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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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?

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

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

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?

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?

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

Yes, it is appropriate to have different requirements depending on the risk and complexity of the product. However the current definitions are not optimal.
Insurance and lending products are not simple or risk free products. Accordingly The Skills Organisation believes that individuals providing advice in relation to these products should be achieving a formal competency standard.
The New Zealand Certificate in Financial Services (Level 4) is appropriate for those who work according to predetermined guidelines and processes, face familiar customer problems, and have a limited range of solutions. These roles are often found in insurance, banking, or lending

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 current categorisation does not reflect the level of competency and risk associated with financial products. More properly the question should be around the provision of ADVICE about financial products, rather than the product itself. In particular, the risks arise when consumers or their advisers do not fully understand the applicability of the product to the consumer's situation. Examples include failure to fully understand the definitions of insured events, which can result in devastating outcomes in the event of a declined claim, and failure to understand the potential consequences of a customer being over committed in the servicing of debt.

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?

The term Registered Financial Adviser is not well understood. As the standard setting body for financial services The Skills Organisation's particular concern is that the term is often used in a way that implies the individual has achieved some sort of formal or mandated level of competency.

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

No, the general conduct requirements are referenced against 'the care, diligence and skill that a reasonable financial adviser would exercise'. The general conduct requirements should be stated in explicit terms, rather than these more generic terms. Leaving the test generic permits advisers who seek to avoid engagement with the goals of the regulatory regime to mentally opt out by self deciding that they are at an appropriate standard.
The desirability of a more detailed statement is illustrated by our experience with RFAs who complete the National Certificate in Financial Services (Financial Advice) (Level 5). We are often told that they are doing so in order to have a SPECIFIC competency assessment that they can point

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

In pursuit of the goal of providing consumers with sufficient information to make decisions about whether to use a particular adviser, disclosure of experience and qualifications should be included.

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

RFA entities are in the business of providing financial solutions by selling product. Individuals buying these products each have their own particular circumstances and should be able to receive specific advice, not just class advice. In limiting RFA entity staff to providing class advice, their clients are not able to properly have relevant issues explained to them. Staff of RFA entities should be able to have personal conversations and be skilled enough to provide relevant (limited) advice. We would expect their working environment would be one of limited available solutions and working under supervision according to predetermined guidelines. The New Zealand Certificate in Financial Services (Level 4) is appropriate to meet the needs of individuals who are in roles of this type.

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

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?

The distinction is not well understood. Many in the sector including advisers, clients, and commentators, use “financial advice” or “financial planning” when making reference to investment advice. Lending or insurance advice is typically seen as something different from and outside the meaning of financial advice.

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?

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?

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

There should be greater disclosure of an AFA's experience and qualifications to competently provide the advice services that they offer.
Disclosure of qualifications and competency assists consumers in making decisions about using an adviser and who they should use.

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

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

The process and outcome of the development of the Code has in our view been working well. We would not suggest any areas for change.

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

The role and composition of the Code Committee has resulted in a sound outcome to date. We would not suggest any areas for change.

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

21. Should the jurisdiction of this Committee be expanded?

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 have no view on the actual level of understanding of the QFE model. We do note that the approaches of different QFEs to the matter of adviser competency vary widely and it is unclear to consumers what standards their adviser might have reached.
In the area of competency standards of advisory staff, approaches vary from fully in-house, in-house training assessed against external (national) standards, and external training and assessment against national standards. To enhance transparency for consumers, having a consistent outcome is desirable.

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

Consumers who interact with QFEs do so through a QFE adviser. At present consumers are only required to be provided with the QFE's disclosure statement. This covers the business details of the QFE and their disputes resolution process. These matters are of limited relevance and likely to be available in the public domain, so add little value to consumers.
QFE disclosure obligations should be amended to include a description of how the business addresses matters that are required to align their QFE advisers with the standards of other (non-QFE) advisers. Such matters may include processes to ensure appropriate competency and processes to avoid or manage conflicted advice/remuneration.

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

There are currently no disclosure obligations for QFE advisers. These advisers should have a level of personal disclosure that addresses some of the less transparent matters. In particular, consumers would be assisted by knowing the actual personal level of experience and competence the adviser has, they would also be assisted by understanding in general terms the structure of performance (sales achievement) related remuneration that can attach to the customer's decision to do business with the organisation. Performance based remuneration derived from sales targets and similar creates a conflicted advice situation that is not dissimilar to the issue being identified in relation to insurance advisors.

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

Changes should be made to include the matters referred to above.
The cost of production should not be high as both documents are very amenable to having largely standardised or template wording, with a small amount of personalised information. Some QFEs already supplement their QFE disclosure statement with an individual personal information document containing some background about the adviser. The fact this is being done already indicates that the production is not onerous or expensive, and producing the document has some benefits to the organisation.

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

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

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

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

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

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?

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?

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.

The definitional aspects of the current regime leave consumers in a state of confusion. The matrix of adviser types and regulated products/services is a complex mix.

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?

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?

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

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

To provide useful information to consumers when deciding to work with an adviser, the disclosure statement should include information relating to the adviser's personal level of competency and relevant qualifications.

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?

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?

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)?

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

44. Do you think that the Code of Professional Conduct for AFAs strikes the right balance between requiring them to understand their clients and ensuring that consumers can get advice on discrete issues?

45. To what extent do you think that the categorisation of types of advice and advisers is distorting the types of advice and information that is provided?

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?

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?

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?

50. What impact do you expect that the introduction of the Financial Markets Conduct Act (FMC Act) will have on the market for financial advice in New Zealand? Should any changes to the regulation of advice be considered in response to these changes?

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

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

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

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

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

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

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

The appropriate MINIMUM qualification for those providing financial advice (irrespective of their categorisation) is the New Zealand Certificate in Financial Services - Level 5. This qualification was developed with significant industry involvement during 2013 and 2014. It has specific relevance through the creation of strands in Investment, Life and Health Insurance, General Insurance, Residential Property Lending, and Personal Lending. In addition, the Financial Advice strand covers the ability to APPLY a professional advice process (based on Six Step Process and ISO22222) and understanding of the regulatory environment.

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?

As stated above, The Skills Organisation believes all advisers should be meeting a minimum standard. Where they have independence to create unique solutions using a range of products the New Zealand Certificate in Financial Services (Level 5) is appropriate.
Where advice is provided in a controlled and managed environment a lower level may be appropriate. The New Zealand Certificate in Financial Services (Level 4) was developed to suit the needs of individuals providing advice in an environment where they deal with familiar problems, are required to work to predetermined guidelines, use a limited range of familiar products, and are subject to some degree of supervision or oversight. This is a relevant minimum standard for advice

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

Raising the levels of adviser competency should be a staged process, and it is in fact happening. The New Zealand Certificate in Financial Services (Level 5) has increased content when compared to the National Certificate in Financial Services (Financial Advice) (Level 5).

There is increased scope for competency in different specialties to be evidenced by completing more than one strand.

A level 6 New Zealand Diploma in Financial Services has also been developed that provides an

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

Professional bodies aspire to high standards and have many visionaries among their leaders. However, they ultimately lack enforcement rights or obligations. Individual advisers who are associated with professional bodies vary widely in their standards, even where they hold recognised qualifications or designations. In some cases the observed practices of members of professional bodies have been of a standard significantly lower than minimum requirements.
In many observed cases, the competency and behavior of individuals who are not members of a professional body have been of a very high standard. This suggests that standards of professionalism derive from the attitude of the individual, not from any association with a particular

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

Professional bodies should not play a formal role in the regulation of financial advisers. These organisations are in a conflicted position as their ultimate responsibility is to represent the interests of their members.

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?

Ultimate responsibility for actions and advice should rest with the individual so that adherence to required standards (including personal competency) can be clearly visible. Accordingly the obligations of all individuals providing advice should be the same irrespective of how they come to be client facing.

63. Is the QFE system achieving its goals in terms of consumer protection and reducing compliance costs for large entities? If not, what changes should be considered?

Role of financial service provider registration and dispute resolution

64. Do you agree that the Register should seek to achieve the identified goals? If not, why not?

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

FAA Review Submissions

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

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

How the FSP Act works

68. Does the FMA need any other tools to encourage compliance with financial service provider (FSP) registration? If so, what tools would be appropriate?

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

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

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

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

73. Is the existence of multiple schemes and the incentive to retain and attract members sufficient to ensure that the schemes remain efficient and membership fees are controlled?

FAA Review Submissions

74. Should the $200,000 jurisdictional limit on the size of claims that dispute resolution schemes can hear be raised in respect of other types of financial services, and if so, what would be an appropriate limit?

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

Key FSP Act questions for the review

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

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

Yes. To assist consumers to identify an adviser who is able to assist in meeting their needs they need to understand their level of competency, areas of expertise, and disciplinary history.

78. Do you consider misuse of the Register by offshore financial service providers is a significant risk to New Zealand's reputation as a well-regulated jurisdiction and/or to New Zealand businesses?

79. Are there any changes to the scope of the registration requirements or the powers of regulators that should be considered in response to this issue?

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

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

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

Demographics

***83. Please provide your name and/or the name of the group of people, business, or organisation you are providing this submission on behalf of:**

Colin James, The Skills Organisation

***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:

The Skills Organisation is the Industry Training Organisation with coverage for the Financial Services Sector. We have worked with the sector to develop the current National Certificate in Financial Services Level 5, and more recently a suite of two New Zealand certificates and a New Zealand

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
- [x] 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.