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.
The goals are reasonable and realistic.
Without consumers none of us have a job!

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

Improving consumers' financial outcomes is the ultimate goal. Everything else underpins that.

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

I have serious concerns about the current definition of "financial advice" (And my reading of the Options Paper is that no significant change is proposed to the definition). This is taken directly from section 10 of the current FAA: A person (A) gives financial advice if A makes a recommendation or gives an opinion in relation to acquiring or disposing of (including refraining from acquiring or disposing of) a financial product.

In theory, therefore, if I talk to a client about their financial arrangements, without making reference to a financial product, then I fall outside the Act, and could argue that I don't need to be registered,

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?

There is significant blurring here and canny advisors will pass off advice to clients as "class advice" to avoid additional compliance requirements.
Consumers will take class advice as personal.
I wonder how many clients take Mary Holm's advice as personal, even though it explicitly states it is not.
The danger with the distinction is that many clients will be left to "take their own advice" based on generic descriptions (class advice). This could directly oppose the key goal of getting better outcomes for clients.

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

No. Absolutely not.
This has been one of the biggest shortcomings of the current legislation.
To think that insurance is not a complex product is ridiculous. And the confusion between the adviser designations has been quite misleading - and very confusing for consumers.
Consumers have no idea about the different requirements.
And, further, if an AFA gives insurance advice, they are bound by quite a different set of requirements to an RFA who gives similar advice. Both unfair and illogical.
All financial advisers should have the same requirements, but they should also have to demonstrate

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?

Surely the key point here is competency. Poor advisers can cause a lot of problems giving bad advice about simple products.
If the focus is on adviser competency (fitness for purpose), then product categorisation becomes less important.

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.
Financial Adviser should be the same for all advisers - as it is for lawyers, accountants and doctors.
Competencies or specialisation should then be overlaid on the basic designation.

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

No.
AFA's have to comply with the Code of Conduct. RFA's do not.
Why?
If all advisers had to comply with a Code of Conduct, then a lot of the concerns about RFA's would disappear.

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

RFA's should be required to follow the same level of disclosure as AFA's.
But, see answer to number 9.

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?

In my case, no.
I am a sole practitioner, and find the ABS to be an unnecessary piece of compliance.
I would be happy to incorporate parts of it into an adviser register which could then help clients to find out more about my services.

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?

It is not understood by me. And certainly not by my clients. And what is the point of the distinction?

Going back to definition, I could accept an investment planning service being defined in terms of product, but would argue that a financial advice service should not be so defined.

My view is that the financial advice service should relate to financial strategies (big picture stuff) and investment planning services should relate to the implementation of those strategies. This could either be carried out by the same adviser, or by separate advisers.

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?

It depends what their "scope of service" is. I have clients who have investments (arranged and 'managed' by other advisers - who also receive remuneration for that service) which I might comment on at a strategic level but leave implementation of any changes to the originating adviser.

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?

Competency again is the key.
Advisers using any sort of 'discretion' should be required to demonstrate competency to provide that service.

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

No.
The Primary Disclosure Statement is too bland. And much of the information in the Secondary document is actually important to discuss with the client at the Primary stage.
The key to the Secondary document is to disclose costs which the client will incur.
In my experience, both as an adviser and as an educator, the secondary document often fails in this respect.
And in my business, where I only charge by hourly rate, the current concept of secondary disclosure is difficult to fit into the process.

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

Yes
I think it should start with the consumer. What does the consumer want? What does the consumer need to help them make an informed decision.
A lot of the standard information could be held on a searchable register.

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

No problems here.

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

Important to ensure that practitioners are well represented on the Committee.
After all, they are the ones who have to make the Code work.

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?

Yes
Most consumers do not understand this.

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

Those giving financial advice through a QFE should be obliged to meet exactly the same standards as those outside the QFE environment.

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

No
See #23

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

See #17

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?

Because Financial Advice is defined in terms of products, those professionals who are not product focussed are effectively exempt.

A recent example of this that I became aware of is of a property syndicate distributing its offering through accountants, because they don't get any business from financial advisers. Accountants can make these recommendations because they are not subject to the compliance requirements of AFA's. And AFA's do not recommend these products because they do not have time (or capability) to conduct sufficient research.

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.

I would like to see a baseline for all Financial Advisers, so that the consumer could be confident that anyone who is called a financial adviser has to meet a professional code (so, in other words, apply the Code to all advisers)
Then advisers would have to define their areas of specialisation and back that up with appropriate qualifications and competency testing. This specialisation could then be linked to a searchable register.

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?

Yes - such distinction would be helpful.
Financial advice should cover all services where a client's personal financial situation is evaluated and recommendations made about modifying that situation.
This should not only relate to buying/selling financial products.
For example, to help a client to complete a budget may not involve any financial product. However, it is a core (and much undervalued) piece of the financial advice process.
Similarly, helping clients to understand their retirement planning requirements should start off without mention of products. Products only become relevant when the strategy which is developed is

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

If all financial advisers had to comply with the Code of Conduct (currently only applicable for AFA's) then a lot of these problems would be addressed.
Acting in the client's best interests inevitably catches such problems.

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?

Yes, see #38

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?

If we believe in a free and competitive market, then commissions form part of that. Supermarkets are not expected to disclose the profit margin on a loaf of bread, for instance.
However, there are two aspects of commission in relation to life insurance products which I believe create distortion in adviser behaviour:
1. Payment of full commission on replacement business
2. Originating adviser continues to receive trail commission even if the servicing of that policy is provided by another adviser (as far as I am aware, AMP is the only company which does not follow this policy). This encourages advisers to rewrite business. And it discourages advisers who are

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?

Yes
There is very clear evidence that small to medium size investors now have less choice because investment advisers are setting their minimum investment requirements at a higher level than they used to.
The question refers to "independent" financial advice - and my view is that there are very few advisers who could call themselves truly "independent". This is because most advisers have some product interest which will almost certainly influence their advice.
Only if the client pays a consultation fee to the adviser can that be avoided - and even then, if part of

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?

Kiwisaver decumulation will (or should) require more consumers to seek financial advice.
But I am not in favour of "Kiwisaver advice" being treated differently. After all, Kiwisaver is only part of a consumer's broader financial picture and good advice can only be given when the broader picture is considered.

Putting a lower threshhold on "KiwiSaver advice" panders to the "product floggers".

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?

Yes I believe that substantially they have succeeded. All the AFA's that I know take these ethical requirements very seriously.
They are frustrated by the fact that the majority of financial advisers (RFA's and QFE advisers) are not required to follow the same ethical standards.

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

yes
See #55

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

At this point, the NZ Certificate in Financial Services (Level 5) is appropriate.
However, I would like to see it signalled by the legislators that this will rise over a period of time.

Further, if all financial advisers had this qualification and then could advertise their particular specialisation and additional qualifications, then competition could take place above the baseline, rather that at the baseline (or even below it!)

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?

If they had to meet the Code requirements this would take care of itself.

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

There are already internationally recognised qualifications. I am familiar with the Certified Financial Planner (CFP) designation. When I started my career in financial services in the mid-1990s, this was seen as a worthy qualification and I, and many of my peers, worked hard to meet the requirements of the qualification.
Since 2010, the CFP mark has been undermined by the AFA debate.
Such international qualifications should be given a higher standing in the current environment. And the government (through FMA) should support such qualifications.
It is difficult for advisers to convince consumers about the value of such qualifications in the absence

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

I am a member of the IFA and in my view the IFA has been very effective in this area.
However, partly in relation to my answer to #59, the IFA has had a lot of its professional status undermined by the current regime.
I joined the IFA (or its predecessor FPIA) because I believed it was the pre-eminent body representing financial advisers. There is now too much fragmentation between professional bodies.

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

Yes.
I think it can happen by supporting the code of conduct and ethical requirements which an organisation such as IFA has. I think that the FMA has taken on too much responsibility in relation to the professional requirements for advisers. Many advisers might almost think that the FMA is their professional body!

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?

Surely if goals are identified for the Register, then it should seek to achieve them. Otherwise, what's the point of having goals!!??
Having said that, I don't believe the current Register does meet all the goals which were originally laid down.
The Register would be far more useful if it contained more information about advisers and the range of services which they are able to offer. This could be standardised, but consumers would need to feel confident that the information it contained was accurate.

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

Increase the level of transparency of public information related to FSPs, their licensed services and their related dispute resolution schemes;
This goal particularly could be achieved much better with an expanded register.
A lot of the information which I have to supply to the regulators does not get to the register.
So, is the register for the regulators or the consumer? The above goal suggests that the consumer should gain benefit from the register.

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

Surely if goals are identified for the Dispute Resolution regime then it should seek to achieve them. Otherwise, what's the point of having goals!!??

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?

If all advisers had to follow the Code of Conduct - and one of the Code points related to compliance, this would very quickly raise the level of compliance.

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

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?

See previous answers

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

Yes and 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?

It could be. So means will have to be devised to ensure that doesn't happen.

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?

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:**

Tony Walker, AFA

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

Redacted

85. Are you providing this submission:

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

Please describe the nature and size of the organisation:

2

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.