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 I think the identified goals are sufficient at this stage.

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

If the aim is to ensure more of the public have access to understandable, quality advice then the review goals are all equally important. However it is important that adviser categorisation is clear and that consumers are aware of who they are dealing with, any limitations and what the alternatives are so they can select who to deal with on an informed basis i.e. industry qualifications - a consumer knows if someone call themselves an accountant or a Dr they have a certain level of qualification. Someone calling themselves a Financial Adviser can have a very basic or no qualification and this needs to be rectified to protect consumers.

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

Advice is informative and provides guidance and recommendations - the 'advice' label should only be associated with personalised interactions with clients which is defendable by the adviser. This means ensuring any recommendations are in the clients best interest. If a product is being sold on an information only basis then the person providing that information should be made aware of the basis of the information not being personalised advise and what that means.

Someone selling an insurance product is not providing financial advice. There is a huge difference.

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?

No - just because a client has a certain asset base does not mean they have a certain level of sophistication when it comes to finance i.e. an inheritance/lottery win. The system should be opt-out not opt-in ie all considered retail unless opt out to wholesale once educated on the differences.

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?

It is not always clear and depends on how the "adviser" explains the differences to the consumer.

I do not see how any one giving KiwiSaver advice can really be given under 'class' advice. Consumers do not understand that the information they are receiving is not personalised.

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

Over and above an industry bases level, yes, and the AFA minimum Level 5 is a start and CPD builds on this however labelling is a major factor in this. If a person is receiving what is pertained to be 'advice' because they are working with a Registered Financial Adviser then there is a need for that adviser to prove competency via qualifications and CPD requirements the same as an AFA.

I see my GP and then a specialist who is an expert in his defined field.

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 - there should be one class of adviser with a minimal level 5 qualification and then specialisations over and above that. AFA specialising in financial planning/personal risk management etc.

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 definately not - consumers perceive that to be registered there has been a satisifying of some criteria, normally qualification wise, not simply a good character reference signed off by the insurance company they place most of their business with.

Easier to understand terminology should be used like 'tied versus independent' rather than QFE.

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

Consumers need to be made aware that there is risk if they buy a product without advice - so if the product seller is labelled an Adviser in anyway, ie RFA, AFA, QFE adviser, then the same code and conduct requirements should apply.

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

All disclosure should be the same - therefore RFAs and QFEs should also have to provide secondary disclosure for fees/commissions/targets.

Primary disclosure should not be to prescriptive but should enable qualifications and competency information to be provided.

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

RFAs should be regulated in the same way as AFAs as should QFEs.

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

The need for Adviser Business Statements should be removed. The maintenance of such is an unjustifiable and onerous burden that is time consuming and irrelevant.

The only purpose of the ABS is for he regulator to get a snapshot of the adviser business - this can readily be done via the AML/CFT return and regular audit, and the annual AFA return. The regulators can then request additional information via a pre-monitoring questionnaire if necessary.

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?

It is not understood by clients - I would hope it is understood by advisers.

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?

This is largely covered through the introduction of DIMS

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?

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

No not at all useful. Primary Disclosures need to be less prescriptive and (as above) include qualifications/competency, areas of specialisation, professional memberships etc. Should be the same for all categories of Advisers (QFE/RFA) and note the differences between categories/levels of qualifications.

Secondary disclosure (i.e. disclosure of fees payable/commissions received) are generally included in SOAs and this should be adequate, as specific to the recommendations.

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

As above in terms of relevance. Ability to have multiple advisers in a practice covered by one PDS would reduce costs.

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

Seems to but the code needs to cover all advisers and all need to be appropriately represented in the process.

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

More coal-face representation - potentially via industry bodies

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

21. Should the jurisdiction of this Committee be expanded?

Yes to RFAs and QFEs

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 - QFEs need to be covered by the same code and the consumer needs to be aware of the limitations in dealing with a QFE. Once again, changes in 'labels' would help - ie. tied representative.

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

Stricter guidance around QFEs being transparent to consumers on how any advice/product recommendations is restricted

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

As above, AFAs , RFAs and QFEs should have same Primary Disclosure and basis for remuneration outlined i.e. targets, commissions, fees, qualifications, specialisations, tied, independent etc.

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

As above, one more indepth PDS to cover wider information

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

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

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

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

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

31. Should any changes to these requirements be considered?

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

There should be no exemptions. Lawyers and accountants who are not qualified to give financial advice should not do so unless they are prepared to fall under the Act and fulfil the same obligations as an AFA - they should not provide comment on a risk strategy or investment profile, structure etc.

Property advisers should also fall under the remit of the Act.

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

Yes - now there has been a couple of years' of bedding in they perhaps now need to actually 'enforce' appropriately.

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

It is a nightmare - need to reduce amount of communication, make it relevant and plain english.

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.

Removal of RFA and QFE - one code, one set of guidelines, all in the same boat. Qualifications and competencies should be highlighted.

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?

They don't - hence the need to clarify between sales and 'advice' from 'advisers'

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?

use of the word 'advice' is key - consumers know what advice is, they don't understand when they haven't been given it but have instead been 'sold' a product.

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

Yes - but RFAs and QFEs should have same requirements as they tend to have even more conflict.

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

No need - as long as all designations, RFAs, QFEs, property adviser who should fall under the Act make the same disclosures.

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?

Same for all.

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?

No - soft dollars can be a problem and disclosure of such to consumers could be an area where more transparency needed. Banning would just work to the banks' advantage and there would be no monetary advantage to the client. Many insurance companies are moving towards rewarding persistency - monitoring abundant practice of 'churn' does remain important.

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)?

Do not understand

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

Why do you want to increase competition - surely that is just asking for trouble

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?

Yes

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?

Largely covered already

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

Yes, Cost of AML/CFT audits is highly unnecessary - as well as time involved in completing annual AFA and AML returns.

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

Combine information required for AFA and AML returns (if the latter is really necessary annually) information is similar but small differences make it a nightmare from a time/information collecting perspective.

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?

Huge impact on time and cost for audits, completion of returns. Likelihood of AML minor as clients generally NZ resident, with clear source of funds. Should be on an awareness and reporting of suspicions basis only.

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?

Yes in a few years, advice requirement perhaps linked to size of fund? Possible introduction of annuity market required or at least sign off on advice/proof of financial support for retirement.

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?

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

Yes it will increase

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

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

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

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

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?

Level 5 is minimum and higher would be better but there doesn't seem to be much available

If Financial Advisers are ever going to be perceived as professionals higher minimum qualifications are required.

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 - Level 5 min

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

Should be some alignment at some level as CFP is

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

Yes - i.e. through provision of CFP and CLU

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

Yes, as they do in other professions i.e. medical - our industry has too many

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?

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?

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?

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

Consumers are not aware of and do not use. Should be provided as a selection tool with visitors able to select an adviser based on qualification, specialised area etc.

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?

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?

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

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

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

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

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?

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?

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

Key FSP Act questions for the review

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

Already mentioned - qualifications, competencies, areas of specialisation, remuneration model

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

Yes for sure

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?

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?

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

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

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

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:**

Jane Benton - G3 Financial Freedom Limited

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

18(d)

85. Are you providing this submission:

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

Please describe the nature and size of the organisation:

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
- [ ] 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.