

**Submission on the  
Review of the Financial Advisers Act 2008  
and the Financial Service Providers  
(Registration and Dispute resolution)  
Act 2008**

August 2015



CHARTERED ACCOUNTANTS  
AUSTRALIA • NEW ZEALAND

8 August 2015

Corporate Law  
Labour and Commercial Environment Group  
Ministry of Business, Innovation & Employment  
PO Box 3705  
Wellington  
New Zealand

Dear Madam/Sir

**Review of the Financial Advisers Act 2008 and the Financial Service Providers  
(Registration and Dispute resolution) Act 2008**

Chartered Accountants Australia and New Zealand welcome the opportunity to provide feedback and lodge a submission to the Government's **Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute resolution) Act 2008**.

Chartered Accountants ANZ have long held the belief that the provision of quality financial advisory services is a critical service that should be affordable and accessible to all New Zealanders.

CA ANZ is ideally positioned to take an objective view on the current financial services environment. Members of Chartered Accountants ANZ operate and hold a wide range of roles within the financial services industry including small practices through to major financial institutions and financial product manufacturers.

Chartered Accountants Australia and New Zealand is a professional body comprised of over 100,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over. Specifically in New Zealand members make up the majority of the accounting profession with approximately 30 000 members. We have 17 branches throughout New Zealand.

Members of Chartered Accountants Australia and New Zealand are known for professional integrity, principled judgment, financial discipline and a forward-looking approach to business. We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international capital markets.

We are represented on the Board of the International Federation of Accountants. Our global network also includes the 800,000-strong Global Accounting Alliance, and Chartered Accountants Worldwide, which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

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Chartered Accountants ANZ is committed to promoting public policy that furthers the overall interests of New Zealand. We operate under a strong culture of putting the public interest before member interest.

We have provided commentary and feedback on a range of the questions raised within the Review.

We strongly support the Government's view that New Zealanders need unbiased, quality financial advice that is appropriately tailored to the needs of individuals, families and businesses.

Many jurisdictions around the world have focused on the delivery of financial advice and the appropriate framework. There are currently reviews in the US, UK, Canada and Australia. As raised in this Issues paper Australia is going through a consultation to lift the professional, ethical and education standards in the financial services industry.

Some of the indicators globally focus not just on the regulatory and technical aspect of the provision of advice but also the culture of the organisations and individuals in the provision of this advice. In particular the issue of conflicts of interest are key elements.

Chartered Accountants are well positioned to provide insights into how to address conflicts of interest having a very robust structure of professionalism and ethics.

One of the key elements in reviewing any regulatory framework is to ensure that the policy outcome delivered provides a tangible increase in the consumers trust and confidence in the financial services industry and the capital markets.

There is an ongoing balance required between consumer responsibility and the industry's responsibility, however importantly it must be recognised that there is usually a significant knowledge gap between consumers and providers. As a consequence a greater responsibility lies with providers.

As part of the overall framework in addition to the appropriate regulatory settings consumer financial literacy is important.

If you have any questions about our submission please do not hesitate to contact me.

Sincerely

A handwritten signature in black ink, appearing to read 'Hugh Elvy', with a horizontal line underneath.

**Hugh Elvy**  
Head of Financial Advisory Services  
Chartered Accountants Australia and New Zealand

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## Executive Summary

The New Zealand financial services industry has a generally strong and robust framework, however a characteristic of the industry is that it continues to evolve and change. As a consequence it is necessary for the Government and regulators to proactively monitor the environment.

It is interesting to note that globally while addressing various components of regulatory framework in respect to the provision of advice, the key issue surrounds behavior and addressing the drivers of behavior rather than technical competence.

With a policy objective to increase trust and confidence in the financial services industry, the provision of quality financial advisory services must be based on ethical behavior, trust, integrity and honesty for the benefit of the New Zealand public.

The key drivers in the provision of quality financial advisory services and the confidence in these services include:

- Increasing consumer financial literacy and education
- The impact of remuneration models
- The need to encourage the development of practical and ethical behavioral attributes
- The development of stronger technical expertise
- A greater emphasis on the value of advice as opposed to financial products

Chartered Accountants Australia and New Zealand strongly supports the financial services industry, the role of financial advisers and the importance and value of providing appropriate and quality financial advice to the New Zealand public.

## Summary of goals and key questions

**Goal 1: Consumers have the information they need to find and choose a financial adviser**

**Goal 2: Financial Advice is accessible for consumers**

**Goal 3: Public confidence in professionalism of financial advisers is promoted**

Chartered Accountants ANZ supports the intent and overarching objectives of the proposed goals. Consumers need confidence in affordable and accessible financial advice.

One of the key elements in the provision of financial advisory services globally is the clarification for consumers between the provision of advice versus the provision of product sales. In many cases the provision of financial advice is too product centric and the success of advice is measured by the purchase of a financial product.

In addition, the need to ensure that there is an understanding based on the knowledge gap between providers of advice and consumers.

Consumer research indicates that there is a misunderstanding as to the value and role financial advisers provide. Research indicates that generally consumers who have a financial adviser and receive financial advisory services value these services and have confidence. Conversely those who do not currently receive these services have a negative perception. This would be a reflection of a lack of understanding of the role and services provided by a financial adviser. Whilst the financial services framework is complex and there many products and strategies for many consumers the financial advice they require can be as simple as setting a budget or paying

off debt and in reality they require general guidance and a plan. On an ongoing basis it is important that they are following financial plan.

One of the aspects when considering the value of financial advice is that it is usually aligned with investment or portfolio performance. Whilst this is an important consideration the value of advice is wider than investment performance, in many cases from a consumer perspective the value is “peace of mind” that they are heading in the right direction. Unfortunately the measure of success of financial advice is often related to purely investment performance.

This indicates that a component of the overarching regulatory framework is education of consumers,

## Role and regulation of financial advice

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

The goals outlined are an appropriate objective. Consumers need clear and simple information to choose a financial adviser to obtain affordable and accessible. Most importantly consumers want a trusted source of financial advice.

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

These goals are not stand alone or mutually exclusive and need to be addressed concurrently to deliver the appropriate policy settings. Without confidence in the overall framework and providers consumers will not endeavor to seek financial advisers and financial advice even if it is affordable and accessible.

One of the primary objectives should entail consumer education of the value of financial advice. While a focus can be on the regulatory framework and its structure there is need to have consumers wanting to engage with it. This will be a result of consumer education.

However it should be noted that consumer education is a long term objective and in many ways may well be a generational.

## How the FA Act works

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

In terms of a definition a key element is its simplicity, we believe the definition in Section 10 of the FA Act provides an appropriate level of clarity.

However the issue that does introduce complexity is having the definition of “investment planning service” and to a degree the “discretionary investment management service”. From a consumer perspective, who in general terms, is not engaged this adds a level of complexity that does not assist in creating greater engagement.

### **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?**

In general terms we support the current defined distinction between retails and wholesale clients.

One of the challenging aspects of defining a wholesale client is, for example, the objective thresholds for “eligible investors”. The setting of an arbitrary threshold of assets and income can often be debated. We believe the certifying the current \$2 million in net assets and gross income of more than \$200,000 is appropriate.

It is generally recognised that thresholds alone do not necessarily indicate that an individual has an appropriate level of understanding and experience in terms of investment decision making. In many cases there would be value in an overlay of a subjective test as per the “Experience in investing money” test.

There is practical value in individuals having the opportunity to opt-out of being treated as a wholesale client, however the question does arise as to an individual's capability to confirm they have the appropriate level or experience and expertise to opt-out.

Whilst there are potentially gaps in terms of the overall approach to wholesale clients the current approach appears to be appropriate.

**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 provision of personalised financial services is not required by all consumers in all situations. In many cases individuals are in need of high level guidance or a “financial sounding board” as opposed to holistic financial advice services.

As a consequence there is value in having a distinction between personalised and class service.

Without some form of distinction potentially consumers will actually not have access to a form of advice.

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

Globally this is an issue that continues to be discussed and as yet no jurisdiction has developed a recognised best practice framework. Globally the issue of financial advice regulation continues to evolve.

Whilst there is a reasoned basis to have different requirements on advisers depending on the risk and complexity of products, in terms of simplicity for consumers, it is unlikely that they would have an appropriate understanding of the differences.

However, when reflecting on the potential risks for consumers, there is a need to have a higher level of requirement. A consideration may be to overlay the current requirements with a framework as to what complex products can be provided to a consumer.

**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?**

We believe the current categorisation does reflect the level of complexity and risk associated with financial products. However it is unlikely there is a clear understanding by consumers, as a consequence the concept of categorisation may need to be revisited for simplicity. From a consumer perspective they will not understand the services or products they require as such the categorisation adds further complexity.

**Register Financial Advisers**

**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?**

The range of terms associated with who can provide advice is one that most consumers would find difficult to distinguish between. Even with the associated disclosure documents consumers find it difficult to put the services and advice in context.

Based on the assumption that the financial literacy of consumers is comparatively low the term "Registered Financial Adviser" would imply that a range of services can be provided, as opposed to the provision of a limited range of services/ products. From a consumer perspective there would likely be an expectation gap in terms of the services to be provided.

Similarly it is unlikely a consumer would understand the difference between a "Registered Financial Adviser" and an "Authorised Financial Adviser". Both terms indicate a high level of robustness and value.

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

In general terms, we support the current general conduct requirements, however we do believe there should be greater consistency between the different types of advisers. If the intent of the policy objectives is to increase professionalism, confidence and recognition by consumers, then the requirements between the different types of advisers should be very similar or identical.

This would include not only technical qualifications but also the standards by which RFAs must abide by. The Code of Professional Conduct should apply to all who provide financial advisory services – it would be difficult for consumers to comprehend when receiving advice there is a difference in the professional conduct requirements

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

The first issue to be emphasised, is that post the Global Financial Crisis, it is recognised that disclosure does not deliver a high level of consumer protection. The provision and disclosure of information is important for consumers to make informed decisions, however there is still a significant knowledge gap between providers and consumers.

In terms of simplicity the RFA disclosure may well be appropriate, however when one considers that globally it is recognised that the drivers of inappropriate advice is conflicted remuneration structure, we would support that RFAs having to disclose their remuneration structure.

The ongoing challenge with disclosure is whether it is valued by the consumer. In many jurisdictions it has found that disclosure does not actually deliver the intended consumer protection.

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

We do not have a comment on this issue

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

We do not have a comment on this issue

**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?**

Similar to our comments on AFAs, RFAs (and QFE advisers) it is highly unlikely consumers can distinguish between financial advice and investment planning services. Arguably an investment planning service is a subset of the broader definition of financial advice.

One must be mindful that many consumers are unlikely to be aware of the particular services they require as a consequence are not in a position to make an informed decision as whether they need "financial advice" or "investment planning service".

**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 do not have a specific comment on this issue. However would highlight that

**15. Should any changes be considered to reduce the costs on advisers who exercise some discretion, but not offering funds management type service?**

We do not have a specific comment on this issue

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

As previously stated it is difficult to quantify the value of disclosure. Post the Global Financial Crisis one of the key learnings has been that despite some extensive disclosure consumers did not really understand what advice they were taking and what the implications were.

However, while this may well be the case this does not mean that disclosure should be removed.

The elements provided in the disclosure document - contact details, services provided, how paid disciplinary history and complaint procedure are all important for consumers and are necessary. The importance is to ensure the disclosure documents are not of undue length.

The challenge for consumer is having the context to understand the details provided and the ability to compare between advisers.

As a consequence a key issue is the education program for consumers to understand the difference and value difference between disclosure documents. This is not a short term solution but one that must be incorporated into a financial literacy strategy from school children to adults.

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

The main focus and consideration should be in how to reduce the length of the disclosure documents. There will in due course be the opportunity to provide some form of disclosure electronically and this will become the norm. However currently the main form of delivery is a hard copy – as a consequence shorter form documentation would be of greater value.

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



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We are comfortable with the current process for the development and approval of the Code of Professional Conduct.

As we have previously stated there would be value in considering that the Code's obligations also apply to RFAs in some form. Ethical behaviours should be consistent across all of those who provide financial advice.

For information, in Australia the current consultation into the financial services industry is considering how best to apply Codes of Conduct to financial advisers. There are a wide number of options under consideration. In addition, in Australia the Tax Agent Services Act has a Code that applies to all who provide tax advice, this is irrespective of the type of advice or the scope of the advice.

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

We have no comment on this issue.

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

We believe the Financial Advisers Disciplinary committee is an effective mechanism to discipline misconduct.

**21. Should the jurisdiction of this Committee be expanded?**

We have no comment on this issue.

**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?**

We do not believe the limited public transparency is the issue in terms of public confidence, rather it is the consumer's lack of appropriate understanding and the potential implications of the advice provided.

If a service is basically a sales role, then this should be clearly disclosed to the consumer.

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

We have no comment on this issue.

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

The disclosure requirements appear to be adequate in terms of simplicity, however disclosure should entail an explanation of the remuneration structure and any potential conflicts of interest, that is, the more sold the higher the remuneration or that bonuses based on volume of sales.

It is important that consumers do not perceive they are receiving a higher level of advice than they really are.

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

In terms of the role of QFE advisers it is the distinction between sales and advice. It is recognised that consumers generally have low level of financial literacy and the only opportunity they may

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have to obtain an “advice” type service is through their bank. There is an opportunity for these sales roles however it should not be confused with receiving personal financial advice.

As long as there continues to be a knowledge gap between the consumer and the adviser, there is a greater need to ensure appropriate clarity and disclosure. As a consequence this responsibility lies with the advice provider as opposed to the consumer.

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

We have no comment on this issue.

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

We have no comment on this issue.

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

We have no comment on this issue.

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

We have no comment on this issue

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

We no comment on this issue

**31. Should any changes to these requirements be considered?**

We have no comment on this issue

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

In reviewing the current exemptions a key element is considering the earlier stated goals and as a consequence consider how these exemptions operate in light of these exemptions.

The key components of the goals include financial advice that is easy to find, is accessible/affordable and trusted.

We believe the current FA Act exemptions are appropriate to assist in delivering the policy goals outlined in this Issues paper.

Under Section 13 of the FA Act defines the exemption for incidental service on a number of levels as follows.

**13 Exemption for incidental service**

(1) A service is not a financial adviser service for the purposes of this Act if the service is provided only as an incidental part of another business that is not otherwise a financial service or does not have, as its principal activity, the provision of another financial service.

In addition

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(3) In this section, a service is incidental to another business if it is carried on to facilitate the carrying out of another business, or is ancillary to another business.

**14 Other exemptions**

(1) None of the following is a financial adviser service for the purposes of this Act:

Other occupations

(a) a teacher, lecturer, journalist, or State services employee providing a relevant service in the course of that occupation:

(b) a Minister of the Crown providing a relevant service in the course of his or her duties as a Minister of the Crown:

(c) a member of Parliament providing a relevant service in the course of his or her duties as a member of Parliament:

(d) a lawyer, incorporated law firm, conveyancing practitioner, qualified statutory accountant, tax agent, real estate agent, registered legal executive, registered valuer, or any other exempted class of service provider (as specified in the regulations) providing a relevant service in the ordinary course of business of that kind:...

These exemptions are particularly relevant to the services and recognised role provided by Chartered Accountants and are a reflection of how Chartered Accountants operate. A Chartered Accountant (CA) who holds a New Zealand certificate of public practice (CPP) is automatically considered to be a Qualified Statutory Account (QSA)

It should be noted that one of the key goals is "Public confidence in professionalism..." Chartered Accountants are recognised by consumers as professional, as a consequence the framework in which CAs operate reflect the traits and characteristics the financial advice industry is endeavouring to achieve.

A further element to consider is the issue of accessibility and also the type of advice consumers need.

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

We have no comment on this issue.

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

The FMA provides a range of resources and guidance for the industry. The key objective of this guidance must be to provide practical clarity for market participants.

In general terms, we believe that the guidance issued by the FMA is accessible and useful.

**Key FA Act questions for the review**

**Goal 1: Consumers have the information they need to find and choose a financial adviser**

**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.**

There are a number of issues to consider in terms of ensuring the regulatory framework is simpler and easier. The first of these is to understand that the issues relating to the complexities of the financial services industry and the provision of advice is a global one. At this stage no jurisdiction has developed a framework that is “easy” for consumers to understand. The ongoing regulatory change within the financial services industry is part of the evolving nature of the industry.

In the UK the Financial Conduct Authority (FCA) has recently announced a Financial Advice Market Review (FAMR). The Scope of this review “will consider the current regulatory and legal framework governing the provision of financial advice and guidance to consumers and its effectiveness in ensuring that all consumers have access to the information, advice and guidance necessary to empower them to make effective decisions about their finances.”

As has previously been stated a key element is the knowledge gap between consumers and providers. This knowledge gap is not just in terms of understanding financial products and services but also the understanding that the consumer has a need to be addressed and how this need can be addressed.

With the knowledge gap expected to continue there is a need to provide additional clarification between providers and how the delivery of their services can impact consumers’ financial outcomes. The issue is not just that the factual differences in the service offering but what are the implications for consumers.

In addition, to developing a greater level of clarification there needs to be a focus on educating consumers.

It is broadly agreed that one of the major challenges to obtain consumer buy-in to obtain and value financial advice is to reduce the level of complexity with the various providers of advice. By having 3 categories of advisers AFAs, RFAs and QFE advisers can only result in a misunderstanding by consumers. With misunderstanding comes a lack of confidence and trust. In particular there needs to be greater clarity between the roles of AFAs and RFAs as consumers will be unable to put in context the services being provided and the distinction.

We believe the name RFA should change to reflect the limited services provided. In addition consideration should entail the education and professional standards that RFAs operate. Whilst an RFA provides a limited scope of service and products, there is a need over time to raise their requirements.

**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?**

The financial services industry more broadly including the range of participants and products continues to become more complex. This increased level of complexity results in ongoing consumer misunderstanding and confusion.

As highlighted in the MBIE consumer research generally consumers do not understand the differences and what the implications are.

Being mindful that financial products inappropriately sold can have significant lifestyle implications for consumers, it cannot be regulated as other sales oriented industries are. The provision of sales of financial products are often remunerated with commissions that can drive inappropriate behavior. As a consequence the sale of financial products must be addressed under the FA Act.

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This currently is being addressed in an Australian Parliamentary inquiry between terms such as general and personal advice. It is generally accepted that there needs to be greater clarity and improved definitions around advice, sales and product information. In Australia this has not been finalised at this stage.

**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 stated in Q36, this is a significant issue from a consumer understanding perspective. There should be clear disclosure between sales, information and advice. Consumers must not be under any misunderstanding as to the services they are being provided.

Interestingly in the United States the Department of Labor is consulting on introducing a best interest standard/ fiduciary duty for brokers. There is much debate over this as brokers are seen predominately as providing a sales related service.

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

Globally it is recognised that remuneration structures drive behaviors and in particular there is a focus on commissions. In some jurisdictions there is a move away from commission remuneration structures.

Whilst it is important to review how to better disclose conflicts of interest the long term objective should be how to remove commissions and conflicts of interest. One of the challenges is that the regulatory framework is endeavouring to develop a greater level of professionalism within the financial services industry. It can be argued that commission remuneration structures do not align with the services provided by a professional. The removal of commission and similar remuneration structures cannot be removed immediately but it should be part of the long term journey of the industry. In many cases, the changes to remuneration models are not just acceptance by the financial adviser and distribution channels but predominately the responsibility of product manufacturers.

The current need for disclosure is recognition that there are potentially real and perceived conflicts of interest with the use of commission remuneration structures and the resulting behaviours are driven by these remuneration models.

In the last 10 years the use of disclosure was perceived to be the solution to ensuring consumers are appropriately informed. However in the last 5 years and particularly post GFC the issues associated with inappropriate advice indicate that disclosure has not delivered the appropriate policy outcome.

In fact there is some research that indicates disclosure actually results in consumers trusting the provider more as they have disclosed potential conflicts. So rather than assess the conflicts that have been disclosed they believe they can trust the provider more as they have disclosed.

There is a view that disclosure has not deliver the intended outcomes. The options are limited. Where conflicts of interest are not removed or avoided, then disclosure is seen as a safeguard to manage the conflict of interest.

On the assumption that conflicted remuneration structures are to continue then it is vital that the associated costs are delivered to consumers in a simple format in the disclosure documents for consumers to understand.

A consideration that is used some jurisdictions is to have a higher level of disclosure, that requires consumers to provide "informed consent". Rather than a simple sign off of the information disclosed, (which many consumers do not read), the onus is on the provider to ensure

the consumer is appropriately informed and understands. The onus is on the provider that the consumer can provide informed consent. If that cannot be achieved then the engagement should not proceed.

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

The key to disclosure is to ensure it is simple and concise.

As noted in the Issues paper indications are that many consumers do not read the relevant disclosure documents. This reiterates the divide of the knowledge gap between consumers and providers. As a consequence there is a greater responsibility on the adviser to ensure consumer understanding.

Longer term improved understanding will be the result of improved consumer education.

**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?**

Commission and conflicts of interest disclosure requirements should apply to all advisers.

It is widely recognised that commissions are a form of conflicted remuneration. Commissions and conflicts of interest are issues that various jurisdictions are endeavouring to best address.

One must be mindful that inherently commissions are associated with the provision of "sales" services and a sales culture. Whilst it can be viewed that commissions are provided as a remuneration structure throughout many industries the "sales" and "advice" of financial products has potentially a greater influence and impact on a consumer than a regular sales product.

So it is not appropriate to use the example that commissions are used in other industries.

It is generally agreed that conflict remuneration structure can lead to inappropriate behavior. (Importantly, conflict of interests may be real or perceived, either way they impact on trust and confidence.)

Whilst there have been problems with product failures from time to time, in most cases where there is inappropriate advice provided it is behavioral issues as opposed to a technical competency issue.

It is therefore appropriate that commissions and conflict of interest disclosure requirements are applied to all adviser types. From a consumer perspective simplicity and consistency are important.

**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?**

To reiterate the comments made in Q38 and Q40, there are a number of key issues to consider when assessing how to appropriately address commissions. The debate over commissions is a global one. As noted in the Issues paper there are a range of arguments for commissions, in particular such remuneration structure ensures consumers are able to access advice as some consumers would not be able to afford to pay an upfront fee.

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Apart from a micro approach to address commission in terms of restrictions or banning an overarching perspective is to consider the future framework of the provision of quality financial advice.

If the intent of this review is to enhance the professionalism of the industry, then it can be argued that commissions as a remuneration structure do not align with professional advice services. The use of a commissions based remuneration structure traditionally aligns with sales framework.

A sales framework and culture (whether real or perceived) does not engender trust and confidence).

One of the key aspects against removing commissions is the issue of accessibility and affordability. However it could be argued that the issue is more so around the value proposition of the services being paid for. That is, consumers are not comfortable paying for a service as they do not recognise the value they are receiving for the advice.

Finally, as was noted Australia has consulted widely on the issue of commissions, more recently in regards to insurance. One of the key aspects of this consultation was the importance of the product manufacturers in terms of product pricing and the development of products that are commission free. The issue is wider than just considering banning or restricting commissions it is a whole of industry approach.

### Goal 2: Financial Advice is accessible for consumers

#### **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)?**

Before considering whether the current balance has been struck between minimum quality standards and ensuring there is competition between providers is to assess the long term policy objective for the industry. As was noted in the Issues paper financial advisers are not viewed in the same way as lawyers and accountants.

If the intent longer term is to enhance the professionalism of financial advisers, then there will need to be increases in the professional and education standards. It should also be recognised that the concept of "professionalism" is not something the industry can bestow on itself. Rather recognition of "professionalism" is bestowed by consumers and society more broadly.

As the need by consumers to obtain financial advice increases and the advice they will need inevitably increases in complexity, then the standards of those providing advice will need to be set at a higher level.

Whilst increasing professional and education standards in themselves is a barrier to entry and as a consequence can have implications on the supply of individuals, (in the short term), who can provide advice, longer term it will attract graduates and more importantly change the structure of the industry.

There may well be short term concerns with increasing professional and education standards that may impact on competition and availability but in due course the market sorts out an appropriate level of competition.

The key question is – long term what should the industry look like? From there appropriate decisions can be made.

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

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In all industries there is an overall objective to consider how best to increase the level of completion between participants/ stakeholders. Inevitably there is a balance that needs to be considered.

In terms of increasing competition and meeting an accessibility goal, the fall-back position is the need to reduce red tape and reduce barriers to entry. While this is a consistent issue across most industries the financial service industry is different. The provision of financial advice and its long term implications, where inappropriate advice is provided means that it is not appropriate or practical in the short term to quickly increase financial adviser numbers.

The current regulatory framework and any future changes to the framework is based on consumer protection objectives. The overarching issue is to ensure the appropriate behaviours of advisers and more specifically ensuring that consumers do not receive inappropriate advice. Currently the safeguards in place entail disclosure documentation and high levels of regulatory compliance, particularly to address the drivers of inappropriate advice. If these drivers of inappropriate advice are removed then inevitably there will be less need for the high level of compliance regulation. As a consequence the cost of providing advice may reduce. There irrespective of the type of adviser there will be greater competition.

**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?**

At high level we believe the Code of Professional Conduct strikes the appropriate balance. However on an ongoing basis it is necessary to continue to review the Code as Professional Conduct as behaviours evolve.

**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?**

We believe that by having a range of different types of providers, who provide a range of different advice results in consumers being unable to appropriately understand the distinction between them.

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

As stated in Q43 the compliance requirements are a result of developing the safeguards needed for a consumer protection framework. Longer term removing the drivers of inappropriate advice will reduce the compliance costs for any form of advice..

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

Refer to the comments made in Q43 and Q46

**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?**

We have no comment on this issue.

**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?**



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With an aging population, the funding for retirement and ensuring an adequate standard of living in retirement are the most critical issues for the Government and the financial services industry.

In retirement one of the key elements is longevity risk and finding the balance between a consumer's risk profile, growing assets and their income needs. In many cases they do not simply align. As a consequence from the financial services industry perspective, this is not only an important issue to deliver quality financial advisory services to consumers but also an opportunity.

We do not believe there is not a need to make regulatory change to promote KiwiSaver. The key issue is education of consumer to have a greater understanding of their retirement needs and how to address them. As has been previously stated there is a need to widely promote the value of financial advice.

**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?**

The introduction of the FMC Act should in due course provide a greater level of confidence within the financial services industry. As has been stated the purpose of the FMC Act is to promote and facilitate the development of fair, efficient and transparent financial markets, and to promote the confident and informed participation of businesses, investors and consumers. The delivery of this policy objective will be a positive one.

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

In the long term inevitably international financial advice will increase. With the ability of consumers to access information and various forms of advice online, global opportunities will increase. However at this stage access to financial advice will be predominately through face to face channels by New Zealand based financial advisers.

There is still an education process required for consumers to actually seek financial advice in the first place.

From a regulatory monitoring perspective one area for consideration in terms of international advice, is the increase in scams and offering various investment opportunities to consumers.

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

We would support a further review of the current Trans-Tasman arrangements in due course.

Currently in Australia there is a significant consultation being undertaken that will address professional, ethical and education standards. This consultation will increase the requirements for those who provide financial advice. In particular there is a recommendation that anyone providing financial advice will need to be trained at a Bachelor Degree level.

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

We have no comment on this issue.

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

We have no comment on this issue.

**Goal 3: Public confidence in the professionalism of financial advisers is promoted**

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

The introduction of ethical standards are an attempt to change and drive behaviours. The changing of behaviours is a long term objective and there may not currently be specific examples and demonstration of change.

The principles of the Code are appropriate. The core elements address many of the principles currently used by other professions. Unless there is definitive evidence that the principles of the Code are inappropriate we would not recommend changing it at this time.

An issue that should be considered at a higher level is whether the culture of organisations and the industry is being addressed. Predominately when Codes of Ethics and Codes of Conduct are considered it is specifically focused on the individual financial adviser.

In Australia the Financial System's Inquiry report recognised that to enhance the financial system requires not just a regulatory focus. A key element is the culture of the industry, the organisations and their leadership. As the report states, "*Without a culture supporting appropriate risk-taking and the fair treatment of consumers, financial firms will continue to fall short of community expectations. This may lead to ongoing political pressure for additional financial system regulation and the undermining of confidence and trust in the financial system.*" While the regulators and government can set a framework, the industry has a responsibility to develop an appropriate culture of operation. As stated in the report, "*The responsibility for setting organisational culture rightly rests with its leadership*".

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

Globally most of the financial services reviews are endeavouring to regulate behaviours. In our experience very few of the issues that are being addressed are related to technical competence. There have been some product failures in various jurisdictions, including New Zealand.

Ethical standards are the foundation for appropriate behaviour and some form of an ethical standards framework should apply to all who provide advice and services to consumers.

Consumers must have confidence that all advisers they deal with operate under the same professional and ethical framework.

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

It is generally agreed that from a consumer's perspective (and the industry's perspective) there is value in developing a trusted profession in the provision of financial advice, as a consequence education standards will have to increase.

The need for financial advice will continue to grow as will the complexity of this financial advice. There will be a need to continue to evolve the industry and that will include increasing the education requirements.

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As most recognised professions usually have a tertiary education level requirement then this is where the AFA requirements should be heading in due course.

This is a significant step that has associated costs and barriers to entry, however it should be a part of the longer term evolution of the industry

**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?**

With an overarching policy requirement to increase trust and confidence, recognition of an appropriate education framework is necessary. While a greater level of education does not guarantee improved advice or necessarily appropriate behaviors it is an important component.

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

Whilst it is not a necessity when developing a new framework there is value in considering the learnings from other jurisdictions. In addition, in regards to Australia it would be appropriate to consider it in light of the Trans-Tasman recognition and its implications.

In Australia a component under consideration is the use of a national exam based on the US FINRA Series 7 model. While the details of such an exam are yet to be released it potentially forms part of a framework for transition. While jurisdictions vary in terms of regulatory requirements this may be an option to obtain some form of alignment. (It should be noted that when considering an exam what are the objectives, exams can address regulatory and technical competencies as opposed to the behavioural attributes.)

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

Chartered Accountants have a very long history of operating under a professional body framework and as a consequence have recognition for professionalism. Conversely financial advisers operate in a relatively new industry as a consequence are yet to have the same recognition.

In due course with a robust and well recognised framework financial advisers can develop professional recognition.

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

Professional bodies do have a role to play. It should be noted that operating as a professional indicates operating in many cases at a level higher than the law.

The challenge is that not all financial advisers are mandated to be members of a professional or industry body. As a result it is difficult to have professional bodies having a formal role.

Australia is going through a similar issue currently. Currently only 50% of financial advisers are members of a professional or industry body, therefore to incorporate a formal role for professional bodies would require mandating membership. Apart from the issues associated with such a regulation, there needs to be framework as to the approval or recognition of professional bodies to ensure there is an appropriate benchmark.

**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?**

As noted in the Issues paper most other professions such as lawyers, accountants and engineers are regulated on an individual basis. This is a significant challenge for the financial services industry, in particular with the engrained framework associated with QFEs. As also stated in the paper it was an issue considered in Australia however no recommendation was made to transition the regulation to individuals as opposed to the current entity model.

Structurally this is a hurdle in the transition of the provision of financial advice services to a profession.

Accountability and obligations between the individual and the business should not be mutually exclusive. As a general comment accountability and obligations should lie with both the individual and the business. Where all of the obligations lie with the business, then the individual can in some ways step away from accountability. Interestingly in Australia the introduction of the "best interests duty" changed this. The best interests duty and related obligations generally apply to the "individual providing the personal advice", not the "providing entity".

**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?**

We do not have a comment on this issue.

### 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?**

The stated goals for the FSP register of usefulness, accuracy and accessibility are appropriate from both a regulator and consumer perspective.

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

All three goals are interrelated and as such are equally important. Any review of the operation of the Register needs to consider each of these goals, otherwise the value of the Register will be deficient at some level.

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

The key to a dispute resolution scheme is best stated in the Issues paper "...for consumers who have a dispute with a financial services provider to seek redress in a quick, efficient and cost-effective manner". In terms of consumer trust and confidence this is only appropriately demonstrated from a consumer perspective once they have had the need to use a scheme.

The identified goals of awareness, accessibility and confidence are appropriate. However these goals should include "ease of use" and efficiency. That is the process to address a complaint must be reasonably simple and not entail high levels of regulatory red tape.

Inevitable those who will most need dispute resolution schemes will be consumers who will often have a lower level of financial literacy and as such require a user-friendly process.

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

All three goals are interrelated and are of equal importance. A deficiency in addressing any of the three goals will be detrimental to the dispute resolution regime.

## How the FSP Act works

### Registration

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

From the FMA's perspective the most significant tool that can be used is the ability to cease an individual or entity from operating and providing financial services. This is a significant deterrent.

It is not possible to ensure complete adherence by every individual and entity. Where there is an intent to operate outside the regulatory framework there will be those that will do so.

However including on the Register an individual's disciplinary record would encourage compliance.

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

We do not have any specific comment in terms of the minimum requirements. However at a high level and consumer perspective there may be value in having all individuals who provide financial advice be on a register. In light of the current confusion by many consumers between RFA, AFAs and QFEs services a single register may assist consumers.

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

We believe the current scope that those FSPs who provide services to retail clients are required to be members of an approved dispute resolution scheme is appropriate. However more broadly there needs to be some form of consistency that irrespective of where a consumer receives various forms of advice they have a simple framework to address their complaints

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

We have no comment on this issue.

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

We have no comment on this issue.

**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?**

As long as the overarching principles of the dispute resolution schemes are robust and consistent as is the approval process we support the existence of multiple dispute resolution schemes.

**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?**

We do not have a comment on this issue.

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

This is a significant issue to ensure that there is confidence in the overall framework. There should be a clear understanding that where payment of compensation is required that appropriate compensation arrangements are in place. We are unable to provide specific comment without an understanding of how wide spread non-payment of compensation is.

At a high level compensation arrangements in some form should be available for all consumers who received financial advice.

However there must be clarity between the roles of compensation arrangements per se and for example professional indemnity insurance and how they interact.

### Key FSP Act questions for the review

**Goals for the Register: The register information is useful, accurate and accessible.**

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

A key aspect of the Register is to consider its overarching purpose. The Register should provide appropriate details for both the FMA as the regulator and for consumers as an initial validation tool.

It would appear a key element is that most consumers are not aware that the Register exists. This is also a reflection that consumers do not readily engage with financial advisers.

An additional feature to be considered is how long the FSP has been operating and providing advice. This would be valuable for consumers as they compare FSPs and validates the information an FSP has provided to a consumer.

As previously raised when addressing the overarching goals and other aspects of this Issues paper is that each particular aspect should not be considered in isolation. An important component is to have an appropriate long term education strategy that will provide consumers with a better understanding of the value of financial advice. This in turn will result in consumers accessing and making use of the Register.

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

Recently in Australia a Register of Financial Advisers was introduced. As stated earlier it provides two roles, a validation tool for consumers and provides the Australian regulator, the Australian Securities and Investments Commission (ASIC) the ability to the actually monitor the whole market as to who is providing financial advice to retail clients.

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We would support the inclusion of the details of disciplinary proceedings and qualifications where there are appropriate parameters as to what qualifications are to be included. This is an issue that has been raised in Australia where qualifications have been included in the Register of Financial Advisers.

A concern that was raised during its consultation process was whether the listing of qualifications could be appropriately understood by consumers. This would make it very difficult for consumers to compare advisers. Similarly included on the Australian Register is membership of a professional body, however there is currently no criteria as to what is a professional body versus an industry body. As a consequence it can be questionable as to the value it provides to consumers.

As previously stated the Register should be a validation tool for consumers rather than a marketing tool. In terms of qualifications, it can be argued that by being included on the Register an individual (or entity) meets the qualification requirements to provide financial advice.

**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?**

The issue raised in the Issues paper is an important one to ensure New Zealand retains its reputation as a well-regulated jurisdiction. We are not in a position to provide specific insights as to whether misuse by offshore service providers is a significant risk.

However the primary function of the Register should be to provide details of advisers who reside in New Zealand and provide advice in New Zealand.

**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?**

We do not have a comment on this issue.

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

The availability of dispute resolution schemes for consumers is a critical component of a consumer focused regulatory framework.

Whilst having a number of schemes may provide consumers with some confusion, the availability of these schemes provides a greater benefit.

Unfortunately the success and understanding of such frameworks are not usually demonstrated until there is, for example, an investment market correction and consumers are required to access them.

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

We do not have a comment on this issue.

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

The current lack of understanding and awareness of dispute resolution schemes and how they apply is a reflection of consumers' level of financial literacy.

In addition it is a reflection that it is not something many consumers would currently be considering. There are no short term solutions to increase awareness and understanding that will obtain engagement. The key element is to ensure when consumers have a need they can simply find the relevant schemes.