



#21

## 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?**

(a) Important to distinguish between “Financial Product Sales” – as practised by QFE advisers and “Independent Financial Advice” as may be provided by those not aligned to one or more financial product providers through salary, bonus, sales targets or commission. (b) Important to clarify the roles of different grades of financial adviser in the public mind. See question 35. (c) Important to allow AFA to provide limited advice, including an opinion on a single product or issue. (d) Important to reduce AML/CFT compliance time and costs.

**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?**

Distinction is adequate.

**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?**

Distinction is adequate.

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

Yes.

**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?**

Current system satisfactory. Do not change without very good reason.

**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?**

No. Alternative term "Financial Adviser Associate". See 35.

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

All should abide by the Code of Conduct.

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

*Respondent skipped this question*

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

Yes, need for disclosure.

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

Not at present. Costs of maintaining an ABS would be justified if the ABS was given a wider role in regulation of the advisory sector such as replacing the AML/CFT biennial audit and incorporating the annual AML/CFT return data.

**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?**

Yes. The client usually knows what he or she wants in the first place and this is then set out clearly in the initial discussion, scope of service and advisory agreements. The new DIMS regime has very recently had a major impact on the way an investment planning service is regulated. No further changes needed.

**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?**

One size does not fit all. The extent of discretion exercised is a matter for agreement between each client and adviser.

**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?**

Yes. Reducing costs to advisers who do not offer DIMS would help extend financial advice to those for whom it is presently uneconomic to provide. In addition to reducing compliance fees, access to worthwhile professional indemnity insurance at a reasonable cost would be of major assistance.

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

Adequate but not useful for consumers as two separate documents.

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

Only one disclosure document is necessary and desirable. The easier the disclosure process is made, the more effective it is and the more prospective clients are likely to read and understand it. All essential information can be presented in a single disclosure document to simplify the process. Simplifying the process helps lower costs through reduced preparation, presentation and maintenance time.

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

*Respondent skipped this question*

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

*Respondent skipped this question*

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

*Respondent skipped this question*

**Q21: Should the jurisdiction of this Committee be expanded?**

*Respondent skipped this question*

**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?**

Yes. See 35.

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

Yes. See 35.

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

No. Product sales is being presented as financial advice. QFE disclosure should have the primary purpose of making this fact clear to the prospective client when a QFE adviser works for a financial product provider and is largely dependent on that product provider for income via salary, bonuses and the like. See 37.

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

Yes. See 24.

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

*Respondent skipped this question*

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

*Respondent skipped this question*

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

*Respondent skipped this question*

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

*Respondent skipped this question*

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

*Respondent skipped this question*

**Q31: Should any changes to these requirements be considered?**

*Respondent skipped this question*

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

Existing exemptions are not appropriate. If the financial advisory industry is to become a profession, then it is not appropriate that unqualified journalists, teachers, lecturers, lawyers, conveyancing practitioners, accountants, tax agents, real estate agents, registered valuers, non-profit organisations and others, whether or not deriving a major part of their income from providing financial advice, should be able to do so without attaining a specified professional financial advisory qualification. Section 14 of the Act requires reduction and simplification.

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

*Respondent skipped this question*

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

*Respondent skipped this question*

### **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.**

Public perception of the term "Registered Financial Adviser" is widely misunderstood. The term "Registered" as it applies to many professions and industries is widely understood and accepted by the public as denoting the fully qualified professional practitioner. That the term was not used in this capacity for the financial adviser regime at the outset was a serious mistake that needs to be corrected if public confidence in financial advisers is to be advanced. To align the financial adviser industry with other industries and widespread public understanding, the title "Authorised Financial Adviser" should be abandoned altogether. Existing AFAs should be re-classified as "Registered Financial Advisers" to denote the fully qualified professional in the public mind. Existing RFAs would then need to achieve the current criteria for an AFA to retain RFA status under the new regime. There could be no "grandfathering". Existing RFAs wishing only to retain their current authority would become "Financial Adviser Associates". The term "Associate" is widely understood by the public to denote a practitioner not fully qualified or of limited authority. The term "QFE Adviser" would also be abandoned. QFEs could remain and could employ new RFAs or FA Assocs as they saw fit, but RFAs employed by a QFE could not describe themselves as "Independent". Under the new regime, RFAs would be able to describe themselves as "Independent" where the RFA: (a) Derives less than 20% of revenue as salary, bonus or commission from one or more financial product providers and (b) Offers a financial advisory service which provides for full rebate to the client of any commission received from a financial product provider or other third party in the course of providing that service. Obviously, a corresponding amendment to Code Standard 3 is required. Importantly, if substantial amendment to the existing financial adviser regime of this nature is not to be undertaken during this review then the existing regime should be retained largely in its entirety to avoid further public confusion.

**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?**

"Product sales" as opposed to unbiased financial advice is poorly understood by the public. Disclosure documents presented by advisers whose primary role is product sales, are normally written to impart an impression to the prospective client that the advice they are to be given will place the interest of the client first. This can rarely be the case where the adviser's own income is determined by salary, bonus and sales targets through contract to one or more financial product providers.

**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. See 35 and 36. Use should be made of the widely understood term "independent" – such that a reasonable person in the position of a client would consider that the service to be provided is independent. A disclosure document presented to a prospective client by an adviser whose primary role is product sales must state, primarily, that product sales is, in fact, the primary role of the adviser. Sources of the adviser's income, including percentage breakdown, must be clearly and unambiguously presented in the disclosure document.

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

Not entirely. See 16, 24 and 36. Apart from the product sales / advice conflict, current AFA disclosure requirements are largely effective.

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

Yes. See 16, 24 and 36.

**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. To avoid confusion and to enable the prospective client to make an informed decision as to whether or not to engage the services of the adviser, in addition to current AFA requirements, all adviser types should present sources of income including commission, bonus, salary payer, sales targets and conflicts of interest in a single disclosure document, provided to the prospective client before financial advice is given.

**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?**

No. There is already a steady move away from commissions within the financial adviser industry. However, some prospective clients still prefer not to pay for advice or pay reduced fees, opting instead for their adviser to receive commissions. Provided full disclosure of commissions, bonuses, salary and possible conflicts of interest is made, payment of commissions is not a concern.

**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)?**

No. Division between AFA and RFA is too great in terms of qualifications and disclosure.

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

A weird question when we are supposed to be considering how to improve service to the public by an industry currently under-staffed, under-resourced and already facing major new process adjustments, compliance costs

and complexity of regulation. Yes, you could increase competition between advisers by prescribing lower fees, prohibiting commissions and even forbidding membership of collegiate – style associations. However, standard of financial advice and public confidence in the industry would both be severely damaged. At this stage of the financial advice industry development, a measure of co-operation between advisers should be encouraged.

**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?**

No. Code standard 8 effectively precludes the adviser from providing advice on a discrete issue or security or providing limited advice in any form. Code standards 8 and 9 need to be simplified to allow the provision of limited financial advice, including advice on a discrete issue or security, without the necessity for an adviser to undertake a full review and presentation of the client's financial situation, capacity, risk profile, investment experience and financial goals.

**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?**

*Respondent skipped this question*

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

Yes.

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

By reducing direct costs to the adviser. In particular the annual registration FMA levy is a significant impost on a small adviser business. If a goal of the legislation is to extend the accessibility of financial advice to those with limited financial resources, waiving the annual fee would assist. Costs to fund the financial advisory industry would have to be spread across the wider community which the industry is intended to serve.

**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?**

Severe impact through major diversion of time and effort to meet programme preparation and implementation including the AML/CFT audit. Cost could be minimised by abandoning the specific requirement for a biennial AML/CFT audit and treating compliance with the legislation as a condition of the ABS – along with all other legislative demands. If advisers are not to be financially compensated for acting as police when their role is the provision of financial advice, then direct costs should at least be reduced to nil. If the full AML/CFT regime is to remain, then small advisory business needs could be met at nil cost through adherence to a common AML/CFT programme prepared by the FMA. Monitoring of compliance would be via ABS review and inspection if necessary.

**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?**

*Respondent skipped this question*

**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?**

*Respondent skipped this question*

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

*Respondent skipped this question*

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

*Respondent skipped this question*

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

New technologies, especially online services (robo-advice) will impact the financial advisory industry through making access almost universally available at low cost to a tech-savvy population. However, outcomes could be damaging for clients in adverse markets as investment algorithms largely follow market trends and all “rush for the exits” at the same time. Also, new technologies will not change the human propensity to go with the crowd – buying in at the top and selling out at the bottom. For some time into the future, human advice will be able to add a balancing aspect to the financial advisory process that machines lack.

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

*Respondent skipped this question*

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

Largely so.

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

Yes.

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

A tertiary qualification is needed for advisers to reach a high standard of theoretical knowledge and for the public to perceive the investment advisory industry as a profession. The Graduate Diploma in Business Studies (Personal Financial Planning) as awarded by Massey University, is an appropriate qualification.

**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.

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

Consideration should be given but exact alignment is not necessary.

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

Very effective.

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

A desirable objective but not practical at present. Regulation of the industry by professional bodies would simply be handing regulation over to the “big end of town”.

**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?**

Yes. See 24, 36, 37 and 40.

**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?**

*Respondent skipped this question*

#### **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?**

*Respondent skipped this question*

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

*Respondent skipped this question*

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

*Respondent skipped this question*

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

*Respondent skipped this question*

#### **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?**

*Respondent skipped this question*

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

*Respondent skipped this question*

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

*Respondent skipped this question*

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

*Respondent skipped this question*



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

*Respondent skipped this question*

**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?**

*Respondent skipped this question*

**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?**

*Respondent skipped this question*

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

*Respondent skipped this question*

#### **PAGE 6: Key FSP Act questions for the review**

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

*Respondent skipped this question*

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

*Respondent skipped this question*

**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?**

*Respondent skipped this question*

**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?**

*Respondent skipped this question*

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

*Respondent skipped this question*

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

*Respondent skipped this question*

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

*Respondent skipped this question*

**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:**

9(2)(a)

**Q84: Please provide your contact details:**

9(2)(a)

**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:**

- 
- Yes
  - **Explanation:** 9(2)(ba)(i)
-