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.

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FAA Review Submissions

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 it should - But it isn't achieving this as consumers don't know nor care about it.

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

Encourage confidence and participation that is efficient and cost effective to provide (by advisers) and receive (by consumers).

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

Yes but there should not be exceptions. Consumer confidence in adviser professionalism and abilities is paramount, this suggests that ALL advisers should be held to the same standard of professionalism including educational standards.

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?

No. In my experience wealthy clients are NOT automatically sophisticated and knowledgeable enough to make the types of decisions that the exceptions suggest.

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?

No. Again the consumers don't differentiate between "personalized" and "Class" as if they hear an adviser state that a particular product is a good one they assume by virtue of the fact that they are in the audience, that it is a good product for them.

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

NO. Financial advice incorporates a whole range of "product needs" and getting for example their risk insurance calculation wrong can cause major negative impacts on their retirement savings capacity. Equally getting the ownership of their risk insurance wrong is likely to have exactly the same impact on their future financial wellbeing.

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?

NO - see above

Financial Advice is or should be an integrated process involving inter-relationships between groups of product needs.

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?

NO. Those consumers that know of the different types would think of a registered financial adviser in the same way they think of a registered medical practitioner.

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

Yes but they are not consistent, ALL financial advisers including QFE advisers should be required to adhere to the same code of professional conduct equally.

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

NO. See above

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

Again, ALL financial advisers including QFE advisers should be required to adhere to the same code of professional conduct equally.

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

The cost incurred here are simply one part of regulatory costs and on its own is not large, but there seems to be no significant benefit apart from requiring advisers to think about the processes they use when doing business.

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?

NO I feel that while advisers understand it their clients consider these to be one and the same thing as the planing service leads to the recommendation of financial products.

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?

If we are looking to gain some efficiencies for the consumers there should be an allowable amount of discretion applied by the advisers under a delegated authority and within appropriate guidelines

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?

DIMS is what most clients are expecting advisers to provide and requiring advice and sign-off from clients on each transaction is both in-efficient and costly for the client and adviser.

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

The multiple tiers of disclosure is both inefficient and confusing for the consumers, I feel that having a single disclosure that covers all areas pertaining to the client/adviser relationship is better. As an adviser we don't know what the costs will be to the client until all is implemented so maybe an exceptions disclosure after the fact would be better.

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

Yes - See above.

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

Yes it is okay as long as there is a single application of the COPC and the composition of the committee is balanced and in proportion with the advisers covered by it.

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

See above

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

The FADC should here ALL cases against anyone giving Financial Advice, this assumes that QFE advisers, RFS's and AFA's become one.

21. Should the jurisdiction of this Committee be expanded?

Yes - See above

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?

Yes - but this question presumes that QFE's are appropriate in their current form and most of the concerns are held by non-QFE advisers as the consumers don't know the difference.

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

The only change that I suggest is to NOT have QFE's as they currently are. If QFE's are to remain they should simply be collectives of advisers that use similar processes but the individual advisers should be held accountable for their adherence to the Code requirements.

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

Disclosure for financial advisers should be standardized irrespective of what type of adviser.

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

Standardization as above.

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

Not very well. It make sense to me that ALL financial advisers (including Brokers) should be covered by the same legislation for the activities of provision of financial advice.

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

NO All advisers should be covered by regulations. (102)

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

YES again ALL individuals providing advice to the public should have similar disclosure obligations.

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

Don't know and in reality I don't care, the consumers needs should take precedence.

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

YES

31. Should any changes to these requirements be considered?

undecided

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

NO! NO! NO! ALL advisers should be covered by the code. Look at most of the complaints over finance companies and fraudulent activities, I feel you will find that many if not most were either lawyers or accountants or both.

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

YES

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

Communications in this regard are good.

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.

There is too much variation in types of adviser titles and the type of advice they provide for the consumers to gain an understanding of adviser obligations.

Keep it broad and flat, so cover more advisers (QFE, RFA, AFA, Brokers, Lawyers and Accountants) under a single adviser category with the same requirements and obligations. Simplify the product differentiation as part of the above.

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?

There is little or no understating in this regard.

Again if ALL advisers were required to comply with the Code of Professional Contact they would ALL be focused on placing the clients needs first and foremost.

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?

I am of the belief that the simply provision of product information should constitute financial advice as it clearly allows for a bias that suggests to the consumer that this product meets their needs.

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

YES even though I don't consider commissions to be an inherent conflict of interest, rather the behavior of sales only could be considered conflicted.

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

Simplified single document with the possibility of an additional "exclusions" disclosure post execution.

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

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?

NO They are not inherently a conflict.

I do however feel that Initial risk commissions should be universally reduced to about 25% of API and should be paid annually. Any transition could be managed by having this rate applied to all existing business that is over five years inforce.

I feel that this would reduce the incentive and in turn amount of product "churn".

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)?

NO There is too much given up to QFE's here and this is restricting the numbers of "independent" practitioners available to the consumers we are supposed to be focused on.

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

ALL advisers (individuals) need to meet the same single standards and not be able to be cloaked by a QFE.

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 I feel that requiring the adviser to effectively "know their client" before giving advice is right and this information should be gathered and referred to with each type of product or service provided. We can provide advice in a discrete area of client needs and build on this area over time.

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?

No further comment here

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

YES - Smaller adviser practices are required to spend similar amounts to comply as are large firms and larger firms tend to be more likely to be aligned with product providers. This has contributed to the reduction in independent adviser practices.

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

Simplified and flat (applied to ALL individuals giving 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?

Increased the time and therefore costs of getting a client.

If funds are clearly coming via an existing RE (NZ bank account) there shouldn't be any need to re-identify these clients.

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?

I expect that as KS funs mature, this should increase the need for financial advice.

Possibly too late now but spiting the government subsidy to encourage gaining appropriate financial advice would benefit consumers.

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?

Very little impact for the majority of consumers as very few read the material now.

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

Until there is a global standard for regulations around financial advice I feel that there is little chance for this to increase. The alignment of trans-tasman qualifications is NOT correct as it only applies to some elements of the qualifications.

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

Not beneficial at present.

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

Robo advice will come and should be regulated to meet the same objectives of the FAA. I feel that advisers using Robo advice tools and having these supplement personal advice is best.

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

Unknown.

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

YES but should require the addition of ethical practices CPD

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

YES! YES! YES!

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

I feel that a level 7 or 8 Grad or Post Grad Diploma is the appropriate level for any profession, however I can accept the Level 5 Certificate as a starting point as long as it doesn't stay around for too long.

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?

YES! This is where the bare minimum of a level 5 certificate is a must.

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

Ultimately we will need to align with the Australian requirements but that is something that will come over time as above.

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

I am of the belief that any "professional Body" that doesn't require a real professional standard of its members, isn't a real professional body. The IFA have done as much as they can without loosing too many members due to the higher standards they set.

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

YES! I am still a believer that real professional advisers will belong to a real professional body which guides their development and encourages improvements. I also feel that if there was a single professional body that advisers had to belong to, it could quite easily manage initial oversight of the professional standards and ensure they are adhered to.

I feel this would be far more cost effective for the government as well as the advisers and ultimately the consumers.

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?

It is all very well having an overarching company to manage advisers but ultimately the individual advisers are the professionals not the company.

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?

NO! Too many QFE advisers are advising in areas they are not at all competent to advise in.

The costs for advisers are proportionate to the number of advisers in the profession rather than the business or QFE. If the costs incurred by a single operator are say $10,000pa and a QFE has 50 advisers, I expect that the costs incurred by the QFE are likely to be less than $500,000pa.

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, but

It is a concern to me that the focus here has moved from a full register of advisers to a register of FSP's, this effectively removes the majority of those currently giving advice from the register.

The register should be a FULL list of ALL INDIVIDUALS providing advice.

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

To help the public make informed decisions about financial services...and the individual providers. This has meant that the register has not been accurate or useful to the public.

The benefits of regulatory oversight should always be a secondary consideration.

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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?

Greater confidence is likely to come from having a single EDRS such as the Ombudsman's scheme.

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?

NO

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

ALL individuals providing financial adviser services should be registered

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

NO It should apply to ALL

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

There are too many schemes and this leads to excess costs for members.

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?

NO there are too many as above

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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?

YES!! The current limit doesn't cover the likes of a lost home but also the loss of income from an incorrect Income Protection policy whic over a life could be substantially more that this limit.

Key FSP Act questions for the review

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

YES

It should cover all of the information that a prospective consumer of financial services needs to make a decision between one adviser and another. Things such as qualifications, experience, membership of professional bodies, areas of expertise, appropriate complaints history etc.

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

YES

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

Go to individual adviser registrations

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?

See above

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

There can be issue where the product provider and the adviser are members of different schemes.

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

I Don't believe so.

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

I feel they are adequate currently if they are adhered to by advisers and product providers.

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:**

Nigel Phillip Tate

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

NOT PROVIDED

85. Are you providing this submission:

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

Please describe the nature and size of the organisation:

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
- [ ] >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.