for consumers?

Ask consumers

77. Would it be appropriate for the Register to include information on a financial adviser's qualifications or their disciplinary record?

Why not so long as it is accurate and true

78. Do you consider misuse of the Register by offshore financial service providers is a significant risk to New Zealand's reputation as a well-regulated jurisdiction and/or to New Zealand businesses?

I wouldn't know

79. Are there any changes to the scope of the registration requirements or the powers of regulators that should be considered in response to this issue?

As above

80. What are the effects of (positive and negative) competition between dispute resolution schemes on effective dispute resolution?

I wouldn't know

81. Are there ways to mitigate the issues identified without losing the benefits of a multiple scheme structure?

I wouldn't know

82. Are the current regulatory settings adequate in raising awareness of available dispute resolution options? How could awareness be improved?

Awareness more than adequate and more an 'over sale' situation as dispute organisations openly tout for business.

Demographics

***83. Please provide your name and/or the name of the group of people, business, or organisation you are providing this submission on behalf of:**

9(2)(a)

***84. Please provide your contact details:**

9(2)(a)

85. Are you providing this submission:

- [x] As an individual
- [ ] On behalf of an organisation

Please describe the nature and size of the organisation:

NZFP is designed as an independent financial advisory professional practice where we charge fees for our advice and services in a tax effective manner for our clients. Each Adviser operates as a self employed business owner and is expected to practice within the Firm's professional standards,

86. If submitting on behalf of an organisation:
How many people are in the organisation, or work in the organisation, that you are providing this submission on behalf of?

- [ ] 1-5
- [ ] 6-19
- [x] 20-49
- [ ] 50-99
- [ ] 100-250
- [ ] 251-500
- [ ] >500

87. I would like my submission (or specified parts of my submission) to be kept confidential, and explain my reasons for this, for consideration by MBIE:

☑ Yes ☐ No

Explanation:

9(2)(ba)(i)

Thank you for your time. Please send your submission.