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?

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

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

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?

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?

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

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?

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?

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

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

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

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

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?

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?

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?

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

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

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?

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

21. Should the jurisdiction of this Committee be expanded?

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?

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

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

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

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

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

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

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

31. Should any changes to these requirements be considered?

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

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

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

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.

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?

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?

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?

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?

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?

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)?

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

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?

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?

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

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

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?

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?

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?

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

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

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

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

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

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

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

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?

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

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

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

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?

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?

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?

Goals 1 and 2 are most important (usefulness and accuracy).

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

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

How the FSP Act works

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

In our view, the focus should be on better filtering prior to a FSP applying for registration, through the introduction of additional eligibility criteria, rather than on further bolstering regulatory powers to be used 'after the fact' as has already occurred with the 2014 amendments to the FSP Act.

The FMA and the Registrar have enhanced powers to decline registration or deregister FSPs where registration has, will have or has the likely effect of creating or a false or misleading appearance as to the extent of the FSP's NZ nexus, and where registration damages the integrity or reputation of NZ's financial markets.

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

See our answer to 79.

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

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

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

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

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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?

Key FSP Act questions for the review

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

At present, the Register is a simple list of FSPs. More information is required to assist consumers in making informed decisions on which provider best suits their needs.

Useful information:
Individual FA entries should contain information such as that FA's affiliations and membership of professional organisations. This information would provide useful insight into that FA's professional standing, and assist in identifying potential conflicts of interest.

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

Information about a FA should only be included insofar as it sheds light on their professional ability and standing, and helps consumers make an informed decision.

Qualifications:
Qualifications unrelated to the provision of financial services potentially mislead consumers (e.g. Bachelor of Medicine may appear impressive to a consumer but does not signify the FA's professional skill). Given the wide array of qualifications that might be recorded, we believe the risk of consumer confusion and

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

Yes – see our answer to 79.

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?

Yes – the scope of registration should be redefined.

Section 8A of the FSP Act outlines the territorial scope of the Act.
It provides that the Act applies to a person who:
(a) is ordinarily resident in NZ or who has a place of business in NZ (regardless of where the financial service is provided);
(b) is, or is required to be, a licensed provider by statute; or

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

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

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

Demographics

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

Tom McLaughlin

***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:

Kensington Swan Lawyers
Large law firm

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
- [x] 20-49
- [ ] 50-99
- [ ] 100-250
- [ ] 251-500
- [ ] >500

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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.