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.

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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 agree on goals but implementation steps have not aligned with goals.
Consumers do not understand the framework because the descriptions used for different levels of adviser are uninformative and misleading. To many are given the term financial adviser when they are simply salespeople.
To be accessible descriptions must be informative so the first word in the description should be the type i.e. investment, insurance or mortgage. (an adviser can have more than 1 if qualified)
To be understandable the three levels need to be clearly separated by the way they function
AFA = Financial Advice = Direct responsibility to the FMA = Adherence to industry codes.

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

- If the objective is to improve both standards and the image of advisers of all three types do not have regulations that undermine their credibility and involve them in pointless time wasting activities.
Example one: Not accepting AFA or other adviser types certification of document copies under AML regulations, when all sorts of other professions can certify even though the FMA has no way of controlling them e.g. any school teacher can but an AFA cannot. What message does that send to the general public?
Example two: Not proactively forcing banks and allowing wrap accounts to use the Real Me identification process instead of the manual copying and certification of documents.

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

No it does not. Refer comments in 1. Many in the industry seek to disguise product selling by calling it "financial advice."

The industry is largely not "trusted" because of this type of role disguise. If you state what you are, and do what the person expects, you build trust. It is perfectly acceptable to be an agent for a product or representative for a firm. Stop allowing those roles to be describe as if they are really giving financial advice. They are not and cannot because of the conflict in their role.

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?

Yes fine. None.

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?

No it is not, it simply creates confusion. A muddle.
It appears to be an attempt to allow a loophole. To give advice when not "really" giving advice. Advice is advice. The situation, the role of the provider and the "relationship" between the parties determines the type of advice and whether it is appropriate.

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

Yes.

But do not believe that high levels of fund management qualifications for an AFA, automatically improves the quality of financial advice an adviser can provide to a member of the public. The reverse seems to often apply.

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?

Yes. Refer comments in 1.

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?

There needs to be a clear distinction between advice and sales so that consumers can chose to work with someone who best suits their needs and whose role is well defined. Where advisers are tied to a supplier and only offer the product of their institutions, the term ‘agent’ would be more appropriate than financial adviser or adviser. If it is not a fiduciary relationship then the term financial adviser or adviser is misleading.
You do not buy a house from a Real Estate Financial Adviser. You buy a house (product) from a Real Estate Agent. That is what RFAs and QFAs are doing, they are selling a product. Which is a worthwhile service but the consumer needs to know that is there role. So RFA should be Registered

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

-

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

Where an RFA is competing for business against an AFA they have an advantage under the current legislation in that AFA has to disclose how they get paid and the RFA does not. This system doesn't benefit the client.
Most prospects or clients do not read the disclosure documents, merely glance over them which reinforces the need to have clear naming for the adviser functions and levels.

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

As before.

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

No. It can be an irrelevant document to many adviser organizations and an unnecessary intrusion.
I have had the experience of being asked questions about my business ABS which really showed that the FMA person had a limited understanding of how most adviser firms run - or how businesses run in general. So why have regulators wasting time in an area where they have limited understanding and one which does not aid actual regulation for clients?

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 well understood. No other comment.

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 the main reason I applied for 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?

Is this really a way of asking if DIMS was a giant mistake?
Clients go to an adviser to get advice and be told what to do. If they like the advice and the proposal they will follow the adviser's recommendation. To not have DIMS and maintain that your client really makes all the decisions is a lie of convenience. But that is what effectively the bulk of AFA's have voted to do.
I did not, because my clients expect me to make decisions based upon a broad outline of a portfolio type - a selection of securities. Model portfolios really. You do not hire a dog and then expect to have to bark. I did not believe an AFA should ask their clients to bark.

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

Most prospects or clients do not read the disclosure documents, generally at best they merely glance over them - and sign that they have them.
(which reinforces the need to have clear naming for the adviser function types and levels.)

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

-

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

-

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

-

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

-

21. Should the jurisdiction of this Committee be expanded?

No.

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?

-

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

-

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

-

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

-

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?

Commission and expected portfolio turnover ‘churn’, need to be disclosed up front and then actuals reported on annually so clients can hold their brokers to account if the actual costs don’t match up with what was forecast.

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?

Large wrap accounts and their custody service very effectively reduce the risk of adviser misappropriation.

31. Should any changes to these requirements be considered?

- Custody services that used pooled holdings with brokers need to much more closely monitored. A fraud at the broker level could completely undermine the custody service. Pooled holdings that are not electronically and automatically reconciled back to individual client accounts at least daily are potentially dangerous.

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

-

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

-

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

- It has been a shambles. Consider the DIMS experience. A regulator or law maker proposing rules about processes and functions they did not fully understand and zig zagging unclear requirements to the very last minute. At huge cost to the industry.
It is not acceptable for the regulator to answer queries about regulation from advisers and financial institutions with the reply that the person should consult with their lawyer. To many inexperienced and uninformed lawyers were involved in drafting many of the laws\regulations. The regulator has to be able to give clear answers to the industry about the interpretation of the law and regulation.
It is a key requirement for a better and less costly way forward.

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.

Refer earlier comments.

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?

Refer earlier comments and suggestions. It is essential to get this sorted if the public are going to be able to trust advisers and more quickly gain access to what they want.

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?

The distinction is in the relative independence of the person giving the advice. A QFE selling only bank product and remunerated based on how much product they sell will not make the same choices as a fee only adviser with no ties to anyone provider. Consumers need to be able to understand the difference. This is most easily solved by distinguishing based on the terms 'adviser' and 'agent' or "representative" depending on the level of their independence.

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

There is one bad mistake. The requirement that to be independent an adviser must not accept any payment from a supplier needs to be dropped in relationship to Kiwisaver suppliers - provided full disclosure of that commission is made to the member.
The regulator laments the lack of good advice for Kiwisaver members yet requires that an adviser bill for their services to remain "independent." A typical new Kiwisaver member would be lucky to have $4,000 in their account at the end of the first year. The adviser that puts them there is typically paid a commission of 0.25% on the average balance. i.e. ($4,000 x.0025)/2 i.e. $5. Year 2 the calculation would give income of $15. So the adviser only does the work as a charity and in the

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

Why two disclosure statements? How about one short one with specific facts stated.

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?

Refer earlier comments about Kiwisaver commission.
Yes absolutely support conflict of interest disclosures. But currently much of what is being put in many conflict of interest statements is information that should be self evident to the general public by the description of the advisers role. Refer earlier comments.

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?

Refer comments about the economics of Kiwisaver commission for an adviser.

This would simply please large financial institutions. When there are large vertically integrated financial suppliers dominating the market this is the last step that should be taken.

Commissions however need to be revealed. Secret commissions are the problem, not commissions. Correct naming of adviser types will help address part of this issue. A person expects to pay a real estate agent a commission. They would also expect to pay a Registered Financial Agent a

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. The playing field massively favours financial institutions. Hence the disappearance of many small independent adviser firms because of the compliance and regulatory framework. There has been an explosion in the vertically integrated large suppliers (even though the general public and regulator may not realise the extent of this, due to some implementations being done by buy out and supply agreements). Many previously independent firms have been frightened into these structures by the institutions ramping up fears of the new compliance and regulatory framework. The general quality of a lot of the advice provided has sunk - because it primarily addresses compliance issues not real advice issues.

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

Give advisers a chance not to be spending so much of their time dealing with badly thought out and implemented regulations and compliance issues.

There is no shortage of competition. the regulations however have slanted the playing fields in favour of the large financial institutions.

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?

-

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?

Refer earlier comments

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

- Refer Kiwisaver commission and cost example provided earlier.

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

Get more electronic with all AML requirements URGENTLY.
Make various (currently in house) adviser firm registers available outhouse. CPDs, complaints, etc.
Make the electronic systems connect so information is not duplicated time and again.
Aim to create a single automated system for adviser firms regulation and compliance requirements.
Automatically link professional indemnity insurers database as well.
Simplify disclosure requirements and allow more electronic compliance and communication with the public, prospects and clients.
Remove requirements for ABS and as many other filings as possible to make one system.

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?

See suggestions in 14 above. This is a disaster area and has resulted in very high levels of additional costs in the industry and many meaningless activities.
This needs a radical overhaul and complete rethink.
Starting with making Real Me work - for all New Zealanders including Government Departments.

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?

Refer comments on commission.

Kiwisaver has barely got into the accumulation phase - the current level of decumulation is a minor issue and generally being well served. Those removing significant sums are generally high earners that have access to advice.

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?

- No. The regulator has failed badly with reviewing existing software tools. It has not demonstrated any capacity to check or validate these, so how can there be any confidence about its ability to cope with a new generation of robo type products?

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?

-

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

A degree and diploma in financial planning.

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?

Standards papers.

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

None.

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

-

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

Consultative.

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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?

-

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

-

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?

-

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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?

What would be useful is if advisers supplied the Register some basic info on whether they are an AFA or RFA, the areas of advice they provide (investment, insurance, kiwsaver, mortages etc), whether they are fee only or not, and the locations the serve. If advisers could also upload a disclosure statement, consumers could do a quick search to narrow down advisers that might cater for their needs. This would require promoting the FSPR as a tool for this purpose. A UK example is detailed below:
www.unbiased.co.uk

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

-

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:**

John Cliffe

***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:

Small adviser firm

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?

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

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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.