IAG New Zealand submission

to the

Ministry of Business, Innovation and Employment

on the

Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2019

11 November 2019

1. Introduction

1.1. This submission is a response by IAG New Zealand Ltd (IAG, we) to the Ministry of Business, Innovation and Employment (MBIE) on the Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2019 (Draft Regulations).

1.2. IAG is New Zealand's leading general insurer. We insure more than 1.8 million New Zealanders and protect over $650 Billion of commercial and domestic assets across New Zealand. We receive more than 650,000 claims a year and pay $1.365b in settling them.

1.3. This submission includes information that is commercially sensitive. If MBIE plans to make this submission available publicly we request the opportunity to provide a redacted version.

1.4. We would welcome the opportunity to discuss this submission with officials.

1.5. IAG's contact for matters relating to this submission is:

Bryce Davies, Executive Manager Corporate Relations
[redacted]

2. General comments

Ensuring the disclosure regime is workable

2.1. IAG supports disclosure that provides consumers with the information they need to confidently select their adviser and act on their advice. As such, we are pleased to have the opportunity to comment on the Draft Regulations.

2.2. In our previous submission on financial adviser disclosures[1] we asked for the regulations to recognise the breadth of financial advice services in the market and provide clear guidance on what is to be disclosed and flexibility on how. Further work is need on all three aspects, as in their current form the Draft Regulations are unworkable for the type of advice service IAG provides.

2.3. To make the regulations workable we are seeking four general changes:

- The ability to make a single disclosure that encompasses the information required to be disclosed when the nature and scope of advice is known and when advice is given. This would avoid significant operational and customer experience impacts which are a key factor in IAG's decisions about its participation in the financial advice regime.
- Reducing the amount of information that is required to be disclosed for obligations that apply universally to all providers of financial advice, such as duties, complaints procedures and disputes resolution services, by simplifying what is to be disclosed and referencing information that is publicly available.
- Various changes that provide greater guidance on what is to be disclosed in relation to: commissions and incentives; fees, expenses and other amounts payable; and licence conditions.
- Greater recognition that Financial Advice Providers are the source of financial advice in respect of Nominated Representatives.

2.4. Our comments and recommendations are not seeking substantive change or to alter the purpose of disclosure or Cabinet's intent. Rather they are focused on ensuring that the regime is workable and delivers clear, concise and effective disclosure.

2.5. We are also seeking an amendment to the commencement order so that there is enough time to implement the changes needed to comply with the new disclosure regime. The delays in finalising the disclosure regulation make a commencement date on 29 June 2020 unachievable.

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[1] 'IAG submission to the Ministry of Business Innovation and Employment on the Discussion paper: Disclosure requirements in the new financial advice regime', May 2018

An information gap for no-advice sales

2.6. The Draft Regulations (s229D) indicate that if an adviser does not have 'reasonable grounds for concluding that advice may be given', either because of the nature of their interaction with the customer or the application of a no-advice model, then disclosure under regulation 229D and consequently 229E is not required.

2.7. Prescribing disclosure obligations that are cumbersome or costly to implement will, along with the wider impost of the updated financial advice regime, only increase the use of no-advice models by creating a further regulatory disincentive to operate as a Financial Advice Provider or Financial Adviser.

2.8. This will have the effect of depriving customers of information on specific fees, commissions and incentives, and conflicts of interest that may still be relevant to their decision to acquire a product.

2.9. We note that in their report on the life insurance industry, the Reserve Bank of New Zealand (RBNZ) and Financial Markets Authority (FMA) expect insurers to encourage all intermediaries to disclose all commissions to customers[2]. This will only occur as a matter of minimum practice with the support of regulation.

[2] Page 10, *Life Insurer Conduct and Culture: Findings from an FMA and RBNZ review of conduct and culture in New Zealand life insurers*, Reserve Bank of New Zealand and Financial Markets Authority, January 2019

3. Summary of recommendations

3.1. We recommend that the Draft Regulations are amended:

- To expressly allow the information required by clauses 5(2) and 6(1) of Schedule 21A to be met through a single disclosure for 'simple advice processes', especially those that are characterised by a single interaction of short duration.
- So that the requirements of clauses 5(2)(b) and 6(1)(b) do not apply to Nominated Representatives.
- To ensure clause 2(3)(b) incorporates the materiality test that Cabinet intended to be included.
- So that clauses 5(2)(d) and 6(1)(d) are amended to require fees, expenses and other amounts payable to be itemised.
- So that clauses 6(1)(g) and 6(1)(h) only require the adviser to inform the customer that they have a complaints procedure which they can access and where they can find publicly available information on that procedure.
- So that clause 6(1)(i) only requires the adviser to inform the customer that they have a dispute resolution service which they can access and where they can find publicly available information on that service.
- To remove clause 5(1)(b).
- To provide further guidance on which license limitations are to be disclosed.
- So that only those reliability events that are likely to materially influence a customer's decisions are disclosed.
- So that the requirements of clause 5(1)(h) do not include reliability events relating to Nominated Representatives.
- So that clause 6(1)(j) is streamlined to only require the adviser to say that the FAP is bound by the Code of Professional Conduct for Financial Advice Services and that this information is publicly available.
- So that information on duties is included in clause 4(1) rather than clause 6(1).

3.2. We recommend that the Commencement Order is amended to delay the date on which the requirements of section 431O and or section 431Q of the Financial Services Legislation Amendment Act 2019 come into force.

4. Specific comments

Impact of draft regulations

Recognising 'simple advice processes'

4.1. The Draft Regulations do not sufficiently consider financial advice services that are short and simple such as those supporting the direct sale of most general insurance products. For IAG this is the case for almost all our likely advice giving, which is currently characterised by the following:

- **A single interaction.** Most of our customer interactions that might include giving financial advice take place through a single phone call, visit to a branch, online process, or social media conversation.
- **A compressed timeframe. T**he typical duration of a customer interaction that might include giving financial advice is less than 10 minutes.
- **A single product category.** All the products on which we might provide advice are general insurance products.
- **A single provider.** There are no products on which we might give advice for where there is more than one provider to choose from. Except for travel insurance all products are manufactured by IAG New Zealand. And although we operate multiple brands, a customer will only be offered the products from the brand they have chosen to contact. Consequently, a single remuneration structure and set of conflicts (if any) apply.

4.2. In practice this means that, for example, a customer calling AMI will only ever get advice on buying, altering, or cancelling an AMI general insurance product. The fees, biases and standing of AMI does not change with the advice and nor does the adviser's remuneration. Similarly, we know up front that we will only give advice to a customer on the acquisition or retention of an AMI product.

4.3. It is with these characteristics and concerns about the impacts on customer experience in mind that we have considered the workability of the draft regulations.

4.4. We have also considered the experience we provide to our customers and ensuing that we can provide a service that not only enables them to make good decisions about the advice they consume and the insurance they take out, but that meets the other needs they have of the service we provide them for example speed and ease and the overall aim of ensuring that they are treated fairly.

Meeting the requirements of the draft regulations is unworkable

4.5. Our conclusion is that the draft regulations are not workable in our current context, but that several small changes that we discuss below would rectify this.

4.6.

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4.7. We believe this will result in an extremely poor customer experience. Much of the information is repeated and customers who request a quote also have to listen to a privacy disclosure.

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Proposed amendments

Allow for a single disclosure for simple advice processes

4.9. Regulation 229A of the Draft Regulations specify the disclosures to be made. This includes disclosing information when the scope and nature of the advice sought has been identified so that the customer can decide whether to seek advice from the adviser. And disclosing information when providing advice so that the customer can decide whether to follow that advice.

4.10. In relation to simple advice services such as those provided by IAG's brands through its call centres, branches, social media and digital channels we would note the following:

- Given the short duration of the advice processes, the gap between when the nature and scope of advice is known and when the advice is given will almost always be a small number of minutes.
- Given the limited products, single provider and straightforward needs, the scope and nature of advice is essentially known before the customer makes contact. For example, a customer calling State will only ever get advice of the acquisition or retention of State general insurance products.

4.11. It seems to us that requiring two-step disclosure in 'simple advice services' is unnecessary and would impose unnecessary compliance costs, impede the natural flow of conversation and diminish the effectiveness of the disclosures.

4.12. Given Cabinet's support for flexibility in how disclosure is provided to Clients[3], it seems reasonable for Financial Advice Providers to provide a single disclosure that includes the applicable information required under clauses 5(2) and 6(1) of Schedule 21A. Further, that this single disclosure could be made up-front when the scope and nature of the advice is known. Given the nature of 'simple advice services', this would still support the intent of enabling customers to make informed decisions about whether to seek and accept advice from the Financial Advice Provider and its Nominated Representatives.

4.13. While this approach is not prohibited by the regulations, it is not considered within regulation 229E(5), which deals with when additional information does not need to be disclosed if the customer has already been given the information in the preceding 12 months, as opposed to information that has been provided at the same time.

4.14. **We recommend that the Draft Regulations are amended to expressly allow the information required by clauses 5(2) and 6(1) of Schedule 21A to be met through a single disclosure for 'simple advice processes', especially those that are characterised by a single interaction of short duration.**

Only provide information in relation to the Financial Advice Provider

4.15. In Schedule 21A, clauses 5(2)(b) and 6(1)(b) require 'a person who gives advice' to provide to the client their name, contact details and a statement that they provide advice on behalf of the financial advice provider.

4.16. We have two concerns with this requirement:

- Much of this information is apparent from the interaction and stating it is unnecessary and may be detrimental to the customer experience (although it could be considered as not applicable under regulations 229D(2) and 229E(1))

- The contact details that the Nominated Representative would provide would be those of the Financial Advice Provider (e.g. an 0800 number) and would likely lead the customer to a different Nominated Representative. The customer will already have those details as they will have used them to contact us.

- It is impractical for the purposes of clause 5(2)(g) to provide disclosure statements that are personalised to individual Nominated Representatives – especially in an organisation that is the size of IAG.

4.17. We also note that Cabinet decisions do not mention or discuss providing Advisers' details as a requirement of disclosure. Requiring details of the individual Adviser appears to go beyond what has strictly been approved by the Cabinet decisions, with details relating to the FAP itself being enough to discharge what was decided.

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[3] Regulation of Financial Advice: Disclosure and Multiple Providers, Cabinet Paper, paragraphs 6 and 38

4.18. In addition, the Financial Advice Provider is essentially giving advice through the Nominated Representative. This is reflected in sections 431R and 431H of the Financial Markets Conduct Act which state that the Financial Advice Provider controls and is accountable for the advice provided by its Nominated Representatives. The individual delivering the advice should have no bearing on the advice provided, so providing their details is of no value to the client.

4.19. We recommend that the Draft Regulations are amended so that the requirements of clauses 5(2)(b) and 6(1)(b) do not apply to Nominated Representatives.

Greater clarity is needed to guide disclosure of incentives

4.20. In Schedule 21A, clauses 5(1)(f) and 6(1)(f) require the adviser to disclose the commissions and other incentives they may / will receive in relation to the advice they provide. Clause 2(3)(b) limits this disclosure to that which a reasonable client would expect to, or be likely to, influence the advice provided.

4.21. We make the following observations:

- Cabinet agreed that disclosure should be limited to those commissions and incentives that the customer might perceive as having potential to *materially* influence the financial advice, so that that the information disclosed to consumers is not overly complex[4]. Clause 2(3)(b)'s reasonable client test does not include this refence to materiality.

- In practice a reasonable client test on its own will tend toward the lowest common denominator and the inclusion of incentives that in practice would not influence the advice. This would work against the requirement for disclosure to be clear, concise and effective[5]. An example of this in IAG's business could be the inclusion of reference to an annual bonus, based on business performance and scorecard service measures, that is paid to salaried Nominated Representatives. Ironically, a bonus paid for excellent customer service would need to be disclosed as a conflict of interest, as such a bonus is intended to influence the advice, albeit for the benefit of the customer.

4.22. **We recommend that the Draft Regulations are amended so that clause 2(3)(b) gives effect to the materiality test that Cabinet intended to be included, with an express exclusion of incentives that relate to the quality of the adviser's advice.**

[4] Regulation of Financial Advice: Disclosure and Multiple Providers, Cabinet Paper, paragraph 30
[5] Regulation of Financial Advice: Disclosure and Multiple Providers, Cabinet Paper, paragraph 39.2

Itemise fees.

4.23. In Schedule 21A, clauses 5(2)(d) and 6(1)(d)) require the disclosure of fees, expenses, or other amounts the customer will pay for the giving or acting on the advice. It is possible that there will be several fees payable, but the Draft Regulations do not require these fees to be itemised.

4.24. It is important that consumers know about each of the fees and expenses they are paying for so that they can judge the necessity and value of each item.

4.25. **We recommend that Schedule 21A clauses 5(2)(d) and 6(1)(d) are amended to require fees, expenses and other amounts payable to be separately itemised.**

Focus on promoting complaints and dispute resolution arrangements

4.26. In Schedule 21A, clauses 6(1)(g) to 6(1)(i) require the adviser to disclose information about their complaints procedures and disputes resolution service, including details on how to make a complaint and the contact details of their dispute resolution service.

4.27. We make the following observations:

- Cabinet's intent is to ensure that consumers are aware of their right to access redress through complaints procedures and dispute resolution services[6], and that the intent is to promote these arrangements.
- The requirements of 6(1)(g), 6(1)(h) and 6(1)(i)(iv) go well beyond this intent and prescribe a level of detail that is not needed at this point in the advice process. They do not align with Cabinet's requirement that disclosure is clear, concise and effective[7]
- It is not practicable to provide this level of detail in 'simple advice processes' that are characterised by a short duration, especially those provided over the phone or through social media.
- We agree this information should be made publicly available and should be provided when a customer makes a complaint. Indeed, clauses 4(1)(k) to 4(1)(m) of Schedule 21A and regulation 229F of the Draft Regulations, and section 63(1)(r) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 requires information about the disputes scheme to be provided.

4.28. Cabinet's intent would be best met by requiring financial advisers to inform customers that they have a complaints process and a dispute resolution scheme, and that further information is publicly available and where they can find that information.

4.29. We recommend that the Draft Regulations are amended so that clauses 6(1)(g) and 6(1)(h) require the adviser to inform the customer that they have a complaints

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[6] Regulation of Financial Advice: Disclosure and Multiple Providers, Cabinet Paper, paragraph 21

[7] Regulation of Financial Advice: Disclosure and Multiple Providers, Cabinet Paper, paragraph 39.2

procedure which they can access and where they can find publicly available information on that procedure.

4.30. We recommend that the Draft Regulations are amended so that clause 6(1)(i) requires the adviser to inform the customer that they have a dispute resolution service which they can access and where they can find publicly available information on that service.

Remove repeated requirement to disclose licence conditions

4.31. In Schedule 21A, clause 5(1)(b) requires providing the customer "a brief summary of the effect of each condition of the licence that limits or restricts the advice the client will be given". It is right that customers understand the limitations on the nature and scope of advice that may receive. However, we make three observations:

- The intent of this is already achieved in greater detail by clauses 5(1)(c) to 5(1)(f).
- Also, since we do not know what licencing looks like or the conditions that might apply, this could result in a significant impost.

We recommend that the Draft Regulations are amended by removing clause 5(1)(b).

Provide further guidance on disclosure of limitations on advice

4.32. In Schedule 21A, clause 5(1)(f) requires providing "a brief explanation of any limitations or restrictions on the nature and scope of the advice that the client will be given". We expect that is restricted to limitations that may not be reasonably expected by the customers given the requirements of clauses 5(1)(c) to 5(1)(e). For example, we expect that a Nominated Representative for State does not have to tell a customer who has telephoned State that they only provide advice on State products.

4.33. This should only require positive disclosure of material and necessarily relevant information, i.e. having disclosed what we can provide advice on we should not then also be required to disclose what we can't give advice on.

4.34. We recommend that consideration is given to providing further clarity and guidance on which limitations are to be disclosed, or which types of limitations do not need to be disclosed.

Remove Nominated Representatives from disclosure requirements on reliability events

4.35. In Schedule 21A, clause 5(1)(h) requires disclosing reliability events in enough detail to identify the event and when it occurred. While we agree that some reliability events will be important and relevant information for customers, we make the following observations:

- The range of potential reliability events captured is large and many won't be material to a customer's decision to act on the advice they receive. Including these in disclosure will reduce it clarity, concision, and effectiveness.

- We expect that the Financial Markets Authority (FMA) will consider reliability events in their licencing process and that there should be consistency between the reliability events that are material for licencing and those that are material for disclosure.

4.36. We recommend that the Draft Regulations are amended so that only those reliability events that are likely to materially influence of a customer's decisions are disclosed.

4.37. We also observe:

- It is the Financial Advice Provider that is giving advice and therefore the focus should be on reliability events relating to it and not its Nominated representatives.

- It will have the effect of creating a fit and proper test for the hiring of Nominated Representatives and add additional costs to the acquisition of staff.

4.38. **We recommend that the Draft Regulations are amended so that the requirements of clause 5(1)(h) does not include reliability events relating to Nominated Representatives.**

Streamline the disclosure of duties.

4.39. In Schedule 21A, clause 6(1)(j) requires advisers to make a statement that they are bound by the duties set out in the Act and their general effect. The intent being to promote confidence[8]. We agree that it is vital that all advisers meet these duties and that customers make confident decisions, but make the following observations:

- Much of this information is affirming what consumers naturally and reasonably expect of a financial adviser and to state it in this level of detail seems mildly absurd. (Indeed, these reforms are aimed at raising the performance of advisers to meet the expectations of consumers and not the other way around.)

- It would be more efficient and relevant to say that the adviser is bound by the Code of Professional Conduct for Financial Advice Services and where information on the code can be found, and for further information on the code and its general effect to be made publicly available.

[8] Regulation of Financial Advice: Disclosure and Multiple Providers, Cabinet Paper, paragraph 20

- The duties that need to be disclosed are common to all financial advice providers, so requiring all financial advisers to disclose them will not assist customers to choose between providers. A more efficient option would be to require customers to be referred to a list of duties made publicly available by the Financial Advice Provider or by the FMA

4.40. We recommend that that the Draft Regulations are amended so that clause 6(1)(j) is streamlined to require the adviser to say that they are bound by the Code of Professional Conduct for Financial Advice Services and that information about their duties is publicly available.

4.41. We recommend that that the Draft Regulations are amended so that information on duties is included in clause 4(1) which deals with the information to be made publicly available.

The impacts of our proposed amendments

4.42.

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5. Implementation

5.1. Financial Services Legislation Amendment Act Commencement Order 2019 ("Commencement Order") sets June 29 2020 as the commencement date for the new financial advice regime, including the obligations in relation to disclosure.

5.2. To implement the new disclosure obligations, IAG needs finalised regulation so that it can decide what must be disclosed, when and how. Getting to that decision will likely take a couple of weeks, whereas implementing the decision will take varying amounts of time depending on which disclosure and how it is made. This includes:

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5.3. *Withheld - Commercially confidential*

5.4. We recommend that the Commencement Order is amended to delay the date on which the requirements of section 431O and or section 431Q of the Financial Services Legislation Amendment Act 2019 come into force.

5.5. We would welcome the opportunity to work with MBIE to identify an appropriate date that balances the need to implement the regime with the ability of advice providers to comply.

6. Appendix One

Example script for *initial disclosure*

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Example script for *additional disclosure*

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7. Appendix Two

Proposed disclosure

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