FinancialServicesCouncil.

growing and protecting the wealth of New Zealanders

Financial Services Council (FSC) Submission on the Issues Paper: Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008

22 July 2015

Introduction

The Financial Services Council (FSC) appreciates the opportunity to submit on the Issues Paper on the Financial Advisers Act Review (FAAR) because access to competent, effective financial advice is a major driver for the financial security and resilience of New Zealanders.

Who is the FSC and who does it represent?

The Financial Services sector is of comparable size to the Dairy Industry and consists of the banking, insurance and the investment management (including superannuation) industries. If you have a bank account, term deposit, life insurance or income protection insurance policy or a KiwiSaver account, it is likely that a FSC member provides it.

The FSC members are trusted by New Zealander's to manage their retirement savings, help them save for a first home deposit and to protect against the premature death or extended illness preventing their employment. As well as providing products, FSC members also utilise agents and brokers to distribute those products. Many of those agents and brokers also provide financial advice. FSC members want trust and confidence in the industry to grow and therefore have a very direct interest in how advisers are educated and are regulated.

Why is there a need for financial advice?

Throughout this submission the FSC will use the term financial advice to include both traditional financial planning assessing your needs as well as helping to select the products to realise those plans. We will use the term sales or sales process when we are referring to the purchase of financial services without the provision of "advice" other than on the suitability of the product for the customer.

In the absence of effective financial advice and supporting polices, New Zealander's face:

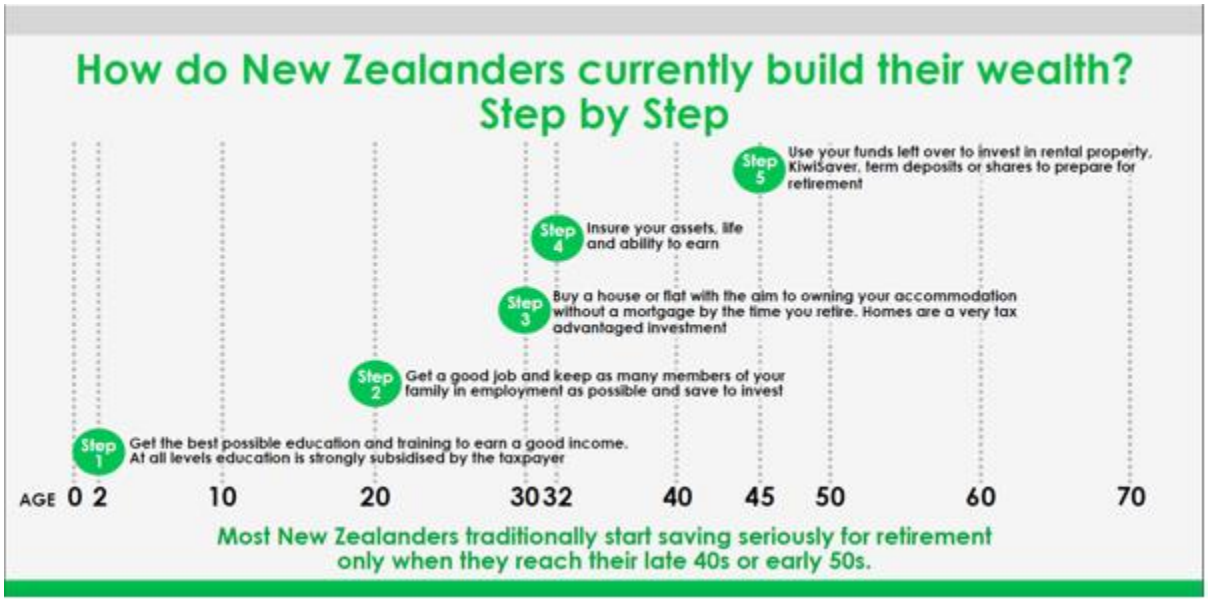
- lowering levels of home ownership with recent reports stating that home ownership levels are the lowest in 60 years
- increasing levels of financial insecurity because of relatively low levels of life insurance and in particular very low levels of coverage for income protection insurance
- most middle and lower income New Zealander's saving inadequately to achieve a comfortable retirement

There is evidence that people who receive financial advice have more wealth but it has proven difficult to show cause and effect.

We do know that many people have difficulty planning and carrying out a savings programme and making good decisions with respect to rare but potentially devastating events.

A competent adviser can help someone:

- identify the financial future and security they would like to achieve
- assess the level of risk and reward trade off they are comfortable with
- understand the benefits of compound returns (earning interest on interest) by saving a little each week for a long time and not dipping into it
- understand the benefits of diversity in their investment exposures
- understand their areas of greatest financial vulnerability and how to protect against them
- implement a savings, insurance and investment plan to achieve their goals
- select the savings, investment and insurance products most likely to meet their needs



New Zealander's need effective financial advice many times over their lives from the time they select the subjects they will study to enable them to pursue their occupation of choice, to selecting the course of study or training most likely to enable them to reach their potential. Joining KiwiSaver, saving for a first home, investing for retirement, picking the right fund to join in KiwiSaver are all matters for which effective financial advice has value. Much of that advice will come from parents, friends, employers, teachers, lawyers, accountants and real estate agents, all people outside of the financial sector regulatory framework but who may have more influence than anyone in it. A few key decisions will have an overwhelming influence on whether someone achieves financial security and this requires the whole of society to share responsibility for making this happen.

The Future of Financial Advice

On current trends, many more New Zealanders will reach retirement without owning their accommodation mortgage free traditionally, along with NZ Super the bed rock of a comfortable

retirement. On the positive side, recent projections prepared by Infometrics for the FSC show that over the next 40 years between 2021 and 2061, more than 1.2m New Zealanders will reach 65 with KiwiSaver balances over $100,000. Over the next 40 years the cumulative KiwiSaver retirement balances of New Zealanders reaching age 65 will exceed $460 billion. More New Zealander's than ever before will need competent effective financial advice to ensure those savings are invested wisely to fund a comfortable retirement. Similarly, retiring New Zealanders who move, selling their current houses to move to a location with less expensive housing or simply to downsize, will also have potentially large amounts of money to invest. Even if New Zealanders maintain a preference for do-it-yourself retirement solutions, the need for financial advice is likely to expand considerably over the next 40 years.

What is right about the current regulatory regime for financial advisers?

Most observers consider that with the existing regulatory regime there has been a lift in the quality of financial advice and professionalism in the sector. While this has not resulted in a significant expansion in utilisation of the services the industry provides there has been a modest but positive improvement in trust and confidence in the sector. The sales materials and documentation provided by the industry is now more accessible and easier to understand. Apart from the take up of KiwiSaver there has been minimal growth in direct investment into equities and most financial wealth is still disproportionately in real estate or bank term deposits.

What has not worked so well in the current regulatory regime for financial advisers?

While responsible players in the financial services sector have learnt to adapt to the current regulatory regime quite well, consumers have found the current regime quite challenging.

Fundamentally the current regulatory regime is not customer centric. This gives rise to a number of issues when compliant industry action doesn't align with how customers want to be provided with advice and purchase financial products.

New Zealanders like to be advised by and purchase financial products from people they like and trust who they expect know more about financial advice and the products than they do. New Zealanders rarely are prepared to pay for financial planning as a standalone service to help them decide what they might need. When they seek "advice" they are not usually wanting what the industry calls "financial planning" or what the legislation treat as "class advice" but rather to be advised whether the particular product is suitable for their needs. They expect that someone selling them a product will be rewarded for doing so, whether by salary, commission or some other incentive payment. They want to be able to make easy comparisons of products by features and cost.

For other significate purchases such as a new home or a vehicle, they often purchase from a branded supplier and don't expect to be told what they might purchase elsewhere. If they go to a Holden dealer looking to by an SUV they expect to be told about the Holden SUV's but not that a Toyota SUV may have better fuel economy or a Land Rover might last longer. Equally they don't ask to be shown a house by Ray White and expect the real estate agent to tell them that Barfoot & Thompson has a sunnier or cheaper property down the road. Similarly a member of the public would be surprised that the KiwiSaver conservative fund they defaulted into by the Government is a riskier and more complex Category 1 product than a Category 2 income protection insurance policy, when by shifting to a new policy they may lose coverage for the existing medical condition they have which is most likely to lead to a claim.

Another area of confusion is the RFA, AFA, QFE "acronym soup". Consumers don't understand what the different categories mean and often think an RFA is a "higher" qualification than an AFA designation.

Changes to make the regulatory regime more "consumer friendly" need to be based on simplifying the regime by removing the categories of advisers, making sure that consumers know what type of service they are receiving (i.e. financial advice or sales process), and requiring product providers to ensure that their products meet suitability requirements. Such an approach would not require any artificial division as between the current Category 1 and 2 products.

A Vision for Change

Issues

The purpose of the legislation is primarily occupational regulation. The current definition of financial advice is so wide that it captures the sales process for financial products and services. Consequently, all financial products and services must be sold with a "side-order" of financial advice.

Consumers do not trust or value financial advice in the sales process.

Solution

- Enable a sales process that does not stray into "financial advice".
- Product providers and distributors are subject to positive obligations as to the suitability of the financial product or financial service.

Effect

The following complexities in the current regime fall away for financial adviser services:

- No distinction between class and personalised advice. All financial advice is personalised.
- No RFA/AFA distinction. Only AFAs can provide financial advice. Anyone who distributes financial products or financial services must be registered on the FSPR as a distributor or be part of a QFE.
- No distinction between category 1 and category 2 products.
- The FA Act would only apply to people advising retail customers. Wholesale participants are governed by the fair dealing provisions of the Financial Markets Conduct Act, not the FAA.

Impact on current market participants

- Consumers recognise, trust and value financial advice as the product of the financial advisers profession. Consumers gain clarity between product sales and advice.
- No change in legislation until 2018 – grandfathering provisions in transition period.
- Current matrix of suitability obligations clarified and simplified.
- RFAs become distributors or apply to be authorised as AFAs.
- QFE structure remains to ensure efficiency of sales process and to manage risks of conflict for AFAs within QFEs (assuming no appetite for all AFAs being independent).
- The FA Act would only apply to people advising retail customers.

Bright line exclusion for sales

Sales could be carved out from the regime by inserting a new s 10(3)(ba) in the FAA. Section 10 defines financial advice and sets out when financial advice is not provided. A new s 10(3)(ba) could state:

> "making a recommendation or giving an opinion about a financial product when the prescribed warning has been given."

An appropriate warning must be given to customers in order for the bright line exclusion for sales to apply. The warning could state:

> "WARNING: I am selling this financial product on behalf of [*name of financial service provider*]. It is my job to sell this product and I am rewarded for this sale. I have not taken into account your particular financial situation or goals. If you want financial advice you should talk to an authorised financial adviser."

Consideration should be given as to whether the warning includes an explanation of suitability. Processes around giving the warning could be developed based on s 36U Fair Trading Act (extended warranties).

Suitability

A legislative requirement for suitability should be backed by non-binding guidance issued by the FMA or industry organisations. Product providers must be able to demonstrate to the FMA that their products are fit for purpose and identify who they are suitable to be sold to. This information must be provided to distributors. Suitability could be regulated by:

(i) relying on ss 20 and 21 of the Financial Markets Conduct Act plus FMA guidance; or
(ii) developing the concept of 'responsible financial service provider' in the FSP(DR)A.

Alternatively a suitability requirement could be introduced in the FAA (s 33 or 36 and amended 20F).

In structuring a suitability requirement, consideration should be given to:

- Section 29 of the Consumer Guarantees Act 1993 which is a guarantee that a service supplied to a consumer will be reasonably fit for purpose.
- Sections 20 and 21 of the Financial Markets Conduct Act which prohibits conduct that is liable to mislead the public as to suitability for a purpose of financial products or services.
- The FMA suitability requirements in FMCA derivative licensing conditions.
- Code 8 of the Code of Professional Conduct for Authorised Financial Advisers.
- The equivalent requirements for credit contracts: lender responsibility principles and Responsible Lending Code.
- The recommendations of the recent Australian Financial Systems Inquiry, UK requirements for suitability across investments, insurance and finance and EU and IOSCO recommendations.

Goal 1: Consumers have the information they need to find and choose a financial adviser

1. **Do consumers understand the complexities of the regulatory framework?**
   No, consumers are confused by the designations given to advisers (RFA, AFA and QFE), what the legislation calls financial advice and what they call advice, the differences between Category 1 and 2 products, and want accessible information to compare product features and cost.

2. **Should there be a clearer distinction between advice and sales?**
   The FSC believes customers would be better served by clearly knowing whether they were in the financial advice process or the sales process and having each process and the documentation used subject to regulatory oversight by the FMA.

3. **How should we regulate commissions and other conflicts of interest?**
   Most New Zealanders are currently not saving enough to fund a comfortable retirement over a potentially 30 years plus retirement and would benefit from access to financial advice.

   The FSC believes, based on Massey University research that New Zealanders are underinsured particularly in the case of income protection insurance. The products the industry sells are sold, not bought, because they address problems that most people prefer not to talk about, such as premature death, unexpected illness preventing employment and running out of retirement savings before you run out of life. If underinsurance and retirement income adequacy are to be addressed then more people will need to receive financial advice and be sold appropriate products.

   Financial planners, advisers and sales people need to be paid whether by salary or commission. The FSC and its members have commissioned Melville Jessup Weaver ("MJW") to investigate the current sales incentives in the personal insurance industry and any issues that may arise with respect to a potential misalignment of incentives between sales people and their clients. We expect that the MJW report will include possible solution for any of the issues identified and we aim to have firm recommendations available by the time we submit on the FAAR proposals later this year.

   The FSC believes that customers who are being sold a product should be told that the person making the sale may be benefiting from making the sale (refer to bright line exclusion for sales).

Goal 2: Financial advice is accessible for consumers

1. **Does the FA Act unduly restrict access to financial advice?**
   Our advice from members is that the FA Act reforms have had the following impacts:

   - some competent and ethical financial advisers leaving the industry because the increasing cost of compliance made their existing business models non-viable
   - some financial advisers who would have been able to become AFA's deciding to restrict themselves to the RFA designation to minimise what they saw as a regulatory burden and as a consequence no longer provide financial advice

- there has been a significant reduction in the number of independent financial advisers willing to advise on investment products

When the Government's partial privatisation of its power companies occurred there were reports of many people being unable to access independent, non-conflicted advisers to provide advice on whether the investment was suitable for them. It would be desirable for New Zealand households to hold a more diversified group of financial assets than at present but there are fewer advisers now available to give such advice. The FSC has suggested a model where there is a clear distinction for consumers between financial advice and the sale of financial products.

2. How can compliance costs be reduced under the current regime without limiting access to qualify financial advice?

FSC members suggest that regulating the financial advice and sales process so the customer clearly knows which service they are receiving and having the FMA licensing all financial advisers and sales people and the materials provided to customers would reduce the compliance costs for the sector and extend access to the financial advice most customers are seeking.

3. How can we facilitate access to advice in the future?

The FSC believes there is value in having a pathway where those giving financial advice over time all become AFA's and that sales people are recognised separately and that consumers should clearly understand that they are in the financial advice or sales process.

The FSC has suggested that AFA numbers be expanded and provide a designation for advisers wishing to provide advice on the full range of financial products. We have also suggested that sales people be registered to be licensed to sell products for which they are appropriately trained.

It has also been suggested by some of the financial adviser organisations that at key decision points in their lives KiwiSaver's might be able to use their KiwiSaver accounts to pay for independent, non-conflicted financial advice such as when they are preparing for retirement. Similarly it would be useful if during younger New Zealanders' education, that financial capability skills be taught and information provided to assist people starting out in life to secure their financial futures. This could include what levels of education in which subjects are needed for particular careers and what is the likely employment prospects for someone who completes a particular qualification or training course.

It is likely that with New Zealander's preference for do-it-yourself solution, that Robo-advice will become an attractive option for those who do not wish to pay to receive financial advice and those who feel more comfortable accessing advice online rather than in person.
Industry Associations, Unions, Consumer New Zealand and the Commission for Financial Capability, through its Sorted site could be providers of such online advice that in part replicates the financial advice process.

The FMA should also be making this sort of information available to potential investors and purchasers so they know what to ask to ensure they buy what they need.

Goal 3: public confidence in the professionalism of financial advisers is promoted

1. **Should we lift the professional, ethical and education standards for financial advisers?**

   As the FSC envisages, the future of financial planning will be built around AFA's able to provide financial advice and sell its recommended products, it is expected that eventually the level of education required will become a degree or similar level qualification. Alongside that, there is expected to be an expansion in the number of people licensed to sell particular financial products. It should be the responsibility of the organisation selling the product that their sales people are qualified to advise a customer on the suitability of the products they sell. All financial advisers should have training in ethical practice but to promote ethical behaviour it will also be necessary for non-performance to result in the loss of a license to work in the sector.

2. **Should the individual adviser or the business hold obligations?**

   The model that the FSC sees developing would have QFE's in effect standing behind the performance of their advisers and sales people, as would a brokerage or sales agency.

   In the case of a financial adviser or salesperson working on their own, they would take individual responsibility for the suitability of financial advice or a product sold to a particular customer. With each practitioner being a member of a dispute resolution service, having to hold liability insurance and being at risk of losing their license for engaging in inappropriate behaviour we consider that the client would have effective remedies available whether doing business with a QFE or any other business type dispensing financial advice or selling financial products.

3. **Could the Register provide better information to the public?**

   Yes, the FSC members consider the Australian financial advisers register contains information that would help consumers identify a suitable adviser to use.

   There would be value for consumers in listing on the register:

   - the qualifications of the adviser
   - any disciplinary actions taken against an adviser or pending
   - areas the person specialises in or has exclusion from
   - a short statement outlining their approach or business model
   - the dispute resolution service they are a member of
   - professional liability insurance cover in place
   - list of the products that the Adviser can sell/advise on
   - the date at which the information was last updated

4. **How can we avoid misuse of the Register by overseas financial providers?**

   The register should only be available for New Zealanders domiciled advisers or people advising New Zealanders from offshore (entity would be required to have a director resident in New Zealand who is actively involved in the business and has liability insurance.

5. What is the impact of having multiple dispute resolution schemes?

The FSC members value the availability of multiple dispute resolution schemes because it ensures industry customers receive a quick, low cost review of their complaint which boosts trust and confidence in the industry.

Provided all dispute services have the same minimum standards (e.g. claim limit and similar fee structures) the current arrangements are most likely to encourage high levels of performance for consumers with complaints and the industry.

If dispute resolution services providers are able to have different standards then this encourages industry players to join the dispute resolution scheme with the lowest claim limit and/or fee structure, to the detriment of consumers.

FAA Review – FSC Submission

1 Do you agree that financial adviser regulation should seek to achieve the identified goals?

Yes they should, but the identified goals are not sufficient as they stand. While the goals are useful, like the Treasury's Principles for Best Practice Regulation, on their own, they are not sufficient to provide for the promotion of effective accessible financial advice.

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

Some years ago the FSC adopted the following criteria for the assessment of regulation:

Financial Services Council
Criteria for assessment of regulation

1. Regulation should be used only to address an identified problem that cannot be solved by other means.
2. Regulation should be developed in consultation with those expected to benefit from it as well as those expected to be subject to it and the benefits of regulation should exceed its costs and provide the lowest cost solution from suitable options.
3. Regulation should be based on a reasonable assessment of the capability of consumers and providers to use and understand it. In other words, on what they are realistically likely to know and be able to do rather than what they might ideally know.
4. Regulation should not impede innovation or competition.
5. Regulation should be able to provide a predictable outcome and, where possible, should draw on other existing regimes (including those in other jurisdictions) that have been shown to be efficient and effective.
6. A regulatory impact statement should be prepared before the decision to enact the regulatory regime in order to avoid unintended adverse consequences.
7. Regulation should be the subject of both regular review and evaluation.
8. It should be probable that the proposed regulation will cause an appropriate change in behaviour

While they generally overlap with the Treasury's Principles under criteria 3, they touch on the major deficiency in the existing regulatory framework for financial advice. The existing framework does not have sufficient regard for how New Zealander's prefer to obtain financial services and advice. New Zealanders wish to deal with people they like and trust and expect the adviser or sales person to know more than they do and be able to advise whether a particular product is suitable for them. Most people do not want to pay for financial advice, but are happy to purchase products from people who are rewarded for doing so.

FSC members provide products that manage the financial risks that could arise from premature death, extended illness that precludes earning an income and retirement income inadequacy. These are subjects most people would rather avoid talking about unless they have to. These products are therefore more often sold than bought.

Regulation that restricts the access to financial advice is likely to reduce the financial resilience of New Zealanders by preventing some people from purchasing products that will enhance

their financial security and are welfare enhancing that is the benefits are likely to exceed their costs.

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

The current definition of financial advice is so wide that it captures the sales process for financial products and services. As mentioned earlier, there should be a bright line exclusion included in the legislation for sales transactions.

4 Is the distinction in the FA Act between wholesale and retail clients appropriate and effective? If not, what changes should be considered?

The FA Act would only apply to people advising retail customers – wholesale participants are governed by the fair dealing provisions of the Financial Markets Conduct Act, not the FAA.

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?

As mentioned earlier, there should be no distinction between class and personalised advice. All financial advice should be personalised.

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

The key is to ensure that advisers are competent in the products and services they can give advice on. Therefore, under our model each adviser will be required to meet minimum qualification/education standards relevant to the products/services that they are advising on.

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?

Under our suggested model there would be no categorisation of products.

8 Do you think that the term Registered Financial Adviser 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.

The term "Registered Financial Adviser" does not give the consumer an accurate understanding of what these advisers are allowed to provide them advice about and the level of competence they have to do so. Under the new model the RFA designation is removed, and someone who is currently a RFA would have to elect to either become an adviser or a salesperson. All advisers would have to meet minimum education/training standards (relevant to the products that they are advising on). If an RFA did not want to meet the required standards then they could only operate as a sales person (and would need to be registered on the FSPR to reflect this).

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

The conduct requirements set out in the Code are appropriate, and under our proposed model all advisers would be subject to the Code (regardless of what products they are accredited to provide advice on).

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

Disclosure should be the same for all advisers. There needs to be full disclosure and transparency around what products are on offer, remuneration and any contractual obligation, sales targets and soft dollar incentives.

In our model RFA's would either become AFA's or salespeople with appropriate regulation of disclosure for both.

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

As already mentioned, there needs to be a change to this designation and then there should be a minimum qualification / education threshold to meet.

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

Whist actual costs advisers pay to meet the new code and regulatory requirements have risen e.g. training, compliance checks, registration, dispute resolution etc, these have mostly, with the exception of time, been absorbed into the business and in a lot of cases transferred to clients by increasing fees etc. There is value in maintaining an Adviser Business Statement "ABS" however some of its contents are already duplicated through other means including regulatory websites and information already sent to FMA, Professional Bodies etc. Given current technology it would seem reasonable for advisers to fill in one ABS form, possibly web based, that would flow into all areas of business and compliance plus a public register. Copies could still be either printed, linked or emails to clients. This operates for KiwiSaver reporting with fund managers and could be easily replicated for ABS given the common format etc.

13 Is the distinction between an investment planning service and financial advice well understood by advisers and their clients? Are any changes needed in the way that an investment planning service is regulated?

No. The distinction is not well understood by consumers or advisers. Most consider investment planning (specific advice) is the same as financial advice (holistic or all-encompassing advice). More clarification on what each service does or does not cover is warranted.

14 To what extent do advisers need to exercise some degree of discretion in relation to their client's investments as part of a normal role?

Most advisers operating within the investments area exercise some degree of discretion, even if that is simply to advise a client, when in their opinion, an investment should be changed or modified. This has always been the hallmark of experienced, hands on, professional advisers. It is however paramount that the adviser is qualified and experienced to use that discretion and the current DIMS qualification process and vetting should ensure this.

15 Should any changes be considered to reduce costs on advisers who exercise some discretion, but are not offering a funds management-type service?

It is too early for the FSC to comment on the new DIMS regime.

16 Are the current disclosure requirements for AFA's adequate and useful to consumers?

Adequate yes, useful no. A simpler more consumer friendly information source would be more helpful including clearly telling the customer if they are in the sales or financial advice process. Few clients read disclosure statements in detail and most just glance at them. They usually know the adviser personally therefore some of the disclosure contents are already known or advised elsewhere like a website. It is useful for consumers in choosing an adviser or where they do not know of them. It is also hard to get disclosures signed and acknowledged by the clients who have no "buy in" on the process at the time they are required.

17 Should any changes be considered to improve the relevance of these documents to consumer's and reduce the cost of producing them?

It is too early to assess the relevance of more recent innovations. Relevance can be improved by making them shorter, able to be delivered digitally (as html on a website, links etc) and acknowledged by electronic means. Similar to the way disclaimers are notified and acknowledged.

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

Yes. It is important to have a process that allows for meaningful industry input into the development of the Code, and the current process seems to allow for that.

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

We have no comment on this question.

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

Yes.

21 Should the jurisdiction of this Committee be expanded?

No change is recommended.

22 Does the limited public transparency around the obligations of QFEs undermine public confidence and understanding of this part of the regulatory regime?

Whilst there is a general lack of consumer understanding about the regulatory regime, the lack of transparency around the obligations of a QFE aren't a specific key driver of that. There is more benefit in a consumer clearly understanding the type of service they are engaging with, financial advice versus a product sales service, than understanding the details of a QFE regulatory requirements.

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

There would be no great benefit in increasing the transparency of the QFE obligations to the public.

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

Viewed in isolation yes they are adequate but the current disclosure requirements for QFE advisers are likely to have little real meaning to consumers. There should be more standardisation of disclosure requirements across all channels where 'advice' is offered. Consumers should be clear when entering into a more pure 'sales' discussion.

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

If there is a clearer separation between 'sales' and 'advice' then they may need changing. They should be standardised but also need to be straight forward and easy for consumers to understand. They also need to be practical in their ability to be implemented. Consumers utilise a variety of channels for advice and sales situations (e.g. face to face, telephone, digital) and disclosures must work within those.

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

The new Broker requirements enhance historical best practice in the sector however guidance and industry support from the FMA will always improve understanding.

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

As with custodians these requirements ensure broker conduct maximises the best interests of their clients and safeguarding of client assets at all time.

The promotion of a degree of separation when acting with client assets ensures client assets should always be handled correctly and the Broker is answerable to this.

The requirements set a formalised standard for competency and accountability for the benefit of the overall industry.

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

The recommendations currently made by FMA for disclosure are reasonable and could become a standardised requirement for informing clients. The disclosure requirements currently recommended by the FMA are:

- any material interests or relationships you have
- your procedures for handling client money or property
- any criminal convictions or civil or disciplinary proceedings you (or your principal officers) have
- you should give sufficient information to each client to whom you owe obligations, to enable them to make an informed decision about whether to use your broking services
- You should also disclose your fees and other remuneration payable (directly or indirectly) by clients for your services.

Any future disclosure needs to be mapped against the current disclosures and reporting by connected parts of the industry (ie Custodian reporting requirements) to ensure there is not double reporting and large overlaps – the information should be meaningful and the compliance impact on the reporter should be minimised where possible.

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

We have no comment on this question.

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

The recent legislation additions that include extra requirements on custodian services enhance the role of the custodian as an independent safe-guarder of client assets.

The requirements for client reporting increase the transparency of the custodian role, enabling this typically back office function to become another layer of visibility to the retail investor.

Making the custodian directly accountable to the retail investor can only increase the standard of custodial services, decreasing opportunity for misappropriate and mismanagement, and therefore increase confidence in the sector.

The requirement for a custodian to obtain an assurance engagement and make this available to both the FMA and the retail client introduces a mandatory independent assessment that there are adequate safeguards against the loss, misappropriation, and unauthorised use of client money and client property – again this is a positive move for the sector putting stringent audit requirements across the custodian sector.

31 Should any changes to these requirements be considered?

It is still very early to consider changes as the adequacy of the requirements are yet to be tested ie reporting has not yet occurred and this is the first year assurance reports must be made available to the FMA and client.

The practicality of some requirements definitely needs be considered with feedback from the sector ie Historically the use of buffers in client accounts has been a widespread practice and the new legislation has required major alteration for many brokers and custodians to not breach this rule – however recently the FMA has indicated that if well documented and calculated for shorter term account maintenance buffers, ie daily, then small buffers should practically be allowed (although contravening legislation).

Also there is possibly overlap in reporting between Brokers, Custodians and DIMs licensees and this should be reviewed in the future to ensure compliance burdens are kept at a minimum for all parties including the FMA.

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

The FSC believes the current exemptions for accountants, lawyers and not for profits are appropriate and should continue. Accountants and lawyers are rarely active in the business of providing financial advice other than when incidental to their other activities. If consumers

have issues with their performance in giving that advice, the existing complaints process for those professions are available for those seeking redress.

Similarly, given the current issues with the public gaining access to competent effective advice, there is no good reason to remove the current exemption for not for profit organisations who provide general advice on a free to user basis.

33 Does the FA Act provide the FMA with appropriate enforcement powers? If not, what changes should be considered?

The FA Act provides the FMA with enforcement powers for each type of financial adviser. The FMA does not have significant powers over RFAs under the FA Act, save the general power under s 97 to investigate any compliant it receives concerning financial advisers. Consideration should be applied to whether the FMA requires further powers to regulate suitability. Our initial view is that the FMA has significant powers under the FMC Act and Financial Markets Authority Act 2011. The powers should be consistent – although not replicated across legislation.

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

Guidance should be aimed at resolving a problem or difficulty. It is of most value when it offers clarity in areas of uncertainty. Accordingly, guidance should strive to assist market participants in navigating through grey areas as well as black and white. Guidance should not be binding on market participants who should be able to develop their own methods of complying with legislation. Complying with guidance should prima facie be evidence of compliance.

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.

Consumers do not understand the regulatory framework. That in itself is not a necessary part of meeting the goals of the regime. However, the regulation is so complex that in many circumstances market participants do not feel confident in complying without obtaining legal advice. The distinctions between category 1/ category 2 products, RFAs/AFAs, wholesale/ retail and personalised/class advice made the regime very complex.

Enabling a sales process that does not stray into "financial advice" (as set out in 37 below) could result in a regime where for financial advice there is:

- No distinction between class and personalised advice. All financial advice is treated as personalised.
- No RFA/AFA distinction. Only AFAs can provide financial advice. Anyone who distributes financial products or financial services must be registered on the FSPR as a distributor or be part of a QFE.
- No distinction between category 1 and category 2 products.
- The FA Act would only apply to people advising retail customers.

Generally, consideration should be applied to moving toward more principles based regulation and away from the current prescriptive regime. This could simplify and future proof the legislation, reduce cost and improve consumer protection. The needs of the customer should be put at the centre of the regulation, without losing sight of the additional purposes adopted from the FMCA such as facilitating the development of fair, efficient, and transparent financial markets and cutting compliance costs.

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?

The data in the Issues Paper suggests that consumers are aware that they are being sold a product, but are being told that they are receiving financial advice. This disparity between what a consumer understands and what he or she is told, may go some way to explaining the lack of confidence consumers have in the industry and financial advisers.

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?

Consideration is needed in creating bright line test for sales. Because, currently, most sales are made by people (not computers) the regime has to deal with the infinite complexity of human communication and behaviour. Fitting human behaviour into legal definitions is never easy, but sales and advice could be distinguished by:

- a bright line exclusion for sales from the definition of 'financial advice',
- product providers positive obligation to ensure the suitability of financial products

Sales/ Advice distinction

Amendment to FAA s 10(3) could provide one possible means of carving out sales from the financial advice regime. Section 10 defines financial advice and sets out when financial advice is not provided. A new s 10(3)(ba) could state:

"Making a recommendation or giving an opinion about a financial product when the prescribed warning has been given."

The warning could state:

"WARNING: I am selling this financial product on behalf of [*name of financial service provider*]. It is my job to sell this product and I may be rewarded for this sale. I have not taken into account your particular financial situation or goals. If you want financial advice you should talk to an authorised financial adviser."

Consideration should be given as to whether the warning includes an explanation of suitability. Processes around giving the warning could be developed based on s 36U Fair Trading Act (extended warranties).

Suitability

A legislative requirement for suitability should be backed by non-binding guidance issued by the FMA or industry organisations. Product providers must be able to demonstrate to the FMA that their products are fit for purpose and identify who they are suitable to be sold to. This information must be provided to distributors.

A legislative requirement for suitability can be achieved by:

(iii) relying on ss 20 and 21 of the Financial Markets Conduct Act plus FMA guidance; or
(iv) developing the concept of 'responsible financial service provider' in the FSP(DR)A.

Alternatively, a suitability requirement could be introduced in the FAA (s 33 and amended 20F).

In structuring a suitability requirement, consideration should be given to:

- Section 29 of the Consumer Guarantees Act 1993 which is a guarantee that a service supplied to a consumer will be reasonably fit for purpose.
- Sections 20 and 21 of the Financial Markets Conduct Act which prohibits conduct that is liable to mislead the public as to suitability for a purpose of financial products or services.
- The FMA suitability requirements in FMCA derivative licensing conditions.
- Code 8 of the Code of Professional Conduct for Authorised Financial Advisers.
- The equivalent requirements for credit contracts: lender responsibility principles and Responsible Lending Code.
- The recommendations of the recent Australian Financial Systems Inquiry, UK requirements for suitability across investments, insurance and finance and EU and IOSCO recommendations.

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

No. This would be improved by requiring all disclosure to be clear, concise and effective.

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

Disclosure plays a part in engaging consumers and encouraging them to take responsibility for their investment decisions. Accordingly, it should be clear, concise and effective. The current length and complexity of disclosure statements does not encourage consumer engagement. Diagrams could be useful to illustrate key information.

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. Consideration should be given to there being only one category of financial adviser who would be required to disclose relevant information including commissions and potential conflicts of interest.

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?

Robo-advice models suggest that in the future advice will be "free". Furthermore, there is little appetite amongst New Zealand consumers to pay for financial advice, except in limited circumstances where they are prepared to pay a fee for a financial plan. Accordingly, an industry solution should be sought for commission.

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, it is important that the minimum quality standards of advisers and sales people are raised. Raising the minimum quality standards may reduce the number of advisers, but it is difficult to assess the impact this may have on competition between providers.

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

Raising the standard for all advisers, differentiating between advisers who offer advice and salespeople, and removing incentives to churn should all have a positive impact on competition between advisers.

Disclosure obligations should be changed. There should be standardised and simplified disclosure obligations, which include meeting a clear, concise and effective test for all financial advisers and salespeople. Primary and secondary disclosure should be discontinued. The purpose of disclosure should be to empower customers to make well informed purchasing decisions and address any information asymmetry between the customer, adviser and product provider. If this is achieved there should be increased competition between advisers.

There should be a focus on providing financial capability support that aids consumers to ask the right questions and establish for themselves if they are receiving competitive advice.

In addition the mechanisms available to the FMA and industry to address poor conduct by advisers promptly should be improved.

Increasing the number of advisers who provide advice should improve competition. Therefore it is important that any regulatory changes ensure that while there are appropriate barriers to entry, the regulatory structure allows for "apprenticeships".

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?

Please refer to our responses to Q35 and Q37.

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

The FSC has been advised that the cost of complying with the FA Act regulation has been high across the industry, with the relative cost being borne by Advisors being assessed as particularly significant. Larger entities look at the cost of complying with this legislation as part of the fixed cost required to operate in the sector.

The complexity of the legislation has been called out as a reason for providers to seek ongoing (costly) legal advice- therefore reducing the complexity of the legislation would reduce the need for this additional cost. Ongoing compliance costs (registration, ABS, surveillance audits) have also been called out as additional costs of the regime. The FSC has also been advised that

the market is setting the price of services provided under the Act, so these costs have been absorbed by providers.

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

FSC has also heard (para 153 of MBIE's paper) that AFAs are reluctant to give class advice or information only services due to the perceived risk of breaching the code. Providing a clearer process to permit AFAs to operate in this non-financial advice area would provide them with more flexibility, provide clients with the right cost: benefit outcomes and increase competition in the sector. The FSC's suggested model would achieve this.

48 What impact has the Anti- Money Laundering and Countering Finance of Terrorism Act had on compliance costs for advisors? How could these be minimised?

There are three impacts of the Anti- Money Laundering and Countering Finance of Terrorism Act on Advisers: the cost of setting up ongoing compliance processes to avoid money laundering; the cost of operating those compliance processes; in addition to the cost of preparing for and responding to surveillance audits. These costs have already been borne by the sector and further regulation would add to the cost of change in the short term.

For those financial advisers that are also reporting entities, a single annual return could reduce compliance costs.

We note that the inclusion of other businesses and professionals though the implementation of the second phase of the AML/CFT legislation should indirectly have a positive impact on the AML/CFT compliance related costs for advisors.

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 have a big effect on the market for advice. However to date no one KiwiSaver provider has a robust answer to decumulation. Most just put the client into a conservative product. Decumulation requires looking at income needs over the remaining period the client lives plus allowing for surplus funds to be distributed to beneficiaries. This issue has yet to be resolved properly in Australia too. This issue of retirees having mortgages to be repaid also needs to be addressed.

No specific changes need to be made to regulations.

50 What impact do you expect that the introduction of the 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?

Introduction should have a positive impact on financial advice for New Zealand. However the Act should be able to have that positive flow for both now and in the future so the way advice will be received by future investors needs to be included as well as it is today.

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

With the internet/technology providing "international" access to knowledge and advice, and which is expected to increase as tech savvy investors look for cost effective, robust advice, any Act needs to take this into account. Currently New Zealanders can access a number of financial advice sites and even open accounts. The issue is not the advice but the other regulations like AML that can impact investors. Discussions with FMA/MBIE show whilst they are aware of this they are unsure how to monitor and enforce – both New Zealanders using global sites and overseas visitors using New Zealand sites.

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

As we are aware Australia is stepping up the minimum qualifications for advisers and has for many years had ongoing requirements including regular update exams. Some mutual recognition is beneficial but as Financial Planning is a big employer in Australia the options for learning are much better than in New Zealand. So whilst mutual recognition is good, the access to education and the level must be also mutual.

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

New technologies (Robo Advice and wrap platform accessibility etc) have already started to change the market and customer experience for advice. This will continue at a rapid pace as institutions or larger dealer groups target younger investors with KiwiSaver, saving for first home etc. Whilst no one in New Zealand has an offering similar to that offered globally, this will change over the next few years and both FMA and MBIE are aware of the challenges this will bring in term of regulating the advice, AML etc. The one major difference globally compared to face to face advice is the low cost of product offerings e.g. ETF's. This is something that New Zealand given its market size might have difficulty reproducing.

Robo-advice with sales execution under current legislation is financial advice. The regulatory regime for financial advice and sales in the future will need to incorporate robo-advice.

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

Discussions with FMA/MBIE show their focus remains on "real" advisers and their process. This is also for the review. Not a lot of thought has been given to a technology alternative. They are aware of the issues that can affect current code, regulations and standards of advice plus any future disputes. They are also mindful of the need to increase access to advice and any innovations but remain firm in the need for some regulatory oversight. Examples of Robo Advice in the US and UK have shown there is a good "middle ground" for innovation and regulation and FMA/MBIE are looking into these examples.

The FSC and the industry are interested in sharing technology developments with policy makers and regulators. The potential uptake of robo-advice needs to be recognised in regulation.

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

We consider that the minimal standards for ethical behaviour contained in the Code are broadly appropriate. We also support the principle that the Code can be amended from time to time as required to ensure public confidence in the professional standards of advisers.

We believe that standards have risen since the Code was introduced, as advisers become increasingly familiar with the requirements and understand how these standards apply to the financial advice that they are providing to their customers. Increasing consumer engagement and educational standards for advisers will serve to improve the ethical behaviour of advisers over time. We consider that ethics should be a key part of an adviser's training and continuing professional development.

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

Yes, the same requirements should apply to all advisers.

57 What is the appropriate minimum qualification for AFAs?

As submitted earlier, we promote the removal of a distinction in adviser categories. In our view any person providing financial advice must be appropriately qualified for the products that they are advising on. Advisers should not be able to provide advice on any product where they do not have requisite skill/training/competency.

The minimum education requirements should comprise a core syllabus for all advisers covering such things as an advice process, conflicts, code/ ethical requirements, coupled with tailored components relevant to the adviser's scope of service, eg risk products, insurance advice, wealth. ASIC Guidance Note 146 is useful to consider in this respect.

We promote raising the education standards of advisers over time. We would expect advisers to aspire towards a professional qualification. We understand this is a process that will take time. We would also like to see more transparency in the levels of training/competency that an adviser has attained by requiring this information to be recorded on the adviser's FSP registration.

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. Please see comments in 57 above, noting we believe minimum qualifications should extend to any person providing advice.

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

An ancillary objective of the legislation should be to promote the trans-tasman mutual recognition of advisers. Accordingly, in looking to improve the educational standards for NZ advisers, it appropriate to look to Australia as a matter of direction (bearing in mind that Australian policy is not always applicable in the NZ context, and the impact of aligning adviser qualification levels (e.g. degree qualification) would need to be considered).

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

In our view this is not the role of professional industry bodies. We believe the role of a professional body is to display leadership by adopting a clear public position on important issues facing the industry and to represent its members by lobbying and influencing government on these issues. We also see the role of a professional body is to support its members by providing them with training and professional development opportunities.

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

No. There should be no role for professional bodies in the regulation of financial advisers. This creates undue complexity and seems to be suggesting a pre FAA approach, which failed because it relied on professional bodies to establish and enforce standards.

In our view the model whereby the QFE takes responsibility for its advisers, and the FMA directly regulates advisers outside of a QFE, is the correct one.

Sales people/advisers working outside a QFE must be accountable to the consumer and FMA directly, and must carry adequate and appropriate insurance relevant to their business (and this must be prescribed in legislation).

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?

As noted above, we support a sales and advice model. In either model where the person is employed by, or contracted to an entity, that entity must be responsible for that person's conduct and their compliance with rules relevant to the customer engagement (disclosure obligations for example). A consumer's right of action should be against the entity, as that is the brand they are engaging with, vs the employee, eg a bank teller. The FMA, as the regulator of the entity, must have sufficient tools to deal with errant sales or advice staff, in circumstances where the entity is not adequately doing so.

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?

Yes. Because the QFE takes responsibility for its QFE adviser we consider this has the potential to provide a better outcome for the consumer. Because QFEs are required to meet minimum standards set by the FMA, this provides the consumer with better access to remediation (eg better complaints handling). We would support the concept of additional capital requirements being imposed on QFEs to ensure that there is sufficient capital to apply toward any advice failure.

The compliance costs of the QFE model are high, but work to reduce individual adviser compliance costs. There are some costs that should be reconsidered as part of this review eg annual preparation of an ABS.

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

We support the register including additional information of value to consumers: our proposed financial adviser's qualifications, any disciplinary record, any areas of specialisation (or exclusion and any special features such as languages spoken.

Other information that could assist regulators and the public include a declaration of professional indemnity cover and excess.

We also believe there is considerable public good in making more consumers aware of the register and encouraging them to access it. We recommend consideration of ways to raise awareness of the register.

We note that the Australian financial advisers' register details the following:

- The adviser's qualifications, experience and employment history
- What product areas the adviser can provide advice about
- Whether the adviser is a member of any professional bodies or industry associations that are relevant to providing financial services
- Whether the adviser has been the subject of disciplinary action by ASIC
- The name and number of the Australian Financial Services (AFS) licence holder who employs or authorises the financial adviser to provide advice
- Details about who owns or controls the licence holder

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

See Question 64.

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

We believe that alternative dispute resolution saves time and money for consumers, advisers and suppliers, and represents an accessible and cost-effective alternative to the court system. An efficient and effective disputes resolution process adds to consumer trust and confidence.

We also believe that, similar to the court system, both the insurer and the customer should have the right of appeal.

Further, we note that an insurer's internal complaints processes are an important part of early disputes resolution.

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

We believe that the three stated goals are all important for consumer protection.

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

We believe that all those making financial products available to advisers should have a responsibility to ensure that the adviser is appropriately registered. The FMA would be in a position to audit these internal processes.

In the interests of transparency, the FMA should have the discretion to require any breaches of registration provisions to be recorded against the name of the provider on the register.

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

All advisers need to be registered, and the Register needs to contain information that is valuable to the customer. See our response to Question 64 for more details.

We suggest the register contain the provider's principle country of business, and centre of control (if it is not New Zealand) so the FMA is assisted in identifying offshore entities offering their services principally offshore, to investigate their suitability on the register. The powers in Section 15A to 15C of the FSPA should be sufficient to protect the register (with this assistance) to the extent reasonably practical.

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

We recommend that all providers of financial advice should have to belong to a dispute resolution scheme. We note that the Fair Trading Act and the Consumer Guarantees Act provide some protection.

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

We are not aware of any problems with the approvals regime and recommend no major change to the current framework for the approval of disputes resolution schemes.

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

We believe the current monitoring regime serves consumers and New Zealanders well. We concur with the views of the Commonwealth Consumer Affairs Advisory Council in their Review of the Benchmarks for Industry-based Customer Dispute Resolution Schemes ([1]) that the principles retain on-going relevance.

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?

We support the current choice of dispute resolution schemes, and believe competition and choice will lift quality and control cost.

We note the conclusion of a recent independent review of a disputes resolution provider by the Australia-based Foundation for Effective Markets and Governance ([2]):

> *"We have come to the conclusion that on balance, competition between EDR schemes has not been dysfunctional. We see risks and advantages and disadvantages in both competitive and monopoly models. The advantages of competition are clearly to push schemes to greater levels of efficiency and potentially greater levels of quality in their services. There is a risk of a race to the bottom in quality in the quest to maintain market share or membership because of pricing pressures. We have seen no evidence that this has occurred in this sector*"

There needs to be the same regulatory regime coverage for all dispute resolution services in the industry.

[1] CCAAC, Review of the Benchmarks for Industry-based Customer Dispute Resolution Schemes,
[2] Foundation for Effective Markets and Governance, Financial Services Complaints Ltd Independent Review, February 2015

74 Should the $200,000 jurisdictional limit on the size of claims that dispute resolution schemes be raised in respect of other types of financial services, and if so, what would be an appropriate limit?

We believe the current level of $200,000 is appropriate given that there is no right of appeal for product providers and distributors.

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

We recommend that Professional Indemnity Insurance be mandatory for all advisers and financial service providers including online advice providers and QFEs.

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

The register provides access to a limited amount of information (the name, contact address, categories and dispute resolution membership) of financial service providers. To that extent, it allows people to screen out persons or businesses purporting to be financial service providers who have not become registered or who claim they can perform services they have not registered for. Boiler room advisers often will not be registered, and can be identified as being unqualified to provide financial advice through an online check of the register. For those who wish to contact a financial service provider's dispute resolution scheme, access to this information from the register would also be useful. However, because of the limited nature of the content, the register appears to have few further uses for consumers. It is important to remember though that the register's other purpose was to identify persons subject to the AML requirements. It has served that purpose successfully.

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

We support inclusion of adverse findings in disciplinary proceedings and censures from recognised regulators and NZ Markets Disciplinary Tribunal. However, the incidence of these findings is rare compared to the number of registered financial advisers.

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. We support the FMA's actions to remove foreign controlled persons not conducting business in or from New Zealand from the register and the introduction of sections 15A to 15C of Financial Service Providers (Registration and Dispute Resolution) Act 2008.

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?

We suggest that additional fields be added - the financial service provider's principal country of business and centre of control if it is not New Zealand, so the FMA can identify providers who are operating or controlled principally overseas. While, many legitimate financial service providers will have overseas countries in these categories, it would assist the FMA in narrowing the field of those financial advisers who are using New Zealand as a convenient regulatory forum.

80 What is the effect of (positive and negative) competition between dispute resolution schemes on effective dispute resolution?

The FSC believes the best interests of both consumers and the responsible members of the industry it represents are served when consumers have access to quick, low cost, independent review of their complaint. This is best provided by competition in performance basis between multiple dispute resolution services (provided that ceratin minimum standards across the dispute resolution schemes are the same). This is best achieved if the competition occurs on performance not by having lower standards (e.ge. lower limit on claims or fee structures) by one or more dispute resolution service providers that will make them a magnet for the less well intentioned industry players.

We believe one monopoly provider of dispute resolution services is unlikely to be in the best interests of either consumers or the responsible service providers in the industry. It is for that reason we support having the same claims level limit, for each dispute resolution service while retaining the option for providers to waive that limit in particular circumstances.

The only downside of having multiple dispute resolution services is that on occasions a consumer unhappy with both the product and how it was sold may end up dealing with two different dispute resolution services. We believe however, that this is an issue that can be managed by product producers and the agent and broker organisations they are associated with agreeing to use a common dispute resolution service.

Issues to do with the absence of knowledge by consumers of which dispute resolution they should approach are best handled by requiring each organisation in the product manufacture and distribution chain making it clear on its website and in its sales materials which dispute resolution service the customer should approach if it is unhappy with the outcome of its initial complaint to the service or product provider. This could be a license requirement for product providers and distributors.

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

See answer to question 80.

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

See answer to question 80.

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