



22 July 2015

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Dear 9(2)(a)

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

CPA Australia welcomes the opportunity to provide comment to the review of the Financial Advisers Act 2008 and the Financial Services Providers (Registration and Dispute Resolution) Act 2008.

CPA Australia represents the diverse interests of more than 150,000 members in 120 countries. Our vision is to make CPA Australia the global accountancy designation for strategic business leaders. We make this submission on behalf of our members and in the broader public interest.

A robust and efficient regulatory framework is important in achieving confident and informed participation by consumers in a fair, efficient and transparent market. It is therefore appropriate that a holistic review of the regulatory framework that governs the industry is being undertaken to ensure that it is achieving these objectives and make any identified improvements.

With markets becoming increasingly globalised, it is also important that this review considers reforms in other relevant markets, such as Australia where the Government is reviewing the current education and professional requirements for the industry. Such developments have the potential to impact efforts to realise a single trans-Tasman economy, an objective supported by CPA Australia.

If you have any questions regarding this submission, please do not hesitate to contact 9(2)(a)

Yours sincerely

David Jenkins
Country Head, New Zealand
CPA Australia

Issues Paper: Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008

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?

CPA Australia supports the main purposes of the New Zealand's financial markets legislation. These objectives are integral to ensuring the provision of quality financial advice that in turn, provides consumers the confidence to make sound financial decisions.

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

We believe that all objectives are equally as important, as they must all be achieved in order to deliver a well-functioning, transparent and equitable financial services market. Regulation and the resulting compliance obligations can often increase the cost of providing such advice and services. Therefore it is important that a balance is achieved to ensure financial advice remains accessible.

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

The current definition while broad, appropriately defines when a person provides financial advice.

However, the true value of a consumer seeking financial advice is the strategic advice not the resulting financial product that may or may not be recommended. Therefore there could be value in separating financial advice from financial product advice. This would also have the benefit of more clearly identifying those individuals who perform activities that could be more accurately described as 'sales'.

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 global financial crisis highlighted the need to ensure appropriate objective and subjective tests to determine if an investor should be classed as a wholesale client. It also highlighted the fact that high levels of personal wealth are not always a true reflection of a person's financial literacy.

Provided that a client understands that they have the option to opt out of being a wholesale client and the consequences of making such a decision, subject to section 5D, then the current distinction between wholesale and retail clients is 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?

It is appropriate to place higher restrictions on personalised financial advice, as a consumer would expect that their circumstances have been properly taken into account when receiving such advice. Further, personalised financial service does require a higher level of skill and competence to make this assessment than class of service.

Therefore we believe the current definitions are appropriate.

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

CPA Australia believes it is appropriate to place different requirements on financial advisers depending on the risk and complexity of the products that they provide advice upon.

A higher level of skill and competence is required when providing advice on more risky or complex products. Therefore it is important that the adviser's competence is commensurate with the level of advice they are providing.

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?

The current categorisation system appears to reflect the complexity of risks associated with each financial product.

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?

We do not have any feedback on whether the term Registered Financial Adviser provides consumers with an accurate understanding of the services such advisers can provide. We would recommend undertaking consumer research to test whether this is the case and if appropriate, what alternatives should be considered.

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

CPA Australia believes that the general conduct requirements which apply to all financial advisers are appropriate and adequate.

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

Conflicted remuneration has the potential to create perceived or real conflicts of interest. CPA Australia therefore believes it is important that how an RFA is remunerated is disclosed to the client before the provision of personalised advice. We recommend that this information should also be mandatory in a prescribed disclosure statement.

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

We are not aware of any further issues with the regulation of RFA entities that should be considered.

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

Ensuring a consumer is informed and understands who will be providing the personalised advice is important to promote consumer participation and informed decision making. While disclosure obligations come at a cost, this must be considered in respect of the benefits that it provides to the consumer.

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?

CPA Australia does not have any feedback that suggests that advisers are not clear on this distinction. However, we would recommend undertaking research as to whether the distinction between investment planning service and financial advice is well understood by consumers.

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?

CPA Australia has no specific comments to this question.

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?

CPA Australia has no specific comments to this question.

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

CPA Australia believes the current disclosure requirements for AFAs is adequate, however we would recommend seeking consumer views to gain a clearer understanding if the disclosure requirements are achieving its objectives. It is our experience that while disclosure is used as a tool to ensure the consumer is informed that often mandatory disclosure obligations fail to achieve this outcome.

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

Consideration could be given to combining the two disclosure statements into one, which may provide a more simple disclosure solution for consumers and provide AFAs with more efficiency in meeting their disclosure obligations.

18. Do you think that the process for the development and approval of the Code of Professional Conduct works well? 19. Should any changes to the role or composition of the Code Committee be considered?

CPA Australia do not have any specific comments in respect of the development and approval of the Code or the role of the Code Committee.

20. Is the Financial Advisers Disciplinary Committee an effective mechanism to discipline misconduct against AFAs? 21. Should the jurisdiction of this Committee be expanded?

CPA Australia recommends that the jurisdiction of the Financial Advisers Disciplinary Committee should be expanded to enable it to consider complaints against RFAs and QFE advisers. This would create a more consistent framework where all advisers are expected to adhere to the same conduct and behaviour obligations when providing financial advice.

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

We do not have any feedback to suggest the limited public transparency around the obligations of QFEs may undermine public confidence and understanding. However, the FMA could consider providing a simple overview of the standard conditions that apply to QFEs on the consumer section of its website.

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

While we believe that the current disclosure requirements are adequate, we would recommend consumer testing to determine whether they are in fact useful for consumers. It is our experience that while disclosure is used as a tool to ensure the consumer is informed that often mandatory disclosure obligations fail to achieve this outcome.

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

Further to our previous comments, consumer testing would provide a clearer understanding of whether these documents are achieving their purpose and if any efficiencies could be achieved in their production.

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

CPA Australia has no specific comments to this question.

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

CPA Australia has no specific comments to this question.

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

CPA Australia has no specific comments to this question.

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

CPA Australia has no specific comments to this question.

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

CPA Australia has no specific comments to this question.

31. Should any changes to these requirements be considered?

CPA Australia has no specific comments to this question.

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

We believe it is important the current exemptions to the FA Act remain in place.

The FA Act is wide ranging, the purpose of which is 'to promote the sound and efficient delivery of financial adviser and broking services, and to encourage public confidence in the professionalism and integrity of financial advisers and brokers'.

Professional accountants such as members of CPA Australia must already comply with existing ethical and professional standards, set by an independent standards setter, and other mandatory regulations that safeguard members of the public where advice and services are provided.

Further, the FMC Act 2013 prevents accountants from providing specific financial advice. Rather, the exemption from the scope of the FA Act permits accountants to provide financial advice as part of the ordinary business of being an accountant based on the fact such accountants are covered by other laws and regulatory regimes for such services.

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

CPA Australia believes the FA Act currently provides the FMA with appropriate enforcement powers.

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

CPA Australia has no specific comments to this question.

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.

Further to our previous comments, we believe that consumer testing would prove valuable to determine what amendments could be made to make the current regulatory system simpler and easier for consumers to understand.

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?

Financial advice, including financial planning, is still a relatively new area of advice in comparison to other professions. As such consumers often have a poor understanding of what financial advice is and more importantly, the benefits of seeking such advice.

As such it is important that financial literacy initiatives are implemented to address any potential misconceptions and ensure consumers are informed about this area.

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?

Further to our previous comments, ensuring a clearer distinction between sales, information provision and advice would have benefits for both consumers and the industry. This could be achieved by separating financial advice and financial product advice, which would enable the more efficient provision of strategic advice that may not include a specific product recommendation. It would also clearly identify those individuals who perform activities that could be more accurately described as 'sales'.

This would also help address potential consumer concerns that the primary role of all advisers is to sell financial products, by clearly distinguishing between those individuals who provide advice and those who facilitate product sales.

38. Do you think that current AFA disclosure requirements are effective in overcoming problems associated with commissions and other conflicts of interest? 39. How do you think that AFA information disclosure requirements could be improved to better assist consumer decision making?

As noted in the Issues Paper, mandatory disclosure obligations often fail to achieve the objective of ensuring that the consumer is informed. This may be because the disclosure documents are too long, use complex language or jargon or the consumer may have a low level of financial literacy preventing them from understanding the information being provided.

However, it is important that conflicted remuneration arrangements or conflicts of interest that may, or perceive to, impact the advice being provided are disclosed in writing to the consumer.

Australia has encountered similar issues with disclosure obligations. While mandatory obligations have been implemented that determine what and how such information is disclosed, often these documents are seen as a means to protect the adviser rather than inform the consumer. However, there is a move by some advisers to move back to short, simple disclosure documents that may only be 3 to 12 pages long and which only contain information relevant for the consumer. Such practices should be supported by the regulator, which may require guidance or even regulatory change to encourage the remainder of the industry to also adopt this focus.

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?

CPA Australia supports commission and conflict of interest disclosure requirements applying to all advisers. Such remuneration or interests may create real or perceived conflicts of interest and therefore it is important that they are disclosed to the client during the advice process.

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?

CPA Australia believes that fee for service remuneration best aligns with professional independence. Further, conflicted remuneration can create real or perceived conflicts of interest.

For these reasons during the recent reforms in Australia, CPA Australia supported the banning of all commissions. While commissions are still permitted on risk products, the banning of commissions on investment and superannuation products was significant and is important in rebuilding trust and confidence in the industry.

Importantly, commissions on risk products are still an issue being addressed by Australia's financial services industry and Australian Government.

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)?

In Australia the issue of raising education and professional standards has been consulted on for a number of years. In the past few months the Government consulted on lifting the current minimum education requirement from a diploma level to a minimum of a Bachelor Degree. While this will pose a new barrier to entry, it is supported by the majority of the industry who see this as an important step towards increasing the professionalism of the sector.

It is also important that the level of education is commensurate with the level of complexity of advice being provided to ensure the provision of quality of advice to consumers. It is in this context that education and other obligations should be reviewed.

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

CPA Australia has no specific comments to this question.

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?

Australia has encountered similar issues where the regulatory framework was seen as requiring financial planners to provide holistic advice or undertake a complete fact find of the client circumstances, even if the consumer only wanted limited advice.

The recent Future of Financial Advice (FoFA) reforms made regulatory amendments that provide certainty that a financial planner can provide limited or scaled advice to a client and the resulting client enquiries can be scoped to this limited advice.

Further, the Australian Securities and Investments Commission (ASIC) issued guidance to the industry on how these new provisions would operate and the steps that would need to be taken to demonstrate a financial planner has acted in the clients' best interests when providing the limited advice.

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?

It is possible that the framework for different levels of advice providers, terminology and not have a clear understanding of this may result in consumers seeking advice that may not suit their advice needs.

Further to our previous recommendation, consumer research could provide further insight to determine if this in fact a flaw with the current model.

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

Similar to Australia, the most significant cost of operating in the financial advice sector is compliance costs. It has resulted in a number of smaller independent advice businesses merging with other practices or handing back their own licence in favour of operating under a larger licensee. A number of licensees also outsource their compliance obligations and oversight to specialist compliance firms, as it can be timely and sometimes costly to keep up with regulatory change and oversight.

It is therefore important that a balance is reached that ensures adequate consumer protection while enabling businesses to operate efficiently.

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

It can often be difficult to reach a balance on efficiency of regulation without reducing the quality and availability of financial advice.

While this may not be achieved through reduced or modified regulatory requirements, it is possible that the increasing presence of financial technologies may provide some relief in the future.

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?

CPA Australia has no specific comments to this question.

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?

CPA Australia has no specific comments to this question.

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?

CPA Australia has no specific comments to this question.

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

With technology evolving and the development of robo-advice it is likely that international financial advice will increase. Further, it is becoming increasingly common in the accounting profession for lower value auditing, administration and accounting work to be completed by offshore/outourced providers. Similar solutions are beginning to appear in the financial services space, with offshore paraplanning businesses starting to market their services to Australia for example.

It will become increasingly important for regulators to work together across countries to ensure appropriate oversight but also efficiency in the market.

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

We strongly support efforts to strengthen the Australian and New Zealand financial services industries by increasing competition and lowering transaction costs. We are also eager to see the realisation of a single trans-Tasman economy and recognise the many efforts being made to achieve this.

This includes the respective trans-Tasman mutual recognition of qualifications for both Australia and New Zealand, enabling trans-Tasman mutual recognition of financial advisers.

The Australian qualified adviser notice benefits those Australian financial advisers who may wish to move permanently to New Zealand or who may work for an Australian based entity and wish to be Authorised Financial Advisers. However, the Financial Advisers (Australian Licensees) notice enables those Australian licensed financial services firms to provide financial adviser services into New Zealand on an offshore basis without requiring the individual financial advisers to either move to New Zealand or become Authorised Financial Advisers.

Importantly, key policy reasons for granting the notice remain relevant with the Australian financial services industry currently undergoing significant regulatory change which will further strengthen the protections offered under the Australian financial adviser regime to consumers.

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

The evolution of robo-advice is likely to have a significant impact on the financial advice market and appeal to younger consumers who see technology based solutions as a better fit for their advice needs.

It may also lead to new efficiencies, especially in compliance.

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

Further to our previous comments, it will be important for regulators to work together across countries to address the increasing presence of technological developments on the financial advice sectors.

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

CPA Australia believes the current minimum ethical standards for AFAs is appropriate and ensures a focus on the client when providing advice.

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

CPA Australia supports the same ethical standards applying to all types of financial advisers. It is paramount to maintain confidence in advice and ensure quality advice is provided to the client and that the clients' interests are prioritised in all circumstances. This also helps address conflicts of interest created by being remunerated by conflicted remuneration.

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

CPA Australia supports lifting the education qualifications to a Level 7 qualification or equivalent such as a Graduate Diploma. Appropriate qualifications for AFAs are important to ensure that the individual has the appropriate level of education to provide quality advice in the best interests of the client and importantly for consumers to have confidence and trust in the advice they are receiving.

In Australia the Government proposal to lift education standards has been widely supported, with many larger licensees announcing ahead of any legislative change that their advisers must be degree qualified or hold an approved financial planning professional designation.

Further, lifting the minimum qualifications to be more aligned with Australia would assist with trans-Tasman mutual recognition of advisers.

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?

Appropriate qualifications are integral to the provision of quality financial advice. CPA Australia supports requiring RFAs to meet a minimum qualification relevant to the area in which they specialise.

Given that there is currently no minimum requirements, it may be appropriate to require a minimum of a National Certificate. After a period of time this could be reviewed to ensure it is still commensurate to the level of expertise required to provide the advice.

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

Given the increasing globalisation of markets and increasing benefits being delivered by new technology, CPA Australia would recommend that efforts should be made to ensure the alignment of qualifications between Australia and New Zealand.

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

Professional bodies play an integral role in promoting professionalism. Members of a professional body have made a voluntary commitment to adhere to a standard that is above the law and to ensure that the advice and services they provide are in the public interest.

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

Australian accountants operate in a regulatory environment that imposes:

- requirements to comply with legislation, including application of accounting and auditing standards
- professional obligations to comply with ethical standards
- oversight arrangements set by governments and professional bodies

This arrangement is referred to as 'co-regulation' and has benefits for the profession, regulators and importantly the consumer, as it encourages a combination of best practice and compliance with legislative requirements, and ensures a focus on advice and services that are in the best interests of the client.

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?

A combination of obligations on the individual and the entity are important to ensure there is appropriate responsibility for the provision of quality financial advice to consumers.

An individual should be required to meet minimum initial and ongoing knowledge to maintain the competence to provide quality advice, ensure that the advice they provide is in their clients' best interests and importantly comply with all legal obligations.

An entity has a responsibility to ensure it has adequate resources, systems and oversight to ensure its advisers are competent, and that the entity and individuals comply with all relevant financial services laws.

Whilst in Australia there is a statutory obligation on the individual adviser to provide advice that is in their clients' best interests, there is no overarching ethical or professional framework that influences an advisers conduct and behaviour. This is why the Australian Government has consulted on introducing mandatory professional membership for individual advisers, noting that a professional association would have to be approved to ensure consistency in codes of conduct.

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?

CPA Australia has no specific comments to this question.

Role of financial services provider registration and dispute resolution

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

CPA Australia agrees that the Register should seek to achieve the identified goals.

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

We believe that the goals are equally as important as each other. For example, if information is accessible but not useful then the Register cannot achieve its goals.

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

CPA Australia agrees that the dispute resolution regime should seek to achieve the identified goals.

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

We believe that the goals of awareness, accessibility and confidence are equally as important as each other.

How the FSP Act works

CPA Australia has no specific comments on questions 68 through to 75.

Key FSP Act questions for the review

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

If a consumer is not familiar with the regulatory regime and the defined terms such as financial adviser service, registered financial adviser or authorised financial adviser, it is likely that the information on the website would not be useful to the consumer in helping them select an adviser that meets their needs.

One option could be to include links in the Register to defined terms or provide information boxes, to assist the consumer understand the information they are accessing. Alternatively, the Register could provide this information within the register avoiding industry jargon, but rather stating in plain terms the advice and services the individual can provide.

The most effective way to identify what additional features or information would make the Register more useful for consumers would be to undertake consumer testing.

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

The inclusion of qualifications would only be appropriate if the individual had completed a qualification that is above the mandatory minimum, but is still relevant to the advice being provided. Further, there would need to be controls around how such information is listed to ensure it is meaningful and not misleading to the consumer being the end user.

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?

CPA Australia has no specific comments to this question.

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?

CPA Australia has no specific comments to this question.

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

Having more than one dispute resolution scheme can provide benefits to the industry through increased competition. While we do not have any feedback to suggest the current differences are causing a lack of consumer confidence, it is important a level of consistency is maintained to ensure consistent outcomes in the dispute resolution process.

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

In Australia there are two approved dispute resolution schemes for the financial services industry. While they both have different terms of reference, there are overarching requirements that they must meet in order to be approved by the regulator. However, there are still issues with consumer awareness and understanding their purpose.

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

CPA Australia has no specific comments to this question.