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 we support the goals identified.

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

We consider the main goal is public confidence in the professionalism of financial advisers. This will only occur if a number of other goals identified are achieved. However simply making legislative changes and other related changes will not immediately result in increased confidence or preparedness to use financial adviser services.
It is difficult to promote culture change by regulation and we believe that developing a culture of professionalism in the financial adviser industry will depend on the demands of consumers as much as on specific regulation of advisers.
As consumers become more financially aware and more confident in the dealings with advisers they

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

We believe the definition is adequate however use of term “financial product” and resulting exemptions does create a situation where certain industries that are clearly providing advice are not being caught. The obvious example is property investment. There are a number of players on the market that promote and advise on property investments including real estate agents that are doing so with minimal accountability. The definition should be modified to ensure this is addressed.

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?

Somewhat understood. In our opinion, the issue is Adviser education in relation to this topic.

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?

The labels are neither effective nor meaningful. Class Advice should be renamed “Non Personalised”. This will clearly indicate to consumers that the information or ‘advice’ is “Not Personalised” to them, it is generic.

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

Yes we believe it is appropriate. There are a number of complex products in the financial services industry so it is important that the consumer has confidence that the adviser is well equipped by way of knowledge and experience on advising on those products.

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?

No it doesn’t. For example, the current categorization places all insurance based products in Category 2 and some fairly simple investment products in Category 1 such as KiwiSaver.

Whilst some component of insurance may be straightforward eg life cover and lump sum disability other areas such as income cover, key person and business insurance can be extremely complex and in many cases require a solid knowledge of accounting and legal issues. Insurance claims can involve substantial sums even into the millions so skill and knowledge is essential.
KiwiSaver is not a complex investment product as the options and structure are largely prescribed in

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 it doesn’t. Consumers cannot and do not know how to distinguish between RFA and AFA and QFE adviser unless the adviser him or herself actually takes them through a process of explaining. We ask all clients at first interview if they understand or know the difference and 99% would not have a clue.

We believe that the RFA and AFA references be removed and replaced with one designation eg Licensed Adviser (or perhaps even retain AFA) with each adviser having a sub designation that reflects the type of work that they are qualified to adviser on.

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

Yes we believe the general conduct requirements are adequate however RFA's should have the same conduct requirements as AFA's. There should be no distinction. This can be achieved if the actual designation structure is modified.

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

No it is not adequate.
The disclosure requirements are not adequate and we would suggest the following changes:

1. RFA's disclosure is the same as AFA. We have a situation currently where AFA's providing risk advice have much higher disclosure requirement than an RFA who is giving advice in the same area.

2. The primary and secondary disclosure structure be replaced with one disclosure document.

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

We have no issues so long as it is transparent and clear to the consumer.

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

We don't find the cost of maintain this document to be onerous however it is hard to see any value in having the document in the first place. What purpose does it serve? Also where we have a small team of advisers operating as a team under one entity using the same processes etc why is it necessary to have individual ABS's saying the same thing.

If a business or entity is meeting minimum good practice standards for running a business then it should have in place a summary of policy and procedures anyway.

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?

Well understood, generally the discussion is “your whole financial situation is considered”, or “We are focusing on this aspect of your situation/requirements”

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?

Some discretion is needed. As an example, a recommendation to buy $10,000 of Company X, might end up investing only $9,997.47 due to the unit or share price not equaling the exact recommendation

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?

Yes, common-sense

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

Yes we are comfortable with the current level of disclosure for AFAs.

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

Refer comments under question 10. We would also add that to ensure consistency disclosure statements follow a prescribed format similar to current but advisers have the flexibility to include work experience and similar information not just qualifications.

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

Yes

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

No Comment

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

No Comment

21. Should the jurisdiction of this Committee be expanded?

No Comment

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?

No Comment

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

Promotion of a QFE or its obligations is at the risk of promoting one designation over another. This would undermine public confidence in other designations and therefore should be avoided.

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

No

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

Disclosure statements need to clearly outline the limitations of their advice.

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

No Comment

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

No Comment

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

No Comment

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

No Comment

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

No Comment

31. Should any changes to these requirements be considered?

No Comment

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

We accept that there needs to be some recognition for lawyers and accountants who need provide a degree of advice in certain areas such as where to hold estate funds for short period of time etc. However in reality there remains a number of lawyers and accountants who continue to provide specific investment advice for funds and portfolios without any regards to the processes or obligations required by AFA's thus effectively becoming competitors. Lawyers and Accountants should not be exempt from this type of activity. The issue of Real estate agents promoting investment property also needs to be addressed.

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

We are comfortable with the level of enforcement power.

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

No Comment.

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.

As previously alluded to the RFA designation and structure should be removed. We strongly believe that all advisers would have to meet a minimum standard of competency. Additional competency levels should have to be met depending on what area you are working in.

How can the consumer possibly gain any confidence in the profession or advice if that person giving it has not had to complete any training before coming an RFA.

The minimums toward should be Level 5 Certificate with ongoing CPD requirements the same as

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?

The Issues Paper preamble on this states…"We have heard concerns that investors…." But does not provide any supporting data to indicate the prevalence of such concerns i.e. is it widespread or just limited to a small number?

Ideally the disclosure documents would clarify or should be able to clarify what the primary role of the adviser is. The only real exposure we have had to possible examples of this would be some banks who push their own KiwiSaver product. We know that many staff have targets to meet in that regards so in that situation they are clearly selling and not providing unbiased advice. Or RFA's who

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?

We believe that the current distinction using class and personalized advice works. We do not see any need to extend that to a "sales advice" category. As long as the adviser's disclosure clearly states that they only advise on or provide information on X product then that in itself should be sufficient.

If you try and start to define it further this will just create confusion about what is sales and what is advice. Endeavoring to attempt to distinguish between these is more than likely only going to add more complexity. Firstly defining "sales" would be somewhat challenging. If the outcome is that a

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

Primarily yes. However we believe they can be improved on in two areas.

1. Where commissions are received for insurances then the disclosure should show the maximum amount the adviser can receive include all volume bonuses etc. The actual level of commission is not the issue but the different levels between providers that can create bias.

2. Disclosure should also be clear on what other benefits (soft dollars) the adviser may qualify for especially offshore trips. We strongly believe all soft dollar rewards should be banned.

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

Suggestions for disclosure are covered under other questions

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. As previously suggested disclosure requirements should effectively be the same for all advisers. Where advisers are restricted to product providers in particular in the insurance space this should be clearly outlined. Commission levels should be disclosed in full so clients can see if there are major distortions between product providers. However one issue here is that clients may automatically link higher commission rates to biased advice when in fact that provider may well have the best options available.

Conflict of Interest disclosure is already required for AFA's so this should extend to all advisers.

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?

We have confined the response on this to insurance products .

There is nothing inherently wrong with commission based remuneration and we do not believe they are a problem. Banning commission and charging a fee does not mean getting better advice. Arguably the advice would be limited.

We strongly believe that if commission was banned then this would have a major detrimental impact on New Zealanders who according to a number of market surveys are already under-insured.

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)?

No as there is no consistency across the different types of advisers therefore creating an imbalance. For example, a client comes to us to get advice on KiwiSaver and investment options – as AFA's this creates a process which incurs cost and needs to be charged for. The client goes to the bank gets enrolled into KiwiSaver at no cost. The client doesn't realise there choice is limited and there is no actual advice.

Therefore more and more business is being done by banks and it is not viable for businesses like ours to providing advice for retail KiwiSaver clients.

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

We are unsure on why competition should be a target for the FA Act. Create a level playing field and minimum standards should be the priority.

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?

Speaking purely from our own business perspective we don't think the Code has made any difference. For us it has simply codified the way we operate anyway. However overall the regulation especially around the personalized advice section has impacted on the types of advice you give and when. Previously where you may have provide some good quality advice on discrete or basic issue you are inclined not to now as this activates a whole new process which becomes costly for adviser and client.

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?

Consumers do not know what limitations may apply for advice received and products recommended. Especially so with QFE advisers and to some extent RFAs. Better disclosure is required to address this.

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

Yes compliance now adds significant extra cost to the maintenance of AFA status.

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

Simplification of disclosure
Removal of ABS requirements
Less onerous AML-CT requirements

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?

This has had a big impact in terms of time and cost. For the most part there are double ups in the identity verification work we do and much of it was being done anyway. As an example our business handles no money directly and funds transferred to investments come from bank accounts where the process has already been carried out. There needs to be recognition of different types of FSPRs where AML-CT Risk is very low or minimal.

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?

No comment

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?

No comment

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

No comment

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

No comment

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

No comment

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

No comment

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

It is appropriate to have minimum ethical standards codified however it would be debatable as to whether they have succeeded in fostering ethical behavior. Ethics is a character trait not a behavioral one and we believe that good ethical adviser behave no differently pre and post code. The issue paper refers to commission and conflicted remuneration. If everyone has to abide by Code standard one then the influence of these factors should in theory be minimized as long as the adviser acts in accordance with the code.

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

Absolutely.

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

This will depend on the revised structure post review but Level 5 should be the absolute minimum. If there is to be a higher category of adviser we would suggest that it is Level 6/7 or holding the Diploma in Business Studies (FP) or equivalent.

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?

Yes, As previously commented. The minimum should be Level 5 for both insurance and mortgage advisers. Currently there are a number of AFA's who only advise on insurances or mortgages so the playing field is not even.

From there additional competency needs to be demonstrated in the area they specialise in.

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

It is difficult to see what advantage this would have. Australia and other markets operate differently e.g. Australia is predominantly investment and superannuation based with insurances often part of unions or group schemes.
CFP and CLU Designations are already reflective of global designations with minimum requirements.

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

No Comment

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

No Comment

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?

Ultimately individuals should be responsible however there is some advantage in reducing compliance cost by shifting some of the responsibility especially around process etc to a business level. Currently this is only able to be done under a QFE structure. Where you have a small business such as ours where we all operate on the same basis and all part of the same team having duplication of regulation requirements is costly eg Adviser Business Statements.

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?

No Comment

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 the FSPR should seek to achieve the goals identified. There should be one register for all advisers holding information on their status, qualifications and what they can and cannot advise on. This register should be easily accessible to the public and called the Financial Advisers Register. We are concerned that reputational damage to New Zealand's financial markets has occurred due to the admittance of companies operating offshore (usually Currency Traders) onto the FSPR. This undermines the confidence of the NZ public in those that are registered on the FSPR including Financial Advisers. With this in mind, Financial Advisers should be separated or clearly distinguished on a register.

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

No Comment

FAA Review Submissions

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

No Comment

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

No Comment

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 Comment

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

No Comment

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

No Comment

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

No Comment

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

No Comment

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?

No Comment

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 Comment

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

No Comment

Key FSP Act questions for the review

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

No Comment

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

No Comment

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?

No Comment

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?

No Comment

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

No Comment

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

No Comment

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

No Comment

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:**

First Capital Financial Services

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

18(d)

85. Are you providing this submission:

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

Please describe the nature and size of the organisation:

Small financial services company consisting of five advisers, spealising in insurance, investments and employee benefits.

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

FAA Review Submissions

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:

Thank you for your time. Please send your submission.