# 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?

Agreed

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

I think there needs to be a more level playing field for financial advisers.

AFAs go through more training and exams, have much higher costs and are deemed to be more professional yet are treated much more harshly and have to provide commission disclosure that RFAs and QFEs are not required to do.

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

No - the legislation has been written by lawyers and the general public simply do not understand.

### 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

**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?**

Yes

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

I think that it is appropriate to have different requirements on types of advice (such as life insurance planning and investment planning) but not on the different types of advisers (i.e. AFAs, RFAs and QFEs giving life insurance advice should all be using the same level playing 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?**

The Consumer needs to understand better; the current categorisation is very confusing and does not benefit the Consumer or make things better for them

**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 I do not.

Changing the term RFA to something new will just simply add more confusion - the Consumer needs to be educated on what the different types of adviser can advise on.

Simply giving the Consumer another piece of paper to rad on this will not help either as most Consumers do not read such things.

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

I think they are appropriate and adequate but the big issue here is how the Banks work.

They are a law unto themselves and think the regulations do not apply to them. Furthermore, the FMA seem to allow them to get away with it.

The way the banks have been allowed to act with KiwiSaver switching is just one example.

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

RFAs should have to disclose the same information as AFAs (without exception).

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

Raising the bar so they have to become AFAs within a certain time frame.

How else can standards be achieved.

Pretty crazy that anyone can become an RFA simply by registering and having a Disputes Resolution provider. You cant become an Accountant or a lawyer overnight so why can you call yourself a Financial Adviser overnight.

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

Why should an AFA have to produce an adviser business statement when an RFA does not?

What clever person thought that one up?

As an AFA, what purpose does it really provide and how does it help the consumer.

Scrap the bloody thing!

**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 understood by advisers but not by the client.

I thought the whole purpose of the regulation was to benefit the consumer but in reality, all it has achieved is to make us cover our own backsides.

The extra paperwork generated is not read by the Consumer so why produce it and make their life more complicated.

**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 simple common sense

**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?**

Anything that reduces my compliance costs and paperwork gets my vote.

Why am i expected to produce a KiwiSaver report for a client, complete a risk profile and a Secondary Disclosure and complete Money Laundering paperwork when a client can choose a default provider and join KiwiSaver in two minutes

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

No - there is too much paperwork for Consumers and they don't read half the stuff we are required to give them.

What other industry tells a client how much we earn???????????

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

Hell YES

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

No comment

**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?**

Ask the clients of Ross Asset Management

**21. Should the jurisdiction of this Committee be expanded?**

Not sure?

**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?**

Consumers do not understand what a QFE is and I suspect neither do half of the advisers.

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

Yes - the current rules around QFEs are bukkshit

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

No.

If you are giving advice you should be acting in the same way and with the same amount of professionalism (irrespective of being an AFA, RFA or QFE).

QFE's have the ability to hide behind a big organisation

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

A level playing field for all would be nice - I wont hold my breath though!

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

Well understood

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

Yes to both points

**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?**

Higher regulation costs

**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?**

Why should investment property consultants and real estate agents be exempted.

It is easier to launder money through property rather than through something like KiwiSaver

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

Yes

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

Good

## 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.**

Help consumers understand the difference between AFAs, RFAs and QFEs
Create a level playing field between AFAs, RFAs and QFEs
Regulate the Banks
Get rid of the ABS and Secondary Disclosure

**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 do not understand and the current regulations do nothing to make them understand.

Why are you using the word "unbiased' in this question when the FMA will not allow me to use this term as an AFA.

Consumers understand the term :unbiased: but not in the way the FMA say it has to be used.

**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 to be clarified has nothing to do with sales, information provision and advice but everything to do with the people providing the advice (AFAs, RFAs and QFEs)

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

No because Consumers do not understand it

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

Just have one Disclosure Statement and remove commission disclosure for AFAs (or include commission disclosure for RFAs and QFEs)

**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 - all do it or no-one do it

**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 commissions should not be banned.

If commissions are banned, it will simply drive those that need advice straight to the banks.

I am happy to receive commissions and I am happy to work on a fee - the problem is that most "Mum and Dad: clients want advice but aren't prepared to pay for it.

**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 - definately not.

There is a total imbalance between advisers and the banks as well as between AFAs and RFAs

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

A level playing field for all

**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?**

No issues

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

Consumers do not understand the term "independent" in the way the FMA says we have to use it.

I receive commissions on life insurance products but have no financial obligations in place with any one provider so I seek the best for my client's situation and circumstances yet I cannot use the word "independent or impartial" yet this is what i am

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

Common sense would help

**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?**

Way too much cost and total overkill.

What AML/CFT is there going to be for someone joining KiwiSaver for $20 per week.

Current situation is a joke - especially the need to be audited.

**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?**

It shows there will be a need for continued investment advice via the AFA market.

The issue however is the fact that the regulatory process is so anti-AFA that RFAs do not want to updrade and improve to AFA status.

**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?**

Just another set of regulations that we have to abide by and make sure that our arses are adequately covered.

I expect it will do bugger all for the consumer.

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

Not particularly other than existing clients going overseas

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

Not relevant to me

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

More online advice will be sought; the amount of paperwork in our profession will drive more pople online

**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?**

I think so

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

YES - WITHOUT QUESTION

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

?

**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 I do

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

That's the trouble with New Zealand - we are a small market and seem to sometimes follow the pack instead of doing what works in this country.

**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?**

Yes because they understand the industry.

The Ministers and likes of the FMA make too many knee jerk reactions and make legislation that they do not understand.

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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?**

No - it's a joke!

## 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?**

It provides minimal purpose to the Consumer

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

Agrees

**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?**

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?**

Yes

**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

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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

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

Yes if fraud is involves

## Key FSP Act questions for the review

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

Qualifications and disciplinary records

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

Yes - as above

**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

**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

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

More confusion

**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:**

Michael Lay (AFA)

***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.