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?

Disagree. In my experience (40 years) (and 10,000 clients), it makes no difference as to the level of sophistication or qualification for the purpose of having people seek or take financial advice. I have hired, trained, managed and monitored hundreds of advisers. Regulation will not necessarily change public perception in financial services but it could promote a haven for elitism. Many of our communities' best servants are amateurs and volunteers in committees, councils and clubs – they are often neither regulated nor reviewed but most often revered. Very often the most 'professional' – the least trusted. An overarching 'standards'. Set of principles, yes but a prescriptive regulatory arrangement, no. Leave to the authoritarian regimes of socialism, communism and dictatorships.

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

Do not regulate advisers. Adherence to 'the code of principles' is all that is required. Let the market determine – choice, service, reputation, competency. Hold 'product' suppliers accountable for competency of distribution i.e. Banks, Insurance companies, Fund Managers, and/or licensed distribution centres (large agencies)

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

The problem with attempting to be prescriptive is the inability to define in simple English and the inevitable establishment of departments to overview adherence. In other words the 'Red tape" of bureaucracy. Both India and China have a growing middle class because of the departure from bureaucratic practices not from the regulatory expansion of central or local government into common law principles. East Germany ruled via a strict guideline of prescriptive behaviours. People informed the 'Stasi' if adherence to these were not met. No one wanted to escape from West Germany to East Germany. Everyone in NZ should have a view on finance and money, even school teachers, accountants and lawyers. We should not restrain that.

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?

Eliminate – why a distinction. Who defines sophistication? Stop being interfering. Let the market prevail. Supply and demand. Choice and options. Whatever politicians and bureaucrats attempt to define and manipulate will inevitably lead to unintended consequences overtime. Laissez faire Capitalism with overarching governance. Smaller government – not larger. Less bureaucrats not more.

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?

As above.

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

As above.

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?

The greatest risk consumers face in life (with respect to financial security) is their own behaviours. Markets are volatile. Governments and bureaucrats cannot manipulate markets – it is the natural affect of business and its reaction to events and environments (often created by political short term decision making). Investment performance, product appropriateness will never be de-risked by regulation. Financial capability and even best advice can be and often is overwhelmed by market volatility and the resultant emotion created by volatility fatigue and exacerbated by media influence. Attempting to regulate this (de risk) will have the opposite affect – people will believe – and no economist, banker, financial advisers knows the financial future. The consumer cannot trust

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?

This is an example of a) prescriptive regulation and b) elitism which can and does come from regulation driven by well-meaning bureaucrats – taking advice from 'interest groups' (Banks, Insurance companies and elitist advisers with personal agendas). Bureaucrats whose best intentions are to pass on their recommendations to their minister – who's intentions we all hope are founded and grounded on consumers best interests and not political need. You have created the beast now (QFE<AFA<RFA) – stop listening to the elitists – let the public get to know and differentiate for themselves. Educate the public on what each can deliver i.e.
a) QFE – a defined product range (one supplier product)

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

Change would be confusing – the code has been sufficient with which to set standards – make suppliers and licensees responsible.

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

Everyone should disclose commissions and fees at the time of the quoting/recommending. Full disclosure is fundamental. Let the market determine acceptance of price and value. The regulator should not try to determine value.

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

Simply make them aware of their responsibilities and adherence to code standards – then hold them accountable.

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

Once designed and written these are not overly onerous to maintain. Fundamental and good best practice – but you shouldn't be excessively autocratic in their monitoring. If you keep changing things however – the cost escalates. A simple change by a protocol committee becomes a potential nightmare because various well-meaning department heads will want to make an impression and we will end up with another IRD.

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?

Again attempting to be overly prescriptive can complicate. If you maintain the QFE, AFA, RFA status (which I recommend) do not then attempt to prescribe product or process. Let the market prevail. If you have determined that 'an adviser or their licensee' is qualified, let them do their job within the bounds of the code standards.

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?

Fundamental
a) Non advice – products – transactional service
b) Advice – procedural – relationship advice

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?

The biggest cost to an adviser practice is the mitigation of reputation risk (their compliance division) and the protection from inadvertent procedure (the legal costs and or regulatory fine). A DIMS license is another example of elitism. Make it a large cost and demand high/excessive criteria – you don't improve advice but you will drive prescriptive procedure. The market will adapt. Rebranding is a fundamental investment practice. But once a year is OK and if you demand client sign off rather than automation (our administrator auto-rebalancing) it will allow face to face review (for the DIMS and non DIMS advisers) The public really doesn't care. You cannot regulate for trust and integrity. You can and will create procedures and standards – as long as these do not become excessive (i.e.

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

Adequate – yes. Useful – questionable. But give them time. I think as both the regulators and practitioners communicate more a mutual trust and respect will develop. Overall transparency of experience, capabilities and remuneration is fair and reasonable.

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

Give them time – concise is probably more important than detail (less paper less cost). But all advisers should be providing – including QFE's and RFA's. Everyone needs to be transparent when recommending. This will differentiate between an amateur's advice and that from a professional – a stipulated disclosure. That way even accountants and lawyers when preferring financial advice – at whatever level or product suppliers such as banks or insurance companies must make their distribution provide a templated disclosure document.

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

Minimum standards and the code are key. But all must be subject to same. Give it time.

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

Minimal need for change. The broader the better. Principles based. Don't become more prescriptive.

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

Should cover all.

21. Should the jurisdiction of this Committee be expanded?

As above

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?

Make expectations transparent. I'm ok with QFE's but the adherence to things such as disclosure and procedure, a level playing field. But class advice and personalised advice needs to change.

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

As above

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

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?

All should be equal – (class advice vs personalised advice must go). It already is leading to product pushing.

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

Understood by whom. It ain't broke!

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

There may be occasional abuse – but the professions seems quite self-regulating to me.

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

Don't see any advantages

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

As above

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

Yes

31. Should any changes to these requirements be considered?

No

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

If they give financial advice
a) It should be in writing
b) It should be accompanied by a disclosure document

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

Don't give them enforcement – give them less

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

Fine

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.

Retain and explain – simply. But hold each accountable to code standards and the same disclosure regime.

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?

Can't answer that – but suspect that people are not stupid.

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?

Let the public decide. It is not the function of government.

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

I do not see problems associated with commissions – especially when they are fully disclosed. There is always conflict of interest. Even amongst bureaucrats and especially with politicians. You can't legislate or regulate against and if you try it will always distort and create unintended consequences.

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

Shorten – template and make everyone use them

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. Keep the same

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. Let the market determine. Capitalism not communism. Don't let 'churn' debate confuse the commission question. They are two different things. But fully disclose commissions. If a supplier accepts a churned product – they must accept all the benefits of the previous contract or outline in detail (direct to the client) – the benefit exclusions. Make the supplier or the licensee responsible for 'codes of conduct' – Best practice.

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)?

Yes. Do not attempt to regulate further.

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

If you create greater elitism – you will reduce competition. At the same time – the code needs to become the expected standards for all – and the suppliers/licensees responsible for adherence through their distribution.

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?

Keep the same QFE/AFA/RFA but adhere to fundamental procedures and transparency. Give it time. Advertise the options – keep it simple.

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

Cost – yes. About $100,000 per annum now for my small agency ($3,000,000 revenue). Availability – no!

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

I think costs will reduce in time and the market adjusts to the requirements of compliance and all participants operate within a level playing field – systems and procedures become more templated. I don't think automation will reduce availability or quality – it may improve it.

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?

Simply added to adaptation of paperwork. For our office the AMC/CFT has meant admin support time and documentation change. We understand the need – accept the cost. But we cannot maintain increasing costs.

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?

Phew. Your biggest question. NZ"S are not accustomed to paying for advice. I think ultimately the politicians will demand a certain proportion to annuity – if not all. The problem is lack of supply. (Annuities). But that will soon follow demand. Advice is needed pre and post retirement – both are critical. But regulation will not solve it. As people are becoming more savvy (because KiwiSaver balances are growing) they become easier to educate and advise. QFE/AFA/RFA status can be marketed by authority as the means to determine and differentiate – who can and who cannot advise on category one product.

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?

Not sure I have sufficient understanding to answer this question. My first reaction or default option is always less rather than more regulation.

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

I think in times borders will disappear. It is already occurring, but attempting to facilitate a mutual compliance would be a fool's errand. International financial advice is specialised and it will predominantly revolve around taxation rather than pure investment. Investment products and asset classes are basic it's regulations and taxation that differ. The nuances of overseas advice belongs to specialist practices. Predominantly these organisations with international affiliates. (Beyond my level of understanding and comprehension).

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

Different markets, different leadership, different philosophies. A bit like convincing the NZ and Australian rugby unions to join. Or the Greeks and Italians. Has the EU worked? Let the markets work it out. Stop the politicians from interfering.

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

Dramatically. Information rather than advice, but instant and with multiple options. Once people get information they should/can determine the level of sophistication required to take action. Let them determine.

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

They shouldn't try. Set principles and expect the market to take responsibility for best practice (compliance within code standard and product/advice disclosure)

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

Don't try and become a totalitarian organisation. Enough is already too much.

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?

Don't change

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. NCFS – applicable to the product.)

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

Ignore the Aussies. They will become more prescriptive because their market is larger and their people more diverse. International best practice standards – yes. Tempting to be led by the Australian referee of fair play – never. It's not how they think. I've worked alongside Australian management in business for many years – our style is less combative and I think more balanced. Please don't use 'closer working relationship' political spin as an excuse for copying an Australian template – because it's easier or the senior bureaucrats and politicians can cosy up to their cousins across the Tasman. Until 'at work superannuation' created a booming funds management industry Australian management in banking and insurance was poor. The advice industry would most often

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

Another good question. I've belonged to IFA and PAA for over 35 years. I think it (professionalism) could be improved not however through 'white coats and elitism'. I think if they (prof bodies) were given the mandate to overview in conjunction with suppliers – with a simple/consistent greater responsibility. Why don't you ask them? I also think you would reduce the options (numbers of assns.) if you set a mandate. A bit like dealing with NZBA or FSC or NZICA.

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

Yes. Give them the power to exclude and include and prevent advisers from operating outside the affiliation. Let them determine rules of procedures. Overview. Make it mandatory for advisers to belong to a professional body.

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?

I'm not sure that the model is necessarily wrong ie QFE/AFA/RFA. I understand the QFE rationale and its differentiation of structure and numbers. Perhaps the advice process/product process could be more transparent.
QFE's can do this – like this
AFA's can do this – like this
RFA's can do this – like this
And this disclosures are similar and transparent. Everyone is registered – including all QFE representatives.

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?

I can't answer for the QFE's. As long as QFE's conform to a compliance regime I'm not opposed to healthy competition – as long as the consumer can differentiate as to the level of advice.
Registration and disclosure.

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?

Agree

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

The register should name all participants from each category QFE, AFA, RFA and simply show advice protocols i.e. category one and/or two products. Product sale or individual advice.

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

Agree

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

I think it is ok currently although I'm not personally involved within a providers business.

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?

I'm not a fan of greater levels of oversight or prosecution.

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

Not sufficiently understanding to answer this question.

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

Can't answer that. The ramifications for a 'wholesale' client don't seem dissimilar to me. Why only retail?

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

It seems fine to me – and with good competition plus 'feel' for a balanced role.

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

Fine

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?

Fine

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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?

No – unless stipulations are placed on specific disputes

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

No – let common law prevail

Key FSP Act questions for the review

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

Not sure.

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

Yes

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?

Yes

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?

Not sure how.

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

Can't answer that.

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

As above

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

It does not require such a negative approach. It would be far more positive to offer a productive explanation of what financial advice can offer people.

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 Killick

***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

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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.