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?

Westpac considers additional goals should be added. Goals 1 and 3 map directly to s3 of the Financial Advisers Act 2008 (FA Act) and to parts of s3 and s4 of the Financial Markets Conduct Act 2013 (FMCA). However, Goal 2 "Financial advice is accessible for consumers" does not reflect fully the remaining purposes in the FA Act s3(1) ". . . to promote the sound and efficient delivery of financial adviser and broking services" or the FMCA s3(b) "to promote and facilitate the development of fair, efficient, and transparent financial markets" and s4(c) "to avoid unnecessary compliance costs" and (d) "to promote innovation and flexibility in the financial markets". Promoting efficiency and innovation remain important and are more than ensuring that services are accessible to

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

The Goals should be equally important. This reflects the balancing exercise required by the industry's participants, regulators and consumers.

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

The definition of financial advice in the FA Act is complex and creates legal uncertainty over what duties apply in particular circumstances. Section 10 is not a stand-alone definition as it has to be read in conjunction with s11 and s15. In relation to the latter, further complexity arises through "financial adviser "class service" not being defined.

The definition of financial advice is more complex than the comparable definitions in other jurisdictions. When the Australian government launched its Future of Financial Advice initiative in 2009 one of the objectives was to see more Australians receive advice, for the price of advice to

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?

It is appropriate to have a distinction between wholesale and retail clients because the obligations in the FA Act should only apply to retail clients. To the extent possible and relevant, the FA Act wholesale client categorisations should be aligned with those in the FMCA. This would mean one level of compliance and avoid confusion. Westpac does not support any approach that would result in amendments to the FMCA wholesale regime as these will already be in place and use before any FA Act amendment is likely to be passed.

The FA Act provides limited protection to wholesale clients, even exempt providers can advise them.

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?

It is appropriate that there should be a distinction but it currently creates uncertainty because the boundaries of "personalised service" are unclear because s15(b)(ii) is subjective: "a client would, in the circumstances in which the service is provided, reasonably expect the financial adviser to take into account the client's particular financial situation or goals (or any 1 or more of them)." In practice, this test is more subjective than that in Australia where s766B(3)b) provides " a reasonable person might expect the provider to have considered one or more of those matters."

"Class service" is not defined, s15(3). The interpretation of s15(3) has been narrowed by the

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

Yes, in principle. This does not, however, have to be done by establishing specific statutory categories of 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?

The current categorisation system is appropriate as a method to distinguish between higher and lower risk products but the list of category 2 products should be expanded to include "vanilla" debt securities (including Medium Term Notes (MTNs) and Registered Certificates of Deposit (RCDs)) issued by registered banks.

Under this proposal "vanilla" debt securities would be debt securities (other than deposits) issued by registered banks which meet the following criteria:

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, the term registered financial adviser does not convey what these advisers do. The general public believes that the term RFA means that the holder has completed education or gained experience in order to hold the title. However, this term simply means that the holder has passed a credit check, is a member of an approved Disputes Resolution Scheme and is registered on the Financial Service Providers Register. Westpac does not have a final view on alternative terms but some possibilities are Mortgage Adviser and Insurance Adviser.

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

9(2)(ba)(i)

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

The information disclosed by RFAs should be the same as for AFAs. This would mean the addition of information on remuneration, qualifications and areas of expertise.

RFAs should be required to provide their customer with a written recommendation when providing personalised advice, consistent with that provided by AFAs.

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

N/A

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

The costs of maintaining an ABS for AFAs are not justified by its benefits, particularly for AFAs working in QFEs. The purpose of the AFA ABS is unclear now that there an Annual AFA information return. The content prescribed for AFA ABSs by Part 1 (Adviser Business) largely repeats information contained in disclosure statements, see attachment. For AFAs working in QFEs Part 2 of the ABS (Compliance Arrangements) largely repeats or is based on their employing QFE's ABS as the QFE is permitted to take responsibility .

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 definition of “investment planning service” in the FA Act gives rise to a range of boundary issues. These issues impact on the availability of face to face and online advice to consumers from RFAs and QFE Advisers .

The impact on face to face advice arises because the definition partially overlaps with AFA Code Standard 8 (which requires an up-to-date understanding of the client’s “financial situation, financial needs, financial goals and risk profile”). RFAs and QFE advisers legitimately providing personalised advice on category two products in this way could be caught by the planning service rule. Chapman

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?

N/A

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?

N/A

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

AFA disclosure is too long and complex for consumers to readily understand. Taken together, Westpac's AFA Primary and Secondary Disclosures are 15 pages long. That length is required to cover all the elements in the Financial Advisers (Disclosure) Regulations 2010 (Disclosure Regulations). The provision of two AFA disclosure documents at different times is confusing to consumers.

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

The relevance of these documents and the costs of producing them would be improved if:
-The requirement for primary and secondary disclosure was removed; and
-Disclosure focused on key elements such as adviser qualifications, conflicts of interest and remuneration.

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

Yes, the process for development of the Code of Professional Conduct (Code) was transparent and enabled stakeholders to make submissions.

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

The Code Committee composition and role are entirely appropriate for the development of a Code that applies solely to AFAs. There is a question as to whether the Code Committee is qualified and empowered to consider the full impacts of the Code on QFEs through the action of s66 and associated standard conditions applicable to QFEs such as the “If not why not” requirements in the QFE ABS Guide. The statutory provisions relating to the Code Committee and the content of the Code were not amended to cover the addition of s66. The Code Committee has to consider the content of the Code purely in terms of s86 which only relates to AFAs.

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

It is difficult to provide comment on this given the low level of activity to date.

21. Should the jurisdiction of this Committee be expanded?

The disciplinary function of this Committee is only appropriate for individual professionals who are personally responsible for their professional activity. The jurisdiction should not be expanded to include QFE Advisers. The QFE should be responsible for the advice of its QFE 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?

Westpac does not agree with the assumption in the Issues Paper that there is less transparency about how QFEs meet their obligations than for other types of adviser under the FA Act.
QFEs are required to provide disclosure under the Disclosure Regulations. The prescribed content of the QFE disclosure provides more information than that prescribed for RFAs, see attachment. QFE disclosure attracts additional obligations in relation to Category 1 products which are equivalent to those for AFAs.

The other QFE obligations under the FA Act are contained in the Standard Terms and Conditions for

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

As per the response to question 22, there is no less transparency of QFE obligations than for other types of advisers under the FA Act. The Issues Paper contains no evidence of a particular lack of public confidence in QFEs. There is no need to provide specific additional obligations on QFEs to disclose their ABSs.

The FA Act review should consider whether the FMA's requirement for QFEs and AFAs to have ABSs as part of their standard terms and conditions is the most efficient and effective means of ensuring their compliance with the regime given the confusion about the status of the ABS.

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

QFE disclosures are complex and not useful to consumers. QFEs have extensive disclosure obligations many of which have been set by the FMA under the Standard Terms and Conditions for QFEs (see Appendix Two). The FMA takes the view that "The Act's objectives for disclosure are to assist clients in choosing an adviser and in deciding whether to follow any advice provided. Information on the nature of the service, products available and any potential conflicts is therefore important."

The Standard Terms and Conditions for QFEs require a lot of information about the range and types

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

Yes. QFE disclosure obligations should be simplified. A return to the basic provisions of the FA Act on disclosure would be a substantial improvement to disclosure under the Standard Terms and Conditions for QFEs.

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

N/A

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

N/A

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

N/A

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

N/A

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

N/A

31. Should any changes to these requirements be considered?

N/A

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

N/A

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

Yes, the FA Act provides the FMA with appropriate enforcement powers in association with the Financial Markets Authority Act 2011 (FMA Act). The review should consider the FMA's use of the condition making powers under ss45 and 46 of the FA Act. The FMA has interpreted this condition making power in a manner which appears to exceed the purpose and context of that power. In particular, they have used Standard Terms and Conditions for AFAs and QFEs to require them to obtain client consent to provide client specific information. This is unnecessary as the FMA has a statutory power to obtain information under s25 of the FMA Act.

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

The FMA guidance on the FA Act that has been issued is useful. Unfortunately, the FMA has not provided overall guidance on the interpretation of the FA Act and its boundaries. Guidance is mostly for types of advisers, e.g. the QFE Standard Conditions: Explanatory Notes, or the Guidance Note: Limited Personalised Advice for AFAs, or related to specific monitoring interests of the FMA, Guidance Note: Sale and Distribution of KiwiSaver . This contrasts strongly with ASIC and the FCA both of which provide comprehensive guidance. In the case of ASIC, general guidance is provided on all the core concepts. In the case of the FCA specific guidance is provided to all product providers and advisers.

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 regulatory regime could be simplified by:

- Using plain English terms such as investment advisers, mortgage advisers and insurance advisers to refer to types of advisers;
- Applying the same core professional obligations to all individuals providing a professional service in a specific area of product expertise i.e. investment advisers, mortgage advisers and insurance advisers. The basic professional obligations are disclosure, appropriate qualifications, compliance with an ethical Code of Conduct and individual accountability to a professional body for professional

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?

Customers understand that the branch staff in banks are employees of a bank.

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?

Yes. This could be achieved by simplifying the definitions of advice, see response to question35 above. The provision of information should not be captured by a financial advice regime.

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

Current AFA disclosure statements contain sufficient information to enable a consumer to make an informed decision on commissions and other conflicts of interest. This information is not necessarily easy for consumers to find in its current form because AFA disclosure statements contain a lot of information spread across primary and secondary disclosure statements. The effectiveness of the disclosure may rely on the integrity of the AFA in highlighting these issues to customers.

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

See response to question 17.

40. Do you support commission and conflict of interest disclosure requirements being applied to all financial advisers? If so, what requirements are appropriate for different adviser types?

Yes. The same requirements should be applied to all financial advisers.

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. There is insufficient evidence of commission selling causing actual harm under the FA Act regime. The FA Act regime contains checks and balances against the potentially harmful incentives particularly for AFAs and QFE advisers who are required to disclose commissions and are subject to ongoing supervision by the FMA. However, as noted in the response to question 38, the current quantity of information that must be disclosed gives rise to issues regarding the ease of accessing this information.

A restriction or ban on commission could make independent financial advice less accessible.

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)?

The Issues Paper provides evidence that the FA Act has resulted in significantly fewer AFAs than was originally anticipated and that there have been very few new AFAs since the legislation came into force. This lack of AFAs reduces competition but may not be due to competition. It cannot simply be assumed that the small number of AFAs is because:

- The minimum standards for AFAs are too high; or

- AFAs are being out competed by other types of financial advisers who are subject to lower

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

Simplifying the regulatory regime (see response to question 35) might increase the levels of competition reducing some compliance costs and making it easier for consumers to understand the available types of advice. Given the short period of time in which this market has been regulated it would be difficult to model the likely impact of such regulatory change on competition. If price is not the only factor impacting on demand for AFA services removing regulatory barriers and cost may not increase the number of AFAs.

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?

The Code of Professional Conduct for AFAs has acted as a constraint on the range of advice provided by AFAs. Whilst the Code Standards express overarching principles which are not prescriptive its "additional provisions", especially those in the "Minimum Standards of Client Care" section of the Code, detail steps an AFA must be follow and matters that must be taken into account during the advice process. The "additional provisions" are not guidance but form a binding part of the Code. AFAs can be asked to do more than is detailed in the "additional provisions" but they cannot really do less:

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?

The complexity of the FA Act obligations on types of advice and advisers does create distortions in the types of advice that are permitted. It is difficult to quantify the extent of these effects. The commonest example for QFE advisers is of information being provided where class or personalised advice could be given:

- QFE advisers wary of providing personalised advice about KiwiSaver may limit themselves to information when they could provide class advice;

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

See response to question 42.

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

Regulatory requirements can be made less onerous by simplifying the regime, see response to question 35.

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?

The reporting entities that make up the Westpac NZ QFE Group take responsibility for all the AML/CFT Act compliance obligations of its advisers.

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?

More than a million New Zealanders will reach the age of 65 over the next twenty years. The numbers reaching 65 are currently accelerating as the first baby boomers retire but will they will soon reach very high levels and remain there for many years. All these New Zealanders will need advice. They will have a large lump sum (perhaps for the first time in their lives) but will have to manage it carefully as they are likely to live much longer than previous generations.

If the trends under the current regime were to continue there would not be enough AFAs to provide advice to this group. In fact, there could be fewer AFAs than at present as the number of new AFAs

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?

As the FMC Act is still in a transitional phase it is difficult to know the extent to which it will impact on the market for financial advice.

It is already clear that the FMC Act has increased the complexity of regulation surrounding financial advice. The regulatory position regarding discretionary investment management services (DIMS) is particularly complicated with a regime for AFAs under the FA Act and for entities under the FMCA. QFEs which plan to be licensed to provide DIMs under the FMC Act have faced duplication of effort as they change their ABSs and make new licence applications.

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 financial advice is likely to increase. There are a number of online applications and websites operated in other jurisdictions that can be used by New Zealanders. Fees and costs for this type of service are lower than for face to face financial adviser services as they do not have the costs of a sales force . New Zealanders can find services by carrying out an Internet search for advice and may use them without any restrictions. Some, such as LearnVe$t, provide online tools but also involve access to a financial planner, who may be a Certified Financial Planner, as well as tools to track the plan. Others such as Wealthfront and Betterment are robo-advice, albeit with their models backed by investment and fund management professionals . The online applications and

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

The broad nature of the territorial scope of the FAA taken together with the unclear definition of "financial advice" already makes the regime unwieldy.

Section 157 provides that the FAA "applies to a financial adviser service or broking service received by a client in New Zealand, regardless of where the person providing the service is resident, is incorporated, or carries on business".

This means that the FAA currently applies to financial advice given by persons in other jurisdictions

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

Increasingly, consumers expect financial institutions to provide product information, communications and offers via online channels such as a bank's website and online banking services. Over 50% of Westpac's active base now use online banking services almost exclusively and on average interact 17 times per month. Customers who use online services are also likely to research products and services online before purchase. The Path to Purchase market research published by Millward Brown Digital on consumer savings products found that "During the initial research phase, online resources, such as review websites, have a larger consumer impact compared to traditional media; 48 percent of consumers only use online resources, and 21 percent rely on offline tools."

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

Keeping pace with technological developments will require changes to the FA Act. The FA Act does not permit financial service provider entities to provide personalised financial advice, s 18. New Zealand registered financial service providers do not provide online services of the types seen overseas, see response to question 53.

The simplest way to enable innovation and ensure quality standards is to let financial service providers take direct responsibility for online advice. This could be done by changes to the Restrictions on Financial Adviser Services in Part 2 of the FA Act enabling QFEs to provide

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

Yes.

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

Yes, the public expects that all advisers (AFA, RFA & QFE) are held to the same standards of fairness, expertise and trustworthiness. These standards should be non negotiable. The current qualification is an appropriate minimum.

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

The current qualification is an appropriate minimum.

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?

9(2)(ba)(i)

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

New Zealand's qualifications do not need to be directly aligned to adviser qualifications in other countries. The Code Committee has the power to recognise overseas qualifications or to set the additional study needed to achieve authorisation.

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

N/A

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

No. There are too many professional bodies for this to be practical.

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?

QFEs should be able to provide advice, see response to question 54. AFAs employed by QFEs should not have to provide ABSs, see response to question 12.

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?

The QFE regime is achieving its goals in terms of consumer protection:
QFEs are accountable for their adviser services, see responses to questions 22 and 23;

- The FMA has conducted ongoing monitoring of QFEs which has ensured their accountability; and
- The existence of QFEs has enabled the FMA to collect broad thematic information across providers.

The QFE regime is overcomplicated by layers of compliance obligations in the FA Act, the

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?

N/A

FAA Review Submissions

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?

N/A

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?

N/A

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

N/A

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

There are some issues with entities associated with securitisation which are the beneficial owners of securitised loans serviced by another financial service provider being required to belong to a dispute resolution scheme as lenders under changes to the FSP Act made by the Credit Contracts and Consumer Finance Amendment Act 2014. Clauses 14B and C of the Financial Service Providers (Exemptions) Regulations 2010 do not create a full exemption but continue to require dispute resolution scheme membership in circumstances where the securitisation entity has no actual customer service functions or capacity and customers have access to a dispute resolution scheme.

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

Yes.

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

Yes.

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?

Westpac can only answer as a member of the Banking Ombudsman Scheme. The existence of multiple schemes has had no impact on the Banking Ombudsman Scheme's efficiency or membership fees.

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

No. A need to change the current claim limit has not been identified. Any increase needs to be justified by clear evidence that the current level is inadequate.

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?

N/A

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

It would be reasonable for the Register to include qualifications. It might not be particularly useful to consumers, however, as the qualifications currently held were subject to some transitional provisions and may not be easy for consumers to compare. Including information on a financial adviser's disciplinary record on a public register would be an additional penalty for that adviser and should only occur as the result of a specific finding by the Disciplinary Committee after an opportunity for the adviser to be heard under s 102.

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?

It is difficult to assess the scope of the risk. The public harm appears to be the assumption that registration in New Zealand is equivalent to licensing regimes in other jurisdictions. The reputational damage is greater in relation to types of financial institutions that are not subject to other licensing regimes under the Reserve Bank of New Zealand Act 1989, the FA Act and the Financial Markets Conduct Act 2014. These other licensing regimes involve substantial oversight and have specific powers to prevent use of the titles and terms that are subject to licensing, for example Part 4 of the Reserve Bank of New Zealand Act.

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?

As discussed in response to question 51, the FA Act and FSP have broad territorial scopes and the FMA has powers under the FA Act, FSP Act and the FMA Act.

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

Westpac has no evidence of any effects of competition resulting from multiple dispute resolution schemes. See response to question 73.

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

N/A

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

Yes. It should be noted that the Credit Contracts and Consumer Finance Amendment Act 2014, which only came into force on 6 June 2015, contained substantial new obligations on all lenders to make disclosure about their dispute resolution scheme. The full positive impact of this change on consumer awareness of dispute resolution is still to be observed.

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:**

Westpac New Zealand Limited

***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:

Westpac New Zealand Limited is a registered bank which provides a full range of banking services throughout 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
- [ ] 50-99
- [ ] 100-250
- [ ] 251-500
- [x] >500

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:

Westpac requests that its responses to questions 9 and 58 be withheld as these contain commercially sensitive information relevant to its relationship to third parties.

Thank you for your time. Please send your submission.