



#23

COMPLETE

PAGE 2: Role and regulation of financial advice

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

Q4: Is the distinction in the Financial Advisers Act (FA Act) between wholesale and retail clients appropriate and effective? If not, what changes should be considered?

There should be some form of light licensing requirements for wholesale advisers - something more than mere registration. For example, this could be linked to meeting custodial and AML requirements and would help to give some "standing" to wholesale advisers than merely being registered. There are some odd things in the definition of wholesale investors. For example, if I am individual and I qualify as a wholesale investor (say because I have \$1million of shares), but then I sell my house and put the cash into a newly established trust to be the client in a personalised dms, then the trust does not qualify as a wholesale investor on the \$1million, unless the trustees somehow qualify. Assuming, I am a trustee the law could be clearer as to whether I can rely on my classification in my personal capability when acting in my trustee capacity. There needs to be more consistency with the FMCA in respect of "eligible investors". Why are the thresholds different? Some clear guidance on the process of eligible investor certificates would also be helpful.

Q5: Is the distinction in the Act between a personalised financial service and a class service appropriate and effective? If not, what changes should be considered?

No. Even the FMA guidance is not clear as to the distinction. This appears deliberate so that more people get licenced to be DIMS providers than they need to under the legislation.

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

This links into your statements in your paper as to what to call "advisers". Only AFAs should use the word "adviser". Most QFE advisers are only "sellers" of one brand of product and while they may advise on the suitability of a product they are still there to only sell one brand.

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

Respondent skipped this question

Q8: Do you think that the term Registered Financial Adviser (RFA) gives consumers an accurate understanding of what these advisers are permitted to provide advice on and the requirements that apply to them? If not, should an alternative term be considered?

No. An alternative term should be considered. If you speak to someone and they say are registered, it implies that they have been approved. There is no immediate distinction between an authorised and a registered adviser.

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

Q13: Is the distinction between an investment planning service and financial advice well understood by advisers and their clients? Are any changes needed to the way that an investment planning service is regulated?

No.

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

That is what a consumer expects when they see someone called an "adviser" - that they will get personalised advice. So there should be some discretion.

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

Respondent skipped this question

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

No. As a consumer the key thing I want to know is "what is the average market return" for the past year, 5 and 10 year periods (and it would be helpful if there was an FMA approved standard market type of return as everyone uses different benchmarks), and what was the AFA's returns for their personal investments in the same period. This seems to be the most important thing. If the person can manage their own money, then that would seem to indicate how good they are at selecting products/investments. Most financial advisers look the same on paper, and any AFA linked to an organisation you know is going have a conflict. I wouldn't mind about the conflict if they seem to know what they are doing independently.

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

Q21: Should the jurisdiction of this Committee be expanded?

Respondent skipped this question

Q22: Does the limited public transparency around the obligations of Qualifying Financial Entities (QFEs) undermine public confidence and understanding of this part of the regulatory regime?

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Not very. Maybe change the terminology. Some of broker requirements apply to custodians, but normal language doesn't imply that a custodian is a broker. A broker implies a buyer and seller.

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

Respondent skipped this question

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

No. Would the paperwork actually say anything valuable?

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

Respondent skipped this question

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

The most helpful thing for custodians is to ensure that client assets are held separately from custodian assets and that there are regular audits. The custodian should also be licensed or that a licensed custodian be used in the structure.

Q31: Should any changes to these requirements be considered?

Respondent skipped this question

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

There are some odd things in the definition of wholesale investors. For example, if I am individual and I qualify as a wholesale investor (say because I have \$1million of shares), but then I sell my house and put the cash into a newly established trust to be the client in a personalised dims, then the trust does not qualify as a wholesale investor on the \$1million, unless the trustees somehow qualify. Assuming, I am a trustee the law could be clearer as to whether I can rely on my classification in my personal capability when acting in my trustee capacity. There needs to be more consistency with the FMCA in respect of "eligible investors". Why are the thresholds different? Some clear guidance on the process of eligible investor certificates would also be helpful.

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

Respondent skipped this question

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

Some guidance on eligible investors would be helpful.

PAGE 3: Key FA Act questions for the review

Q35: What changes should be considered to make the current regulatory regime simpler and easier for consumers to understand? For example, removing or clarifying the distinction between AFAs and RFAs.

Yes - you should remove RFAs to make things clearer to consumer.

Q36: To what extent do consumers understand that some financial advisers' primary roles may be selling financial products, rather than solely acting as an unbiased adviser to their clients?

I am experienced in this area and I just treat QFE advisers as sellers. It is annoying that I need to talk to different people at different banks to understand their products and need to get disclosure from them before that happens. The regime in part seems to be designed to keep clients with one QFE.

Q37: Should there be a clearer distinction between sales, information provision, and advice? How should such a distinction be drawn? What should or should not be included in the definition of financial advice?

There should be a distinction.

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

How trail commissions work should be disclosed clearly.

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

Make AFAs disclose what their personal returns were against a market standard so that consumers can see if the AFA is more than just words.

Q40: Do you support commission and conflict of interest disclosure requirements being applied to all financial advisers? If so, what requirements are appropriate for different adviser types?

yes. All commission sources should be disclosed.

Q41: Do you think that commissions should be restricted or banned in relation to financial advice, and if so, in what way? What would be the costs and benefits of such an approach?

No. They should just be clearly disclosed.

Q42: Has the right balance been struck between ensuring advisers meet minimum quality standards and ensuring there is competition from a wide range of providers (and potential providers)?

No. There is no real competition from a "mum and dad" perspective. There are just the banks and you pick one. It is difficult to find an adviser who is not in some way biased towards particular products - and it is not usually because "they have found the best product" that they wish to share the word with how great it is.

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

I am not sure that this is needed. You are probably better focusing on the difficulty of advisers competing with the banks and large financial institutions.

Q44: Do you think that the Code of Professional Conduct for AFAs strikes the right balance between requiring them to understand their clients and ensuring that consumers can get advice on discrete issues?

Respondent skipped this question

Q45: To what extent do you think that the categorisation of types of advice and advisers is distorting the types of advice and information that is provided?

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

Q48: What impact has the Anti-Money Laundering and Countering Finance of Terrorism Act had on compliance costs for advisers? How could these costs be minimised?

You could provide standardised forms that everyone has to use. This will save time having to design forms and paying for expensive legal advice to ensure that they include everything that is needed.

Q49: What impact do you expect that KiwiSaver decumulation will have on the market for financial advice in New Zealand? Are any specific changes to regulation needed to specifically promote the availability of KiwiSaver advice?

The most helpful thing for kiwisaver advice would be to allow people to invest their kiwisaver funds with more than one provider. At the moment you just pick one "brand" and hope for the best across each of their funds. If you could split your funds across providers then you could put money into different types of funds and then advice would be more helpful.

Q50: What impact do you expect that the introduction of the Financial Markets Conduct Act (FMC Act) will have on the market for financial advice in New Zealand? Should any changes to the regulation of advice be considered in response to these changes?

Respondent skipped this question

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

Yes. Especially with the TPPA. If we had a copy of the TPPA we could provide comment on whether the FA Act is set up appropriately to regulate this.

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

If you had disclosure on advisers personal returns, then you don't need to focus on artificial levels of qualification. An investor needs to know how good the adviser is in the real world. If an adviser can't look after their own money, then they shouldn't be looking after mine. And the converse is true too.

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

Q63: Is the QFE system achieving its goals in terms of consumer protection and reducing compliance costs for large entities? If not, what changes should be considered?

Respondent skipped this question

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

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

The definition of who needs to be registered (i.e. who provides a financial service) needs to be consistent across the FSP Act, the FAA and the AML/CFT Act. There also needs to be clear guidance as to what each of the categories apply to. Even a cursory review of the FSP register will indicate that people are probably registered for the whole things. This is because not even one is a financial services lawyer that understands what each of the categories cover. I am an experienced financial services lawyer and even I find some of the categories difficult to interpret. And it makes no sense for someone to be registered as an FSP and not subject to AML or vice versa.

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

PAGE 5: How the FSP Act works

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

Q73: Is the existence of multiple schemes and the incentive to retain and attract members sufficient to ensure that the schemes remain efficient and membership fees are controlled?

Respondent skipped this question

Q74: Should the \$200,000 jurisdictional limit on the size of claims that dispute resolution schemes can hear be raised in respect of other types of financial services, and if so, what would be an appropriate limit?

Respondent skipped this question

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

Respondent skipped this question

PAGE 6: Key FSP Act questions for the review

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

Respondent skipped this question

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

Respondent skipped this question

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

No. The bigger risk is the change in interpretation of the legislation by the FSP Registrar without clear guidance. When the register was first opened anyone with a "place of business" interpreted as a registered address could register. Now it is interpreted as a "physical place of business from which the financial service is conducted". There was no explanation of why the additional words were read in, or why they should be read in. It would make more sense if the test was changed to "carrying on business" (with guidance on what the FSP Registrar) takes that to mean. There would then be consistency in the FSP Act and the Companies Act.

Q79: Are there any changes to the scope of the registration requirements or the powers of regulators that should be considered in response to this issue?

Respondent skipped this question

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

Probably that a provider picks what is most suitable for them. The consumer doesn't choose. The consumer doesn't know whether one dispute scheme is better than another, and therefore whether it should pick one product over another because of that fact.

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

What are the benefits of a multiple scheme structure? You just provide some providers with the optionality of picking a scheme that could provide them (and not consumers) with better benefits.

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

Respondent skipped this question

PAGE 7: Demographics

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

Concerned Citizen

Q84: Please provide your contact details:

New Zealand

Q85: Are you providing this submission:

-
- As an individual

Q86: If submitting on behalf of an organisation: How many people are in the organisation, or work in the organisation, that you are providing this submission on behalf of?

Respondent skipped this question

Q87: I would like my submission (or specified parts of my submission) to be kept confidential, and explain my reasons for this, for consideration by MBIE:

-
- No
-