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.

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FAA Review Submissions

Role and regulation of financial advice

When providing your comments, we would particularly appreciate information about the relative benefits, costs (financial or otherwise) and any other impacts of these proposals on businesses, consumers or other stakeholders. This information will help us more fully understand the effects of the current regulation.

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

Yes

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

To enhance confidence and clarity, all participants dealing with the consumer in relation to financial advice should be subject to a level playing field. There should not be different rules based on 'impact on profitability' or 'burden' to an organisation.

While the Treasury's principle of 'proportionality' is important, the 'burden of compliance' should be consistent across all participants. This includes QFE's. While they may have many more 'advisers' all participants have to make a profit, not just the large institutions. By having consistency, it will be straightforward to explain to consumers what the regulation is and what they can expect.

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

Since the implementation of this definition, I have noticed a number of situations where 'advisers' are arbitraging the definition. I have seen people 'give information' but then it transforms into advice, without any recognition from the 'adviser' that this has happened.

Some of these people have not been registered on the FSPR - as they were 'giving information only'. That 'information only' has ended up providing them with income from the sale of a financial product. A number of these products are going to be with the client for a lifetime - but the person 'selling' the product can hide behind the fact that they aren't covered by the Act.

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?

The assumption that a person with 'net assets' of a certain level is 'assumed to be able to effectively choose a financial adviser without much regulatory assistance' is not realistic, based on my experience. The definition of 'net assets' as a start would need clarification, or it may cover most of the people living in Central Auckland.

I understand the need for a distinction between sophisticated investors and 'others'. But the eligible investor classification provides this. I believe that there should only be two categories - an eligible investor and everyone else - maybe just call them 'clients', consumers, investors or one catchall

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?

The basis for the definition is understandable from a regulatory viewpoint. However, I don't believe that the public understand what they are missing out on if they are getting 'class advice' instead of 'personalised advice.'

I believe that ALL conversations about money in a professional capacity should be classified as financial advice. Within that broad definition, people can then be required to state that this is: Information Only, No Advice, Limited Advice, Financial Advice.

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

Yes, but only to a point. To achieve the goals of the Act, I believe that everyone that communicates or has conversations with people about money in a professional capacity should be covered by the Act and by the Code of Conduct.

If everyone has the 'ethical' and 'conduct' requirements of the Code, then I believe that the only differentiation (which could be consulted on) between different people communicating or having conversations about money in a professional capacity should be:

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?

Yes, but the only difference in categorisation should be based on training and experience in being able to communicate/have conversations about the different products. Having said that, giving good advice on life insurance products requires a lot of knowledge, research and skill.

We are facing a real issue with the public being able to get access to information on KiwiSaver. So why not have KiwiSaver providers training more people to give advice, but only on their KiwiSaver - and stipulate to the public that the person is only trained on that persons KiwiSaver. Then the provider should be responsible for the advice. As an example, I believe that Generate is doing

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, I believe that many people consider that Registered Financial Adviser (RFA) is more qualified and senior than an Authorised Financial Adviser (AFA). I am also aware of people who have provided 'information only' services, and still earned income from a 'sale' after conversations, who have not been registered on the FSPR.

I also believe that many consumers don't think about the fact that there are enormous conflicts of interest and targets for QFE Advisers, which aren't disclosed. I don't know if the public sees RFA's, AFA's and QFE advisers as operating in the same environment. I believe that this needs to be

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

Yes, the FAA requirements for all advisers to: (a) exercise the care, diligence and skill that a reasonable financial adviser would exercise in the same circumstances; (b) To not engage in misleading or deceptive conduct or advertise in a way that is misleading, deceptive or confusing are appropriate and adequate.

The issue arises with the actual implementation, given that AFA's are covered by a Code of Conduct, which reflects these general conduct requirements and the estimated 30,000 non AFAs are not.

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

The different disclosure and regulatory requirements on different types of advisers causes most of the confusion amongst the public.

As an AFA I provide multiple documents to clients (primary disclosure, secondary disclosure, personalised secondary disclosure, scope of service, contract of engagement and an implementation of advice schedule). In addition to signing meeting notes, clients sign all the documents.

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

This will depend on whether it is decided that the business or the individual adviser will have liability going forward.

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

My impression is that having Adviser Business Statements had initial value in ensuring that a structure was put around the business of people who were AFA's. However, I am aware that many of these were templated.

Our business and processes are continually changing with technology, regulation, and just ongoing change. Keeping the Adviser ABS up to date is a continual compliance hassle and as it is pretty much an internal document, or one for the FMA to 'check' I don't see the value.

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?

No, I don't think it is well understood by advisers OR the public/their clients.

But at present, only AFA's can provide this service, so I can't see that it requires any changes to the way it is regulated.

What does confuse me is why some RFA's that are dealing only with Wholesale Clients appear to be able to offer investment planning services to them.

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?

We are not DIMs providers as we consult with our clients before we make any changes to their investment portfolio. Contingency DIMs will work well for us. However, the limitation is when we have to ensure that there is enough cash in their cash accounts to make tax payments (particularly in non NZ dollar accounts.)

As we cannot make any decisions on investments as we are not authorised for DIMs we have to contact each client to make that transaction. Unfortunately, we have a very tight time period in which to make sure there is enough cash in the account. Fortunately some distributions can be

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?

As per answer in Question 14: If we were able to make some administrative changes to a part of the portfolio to enable tax payments to be made without putting cash accounts (particularly overseas currency), up to a realistic dollar level - perhaps as agreed with each client, as part of Contingency DIMs that would be of assistance.

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

Although clients sign the documents, I am not sure that the information is of any use. I recommend that the requirement for multiple documents to be provided to clients be simplified and that the same requirements be made of ALL market participants. Further information in question 17.

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

As an AFA I provide multiple documents to clients (primary disclosure, secondary disclosure, personalised secondary disclosure, scope of service, contract of engagement and an implementation of advice schedule). In addition to signing meeting notes, clients sign all the documents.

The information in the RFA and AFA and QFE disclosures is bland and really not much help to anyone.

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

Yes, but the code should apply to ALL Market Participants (with variations on the requirements for Code Standards 14,16,17,18 to reflect the type of advice being provided.

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

No

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

It has barely been used (maybe the AFAs aren't as bad as the media says). I don't know.

21. Should the jurisdiction of this Committee be expanded?

Yes, the whole industry should be subject to the same rules. Therefore, the FADC should be applied to all market participants.

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?

Yes. We have personally seen several examples of QFE advisers who have targets to meet putting undue pressure on clients to 'take their advice', when it was not always in the best interests of the clients.

As QFE's do not have the requirement to abide by the Code of Conduct, there are questions about whether the business practices are 'placing the interests of the client first and are acting with integrity'. There are KPI's and targets to be met to keep the 'advisers' job. These can cause enormous conflicts of interest that aren't disclosed to the clients and can undermine the entire goal

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

All market participants should be subject to the same rules. All market participants should have the same disclosures and reporting requirements, and be subject to the Code of Conduct requirements.

At present, the only reference to the Code of Conduct in relation to QFE's is in FAA s66(2). However, this only requires FMA to take into account personalised service in relation to Category 1 products. Whereas, the majority of Code Standards apply to ALL services. The same rules should apply to all participants.

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

No.

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

Yes, all market participants should be subject to the same disclosure requirements. There should not be different documents for QFE's, RFA's and AFA's. The standard should be the same. They should be simplified overall to a 2-3 page document.

If we are all called Financial Advisers, but then have qualifications and limitations by stating if we are 'tied' to an organisation (ie having AMP, Westpac or the QFE's name) in brackets, and if our designation states what products/services we are able to provide (eg Investment Planning, Financial Planning, Insurance, KiwiSaver, Investments, Lending) then the consumer will be able to compare

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

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

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

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

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

31. Should any changes to these requirements be considered?

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

No. I am aware of multiple examples of 'financial advice' given from lawyers and accountants that have exemptions, that are definitely not placing the clients interests first, or the best option for clients.

Any person who is giving any financial advice where they will earn income from the advice should be regulated on a level playing field with all other market participants.This would mean that non profit organisations who aren't earning any income can be exempt.

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

They seem to be working well, and particularly with the recent change in focus and new leadership, good results have been seen that I believe will strengthen consumer confidence in the financial markets.

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

Pretty useful so far.

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.

I agree, the system is very confusing not only to consumers, but still within the industry.

I believe that many people consider that Registered Financial Adviser (RFA) is more qualified and senior than an Authorised Financial Adviser (AFA). I am also aware of people who have provided 'information only' services, and still earned income from a 'sale' after conversations, who have not been registered on the FSPR.

I also believe that many people don't think about the fact that there are enormous conflicts of interest

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?

As soon as there are exemptions, or carve out's or differentiations on who is covered and what is covered by the legislation, some people will work hard to take advantage of those differences. We have already seen this happen in numerous examples that I am personally aware of.

To increase confidence, the legislation has to apply to ALL people that have conversations with the public in a professional capacity about money. In particular ALL situations where money is earned by someone (the person having the conversation or their employer) if the consumer implements the advice or buys the product/service.

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?

As soon as there are exemptions, or carve out's or differentiations on who is covered and what is covered by the legislation, some people will work hard to take advantage of those differences. We have already seen this happen in numerous examples that I am personally aware of.

To increase confidence, the legislation has to apply to ALL people that have conversations with the public in a professional capacity about money. In particular ALL situations where money is earned by someone (the person having the conversation or their employer) if the consumer implements the advice or buys the product/service.

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

Any time a person earns an income from someone taking their advice or buying a product or service, there will be a conflict of interest. It depends how far you want to take the concept of as conflict of interest.

I have clients where I recommend that they put funds into a Term Deposit with a Bank, where I don't earn any income as that is the best thing for them to do. Disclosure about commissions or conflicts of interest don't make any impact on that situation. Do other advisers recommend that clients do this? I don't know. Maybe the fact that they only earn money if the client invests the money through

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

Have two simplified documents that cover disclosure, scope of service, contract of engagement, implementation of advice and make them consist to ALL market participants, not differentiated only for AFA's.

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. All market participants should disclose the $ value (ideally), but at a minimum the % income earned by the business that they work for our themselves if the advice is taken/sale made. They should also disclose whether they have any targets or KPI's that will be affected by whether the advice is taken/sale is made.

They should of course also disclose any ownership or beneficial interest that they have in any financial solution that they are recommending/selling.

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?

I believe it is important that commission be treated differently depending on the product.
Commission on non KiwiSaver investments is rare now.
KiwiSaver Commission is vital so that people can get advice.
Insurance Commission is vital so that people with get insurance

I don't have an opinion on Lending commission.

I believe that all of these three commission structures are important. There are a number of people

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)?

There is plenty of competition from people who want to 'sell a product' to a consumer. Unfortunately, the public don't know what they don't know. Most people don't really understand what 'advice' can be until they meet an adviser who gives them full investment planning advice or full financial planning advice.

From my experience there are very few advisers who offer full financial planning advice or full investment planning advice. There have been several comments (in writing and verbally) that 'people don't want full financial plans any longer'. I think this is more a reflection of what the adviser

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

Do we actually need more competition? My experience indicates that there aren't enough advisers providing good service and advice to those people who are asking for it.

But, if there is a perception that more competition is required:
Have every market participant on a level playing field. All the rules apply to everyone.

The Code of Conduct and disclosures apply to everyone. Make it clear from the adviser designation whether they are tied or not, and what financial solutions they can advise on. Make it clear whether

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?

Code Standard 8 provides flexibility to advisers in relation to provision of suitability of advice, by enabling the use of pricing models that some clients might not find desirable to produce a full plan.

I believe that if the whole industry was required to state whether advice/sale was 'no advice', limited advice or full advice, over time (or quite quickly) the problem of giving advice on discrete issues would be solved. However, anecdotal evidence that I have observed suggests that there are not a lot of 'full financial plans' or full investment plans' being produced at present.

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?

Anecdotally, I believe that AFA's tend to be working more and more with 'larger lump sum' clients than before so that their business is profitable with the added compliance.
Regular savers and people who are starting to build up assets for retirement have few AFA's that work in that market. It is possible that RFA's used to assist these people, but because of the categorisations, they can't assist people with investments.

As KiwiSaver has grown alongside the regulation, this is the core saving vehicle for most New Zealanders, but as only AFA's can give advice, and AFAs in general are focussing on clients with

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

I agree with a lot of the comments in paragraphs 156 - 161 about advisers limiting their business practices. We have a small business (5 staff) and are overwhelmed with referrals and clients wanting financial plans this year. We were planning on re-booting our marketing as we have a trainee AFA, but we have more work than we can handle right now. If we didn't have a trainee AFA, we would be getting to the stage of turning away people as we would be at our capacity limits.

In my opinion, there is a lot of superfluous compliance and admin that could be simplified significantly and then applied across the industry.

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

Simplify the documentation required (a lot of it is repetitive) to be given to clients.
Create an AML Lite version for advisers
Make the rules consistent across the whole industry. If they become consistent and everyone has to do them, then they will have to be simplified. See my other answers to question 46.

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?

It has created a lot of repetitive time consuming administration work and external cost with the 2 yearly 'audit'.

How could the costs be minimised?
Modify the AML/CFT requirements. We don't have any problem collecting the identification information, but the idea of having to redo the AML procedure/risk assessment each year, have a 2 yearly audit and report to the Government each year seems like overkill. Could there be an 'AML Lite'? Yes, have one 2 year audit,but what about 5 years after that. The Govt report seems fine

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?

Many of the KiwiSavers will not have had any exposure to financial advice during their lifetime apart from borrowing money at the bank, buying life insurance or having term deposits. Therefore, they will not know what the options for advice are.
I anticipate that the providers will start communicating more regularly about the ability for people to take regular payments from their investments, but consumers will have to work out the appropriate level of withdrawals to make sure they don't run out of money unless the KiwiSaver providers have employee advisers to help the consumers.
Most of these people are unlikely to be interested in paying a fee for advice, as they will never have

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?

No change in particular. What is likely to change the market for financial advice is more reports in the media about the good things that financial advice can do, the enforcement activity from the FMA showing that things are being 'cleaned up'.

My market is the Mums and Dads who are planning for the future, not the high net worth people. The Mums and Dads are the people that really need the assistance and, as correctly noted, more advisers are moving away from this target market. The Mums and Dads need help with the basics and tend not to be interested in the 'new' market developments. The Mums and Dads need

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

Not likely for the Mums and Dads market. Possibly for High Net Worth individuals. However, there is quite a demand for assistance on bringing overseas investments back to NZ (UK, US, Australia). But these are usually superannuation or cash investments in our experience.

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

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

From my experience, the more information that is available, the more consumers need assistance in sorting out what it all means and what is relevant for them. If Robo-Advice is introduced to New Zealand, there will certainly be some people who it is suited to. But for full service financial planning that adds value over and above investment placement and recommendations, I believe that there is and will be demand that outstrips supply.

The issue for the consumer in New Zealand is whether the NZ market is big enough for a dedicated Robo-Advice platform to be introduced (after all we have seen Research House after Research

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

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

Yes, the standards in the new Code of Conduct are quite extensive. All AFA's that I associate with take these obligations very seriously. I can't comment on other AFAs.

However, given that 'suitability' requirements are the minimum standard in other jurisdictions (UK, USA), I believe that the Code of Conduct should apply to ALL Market Participants.

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

Yes, the Code of Conduct should apply to ALL Market Participants. Standards 14,16,17,18 should be adapted for different levels of expertise as previously outlined.

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

The existing standard is appropriate, but fulfilling the CPD requirement needs to be enforced and needs to be a minimum.

AFA's have done a lot of hard work and increased their ability and compliance levels significantly. Now it is time to get all the other participants to start getting a foot on the ladder so that there can start being a relatively level playing field.

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?

I believe that all market participants should have a minimum qualification of Level 5 in the following Standard Sets:
Standard Set B
Standard Set A
Standard Set C (based on what they are trained and registered/authorised to provide).

These could be gained over a period of time through in house training and examination, or by completing an external course, but everyone should have the same knowledge of the markets and

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

Very little. The taxation and investment environment there are very different to here. Guidance should be taken on things like suitability and fiduciary standards. What is happening internationally should not be ignored.

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

This consultation document estimates that there are about 1800 AFA's, 6300 RFA's and 23000 QFE members. By my rough estimates, less than 2000 individuals belong to the combined professional bodies in NZ (I may out by a few hundred.) That indicates to me that the professional bodies have made little impact on the financial advisers. Even if you only take AFA's and RFA's - that is still only around 25% participation.

In comparison with some 'professions' such as Engineering, Law, Medicine, there is no 'qualification' to become a financial adviser.

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

No.

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?

I know of people who left the industry because of the personal liability of being a financial adviser.

Yes, Engineers, lawyers and accountants have individual liability. But they also have good quality professional indemnity insurance that covers all their advice and work.

As a financial adviser who advises on investments, I only have professional indemnity insurance for legal costs if an invest fails or goes down in value and a client is unhappy with me. Therefore, as an individual I am personally very exposed. From that perspective, I believe that I should have the

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 only experience that I have is with different QFE advisers who have pressurised consumers to implement their advice (insurance, investment planning and KiwiSaver) (to the disadvantage of the consumer), presumably so that they can meet their targets.

Therefore, apart from that, I can't comment.

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?

The public should be able to find out what areas the advisers work in on the register. What their 'training/registration/authorisation/qualification' is, what they can give advice on, who they are 'tied or affiliated' to.

Now that it is set up, it would be useful to make it more flexible and useful for the public. All the public can do now is sort by name. They should also be able to search by location.

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?

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?

I am concerned about market participants that choose to be 'outside the regime' by providing 'information only', or because they are covered under an exclusion (lawyer, accountant) or because the product that they advise on/sell is not under the regime - ie property and property related offerings.

Hopefully the review of the FAA will review these situations so that the FSPR is truly inclusive of anyone that the the public will engage in a conversation with about financial matters/money in a professional capacity, or where that person will earn money from that discussion.

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

Nil

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

I am concerned about how the definition of wholesale investors under the FAA works and that these people may not know that they are 'wholesale investors' and do not have Dispute Resolution Schemes available. I realise that many jurisdictions have Wholesale investor designations and assume that is why we do in NZ.

But we also have 'eligible investors' where an active decision is made to become an eligible investor and a declaration signed. Given that a freehold property owner in Central Auckland, who has just started investing could be a 'wholesale investor', I don't see that the 'wholesale investor' description

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

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

73. Is the existence of multiple schemes and the incentive to retain and attract members sufficient to ensure that the schemes remain efficient and membership fees are controlled?

From our perspective, yes.

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?

$200,000 makes sense as this is the minimum threshold for High Court claims. Can there be a different threshold for insurance claims as it would be sad if people felt unable to pursue a claim because of the threshold?

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

I believe that there should be a level playing field and that all financial market participants should be required to have adequate Professional Indemnity Insurance. However, the PI insurance available for investment advice only provides cover for administrative errors, and legal costs to fight the claim if the investment fails, or if the investments go down in value. So I am not sure how much value that is in terms of protection for investors.

Key FSP Act questions for the review

76. What features or information would make the Register more useful for consumers?

I am not sure what value adding a financial advisers primary disclosure document would be, as they are all pretty similar. It would be more valuable to add more searchable fields:

Location
Areas that services can be provided on
Fees or commissions

I am not sure that we 'need' 'more competition between advisers'. What would be more useful is for

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

Only if it was able to be put into context. If someone was disciplined by their professional body, but other people don't even belong to a professional body, then that is unfair on the person who was disciplined. Given that roughly 75% of AFA's and RFA's don't belong to a professional body and very few of the estimated 23,000 QFE advisers don't either.

It would also be unfair if an QFE adviser was 'disciplined' internally, but this becomes part of an employment record and therefore is not public record. We need a level playing field so that fair comparisons can be made.

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?

Yes

79. Are there any changes to the scope of the registration requirements or the powers of regulators that should be considered in response to this issue?

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

I am concerned about the inability to build up a body of knowledge by having four different dispute resolution schemes. The courts in NZ have very limited expertise, experience and knowledge about financial adviser activities, this takes a long time to build up. As there is little case law, and much of the decisions in Australia are from disputes resolution bodies, I think it would be good to have only two disputes resolution schemes at the most so that that body of knowledge can be built up.

We immediately joined the ISO because of our perception about their existing knowledge and experience. By having only 2 Disputes Resolution services, the economies of scale and profitability

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

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

Demographics

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

Carey Church

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

18(d)

85. Are you providing this submission:

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

Please describe the nature and size of the organisation:

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

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

FAA Review Submissions

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

☐ Yes ☑ No

Explanation:

Thank you for your time. Please send your submission.