How to have your say

Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by 5pm on 22 July 2015.

Your submission may respond to any or all of these issues. We also encourage your input on any other relevant issues. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please also include your name, or the name of your organisation, and contact details.

Use of information

The information provided in submissions will be used to inform MBIE's policy development process, and will inform advice to Ministers on the operation of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

We may contact submitters directly if we require clarification of any matters in submissions.

Except for material that may be defamatory, MBIE intends to upload PDF copies of submissions received to the **FAA page on MBIE's website**. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

Release of information

Submissions are also subject to the Official Information Act 1982. Please set out clearly with your submission if you have any objection to the release of any information in the submission, and in particular, which part(s) you consider should be withheld, together with the reason(s) for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

If your submission contains any confidential information, please indicate this on the front of the submission. Any confidential information should be clearly marked within the text. If you wish to provide a submission containing confidential information, please provide a separate version excluding the relevant information for publication on our website.

Private information

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate in your submission if you do not wish your name to be included in any summary of submissions that MBIE may publish.

Permission to reproduce

Role and regulation of financial advice

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

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

Yes.

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

We suggest that the goal of making financial advice accessible should be paramount. In our experience, the cost-to-serve has increased significantly due to compliance requirements which may not be necessarily align with the risk to the client. The consequence being that financial service providers are losing money servicing clients with lower requirements, which in the long term is unsustainable. This can be addressed by better targeting regulatory requirements to the actual risk posed to the client as opposed to blanket requirements across all financial services industries.

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

See Question 37.

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?

While we agree that the focus of the regulation should be on retail clients, in practical terms it is difficult to differentiate between wholesale and retail when the organisation services both. FMG has opted to treat all clients as retail to avoid confusion in the servicing model for our frontline, so in reality the distinction is not effective in our experience.

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?

While we agree that the distinction is appropriate, we do not find it particularly effective. There is significant confusion as to where the line between the two is. For example, an Adviser giving class advice may be asked a question about a product and be given personal information from the client in the process. It is not clear as to when class advice needs to be converted into a personalised service.

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

We completely agree with this. The level of requirements should align to the risk and complexity of the products otherwise regulation is not properly targeted and will, as indicated above, prevent clients with lower level requirements from accessing financial advice.

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

Yes.

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 believe that there is a general lack of consumer understanding around what it means to be an RFA, AFA or QFE. Having said that, we do not believe that there would be material gains in trying to educate the public around the distinction and the cost of trying to do so would vastly outweigh the benefits. Instead, the focus should be on ensuring that when providing disclosure Advisers are required to advise on the limits on their advice (i.e. what they can and cannot advise on).

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

The general conduct requirements are appropriate; however, there is significant ambiguity as to what actually constitutes a breach of these requirements and when notification to the FMA is required. While we agree that the high level /principled conduct requirements are appropriate for the actual legislation, it would be helpful to have guidance notes to address the ambiguities.

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

The disclosure requirements are appropriate; however, where an Adviser is not tied /can offer products from multiple issuers and receives a direct benefit from the sale (commissions or non-financial rewards), these should be disclosed as there is an inherent conflict of interest.

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

None that we are aware of.

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

FMG has no comment on this from the AFA perspective as we do not employ any.

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?

FMG has no comment on this.

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?

FMG has no comment on this.

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?

FMG has no comment on this.

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

FMG has no comment on this.

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

FMG has no comment on this.

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

Yes

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

FMG has no comment on this.

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

FMG has no comment on this.

21. Should the jurisdiction of this Committee be expanded?

The jurisdiction of the Committee should be expanded to include RFAs and QFEs. Even though the scope or complexity of advice may vary, ultimately RFAs, AFAs and QFEs all have the same conduct requirements. Including all within the jurisdiction of the Committee will ensure consistency of decisions relating to conduct and they are applied across all financial services providers; not just those operating in areas of high risk /complexity.

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 have not seen any evidence to suggest the limited transparency has impacted public confidence or understanding. We do not see any evidence to suggest that the public expects to see the underlying information provided to the FMA in relation to the grant of QFE status; the fact the status was granted is sufficient to engender public trust .

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

We do not believe so. The fact that the QFE has had to demonstrate it has appropriate policies and processes to ensure its Advisers meet the legislative requirements in order to be granted QFE status is sufficient.

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

We have seen no evidence that the disclosure statements are being used by our clients. Generally speaking, clients will contact us directly if they have any issues and we will outline the process for them; if any are relying on the disclosure statement, they are in a very small minority.

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

We suggest changing the requirement that the disclosure statement be provided prior to giving advice to 'prior to implementing the advice' for the following reasons:

1) there can be confusion as to exactly when the advice process starts. For example, our sales people may be at a community event in their personal capacity, but be asked questions about FMG and our offering. This scenario could easily stray into the advice space and thus trigger the requirement to provide a disclosure statement.

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

We do not believe the broker requirements are well understood. We have run into several situations where individuals triggered the requirements, but did not understand that they were operating as a broker within the FAA.

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

Yes.

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

Yes and those requirements should align the disclosure requirements for RFAs.

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

This issue is very relevant to FMG. As indicated earlier, FMG does offer outsourced products where FMG does not offer one. To that end, our arrangements between our client and the product provider triggers the Insurance Intermediaries Act and the requirement to maintain a broking account. However, the Act does not mandate this requirement where FMG enters into a written agency agreement with the product provider. If the FA Act were applied to insurance intermediaries without this carve-out it would be a significant compliance requirement for FMG with no commensurate reduction in risk to the client.

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

FMG has no comment on this.

31. Should any changes to these requirements be considered?

FMG has no comment on this.

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

FMG has no comment on this.

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

We believe that the FA Act does provide sufficient enforcement powers.

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

Guidance issued by the FMA is useful and accessible; we would like to see more of it though.

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.

We would suggest that there is little benefit in trying to clarify or educate the public on the distinction between AFA and RFA. Instead, would it not be simpler to remove these distinctions from the client experience and label all as 'Financial Advisers' and then require that their disclosure statement details what they are able to provide advice on. AFA, RFA, QFE could still be used in the regulatory context, but not in the client context.

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?

Dealing with general insurance, if a consumer is dealing directly with the insurer then there is a good understanding of this. However, the general insurance industry is dominated by broker distribution and our experience is that consumers view these brokers as an unbiased adviser when in fact it is largely not the case.

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?

We agree with MBIE's analysis of the sales and advice. We would suggest that the clearest way to distinguish between sales and advice is determined by whether or not the adviser is independent of the issuer of the product. If the adviser is an employee or tied agent of the issuer they can only offer that issuer's products, so there would be no expectation by the client that they are getting an analysis of similar products across the entire industry and a recommendation on which one is best suited to their needs.

We also support the suggestion that the FAA not apply to pure sales activities as there is ample

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

While FMG does not operate in this area, we suspect mere disclosure of commissions and conflicts of interest is insufficient. There needs to a requirement that this specifically drawn to the client's attention and signed off.

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

While FMG does not operate in this area, we suspect mere disclosure of commissions and conflicts of interest is insufficient. There needs to a requirement that this specifically drawn to the client's attention and signed off.

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

Yes, but the requirement to disclose commissions or other non-financial incentives should be limited only to where they could actually give rise to a conflict of interest. Tied agents or advisers who do not directly benefit from the commission should be excluded from disclosure. For example, FMG distributes life products and while FMG receives a commission, the Adviser does not and therefore the Adviser's advice on product choice is not influenced by any potential personal gain.

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?

While we do not believe a outright ban is appropriate, there is significant merit in restricting commissions. As discussed in the Issues Paper, churn is a major issue in the life insurance industry. The industry operates with extremely high-front commissions and low renewal commissions. The behaviour this drives is that once the claw-back period has expired, Advisers target existing business and replace it with another provider to reap the benefits of further higher up-front commissions.

In the vast majority of cases, this practice is, without a doubt, not in the best interest of the client.

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)?

As indicated in Question 2, there could be better targeting of regulatory requirements to the actual risk posed to the client as opposed to blanket requirements across all financial services industries.

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

As indicated in Question 2, there could be better targeting of regulatory requirements to the actual risk posed to the client as opposed to blanket requirements across all financial services industries.

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?

Yes.

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 definitely having an impact. For example, within FMG's personal insurance team we have a team that only deals in the transactional space. Consequently, if the client starts asking for advice that touches into the personalised space, the team is required to refer it to another area of the business. This is an extremely disjointed process and not particularly helpful to client as generally they are not looking for a full personalised service, but have only minor queries.

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

Not that we are aware of.

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

As previously indicated, by better targeting regulatory requirements to align with the risk posed to the client, it will reduce blanket regulation that is costly and not necessary. Further, changes to the requirements around the timing for the provision of disclosure statements (discussed in Question 25) would reduce cost and complexity of that process.

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?

FMG is not subject to AMLCFT.

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?

This does not apply to FMG.

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?

FMG does not have a comment on this.

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

FMG does not have a comment on this.

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

FMG does not have a comment on this.

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

FMG does not have a comment on this.

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

FMG does not have a comment on this.

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

While we agree that the ethical standards for AFAs are appropriate, we are not in a position to comment on whether or not they have succeeded in fostering ethical behaviour.

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

The ethical standards currently set out for AFAs in the Code of Professional Conduct (COPC) should be a benchmark for all financial advisers regulated by the FAA. The COPC provides for minimum standards of professional conduct and the paramount standard is for the adviser to place the interests of the client first and to act with integrity. Respondents to the MBIE survey agreed that the COPC had resulted in advisers applying focus to their continued professional development and increasing their knowledge and competence (page 47). Applying the COPC as the standard can only be in the best interests of the financial services industry.

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

We submit that there should be a minimum qualification level for financial advisers. The current National Certificate of Financial services (Financial Advice) Level 5 qualification for AFAs could be an appropriate minimum qualification level however needs to recognise the type of advice being given to the client and therefore needs to be flexible in its design and application across the spectrum of financial advisers. We also need to be able to recognise financial advisers who have a similar level of qualification gained overseas. We recognise that Australia is moving toward requiring higher educational standards (qualifications) for Financial Advisers and suggest that in the fullness of time this may also be an approach that New Zealand may look to follow.

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?

We believe that RFAs should be required to meet minimum standards. Those standards should align to the risk to the client related to the advice.

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

While aligning NZ qualifications with Australia is desirable in the long term, we need to be careful to ensure that changes are incremental and within the tolerance of the industry to absorb.

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

FMG does not have a comment on this.

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

We do not believe that professional bodies for example ANZIIF, IBANZ and ICNZ should play a more formal role in the regulation of financial advisers. Professional bodies such as these play a very important role in the industry in respect to providing information, educational services, consulting services, lobbying government and other activities and these are best kept separate and independent from the role of regulation which we believe best remains with the regulator. A number of other organisations (not industry bodies) also provide education and training services to the industry and this creates competition which is healthy. Professional bodies, alongside other 'approved' providers, should be permitted to administer training and assessments to ensure relevant

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?

No, the current system is appropriate.

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?

From FMG's perspective, compliance costs are significantly lower than they would be if Advisers were regulated directly. We also believe it has achieved its goals in terms of consumer protection because it is the QFE's obligation and consequently it becomes an organisational focus. Further, generally speaking organisations are better resourced than individual Advisers to undertake activities related to training and process improvement which ultimately enhance consumer protection.

Role of financial service provider registration and dispute resolution

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

Yes.

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

They are all equally important.

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

Yes.

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

They are all equally important.

How the FSP Act works

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

FMG has no comment on this.

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

FMG has no comment on this.

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

Yes.

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

Yes.

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

Yes.

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?

Yes.

FAA Review Submissions

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?

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

We agree that financial services providers should be required to have adequate arrangements in place to ensure they can pay compensation to consumers (i.e.. professional indemnity insurance).

Key FSP Act questions for the review

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

Including the Adviser's disclosure statement may be useful.

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

Yes. These are both pieces of information that would better inform consumer choice. However, we would suggest that consideration be given as to whether or not it appropriate to apply a threshold for which disciplinary actions will be disclosed. Further, if it is disclosed whether or not it is only included for a set period of time provided there are no further disciplinary actions.

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?

FMG does not have a comment on this.

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?

FMG does not have a comment on this.

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

We agree that the existence of overlapping schemes with differing rules and jurisdiction has potentially negative implications especially where there are inconsistencies in decisions between the schemes.

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

One option is to require publication of the decisions which would enable consideration of precedent amongst the schemes.

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

FMG does not have a comment on this.

Demographics

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

Lisa Murray - FMG

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

18(d)

85. Are you providing this submission:

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

Please describe the nature and size of the organisation:

Rural mutual insurance association

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

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

FAA Review Submissions

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

☐ Yes ☑ No

Explanation:

Thank you for your time. Please send your submission.