Redacted

From:
To:
Cc:
Subject: FW: submission on changes to adviser legislation
Date: Friday, 31 March 2017 9:43:15 a.m.
Attachments: image957c72.JPG
imagee260d4.GIF
imagebc4d72.GIF

Please see below a submission on the FA Act review that we received. I have let Redacted know that I have forwarded his email to you and provided him with the review email address faareview@mbie.govt.nz.

Kind regards

Red

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Level 5, Ernst & Young Building
2 Takutai Square, Britomart, Auckland, 1010
PO Box 106 672, Auckland 1143, New Zealand
Follow us on Twitter: @fmamedia
www.fma.govt.nz

From: Redacted
Sent: Thursday, 30 March 2017 9:58 a.m.
To: Consultation
Subject: submission on changes to adviser legislation

Hi There.

I am not sure how one goes about lodging a submission to the changes to the FAA, however I see this is the email address, so please accept this as my submission.
I checked MBIE and FMA websites, and it certainly wasn't clear, where to lodge these.

I also attended the DLA briefing the other day, so feel I'm pretty "up to speed" with things.

- As background, I am an AFA. I have been in the industry for over 20 years, I run a sole practice, with a very satisfied client base.
- I engage a professional firm to oversee my compliance and am a member of both IFA and PAA.
- In short, I believe I am the type of adviser that the FMA/MBIE would like to encourage to stay in business, for myself, rather than be scared off with yet more changes, because the system becomes "too onerous".
- I already feel this way, given we were "authorised in 2011", and have been subject to number tinkering since then. I wonder how long the next change will be in force, before its changed again and again.
- My view is that for my business anyway, the current system, while not perfect is working ok.

Ok- to the review submission.

MBIE/FMA said there were a number of aims with the review.

1- clients get access to high quality advice- and that advisers have the same standards, but without causing undue cost and compliance.

I feel this alone is an oxymoron. My compliance costs have increased significantly already, with company filings, AML filings, affiliation fees, PI insurance to name a few. Just this change ahead (whatever it may be) alone increase these costs significantly, and as noted above, I now feel I have to have a compliance firm engaged full time, on retainer.

In addition, the cost in terms of my time is significant. I spend probably up to 2 weeks a year on various compliance issues, such as attending meetings and seminars etc but more to update my own systems as well. This is in addition to all the time I spend keeping up with markets attending seminars etc.

My first major concern, is that the FMA/MBIE need to take into account the needs of the small adviser business. I am simply not able to have full time compliance person to dot every i and cross every in the business. All of this prevents me delivering advice and service to my clients.

There are only 1800 AFAs servicing NZ, and you want that number to increase (clearly so that more people get access to good advice).
BUT
Because of compliance, and hence the need to provide high level of service, I am not able to provide this to the standard that the FMA wants (this is my view), I have reduced the number of clients I work with over the last 5 years.
I do not believe this is in the best interests of the industry, but I feel it is desirable.
You also need to remember that clients do not all want the same level of service and therefore in my view, there should be capacity in firms (large or small) to provide various levels of service.

The other issue is to get clients access to the same high quality advice. I think this would be better serviced by keeping the same designations as we currently have, but increase the scope of advice that RFAS can cover, but also raise their duty of care and other areas of competence. I am also not sure how you will actually get this in practice. The reason is that financial advice is not a black and white issue, and we often call it science and human factors become a major component.

Just one example to illustrate

1. Does a client get advised to pay off their mortgage or invest surplus funds? There is

no right and wrong answer to this, but clients will get different answers depending on the views of the adviser.

2 Disclosure

I feel that FMA/MBIE believe that disclosure is everything. I'm sorry, but I don't agree. At the presentation last week, it was stated that clients can make an assessment on what adviser to use, based on the disclosure documents provided. Clients go to a financial adviser because they have been recommended to them by a trusted person. it does not matter if they are a bank, solicitor or accountant. If clients are new, then they may be directed to a firm by advertising, or else will go to a large firm, but I am sorry, the disclosure document does not do it.

I am also concerned that these documents are long and onerous, again putting people off using them. I have cut mine to the bone, and they still go to 6 pages. In addition, by the time I provide all documents and supporting information to clients, they can end up with 00's of pages of information, much repeated (eg PDS's).

I also do not see the rationale for a 2 stage disclosure regime. It is far easier to have just 1. ie here are my authorisations, this is how I operate, I work with xyz companies, my fees are .... and if you have a problem, the way I handle it is ....

3 Simplify the regime

This is another aim. I do agree with the aim, because even after 5 years of the current one, if you asked the majority of the population, they would not know the difference between and RFA and AFA or QFE.
My question is that how do you think changing the system again, is going to simplify it, and more importantly, make it simpler for the public to understand. ?
Also, you are at great risk of dumbing down the industry by calling us all financial advisers. I try to operate at the highest level, and this is certainly not the level of a new insurance agent into the industry- yet to a client, we are both financial advisers.

You want more members of the public to access advice, and yet the very people who provide that advice, are being compromised. Please make my business easier to deal with more people.

On the issue of this, banks still promote the sale of their products – kiwisaver and insurance, without some of the requirements we have. I would not mind if they said, "we would like to show you bank products and would you like to move to the bank kiwisaver scheme", but they need to be clear of the conflict, and consumers need to be aware that their advice and product comparisons are VERY limited (if they can provide options). ie The knowledge of a Westpac staff member knowing about the ANZ kiwisaver scheme, or an AIA insurance products are probably virtually nil.....and the consumer needs to be aware of that.

You also say that all firms need to be licensed and no longer can I be the authorised person. I run a sole practice via a company structure. As it is, I need to file returns for the company, and me as the AFA, and that is ok, because I can essentially "alternate between me and company"- because we are essentially the same.
But
under the proposed legislation, my company will need to go through this review process, and then appoint me as the adviser. This will add more complexity that I dont need. It will also add further costs to my business.

4 Client First

This is a huge issue, and one I was not aware of initially. I feel you are making a huge mistake with this, and will potentially put me out of the business.
I don't think many people would say this is a bad aim, but this is normally considered in the light of dealing with major conflicts of interest.

There is potential for massive mistakes and legal challenges here.
You also want to put this into legislation, and I now find my company, is liable for up to 5M in damages. Up to now, I have felt the likelihood of this is relatively low, and hence is probably not why I have been so worried, given that it is me the individual adviser, who is "in the gun" for complaints, but the proposed changes, alter the rules of the game. A client would not attack me, but the company, as the potential for damages, or fines, is much higher, and would put me out of business.

I will give you 2 examples of why I am very worried about this clause of putting clients first.

1. I recently placed 4 clients plus myself into an investment syndicate. All clients are wholesale clients. The level of investment was 100k each. One client asked if he could invest 200k- to which I said NO, as I was only able to have a max of 500k into this investment. I could have withdrawn my own investment to this syndicate, and allowed him to increase his stake, but I prefer to co-invest alongside clients in these situations and hence why I said he could not increase. I am worried that if this investment goes well, that under the new legislation, he could say I did not put his interests ahead of my own, as he could have made more money if I had withdrawn....
2. Commissions on insurance. I take insurance commission for placing new business. While I disclose this to clients, and I always make sure there are a number of valid reasons before moving clients to another company, it is another possible area of conflict. Ie whos interest is best served in the example of a client with out of date products, or with cover that is not sufficient for their needs, or an adviser who takes commission to selling new cover to them....It is not inconceivable that a client could say an advisers interest was motivated by commission.

There are more and more solicitors and firms, willing to take on clients at no cost, and challenge all manner of things. These include wills, trusts and insurance companies, but it will only be time when they take on financial advisers as well, especially if we are held up against a standard of putting clients first and acting in their best interest. This will be compounded if my company could be liable for up to 5M.....!!

I will provide a graphic example of this.

1. 3 years ago, I was contacted by a person who had a falling out with their previous insurance broker. He said he did not want me to review his own insurance, but wanted to obtain trauma cover for his wife. I then placed the cover for her.
   2 years ago, he started having eye problems, and 1 year ago, became nearly blind in 1 eye. 6 months ago, he lodged a complaint against me, stating I had not provided him good service. I showed him in black and white (both in my emails to him and my statement of advice to him), that he had NOT wanted his insurance reviewed, but he proceeded with the complaint. Fortunately after about 3 weeks, he saw sense, and withdrew his complaint.

My big concern, is that he felt I had not acted in his best interests, and felt I should have reviewed his insurance cover, despite saying he did not want that. If this is enshrined in more legislation, he may well have pursued this further, and may have found a solicitor to have agreed with him.....

It is this type of issue, that would put me out of business very quickly, as I was not able to concentrate at all for the 3 weeks of this process.

As a financial adviser, I am asked to provide opinions on numerous issues, and far to many to comment on here. So many of these could potentially be twisted by clients and solicitors if

an issue goes against them. EG a failed claim to an insurance company, or an investment that does not go as well as anticipated.

Therefore,
If you want to legislate these terms (clients first, and acting in best interest of clients) in regulation and codes – then the scope needs to be VERY narrow indeed. If not, it opens me and other advisers up to many many potential conflicts- most of which may not even be seen as a conflict at the time the issue was addressed. This is because the conflict may only surface years after – eg change in health of person, or an investment which has a long term horizon.

I would be absolutely aghast if I was in the position where 99.% of clients and advice was fine, but my whole business spun on its head and I put out of business for 1 disgruntled client.

5 Costs

I need to comment on this. I am a small business. As I noted at the outset, I certainly believe I am the type of adviser that FMA and MBIE need and would want to keep in the industry. You would only need to speak to Fred Dodds –of IFA, to attest to this fact. I am looking to take on another staff member, and one of their roles will be an oversight of compliance. While they will also be looking to do jobs that increase the value of my business, the fact that a portion of time will be spent on compliance is a concern to me...... the costs of this person, but additional cost, are significant..

The 2 hours I have spent on this submission is another hidden, but very real cost of the regime.

6- consultation.

Finally here, I felt the consultation meeting last week did not achieve a great deal. There were nearly 100 advisers in the room, all of good standard, but all of them VERY WORRIED about what FMA and MBIE are planning, especially for small business operators. I feel it would be better value for all, if you consulted with a much smaller group, (say 30), where the issues could be dealt with in greater depth.

yours etc

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