

Submissions on: Disclosure requirements in the new financial advice regime.

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This Submission template

Disclosure requirements in the new financial advice regime

Instructions

This is the submission template for the discussion document, *Disclosure requirements in the new financial advice regime*.

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in the discussion document by 5pm on **Friday 25 May 2018**. Please make your submission as follows:

1. Fill out your name and organisation in the table, “Your name and organisation”.
2. Fill out your responses to the consultation document questions in the table, “Responses to discussion document questions”. Your submission may respond to any or all of the questions in the discussion document. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.
3. We also encourage your input on any other relevant issues in the “Other comments” section below the table.
4. When sending your submission:
 - a. Delete these first two pages of instructions.
 - b. Include your e-mail address and telephone number in the e-mail or cover letter accompanying your submission – we may contact submitters directly if we require clarification of any matters in submissions.
 - c. If your submission contains any confidential information:
 - i. Please state this in the cover letter or e-mail accompanying your submission, and set out clearly which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.
 - ii. Indicate this on the front of your submission (e.g. the first page header may state “In Confidence”). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).
 - iii. Please provide a separate version of your submission excluding the relevant information for publication on our website (unless you wish your submission to remain unpublished). If you do not wish your submission to be published, please clearly indicate this in the cover letter or e-mail accompanying your submission.

Note that submissions are subject to the Official Information Act 1982.

5. Send your submission:

- as a Microsoft Word document to faareview@mbie.govt.nz (preferred), or
- by mailing your submission to:

Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

Please direct any questions that you have in relation to the submissions process to faareview@mbie.govt.nz.

Submission on discussion document: *Disclosure requirements in the new financial advice regime*

Your name and organisation

Name	Jamie Lester
Organisation	Advice Plus Limited

Responses to discussion document questions

1 *Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?*

The timing and form of disclosure

2 *What are your views on the proposal that information be disclosed to consumers at different points in the advice process?*

Confirmation on how the adviser is remunerated i.e. receives commissions, for the service can be provided at the start. Specific information regarding actual commissions should not need to be disclosed until the implementation stage. It is at this point that the client can assess the level of effort and expertise that has gone into the advice process. Clients may have the initial perception that insurance advice simply involve printing off some quotes. This is quite different to the comprehensive report they actually receive, and this will change their view of the value of advice.

3 *Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?*

4 *Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?*

The form of disclosure

5 *If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?*

6 *Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory*

response?

What information do customers require?

7

Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?

Continually providing information regarding dispute resolution will only provide a negative focus to the client about the advice process. If they are being continually reminded they can complain then there is a risk they will become more suspicious and cautious not put at ease

8

Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?

No. it should just be required that the information is provided as part of the advice in the advice document. However the test in a potential claim will be was it presented in a clear format at a relevant point in the report (not 6 font at the back of the last page in the footer.

9

Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?

Absolutely

Information about the financial advice

Limitations in the nature and scope of the advice

10

Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out on page 19? Why or why not?

11

How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?

Costs to client

12

Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page 20? Why or why not?

Where the client is required to directly pay fees to the adviser either through upfront fees or repaid clawbacks then this needs to be declared up front as this is a direct payment from the client to the adviser, however in regards to commissions this is not a payment made directly by the client to the adviser so they do not need to be made aware of this as this may confuse the clients perception of cost. If any commission costs are to be declared it need only be the relevant % of their premium that is attributed to commissions e.g 20-30%

13

What role, if any, should the disclosure regulations play in ensuring that consumers are aware

of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?

Commission payments and other incentives

14

Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?

If disclosure is required then it should be general in the first instance. Often when you have been engaged to offer broad advice across all risk categories (i.e. death, temporary disablement, permanent or long term disablement, major trauma and medical) it is unlikely that the client will implement all recommendations. However they should be made aware of the financial gap they are exposed to. Commission should only need to be disclosed on the actual implemented cover otherwise it will appear much higher in the broad sense of recommendations and could push the client away from implementing a solution that best fits their needs.

15

If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?

In paragraph 59 In determining disclosure of commissions where it might materially influence the financial advice would this then not be required if all providers were paying the same commission levels?

Options for how to disclose commissions and other incentives

16

Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?

Provided we are meeting the requirements to put the clients best interest first, does this not ultimately protect the client.

17

Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?

From an insurance perspective, if we are to disclose commissions is it not more relevant to the client to disclose the % of their premium that is applicable to commission ie. On the basis that a nil commission premium illustration provides a 20% premium discount then the disclosure is - 20% of the client's premium is attributed to our remuneration.

How we then negotiate remuneration between the insurer and adviser is not relevant to the client.

e.g (45 year old male approx. \$1,500,000 life cover)
If the original premium is \$2,000 per annum x 200% commission = Total commission may be \$4,000 (rough I know).

However over the following 4 years the client only contributes \$1,899 of their premium towards that remuneration (Assuming indexation and premium increases). During this time, he could receive up to four follow-up reviews. These reviews may in fact result in cover being reduced due to changes in circumstances further reducing the clients contribution to the original remuneration.

To make the client feel they have paid the adviser \$4,000 for their original advice is an unfair representation of the upfront commission.

It is also important to understand that being paid by commission means you are being remunerated at different levels for the same time and effort that goes into advice. In our practice we would spend 8 to 10 hours on advice meetings and provision of a comprehensive report. While some reports may provide returns of \$10,000 plus, other reports may only pay commissions as low as \$1,000 or in some cases no income at all where reductions are recommended.

It is usually the households with lower household income that may not be able to implement insurance sufficient to meet the costs of giving advice. If commission disclosure means we will no longer be able to collect on the upside of a large commission sale to fund the smaller sales, then we will need to charge fees to people who do not implement sufficient cover. This will inevitably mean those people may choose not to take advice because of the cost.

The real saving in a comprehensive insurance plan comes when the adviser assists the client in understanding they no longer have a need for particular insurance and can start to downscale it as their personal net worth increases and their ability to manage risk improves. Being paid a higher upfront commission in advance of future premiums means the adviser has already been paid and does not have a conflict around recommending reductions in cover. If a client implements cover on a low upfront high trail basis the adviser may feel that that cover needs to stay in place for a longer period of time in order to remunerate him for the work he has completed at the start and subsequent reviews.

Other conflicts of interest and affiliations

18 *Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?*

19 *Are there any additional factors that might influence financial advice that should be disclosed?*

Ultimately the test should be has the clients best interest been put first? If this analysis shows that advice clearly supported the best outcome for he client then he resulting rewards to the adviser should not matter.

20 *Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?*

Information about the firm or individual giving advice

Details of relevant disciplinary history

21 *Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?*

22 *Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?*

No, ultimately regardless of the size of the business, the client is dealing with the adviser and their advice should not be negatively impacted by the history of the directors of the FAP

23 *Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?*

No, the relationship is between the adviser and the client

Additional options

A prescribed summary document

24 *Do you think that a prescribed template will assist consumers in accessing the information that they require?*

Yes

25 *How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?*

Requirements for disclosure provided through different methods

26 *Should the regulations allow for disclosure to be provided verbally? Why or why not?*

Yes if it is recorded it has been done

27 *If disclosure was provided verbally, should the regulations include any additional requirements?*

Requirements for financial advice given through different channels

28 *Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?*

Robo advice clients should be warned that Advice has been limited to the clients own understanding of their situation and has not benefited from the point of view of an experienced advisor which may be able to raise additional issue not considered by the client

29 *Do consumers require any additional information when receiving financial advice via an online platform?*

Information regarding expectation of future service or assistance at claim time. This is usually non existent in robo-advice or bank advice

Disclosure when replacing a financial product

30

Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?

An explanation of the need for the new product over the existing product and why the change has been recommended. Also require client signoff where substandard terms have been offered on a new product which don't exist on the old product.

There should not be a need to individually name each minor benefit that differs in the policies unless it is relevant to the specific clients or the scope of advice

31

Should this apply to the financial advice given on the replacement of all financial advice products?

yes

Information to existing financial advice clients

32

Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?

Where an existing client has already been provided with relevant disclosure then only reference to the website should be required

33

Should there be a limit on the length of time that this relief would apply?

Up to 3 years since last review

Transitional requirements

34

Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?

35

Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?

Disclosure to wholesale clients

36

Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?

37

Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?

Other comments – re understanding the impact incorrect disclosure of commissions will have on the industry over time.

Understanding the existing life insurance market

Advice Plus background

Having been in the industry for 22 years and owning my own business as an advisor for 14 years I have built a solid insurance advisory business. We currently have our own business to broker shareholders, and three administrative staff. We provide comprehensive needs analysis and reports based on present value lifetime calculations and have done so for the last 10 years. [S 9 \(2\) \(b\) \(ii\)](#)

In our experience, less than 5% of our business each year comes from people approaching us for insurance advice. Our clients come to us via referrals from professionals such as accountants and lawyers. In addition to this, we must actively network and hunt for business opportunities and hope for referrals from the odd client although these are few and far between.

On paper, this industry appears to be a license to print money but in reality this is rarely the experience of a new advisor.

New Zealanders do not see life insurance as a necessary cover the same way they do with fire and general insurances. Life insurance is not bought it is sold. For this reason, anyone choosing to sell insurance must get themselves outside their comfort zone in order to make sales approaches. We are required to overcome people's stereotypes in order to gain trust and generate our income. While some advisers thrive on this type of work the majority find the sourcing of new clients to be the hardest part of the day-to-day activity. For this reason, the incentive to put yourself outside your comfort zone is regularly measured by the return achievable for doing so.

High upfront commission – Excessive?

A reasonably successful adviser will do well to find one new client per week.

In understanding whether the 200% commission is excessive have the FMA taken time to review the profit and loss statements of most full-time insurance brokers. Judging any business by its turnover is pointless. The true understanding of a successful business and the income generated by the business owner is in its bottom line or profit. Is it not wiser to understand the average income of the average full-time broker.

It is also important to understand that being paid by commission means you are being remunerated at different levels for the same time and effort that goes into advice. In our practice we would spend 8 to 10 hours on advice meetings and provision of a comprehensive report. While some reports may provide returns of \$10,000 plus, other reports may only pay commissions as low as \$1,000 or in some cases no income at all where reductions are recommended.

Upfront commission versus higher trail commission

About 17 years ago I worked as a development manager Colonial franchise network. [S 9 \(2\) \(b\) \(ii\)](#)

S 9 (2) (b) (ii)

S 9 (2) (b) (ii)

S 9 (2) (b) (ii)

Changing commission as an impact on churn

The few insurance advisers currently involved in churning business New Zealand market do so – flow purposes. Changing commissions to lower upfront and higher trails will not change this. If an insurance product only paid 100% upfront and 25% trail then advisers currently tuning business would simply be required to churn more business in order to meet the cash flow needs. 100% upfront is still four times more than the equivalent trail commission.

Providing a flat commission structure will not solve this problem either as you then provide no incentive for advisers to continue to monitor their clients cover and recommend changes where it may benefit the client, as they will not receive any additional remuneration for the work required to move a client to a better product.

Instead, more work must be done on penalising advisers who move clients where there are not sufficient benefits to justify a move or the client fact is in a worse off position.

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Submission on the disclosure requirements for the new financial advice regime**1 Introduction****About AIA New Zealand**

- 1.1 AIA New Zealand is a member of the AIA Group. Established in New Zealand in 1981, AIA New Zealand operates in New Zealand as a branch of AIA International Limited, a company incorporated in Bermuda. It is ultimately owned by AIA Group Limited, which is listed on the Hong Kong Stock Exchange. AIA New Zealand is a licensed insurer under the Insurance (Prudential Supervision) Act 2010.
- 1.2 AIA New Zealand offers a range of risk management products that focus on the needs of customers. The bulk of AIA New Zealand's offering is life and related insurance, although it also offers some health insurance. AIA New Zealand distributes its products through a network of financial advisers across New Zealand.
- 1.3 AIA New Zealand is a member of the Insurance & Financial Services Ombudsman Scheme (IFSO), the Health Funds Association of New Zealand (HFANZ), and the Financial Services Council. AIA New Zealand's financial strength rating of AA- was reaffirmed by Standard and Poor's in June 2016.
- 1.4 AIA New Zealand distributes its products primarily through a network of financial advisers across New Zealand, and relies heavily on its advisers to provide quality, timely advice to customers.

About this submission

- 1.5 This submission focusses on the issues of key importance to AIA New Zealand. As such, AIA New Zealand has not commented on every aspect of the proposed disclosure requirements in the new financial advice regime.

Public release

- 1.6 AIA New Zealand is comfortable with this submission being made available to the public.



2 Submissions

Overall comments

- 2.1 AIA New Zealand is supportive in principle of the proposed disclosure framework that has been outlined in the Consultation Paper. Current regulatory disclosure requirements for financial advice relating to insurance offerings are not well targeted to ensure that our retail customers receive all the information they need in a meaningful way that allows them to make an informed decision about whether or not to take out, update, or replace an AIA New Zealand insurance policy. AIA New Zealand is particularly supportive of the proposed approach for enabling general disclosure information to be provided on a Financial Advice Provider's website or on request, thereby ensuring that advice-specific disclosure information is clearly differentiated from entity-level information. We feel this will enhance customers' ability to make informed decisions about the advice they receive and the Financial Advice Provider they engage, at the relevant time.

Objectives

- 2.2 AIA New Zealand agrees with the five objectives that have been identified at paragraphs 16 to 20 of the Consultation Paper. In addition, we believe an additional objective should be to minimise the prescribed disclosure of information that is not directly relevant to consumers' decision-making, and to avoid duplication of disclosure. This could be achieved by clarifying and expanding the first objective (providing consumers with the key information they need) to allow the exclusion of information that is irrelevant and/or duplicate.
- 2.3 One of our major concerns is that consumers are faced with an ever increasing array of information and paperwork that they need to consider when making any decision in relation to a financial product. Financial adviser disclosure should not add to the burden already laden on consumers, or distract consumers from the key information they need to consider in relation to an insurance product they are being advised upon. Limiting prescribed financial adviser disclosure requirements to information critical to consumer decision making alone, and avoiding duplication or irrelevant information, will assist in that regard.

Publicly available information

- 2.4 AIA New Zealand strongly supports the proposal for regulations to require Financial Advice Providers to make general information publicly available to help retail consumers when they are searching for financial advice, as outlined at paragraph 22 of the Consultation Paper. Removing the same general disclosure information from advice-specific information, and enabling it to be disclosed by reference to the Financial Advice Provider's website, has the potential to streamline the disclosure process.
- 2.5 With regard to the detail of the current proposal – requiring general disclosure of the conduct and client care duties that Financial Advice Providers are subject to, without clarifying expectations in this regard, risks Financial Advice Providers erring on the side of caution and over-disclosing. This may overload retail consumers with information. We believe the requirement should be clearly limited to a high-level statement, and possibly cross reference the Code of Professional Conduct.



- 2.6 Some of the information proposed to be disclosed when the nature and scope of the financial advice is known, as outlined at paragraph 23 of the Consultation Paper, could more usefully be provided in the general information, so as to avoid cluttering the advice-specific information provided. Examples include information relating to any relevant insolvency or bankruptcy history of the Financial Advice Provider. There should be no requirement to duplicate provider-level information provided in general publicly available information. This could be achieved by caveating the advice-specific disclosure information required to be provided with the fact that information need not be provided to the extent that it is included in the general disclosure information.

The timing and form of disclosure

- 2.7 AIA New Zealand supports the proposed approach of providing flexibility in how information should be provided, and agrees with the reservations expressed in relation to taking an overly prescriptive approach.
- 2.8 AIA New Zealand is supportive in principle of the proposal that information be disclosed to consumers at the most relevant point in the advice process, with the key proviso that this must not result in introducing undue complexity to the requirements or creating a multiplicity of separate disclosures that would be required on a granular basis. We believe this approach will improve the effectiveness of disclosure by ensuring key information is provided at the relevant time, tailored to the consumer's information needs.
- 2.9 AIA New Zealand also supports the proposal that those giving advice be required to tell consumers they can access the Financial Advice Provider's general information disclosure statement at the time regulated financial advice is provided. The financial adviser should have the option to select whether this is done by simply referring to the general information statement on the Financial Advice Provider's website, or in some alternative fashion. However, we do not support a requirement to refer to this general information in advertising material, as this is likely to unduly detract from the relevant advertising message, and would be an unnecessary duplication of the need to reference that general information.
- 2.10 As we understand the proposals, three disclosure steps are envisaged – the general information disclosure outlining key information features of the Financial Advice Provider, and then two limbs to the advice-specific disclosure providing more tailored disclosure at the point at which the nature and scope of the financial advice is known, and disclosure specific to the recommendation or opinion given. We support this approach, provided there is sufficient flexibility for the two limbs of the advice-specific phase of disclosure to be combined where appropriate. We envisage that in many instances where a simple advice process is followed in relation to an insurance product, for example, a recommendation or opinion will be able to be given at the same time as the nature and scope of the advice is determined. It would be unhelpful for our advisers and the customer experience if two separate disclosures were required.
- 2.11 While AIA New Zealand supports the principle of disclosure being required to be clear, concise and effective, we believe that specific requirements such as word limits, or mandating particular requirements that apply when disclosure is provided in writing or in digital form, are likely to detract from the effectiveness of disclosure.



What information do consumers require?

- 2.12 AIA New Zealand supports the proposition at paragraph 43 of the consultation paper that Financial Advice Providers include details about their licence in their general publicly available information. However, we do not support the proposal that information be provided about the licence 'by the point at which the nature and scope of the financial advice is known'. We do not believe this second requirement is helpful and believe it would amount to a duplication of disclosure. In our view, a simple catch-all requirement in the disclosure required by the point at which the nature and scope of the financial advice is known, requiring the firm or individual giving the regulated financial advice to draw the client's attention to the general publicly available information, will suffice.
- 2.13 Similar comments apply in respect of the proposals at paragraphs 45 and 47 of the consultation paper. Information that is disclosed in the general publicly available information should not be included in any separate disclosure required either by the point at which the nature and scope of the financial advice is known, or when the recommendation is provided. This is inefficient, and risks detracting from the more relevant, advice-specific information that consumers will be basing their decisions upon.
- 2.14 AIA New Zealand agrees that it is important for consumers to be provided with clear disclosure about a Financial Advice Provider's complaints process and dispute resolution scheme arrangements, but this should be limited to disclosure at a relatively high level and in general publicly available information. In response to a complaint received, all the Financial Advice Provider needs to do is to refer the complainant to its general publicly available information. Prescribing detailed requirements in this regard by way of regulation risks cutting across applicable dispute resolution methodology, and disclosing at the time a recommendation is made risks distracting from disclosures of information relevant to the consumer's assessment of the recommendation.
- 2.15 AIA New Zealand agrees with the proposal set out at paragraph 53 of the consultation paper. The combination of requiring Financial Advice Providers to detail the types of financial advice they can provide, the types of products they are able to deal with, and the providers whose products they can consider in their general publicly available information, and then detail limits in the nature and scope of the financial advice that will be provided in advice specific disclosure, is appropriate. We believe it is important for the regulations to be expressed at an 'in principle' level in this regard, without being overly prescriptive, given the wide range of advice positions that are likely to be out there.
- 2.16 In addition to the benefit to consumers in having business descriptions for Financial Advice Providers set out in general publicly available information, we believe there is likely to be benefit for the providers of financial products (such as AIA New Zealand) in having that general information publicly available, assisting with adviser due diligence and ability to access optimal business models for advising on our products.
- 2.17 AIA New Zealand supports the proposals set out under paragraph 56 of the consultation paper, regarding regulatory requirements for Financial Advice Providers to outline the basis on which clients will incur costs by engaging their services. Our main proviso here is that Financial Advice Providers, and any individual providing the financial advice on a Financial Advice Provider's behalf, should be relieved from any obligation to make further disclosure to



the extent to which information has been disclosed in their general publicly available information. In other words, if a Financial Advice Provider has articulated the basis on which fees will be charged to a client in their general publicly available information, that information should not need to be repeated in subsequent advice-specific disclosures, with a reference back to the general publicly available information being sufficient in that regard. This will assist in the efficiency of disclosure, as well as assisting with Financial Advice Provider compliance risk management.

Commission payments and other incentives

- 2.18 AIA New Zealand believes it is important for there to be a higher level of transparency in the disclosure of commissions and incentives, with a clear obligation to disclose such commissions and incentives in a clear, concise and effective manner.
- 2.19 In response to question 15 of the consultation paper, AIA New Zealand supports in principle the inclusion of a materiality threshold to determine the commissions and incentives that need to be disclosed. We note that any materiality threshold included will need to be measurable and be supported by detailed guidance for Financial Advice Providers.
- 2.20 With respect to each of the options outlined in relation to the method of disclosure for commissions and other incentives, AIA New Zealand notes the following:

a Option 1: require a comparison of commission rates

In principle, AIA New Zealand supports the transparency involved in requiring a comparison of potential commission rates and incentives to be disclosed. However, we have concerns over the extent to which this may cut across commercial sensitivities and confidentiality constraints, in addition to the logistical challenges that would be involved if advisers had access to products of multiple providers. This requirement would add further complexity to the process, and may have the unintended consequence of advisers being incentivised to limit the number of providers whose product they advise on.

b Option 2: require the disclosure of commissions and incentives in dollar terms

We are attracted to Option 2 due to the higher level of transparency involved, provided there is sufficient flexibility to overcome practical hurdles where it is not reasonably practicable to disclose in dollar terms, and only incentives that are reasonably likely to materially influence the adviser are required to be disclosed. We also do not believe it is appropriate to require advisers to quantify non-financial incentives in dollar terms, although there must be clear disclosure of the details of any non-financial incentive received from a provider that might materially influence the adviser when making a recommendation. One approach to address practicality concerns in relation to financial incentives would be for a default position to be to express remuneration in dollar terms unless it is not reasonably practicable to do so. Where it is not reasonably practicable to express remuneration in dollar terms then remuneration should be disclosed by reference to the formula by which it was calculated. Clear guidance would be required to make this workable.



c Option 3: principles based approach

We are concerned that taking that approach will create too much uncertainty and risks undermining transparency. For that reason we do not favour Option 3.

- 2.21 AIA New Zealand supports the disclosure of conflicts of interest and affiliations, although notes that the regulations imposed here will be subject to the final form of the statutory provision governing the obligation to prioritise the interests of the client.
- 2.22 AIA New Zealand agrees with the imposition of a requirement to disclose information relating to any relevant individual financial adviser's disciplinary history and bankruptcy or insolvency history no later than the time by which the nature and scope of the specific advice is confirmed, or if a specific financial adviser is not involved at that stage then by the time any recommendation is provided by a financial adviser. We believe this is important information relevant to a client's decision as to whether or not to engage further with the financial adviser, however only complaints or alleged breaches that have been upheld by the Financial Advisers Disciplinary Committee or the FMA or a Court should need to be disclosed.
- 2.23 AIA New Zealand does not support the regulations imposing a requirement on Financial Advice Providers to disclose if they have been found to have contravened a financial advice duty. We believe this is something best left to the discretion of the Financial Markets Authority to impose, based on its assessment of the severity of the contravention. Any prescribed disclosure obligations should be limited to complying with any disclosure obligation imposed by the Financial Markets Authority, where the Financial Advice Provider has been found to have contravened a financial advice duty. Otherwise, there is a risk that relatively minor financial advice duty contraventions will receive disproportionate emphasis in disclosures.

Additional Points

- 2.24 AIA New Zealand does not support the requirement for a prescribed summary document to be produced by each Financial Advice Provider. This is something generic that could just as easily appear on the Financial Markets Authority website for consumers to refer to. We believe that having a prescribed template for providers to produce is likely to simply confuse the disclosure process, without adding any tangible value. What is likely to be more effective is a requirement in the Financial Advice Providers' general publicly available information statement to include a reference to the Financial Markets Authority's website for further information about the information that must be disclosed.
- 2.25 In response to Question 26 of the consultation paper, AIA New Zealand supports the regulations including flexibility for disclosure to be provided verbally but where disclosure is made by phone written disclosure should also be made available to the customer. Many of the consumer advice propositions involving AIA New Zealand Insurance products will be conducted over the telephone and we believe it is essential for the regulations to provide an effective means for disclosure to be made by phone. The requirement for general publicly available information should assist in this regard, with the verbal disclosure simply needing to refer to that general information. Otherwise, there is a strong risk that the disclosure regulations would act contrary to the objective of the new regime of improving access to financial advice.



2.26 AIA New Zealand does not believe that a particular prescribed form of disclosure should be imposed in relation to replacement business. However, we consider that this information will need to be provided to enable a client to make an informed decision, and obligations in this regard are best addressed in the code of professional conduct. The information we envisage being provided to a consumer, where replacement business is being considered, includes:

- The risks of replacing a product; and
- The benefits/detriments of replacing the consumer's existing product with the new product.

2.27 In response to Question 32 of the consultation paper, AIA New Zealand believes that there should be some mechanism for reduced disclosure requirements for existing clients. In particular, if information has been disclosed in the past two years, there should be no prescribed obligation imposed on those providing regulated financial advice to repeat the disclosure. Instead, advisers could simply be required to reference the past disclosure that has been made. This would help to minimise the risk of consumers reacting negatively to repetitive disclosures, which becomes a nuisance factor.

2.28 AIA New Zealand does not believe it is necessary for the disclosure regulations provide for an additional transitional period, provided there is at least a 9 month window between the regulations being finalised and the regulations coming into effect.

3 Conclusion

3.1 I would be pleased to answer any questions you have in relation to our submission. I can be contacted on **S9(2)(a)**

Yours faithfully
AIA New Zealand

S9(2)(a)

Kristy Redfern
GM Corporate Services and General Counsel

P: **S9(2)(a)**
E: I

Submission on discussion document: Disclosure requirements in the new financial advice regime

Name	Simon Manning (CEO)
Organisation	On behalf of the Board of The NZ AMP Adviser Businesses and Advisers Association Inc. (“The Association”) 2B 33 Ponsonby Road Ponsonby Auckland

Responses to discussion document questions

1	<i>Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?</i>
	Yes we agree
The timing and form of disclosure	
2	<i>What are your views on the proposal that information be disclosed to consumers at different points in the advice process?</i>
	We agree
3	<i>Will this approach improve the effectiveness of disclosure by increasing consumers’ engagement and understanding of the information they receive? Why or why not?</i>
	In many cases , the disclosure required under current regime for AFAs works well
4	<i>Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?</i>
	We have no strong views on this.
The form of disclosure	
5	<i>If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?</i>
	Clear and precise drafting in plain english
6	<i>Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?</i>
	That depends on the outcome, severity and the number of assumed breaches.
What information do customers require?	
7	<i>Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?</i>
	Yes

8	<i>Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?</i>	Some guidance may be useful, we suggest you use what works well in the current regime.
9	<i>Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?</i>	Yes, although you may have an unintended outcome that clients will not attempt to resolve conflicts internally and simply resort to external means. We suggest some sort of deadlock or impasses should have been reached before this can be triggered.
Information about the financial advice		
Limitations in the nature and scope of the advice		
10	<i>Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out on page 19? Why or why not?</i>	No, the philosophy is to keep the disclosure relevant. If you go too deep in terms of information for suppliers and products then the document could be lengthy
11	<i>How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?</i>	The client and Adviser should discuss and agree the extent of the offer, and this should be signed off in the scope of service before any work is undertaken by the adviser
Costs to client		
12	<i>Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page 20? Why or why not?</i>	it can be difficult to understand disclose specific fees before any work is undertaken , however this can be disclosed in the statement of Advice. The provision of a schedule of fees might be more practical at some stages.
13	<i>What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?</i>	This can be contained in the Statements of advice and also by the Adviser directing clients to manufacturers PDS /quotes and other relevant documents
Commission payments and other incentives		
14	<i>Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?</i>	Yes
15	<i>If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?</i>	That the commission would materially affect the advice, however we suggest this should be addressed in Conflicts and how they are managed. Often, commissions will not be known until the adviser has done the work, provided quotes where applicable and recommended the product. We suggest that the adviser should also be allowed to put context around this, including any timeframes that commission is at risk (i.e. clawbacks) and it seems reasonable that they could

	mention the ongoing “non paid work“ that the adviser may be called to do that does not attract income (in certain cases, this work reduces the advisers income eg assisting with reductions in cover, assistance with claims etc).
	Options for how to disclose commissions and other incentives
16	<i>Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?</i>
	Yes, to the extent of what needs to be disclosed and so that clients know where and when to expect the information to be disclosed.
17	<i>Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?</i>
	We prefer Option two.
	Option one would be an increase in work for the adviser without a benefit to the consumer. This option also increases unnecessary focus on the commission element rather than the solutions and services that the adviser is offering to the client. Option one does nothing to promote the increased trust in the financial services industry
	While an adviser may have many product options to consider, the options not chosen (based on merit and fit for purpose) make what the provider would have been paid in commission irrelevant. The additional level of work and disclosure information to be provided where an Adviser may have been able to access (say) 10 different product choices seem impractical.
	If MBIE chooses Option one, will MBIE then also enforce that this rules apply to those who are giving advice and charging a fee (or receiving a salary) to also disclose what they or their firm may receive for all product choices available?
	Other conflicts of interest and affiliations
18	<i>Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?</i>
	Yes, where they are relevant and material
19	<i>Are there any additional factors that might influence financial advice that should be disclosed?</i>
	Yes - conflicts of interest higher up the supply chain. This would include directorships or company ownership and positions of office within shareholder companies that may create conflict
20	<i>Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?</i>
	We believe so, however there is a danger in information overload for the customer
	Information about the firm or individual giving advice
	Details of relevant disciplinary history
21	<i>Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?</i>
	Yes it is relevant to Moral character and increasing the trust of the financial advice offering in NZ
22	<i>Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?</i>

	<p>Yes and it should also be enforced for Nominated Representatives in the post FSLAB environment and anyone having an influence in the advice outcome to be delivered to the client.</p> <p>We believe it should also extend to other office bearers of entities that are involved in the delivery of the financial advice solution</p>
23	<p><i>Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?</i></p> <p>Yes, this would create transparency and builds trust in the industry.</p>
Additional options	
	A prescribed summary document
24	<p><i>Do you think that a prescribed template will assist consumers in accessing the information that they require?</i></p> <p>Yes</p>
25	<p><i>How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?</i></p> <p>It needs to be provided in a format acceptable to legislation and the client, in a timely fashion and the client should acknowledge its receipt.</p>
	Requirements for disclosure provided through different methods
26	<p><i>Should the regulations allow for disclosure to be provided verbally? Why or why not?</i></p> <p>Yes, with the proviso that the client acknowledges the disclosure has been received and that they understand it (the onus must be on the client that they understood the disclosure when they acknowledge the fact).</p>
27	<p><i>If disclosure was provided verbally, should the regulations include any additional requirements?</i></p> <p>That the disclosure is in a language the client understands and delivered in a way that the disclosure is understandable. Refer also to above answer 26.</p>
	Requirements for financial advice given through different channels
28	<p><i>Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?</i></p> <p>Verification that the disclosure is given in a timely manner before implementation of the advice</p>
29	<p><i>Do consumers require any additional information when receiving financial advice via an online platform?</i></p> <p>That they understand the delivery mechanism and what that means and the potential constraints (if any) and the time frame in which solutions will be implemented and the outcome so that (e.g. if the advice is implemented immediately, the client may have no chance for cooling off, or adjusting the authority /implementation , there may be a large cost to remedy “pressured acknowledgement”</p>
	Disclosure when replacing a financial product
30	<p><i>Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?</i></p>

	<p>Yes</p> <p>In our view this should not just apply to Life insurance alone, and it certainly should not fall onto commission-based advisers alone. There should also be a proof mechanism that extends to solution suppliers - i.e. the solution suppliers be bound to take action where they believe the replacement is inappropriate and not in the clients best interest.</p> <p>We understand that at least some if not all life insurance companies simply file any replacement business forms submitted by Advisers and clients where business is replaced for life insurance and this seems strange.</p> <p>This obligation should extend to the product solution recipient, even if they are not liable for the advice.</p>
31	<p><i>Should this apply to the financial advice given on the replacement of all financial advice products?</i></p> <p>Yes</p>
	<p>Information to existing financial advice clients</p>
32	<p><i>Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?</i></p> <p>We suggest reduced requirements on review, when no advice changes are required, and when no material changes have happened within the Adviser entity since the last advice contact.</p> <p>We suggest this can be achieved by a statement from the Adviser or entity, stating that no material changes have happened that require the client to receive new disclosure documentation.</p>
33	<p><i>Should there be a limit on the length of time that this relief would apply?</i></p> <p>Not necessarily, although best practice may apply where certain disclosure documents are given each time a client/adviser cycle is initiated.</p>
	<p>Transitional requirements</p>
34	<p><i>Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?</i></p> <p>Not in our view. However there should be some flexibility in case another entity cannot or does not comply causing incorrect information to be provided or a gap in available information - i.e. the cause is outside the disclosing entities control.</p>
35	<p><i>Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?</i></p> <p>The provisions should be clear. For those AFAs who have gone through the initial process, and if replication can be avoided in the process, then the simpler the better</p>
	<p>Disclosure to wholesale clients</p>
36	<p><i>Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?</i></p> <p>At the beginning of the relationship</p>
37	<p><i>Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?</i></p> <p>This could be contained in supplier documents. such as PDS.</p>

Other comments

- A. In the case studies attached to the discussion paper there are references to different adviser types including descriptors of how those advisers are paid. We observe that there seems to be an author bias against advisers who receive “commission” and sell life insurance. The industry has many participants, and different product types, and all should be considered.
- B. In the requirement for disclosure, the specificity of that disclosure around what and how they may be paid seems unreasonable. In our view, there are other persons who deliver and have an influence on the client's decision to proceed with a financial solution (e.g. within a vertically integrated organisation such as a bank with front line) , including the senior people of the institution who may trigger KPI bonuses or other awards (hidden to the consumer, yet potentially able to manipulate the front line delivery). This could extend across related party groups of companies/entities.
- C. This document relates to regulated advice to retail customers. We are interested in what disclosure regimes will be required for the delivery of advice that is not regulated such as non NZ domiciled robo-advice platforms and the delivery of workplace solutions?

What steps will be put in place to protect the advice and solution quality for people in these cases that will also increase the trust in the NZ financial services delivery and at the same time protect the advisers who operate in the regulated space, should there be negative experiences in the non-regulated space?

We see this as being a role that falls on the policy makers and policy keepers to stand by the regulated sector, should there be a fallout in other areas that the regulators have chosen to allow in a non regulated regime.



Submission on discussion document: *Disclosure requirements in the new financial advice regime*

Name	Peter Kenny, Head of Compliance
Organisation	AMP Financial Services

About AMP Financial Services ("AMP")

AMP comprises all of AMP Limited's New Zealand-based financial services businesses (excluding AMP Capital). AMP Limited is listed on the Australia and New Zealand stock exchanges. AMP has more than 150 Authorised Financial Advisers, the largest assemblage in the New Zealand market and has a similar number of QFE Advisers. AMP's brands include:



AMP is a leading investments and retirement savings provider and life insurer with more than 700,000 customers. It is the second largest contemporary life insurer, has the majority of the conventional life insurance market, manages approximately 12% of Kiwi's KiwiSaver funds, and runs the largest retirement savings master trust in New Zealand. AMP Services (NZ) Limited is a Qualifying Financial Entity and a Discretionary Investment Management Services licensee, AMP Wealth Management New Zealand Limited is a Managed Investment Scheme licensee, and AMP Life Limited is licensed insurer.



AdviceFirst is the largest financial advice business of its type in New Zealand, with offices nationwide, providing quality financial advice through its 57 financial advisers to individuals and businesses on life and health insurance, general insurance, investments, KiwiSaver, and home loans. AdviceFirst is majority-owned by AMP.

Overview

1. Address current deficiencies

Disclosure in the current regime, as noted in the discussion paper's introductory paragraphs, is sub-optimal. In summary, six 'C's categorise the issues:

Conflicts are insufficiently prominent or absent, e.g. commissions and incentives

Confusion due to adviser status is caused by the different requirements

Catholic primary disclosure is so generic it is not valued/considered

Complicated long and impenetrable secondary disclosure is required

Convolutd legalistic prescribed language bamboozles consumers, and

Condensed one-off delivery means it's treated as a compliance irrelevancy.

These consumer-identified deficiencies are valid. From our experience, disclosure in the current regime is rarely questioned or valued. Only intermittently do we receive queries about disclosure from consumers. Advisers commonly treat disclosure as a hindrance and compliance requirement only, demonstrating that they do not see little value in it educating or enlightening their clients.

We hope that the revamped disclosure requirements address these issues and that meaningful information, valued by consumers, is the result.

2. The questionable value of disclosure, especially for the non-financially literate

Despite our optimism, achieving relevant and valued disclosure is a big ask. Some academic literature questions the value of disclosure in a consumer financial regulation context. It is suggested that disclosure requirements do not deliver anticipated benefits:¹

How can lawmakers mandate disclosures so promiscuously with so little evidence that they do more good than harm? Partly because disclosures are often mandated not so much because they are expected to work as because they are the only practical response to pressure to act. That is a poor reason to mandate disclosures, but it beguilingly easy to believe that cost-benefit analysis is unneeded. Mandated disclosure seems so plausible, and its failure is so easily explained. Thus, even when lawmakers and commentators think somewhat more explicitly than usual about disclosure's costs and benefits, the balance seems at first glance self-evidently to be on the benefit side.

But the benefits of mandated disclosure have been notoriously elusive, and nowhere more prominently than in consumer financial regulation. In fact, it would astonishing [*sic*] if disclosures yielded much benefit. Financial products are complex, generally for good reasons. Millions and millions of people are only modestly literate, and millions and millions more are financially illiterate. How can they learn to make good choices through tutorials plastered on fine print forms?

A more careful assessment of benefits and costs reveals that mandated disclosure has unappreciated costs that are hard to measure and substantial enough to undermine the enterprise. Disclosures work (in theory) if people pay attention to them. Attention is a scarce resource, and thus at best only a limited number of disclosures could work. When the number of disclosures mandated exceeds this optimal level, additional disclosures do not increase, and may even reduce, the attention disclosures pay to disclosures.

The challenges identified in this extract bluntly summarise the challenge: how can disclosure be made relevant, concise, and aid good consumer advice outcomes?

Further, there is research that suggests it is only the financially literate who heed disclosure even when that disclosure indicates that the advice would be against the consumer's interests and damaging to them:²

¹ Omri Ben-Shahar & Carl E. Schneider, "The Futility of Cost Benefit Analysis in Financial Disclosure Regulation" (Coase-Sandor Institute for Law & Economics Working Paper No. 680, 2014). Accessed 23 May 2018 at https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2346&context=law_and_economics

Experiments ... showed that customers mostly follow the agent's recommendation, even against their best interest, and despite the presence of a fair disclosure statement. Only participants with high financial literacy, who received a disclosure statement, did examine the alternatives closely and rejected the advice when the recommendation was damaging.

For benefits to be delivered to New Zealand consumers it is essential for disclosures to be simple, meaningful, very brief, and unobtrusive. Requirements and/or principles need to embrace this.

3. Disclosure should be centralised/web delivered, unless critical to assessing a recommendation or pertinent to an immediate consumer decision/need/warning

The working proposal in the Paper is for disclosure to occur at four or more points:

- Publicly available or on request
- When nature and scope of advice is known
- When making a recommendation
- Other

We consider that although this appears to be many points of disclosure, and arguably quite complicated, many of the individual instances of disclosure occur today already. However, some of the instances proposed may place additional burden on FAPs/individuals and provide little benefit to consumers. We propose that as much disclosure as possible should be delivered under the "Publicly available or on request" category. Taking such an approach reduces the ineffectiveness and inefficiency of over-disclosure, yet maintains availability of the information for those who seek or need it. This is also an efficient and contemporary method of ensuring disclosure is available to consumers. Finally, it elevates critical disclosures by making them more prominent to consumers.

The following re-crafting of the table at para 73 (page 24) of the Discussion Paper (referred to as our "Revised Disclosure Table") illustrates what we consider is a more suitable framework. It balances the need for critical information required by consumers at the time of recommendation versus information that may rarely be sought or needed and which distracts from the critical or 'immediate decision/need' disclosure. Specifically, it elevates fees, expenses and FAP/individual remuneration and commissions.

Revised Disclosure Table

	Publicly available or on request	When nature and scope of advice is known	When making a recommendation	Other
Summary statement of publicly disclosed things (information the consumer may be interested in)			✓ A one-paragraph statement noting information is available at the FAP's website, including: • Licensing, • Conduct and client care, • Complaint process	
Licensing information	✓			

² Eyal Carmel, Dana Carmel, David Leiser & Avia Spivak, "The Facing a biased adviser while choosing a retirement plan: the impact of financial literacy and fair disclosure" (*Journal of Consumer Affairs*. 49.3 (Fall 2015): p576+). Accessed 23 May 2018 at <http://dx.doi.org.au/10.1111/joca.12083>

	Publicly available or on request	When nature and scope of advice is known	When making a recommendation	Other
Conduct and client care obligations	✓			
Complaints process / dispute resolution membership	✓			✓ Disclose dispute resolution scheme at time complaint received
Disciplinary history	✓ Include any FAP (or engaged FA or NR) disciplinary history on the FAP's website			✓ Where there is history, confirm what that at the first contact point verbally and in writing.
Insolvency or bankruptcy history	✓ Include any FAP (or engaged FA or NR) insolvency or bankruptcy history on the FAP's website			✓ Where there is history, confirm what that at the first contact point verbally and in writing.
Limitations on nature and scope of advice	✓ Types of advice available, products that can be dealt with, and providers whose products can be considered	✓ Nature and scope of advice that will be provided, including providers whose products will be considered and the frequency of their use in the prior 2 years	✓ Providers whose products were considered and the frequency of their use in the prior 2 years. Confirm if any material changes to nature and scope of advice	✓ Types of advice available, products that can be dealt with, and providers whose products can be considered confirmed at first point of contact verbally and in writing
Costs	✓ Basis on which fees may be charged		✓ Disclose any additional expenses client may incur (e.g. repay clawback commission)	✓ Provide a reasonable estimate of fees and basis for fees before fee incurred
Commissions and other incentives	✓ Whether pay or receive commissions or other incentives		✓ Any commissions or incentives that will apply, which must be stated in dollar terms and be quantifiable, not "I may..."	

	Publicly available or on request	When nature and scope of advice is known	When making a recommendation	Other
Other conflicts and affiliations	✓ Whether any conflicts of interest which could materially influence advice would materially influence advice but have been (and how they have been) mitigated			

Differences from what is proposed in the Discussion Paper's table are identified in the "Other Comments" appendix including our rationale for those differences. We consider that adopting this revised approach would significantly increase the likelihood of meeting the aims of the revamped disclosure regime, especially increasing consumer engagement and interest in the information by focusing on key disclosures, relegating to passively-delivered the more generic and lesser aspects.

Responses to discussion document questions

1 *Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?*

Yes. If articulated as principles, they could be expressed as disclosure needing to be:

- *Precise* (delivering key information consumers want/need)
- *Punctual* (right information at the right time)
- *Plain* (succinct, simple and in plain English)
- *Portable* (delivery-method flexibility), and
- *Practicable* (for the industry to deliver).

The timing and form of disclosure

2 *What are your views on the proposal that information be disclosed to consumers at different points in the advice process?*

As the Paper proposes, the extent of disclosure proposed at multiple points in the process may be hard to implement in practice. There is also a risk that repeated disclosure turns consumers off, which is contrary to the aims of the regime. An example is in the Annex 1 Case Study where the first three points are *repeated* in stages 1 and 2. A principle should be, unless the information has changed materially, multiple disclosure of the same points is unnecessary and discouraged.

Multiple points are also acceptable if conveying of the information is seamless and not couched as "I have to give you this disclosure statement now".

3 *Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?*

In principle, providing relevant information at the right time is a good idea. Consideration needs to be given to the consumer experience, however. Multiple disclosure points potentially make for a disjointed and unfriendly consumer experience, particularly if it seems there are too many disclosure "stage gates".

An example: providing information about the FAP's dispute resolution scheme is relevant at the point a complaint is made. Made too early, it may appear unduly defensive and/or superfluous for what will commonly be cordial and mutually beneficial advice and servicing of clients by their advisers/FAPs.

4 *Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?*

Yes, provided it is not prescribed how it must be conveyed. For example, it would work well in providing a URL³ in a Statement of Advice regarding the recommended provider. However, compulsory references in general advertising material itself should not be required.

The form of disclosure

5 *If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?*

To achieve this, it is essential that precedent examples be provided to provide sufficient guidance on what otherwise will be too open-ended. Clear and simple guidance will help willing compliers not over-engineer their disclosures and will increase the likelihood of the otherwise uninterested from doing nothing.

6 *Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?*

If the contravention is particularly egregious, commensurate penalties should ensue.

It would be an improvement to see different levels of enforcement applied reflecting the extent of the failure, and especially consideration of whether an unintended mistake was made versus wilful non-compliance.

In hindsight, we expended undue effort on getting disclosure right under the FAA. This was driven by the concern that potential fines of \$100,000 (for individuals) or \$300,000 (for the entity) could result (FAA, section 117). Customers very rarely have interest in the FAA-prescribed disclosures and we are unaware of any penalties in practice for getting them wrong. The new regime needs to get the settings right and provide clarity around the continuum of consequences expected for not doing disclosure right.

What information do customers require?

7 *Do you agree that information relating to the licence, duties and complaints process*

³ Where we suggest web links/Uniform Resource Locator (URL) solutions in this submission we consider this sufficient for any consumer with access to the internet connection. For those consumers who don't have, are unwilling to, or are incapable of using, the internet should be provided the option of receiving the information via another agreed method (e.g. posting it to them). Elsewhere in this submission where we recommend URL solutions this should be similarly inferred.

should be made available to consumers?

Yes, though the first two should be required only in the “Publicly available or on request” category. Unless consumer research determines these are data that consumers truly want disclosed overtly, making it them available on a public website should be sufficient.

For the complaints process, we consider that this should also be available on the FAP’s website and that it should be sufficient to direct a complainant to the URL with that information.

8

Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?

For generic aspects, e.g. of standard licence conditions, yes. Licence, duties and complaints process are formulaic, so are suited to prescribed text requirements.

9

Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?

Yes, and yes. Though it should be sufficient to reference the provider’s URL where the FAP’s complaints process is described, including the fact a free dispute resolution service is available.

Information about the financial advice

Limitations in the nature and scope of the advice

10

Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out on page 19? Why or why not?

Yes, the nature and scope of the products and/or services that the FAP provides should be clear to the consumer. As noted in our Revised Disclosure Table, we also believe that the likelihood of the product, where applicable, being recommended should be apparent; that is, where an Adviser may have three potential products yet 99% of the time recommends only one of the three that fact should be clear to the consumer because the reality is that the other two are probably not seriously considered.

AMP’s advice processes already require for the scope to be clear at this point (via a specific Scope of Service document), so we see no issues with making this mandatory.

11

How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?

Pre-determined Adviser preference: As noted in the answer to question 10, quantitative estimates of business written (by the FAP or individual, as applicable) in the prior period, perhaps 24 months, would be enlightening for consumers. That should help them determine whether there is pre-determined preference or exclusivity despite apparent capability to recommend a range of products. This would address the issue today where Primary disclosure may indicate “*I will be able to give you advice about financial products provided by a broad range of organisations (more than 5 organisations)*”, yet only one organisation receives all, or the bulk of, the business.

Pre-determined Adviser restrictions: Pre-determination of the likelihood of any specific

provider or product being recommended should also be apparent. Such things as exclusivity, quotas, and so forth should also be indicated transparently.

Costs to client

12

Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page 20? Why or why not?

Generally, yes, though in practice we expect common sense would normally mean that consumers are alerted to potential costs. Where this does not occur, we would expect complaints would be upheld.

13

What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?

A general principle should be all that is required. Fees/costs/charges should be apparent to the consumer prior to them being applied and within a reasonable time frame to avoid them if they do not agree to being charged.

Commission payments and other incentives

14

Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?

Detailed and precise or near-estimates should be available to the consumer at the time of recommendation. This may need to change, of course, and updated figures may be needed (e.g. in a life insurance context if a "loading" is applied after underwriting that is unknown information at application time).

We consider general information on the FAP's website should normally be adequate prior to the recommendations stage. Prior to that point, common sense demands that the FAP/individual makes it clear to the consumer that they would incur certain charges/costs/fees.

15

If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?

This will be too subjective to quantify for every scenario of advice delivery, so we suggest that no materiality test should be determined.

Options for how to disclose commissions and other incentives

16

Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?

Options 1 and 2 are attractive and they should be combined.

In some scenarios, it will be relevant for a consumer to know the *relative* commissions. For example, retention of an existing life insurance product may mean the FAP/individual receives only perhaps 4% of the annual premium income whereas replacing the product with another provider's may have the FAP/individual receiving perhaps 230% upfront commission. For a consumer who has a \$1,000 annual premium it is relevant information that the FAP/individual may receive only \$40 for the client retaining yet \$2,300 for being replaced. Of course, depending on the ultimate interpretation of section 431J, in practice this may be impossible if such a large

difference is automatically considered “materially influenced” and unable-to-be-mitigated, conflicted, recommendation.

Commissions and other incentives should be required to be stated in dollar terms. If they cannot be precisely, or at least adequately estimated, we consider they should not be permitted. This position is consistent with what we have submitted throughout FSLAB development.

17

Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?

There should be few costs involved in providing precise, or at least adequate, estimates of dollar cost commissions and other incentives.

Current “hard commission” requirements for AFAs demand dollar cost or percentages to be disclosed. As providing dollar cost is a simple formula from the percentage, “hard commission” dollar cost should be straightforward for the FAP/individual to articulate to the consumer. (NB: we have data that correlates where clients are informed of large “hard commission” levels disclosed in dollar figures, in a replacement business context, that clients are less likely to proceed with their advisers’ recommendations.)

For “soft commissions”/other incentives, we reiterate our position that unless these can be adequately estimated for the recommendation to the consumer they should not be permitted. That is, a statement that “*I might qualify for an overseas trip if I sell Acme Assurance Corporation widgets*” is inadequate and should be forbidden. Instead, a statement such as “*I will receive around \$500, either directly or credited towards a trip to Antarctica hosted by Acme Assurance Corporation, if I sell you the widget I recommend to you*” is transparent and should be allowed.

Other conflicts of interest and affiliations

18

Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?

To reiterate: as drafted, section 431J would prohibit any material influence to the financial advice. All that remains are conflicts, which by consequence, are immaterial, so not worthy of disclosure. For example, a financial adviser in an “independent” FAP may own shares in a large New Zealand bank/insurer, however, any advice to purchase that entity’s product would have essentially no impact on the value of that infinitesimal shareholding, so the conflict is immaterial.

19

Are there any additional factors that might influence financial advice that should be disclosed?

Inability to provide advice on an incumbent product held by the consumer should be clearly articulated. Any number of reasons may be behind that, including: (a) the FAP/individual not being accredited in the product by the provider, (b) it not being on the FAP’s contracted/approved products list, etc. However, any advice to dispose of that incumbent product should, preferably, address the like-with-like features, costs, etc. Where that is not possible, the advice should be required to include clear warnings that the consumer should/will need to seek advice elsewhere to understand benefits/features that potentially may be lost.

20

Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?

No. We consider conduct and client care duties should be adequately addressed in “General summary disclosure of publicly disclosed things” on the FAP’s website and,

where applicable (e.g. at recommendations stage), the consumer should be directed to that and other general, prescribed, material.

Information about the firm or individual giving advice

Details of relevant disciplinary history

21 *Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?*

Where this has occurred, this is relevant information for consumers. However, practically, in most occasions it will not have occurred. We consider that a specific requirement to confirm the FAP/Adviser has *no* issues is unnecessary. It should only be where there is disciplinary history or bankruptcy or insolvency history (as happens today in Primary disclosure) and that should be disclosed at the first point of contact with the consumer to ensure that the consumer can decide as early as possible.

22 *Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?*

Yes, though a materiality threshold should be considered for disciplinary history.

23 *Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?*

Yes, though a materiality threshold should be considered.

Additional options

A prescribed summary document

24 *Do you think that a prescribed template will assist consumers in accessing the information that they require?*

We consider that a guideline for website-maintained disclosure items should be adequate for disclosing most of the things contemplated.

25 *How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?*

This could be a hyperlink where online-delivered or an emailed hyperlink where phone-delivered. For the relatively small percentage of consumers without any internet access, sending a printed copy of the applicable web page by mail, or other agreed method, should suffice.

Requirements for disclosure provided through different methods

26 *Should the regulations allow for disclosure to be provided verbally? Why or why not?*

In general, no, though in some instances we consider verbal disclosure should be required in addition to written. These circumstances include: disclosure of disciplinary action, bankruptcy/insolvency, and in providing the overview to the ranges of services/products available at the first point of contact.

For our “When making a recommendation” items, which are consumer-specific and costs/fees information, verbal disclosure only is certainly inadequate. Additional

requirements could be to provide a copy of the recording to be sent to the consumer in addition to being spoken or otherwise written material explaining the information.

For the remaining more general disclosure items, providing those are articulated clearly to the consumer or the consumer is directed to those (e.g. aiding the consumer on the phone to find the FAP's applicable web page), that should be sufficient.

Long, possibly pre-recorded and complex, disclosure delivered verbally should be prohibited. An exception could be made where the recording is also sent to the consumer in addition to being spoken, however.

27 *If disclosure was provided verbally, should the regulations include any additional requirements?*

Yes, as noted in our answer to question 26.

Requirements for financial advice given through different channels

28 *Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?*

Requirements should be delivery neutral. We consider the consumer-specific and costs/fees information should be transparent, as noted in our answer to question 26.

29 *Do consumers require any additional information when receiving financial advice via an online platform?*

By default, no. Conditions of licence could be determined to specify any FAP-specific or platform-specific information that needs to be conveyed to consumers.

Disclosure when replacing a financial product

30 *Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?*

We consider pamphlets warning of the risks (such as those for life insurance products previously issued by the FMA and by the Financial Services Council) could be mandated documents. These would be provided to consumers when recommendations to replace products are made, consistent with our view that the recommendations stage should be the right time to concentrate the consumer's attention to this information.

Different types of products have specific risks, so a general prescribed notification is unlikely to be sufficiently relevant to consumers. Further, some replacement recommendations carry little/no risk to the consumer so may not warrant any warnings. Replacement of a maturing term deposit with another bank's term deposit is an example (where they have a similar financial strength rating).

31 *Should this apply to the financial advice given on the replacement of all financial advice products?*

A list of types of products where prescribed notification is necessary could be created and maintained, along with the applicable pamphlet that must be used.

Information to existing financial advice clients

32 *Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should*

consumers receive?

This should be inapplicable if our Revised Disclosure Table is adopted. The publicly available information would be dynamically updated so would be available to the existing client. Any recommendation, and the critical disclosure around costs/fees, etc., should be just as relevant to a long-standing client as it is to a new one.

33 *Should there be a limit on the length of time that this relief would apply?*

N/A.

Transitional requirements

34 *Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?*

No.

35 *Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?*

No. There are only a small number of individuals with personalised DIMS, so providing specific provisions is unwarranted.

Disclosure to wholesale clients

36 *Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?*

This depends on the conclusion as to who is considered a wholesale client for the purposes of regulated financial advice. If, as we have suggested in our submission on FSLAB, this is narrowed to only truly wholesale entities and expert individuals, then the disclosure to such entities should be unnecessary as they can determine the information required in their contractual arrangements.

37 *Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?*

Other comments

Below we have annotated the rationale behind our **Revised Disclosure Table**.
 Green = new or amended requirements. Red = removed requirements

	Publicly available or on request	When nature and scope of advice is known	When making a recommendation	Other	Rationale
Summary statement of publicly disclosed things (information the consumer may be interested in)			✓ A one-paragraph statement noting information is available at the FAP's website, including: • Licensing, • Conduct and client care, • Complaint process		<ul style="list-style-type: none"> • Consumers should be able to access this information easily if they want it. • This information is easily prescribed and largely generic/not specific to an individual consumer. • Relatively, the risk of not being aware of this information is low. • The complaint process is relevant when the consumer wants to complain, but is otherwise incidental.
Licensing information	✓	✗			<ul style="list-style-type: none"> • This is of limited interest to many consumers. To illustrate: do consumers care today whether they are dealing with an AFA or RFA? A QFE? No. • Referring to the FAP's website in a prescribed statement at the recommendation stage should be sufficient (refer row 1).
Conduct and client care obligations	✓		✗		<ul style="list-style-type: none"> • Referring to the FAP's website in a prescribed statement at the recommendation stage should be sufficient (refer row 1).
Complaints process / dispute resolution membership	✓		✗	✓ Disclose dispute resolution scheme at time complaint received	<ul style="list-style-type: none"> • There should not need to disclose this in detail if there is no actual complaint. In fact, it makes a client-adviser relationship appear inherently combative, which should be avoided. • Referring to the FAP's website in a prescribed statement at the recommendation stage should be sufficient (refer row 1), <i>except</i> where there is an actual complaint made.

	Publicly available or on request	When nature and scope of advice is known	When making a recommendation	Other	Rationale
Disciplinary history	✓ Include any FAP (or engaged FA or NR) disciplinary history on the FAP's website	✗		✓ Where there is history, confirm what that at the first contact point verbally and in writing.	<ul style="list-style-type: none"> Website disclosure of this information makes sense because it is information that should be publicly available. Requiring disclosure at the first point of contact ensures that the consumer will not proceed if they are uncomfortable. The scope stage should be limited to scope itself to make the disclosure stages simpler (and it may be after the first point of contact).
Insolvency or bankruptcy history	✓ Include any FAP (or engaged FA or NR) insolvency or bankruptcy history on the FAP's website	✗		✓ Where there is history, confirm what that at the first contact point verbally and in writing.	<ul style="list-style-type: none"> Website disclosure of this information makes sense because it is information that should be publicly available. Requiring disclosure at the first point of contact ensures that the consumer will not proceed if they are uncomfortable. The scope stage should be limited to scope itself to make the disclosure stages simpler (and it may be after the first point of contact).
Limitations on nature and scope of advice	✓ Types of advice available, products that can be dealt with, and providers whose products can be considered	✓ Nature and scope of advice that will be provided, incl. providers whose products will be considered and the frequency of their use in the prior 2 years	✓ Providers whose products were considered and the frequency of their use in the prior 2 years. Confirm if any material changes to nature and scope of advice	✓ Types of advice available, products that can be dealt with, and providers whose products can be considered confirmed at first point of contact verbally and in writing	<ul style="list-style-type: none"> The scope and recommendations stages should be clear and the products and any FAP/individual preference for recommending those products also. To ensure consumers do not waste time or progress under the misapprehension that the FAP/individual can provide advice that they cannot, providing this information at first contact mitigates that.

	Publicly available or on request	When nature and scope of advice is known	When making a recommendation	Other	Rationale
Costs	✓ Whether charge a fee Estimate of fees and Basis on which fees may be charged		✓ Disclose any additional expenses client may incur (e.g. repay clawback commission)	✓ Provide a reasonable estimate of fees and basis for fees before fee incurred	<ul style="list-style-type: none"> It may be impracticable to provide estimates on a website, though the basis of any fees/charges should be practicable. The key is making sure that consumers have actual fees disclosed to them with sufficient time to elect not to proceed and avoid those charges if they want to. That is achieved with the requirements under “When making a recommendation” and “Other”.
Commissions and other incentives	✓ Whether pay or receive commissions or other incentives	☒	✓ Any particular material Any commissions or incentives that will apply, which must be stated in dollar terms and be quantifiable, not “I may...”		<ul style="list-style-type: none"> It is too early in the process to require this information at the scope stage. It may be unknown or even confusing (e.g. if five providers will be considered). At the scope stage the dollar cost is unlikely to be known or even accurately estimated because, for example, the level of cover will probably be uncertain – a needs analysis will determine that. Dollar cost is critical for ensuring more consumers understand the FAP/adviser’s remuneration. Statements such as “I will receive 150% of API” are opaque, whereas “I will receive \$2,000” is transparent.
Other conflicts and affiliations	✓ Whether any conflicts of interest which could materially influence advice would materially influence advice but have been (and how they have been) mitigated	☒	☒ ✓ Any particular material conflicts of interest		<ul style="list-style-type: none"> Material conflicts that are mitigated should be publicly disclosed. Unmitigated material conflicts are prohibited by section 431J (as it does not allow advice that is “materially influenced”).

25 May 2018

Financial Markets Policy, Building, Resources and Markets
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140
New Zealand

By email: faareview@mbie.govt.nz

Submission on the disclosure requirements in the new financial advice regime

Thank you for the opportunity to comment on the disclosure requirements in the new financial advice regime (the **Consultation**).

ANZ Bank New Zealand Limited (**ANZ**) supports improving and simplifying financial advice legislation to help New Zealanders get the financial advice they need and want.

We strongly support the underlying principles identified by MBIE, in particular that the requirements will take a flexible approach to disclosure which can be applied differently to a wide range of advice situations. We believe that this flexibility, backed up by appropriate processes and controls of the Financial Advice Provider (**FAP**) and a heightened focus on ethical conduct will best reconcile the aims of increasing access to advice and ensuring quality of advice.

We would like to specifically draw your attention to our key messages set out below. We provide further detail on those key messages in Appendix I. ANZ's responses to the specific questions in the Consultation are set out in Appendix II.

Key Messages

- 1. It should be clearer that FAPs have flexibility in the way they disclose the information.**
- 2. The disclosure regulations should complement the Code of Conduct (and vice versa).**

About ANZ

ANZ is the largest financial institution in New Zealand. The ANZ group comprises brands such as ANZ, UDC Finance, ANZ Investments, ANZ New Zealand Securities and Bonus Bonds.

ANZ offers a full range of financial products and services including a significant range of financial advisory services, personal banking, institutional banking and wealth management services. ANZ is a Qualifying Financial Entity under the current Financial Advisers Act regime and has over 4,000 QFE Advisers. ANZ is also an employer of over 100 Authorised Financial Advisers.

Contact for submission

ANZ welcomes the opportunity to discuss our submission with MBIE officials. Please contact Jason Moss, Head of Regulatory Affairs, at **S9(2)(a)**

Once again, we thank MBIE for the opportunity to comment on the disclosure requirements in the new financial advice regime.

Yours sincerely

S9(2)(a)

Bruce MacIntyre
Chief Risk Officer



Appendix I – More detail on ANZ’s Key Messages

1. It should be clearer that FAPs have flexibility in the way they disclose the information.

We generally support a principles-based approach to disclosure. We believe that the intent to provide flexibility in how the information is provided will likely result in a better customer experience, more effective disclosure and will also mitigate any undue compliance costs.

However, we refer to paragraphs 22 – 25 of the Consultation, where it sets out the information that is to be disclosed at different points of the advice process. While we agree with the different points of the advice process that have been identified, we believe that it should be clearer that FAPs have flexibility to determine whether or not they provide the required information at each point or combine disclosure, at say one or two points, depending on the scale and operation of their business and the nature of the advice interaction. For instance, by placing greater reliance on disclosure through the general information that is publicly available (on a website).

We believe that in some cases, for example, in simple advice situations such as opening a transaction or savings account, it will not necessarily be beneficial or effective to make repetitive disclosure to customers. Additionally, this may overly complicate a simple advice scenario and result in “overload” for the customer and a poor customer experience. This will also come with a significant compliance cost for FAPs.

2. The disclosure regulations should complement the Code of Conduct (and vice versa).

It will be important to ensure that any requirements are not duplicated across the disclosure regulations and the Code of Conduct. The Code of Conduct and disclosure requirements should be aligned in both their objectives and implementation dates and there should not be regulatory arbitrage where one aspect is particularly more onerous than the other.

For example, we agree with the Code Working Group in their consultation that a personalised suitability analysis should not apply where, having regard to the nature and scope of the advice provided, the FAP can demonstrate how a good advice outcome is achieved without a personalised suitability analysis having been undertaken. In this instance, the disclosure obligations should be able to be appropriately scaled.

Appendix II – ANZ response to specific questions in the consultation paper

1. Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?

We agree with the objectives identified.

2. What are your views on the proposal that information be disclosed to consumers at different points in the advice process?

Please see our Key Message 1. We agree with the different points of the advice process that have been identified. However, we believe that it should be clearer that FAPs have flexibility to determine whether or not they provide the required information at each point or combine disclosure, at say one or two points, depending on the scale and operation of their business and the nature of the advice interaction. For instance, by placing greater reliance on disclosure through the general information that is publicly available (on a website).

3. Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?

Please see our Key Message 1 and our response to Question 2, above. We believe that in some cases, for example, in simple advice situations such as opening a transaction or savings account (and where the FAP's business structure is relatively simple or straightforward), it will not necessarily be beneficial or effective to make repetitive disclosure to customers. Additionally, this may overly complicate a simple advice scenario and result in "overload" for the customer and a poor customer experience. It is also not clear if this would lead to any greater engagement or understanding by customers.

4. Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?

Yes, FAPs could refer to the availability of this information in advertising material, particularly where FAPs place more reliance on the disclosure through publicly available information (on a website). Where FAPs rely on this approach, they could also be required to provide a written copy of the information if requested by customers. This approach is similar to that which already exists in relation to Qualifying Financial Entities (QFEs) (Financial Adviser (Disclosure) Regulations 2010 (**FAA Disclosure Regulations**)). We are not aware of any general concerns around how disclosure for QFEs is currently made.

5. If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?

We believe that the regulations could be drafted in a similar way to the existing disclosure requirements for QFEs under the FAA Disclosure Regulations (regulations 8-10). Those requirements prescribe certain information to be provided and in some cases provide flexibility to provide 'brief particulars'. To enable the flexibility to be fully realised, industry may benefit from FMA guidance, in order to understand the FMA's expectations and how it intends to enforce the new requirements. Guidance may also be used to develop or improve disclosure over time through feedback or learnings from regulatory supervision.

6. Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?

We believe that an FMA stop order or similar regulatory response is appropriate in this instance.

7. Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?

We agree. However, we believe that this only needs to be disclosed through the publicly available information (on a website).

8. Do you think that the regulations should provide prescribed text for the disclosure of these pieces of regulation?

Yes, to the extent it makes sense. To enable flexibility there may need to be different levels of prescription. Some matters may sensibly be specified (such as name of FAP) while others may require a more descriptive response i.e. 'brief particulars'. See the existing disclosure requirements for QFEs under the FAA Disclosure Regulations in this regard.

9. Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?

See our response to Question 7. We believe that information on the complaints process should only need to be disclosed through the publicly available information (on a website). Depending on the nature and stage of the 'complaint' it may not always be appropriate to refer customers to the dispute resolution scheme. This needs to be considered by the dispute resolution schemes. Those schemes may have some concern regarding the potential increase in complaints that they will need to deal with in the first instance, only for them to end up being redirected back to the FAPs to attempt to resolve. In many cases this could delay resolution of customer complaints.

10. Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out above? Why or why not?

Please see our Key Message 1. We believe that FAPs should also be able to rely on the information disclosed through the publicly available information (on a website). No further disclosure should necessarily be required unless there is a material change that differs from the publicly available information.

11. How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?

This can be dealt with as part of the disclosure around the limitations of the nature and scope of advice. Under the FAA Disclosure Regulations, Authorised Financial Advisers are currently required to make certain disclosures where their use of product providers is limited. A similar approach could be adopted.

12. Do you agree with the proposal relating to disclosure of costs to clients, as set out above? Why or why not?

We agree with the proposal in relation to fees for advice and a reasonable estimate of the fee (and basis) should be provided before a customer incurs a fee for advice. However, this requirement should not extend to product related fees and expenses. Those products will likely be subject to their own disclosure regimes (for example, financial products under the Financial Markets Conduct Act) and customers will be provided with applicable disclosure documentation required by those regimes or notify customers where to find the relevant disclosure.

13. What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?

Please see our response to Question 12.

14. Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?

Please see our Key Message 1.

We agree that this information should be disclosed early and this could be achieved through the publicly available information (on a website). We also note the new duty proposed in clause 27 of the Financial Services Legislation Amendment Bill (section 431Q(b)). FAPs engaging Nominated Representatives will be unable to have payment or incentive structures that are intended to encourage those Nominated Representatives to engage in conduct that contravenes certain duties, including the duty to give priority to a customer's interests. Therefore, we contend that, in relation to Nominated Representatives, there may be little or no benefit to customers in providing this disclosure and if anything is required, a high level disclosure through the publicly available information may suffice.

We also note that to the extent Financial Advisers (not Nominated Representatives) operate on the same basis as above, then they also could rely on disclosure being made through publicly available information.

15. If the regulations were to include a materiality threshold that would determine the commissions and incentives that needed to be disclosed, what would an appropriate threshold be?

We support a materiality threshold to determine the commissions and incentives that need to be disclosed. The current regime sets the disclosure threshold at *an insignificant nature that would be unlikely to influence the adviser*.

As discussed in our response to Question 14, we contend that this disclosure may not be required in certain circumstances.

16. Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?

Yes, in the case of both soft commissions and up front commissions we believe it is necessary for the regulations to contain an element of prescription. However, we believe that there should be a level of prescription that is anchored sensibly, so that there is still flexibility in how commissions and incentives may be disclosed.

17. Which of the above options do you prefer? What are these costs and benefits of the options?

We would prefer both Option 1 or Option 2 - 'Require a comparison of commission rates' and 'Require the disclosure of commissions and incentives in dollar terms'. We believe that it will be beneficial for customers to receive both a comparison of incentives as well as being able to better understand the incentives by seeing these in dollar terms. However, we contend that FAPs should be able to achieve this disclosure by way of examples in the publicly available information where that may be appropriate. As discussed in our response to Question 14, we contend that this disclosure may not be required in certain circumstances.

18. Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?

We agree. However, please see our Key Message 1 and our response to Question 2.

19. Are there any additional factors that might influence financial advice that should be disclosed?

No.

20. Should these factors be disclosed alongside information about the conduct and client care duties that financial advice should be subject to?

No comment. Please see our response to question 19.

21. Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?

We agree that bankruptcy, insolvency and decisions from external disciplinary tribunal, regulatory or other formal external proceedings could be disclosed. In relation to internal performance or disciplinary action, there would need to be clear standards or guidance regarding behaviour that requires disclosure to ensure consistency across FAPs. However, rather than focusing on disclosure, it may be more appropriate to consider implementing a public register or process between FAPs to enable effective reporting on individuals that demonstrate poor conduct to deal with this issue more generally. This could be implemented through changes to the Financial Services Legislation Amendment Bill.

22. Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?

No. We expect this will be dealt with through 'fit and proper' requirements during licensing.

23. Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?

No.

24. Do you think that a prescribed template will assist consumers in accessing the information that they require?

See responses to Questions 8 and 16. Some level of prescription may be helpful, particularly in relation to the information that is to be publicly available. However, this needs to be balanced with the potential to restrict innovation in the way disclosure is made.

25. How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?

No comment. Please see our response to Question 24.

26. Should the regulations allow for disclosure to be provided verbally? Why or why not?

Yes. The FAA Disclosure Regulations currently provide exemptions that enable verbal disclosure in certain cases (category 2 products). This appreciates the need in certain circumstances, to be able to make disclosure verbally and should be available under the new regulations. If verbal disclosure is not permitted then it's likely that the new disclosure regime will not achieve one of more of the objectives outlined in the Consultation.

27. If disclosure was provided verbally, should the regulations include any additional requirements?

No.

28. Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?

As with our submission made to the Code Working Group on the Code of Conduct, in respect of 'robo-advice', we believe it may be prudent to carry certain requirements of the Financial Advisers (Personalised Digital Advice) Exemption Notice 2018 over to the new regime, in particular a description of how the service works.

29. Do consumers require any additional information when receiving financial advice via an online platform?

Please see our answer to Question 28.

30. Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?

We agree, however we believe that it is more appropriate to deal with this under the suitability requirements to be contained in the Code of Conduct.

31. Should this apply to the financial advice given on the replacement of all financial advice products?

No. In some instances there could be little or no potential risk when replacing a product. If a notification is to be used in every case then over time there is the potential for that to be less effective from a customer's perspective.

32. Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?

Yes. We believe that there needs to be some flexibility in this respect and that further disclosure should not apply unless there has been some material variation to the adviser service or scope.

33.Should there be a limit on the length of time that this relief would apply?

No.

34.Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?

Yes. Depending on the final requirements, a 9 month period may not be sufficient to design and implement new disclosure processes to ensure compliance with the regime.

35.Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?

No comment.

36.Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?

No. We do not believe disclosure to wholesale customers is necessary.

37.Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?

No.

Submission on discussion document: *Disclosure requirements in the new financial advice regime*

Your name and organisation

Name	Gavin Greaves
Organisation	Apex Advice Group Ltd

Responses to discussion document questions

1 *Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?*

We agree with the current objectives and suggest addition of a further objective–

“Helping New Zealanders have confidence to seek advice and make better financial decisions.”

Consumers should have the faith in the financial system and with the help of available information, be able to gain confidence to seek financial advice and make well informed financial decisions specific to their needs and requirements.

The timing and form of disclosure

2 *What are your views on the proposal that information be disclosed to consumers at different points in the advice process?*

- FAPs making the basic information publicly available or available on request is a welcome change. Customers would generally prefer to check the website of the adviser before having the first meeting any way. (Talking about things like a disputes resolution creates a negative perception of the industry and the adviser and are not factors that help a client base a decision to work with that adviser. So, if this information is publicly available on the website, you are not highlighting this information to the client in the first meeting and giving an impression that a dispute might arise, rather, this information is available for client to view and decide on if they need to use it in future and you just direct them to the right place for this kind of information rather than spending a substantial amount of time explaining about this when this time could be used in building a relationship.)
- Providing the right information at the right time is a great initiative and it helps the clients as there are no surprises for them. However, we do have concerns on how this will work as it sounds like a cumbersome process for example, if a client comes in as an insurance client you will disclose certain information then if they take up another service from your business then you have a whole other set of disclosure. This will be easier to answer if the items that are essential to be disclosed are listed in detail.
- The disclosure should be simple, clear and concise. Currently, there is too much information and its very confusing especially having 2 disclosures: primary & secondary disclosure document.
- It is assumed that if an adviser is registered by the government, he/she is a professional.

The disclosure should focus on the positives of how that adviser can help them based on their skill and competence.

3

Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?

It would differ from client to client, some clients are not interested to know any additional details and are focussed on just getting the right advice. Also, it depends on what is being disclosed. I believe it will make this very complicated as the adviser will constantly be checking did they disclose the right information at the right time and trying at the same time to identify the right time. We have 1 hour often to work through the discovery phase with the client which is why the client is there and to have this compromised means there is a higher possibility the advice will be compromised. For many clients this will not improve their outcome but make their experience worse.

4

Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?

As a habit, most people would automatically research or google the adviser prior to working with the advisers. And it would be easier for the advisers as well, to point the clients towards a website to view the general information. And, based on this there is no longer a need to confuse the client with conversations that are irrelevant like telling them redundant information about the adviser or provider. The focus would shift back to building good relationships, provide a good outcome and experience for the client.

The form of disclosure

5

If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?

If we are focusing on information about the adviser and their value to a client this should be upfront. Fees or commissions should be at the time they are to be charged. For example, if it is commission based, disclosing that information before value is established when the client doesn't pay this to the adviser it comes from the insurance company, there is no point in disclosing it until it has an impact like a proposal is to be completed and submitted. For fees it should be before a fee is to be charged.

6

Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?

There is an issue with defining "clear concise and effective". This is about disclosure and it depends on the end outcome to the client. I would suggest if the outcome is poor it won't be a result of disclosure it will be due to an error in the advice. So, disclosure should be limited to a response from the FMA and vary depending on the issue from monitoring, suspension to a stop order.

What information do customers require?

7

Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?

This may be publicly available on the website or made available on request. It should be accessible for the client as some of these things might help clients increase trust in the

advisers. But, if you spend a substantial amount of time in your first meeting talking about these things, it could be an over kill and create distrust based on an overcompensation.

8

Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?

Yes. Good guidance for this is very important so the client if comparing companies or advisers can do so on an even level of information.

9

Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?

This should be disclosed on the website. But not by the adviser in the first meeting. We are trying to build good relationships, we should not start with a negative giving the indication that the client should expect something to go wrong. There is no need to disclose this until deadlock is reached and the complaint goes beyond the client adviser level.

Note: whilst this service may be free to consumers, it is not free to Advisers. IFSO provide one free complaint enquiry yearly and all subsequent complaints cost the Adviser \$1,000 each complaint. Is it fair to charge the Adviser every time a consumer uses a dispute resolution service that the Adviser also pay an annual fee to be a member of? There is a perceived move to encourage clients to complain if they don't get the outcome they expect (however reasonable or unreasonable this might be). Recent experience has determined that the IFSO need to carry out an enquiry at a cost, even if they determine the complaint is unreasonable.

Information about the financial advice

Limitations in the nature and scope of the advice

10

Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out on page 19? Why or why not?

For the FAP yes this should be identifiable on their website similarly for a firm.

For individuals they should define what they will be advising on to the client. Obviously if it is something they can't advise on they will not imply or suggest that they would advise on that topic. This should be at the end of the discovery process or from the point that a fee will be charged. It is very difficult to define the scope until you know what the client is wanting and this often is difficult to define until you know a little more about the client. This may not be the case say for a stockbroker the scope is already limited by the specialist nature of the service provided.

For an individual if the analysis and recommendations considered limited products or providers this should be disclosed if the client has an expectation that the whole market was considered or if there is a conflict of interest affecting the depth and breadth of the research.

11

How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?

I don't believe the regulator can ensure that the consumer receives an accurate indication. In the disclosure the customer should be aware of the breadth and depth that the adviser can advise. If the advice is within the adviser's ability then it would be assumed the outcome

would be within the expectations of the client. As you go through the advice journey where you end up may be very different to where you start but if it is within the disclosed capabilities of the adviser there should be no problem. For example, when you go to the lawyer with a legal issue say employment related. If they are not an employment lawyer then they will not provide you advice. But as a consumer if they are qualified the guidance or advice is expected to be reasonable.

Having said that, if the regulators can provide a standard template of the disclosure document, and that has a section that covers extent of the market, the advisers would have to give information about this.

Costs to client

12

Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page 20? Why or why not?

This is only relevant if you charge an hourly or set fee for your advice. These fees need to be agreed before they are charged. This may be when defining the scope if an hourly fee or it may be at recommendation time when a fee may be taken from a product if they proceed with the advice.

13

What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?

These potential fees should be mentioned if they are part of the advice. This would only be in the written advice document. At that stage you have a level of certainty about the advice and products for services recommended.

These should not be disclosed for no reason in a primary or secondary disclosure document like they are now as they just create confusion.

Commission payments and other incentives

14

Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?

I do not believe the general terms add any clarity or value. Customers are more interested in what point will they be paying and the advice is no longer free. It is at this point that it is important to set expectations and agree on the fee and the work to be done.

When receiving commissions and incentives this is different as they do not get paid by the client but by the product provider. The adviser takes all the risk because they can do a lot of work and if the advice does not get executed then they will not get paid for their effort. Therefore, it can be said the more risk the more reward.

With commissions & incentives the client wants to know that they are not getting inappropriate advice based on an adviser's conflict to achieve an incentive.

This is not about disclosure but the industry monitoring and eradicating poor behaviour. The consumer will decide to work with someone they like they will trust them and accept that

they will get paid a certain way or qualify for an incentive. We have been operating that way for many years. The real issue is poor behaviour from unprofessional people taking advantage of this trust. No amount of disclosure will fix this problem. What will fix it is addressing the poor behaviour which should not be left with the client but should be the responsibility of the governing body.

In summary fee should be discussed when it is about to be charged so at the point when the work the adviser will conduct will start costing.

Commissions should not be disclosed when they are paid by the provider. If the industry is unhappy with incentives then take them out of the industry do not have them available to the adviser. Every profession where there are employees have bonuses for performance it is called reward and recognition and that is what people respond too.

I would suggest that if a provider wants to offer an incentive then the FMA needs to approve it. The FMA can then audit which advisers receive an incentive and look if there is any poor behaviour and address it at this stage.

The adviser can disclose that they will be paid a commission by the product provider and there may be incentives available. They should not have to disclose the exact commission or the incentive they qualify for. An underperforming adviser may never qualify for an incentive because they are a lazy operator so this will give them an unfair advantage in the eyes of the industry and the consumer as they can disclose they do not have any incentives. Is that appropriate?

Consumers make decisions on who they think can provide good advice not what they earn. They recognize bad advice can cost them a lot more than the cost of good advice.

15

If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?

That is fair and appropriate. The hard part is deciding what incentives would be material as they can change through the year based on many factors from the incentive offered but more so where the adviser knows they can get a good result for the client. For example, the incentives are nice but the income generated from getting business across the line which puts food on the table for an adviser is a bigger driver. In the insurance space knowing that a certain provider does not look favourably at people with a high BMI then you will use a provider who is more sympathetic and you can get the business through at good terms in a timely fashion as long as you are comfortable with their credit rating and their ability to pay the claim in the future.

Options for how to disclose commissions and other incentives

16

Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?

No, it should be decided by the industry.

This is predominantly in the insurance and mortgage area. In both all the providers are competitive in commissions and incentive due to an efficient market. The client does not focus on this instead they are interested in the outcome "have my issues been understood and addressed with an appropriate solution".

17

Which of the options (as set out in pages 21-22) do you prefer? What are these costs and

benefits of the options?

Option 3 a principle based approach.

Option 1 & 2 provide too much information to the client that very few understand and distract from what is important - access to quality advice.

Option 1 & 2 would delay the advice process and provide poor customer experience because the client focuses on price and not value. Value is built over time and to introduce price that may or may not be relevant before value and trust is built often impacts the outcome and in many cases, scares many clients off and away from getting advice relying on friends and family for advice.

You can never prove to a client that you are not providing good advice if you have them focusing on price. If they know 1 provider pays you less than the provider you are recommending but you know the provider you are recommending is a better fit for purpose leading to the client making a poor decision.

If the issue is addressing poor behaviour from a minority of advisers then this should fall back to the product provider and the regulatory body who can see who is doing what. Recently this was done in the insurance industry and there were 200 advisers identified which out of 7000+ RFA advisers is less than 3% of the industry of which 24 were considered critical. This is where this issue should be addressed not leaving it to the client to do the regulators job. The client is too busy and will never be familiar enough with the industry to identify poor behaviour even if these things are disclosed.

Other conflicts of interest and affiliations

18

Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?

Yes

19

Are there any additional factors that might influence financial advice that should be disclosed?

No

20

Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?

n/a

Information about the firm or individual giving advice

Details of relevant disciplinary history

21

Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?

Yes, the client deserves to know who they are potentially working with. The bankruptcy or insolvency needs to be assessed as someone could get involved in an unrelated business that does not work out and due to personal guarantees could find themselves in a bad financial position. The reality is in NZ we have over 600,000 self-employed people and given 60% of start-up businesses fail. If this was not criminally related and just unfortunate outcome in an

unrelated industry. This needs to be considered and application for a licence and at regular renewals and the regulator needs to decide if this is material and should be included.

One exception is if you are holding clients' money.

22 *Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?*

No. Many directors and successful business people will try other businesses and these may fail should this be disclosed and does it have any bearing on their ability to provide a good business. This should only be relevant if they were involved in criminal behaviour or are holding client money.

23 *Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?*

No. It would change the customer perception about the FAP. It is possible that FAP had just 1 contravention that too because of negligence or lack of knowledge, if this is disclosed it will negatively affect the public perception of the FAP and affect the future business. However, if an FAP is a regular offender then the regulator should not grant the FAP a licence or at least make the assessment of appropriate action as the regulator is the gateway to the industry.

Additional options

A prescribed summary document

24 *Do you think that a prescribed template will assist consumers in accessing the information that they require?*

No. This is very confusing for the client and you are not provide this type of information when you go to an accountant or Lawyer or doctor.

25 *How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?*

It won't work.

Requirements for disclosure provided through different methods

26 *Should the regulations allow for disclosure to be provided verbally? Why or why not?*

No because there is no certainty that the conversation has been had. And it will be difficult for FAP or the regulator to ensure that the customers received this information, unless the client signs an acknowledgement that this information was verbally provided

27 *If disclosure was provided verbally, should the regulations include any additional requirements?*

Yes a signed acknowledgement or digital acknowledgement from the client.

Requirements for financial advice given through different channels

28 *Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?*

No

29 *Do consumers require any additional information when receiving financial advice via an online platform?*

No

Disclosure when replacing a financial product

30 *Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?*

We do this already although it may not be legislated. The client should be aware of the specific risks of the advice not the generic.

31 *Should this apply to the financial advice given on the replacement of all financial advice products?*

Yes. This seems to be an area that issues arise so a better disclosure of the costs and benefits of the replacement can only serve to provide a better customer experience and protect the adviser if they are doing the right thing.

Information to existing financial advice clients

32 *Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?*

Absolutely. If there are no new fees or new services provided then the existing disclosure should be appropriate. This could be captured in a verbal or digital disclosure of the change that effects the client.

The current disclosure documents do not help consumers decide to work with a business. Clients don't read them only about 5% do. So, they are more for the regulator to tick a box than for a better consumer experience. The most important factor is you are registered and qualified either by education or experience.

33 *Should there be a limit on the length of time that this relief would apply?*

No limit if there is no change or no additional service provided to the client.

Transitional requirements

34 *Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?*

No

35 *Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?*

Possibly depending on what they need to work through to transition. This is obviously more onerous than the rest of the market.

Disclosure to wholesale clients

36

Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?

37

Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?

Other comments



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25 May 2018

MBIE Disclosure Requirements Consultation - Disclosure Requirements in the New Financial Advice Regime Discussion Paper

ASB Bank Limited (**ASB**) welcomes the opportunity to make a submission on the Disclosure Requirements in the New Financial Advice Regime Consultation.

This submission addresses, in sequence, a selection of the questions posed in the discussion paper *Disclosure requirements in the new financial advice regime* (the **discussion paper**).

We acknowledge ASB's submission may be published on MBIE's website, and may be released in response to a request under the Official Information Act. ASB does not seek confidentiality for any aspect of this submission other than my contact details below.

If you require any further information, please do not hesitate to contact me.

Yours sincerely,

S9(2)(a)

Jonny Le Leu
Regulatory Affairs Manager
ASB Bank Limited
S9(2)(a)

Question 1: Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?

ASB strongly endorses the objectives identified in the discussion paper, and notes that efforts to make the disclosure process easier for consumers, and to make the disclosed information more understandable, are beneficial to good advice outcomes.

However, ASB is concerned that Objective 2 (provide consumers with the right information at the right time) may not be achieved by the “three step” disclosure process proposed in the discussion paper. Requiring disclosure at three separate points, some of it of the same or similar information, may actually increase the amount of information disclosed to consumers. This is especially true when giving advice in relation to simple products, and is not necessarily consistent with the aim of providing “information that is relevant and meaningful to the client’s current situation”. ASB’s concerns in relation to the proposed “three step” disclosure process are further addressed in the responses to the questions below, and in particular questions 2 and 3.

In terms of further objectives, ASB notes that the premise of disclosure pre-supposes that all consumers will be able to understand what the disclosed information means in relation to the advice they are receiving. This may not be the case for consumers with lower levels of financial literacy. Accordingly, ASB would support an objective to encourage actions intended to address consumer understanding of the information disclosed. This could be achieved by providing impartial guidance (e.g. from regulators or financial literacy organisations) on what information consumers should be expecting and aware of, and how they might assess the information disclosed.

The timing and form of disclosure

Question 2: What are your views on the proposal that information be disclosed to consumers at different points in the advice process?

ASB supports in principle the proposal that information be disclosed to consumers at different points in the advice process, and endorses the principles of effective disclosure of information to consumers. In particular, ASB supports the proposal to make certain information publicly available, as outlined at paragraph 22 of the discussion paper.

However, ASB submits that both the timing and form of disclosure should be flexible (rather than flexible only to form, as the current proposal is).

The reason that ASB supports an approach to disclosure which allows flexibility as to both timing and form is because ASB has a number of concerns about how the “three step” disclosure proposal would work in practice. There are many different advice processes completed by different types of advisers, and it is likely that disclosure at different points (and in particular, providing disclosure both at the “nature and scope of the advice known” stage and the “recommendation” stage) would be impractical in respect of some of these different processes, and in particular product advice scenarios.

First, while disclosure at different points may work in a linear advice process (e.g. where a consumer approaches an adviser, it is established that one product is required, and the adviser makes a recommendation accordingly), in reality, a consumer may have multiple needs and a variety of products may be considered and recommended. In a situation such as this, disclosure

at multiple points may interrupt the logical flow and lead to an excess of information for the consumer to process.

Second, while disclosure at different points may be appropriate in situations involving complex financial planning, it may not be useful when providing consumers with simple, straightforward advice on general products, such as bank accounts. In fact it may have the opposite effect by disrupting the engagement and overwhelming the customer.

Question 3: Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information that they receive? Why or why not?

ASB considers that there are some issues with this approach which prevent it from being truly effective in increasing consumer engagement and understanding of disclosed information.

First, providing general information (at the "nature and scope of the advice known" stage) and then specific information (at the "recommendation" stage) requires customers to engage multiple times with similar information, and evaluate and re-evaluate the effect of this information on their decisions. There is a risk that if this is too demanding, customers will ignore the disclosed information and disclosure will revert to a "tick-box" exercise with little demonstrable value for customers.

More broadly, there is a risk that the proposed regime will actually be more complicated than the existing regime. For example, if all of the proposals in the discussion paper are adopted, a consumer may be required to engage with:

- General disclosure on a website at the "publically available information" stage;
- A prescribed summary document at the "nature and scope of the advice known" stage;
- Any other disclosure at the "nature and scope of the advice known" stage; and
- Disclosure at the "recommendation" stage.

ASB considers that this may be excessive, and risks overloading the consumer with information that they must assess and evaluate in relation to the recommendations received.

Second, as discussed above in the response to question 1, consumers with lower levels of financial literacy may not be able to understand the relevance of or evaluate the information provided in relation to advice, regardless of the timing or form of the information.

Third, there is a risk that consumers will not understand the relevance of information provided at the "nature and scope of the advice known stage", as they are yet to receive the advice in question. This is particularly so if a consumer is given disclosure in relation to multiple products. It is important for consumer engagement that consumers are able to relate to the information provided and to understand how it adds value to their experience. For example, at the "nature and scope of the advice known stage", it is unclear how an adviser disclosing details of their licence and the complaints process provides a benefit to the consumer. ASB considers that this information would be more appropriately disclosed at the "publically available information" stage.

Fourth, as discussed above in the response to question 2, while this approach may make sense in the context of the provision of complex financial advice, it is less practical when applied to a situation where more straightforward advice is provided, such as advice in relation to products. Applying this approach to such a situation may in fact decrease the effectiveness of the disclosure in respect of consumer engagement and understanding, and there is a risk that

consumers will feel alienated by being provided with a large amount of disclosure information at multiple points.

Question 4: Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?

ASB agrees that financial advice providers should be required to tell consumers they can access general information about the provider, particularly if the financial advice provider places reliance on disclosure through publicly available information. The information should also be available upon request.

The form of disclosure

Question 5: If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way as to provide certainty to the industry of what is required?

ASB strongly supports regulations that are flexible in terms of both the form of disclosure and the timing of disclosure.

ASB considers that the benefits of flexibility and the risks of prescription identified in the discussion paper indicate that there should be flexibility in relation to both form and timing, not just in relation to form as set out in the discussion paper.

One way in which flexibility may be achieved would be to establish a principles-based approach to disclosure. This would involve the regulations prescribing what information must be disclosed and requiring advisers to establish a process for disclosing this information in a form and at a time which ensures consumers are provided with good advice outcomes. Timing requirements could be recommended but not required, with advisers given the opportunity to depart from timing requirements if appropriate in a given situation. The principles based approach could be supplemented by Regulator guidance.

Question 6: Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?

ASB considers that an FMA stop order or similar regulatory response would be appropriate, as opposed to a civil liability response.

What information do customers require?

Question 7: Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?

ASB agrees in principle that information relating to the licence, duties and complaints process should be made available to consumers. However, ASB considers that it is important to provide this information at a time where it will be relevant and of benefit to a consumer, as noted above

in the response to question 3. Otherwise, there is a risk that a consumer will not engage with the disclosed information.

ASB suggests that this information is most appropriately provided at the “publicly available information” stage, as well as being available upon request. In addition to being publically available and available on request, information in relation to complaints processes should also be provided upon receipt of a complaint.

Question 8: Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?

For the reasons set out above in relation to the advantages of a flexible, principles-based approach to disclosure, ASB does not consider that prescribed text for the disclosure of information relating to the licence, duties and complaints process is necessary.

Question 9: Should consumers be informed of their ability to access a free dispute resolution service when making a complaint?

ASB strongly supports the provision of this information to consumers at the “publicly available information” stage, at the time a complaint is made or upon request. ASB would have reservations if this information was required to be provided at the “recommendation” stage, as this information is not material to a customer’s decision to accept a recommendation or not.

Information about financial advice

Limitations in the nature and scope of the advice

Question 10: Do you agree with the proposal in relation to the disclosure of the nature and scope of advice, as set out on page 19? Why or why not?

ASB agrees in principle with the proposal in relation to the disclosure of the nature and scope of advice. ASB agrees that it is important for customers to receive this information.

However, as set out in the response to question 5 above, ASB strongly supports regulations that are flexible in terms of both the form of disclosure and the timing of disclosure, in order to support an ability to disclose information at the most effective time in a wide range of advice situations.

Question 11: How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?

ASB considers that the regulations could take a similar approach to the FAA Disclosure Regulations, whereby Authorised Financial Advisers are required to make disclosures where their use of product providers is limited.

Costs to client

Question 12: Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page 20? Why or why not?

ASB strongly agrees with the proposal in relation to disclosure of costs to clients. Information as to cost is a core component of the information a consumer requires to make an informed decision as to whether to proceed with a recommended product or plan. However, as addressed in the response to question 13 below, ASB does not consider that this disclosure should extend to product related fees.

Question 13: What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?

While ASB supports the disclosure of costs to clients, as set out above in the response to question 12, ASB does not consider that this disclosure should be extended to product related fees and expenses. This is because products are often the subject of separate disclosure regimes, and this information will already be provided to consumers.

Commission payments and other incentives

Question 14: Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?

ASB supports in principle the provision of information as to commissions and other incentives to consumers. This may motivate advisers to ensure that consumers are provided with good evidence to support any recommendations, may reassure consumers in situations where there are no additional incentives offered to advisers for recommending one product over another, and allows consumers to compare incentives offered between providers.

ASB agrees that financial advice providers should state if they pay commissions or incentives to individuals they engage, or if they, or the individuals who they engage to give financial advice, receive commissions or incentives from product providers at the “publicly available information” stage.

However, ASB has reservations about the proposal that the firm or individual giving regulated financial advice provide more detailed disclosure at the “nature and scope of the advice known” stage. ASB submits that disclosure requirements should instead be flexible as to timing, for the reasons set out below.

First, as previously alluded to, consumers may have multiple or complex needs, which have not been clarified at an early stage in the advice process. This may result in large amount of commission and other incentive information being disclosed to a consumer. An excessive amount of information is likely to deter a consumer from actively engaging with it.

Second, on a related note, disclosure of such information at an early stage may not be of maximum benefit to a consumer, as they will not be able to immediately incorporate this information into an assessment of a particular recommendation (as none will have been given at that stage).

Question 15: If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?

ASB considers that a materiality test would be appropriate, and suggests that such a test be supported by further guidance from Regulators.

Options for how to disclose commissions and other incentives

Question 16: Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?

ASB suggests that a principles-based approach, as outlined above in the response to question 5 and discussed further in the response to question 17 below, would be sufficient in relation to the disclosure of commissions and other incentives, with guidance provided as to the minimum expected disclosure.

Question 17: Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?

In relation to how commissions and other incentives should be disclosed, ASB prefers Option 3, a principles based approach. The benefits of Option 3 include that it is the most flexible of the options. This means that it is the most appropriate in terms of covering the many different financial advice providers, financial advisers and advice situations, including the provision of verbal advice.

Other conflicts of interest and affiliations

Question 18: Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?

ASB strongly agrees that those giving financial advice should be required to disclose all potential conflicts of interest, provided they are relevant.

Question 19: Are there any additional factors that might influence financial advice that should be disclosed?

No comment.

Question 20: Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?

No comment.

Information about the firm or individual giving advice

Details of relevant disciplinary history

Question 21: Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?

ASB agrees in principle with the proposal to disclose information to consumers relating to disciplinary history and bankruptcy/insolvency history. ASB considers that this is important information about relevant issues which a consumer should be informed about.

However, ASB considers that it is extremely important to clarify and carefully define the scope of “relevant disciplinary history”. ASB does not agree that disclosure should include internal disciplinary actions, as different standards will apply across different financial advice providers.

Question 22: Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?

ASB does not agree with the proposal that disclosure of information relating to disciplinary history and bankruptcy or insolvency history should also apply to the directors of a financial advice provider. This is on the basis that we anticipate this information will be considered during the licensing process as per the ‘fit and proper’ requirements.

Question 23: Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?

ASB does not agree with the proposal that financial advice providers should also be required to disclose if they have been found to have contravened a financial advice duty. Should MBIE consider such disclosure to be necessary, ASB submits that a clear materiality threshold should apply.

Additional options

A prescribed summary document

Question 24: Do you think that a prescribed template will assist consumers in accessing the information that they require?

ASB considers that a prescribed template is not necessary, as any possible benefit to consumers should be evaluated against the increased compliance costs to advisers of establishing and maintaining a summary document in addition to the full disclosure information required.

Additionally, there is a risk that a consumer may only refer to the summary document, and not proceed to reviewing the full disclosure information provided. This would then raise a question as to whether both are necessary.

Further, this proposal appears to be inconsistent with the desire for flexibility in the form of disclosure, the benefits of which are addressed in the response to Question 5 above.

Question 25: How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?

No comment.

Requirements for disclosure provided through different methods

Question 26: Should the regulations allow for disclosure to be provided verbally? Why or why not?

ASB suggests that the regulations should allow for disclosure to be provided verbally. This is because verbal disclosure is the most appropriate disclosure method in some financial services settings such as the dealing room, where no face to face customer interaction occurs. ASB considers that as long as the appropriate disclosure is given to ensure a good advice outcome, the method by which that disclosure is given is largely irrelevant.

Additionally, verbal disclosure may provide important accessibility options for financial advice providers and consumers, such as when advising a visually impaired or dyslexic consumer.

Question 27: If disclosure was provided verbally, should the regulations include any additional requirements?

ASB does not consider that it would be appropriate for the regulations to include additional requirements when verbal disclosure is provided. Such additional requirements could erode the benefits of verbal disclosure.

Requirements for financial advice given through different channels

Question 28: Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?

ASB suggests that a possible additional disclosure requirement in relation to advice given by a robo-advice platform would be a requirement to disclose information that assists consumers to understand how a robo-advice platform works.

Question 29: Do consumers require any additional information when receiving financial advice via an online platform?

ASB refers to the response to question 28 above.

Disclosure when replacing a financial product

Question 30: Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?

ASB agrees that those advising consumers to replace financial products should be required to provide a prescribed notification. However, ASB considers that this would be better addressed by the Code of Professional Conduct for Financial Advice Services, rather than by regulations to support the Bill.

ASB suggests that such a notification should advise a consumer that the consumer should satisfy themselves that the replacement product meets their needs, and that they are not losing a critically important benefit as a result of the replacement, or that any such loss is mitigated by a feature of the replacement product.

Question 31: Should this apply to the financial advice given on the replacement of all financial advice products?

ASB submits that it is not necessary for this requirement to apply to the replacement of all financial advice products, as in some instances there is little or no potential risk to a consumer when replacing a product.

Information to existing financial advice clients

Question 32: Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?

ASB supports regulations which provide for reduced disclosure requirements for existing clients. ASB considers that reduced disclosure requirements should apply where information that has been previously disclosed to a client relating to an adviser's service has not substantially changed.

Question 33: Should there be a limit on the length of time that this relief would apply?

No, ASB considers that the appropriate test is whether there has been material or substantial changes in relation to relevant arrangements, such as organisational arrangements, disciplinary arrangements or remuneration arrangements. ASB suggests that financial advice providers should ensure their nominated representatives and financial advisers are aware of when such changes have occurred, and therefore when existing customers will require repeat disclosure. ASB notes that time is a factor relevant to the likelihood that there has been a material or substantial change in relation to relevant arrangements.

Transitional requirements

Question 34: Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?

ASB considers that a further transitional period for the industry would be appropriate, as this would allow the industry sufficient time to perfect new processes in time to comply with the new requirements, especially in a situation where there is flexibility as to the form and timing of disclosure, or a principles-based approach. ASB suggests that one option would be to have the new requirements come into force on 1 May 2020, as per the proposed general commencement date in the Financial Services Legislation Amendment Bill. This would allow financial advice providers to update their processes so that they may voluntarily comply before this date.

Question 35: Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?

No comment.

Disclosure to wholesale clients

Question 36: Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?

ASB does not consider that disclosure to wholesale customers is necessary.

Question 37: Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?

No comment.

30 May 2018

Ministry of Business, Innovation and Employment
faareview@mbie.govt.nz

Dear Sir/Madam

Disclosure requirements in the new financial advice regime

Thank you for the opportunity to comment on the proposed disclosure requirements in the new financial advice regime. We strongly support the objectives of the disclosure requirements. Please consider this submission in conjunction with our previous submissions on the new financial advice regime, including our submission on the Code of Conduct dated 30 April 2018. Our comments below focus on the disclosure proposals relating to the complaints process and dispute resolution scheme.

About us

The Banking Ombudsman Scheme is an approved dispute resolution scheme under the Financial Service Providers (Registration and Dispute Resolution) Act 2008. Our role is to resolve disputes between banks and their customers, and improve the banking experience for consumers. We use the lessons learned from our cases to improve banking standards and help customers manage their banking affairs better.

Awareness of dispute resolution membership

We are the best-known financial services dispute resolution scheme. We consider the most effective way to ensure consumers know about how to make a complaint is through their financial service provider. Providers should make information available to customers about how to make a complaint and where to take a dispute at the time they provide a financial service and when they receive a complaint.

Each member of our scheme must publicise its complaint process, as well as the availability of our services if a customer is unhappy with the outcome of that process. This is a requirement of joining our scheme, and also of the New Zealand Bankers' Association's Code of Banking Practice, to which our members subscribe. Members display our brochures in their branches, and publicise their complaints procedures and our details on their websites.



Complaints process and dispute resolution membership (questions 7-9)

We support the proposal that information relating to the licence, duties and complaints process should be made available to consumers. This information will give consumers confidence about the standards providers must meet and the regulatory framework within which they operate. Knowing they have recourse to an independent forum in the event of a dispute will strengthen that confidence.

We do not consider the regulations should prescribe the precise text of the disclosure, or how the disclosure should be made. Rather, the regulations should set out what general information must be disclosed at various points in the process. This would give providers the necessary flexibility to respond to changes in the sector.

We agree it is important consumers are made aware of their ability to go to a free and independent dispute resolution service if the customer is dissatisfied with the service or product they have received.

We consider providers should, as a matter of best practice, inform customers as soon as they make a complaint. The initial acknowledgement of the complaint should set out the process the provider will follow, including timeframes, and inform the consumer of the independent dispute resolution scheme that is available. This is not to encourage consumers to go directly to the external dispute resolution scheme, but simply to ensure they are aware of the wider dispute resolution framework available to them. This will help rectify any power imbalance consumers may experience in bringing a complaint.

We therefore agree with the proposal that consumers should be informed of their ability to go to a free and independent dispute resolution service, both at the time of providing the financial service and when making a complaint.

We trust these comments will help you in developing the disclosure requirements. Please do not hesitate to contact us if you would like any further information.

Yours sincerely

S9(2)(a)

Nicola Sladden
Banking Ombudsman

Submission on discussion document: *Disclosure requirements in the new financial advice regime*

Your name and organisation

Name	Haydn Wong and Katie Dow
Organisation	Bell Gully

Responses to discussion document questions

1 *Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?*

Yes, in particular we support providing consumers with the right information at the right time and providing clear and concise information.

The timing and form of disclosure

2 *What are your views on the proposal that information be disclosed to consumers at different points in the advice process?*

We support the proposal that information be disclosed to consumers when the information is most meaningful to them. In some circumstances, however, this may mean that it makes sense to combine the disclosures and we would support creating the flexibility to do so.

3 *Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?*

Yes. When consumers receive a suite of information from advisers at all once (often at the outset of the relationship) this can reduce the effectiveness of the disclosure because the relevance of the information may only become apparent later on. Disclosing the information when it is most meaningful to consumers will increase the effectiveness of the disclosure.

4 *Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?*

Yes, although we would support flexibility in the form of the disclosure. Conduct and client care duties is one area that we believe would benefit from prescribed/standard disclosure especially given objective 2 is to keep disclosure succinct and plain English. Otherwise, there may be uncertainty as to the level of disclosure required and a range of approaches may be taken.

The form of disclosure

5 *If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?*

We believe that clear and concise guidance is needed. We suggest working with the

industry to see whether developing template examples would be useful. It will be important however that any such templates are not so generic as to be of limited assistance nor too prescriptive such that they are unworkable.

What information do customers require?

7

Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?

Yes. See our response to question 4 above in relation to disclosure of duties.

8

Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?

Yes, although some flexibility will be needed to accommodate the different internal complaints processes that are worked through before elevation to a dispute resolution scheme.

9

Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?

Yes, although most FAPs will have an internal complaints process that is worked through before elevating the matter to a dispute resolution scheme and accordingly, the scheme will need to be mentioned in that context.

Information about the financial advice

Limitations in the nature and scope of the advice

10

Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out on page 19? Why or why not?

Yes, although we are uncertain as to how the “publicly available” information requirement will operate for sole traders that do not have a website (unless they are required to have a website).

We note that the boxed text on page 14 states that the disclosure regulations “may go some way to satisfying the duty in the Bill to take reasonable steps to ensure the clients understand the nature and scope of the advice being given but *may not be all that is required*”. In the interests of being clear as to the requirements and expectations of advisers and in line with each of the objectives of the disclosure regime, it would be useful to have clarity on whether the italicised wording is intended to cover situations where there are particular circumstances which mean that the standard disclosure is not going to be effective or whether this is intended to be applied generally such that advisers need to consider on a case by case basis whether there are other steps that should be taken. FAPs and financial advisers may be liable for contraventions of disclosure duties and accordingly it is imperative that there is certainty in the Bill and the regulations as to what is required.

11

How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?

We support the proposed content set out in the bullet points on page 19.

Costs to client	
12	<p><i>Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page 20? Why or why not?</i></p> <p>Yes. We submit that the disclosure required at the generally publicly available information level should simply be a statement to the effect that charges may be payable given the actual charges might be complex (e.g. product dependent etc) and some may not ultimately be of relevance depending on the nature and scope of advice. We agree it is important that consumers receive a reasonable estimate of the fees before incurring a fee.</p>
13	<p><i>What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?</i></p> <p>We submit that all fees associated with the advice should be disclosed but that a reference to the fact that other fees may be payable is all that is required in the context of other fees (on the assumption that other fees will be addressed in the acquisition process through product disclosure or otherwise).</p>
Commission payments and other incentives	
14	<p><i>Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?</i></p> <p>Yes, we agree with early transparency.</p>
15	<p><i>If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?</i></p> <p>Whilst we support transparency of all commissions and incentives, any type of materiality threshold would need to be objective and sufficiently clear to accommodate all the different types of commissions and incentives. We believe this would be difficult to set unless the threshold is dollar based to eliminate any subjectivity (which we understand may not be compatible with some incentives). We believe the definition of soft commissions should capture the <i>possibility</i> of receiving soft commissions, as an adviser will not necessarily know at the time of giving advice whether the necessary soft commission targets will be achieved.</p>
Options for how to disclose commissions and other incentives	
16	<p><i>Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?</i></p> <p>We believe there are strengths in both options 1 and 2.</p>
17	<p><i>Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?</i></p> <p>See response to 16 above.</p>
Other conflicts of interest and affiliations	
18	<p><i>Do you agree that those giving financial advice should be required to disclose all relevant</i></p>

potential conflicts of interest?

Yes.

Information about the firm or individual giving advice

Details of relevant disciplinary history

21 *Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?*

Yes, provided there is a degree of relevancy and materiality applied.

22 *Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?*

Yes.

23 *Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?*

Yes.

Additional options

A prescribed summary document

24 *Do you think that a prescribed template will assist consumers in accessing the information that they require?*

Yes.

Requirements for disclosure provided through different methods

26 *Should the regulations allow for disclosure to be provided verbally? Why or why not?*

Yes.

27 *If disclosure was provided verbally, should the regulations include any additional requirements?*

We submit that consumers should be informed that they may request the disclosure in writing.

Requirements for financial advice given through different channels

28 *Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?*

Yes, in the case of robo-advice platforms, how the platform works and its limitations and in the case of advice given over the phone, we submit that consumers should be informed that they may request the disclosure in writing.

29 *Do consumers require any additional information when receiving financial advice via an*

	<i>online platform?</i>
	Yes, see response to question 28 above.
	Disclosure when replacing a financial product
30	<i>Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?</i>
	We agree that advisers should be required to advise of the dangers of replacing a financial product but believe that these should be tailored rather than prescribed.
31	<i>Should this apply to the financial advice given on the replacement of all financial advice products?</i>
	Yes.
	Information to existing financial advice clients
32	<i>Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?</i>
	We submit that existing clients should only be subject to the new disclosure requirements when the nature or scope of advice changes.
33	<i>Should there be a limit on the length of time that this relief would apply?</i>
	See our response to 32 above.
	Disclosure to wholesale clients
36	<i>Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?</i>
	No. We submit that the regulations should not require any disclosures to be made to wholesale clients given wholesale clients are sophisticated clients who do not need, and will not value, prescribed disclosure. This will add an extra compliance burden for advisers that we do not consider is necessary.

Bank of New Zealand

**Response to the Ministry of
Business, Innovation and
Employment Discussion Paper:**

**Disclosure requirements in the
new financial advice regime**

25 May 2018

1.0 INTRODUCTION

- 1.1 This submission has been prepared by the Bank of New Zealand ('BNZ') in response to the Discussion Paper, "Disclosure requirements in the new financial advice regime" ('the Discussion Paper'), released by the Ministry of Business, Innovation and Employment ('MBIE') in April 2018.
- 1.2 BNZ welcomes this opportunity to provide a response to the Discussion Paper and acknowledges the industry engagement undertaken by MBIE on this matter.

2.0 SUBSTANTIVE BNZ SUBMISSIONS

1: Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?

- 2.1 BNZ supports the objectives identified. BNZ's interpretation of these objectives is that the proposed regime will allow for tailored disclosure (i.e. tailored to the circumstances of the consumer), rather than use of a standard "template" disclosure. This may place a slightly increased compliance burden on Financial Advice Providers ('FAPs'), Financial Advisers ('FAs') and Nominated Representatives ('NRs'), however, BNZ is of the view that this is justifiable when the benefits for consumers are considered.
- 2.2 The main issues that BNZ has identified, arising from the current Financial Advisers Act 2008 ('FAA') disclosure regime, and particularly around Authorised Financial Adviser ('AFA') disclosures, are:

- The use of two separate disclosure requirements (e.g. the primary and secondary disclosures), where one is heavily prescribed, and one is not. BNZ is of the view that the separation of two different documents is not justified;
- Requirements to disclose all financial services the AFA is able to provide (e.g. financial advice, discretionary investment management and investment planning). This will often confuse a consumer who may only be seeking services in one particular area (e.g. just financial advice on a particular financial product); and
- Requirements to disclose fees of the AFA. Where AFAs are employed by large entities, it may not be the case that AFAs charge fees themselves, and rather the fees are charged by the entity. Although those fees would be listed in the disclosure document, this makes such fee disclosures somewhat confusing, particularly when the disclosure document is clearly and directly attributable to the individual AFA, and not the entity.

2: What are your views on the proposal that information be disclosed to consumers at different points in the advice process?

- 2.3 BNZ supports the proposal to provide staggered disclosure at different points in the advice process. This has the benefit of focussing the consumer's attention on the appropriate disclosures, at the appropriate time. This is more appropriate than disclosing bulk information at the outset, and potentially providing services to the consumer over a prolonged period of time without further disclosure (unless anything in the original disclosure changes). BNZ notes that succeeding disclosures should always add to the customers understanding, rather than confuse them with bulk or repeated information.
- 2.4 BNZ supports the proposed list of information that should be publicly available for consumers. However, BNZ recommends that items (a) and (e) of paragraph 23 of the Discussion Paper, being information that 'should be disclosed when the nature and scope of the financial advice is known', should also be included in the list of publicly available information.
- 2.5 The Discussion Paper proposes to require an adviser to inform a client if there is a charge for the financial advice, and the basis on which it is charged, before a client incurs a fee. BNZ is of the view that this additional requirement is superfluous on the basis that this is appropriately covered by the information disclosure requirements 'when the nature and scope of the financial advice is known' and 'when making a recommendation'.
- 2.6 BNZ notes that the new disclosure regime should be appropriately balanced with existing disclosure requirements such as specific product disclosure statements (PDS) required in the Financial Markets Conduct Act 2013 (e.g. KiwiSaver).

3: Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?

- 2.7 As above in the answer to question 2, BNZ is of the view that staggered disclosure has the potential to increase consumers' engagement and understanding.

4: Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?

- 2.8 BNZ agrees that those giving advice should be required to inform consumers that they can access general information if that is what they are needing. However, this does not require a prescriptive obligation in the regulations. BNZ submits that the majority of providers would consider it to be good business practice for FAPs, FAs and NRs to refer to general information that is publicly available about the FAP, FA or NR at every opportunity. This is in the consumers' best interests, and possibly should be considered as part of that obligation in the Financial Services Legislation Amendment Bill ('FSLAB').

5: If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?

- 2.9 BNZ recommends that regulations be drafted with clear prescribed topics and headings as to what needs to be disclosed.
- 2.10 In addition, BNZ recommends the inclusion of practical examples, under each topic and heading, as to what might be considered the appropriate minimum disclosure standard. This would help provide certainty when applying the disclosures in practice.

6: Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?

- 2.11 BNZ submits that a person who contravenes the presentational requirements would be more appropriately dealt with by a stop order or similar regulatory response.
- 2.12 Civil liability for an individual is more suited to dealing with serious breaches, such as those involving deliberate or egregious misconduct. If a person provides disclosure that sets out the required information, but not following the presentational requirements, BNZ does not consider this to be of such seriousness to warrant civil liability.

7: Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?

- 2.13 BNZ supports the requirement for information relating to the licence, duties and complaints process, to be made available to consumers. Such information would be useful and may influence a consumer's decision as to whom to engage to provide services.

8: Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?

- 2.14 BNZ believes it would be more effective if regulations provided flexibility to determine how to provide the disclosure in a clear, concise and effective manner.

9: Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?

2.15 As above in the answer to question 2, BNZ agrees that consumers should be informed of their ability to access a free dispute resolution service when making a complaint.

10: Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out above? Why or why not?

2.16 BNZ agrees with the proposal to disclose the nature and scope of the advice. It is important for a consumer to understand the service that is being provided as well as any limitations of the service. FAPs who only provide advice on their own products should be allowed to do so, as long as it is made clear to the customer.

2.17 BNZ believes that such disclosure is important in helping to achieve positive customer experiences.

11: How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?

2.18 BNZ submits that regulation around the disclosure of nature and scope should be drafted to clearly indicate the requirement.

2.19 As above in the answer to question 5, the regulation could provide a worked example of a relevant disclosure which shows the extent of the market considered.

12: Do you agree with the proposal relating to disclosure of costs to clients, as set out above? Why or why not?

2.20 BNZ agrees with the proposal, subject to our response to question 2. BNZ believes that the proposed timing for disclosures would be particularly helpful to consumers around fees and expenses.

13: What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?

2.21 As above in the answer to question 2, BNZ believes that regulations could provide worked examples of fee disclosures, which could provide examples of fees that should be considered.

14: Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?

2.22 BNZ agrees with the proposed requirement to follow up with more detailed disclosure on commissions and other incentives.

15: If the regulations were to include a materiality threshold that would determine the commissions and incentives that needed to be disclosed, what would an appropriate threshold be?

- 2.23 BNZ submits that a materiality threshold is not required for direct commissions. A fixed threshold approach to such disclosure may not be fit for all consumers, and risks being an artificial solution.
- 2.24 BNZ submits that a materiality threshold would be appropriate for 'soft' incentives and bonuses. Regulations should have clear guidelines so advisers can very clear of the requirement and whether the incentive(s) must be disclosed.
- 2.25 In addition, BNZ wishes to note the developments in incentive structures that promote customer outcomes (e.g. recommendations from the Sedgwick Review). BNZ is in strong support of a customer first approach and believes that synergy with other consumer protections is important. The regime should strive to avoid a complex and paper-work heavy regime for the customer.

16: Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?

- 2.26 BNZ believes that a 'principles-based' approach would be more effective. Prescriptive disclosures can prevent evolution and variation in activities. A 'principles-based' approach will also provide resilience against novel ways of creating or calculating commissions and incentives which are designed to avoid disclosure.

17: Which of the above options do you prefer? What are these costs and benefits of the options?

- 2.27 BNZ prefers option 3, a 'principles-based' approach, to enable flexibility and to provide resilience against commissions and incentives of the nature described in the answer to question 16.

18: Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?

- 2.28 BNZ agrees with the requirement to disclose all relevant potential conflicts of interest.

19: Are there any additional factors that might influence financial advice that should be disclosed?

- 2.29 No comment.

20: Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?

- 2.30 BNZ agrees.

21: Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?

2.31 BNZ agrees with the proposed requirement. However, as noted in the answer to question 2 above, BNZ recommends that this history is also publicly available, rather than only being disclosed at the time the nature and scope of the financial advice is known. BNZ believes that such information is important when a consumer is searching for a FAP or FA in the first instance. Such information is directly related to the firm or individual's ability and suitability to provide advice.

2.32 BNZ submits that regulations should provide a clear definition and worked examples around the types of 'disciplinary history' that must be disclosed.

22: Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?

2.33 BNZ does not believe that this is required. On the assumption that directors are not necessarily directly involved in the provision of advice to the consumer, the issue of director suitability may be better dealt with at the licence application stage.

23: Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?

2.34 BNZ supports this proposal in principle, but believes that contraventions that may reasonably be material to a consumer's decision-making process should be those that are disclosed.

24: Do you think that a prescribed template will assist consumers in accessing the information that they require?

2.35 BNZ does not believe that a prescribed template is required in addition to the other disclosure requirements. Provided that the initial disclosure is clear, concise and effective, an additional template summary disclosure document is unlikely to add any value for the consumer, and may cause confusion.

25: How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?

2.36 See above in the answer to question 24, no additional comments.

26: Should the regulations allow for disclosure to be provided verbally? Why or why not?

2.37 BNZ agrees that regulations should allow for verbal and electronic disclosures. However, BNZ notes that verbal disclosures may be harder to evidence when compared to written disclosures.

2.38 Disclosure regulations should allow for verbal disclosure to be succinct. Comprehensive disclosure may not be suitable for some customers and may result in confusion.

2.39 A 'partial exemption', similar to that which currently exists in relation to QFEs in the Financial Adviser (Disclosure) Regulations 2010, would promote clear and

succinct verbal disclosure. Verbal disclosure should focus on vital disclosure points (e.g. fees and charges), and refer to a written disclosure for additional information.

27: If disclosure was provided verbally, should the regulations include any additional requirements?

- 2.40 BNZ submits that if a disclosure is provided verbally or electronically, a confirmation or some other form of consumer acknowledgement should be obtained to confirm that the disclosure was given and received.
- 2.41 As above in the answer to question 26, BNZ also believes that regulation should require additional supplementation of a written disclosure at a reasonable time afterwards.
- 2.42 The timeframes for disclosure as set out in the answer to question 2 above should be met at the time the verbal or electronic disclosure is given, with a written disclosure to follow at a reasonable time afterwards.

28: Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?

- 2.43 As above in the answer to question 27, BNZ believes the same additional requirements should apply to robo-advice or over the phone.

29: Do consumers require any additional information when receiving financial advice via an online platform?

- 2.44 As above in the answer to question 27, BNZ believes the same additional requirements for electronic disclosures should apply to online platforms.

30: Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?

- 2.45 BNZ submits that where a consumer has an existing financial product replaced by a new financial product, part of the advice to the consumer should include a comparison between the existing product and the new product, highlighting key differences.
- 2.46 If the advice required is outside of BNZ's disclosed advice limitations (e.g. products from another bank), BNZ submits that advisers should notify consumers of the limitations.

31: Should this apply to the financial advice given on the replacement of all financial advice products?

- 2.47 BNZ agrees.

32: Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?

2.48 BNZ submits that there needs to be some flexibility with respect to reduced disclosure requirements for existing clients, and that further disclosure should not apply unless there has been some material variation to the adviser service.

33: Should there be a limit on the length of time that this relief would apply?

2.49 BNZ believes that disclosure should be repeated when there is a material variation to the adviser service.

34: Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?

2.50 No comment.

35: Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?

2.51 No comment.

36: Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?

2.52 BNZ supports the regulations addressing scenarios where advice or similar services are provided to persons who are technically 'wholesale'.

2.53 BNZ comments that 'wholesale clients' are intended to only include clients who are sophisticated enough and with sufficient bargaining power to not require additional statutory protection. As such, BNZ believes that it would not benefit 'wholesale clients' to be restricted by retail-centric disclosure obligations.

2.54 BNZ notes in the Discussion Paper, disclosure to wholesale clients are intended to ensure that they understand that they have been designated 'wholesale', and what that means for them. BNZ submits that this disclosure should occur at the time the nature and scope of the service becomes known.

2.55 BNZ comments that in most cases, an adviser should, if they have undertaken a proper profile of the consumer, and is acting in the interests of the consumer, be able to make a judgment of whether a consumer is 'wholesale' and be able to act in a manner without the protections of the Act, or whether the consumer is 'wholesale' but still requires the benefits of the protection of the Act. And if in doubt, the adviser should assume the latter.

2.56 BNZ also asks MBIE to consider the 'wholesale' designation requirements in the context of robo-advice. As stated above, designation can sometimes require judgement and discretion. When dealing with 'wholesale' services, robo-advice should enquire further into customers who may appear 'wholesale' at face value, and if those enquiries raise concerns, direct the customer to a human adviser.

37: Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?

2.57 BNZ has no further alternative suggestions.

CONCLUSION

3.1 BNZ appreciates the opportunity to provide this submission and supports the MBIE's industry engagement on this matter.

3.2 Should MBIE have any questions in relation to this submission, please contact:

Paul Hay
Head of Regulatory Affairs

S9(2)(a)