How to have your say

Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by 5pm on 22 July 2015.

Your submission may respond to any or all of these issues. We also encourage your input on any other relevant issues. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please also include your name, or the name of your organisation, and contact details.

Use of information

The information provided in submissions will be used to inform MBIE's policy development process, and will inform advice to Ministers on the operation of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

We may contact submitters directly if we require clarification of any matters in submissions.

Except for material that may be defamatory, MBIE intends to upload PDF copies of submissions received to the **FAA page on MBIE's website**. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

Release of information

Submissions are also subject to the Official Information Act 1982. Please set out clearly with your submission if you have any objection to the release of any information in the submission, and in particular, which part(s) you consider should be withheld, together with the reason(s) for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

If your submission contains any confidential information, please indicate this on the front of the submission. Any confidential information should be clearly marked within the text. If you wish to provide a submission containing confidential information, please provide a separate version excluding the relevant information for publication on our website.

Private information

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate in your submission if you do not wish your name to be included in any summary of submissions that MBIE may publish.

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FAA Review Submissions

Role and regulation of financial advice

When providing your comments, we would particularly appreciate information about the relative benefits, costs (financial or otherwise) and any other impacts of these proposals on businesses, consumers or other stakeholders. This information will help us more fully understand the effects of the current regulation.

1. Do you agree that financial adviser regulation should seek to achieve the identified goals? If not, why not?

Yes

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

Goal 3 around public confidence in the professionalism of financial advisers is promoted. All financial advisers should have as a minimum education standard the NZ Cert in Financial Services Level 5. That qualification should be held by the individual and all employers of financial advisers should have a responsibility to ensure that any financial adviser they employ has that qualification within 6 months of joining the firm and before they can provide any financial advice to retail clients.

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

Yes, it adequately captures what financial advice is.

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?

Most clients would not fully understand the difference between wholesale and retail.
The wholesale definition based upon net worth should be increased to a minimum of $5m and not the $1m under FAA. It is common for a client to have more than $1m and still not be financially sophisticated. These people need to be protected by the retail client requirements.

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?

Class service has been twisted out of what was originally contemplated. I am happy for class advice to apply when a financial adviser is doing a seminar or writing an article but it should not be permitted when dealing on a one to one basis. A reasonable person would not be able to differentiate whether the adviser was providing class or personalised advice. The person would naturally assume it was personalised advice for them as the adviser was only talking to them. If we need to get around the issue of collecting all the necessary advice then the process needs to be changed so that the adviser has to state or write that this is not personalised advice and then give the implications of this. Additionally, the adviser should be required to state that this is either

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

Yes and no. All advisers should have to attain the level 5 qualification plus follow a number of the AFA code standards plus have ongoing CPD. However, more complex advice would need to have more specialist training over and above the minimum. Sale of life insurance and income protection insurance and business insurance are complex topics so they should have the same level of training (but in different topic areas) to that of an investment adviser. KiwiSaver should not be regarded as being any less complex to that of a normal managed fund- in fact it is more complex.

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?

It does not accurately reflect the risk. About the only things that should not be Cat 1 are term deposits. All the rest should be Cat 1 then have all financial advisers who advise/sell the products do the relevant education strands of the new level 5 qualification.

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, it is misleading and potentially confusing and deceptive. All financial advisers should be 'licensed financial advisers' as in any other industry. If someone does not want to hold a license then they would be an authorised representative of a licensed financial adviser but would still need to have completed level 5, meet ongoing CPD and meet key requirements of the AFA Code.

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

Conduct requirements for AFAs are appropriate. All RFAs and QFE advisers should be expected to have the same conduct obligations. This would remove the current double standards, customer confusion and improve the public confidence in financial advisers. See my strawman diagram

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

RFAs should have the same disclosure obligations as AFAs. See my strawman document.

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

Remove entirely the RFA designation and make them either licensed financial advisers who have to meet the same standards as current AFAs or else they can be authorised representatives who operate under a Licensed Financial Adviser. However, authorised reps still need to attain level 5 qualification, have ongoing CPD and follow many of the Code of conduct for AFA obligations. See my strawman document

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

The ABS does not take much time to maintain once it is developed. At present, it serves limited benefit as the FMA does not require it to be filed nor is there a requirement to give it to customers. My recommendation is the ABS should either be scrapped or else it should be a document that all licensed financial advisers must have and must give to a client when the client first signs up with the adviser plus a client could request a copy of an updated one at any time.

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?

I believe the distinction is poorly understood by both the adviser and the public. A professional RFA doing detailed data collection to determine the requisite amount of personal risk insurance for a client is inadvertently providing an investment planning service and hence is breaching the FAA as the service can only be provided by an AFA.
It is recommended that the investment planning service definition be removed.

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?

Many advisers will exercise some degree of discretion in relation to client investments. Getting a DIMS license is not a big issue and should be mandatory for those who want to provide discretion.

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?

NO

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

The primary and secondary disclosure statements provide a degree of confusion. It is recommended that only a primary disclosure statement be required but this should contain more information. Make it mandatory that disclosure of all adviser remuneration be made in writing in the advice document. Putting the remuneration in the same document as the advice document means there is a greater chance the client might read it.

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

See answer to Q16. Additionally, RFAs and AFAs should have the same disclosure obligations.

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

Yes. However, it should cover all financial advisers- not just AFAs.

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

No, the people on it are skilled and a good cross section

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

Yes it is but it should be expanded to cover all financial advisers

21. Should the jurisdiction of this Committee be expanded?

Yes, expand it to cover all financial advisers

22. Does the limited public transparency around the obligations of Qualifying Financial Entities (QFEs) undermine public confidence and understanding of this part of the regulatory regime?

Yes it does.

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

QFEs should be the same as a licensed financial adviser and the authorised reps who operate in it must have the same standards as that of licensed financial advisers or authorised reps as outlined earlier in this submission

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

Not adequate. They should disclose remuneration and conflicts of interest and the range of services and products that can be advised upon

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

Standardise documents across all advisers.
The cost of developing and maintaining a QFE disclosure statement is minimal as it says very little of any relevance

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

The term broker is not well understood and most brokers in NZ (insurance brokers) would not fully understand their obligations as they need no qualifications. This can be fixed by making brokers have the same qualifications as licensed financial advisers.

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

The broker requirements are necessary but not adequate. The real issue is many brokers do not have the requisite qualification or ongoing training to adequately undertake their role

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

Brokers should have the same disclosure obligations as today's AFAs or the future licensed financial advisers. See my strawman document

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

Huge benefits. The costs are not excessive in the scheme of things. If brokers want to be regarded as being professionals then they need to obtain a minimum qualification

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

In most cases yes

31. Should any changes to these requirements be considered?

No. I think it will all be tidied up with the licensing that has commenced.

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

Lawyers and accountants should not be able to provide incidental financial advice unless they have completed the relevant strands of the level 5 qualification. The problem we are seeing is that a number of lawyers and accountants and real estate firms are pushing the 'incidental to their main business' to the extreme and moving into financial advice without having any qualification

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

The FMA is not given enough powers when it comes to RFAs and QFEs. Every adviser should have to meet certain education, conduct and behaviour standards

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

FMA is doing an excellent job with guidance. The real issue is advisers do not read the material and do not want to read it as believe it does not apply to themselves

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.

See my strawman document. I firmly support the removal of AFA and RFA and have licensed financial advisers

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?

I believe that consumers do not understand the difference and think that because someone is an adviser, then they are advising them. If someone does not want to be a financial adviser and provide advice and also sell what they advise upon then they should be labelled something else such as a licensed insurance sales agent or licensed ANZ KiwiSaver sales agent

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?

Financial advisers should owe a fiduciary duty to the client they are advising. A sales agent would have to meet the FTA and CGA requirements plus perhaps have a code of conduct similar to what the banks and Strategi Institute recently introduced for mortgage advisers. Sales agents would also have to disclose remuneration and also have to pass level 5 and ongoing product accreditation

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

Not fully. It is recommended that all remuneration and conflicts be disclosed in the advice document and not in a separate secondary disclosure statement. Commission should be retained as a remuneration option but the massive upfront insurance commissions should be replaced with a flat commission rate

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

See previous responses

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?

All advisers should have the same disclosure requirements as current AFAs. See my strawman document

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?

Commissions should be retained but restrictions placed upon the level of commission ie for insurance products, no more than 60% of the annual premium being paid upfront. Commissions need to be fully disclosed. If they were banned then advisers would have to charge all clients fees and this would deter those who most need the advice from receiving it. If commissions were retained then there should be a mandatory warning with all commissionable products that warns that commissions can cause bias and that it is recommended the adviser charge the client a fee.

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)?

There is sufficient competition in the market and the level of competition will increase with more online advice and sales solutions coming on stream. The quality standards for AFAs is sufficient whilst the quality standards for RFAs and QFE advisers is too low

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

There is no need to increase levels of competition. The barriers to entry are already very low and increasing the entry level to the level 5 financial services certificate is not an arduous entry standard

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 it does. The real issue is a number of AFAs are older and are resistent to change and those who held CFP and CLU status were exempt most of the level 5 standard sets. This means they have never really embraced the new legislation and regulation. This has resulted in a number preferring to complain that the regulation is restrictive rather than learn how to operate compliantly within the legislation and regulation

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?

All advisers should hold a level 5 qualification and if they want to advise on certain product areas eg investment or insurance then they also need to do the necessary insurance or investment strands of that qualification. This would enable them to become a licensed financial adviser with endorsements in insurance and investment.

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

Compliance costs need to be kept in perspective. The industry has come from a point 5 years ago where almost no adviser spent anything on compliance. Therefore, any dollar they now have to spend on compliance is regarded as being a dollar too much. This issue is further compounded when there is a massive difference in standards between AFAs and RFAs. An RFA can sell insurance or give class advice on investment products and incur no compliance costs whereas an AFA does incur costs. I would be very surprised if there were more than a handful of financial advice firms that spent more than 2% of their turnover on compliance costs. Every other mainstream industry or profession that I am aware of has higher compliance costs than what an AFA has to pay

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

Simplification and standardisation of financial advisers

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?

It has increased costs and created additional work for financial advisers and staff. Use of CDD technology would minimise 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?

KiwiSaver is already well publicised. We do not favour compulsory conversion of KiwiSaver to a pension upon retirement. Education of investors is a better way to solve the issue even though many investors will 'blow' their KiwiSaver amount at the unlock period

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?

Those advisers who obtain a DIMS license will be regarded as being safer and more trustworthy. FMCA will not make availability of advice any cheaper or simpler.

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

Yes, international advice will increase. It makes sense to be only able to advise people overseas on their overseas situation if you are licensed for that jurisdiction. However, if the person being advised is a Kiwi who is living overseas and has insurances and investments here and eventually intends to return to NZ, then advisers should be able to advise those people. To be on a par with other advisers, then the level 5 qualification as an absolute minimum should be compulsory for all advisers.

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

They are fine

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

The use of online and collaborative advice planning software will make advice quicker to obtain and more accessible. Non-complex advice issues will be be accessed at a lower cost to what it is today. People will be able to do some of the research and analysis work online and then see a financial adviser for final confirmation or else to solve complex issues.

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

Ensure that any software that is used by financial advisers goes through a compliance signoff process to ensure it is accurate, has correct calculations and is not creating misleading perceptions

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

The minimal standards are appropriate. Unfortunately, it has not created the right behavioural change for some AFAs as they still receive commissions plus they can see RFAs providing the same advice and getting paid the same amount but having to do less work. So long as there is a disparity in AFA vs RFA, then AFAs will feel aggrieved and will not tend to fully embrace the professionalism contemplated under the code.

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

Absolutely YES

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

The new Level 5 as a minimum then they should move to level 6 for specialist roles.

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, the new level 5 qualification (New Zealand Certificate in Financial Services level 5) has been developed to meet all sectors of the financial services industry

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

RG 146 in Australia is pretty close to the new level 5 qualification that NZ has.
It makes sense that around the world, financial advisers should have a similar minimum level 5 but it will differ from country to country due to tax, investment structures and other legal issues

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

Pretty poor. As a gross generalisation, I would estimate that the quality of financial advisers belonging to a professional association is no better than those who do not belong to an association. The problem is that there is not a minimum standard for the entire industry to start with.

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

Absolutely not. Professional bodies should be confined to representing the industry with regards to lobbying etc. In NZ, professional bodies do not have the standards or the finances to regulate advisers. The FMA is far more effective at regulating advisers than would a professional association.

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?

All advisers should disclose all remuneration and all conflicts. All advisers should notify FMA of breaches, have to file returns and have minimum education standards

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?

Yes, it is reducing costs but not necessarily increasing the quality of advice being provided. There are many advisers who operate within QFEs who are operating in a non-compliant manner

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?

Yes

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

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

Yes

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

The DRS appear to be operating fine at present

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?

Standardising of all advisers so that the FMA can better police RFAs. FMA should have licensed compliance providers who undertake compliance reviews and then the FMA can check closely these compliance providers rather than having to do heaps of front line monitoring visits

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

Registration should not be merely putting your name on a register. I believe there could be a probationary registration but an adviser only becomes fully registered once they have completed their level 5 qualification. All those in the financial advice industry who provide financial advice should be listed on the register - this includes QFE advisers

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?

Yes, it is fine

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

Appears to be 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?

Yes

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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?

$200,000 is currently appropriate

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

No

Key FSP Act questions for the review

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

If the Register could clearly describe what each type of adviser was, the education standards of the financial adviser, who they work for, their CPD hours in the past 2 years, what they are licensed for

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

Absolutely 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?

Greater due diligence needs to apply before someone can be added to the register

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

No real issue

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?

Yes

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:**

David Greenslade on behalf of Strategi ltd and Strategi Institute Ltd

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

18(d)

85. Are you providing this submission:

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

Please describe the nature and size of the organisation:

13 employees. We provide education and compliance services

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
- [x] 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.