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?

Client first BUT with affordable options. Often those who most require financial advice cannot afford to pay for it directly OR in a largely socialistic society that we have, believe it should be free. My experience is that they do not mind that the cost of advice is built into a products price and effectively they pay it over time as required.

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

Any advice to save / invest / manage risk with financial products. It might seem easy to exclude real estate agents, lawyers & accountants but just because its easy should not be the driving force. What is right for largely uniformed clients should be the driver. Regulate all, not just some

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 - happy with that

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?

My experience is that many advisers struggle to know the difference so how will clients who are not financially savvy know? Like with health or legal advice have one standard.

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

No as per above. We should follow the Dr's example of first do no harm and regulate all those providing advice/recommendations to adhere to the same standards, irrespective of the supposed complexity of products. Some people think the mortgages and life insurance are more simple than investment products. The outcome of having a bank structure your mortgage - which maximizes interest revenue for the bank versus someone unaligned to the bank using the same repayment amounts but saving clients $100,000 over the life of the mortgage, puts a lie to the assertion that mortgages are simple.

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?

One type of adviser with different specialties, much like doctors medical profession.
First and foremost they are all doctors but then some go on to specialise in a particular area or areas of medicine. As a result the public know and trust their doctor but also know that if they have a particular health issue they may need to seek out a specialist.

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 above, have one designation and then areas of speciality.

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

Should be one common type of disclosure which says
I am a financial adviser.
Financial advisers can have one of three categories, much like a drivers licence
Licence C= General, advice on one product providers product or
Licence B =General advice on multiple product providers products or
Licence A = Expert advice on multiple product providers products

Products that an adviser may be authorized to advise on are

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

Yes see above

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

have one standard of disclosure for all advisers with difference licence categories

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

No, not for this particular area, but the issue is that not everyone requires one, which is a nonsense. Whether you are currently an AFA, RFA, salaried staff person with a QFE who is client facing, a stock broker, lawyer, accountant or real estate agent who talks about saving / investment for individuals you should have one.

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?

Financial advice is financial advice. See questions 7, 8 , 9 & 12.

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?

Annual re balance of a portfolio, providing you have met and reviewed clients circumstances in the last 24 months should be able to be handled is a discretionary manner - re balance back to risk profile and clients financial circumstances.

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?

See 14.

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

No, see question 9

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

Yes see question 9 and once such a structure is set up then this should be registered on a centralized website.
Advisers can simply send client a link to that website that goes directly to their profile rather than having reams of paper printed out.

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

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

No

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

Crazy to only have a policeman whom disciplines drivers of red car - so if you are a driver of a white car (RFA) or blue car (QFE) there are no dedicated policeman????

21. Should the jurisdiction of this Committee be expanded?

See question 20

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?

Definitely. The public are largely ignorant of the distinctions and obligations. The system we have again with reference to medical profession is
1. QFE - is like a doctor who works in a large hospital. Because they work in a large hospital they need no training and if they stuff up you hope the large hospital has others around who will put it right, so therefore they need no independent specialist training AND have no personal responsibility if they stuff up.

2. AFA: Same as QFE, they are a doctor , but because they are in private practice they are now

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

Unless a system is adopted as above in Q 22, then tell the public....as a QFE adviser I have had no specialist external independent training. I am only a sales person for the QFE and NOT a financial adviser.

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

As above

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

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

Refer Q 9

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

A bit like the QFE there is some theoretical belief that the large broker houses will stand behind the clients interest when clearly the brokers only make money when they sell something.

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

Ref Q 9

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

Ref Q 9

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?

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

Ref Q 9

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?

has been getting better. Difficult being both a regulator and guide, but I liken it to a referee in a rugby game. They can just keep blowing the whistle and penalizing players or they can try and let the game flow - calling out to players they see getting close to being offside and only blowing the whistle when there is a clear breach.

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 Q 9

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?

See Q 9

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?

See Q 9

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

Yes. Being paid to do a job is essential whether you are a politician, policeman or product sales. In 18 years in the industry, the whole time during which I have openly disclosed to clients or prospects how and what I get paid, I have only had 2 clients who have not wanted to deal with me because I get paid a commission. Over the years a significant and growing number openly discuss this with me but providing they believe that I am providing good advice for their circumstances they have little or no concern over the fact I might receive a commission. The same way they have little or no concern that a lawyer who is being paid for on legal aid (funded by a third party) doesn't have their clients best interests at heart or that a doctor seeing their child for free (funded by a third party)

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

See Q 9

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?

See Q 9. I believe that all should disclose openly.

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?

While i believe the suggestion below wont be implemented because of pressure from insurers and banks I will suggest it anyway.
1. There is a large issue with under insurance in New Zealand compared to many other first world countries.
2. As a result more insurance should be sold to people who don't have any because that encourages self sufficiency & removes much of the strain off government to be a safety net or ambulance at the bottom of the cliff.
3. However much insurance that is sold is really just moving Mr Jones who has $500,000 of life

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 see Q 41 above, Get advisers and supplier genuinely competing for new business not just transferred business.

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

See above

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?

See Q 9

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

Yes. The compliance costs have largely driven independents (non aligned sorry) to focus on higher net worth or income clients because the cost of compliance means we need to earn more from each client to remain a viable business. If Govt values competition and independence - not just controlled by a few big industry players then everyone needs same regs and everyone providing advice needs to accept personal responsibility .....so we all pay a fee and not let QFE's get away from paying their fair share which would drive down overall compliance cost for smaller players.

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

All advisers disclosure on centralised website rather than paper based. Only have to have paper if the clients does not have an email address (therefore no access to the Internet)

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?

Sledge hammer to crack a walnut here in NZ. Again push the onus down to the individual advsier.....whether AFA, RFA or QFE (if you decide to retain those silly distinctions) and make individual advisers who wish to be involved in investments to satisfy themselves as to the source of the money. At present we then have a second layer of checking by the institutions, which is added compliance cost for them which I'm sure they would prefer not to have. If clients come direct to an institution then they will need to check, but if the money is introduced via an adviser then the adviser should be personally liable.

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?

Yes and again same rules should apply.
1. NZ real address.
2. Must have NZ resident or citizen with relevant qualifications who is individually responsible

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?

Hugely. We are already looking at Robo advice, which once built could be international, so it can easily come in from outside NZ, much like offshore gambling sites.

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?

Yes same set of rules for everyone.

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

Level 5 certificate within 1 year of joining the industry or need to disclosure you are non longer qualified to provide advice.
Then minimum number of professional development hours ...same as for doctors and accountants etc otherwise speed of change means you quickly lose relevance for your clients.

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?

See Q 57

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

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

Average. There should be only 1 body. The doctors and lawyers only have one. Its crazy that our industry has 4 or 5????????????

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

Only if there is one body, not multiple.

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?

Removes compliance costs but also removes qualified advice. This should be about the quality of advice clients can get from qualified advisers, not how cheaply a large organisation can provide it.

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?

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?

Was adviser appropriately qualified to provide the advice...proof of recent training in products or area of advice they gave.

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?

All registered as financial advisers

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?

Should be all and again what is the rational behind having lots of different court systems. There should only be one in a tiny country like NZ.

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

have only one.

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?

Have only 1

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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?

About right

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

All should have PI insurance anyway

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

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:**

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

18(d)

85. Are you providing this submission:

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

Please describe the nature and size of the organisation:

86. If submitting on behalf of an organisation:
How many people are in the organisation, or work in the organisation, that you are providing this submission on behalf of?

- [ ] 1-5
- [ ] 6-19
- [ ] 20-49
- [ ] 50-99
- [ ] 100-250
- [ ] 251-500
- [ ] >500

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87. I would like my submission (or specified parts of my submission) to be kept confidential, and explain my reasons for this, for consideration by MBIE:

☐ Yes ☐ No

Explanation:

Thank you for your time. Please send your submission.