



#38

COMPLETE

PAGE 2: Role and regulation of financial advice

Q1: Do you agree that financial adviser regulation should seek to achieve the identified goals? If not, why not?

Yes

Q2: What goals do you consider should be more or less important in deciding how to regulate financial advisers?

Accessibility to advice is critical. This access & the regulatory environment needs to be balanced against the risk to consumers and the risk to Advisers & their businesses

Q3: Does this definition adequately capture what financial advice is? If not, what changes should be considered?

Yes

Q4: 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

Q5: 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?

The distinction is needed but it is not well understood. Class Advice is misused by some to avoid providing advice but the client thinks that is what they have received. Consumers can think they have received advice when in fact it was a sales process. This occurs both in RFA environment but can be of more concern in QFE Adviser context

Q6: Is it appropriate to have different requirements on advisers depending on the risk and complexity of the products they advise upon?

So called risk & complexity has been used to separate Adviser types as RFA & AFA when in fact some insurance products deemed simple are in fact or can be complex eg business interruption ; income protection ; commercial buildings ; professional indemnity & liability Complexity may be more dictated by the circumstances of the client.

Q7: Does the current categorisation system accurately reflect the level of complexity and risk associated with financial products? If not, how could it be improved?

It sets up contradictions as stated in 6 above

Q8: 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?

It is not well understood by consumers that it is not a qualification. An alternative can only be considered if there is a move from the current Cat 1 & Cat 2 categories (see 6 above). The Code of Conduct should be the driver and be applicable to all Advisers and be principles based

Q9: Are the general conduct requirements applying to all financial advisers, including RFAs, appropriate and adequate? If not, what changes should be considered?

The Code of Conduct should be the source of the conduct requirements and applicable to all Advisers

Q10: Do you think that disclosing this information is adequate for consumers? Should RFAs be required to disclose any additional information?

Disclosure should be a common standard requirement across all types of Advisers and could potentially be better stored/maintained in a public on line register. The current RFA Disclosure based on its simplistic standard template does not allow for the comparison between Advisers as stated as one of its goals

Q11: Are there any particular issues with the regulation of RFA entities that we should consider?

Class Advice is misused for one on one face to face situations. It could be better restricted to group settings & printed/electronic publications & promotional material

Q12: Are the costs of maintaining an adviser business statement justified by its benefits? If not, what changes should be considered?

Acceptable but removing duplication between the ABS & the AFA Annual Return would be welcomed

Q13: 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?

No

Q14: To what extent do advisers need to exercise some degree of discretion in relation to their clients' investments as part of their normal role?

No comment

Q15: Should any changes be considered to reduce the costs on advisers who exercise some discretion, but are not offering a funds management-type service?

No comment

Q16: Are the current disclosure requirements for Authorised Financial Advisers (AFAs) adequate and useful for consumers?

Adequate = yes as it is provided to the consumer Useful for consumers = questionable because they don't always read it based on many Adviser's experiences

Q17: Should any changes be considered to improve the relevance of these documents to consumers and to reduce the costs of producing them?

No comment

Q18: Do you think that the process for the development and approval of the Code of Professional Conduct works well?

Generally yes but I do not believe that the Committee has adequate 'practicing Adviser' representation from the smaller Adviser business end, particularly in a risk & mortgage perspective

Q19: Should any changes to the role or composition of the Code Committee be considered?

See above. Quality individuals but institution & Legal/Accounting heavy. Not enough members who provide Advice on a day to day basis.

Q20: Is the Financial Advisers Disciplinary Committee an effective mechanism to discipline misconduct against AFAs?

Yes - thankfully not required much

Q21: Should the jurisdiction of this Committee be expanded?

No comment

Q22: 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?

QFE Advisers are not well understood by the public and they are seen by many RFA & AFA Advisers as having/employing an 'advantage' over them

Q23: Should any changes be considered to promote transparency of QFE obligations?

Yes

Q24: Are the current disclosure requirements for QFE advisers adequate and useful for consumers?

No - see #22

Q25: Should any changes be considered to improve the relevance of these documents to consumers or to reduce the costs of producing them?

Yes

Q26: How well understood are the broker requirements in the FA Act? How could understanding be improved?

No they are not. The term Broker continues to be used in the mortgage & general insurance fields by industry & consumers to describe individual Advisers. The definition in the Act is counter to the common usage

Q27: Are these requirements necessary and/or adequate to protect client assets? If not, why not?

Requirements are should be defined by the action not the title 'Broker'

Q28: Should consideration be given to introducing disclosure requirements for brokers? If so, what would need to be disclosed and why?

The Act defines the standards or could be embedded in the Code of Conduct if it applied to all Advisers. Brokers as defined in the Act are typically required to be on the FSPR and being on there doesn't always come with disclosure requirements

Q29: What would be the costs and benefits of applying the broker requirements in the FA Act to insurance intermediaries?

No comment

Q30: Are the requirements on custodians effective in reducing the risk of client losses due to misappropriation or mismanagement?

No comment

Q31: Should any changes to these requirements be considered?

No comment

Q32: Is the scope of the FA Act exemptions appropriate? What changes should be considered and why?

No comment

Q33: Does the FA Act provide the Financial Markets Authority (FMA) with appropriate enforcement powers? If not, what changes should be considered?

Yes

Q34: How accessible and useful is the guidance issued by the FMA? Are there any improvements you would like to see?

Yes

PAGE 3: Key FA Act questions for the review

Q35: 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.

Removing the distinction is not required provided that standards of disclosure are common to all Advisers. There are distinctions needed between the levels & types of Advice provided

Q36: 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?

Not well understood. Many consumers think they are getting Advice but have been sold to.

Q37: 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. Based on where there is an opinion or recommendation being made to keep, cancel or buy product there should be evidence provided to support that and this is the test that should be applicable. This focus is in line with the FMA Guidelines on Replacement Business

Q38: Do you think that current AFA disclosure requirements are effective in overcoming problems associated with commissions and other conflicts of interest?

Yes the current AFA requirements provide a basis for this but this is not applicable to QFE & RFA Advisers

Q39: How do you think that AFA information disclosure requirements could be improved to better assist consumer decision making?

No Comment

Q40: 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

Q41: 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?

I know there will be further submissions in this area following consultation by the PAA. Commissions should not be defined as inherently 'evil' as they are nothing more than a margin on product as exists in many, many industries where people who purchase product pay a margin that provides for accessibility (by payment of fixed cost overheads such as premises & service staff) to that product - in this case to Advice. NZ already has Disclosure and management of conflict of interest is the key not the banning or capping of commission in & of itself. Salaried Advisers are subject to things that incentivise their behaviour too so banning commission does not cure the perceived problem. Vertically integrated businesses of QFE type Advisers can be a threat of concern based on the Australian wealth management experience.

Q42: 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)?

Can be improved

Q43: What changes could be made to increase the levels of competition between advisers?

Based on systemic problems in the Australian advice industry avoiding setting an environment that fosters any dominance of vertically integrated distribution channels in investment, Kiwisaver, risk & mortgages is important to a healthy competitive environment

Q44: 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

Q45: 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?

I agree with the PAA submission on this point. The Code of Conduct rather than product type should be the driver of competence & conduct

Q46: Are there specific compliance requirements from the FA Act regulation that have affected the cost and availability of independent financial advice?

Yes if judged by Advisers who have chosen to exit from some areas of Advice based on the risk v return. The regulations have driven a number of Advisers to specialize & cease to be general practitioners when they would be deemed very sound, quality Advisers by their clients. This has particularly reduced the number of AFA's available providing individualised investment advice to New Zealanders which is not a good thing

Q47: How can regulatory requirements be made less onerous without reducing the quality and availability of financial advice?

One code for all Advisers with a Code & Committee able to provide standards for the various types of advice situations

Q48: 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?

Reality is we needed to lift standards & make changes but Advisers have become an unpaid extension of the NZ Police - more they are actually paying for the privilege. Matching requirements to the level of risk is important & avoiding duplication of reports would be welcomed. eg. AFA annual return & AML report

Q49: 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?

Will increase the need for advice. Increasing the supply of individualised (rather than commodity style 'cookie cutter' solutions from human Advisers is needed. Promoting the value of Advice on a value added basis should be promoted

Q50: 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?

No comment

Q51: Do you think that international financial advice is likely to increase? Is the FA Act set up appropriately to facilitate and regulate this?

No comment

Q52: How beneficial are the current arrangements for trans-Tasman mutual recognition of qualifications? Should further arrangements be considered?

No comment

Q53: In what ways do you expect new technologies will change the market for financial advice?

Robo Advice may be cheap but is not always good individualised advice. The issue here is similar to the fact that we already have organisations exempt from Advice regulation as they are not for profit who provide calculators for retirement or risk on their web site that consumers would see as Advice eg. Consumer ; Retirement Commissioner; Providers also have similar calculators on their websites and Accountants, Lawyers & Journalists enjoy an exemption. All these provide Advice that if the same was given by an individual Adviser the latter would be accountable. Advisers resent this non level playing field.

Q54: How can government keep pace with technological developments to ensure that quality standards for advice are maintained, without inhibiting innovation?

No comment

Q55: Are the minimum ethical standards for AFAs appropriate and have they succeeded in fostering the ethical behaviour of AFAs?

Yes

Q56: Should the same or similar ethical standards apply to all types of financial advisers?

Yes - absolutely and to all providing Advice

Q57: What is an appropriate minimum qualification level for AFAs?

Level 5

Q58: Do you think that RFAs (for example insurance or mortgage brokers) should be required to meet a minimum qualification relevant to the area of advice they specialise in? If so, what would be an appropriate minimum qualification?

Yes - a Level 5 with Advice type specialisation should be worked towards over a 5 year period. Do not make the mistake though that higher Education levels equals some panacea for standards of ethics & integrity. Major examples in other areas contradict that as correct thinking.

Q59: How much consideration should be given to aligning adviser qualifications with those applying in other countries, particularly Australia?

We should take our own appropriate position & not import or apply other countries solutions without valid research & consideration of our own environment

Q60: How effective have professional bodies been at fostering professionalism among advisers?

Effective but in many respects the regulation & role of the FMA allows Advisers to say they do not need to belong to a professional body as there is really only one arbiter on 'professional standards' in town.

Q61: Do you think that professional bodies should play a formal role in the regulation of financial advisers and if so, how?

There is scope to develop this further and consultation with professional bodies would be welcomed. The original model for regulation included such a role but was removed from the final model. The Associations are well placed to play an increased role.

Q62: Should any changes be considered to the relative obligations of individual advisers and the businesses they represent? If so, what changes should be considered?

No - An individual Adviser focus and the Code developed with the industry are strengths of the NZ system for instance when compared to Australia's licensee type approach.

Q63: 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?

Have commented on QFE space earlier. Common standards & disclosure and clear, common conduct requirements would put all Advisers on an equal footing

PAGE 4: Role of financial service provider registration and dispute resolution

Q64: Do you agree that the Register should seek to achieve the identified goals? If not, why not?

Yes

Q65: What goals do you consider should be more or less important in reviewing the operation of the Register?

No comment

Q66: Do you agree that the dispute resolution regime should seek to achieve the identified goals? If not, why not?

No comment

Q67: What goals do you consider should be more or less important in reviewing the dispute resolution regime?

No comment

PAGE 5: How the FSP Act works

Q68: Does the FMA need any other tools to encourage compliance with financial service provider (FSP) registration? If so, what tools would be appropriate?

No comment

Q69: What changes, if any, to the minimum registration requirements should be considered?

No comment

Q70: Does the requirement to belong to a dispute resolution scheme apply to the right types of financial service providers?

Yes

Q71: Is the current framework for the approval of dispute resolution schemes appropriate? What changes, if any, should be considered?

No comment

Q72: Is the current framework for monitoring dispute resolution schemes adequate? What changes, if any, should be considered?

No comment

Q73: 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?

No comment

Q74: 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 comment

Q75: Should additional requirements to ensure that financial service providers are able to pay compensation to consumers be considered in New Zealand?

Professional Indemnity Insurance should be compulsory for all FSP's and individual Advisers

PAGE 6: Key FSP Act questions for the review

Q76: What features or information would make the Register more useful for consumers?

Providing a database of Adviser Disclosure Statements maintained up to date would enhance comparability of Advisers for the consumer.

Q77: Would it be appropriate for the Register to include information on a financial adviser's qualifications or their disciplinary record?

See above # 76

Q78: Do you consider misuse of the Register by offshore financial service providers is a significant risk to New Zealand's reputation as a well-regulated jurisdiction and/or to New Zealand businesses?

Yes

Q79: 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?

Recent changes are a start

Q80: What are the effects of (positive and negative) competition between dispute resolution schemes on effective dispute resolution?

No comment

Q81: Are there ways to mitigate the issues identified without losing the benefits of a multiple scheme structure?

No comment

Q82: Are the current regulatory settings adequate in raising awareness of available dispute resolution options? How could awareness be improved?

Yes.

PAGE 7: Demographics

Q83: Please provide your name and/or the name of the group of people, business, or organisation you are providing this submission on behalf of:

Andrew Kerr, Seneca Financial Services Ltd & Seneca Insurance Brokers Ltd t/a Seneca Group

Q84: Please provide your contact details:

18(d)

Q85: Are you providing this submission:

-
- As an individual

Q86: 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?

Respondent skipped this question

Q87: 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:

-
- No