## 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 5 pm 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 | A |
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2. What goals do you consider should be more or less important in deciding how to regulate financial advisers?
Accessibility of financial advice should be given greater prominence.
3. Does this definition adequately capture what financial advice is? If not, what changes should be considered?

| Yes | - |
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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 $\quad 4$

## FAA Review Submissions

5. Is the distinction in the Act between a personalised financial service and a class service appropriate and effective? If not, what changes should be considered?

The June 2010 Select Committee report, in introducing a class advice provision, envisaged it applying to "generic product brochures and online planning services", noting that "these publications and internet tools are prepared for a wide 'class' of people". In practice, the provision has been used not only for that but also for face-to-face situations where the adviser chooses not to enquire into the client's financial situation. We believe this incentivises the design of processes called "advice" which are not advice. It can be used to legitimise mis-selling, where the adviser refrains from making simple enquiries to determine suitability, forcing the client to make her own call, on the pretext that the law prohibits a fuller conversation. Also see question 11 below.

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

While it is appropriate to tailor the conduct requirements to different advice needs, we believe this distinction should be made at a conduct standards level (within the Code) and not as a basis for categorising advisers into different types (AFAs, RFAs etc). In large part this is because product type is only one aspect of the complexity of a client/advice situation. It is also because the AFA/RFA distinction causes consumer confusion. We believe it is in the interests of consumers and advisers to remove that confusion and to use the Code to guide adviser conduct, not adviser categorisation based on product.

## 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?

$\square$
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?

## See 6 above.

RFA's should be required to hold the same Level 5 qualification with an appropriate endorsement (e.g. Category 2 Life Insurance)

## FAA Review Submissions

9. Are the general conduct requirements applying to all financial advisers, including

RFAs, appropriate and adequate? If not, what changes should be considered?
Elsewhere in this submission we recommend that there should be only one type of adviser and that a single Code should apply to all advisers. In that context we comment as follows: (a) We believe FAA s33 should make specific reference to the Code. (b) We believe that for some situations the Code Committee should explicitly be empowered to define suitably safe harbours - steps that are sufficient to discharge the adviser's obligation to determine if a product/service is suitable for a particular client. Examples would be less complex advice situations, advice on discrete issues and QFE "sales" situations. FAA s33/34 should refer generically to such Code safe harbours.(c) FAA s33 should explicitly contemplate advice being provided as an ongoing rather than point-in-time service.

See comments below on better use of public register information.
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## 10. Do you think that disclosing this information is adequate for consumers? Should RFAs be required to disclose any additional information?



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

We recommend class advice being limited specifically to published and "robo" advice (ie non-human interactions - in other words not face-to-face, or by phone, web chat (text or audio) etc). We believe that FAA s36 should permit the Code Committee (in addition to the regulations) to set standards in respect of class advice, particularly "robo" advice because the latter electronically mimics what human advisers do. (For the avoidance of doubt, we see no need to change the wholesale client provisions - FAA s20(c).)

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

Yes. For so long as an ABS is the alternative to submitting a detailed application for authorisation as a financial adviser, its costs should be viewed in light of the costs that would be incurred in providing similar information to the FMA at the time of the authorisation application. We would encourage the FMA to minimise what it expects to see in the ABS, and reduce duplication between the annual AFA info return (backwards looking, mainly statistical) and the ABS (forward looking, demonstrating business capacity). We think the comparatively limited effort in keeping the ABS up-to-date prepares the adviser well for an FMA surveillance visit and helps to minimise the disruption such a visit could cause.

## FAA Review Submissions

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?
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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?
$\square$
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?

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

See comments below on better use of public register information. $\square$

## FAA Review Submissions

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

See comments below on better use of public register information.

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

We believe that our members - and advisers and consumers generally - would benefit if the Code applied to all advisers. (The chief arguments for this view are the reputation advantage to the advice profession and the protection for advisers derived from clarification of good conduct standards.) The standing of the Code and the Code Committee is paramount if this is to be successful. From an external viewpoint, the Code Committee appears to be overly controlled by the FMA. We would like to see steps taken to give the Committee a greater say over its funding, number of meetings, ability to call on experts, ability to commission research etc.

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

We recommend that adviser professional associations should be consulted or involved more directly $\qquad$ in the appointment of Code Committee members.

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

The FADC effectiveness will increase if its scope is broadened to cover all advisers.

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

| Yes |  |
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## FAA Review Submissions

## 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?

> We believe the QFE regime as being the single aspect of the current regime they would most want changed. The regime is one of unfairness - QFEs can take short-cuts that other advisers can't. While part of this perception is because of poor transparency around QFE obligations, it is largely driven by real differences in conduct. Some of this can be addressed outside QFEs, such as better use of public register information as an alternative to (primary) disclosure documents and Code Committee prescribed suitably safe-harbours (see above). However, as described below, we believe there is major work to do to minimise the risk of damage to the reputation of advice by directly tackling QFE conduct.
23. Should any changes be considered to promote transparency of QFE obligations?
$\square$
24. Are the current disclosure requirements for QFE advisers adequate and useful for consumers?

See comments below on better use of public register information.
25. Should any changes be considered to improve the relevance of these documents to consumers or to reduce the costs of producing them?
$\square$
26. How well understood are the broker requirements in the FA Act? How could understanding be improved?

While these requirements are becoming better understood, we think it is unfortunate that the word "broker" has been distorted by the legislation. We would prefer Part 3A to use a more neutral term and restore "broker" to its common and well understood normal usage to that of the predominant activity of the brokering of products.

## FAA Review Submissions

27. Are these requirements necessary and/or adequate to protect client assets? If not, why not?
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28. Should consideration be given to introducing disclosure requirements for brokers? If so, what would need to be disclosed and why?

Yes - covering nature of services provided. Disputes resolution process. How regulated. Privacy Act provisions.
29. What would be the costs and benefits of applying the broker requirements in the FA Act to insurance intermediaries?
$\square$
30. Are the requirements on custodians effective in reducing the risk of client losses due to misappropriation or mismanagement?
$\square$
31. Should any changes to these requirements be considered?


## FAA Review Submissions

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

We recommend that the FAA s14(d) exemption be conditional on any specific conduct standards imposed by the Code Committee, and also on an overarching competence requirement equivalent to Code Standard 14.
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?

We believe that the boundary between the Code (authored by the Code Committee) and FMA guidance should be clearer. The FMA's guidance has on occasion strayed into effectively becoming interpretations of the Code and has stretched into territory that is properly the jurisdiction of the Committee, not the Regulator. This detracts from the effectiveness of the Code and should be addressed.

## 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.


## FAA Review Submissions

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?
Limited consumer understanding - particularly from sales people attached to some QFA's

## 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?

Our starting proposition is that where there is recommendation or opinion, there should be suitability - in other words steps to ensure that the product / service is not missold and that appropriateness for the client is considered. However, where the party responsible for both the product and the associated advice is the same (or closely connected) as is the case for example with QFEs and DIMS providers, the boundary between advice and information ("incidental advice") can be particularly blurred. Consequently, we can envisage some expansion of FAA s10(3) without detracting from the objectives of the Act. For example, own-product advice exclusions could be permitted for limited product types (category 2 perhaps) on condition that the Code Committee was
38. Do you think that current AFA disclosure requirements are effective in overcoming problems associated with commissions and other conflicts of interest?
Yes $\quad$ -
39. How do you think that AFA information disclosure requirements could be improved to better assist consumer decision making?

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## FAA Review Submissions

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?
$\square$
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 - this would greatly reduce consumer access to advice and only exacerbate the chronic
under-insured issue we have in NZ .
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 $\quad$ 合
43. What changes could be made to increase the levels of competition between advisers?

| No change needed | 4 |
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## FAA Review Submissions

## 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?

> We believe that FAA s86 could give the Code Committee more explicit powers to provide for differing minimum standards when the adviser (a) is giving advice on discrete issues, (b) is giving advice on category 2 products (irrespective of whether the Code is broadened to apply to all advisers), (c) should consider whether the client engagement is - or reasonably should expect to be - a continuing rather that point-in-time assignment, and (d) should give warnings, especially in respect of the restricted nature of the service. As mentioned above, we suggest the Code Committee should have the power to define suitably safe harbours, so as to streamline the advice process in lower risk client situations. Importantly, we would like the relevance of the Code
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?
We believe the categorisation of advice types should not drive different adviser categories (AFA, RFA etc). Rather, we suggest the Code be used to tailor conduct and competence standards to specific advice situations. This would have relevance to the adviser's conduct and scope of business, but not to the adviser's designation or the client's decision-making.
46. Are there specific compliance requirements from the FA Act regulation that have affected the cost and availability of independent financial advice?

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

One Code for all advisers, with unambiguous Code Committee discretion to tailor standards to different advice situations.

## FAA Review Submissions

## 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?

(a) The AML and Fatca provisions should more specifically address situations where multiple parties have regulatory responsibility (for example adviser, distributor, product provider) for the same client transaction. A simple mechanism should exist to allow one party in the chain to take primary responsibility for the relevant client due diligence checks and for others in the chain to rely on that. This should be standardised in the regulations so that compliance is straightforward and certain. (b) There is scope for Government to provide a taxpayer-funded extension to its RealMe platform to provide a generic web solution to smaller adviser business for electronic identification of customers. This would have a profound, positive impact on the effectiveness of the AML regime and the

## 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?

In line with the comments above, the Code Committee should be able to specify differing suitability safe harbours for different stages of KiwiSaver - for example new account, significant investment, decumulation. By suitability we mean the steps that the adviser needs to go through to justify that the advice is appropriate for a given client's circumstances and financial situation.

## 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?

Some expansion of FAA s10(3) may be warranted for own-product advice exclusions, especially where the entity was already licenced, for example under FMCA. However, we recommend that the Code Committee be given the power to mandate warning statements including the statement that the service is not full advice. Similarly, we would be keen to see the Code Committee having powers to impose standards in respect of the lawyers / accountants exemption (FAA s14) and the DIMS incidental advice provision in the FMCA. This is consistent with our view that the status of the Code be raised to apply across the board and to ensure compatible of approach across the full spectrum of advice situations.

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

We believe NZ is well placed for advice to cross the board in each direction with Australia and
beyond. In our view, a single Code applying to all advisers would act to strengthen this further.

## FAA Review Submissions

## 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?

Only in a limited way. Advice is personalised and difficult to replicate by way of technology.
54. How can government keep pace with technological developments to ensure that quality standards for advice are maintained, without inhibiting innovation?

We recommend that the Code Committee have standard setting powers in respect of robo-advice (ie non-human interactions - in other words not face-to-face, or by phone, web chat (text or audio) etc). We believe that FAA s36 should permit the Code Committee (in addition to the regulations) to set standards in respect of "robo" advice.

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

Yes and yes, although we have unfortunately experienced some serious instances (e.g. RAM) where there have been breaches that bring the AFA into disrepute.

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

| Yes |  |
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## FAA Review Submissions

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

We believe there is an important distinction between minimum and aspirational qualification levels. The first is the responsibility of the Code Committee. The second should be left - competitively - to professional associations. Good advisers require a mix of attributes, and in the context of a profession so centered on client's financial wellbeing, ethical and relationship skills are arguably more important than the academic level of the technical qualification. We think the Level 5 qualification - as recently revised and broadened - is about right for the minimum standard.

## 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?

We recommend that all advisers should meet minimum qualification levels. We suggest that for advisers not yet qualified at the Level 5 standard, a three to five year transition to that qualification be allowed. The aspect of the qualification dealing with knowledge of the Code and laws, should be attained at the start of the revised regime. (In practice that is likely to be a multi-choice exam.) All advisers would then be required - like current AFAs - to maintain a professional development plan, available to the FMA for review. That should map out the part-qualified adviser's journey to full qualification. We support different combinations of the Level 5 coursework requirements being specified by the Code Committee for different types of advice situation, which in effect would allow
59. How much consideration should be given to aligning adviser qualifications with those applying in other countries, particularly Australia?

While consideration of Australia's approach is important, it should not dictate the approach we take domestically.

Our environment is different (e.g. no compulsory Superannuation regime).

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

Reasonably effective, but it would help if all advisers, RFAs' \& AFAs' were compelled to belong to a professional body.

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

Yes, by way of a disciplinary process.

## FAA Review Submissions

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?

We passionately support the efforts to promote the professionalism of financial advisers. Professional skills are inherently about people first, with business systems and capability following behind that. We believe the focus on the individual adviser in the NZ legislation, centered around an industry-built Code, are the two overwhelming strengths of our regime. We recommend it be retained.
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?
$\square$

## 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?
We believe prominence should be given to the usefulness of the Register.

## FAA Review Submissions

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

We think the review would benefit from taking a step back. Instead of assessing the dispute resolution regime, we suggest attention be given to whether the objective of providing adequate consumer redress avenues will continue to be achieved via the schemes, or whether alternative (for example consumer advocacy) approaches could be contemplated. Unlike the rest of the FAA Review, this part of the Issues Paper assesses the operations of the solution, rather than questioning whether the original problem / purpose is being adequately addressed by the solution.
67. What goals do you consider should be more or less important in reviewing the dispute resolution regime?

Inspire confidence in consumers through consistent rulings, a fair and impartial process with feedback that has a clear understanding of how decisions are reached.

## 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?

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## FAA Review Submissions

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?

We would support a unified front-end (single entry-portal webpage and 0800 number) for all schemes.
72. Is the current framework for monitoring dispute resolution schemes adequate? What changes, if any, should be considered?
$\square$
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?
$\square$

## FAA Review Submissions

## 74. Should the $\mathbf{\$ 2 0 0 , 0 0 0}$ 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?

We would caution against raising jurisdictional limits because schemes are designed primarily to work in lower-cost situation and may well be inferior to other solutions at these levels.
75. Should additional requirements to ensure that financial service providers are able to pay compensation to consumers be considered in New Zealand?
We would support professional indemnity insurance being compulsory for financial advisers. $\Delta$

## Key FSP Act questions for the review

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

In the context of MBIE's focus on the easy comparability by consumers of information about advisers, we believe there is scope to use the Register as an alternative to current disclosure statement requirements. We recommend that all adviser primary disclosure statements be scrapped, and that information instead be collected on the Register. Each adviser would be obliged to keep it up to date. The Register would enable consumers not only to view/print out that information for a particular adviser, but to compare several advisers on one screen.

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



## FAA Review Submissions

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


## FAA Review Submissions

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:
PLUSFOUR INSURANCE SOLUTIONS
* 84. Please provide your contact details:

18(d)

## 85. Are you providing this submission:

$\square$ As an individual
On behalf of an organisation

Please describe the nature and size of the organisation:
A Nationwide cooperative with 39 financial advisers
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?

## 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:
$\square$ Yes $\square$
Explanation:
$\square$

Thank you for your time. Please send your submission.

