

Options Paper

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

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26 February 2016



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

Recommendations:

- To increase consumer confidence, a *suitable character* test should be introduced for all financial advisers.
- A suitable character test should include appropriate checks of an advisor's criminal history and an assessment by the engaging entity of their financial capability and experience/qualifications.
- Responsibility for the checking and assessing of financial advisers should rest with the entities who engage them.

Background

Thank you for the opportunity for Veda to respond to the Options Paper.

Veda is a data analytics company, best known as New Zealand's leading provider of consumer credit reports and due diligence services. Veda also offers comprehensive pre-employment screening services, giving employer's confidence in the bona fides of the skills, qualifications and character claimed by a prospective employee. In this role, Veda is accredited with the Ministry of Justice for the provision of criminal history checks. Veda also has extensive experience in the Australian jurisdiction, assisting the financial sector there to meet sweeping changes introduced by the Australian Government for the registration of financial advisers.

We note the Option's Paper stated the key outcome sought is to promote more confident and informed consumers and investors. Chapter four sets out discrete elements that would help achieve this goal, including options for licensing of advisers and proposed eligibility criteria/minimum entry requirements. This would raise the bar on the provisions of the existing Act which essentially only prevents registration where a person is an undischarged bankrupt or has a criminal history¹.

Character Checks and Criteria

Veda considers that the introduction of eligibility criteria/minimum entry requirements across the industry would be a constructive and relatively straight step toward achieving the key outcome of

¹ Clause 14 of the *Financial Service Provider (Registration and Dispute Resolution) Act 2008*

increased confidence, as well as assisting to better inform consumers about the suitability of particular advisors.

There are already provisions under the Authorised Financial Adviser Authorisation Guide² for the FMA to review a person's competency, knowledge skills criminal convictions and aspects of good character³. This applies to all Authorised Financial Advisers⁴.

Veda supports a simplified and more flexible version that would encompass all financial advisors. In an amended form, a suitable character test could be applied across the industry, including requirements to check criminal and bankruptcy records and assess financial history and experience/qualifications. To avoid excessive prescription and minimise the cost of compliance, consideration should be given to allowing the engaging entity to assess and determine a person's suitability, dependant on the services to be provided and the role of the person in providing them eg unlike the extensive AFA requirements, it would not be necessary (unless the entity deemed it critical to the engagement) for an adviser to include details of a drink-drive offence, or disclose substantial number of parking infringements.

Regarding the core elements of a suitability character test:

Check of bankruptcy records

A critical element in ensuring consumer confidence would be the knowledge that no undischarged bankrupts could be offering consumers any form of financial advice.

Check of criminal history

Already Clause 14 contains details of convictions that currently would disqualify a person from being registered as a financial service provider, covering many of the offences (dishonesty, money laundering, subject to FMA banning orders) that a reasonable person would expect to disqualify an applicant.

Assessment of financial capability

A person's ability to provide financial advice should, on some level, be reflective of their own ability to manage their finances. Overall, any Financial Adviser's Register will benefit from consumers knowing that, as a minimum, there has been some consideration of an adviser's ability manage their own circumstances eg a consumer receiving advice from a mortgage broker reasonably should expect the broker has not been in default on their own mortgage.

² AFA Authorisation Guide August 2015

³ Further detail is also provided by the Securities Commission's Guidance note: Good character and criminal convictions March 2011. This note provides a reasonably wide ranging source for assessment of character and guidance on what matters are considered relevant.

⁴ Clause 54 of the Financial Advisers Act 2008

Credit reports hold a range of information – some of it highly indicative of a person in credit stress (eg serious credit infringement information⁵). What weight is put upon any adverse information would be the determination of the entity, in the context of the services and advice the financial adviser’s role would provide⁶.

Assess qualifications and/or experience

The Options paper provides a series of options regarding competency, including principles-based obligation for advisers to be competent in the advice they provide. This may be evidenced by previous experience or actual completed qualifications; in either scenario, the entity should make an assessment on the suitability of either in regard to the position applied for.

Cost of Compliance

Veda recognises the ongoing tension between compliance cost for operators in the industry, particularly small businesses, and the need to improve confidence in this business sector and ensure it is properly regulated. Accordingly it is important that any new thresholds balance the extent of enquiry against the cost to the advisor, including implementation processes. In this context the recommendations Veda makes are already practiced by many segments of the market and should therefore, if formally adopted, be able to be relatively readily implemented at low cost. Veda would be happy to assist in any additional work around compliance and relevant costs if that would be of assistance.

⁵ A serious credit infringement is listed by lenders where a action by a person (a) involves fraudulently obtaining credit, or attempting fraudulently to obtain credit; or (b) involves fraudulently evading the individual’s obligations in relation to credit, or attempting fraudulently to evade those obligations]

⁶ The obtaining of a credit report by employers is permitted under certain circumstances by the Credit Reporting Privacy Code 2004.