



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI



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

Submissions G3 to IBANZ

**5 September 2018**

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

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

## Your name and organisation

|                     |  |
|---------------------|--|
| <b>Name</b>         | Charlene Overell and Jane Benton - Directors |
| <b>Organisation</b> | G3 Financial Freedom Limited                 |

## Responses to discussion document questions

|  |  |
|--|--|
| 1  | <p><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></p>  |
|  | <p>Yes</p>   |
| <b>The timing and form of disclosure</b> |  |
| 2  | <p><i>What are your views on the proposal that information be disclosed to consumers at different points in the advice process?</i></p>  |
|  | <p>This is a sensible approach to not overwhelm the consumer with detail that is not relevant to the advice they are seeking.</p>  |
| 3  | <p><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></p>  |
|  | <p>Yes, we believe so. Providing disclosure of fees and costs at each step, before the consumer/client actually goes ahead, provides meaningful information that is pertinent to the advice being given. Seeing a consumer initially, we have no idea what they are looking for, what they need or want, their goals nor objectives, therefore, providing a scope of service AFTER the initial meeting outlining the fees and costs involved for the advice that is going to be provided, makes much more sense. Further fees can then be disclosed within the Statement of Advice for any product or services that are being recommended to help the client achieve their goals.</p>  |
| 4  | <p><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></p>   |
|  | <p>If by 'provider' you are referring to a product provider, then we believe that the adviser should be acting in a professional and ethical manner, by disclosing the fees and costs that are going to apply to the consumer relevant to the advice being sought, before the client actually establishes the product. This can be done in the Statement of Advice with product brochures and PDSs included. Although fees and costs may be found in general information and advertising material, it is not necessarily easy to find and consumers may not be bothered to check these out. If we provide the detail when relevant and do not 'pass the buck' by referring to marketing material, PDSs or provider website etc. this demonstrates to the consumer that we understand what is going to be important for them to know,</p> |

understand and agree with. This helps create trustworthiness in the client's mind and that the adviser is helping educate them with the things that are important. Creating a valuable relationship can be formed through by being up front and helping the client understand this information rather than expecting them to go searching off elsewhere to find it. This also means that for ongoing progress meetings with the client, the adviser and client can refer back to the disclosure of fees and costs that have been outlined previously and have an honest discussion about whether these continue, remain appropriate, or need to change, based upon the client's changing circumstances. It would be onerous for the adviser to search out all the fees and costs on documents and websites etc. in the future, when these change.

## 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 they should be clear, concise and effective. They should also be in plain-English. This means being clear on underlying potential costs that could be charged too e.g. many stockbroking investment portfolios do not highlight the turnover costs of portfolios so the consumer has no idea at outset what fees they may be paying in relation to the buying and selling of units/securities. Turnover has a huge cost in our industry and has not been addressed in disclosure to date.

We believe that flexibility means ensuring the adviser provides the details of the fees, costs and commissions that will be paid for the advice being given/products being established, BEFORE the work is undertaken i.e. in a Scope of Service. This enables the consumer to make an informed choice about whether to proceed and if they do, they have an open and honest relationship around costs from the start which can be built upon when changes occur.

In an existing client adviser relationship, if further advice/products are to be provided, then again, the adviser needs to outline any costs, fees, commissions associated with them 'doing the work', so the client continues to be happy and that they have a trustworthy partnership with the adviser.

This approach should apply to all adviser types – Financial Advisers and Nominated Representatives.

Sometimes the consumer/client is not interested because they 'trust' their adviser however, advisers should still respect that trust and outline changes in fees/costs/commissions to the client if they proceed with new advice or products. We believe we need to help empower clients with clarity, knowledge and choice so they can feel in control and have peace of mind.

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?*

No. The reason we say this is that the current requirements for PDS, DIMS are more prescriptive and PDSs do not need to be tailored to meet the client's needs and circumstances – advice does. There are requirements for certain information to of course be shared with the client and be in the public domain as we have outlined above.

If, for example, the general disclosure requirements to be decided upon are on an advisory website or in marketing material and these are generic in nature, the adviser should not be penalised that they are not necessarily specific to a particular client. This is where the individual and personalised Scope of Service should outline the detail pertinent to the advice/product being provided to that client.

So, although the generic information may always be accurate, there are differences at times which are tailored to clients depending upon the scope of work being undertaken. The adviser should not have a stop order or similar regulatory response put on them or their business, just because the disclosure of fees/costs/commissions to a particular client differ somewhat from the general disclosure information they have provided. This comes down to ensure the Scope of Service is tailored to the client and that disclosure is provided at the appropriate times so the client can make an informed decision. The consumer may look at the general details on a website or company marketing material to obtain views about how that adviser or business operates from the disclosure perspective but they then need to expect personal disclosure after discussing their needs with the adviser.

Of course, Robo Advice is different and if the client is purchasing a set product or process which does not mean any changes in service or fees from what has been disclosed generically, that is fine.

### 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 – as an AFA we do this at the first initial meeting with our Primary Disclosure Statement already. It highlights transparency

8

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

Probably – would be helpful to all have the same standard text as then consumers can start to be aware of this when they ‘shop’ around looking for an adviser and come to expect to see this information and be aware of what it means. Having a prescribed format for advisers would also mean every adviser is treated as being on a level playing field and that we all comply, so no-one can complain that not everyone is providing the correct 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)?*

Yes however, what is a complaint? Currently we have a complaints register that incorporates all ‘complaints’, even if the client does not really say it’s a complaint as it’s more feedback or a ‘niggle’ about something. If an AFA’s complaints register is empty, we have had the perception to date that we may not be being honest with all our dealings with clients. If a client were to state a ‘niggle’, are we to deem this as a complaint and then say “well hey, we just need to inform you of our free dispute resolution service when making this complaint”. Perhaps saying this towards the end of dealing with the ‘niggle’ would be wise, so that the client does know that if they are not satisfied with the outcome we have offered/provided, they do have dispute service as an option.

### 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

11

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

The adviser could have the list of the providers they have an agency with somewhere on their website or marketing material. We have this now on our AFA Secondary Disclosure Statement so incorporating similar information somewhere may address this point. It does not need to confuse the client however. Many consumers come to us for ADVICE, so when we provide that advice, we consider all products in the marketplace and make a recommendation on **one** that we believe is in going to work best for the client. We do not provide a list of them all with all the premiums, benefits and policy wordings for example – this would confuse the client and detract from the reason they sought advice in the first place.

#### 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?*

Yes

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)?*

Ensure that at the time of the recommendation (Statement of Advice) all fees are disclosed, including those of the recommended product e.g. investment management fees, performance fees, admin fees, bank fees, insurance commissions etc.

#### 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?*

Yes

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?*

Not sure. Many advisers provide advice and product that they believe (and put in writing) is putting the interests of the client first, or is even in the client's best interest, without any regard of what bonuses or soft dollars by way of incentives/trips they may qualify for. This would be difficult to share with the client when they really don't take this into consideration. Finding a good ground would be useful to ensure these types of advisers are not having to disclose information that they really don't know at the time of the recommendation versus those that do and that make the recommendation solely on the basis of what incentives or commission they will receive. Creating extra work for disclosure on the latter is good however, not for the former type of adviser.

## 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?*

The important aspect here is that it will become a level playing field as currently RFAs have not had to disclose while AFAs have. We have no issue whether this is a \$ or % disclosure or both but it needs to be consistent across all.

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

Within our current Secondary Disclosure document we table the various insurance companies and the maximum % commissions available upfront and ongoing. We have no issue with this. However, we do not believe that advisers need to provide a table of *personalised potential commissions* from each product to be considered as outlined in Option 1. When a client is asking for advice, they are not expecting to make the end choice themselves and this is simply directing the discussion to be all around premium cost and commissions not policy wordings and suitability.

We are happy to disclose commission in \$ terms as outlined in Option 2 however, it is unreasonable for us to be expected to calculate the full commission income over the expected lifetime of the policy with inflation increases etc. This could be restricted to Upfront and first years' expected trail.

In terms of how other incentives are disclosed, perhaps advisers could simply disclose what they have received and from which company over the last 5 years. The insurance companies could provide this information to the relevant advisers each year if a monetary value is needed or else it could just be stated as "5 day trip to xxx", "Christmas Luncheon" etc.

## 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?*

Not that we can think of right now

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)?*

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 however, perhaps it should depend upon the outcome of any disciplinary history. E.g. if the case was ruled out and found in favour of the adviser, then although there is a history there, it was a 'clean' history. Just wondering how this sort of situation would be dealt with if only history had to be declared where the adviser was found to be at fault??

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. And we agree that insolvency or bankruptcy of a nominated representative does not need to be disclosed if they are following the process of a FAP

### 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)?*

There needs to be a statement made (if by phone then verbally) that it is important that the consumer with whom they are speaking with (or dealing with via an online platform) is aware of the details they need to have in order to understand the advice they are receiving. Saying something prescriptive like "I understand what you are looking for and asking and I can assist you, however, I would like to take this opportunity to make you aware of some important things you need to know about us, to ensure that you are comfortable in choosing to partner with us, then we can continue to chat. May I have your permission to just run through these now if that's okay please? then if you have any questions, we can discuss them" The phone adviser can then say thank you, run through the summary you have on page 24, make a note their end on a specific template they have in front of them (on screen or paper) before moving on. It would be wise we believe, to have the Summary emailed to the client during the phone discussion or straight after, or with a link to the Summary.

If via an online platform, then the client could be redirected to a page/link, or have the summary put in front of them for them to read, and there is a tick box at the bottom to confirm they have read and understood it and wish to proceed (just like there is on many websites where a Terms & Conditions is provided and has to be ticked before moving on)

#### Requirements for disclosure provided through different methods

26

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

Yes. We need to be able to work with consumers who have different learning styles and communication methods, so providing disclosure in a manner that works for them needs to be accounted for. We need to encourage more New Zealanders to seek advice, in whatever



form suits them, so providing different methods is important however, our comment in number 25 above could apply here

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

None we can think of right now

#### 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?*

Not that we can think of. The key here is that the consumer needs to understand the limitations of any advice, what the advice is based upon and what types of systems are behind the advice being given – understanding that it can be very different from face to face advice with an adviser

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

Comments as per number 28 above

#### 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?*

Yes. It should contain details of any different risks, comparisons of costs/fees/premiums, whether pre-existing conditions will or will not be covered, differences in performance, asset allocations for investments and importantly, how the change will affect the client's goals and long-term outcomes (as used in monte carlo modelling of clients outcomes for their future and the likelihood of the client being able to achieve their objectives with the changes)

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

Yes. We do this now as AFAs on all products yet come up against RFAs and bank tellers who do not have to provide this type of comparison and the consumer is totally unaware of what they are risking or benefiting from with the change recommended

#### 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?*

Yes – if the circumstances have not changed. If there are to be changes to advice and recommendations made, or new solutions given to the client, disclosure on costs, fees, commissions should be provided in the written Statement of Advice.

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

No – it should apply when there is any change that could affect the client, that the original

disclosure is out of date or the advice being provided is of a different nature

#### 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?*

We don't think so. Depends upon the amount of work involved, especially for those advisers who are not AFAs and do not currently have to comply with disclosure.

35

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

We don't know, perhaps not. Again, this would depend upon the amount of work involved

#### 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?*

Yes – at outset if the client is stating they are a wholesale client or are discussing the services they want and are considered to be wholesale by the adviser. Or if not at outset, in the Scope of Service which provides detail on what being a wholesale client means

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?*

They need to sign a prescriptive statement that provides the detail of what a wholesale client is and how their protection differs from being classed as a retail client

## Other comments

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

## Your name and organisation

|                     |                               |
|---------------------|-------------------------------|
| <b>Name</b>         | Gerald Gates                  |
| <b>Organisation</b> | Gerald Gates & Associates 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?*

### 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?*

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?

8

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

## 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?*

Agree to a point but eg. the giving of financial advice by bank tellers under sales target **is not advice** it is straight sales and this needs to be made very clear to the customer. That they are only receiving the opportunity of a limited product range.

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?*

Point 1 No Point 2 Yes Point 3 No as you may have put in a lot of work and potentially get no reward for service. In summary I doubt that Banks and integrated providers would provide useful disclosure of fees as it would take a lot of work to cover the additional fees paid eg in reaching the next level in a sales target program

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?*

Definitely , especially with integrated providers i.e Banks and providers with Tied agencies

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?*

#### 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?*

17

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

#### 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?*

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?*

Yes

23

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

#### Additional options

**A prescribed summary document**

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

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?*

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

**Requirements for financial advice given through different channels**

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

**Disclosure when replacing a financial product**

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

**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?*

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

---

#### 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

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

## Your name and organisation

|                     |                                     |
|---------------------|-------------------------------------|
| <b>Name</b>         | Glyn Lewis-Jones AFA                |
| <b>Organisation</b> | Castle Trust Financial Planning Ltd |

## Introduction

I provide the following information to help you judge the background to my submission.

I am an AFA, working with 2 other qualified advisers, giving uncomplicated personal financial planning advice to two types of everyday clients. Working clients about what they need to do to achieve their long term retirement plans (insurance and savings advice). Retired clients about how to live on their capital in retirement (investment advice). Sensible uncomplicated advice that anyone can understand. We (Castle Trust) expect to apply to be a Financial Advice Provider in due course.

I have been doing the same sort of work for almost 40 years in the UK, the Channel Islands and now NZ (since 2009) always operating within my own practice. As well as being a graduate I have qualified by exam in all 3 of these 3 jurisdictions. I have an unblemished record for this entire period and almost every single client has come in by referral.

Twice in my career (once in the UK and once in NZ) I have canvassed my clients about working on a time recorded fee basis with commissions paid back to the clients. On each occasion this idea has been rejected by my clients (a common comment being “We wouldn’t use you if we didn’t trust you and we’d just as not write out a cheque thanks!”) and we’re back to a commission basis (low up front model).

## 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  |
| <b>The timing and form of disclosure</b> |  |
| 2  | <i>What are your views on the proposal that information be disclosed to consumers at different points in the advice process?</i>   |
|  | I 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> |



Although I agree with the proposal I don't believe it will increase the effectiveness of disclosure because, with each successive 'layer' of information, the client will read less.

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?*

Through advertising material? No. Through official documentation? Yes

### 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?*

I honestly don't know

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?*

Through the FMA. Lower cost, faster and more tuned in to our profession.

### 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

8

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

Yes

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

### 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

11

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

It will be difficult. The operative phrase is going to 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?*

Yes. We have to as AFAs and all advisers should be treated the same

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)?*

Full

## 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?*

Yes but see my reply to question 3.

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?*

Anything with a value above \$100 ?

## 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?*

Prescriptive disclosure yes but not prescriptive wording because of the lack of flexibility

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 1 is the only sensible one

## 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?*

Absolutely – and one which has consistently been overlooked by MBIE and the FMA. The renewal commission arrangements present several unacknowledged, serious conflicts.

1. The renewal commission is tied to the original adviser and (with virtually no exceptions) cannot be untied. So even if the original adviser has provided absolutely no ongoing advice ever he continues to receive payment. 20, 30 or 40 years of receiving renewal commission but no obligation to give advice.

2. Furthermore a retired adviser can sell the renewal commission to a new adviser and the market cost plus interest means that the new adviser pays something like 7 times the renewal commission. Meaning there is a direct conflict of interest on behalf of the new adviser to replace the old policy with a new policy in order to recover the cost. The only way of avoiding this conflict is to give the policyholder client the right to transfer the renewal commission to the adviser of their choice (someone who is actually providing a service).
3. The renewal commission is paid only if the policy continues. So the adviser is effectively acting in the interests of the insurer especially in view of point 1 above.
4. Giving the client the right to nominate their renewal commission adviser would be the one single act that would reduce replacement rates. If the client could nominate the servicing adviser (rather than the original adviser) it would immediately reduce the incentive to replace the old policy.

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)?*

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 – surely it should be on the website and on the very first disclosure?

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?*

Absolutely. It is the directors who apply the pressure to the advisers.

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?*

Absolutely no. Complete loss of flexibility or a huge, cumbersome, box ticking template

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)?*

If you have a prescribed template in these situations it would be inflexible and provide only cover for the advice provider.

### Requirements for disclosure provided through different methods

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

No. You're kidding right? You're asking for "I said. You said" situations.

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

See 26 above

### 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?*

The burden of proof must be on the platform. It is universally acknowledged that the more complicated the algorithm the less explainable the outcome. How do you expect an ordinary client to argue against 'the computer knows best' response.

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

As above. You're disadvantaging the client unless you tie down online platforms with very clear disclosure and liability requirements.

### 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?*

Explanation Yes. Prescribed form No. See my response to question 19.

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?*

No. Not for 2 reasons. Firstly if the type of advice changes (eg mortgage advice to insurance advice). Secondly it would enable a FAP who has 'bought' a book of clients to get away from full disclosure on the grounds that they are 'existing clients' (which they are because they are now the servicing agent)

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

No

### Transitional requirements

|  |  |
|--|--|
| 34                                     | <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>                           |
|  | No   |
| 35                                     | <i>Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?</i>  |
|  | No   |
| <b>Disclosure to wholesale clients</b> |  |
| 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> |
|  | Yes. Depends on the circumstances.   |
| 37                                     | <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>                               |
|  | No   |

## Other comments

Good luck everyone. I'm glad I'm just an ordinary adviser.

My only other comment is that almost whatever you do the clients won't read anything official. In 40 years of working with thousands of clients I've never had anyone asking for the sort of detail that you think they should ask for. Honestly. We spend a huge amount of our time protecting clients from themselves – sorry.

The best protection for clients is local reputation – if we screw up we're stuffed. If the big providers or the robo providers or online advisers screw up they have no reputation to damage. And it's not only the provision of initial advice that does the damage. It's also the absence of ongoing advice when a client's circumstances change and the person being paid to 'look after' the client doesn't do enough to keep the client informed.

The regulatory industry should be doing the very best it can to encourage the growth of ordinary, small FAPs. But that's probably wishful thinking.

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

## Your name and organisation

|                     |   |
|---------------------|---|
| <b>Name</b>         | <b>Graeme Lindsay</b>   |
| <b>Organisation</b> | <p>I am an RFA and have been an insurance adviser since January 1969 (49 years).</p> <p>My company, <b>Strategy Financial Services Ltd</b>, has agencies and does business with most but not all life and health insurers.</p> <p>I established (1994) and operate the original research and comparison tool for advisers in New Zealand.</p> |

## Responses to discussion document questions

|  |  |
|--|--|
| 1  | <p><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></p> <hr/> <p>By and large, yes.</p> <p>I must comment however that the requirement of objective 3, i.e. “disclosure that is succinct, simple and uses plain English” is hardly followed in the discussion document. For example, the words “overcoming information asymmetries” in para 14 is hardly succinct, simple or plain English.</p>  |
| <b>The timing and form of disclosure</b> |  |
| 2  | <p><i>What are your views on the proposal that information be disclosed to consumers at different points in the advice process?</i></p> <hr/> <p>This sounds great in theory, but flies directly in the face of the points made in para 8 of the discussion paper. I currently use two disclosure documents. The first is that required by the IFSO. The second whilst not required (I am an RFA), outlines my background, the structure of our business, the fact that we are paid by commissions, the fact that we have had no disciplinary complaints ever, have never been bankrupt or insolvent, etc. These documents cover 3 pages of A4 paper.</p> <p>By requiring 3 separate disclosures, this will increase to at least 5 pages more likely 9 pages.</p> <p>As stated in para 8 of the discussion paper, “This can reduce the overall effectiveness of disclosure as a means of providing consumers with the information that they need to make an informed decision”.</p> <p>In my experience, whilst we provide these disclosure documents, no one ever reads them!</p> |
| 3  | <p><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></p> <hr/> <p>No! They do not read the documents we provide currently, which fact leads me to believe</p>   |

that they will not read whatever documents are required by the regulations.

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

### 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?*

I have no idea - I am not qualified to draft regulations.

I take issue with the claim in the 1<sup>st</sup> sentence of para 37. I would be interested to see evidence in support of the claim that "providing flexibility to the industry in terms of how and precisely when information should be disclosed **will help consumers to make more confident and informed decisions**".

I suggest that the second sentence of para 37 is naïve. Of course the industry will take a risk-averse approach. In order for the industry to have some certainty that its actions will not contravene regulations, it will take a risk-averse approach. It is important that regulations are precise about how, what and when information should be disclosed.

The contradictions in the discussion paper beggar belief. Para 21 indicates that you will not specify how information should be provided, yet para 38 clearly indicates that regulations will include presentation requirements.

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?*

No. The FMA sanctions are sufficient.

### 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

8

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

No. I would have thought that the intelligent people working in the industry would be quite capable of clearly disclosing the information relating to the licence, duties and complaints process.

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

## 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. If commissions are required to be disclosed by non-aligned (non-salaried) advisers, then the limitations on employees of a vertically integrated Organisations with respect to KPIs, performance targets, limitations on products that can be sold, etc should similarly be disclosed. Anecdotal evidence and public statements by the union indicate that bank employees are uncomfortable about pressures put on them to sell the bank's insurance products. I submit that these limitations are not in the consumer's best interest and in fact are a conflict of interest.

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 should be clear from the disclosure of the number of product providers that the advisor can place business with.

### 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?*

Yes. The consumer making a buying decision clearly must be aware of financial impact of such decision.

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)?*

Regulation should require disclosure of all fees or insurance premiums

### 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?*

No.

In 49 years as an active life and health insurance adviser, I have never been asked how much commission I or my company would earn from a particular life or health insurance product. My sense is that the MBIE bureaucrats and supposed consumer advocates are far more concerned about commission than are my clients.

The last 6 new clients, 3 honours graduate structural engineers, one graduate engineering draughtsman, one specialist income tax accountant and one self-employed finance broker, all became clients without in any way being concerned with, or asking about, the quantum of commission my company would receive as a result of their taking the new insurance we propose.

Given that you appear hellbent on requiring disclosure of commission, one disclosure is enough! Your proposal to require 3 disclosures is overkill of the worst kind.



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?*

Good question.

#### 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 comment

17

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

I have no problem with the suggestion in option 1.

Option 2 evidence is my belief that you have no real understanding of how competent life and health insurance advisers operate. In my practice, the process through which we advise and implement insurance policies for clients can be spread over several months. Said process can involve a number of discussions where product options and alternatives are discussed. If regulations require disclosure of dollar amount commissions at each of these discussions, the cost of providing such information will be excessive. The clients will be frustrated with multiple disclosures which could well have the effect of stalling the whole advice process.

Para 65 clearly recognises that it can be very difficult to calculate commissions in the midst of the discussion. Whilst the calculation of first year commission would be relatively easy, calculation of trail commissions is virtually impossible as such commissions are a function of premiums which are not guaranteed and in most cases, increase regularly. The first increase is due to the fact that most insurance is sold on a yearly renewable premium basis, i.e. the premium increases annually with age. The second increase is due to insurers increasing their rate tables regularly. Clearly, it is impossible to disclose a commission that is impossible to calculate.

I have no problem with the principal of disclosure of incentives and soft commissions. I do however struggle with the logic contained in scenario 2, page 31, where you suggest that the advisor would receive free tickets to an annual conference in Hawaii if she writes four more life insurance policies with that insurer. The reality is that these soft commission overseas trips are always based on the premium dollars produced by the adviser, not the number of policies. To disclose as suggested, would require the adviser to keep the daily running total of premium **issued** by the insurer, rather than applications **submitted**, and recognise that it could well be out of date if an application previously submitted was approved and issued while the adviser was discussing insurance with another client. The practicalities of this disclosure will be extremely onerous and costly to the adviser!

I should note that whilst I did accept some overseas trip incentives in the 1980s and 1990s, I chose to cease accepting such incentives in 1997 and have not accepted any soft commission or incentives in the ensuing 21 years.

Option 3, a principles-based approach would appear to be the most logical.

#### 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. Given that commission has been dealt with separately in this paper, I am very happy that any conflict of interest should be disclosed.

19

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

Not that I'm aware of

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)?*

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. Such information is relevant to the trustworthiness of the adviser.

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 they are involved in the system and should be subject to the same regulations.

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. For small, non-aligned advisers, a prescribed template would ensure that they disclose the necessary information. This will satisfy the requirements of the regulations, although most clients never read the document.

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)?*

I have no idea

#### Requirements for disclosure provided through different methods

26

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

No. It needs to be in writing so that it is on record, and the client signs for it.

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

Not applicable

#### 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 comment

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

I have no idea. In my practice all advice is given in writing, and will continue to be given in writing.

#### 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?*

Any adviser recommending that a consumer replace an existing financial product should be required to provide written evidence clearly identifying the differences between the products and highlighting the advantages and disadvantages as they apply to the client.

Refer to the attached document **S 9 (2) (b) (ii)** as an example of the comparison document we prepare when recommending a replacement of existing policy.

In addition, the client should be advised of the process and warned of the importance of full disclosure and advised that existing products should not be cancelled until a new product is issued and in force.

The following is a document we use to describe the process and to warn about the potential pitfalls when recommending replacement:

#### **Replacement of Existing Policies**

If we recommend replacement of an existing policy, such recommendation is based on our research into the terms and conditions of both your existing policy and what we believe to be the best available for you from the products available in the current market. We consider the wordings of all the products, the financial strength of the various insurers and the premiums charged for the products and only recommend replacement when there is clear evidence that it is in your best interests.

If you accept our recommendation, we need to go through the process of applying for the replacement policy, which will involve you

disclosing all your medical history, details of any pursuits and pastimes and details of your occupation and in particular, any associated accident risks.

Whenever you apply for life and/or health insurance, you are required to answer the questions on the insurer's application form and possibly undergo blood tests and a medical examination with your GP or a specialist.

It is vitally important that you fully disclose your medical history. If you fail to disclose, you run the risk that a subsequent claim may be declined and the policy cancelled from inception. When replacing an existing policy, such declining of a claim or cancellation of a policy could leave you without cover where you had cover under the earlier policy.

Accordingly, we urge you to answer all questions very carefully and completely. In the event that you remember something after completing the application, please contact us immediately so that we can advise the insurer of the additional information.

Please also note that any health issues, consultations, or changes in existing conditions etc, that occur after you complete the application form and before the policy commences, must be disclosed to the insurer. Failure to so disclose could invalidate the policy and any potential claim.

I/We acknowledge receipt of a copy of this document.

Signed by: \_\_\_\_\_

Date: \_\_\_\_\_

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?*

Yes, otherwise we risk boring them to death.

33

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

No. Only a requirement that fresh disclosure should be made in the event of any material change in the information required to be disclosed.

#### 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 comment

#### 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?*

No comment

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

### Other comments

See attached document:

**S 9 (2) (b) (ii)**

## Your name and organisation

|              |                      |
|--------------|----------------------|
| Name         | Graham Smith         |
| Organisation | Keyman.co.nz 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?*

Conceptually the intentions are good, the execution could either make things better, or worse, depending on the detail.

From an insurance perspective, if we accept that New Zealanders are overall underinsured, there is a real risk that new regulations could worsen this. It is critical that whatever information is provided to consumers, does not add to the reluctance implement cover.

### 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?*

I strongly disagree. Keep it simple, provide all information up front at first meeting.

Consolidate the information, as commissions is such a strong focus of these reviews, have Advisers inform prospects at the first meeting that all providers pay between 0 and 200% of first years premium as commission (as an example).

Broadly speaking they are all about the same for the same structure, upfront or level etc. Personally, as an Adviser, I do not pay any attention to what the actual rates are when putting together a proposal.

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

No people find financial services very confusing, it will only add another layer of complexity and distraction.

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?*

No, that is fairly obvious, almost everyone is aware of the internet. It would be just another unnecessary detail to include. If someone sees a BNZ, or AMP ad they don't need a note telling them to look at a website for further detail.

### 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?*

Make it all up front at first meeting. With a set template for each organisation, or adviser.

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?*

Hard to imagine justification for someone not meeting "presentation requirements" being subject to civil liability. This could result in unintended consequences from litigation motivated by anger or spite.

Maybe that is designed for large corporates where damages may be very large-Australian banks for example. Certainly not appropriate for individuals.

### 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

8

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

Yes

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

### 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 sounds fair and reasonable.

11

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

Requiring the use of research such as Quotemonster and QPR Research

#### 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?*

Yes

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?*

No. Keep it simple. Let consumers know the different ranges of commissions at first meeting. A clear chart showing the differences can be discussed before any advice is given.

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?*

Far too difficult.

For example, when a client applies for some risk protection we have an estimate of a premium. Then an offer of terms comes from the insurers (up to 3 months later with business cases). The terms may be fundamentally different from what we applied for.

This can be due to health, or financial assessments.

Then at that stage we work with the client to adjust the types and levels of cover to fit their budget.

Personally, around 80% of the business I submit to insurers comes back with some kind of revised terms.

With this 3 month process. Wouldn't it be better to let the client know the commission ranges at the first meeting, before they make the commitment to to apply for cover, attend insurance medical, submit copies of company accounts and so on?

The precise dollar figure is pointless, as in 80% of cases the end result will be different when the offer of terms comes back from the insurers. At that point the customer has spent so much time going through medicals and so on, that announcing a commission dollar amount is far too late.

## 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?*

A template based on commission ranges for all providers would be a good idea. Incentives come and go and are just a distraction. Focus on the advice being robust, with research to back it up.

As an example, a radiologist that I know recently went to a medical conference, in Vienna, heavily subsidized by the firm they buy their equipment from.

Another associate is in the building trade and gets 'points' at Bunnings, to use as they see fit.

None of this directly affects the consumer and it's naïve to think that if these were banned, the price of goods and services would then reduce.

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 one. Adequate information for a consumer to be informed, without the distraction of focussing on the dollar figure above all else. Ultimately, we do want more people to get good



advice. The dollar figure scenario would create a situation where consumers gravitate to the cheapest option, which is not often the best. Potentially some advisers or businesses could promote themselves as being cheap, which again runs the risk of poor advice for the consumer. Unintended consequences which run counter to the object of this process.

#### 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?*

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?*

Yes

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?*

Not necessarily. A minor infringement on the lower end of the scale could follow someone around for life, which doesn't seem fair.

#### 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. One size does not fit all. We should still be able to present the information in such a way that it addresses the individual clients needs and wants. For example, you can't put a template on a shareholder protection and key person arrangement. Every business and family is different.

However, requiring certain components to be included, as in the case for AFAs now, does

work.

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)?*

Require certain components but do not be overly prescriptive about the format.

#### Requirements for disclosure provided through different methods

26

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

No. Paper based, allows time for consumers to review and discuss with others if they choose.

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?*

Disclosure of the fact that the advice is based on a formula, an algorithm and by its nature is of a more generic nature.

29

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

Disclosure of the fact that the advice is based on a formula, an algorithm and by its nature is of a more generic nature.

#### 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?*

The replacement business form, when used properly as is done by AFAs now, covers off the differences well. A 'head to head comparison' which can be done through QPR showing the areas where products are different would be ideal. The notion that replacing a policy is automatically bad, is incorrect. If the customer is better off overall, then it's a worthwhile exercise for them to have taken.

Insurers would love to ban commissions on replacement business, but it would be the consumer who is penalised. Many older product just can't compete to new ones.

As an example, Southern Cross Regular Care medical insurance, is rated very lowly for many reasons. It is easy to demonstrate the advantages o the client of upgrading to a better product. Naturally the comparison would pay close attention to any exclusions that could apply, but in many cases there are none.

31

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

Something that clearly lists the differences would be best. Kept concise.

| Information to existing financial advice clients |  |
|--|--|
| 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>Yes. Existing clients do not read or want the disclosure information that we give them now. A one page summary that we can email would work better.</p> |
| 33   | <p><i>Should there be a limit on the length of time that this relief would apply?</i></p> <p>If it can be kept simple, one page that clients may actually read, then we could include them every year or two.</p>  |
| Transitional requirements                        |  |
| 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>Totally depends on what is required to be disclosed and in what format. Some of the more extreme levels of disclosure will cause a major burden to comply with.</p>   |
| 35   | <p><i>Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?</i></p>   |
| Disclosure to wholesale clients                  |  |
| 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>  |
| 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>  |

## Other comments

I support a requirement for advice providers to include independent research in their recommendations. Such as QPR research, Quotemonster.

The focus should be on ensuring advisers can demonstrate they are acting in their clients best interests based on finding the best value solution for the clients.

Sometimes the adviser gets paid more than others, but that is not the focus, ultimately if the client is better off by accepting the recommendation, that should be the measure of success and doing a good job.

Commission rates vary according to many factors. It is not possible to say "if I sell 4 more policies I will qualify for a trip" It is not the same as selling appliances with a per unit reward (like Noel Leemings have sometimes).

Picking the highest percentage is fine if it's all disclosed up front, 200% as an example.

In practice, health insurance may only be 15%, income protection rates are lower than life, some products include gst and some don't, this effects the tax treatment of the commissions.

If we are required to present a statement of advice, which includes all these specifics it will take a long time. Then often, there will be a change made, potentially a different insurer gets the business, with different commission rates.

The obsession with commissions risks crippling the insurance industry and those who would benefit from the insurance cover. Again I'm not suggesting do not acknowledge that advisers get paid, but just do it up front.

Please keep it simple.

Too much focus on the evils of replacing one policy with another could hurt consumers.

If there is clear evidence of benefits, as described above, then a good adviser has an obligation to recommend making a change. There is a lot of work involved in the application process, where the adviser only gets paid if the covered is accepted, by both the applicant and the insurer. They should be remunerated for this work. If not, consumers will lose out, as advisers can not afford to do the work for free.

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# IAG submission

to the

Ministry of Business Innovation and Employment

on the

Discussion paper: Disclosure requirements in the  
new financial advice regime

25 May 2018

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## 1. INTRODUCTION

- 1.1 This submission is a response by IAG New Zealand Ltd (IAG) to the Ministry of Business Innovation and Employment on its the Discussion paper: Disclosure requirements in the new financial advice regime (the Paper).
- 1.2 IAG is New Zealand's leading general insurer. We insure more than 1.5 million New Zealanders and protect over \$650 billion of commercial and domestic assets across New Zealand.
- 1.3 We welcome the opportunity to discuss our submission with officials.
- 1.4 IAG's contact for matters relating to this submission are:

**Bryce Davies**, General Manager Corporate Relations

S9(2)(a)

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## 2. SUMMARY OF RECOMMENDATIONS

2.1 We recommend that:

- the regulations do not include a materiality threshold to determine which commissions and incentives are disclosed
- advisers / providers are required to disclose all the remuneration, commission, fees, bonuses, benefits and incentives they receive
- all remuneration, commission, fees, bonuses, benefits and incentives should be itemised to the extent that it allows the consumer to understand what money is ultimately being received by the adviser, the adviser's employer and the product provider(s) being recommended
- guidance material be prepared by the Code Committee with relevant industry and consumer groups, that includes:
  - how to assess materiality and relevance, specifically in relation to conflicts of interest and disciplinary history
  - how to describe key information, specifically different forms of commission, incentives and other benefits, both generally and in relation to specific advice
  - Safe harbor wording and templates
- the regulations allow advisors / providers greater flexibility in when disclosure is made
- the FMA approves disclosure arrangements as part of the licencing of advisers / providers

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### 3. GENERAL COMMENTS

- 3.1 IAG has always been supportive of disclosure and believes that it is essential that consumers have the information they need to confidently select their adviser and act on their advice.
- 3.2 For this to occur, the disclosure regime must recognise the breadth of financial advice that is available and cut through its inherent complexity to ensure consumers can see and understand the factors that will be most material to their decisions. To do this the regulations must reach the right level of detail and specificity, without making disclosure onerous or difficult to understand or expensive and cumbersome to deliver.
- 3.3 We are broadly supportive of the proposals in the Paper. We applaud and strongly encourage the willingness to take a flexible approach. The current set of proposals can be characterised as specifying ‘what’ and ‘when’ but being flexible on ‘how’. Our comments can be summarised as wanting more specificity and guidance on the ‘what’ and greater flexibility on the ‘when’ and ‘how’.
- 3.4 These themes of specificity and flexibility are repeated in answers to the specific questions posed in the Paper.

#### The need for greater guidance

- 3.5 The proposals include all the categories of information that we expect to be part of disclosure and that will support good decision making by consumers. Our concern is that some of this information relates to practices and situations that are open to interpretation, both in terms of whether they should be disclosed and how they should be described. This ambiguity creates a risk that information material to a consumer’s decision is either omitted or unclear.
- 3.6 To overcome this, the disclosure regime must be supported by specific guidance that captures and is tailored to the different distribution models and arrangements in the market. This will help to ensure that advisers / providers can consistently and confidently meet the information needs of consumers.

#### Timing of disclosures

- 3.7 Not all advice processes are the same. The provision of holistic independent financial advice is not the same as the sale of general insurance. They vary in terms of breadth, choice, intricacy, timing and procedure, and it is vital that the disclosure regime can be tailored by advisers / providers to these differences.
- 3.8 This is most important for ‘simple’ advice processes like that which might be used when selling general insurance direct to the consumer. This type of advice typically



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relates to a single transactional need, single product or category of product and single provider, and occurs in a single interaction. This is known in advance by the adviser / provider of any selection decision by a consumer. We believe that this is also well understood by consumers.

- 3.9 In addition, all potential advice is subject to a single remuneration structure, single fee structure (if any), single set of conflicts (if any) and single insolvency or bankruptcy history (if any). Again, all of this is known by the adviser / provider in advance of a consumer selecting the adviser / provider and will not change with or during the giving of advice.
- 3.10 So for example, any consumer calling AMI will only ever get advice on buying, altering, or cancelling an AMI general insurance product. The fees, biases and standing of AMI does not change with the advice and nor does the adviser's remuneration.
- 3.11 The nature of this 'simple' advice also means that the three points in time described in the Paper (searching for the advice, the point by which the scope and nature of the financial advice is known, and the giving of advice) are not mutually exclusive or well separated. The three points of disclosure would therefore be unnatural, unnecessary and impose unreasonable compliance costs.
- 3.12 Instead, disclosure may be most relevant, useful and efficient if it only occurs at one or two points in the process. All the information required to be disclosed can be disclosed as part of the adviser's / provider's *general publicly available information*. The consumer can also then be advised of and directed to this information during the *giving of advice*.

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## 4. ANSWERS TO SPECIFIC QUESTIONS

### Objectives

**Q1. Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?**

- 4.1 We agree with the objectives that have been identified.
- 4.2 We are pleased to see a focus on efficiency. The cost of the disclosure regime for advisers / providers is driven by when and how disclosure is made. Care is needed to ensure that the regime is sufficiently flexible to allow advisers / providers to fit it within, and not have it shape, their advice processes.

### The timing and form of disclosure

#### *Timing*

**Q2. What are your views on the proposal that information be disclosed to consumers at different points in the advice process?**

- 4.3 We agree with the proposal in principle. Disclosing information at different points in the advice process will help ensure that consumers have the right information at the right time to support their decisions.
- 4.4 However as discussed above (see Timing of disclosures), not all advice processes have the three distinct stages described to allow for separate disclosures. It is essential that disclosure fits within, and does not dictate, the advice process. And so, for some advice processes disclosure may be most relevant, useful and efficient if it only occurs at one or two points in the advice process.

**Q3. Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?**

- 4.5 Yes, in principle it will improve the effectiveness of disclosure and ensure that consumers received the information most relevant to where they are in their decision making: selecting an adviser; accepting their offer of advice; and acting on their advice.

**Q4. 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?**

- 4.6 Yes, but only in advertising related to their advice services.

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### *The form of disclosure*

#### **Q5. 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?**

- 4.7 We strongly support an approach that is unambiguous about what is to be disclosed and flexible and how it is disclosed. To achieve this, we think the regulations should:
- Specify the objectives of disclosure;
  - Specify the information that needs to be disclosed;
  - Include definitions for key information;
  - Allow the Code Committee to prepare optional safe harbour wording and templates
  - Allow the Code Committee to develop and issue guidance material on:
    - Definitions (as required)
    - Application of concepts such as ‘material’ and ‘relevant’
    - How to articulate certain disclosures
  - Require the Code Committee to work with industry and consumer groups and organisation in preparing the guidance material
  - Reference the guidance material in enforcement provisions

#### **Q6. 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?**

- 4.8 We agree that disclosure should be clear, concise and effective, and that it meet the (paraphrased) objectives of relevance, timeliness, accessibility, consistency and efficiency. Many of these outcomes are subjective and care is needed in how they might be codified in regulations.
- 4.9 We would not support ‘hard’ presentational requirements such as word limits. Imposing word limits, if they are to be meaningful, risks constraining effective disclosure in more complex situations – precisely when complete disclosure is needed – and so should be avoided.
- 4.10 We agree that there is a role for orders, penalties and civil liabilities in the regime. These must be proportionate in design and use and applied through robust due process. The regime must include penalties for failing to disclose or failing to disclose in a timely manner, and for misleading or deceptive disclosure.

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- 4.11 To avoid concerns about objectivity, consistency and fairness, the regime should avoid penalties and civil liabilities for disclosure that falls short of being misleading and deceptive, but that also fails meet subjective presentational obligations. Stop orders may be appropriate in these circumstances.

## What information do consumers require?

### *Information that promotes confidence among consumers*

#### **Q7. Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?**

- 4.12 We partially agree with the proposal.
- 4.13 We agree that information relating to the licence, duties and complaints process should be in an adviser's / provider's general publicly available information.
- 4.14 We agree that in some circumstances information relating to the licence should be disclosed by the point that the nature and scope of advice is known. However, as discussed above (see Timing of disclosures), in other circumstances this could be unnatural, unnecessary and impose unreasonable compliance costs and so should not be required.
- 4.15 We agree that in some circumstances information relating duties and complaints process should be disclosed at the point of giving advice. However, as discussed above (see Timing of disclosures), in other circumstances this could be unnatural, unnecessary and impose unreasonable compliance costs and so should not be required.

#### **Q8. Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?**

- 4.16 Yes. This text should provide safe harbour but not be mandatory, allowing advisers and providers to vary from it where to do so provides better disclosure.

#### **Q9. 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)?**

- 4.17 Yes, consumer should be informed of their ability to access free dispute resolution through the adviser's / provider's Approved Dispute Resolution service (ADRS). However, this should only be provided when it is apparent that a complaint cannot not be resolved through the adviser's / provider's internal dispute resolution process.

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- 4.18 The consumers expectation when making a complaint is that the adviser / provider will remedy the problem as a priority, not that they are informed of a service they can use when the problem that is the subject of their complaint remains unresolved. To alert all consumers with a complaint will send the wrong signal by implying that the adviser / provider does not expect to resolve the complaint.
- 4.19 It would also be highly inefficient to tell all complainants about the ADRS, when most complaints are resolved without having to be referred to such services.
- 4.20 We agree that this obligation should apply to all financial service providers.

### *Information about the financial advice*

#### *Limitations in the nature and scope of the advice*

#### **Q10. 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?**

- 4.21 We partially agree with the proposal.
- 4.22 We agree that it is important for consumers to understand the scope and nature of the advice they receive, especially any limitation to the type of advice provided and or the products and providers considered. We also agree that this information should be included in advisers' / providers' general publicly available information.
- 4.23 We agree that in some circumstances this information should be disclosed by the point that the nature and scope of advice is known and at the point of giving advice.
- 4.24 However, as discussed above (see Timing of disclosures), in other circumstances this could be unnatural, unnecessary and impose unreasonable compliance costs and so should not be required. Instead reliance could be placed on this information having been disclosed in general publicly available information and reference made to it at the point of giving advice.

#### **Q11. How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?**

- 4.25 We have no further comment.

#### *Costs to the client*

#### **Q12. Do you agree with the proposal relating to disclosure of costs to clients, as set out above? Why or why not?**

- 4.26 We partially agree with the proposal.

- 
- 4.27 We agree that consumers need to know the costs they will incur to receive financial advice and that this information should be included in advisers' / providers' general publicly available information.
  - 4.28 We agree that in some circumstances this information should be disclosed by the point that the nature and scope of advice is known.
  - 4.29 However, as discussed above (see Timing of disclosures), in other circumstances this could be unnatural, unnecessary and impose unreasonable compliance costs and so should not be required. Instead reliance could be placed on this information having been disclosed in general publicly available information and reference made to it at the point of giving advice.
  - 4.30 We agree that consumer should be informed of additional expenses they might incur in buying or exiting a product and that this should be provided at the point of giving advice.

**Q13. 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)?**

- 4.31 Disclosure regulations should ensure consumers are made aware of the fees they will be charged should they follow the advice they receive.
- 4.32 We recommend that all fees and expenses should be itemised to the extent that it allows the consumer to understand what money is ultimately being received by the adviser, the adviser's employer and the product provider(s) being recommended.
- 4.33 We believe that the disclosure of fees and expenses by the point that the nature and scope of advice is known and at the point of giving advice should only be required if such fees and expenses exist.
- 4.34 It is worth noting that in many instances there will be no fees or expenses associated with the advice a consumer receives or any additional fees or expenses beyond the purchase price of the product when acting on that advice. An adviser / provider should not be required to disclose an absence of fees and expenses as this is unnecessary and would impose unreasonable compliance costs.

**Commission payments and other incentives**

**Q14. 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?**

- 4.35 We partially agree with the proposal.
- 4.36 We agree that providers should disclose the commissions and incentives they pay to the advisers they employ and engage, and that this information should be included in their general publicly available information.

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- 4.37 We agree that more detailed disclosure of remuneration should be made later in the advice process as the specific remuneration an adviser will received (if their advice is followed) becomes known.
- 4.38 However, as discussed above (see Timing of disclosures), in other circumstances this could be unnatural, unnecessary and impose unreasonable compliance costs and so should not be required. Instead reliance could be placed on this information having been disclosed in general publicly available information and reference made to it at the point of giving advice.
- 4.39 We do not agree that only the ‘particular’ commissions and incentives be disclosed. Those commissions and incentives that are ‘particular’ may not be all those that are relevant or material to a consumer’s decision. For example, arrangements can exist where the adviser or their employer may receive income or benefits that are not connected to one piece of advice and yet may be perceived by consumers as being a relevant and material incentive acting of the advice they receive.

**Q15. 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?**

- 4.40 We do not agree that a materiality threshold should be used to determine which commissions and incentives are disclosed.
- 4.41 We acknowledge that a materiality threshold can help to create clear, concise and effective disclosure, and achieve more tailored and light-handed regulation.
- 4.42 However, we believe that relevance and materiality must be assessed from the consumers perspective. To avoid the subjectivity and risk of under-disclosure that is inherent in advisers / providers making that assessment on consumers behalf, we further believe that all commissions and incentives must be disclosed. This is an item of disclosure where we cannot trade away relevance for efficiency.
- 4.43 We recommend that advisers / providers are required to disclose all the remuneration, commission, fees, bonuses, benefits and incentives they receive. This should include:
- Salary or wages
  - Initial and annual / trail commissions
  - Incentives at the time of sale and during the life of the product.
  - Fees paid in addition and separate to commissions
  - Annual bonuses and rewards
  - Soft commissions

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- 4.44 As stated above, we recommend that all fees and expenses should be itemised to the extent that it allows the consumer to understand what money is ultimately being received by the adviser, the adviser's employer and the product provider(s) being recommended. This can be achieved by requiring an adviser to disclose the product suppliers base price.
- 4.45 If a materiality threshold is included in the regulations, then we recommend that it is supported by detailed guidance on what is and is not material and that it captures and reflects the different remuneration models in the market.

#### How to disclosure commissions and other incentives

##### **Q16. Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?**

- 4.46 Yes. Commissions and incentives are many and varied and as such can be opaque and open to interpretation about if and how they are disclosed. We believe they are a key input to consumers' decision making and so it is vital that the regulations leave no doubt as to what must be disclosed. As discussed above, this must be supported by detailed guidance.

##### **Q17. Which of the above options do you prefer? What are these costs and benefits of the options?**

- 4.47 We prefer option 3. We believe that one principle should be that commissions and incentives are described in ways that are tangible and understandable to consumers, such as using percentages (option 1) and dollar figures (option2) when that is appropriate and achievable.
- 4.48 As discussed above, the description of commissions and incentives should be a key part of supporting guidance.

#### Other conflicts of interest and affiliations

##### **Q18. Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?**

- 4.49 We partially agree with the proposal.
- 4.50 We agree that all financial advice providers should include relevant potential conflicts of interest in their *general* publicly available information.
- 4.51 We agree that in some circumstances *further details* on relevant potential conflicts of interest should be disclosed by the point that the nature and scope of advice is known. This should only occur if further undisclosed details exist.



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- 4.52 However, as discussed above (see Timing of disclosures), in other circumstances this could be unnatural, unnecessary and impose unreasonable compliance costs and so should not be required. Instead reliance could be placed on this information having been disclosed in general publicly available information and reference made to it at the point of giving advice.
- 4.53 We also agree that the conflicts disclosed should be limited to those financial interests, relationships and affiliations ‘which could be perceived to materially influence the financial advice’. We recommend that this is supported by the development of clear guidance to advisers / providers as to what is considered material.
- 4.54 We do not agree that only the ‘particular’ conflicts be disclosed at the point that the nature and scope of advice is known and at the point the point of giving advice. The conflicts that are ‘particular’ to that piece of advice may not include all those considered ‘material’ by the consumer. As such the disclosure should capture conflicts that are ‘particular’ or material.
- 4.55 Subject to the above point, we agree that in some circumstances ‘particular’ and or ‘material’ conflicts of interest should be disclosed at the point of giving advice.
- 4.56 However, as discussed above (see Timing of disclosures), in other circumstances this could be unnatural, unnecessary and impose unreasonable compliance costs and so should not be required. Instead reliance could be placed on this information having been disclosed in general publicly available information and reference made to it at the point of giving advice.

**Q19. Are there any additional factors that might influence financial advice that should be disclosed?**

- 4.57 We have no further comment.

**Q20. 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)?**

- 4.58 We think that the exact format or placement of information within a disclosure should be left to advisers / providers to decide, guided by the objective of providing accessible information to consumers.

*Information about the firm or individual giving advice*

*Disciplinary history, insolvency and bankruptcy*

**Q21. Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?**

- 4.59 We partially agree with the proposal.

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- 4.60 We agree information relating to disciplinary history and bankruptcy or insolvency history should be disclosed. As discussed above, we believe that this disclosure would be strengthened by developing guidance on what is and is not considered ‘relevant’.
- 4.61 We agree that in some circumstances relevant potential conflicts of interest should be disclosed by the point that the nature and scope of advice is known.
- 4.62 However, as discussed above (see Timing of disclosures), in other circumstances this could be unnatural, unnecessary and impose unreasonable compliance costs and could instead be disclosed in general publicly available information and referenced to when giving advice.

**Q22. Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider? Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?**

- 4.63 Yes. However, a provider should not be required to disclose an absence of a disciplinary history and bankruptcy or insolvency history as this is unnecessary and would impose unreasonable compliance costs.
- 4.64 It should be noted that many of the large entities that will be providers under this new regime will be licenced by the Reserve Bank of New Zealand (RBNZ) and subject to its ‘fit and proper’ regime. This requires insurers, for example, to consider, amongst a wide range of other factors, an individual’s disciplinary, insolvency and bankruptcy history. The practical effect is that people with a history in these areas would not be considered for a directorship nor approved by the RBNZ.

## Additional options

### *A prescribed summary document*

**Q24. Do you think that a prescribed template will assist consumers in accessing the information that they require?**

- 4.65 It is not clear from the Paper whether the ‘summary document’ would be in addition to or merely provide a template for disclosure.
- 4.66 We believe that clear guidance is needed to support advisers / providers to make effective disclosure. This guidance could include templates that support the major advice service types. We do not support mandatory templates.

**Q25. 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)?**

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4.67 We have no additional comment.

*Requirements for disclosure given through different methods*

**Q26. Should the regulations allow for disclosure to be provided verbally? Why or why not?**

4.68 Yes, the regulations should allow for verbal disclosure.

**Q27. If disclosure was provided verbally, should the regulations include any additional requirements?**

4.69 The regulations should require advisers / providers to provide non-verbal disclosure if requested by the consumer to do so. The form should not be prescribed and could include a written document or a link or reference to information held on their website.

*Requirements for advice given through different channels*

**Q28. Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?**

4.70 We have no comment.

**Q29. Do consumers require any additional information when receiving financial advice via an online platform?**

4.71 We have no comment.

*Disclosure when replacing a financial product*

**Q30. Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?**

4.72 We have no comment.

**Q31. Should this apply to the financial advice given on the replacement of all financial advice products?**

4.73 No. A prescribed notification should only be required when the scope of advice captures all products and providers in the market and the circumstances of the consumer or the nature of the product means that replacing the product creates material financial risk to the consumer.

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*Information to existing financial advice clients*

**Q32. 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?**

4.74 We have no comment.

**Q33. Should there be a limit on the length of time that this relief would apply?**

4.75 We have no comment.

*Transitional requirements*

**Q34. 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?**

4.76 We have no comment.

**Q35. Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?**

4.77 We have no comment.

*Disclosure to wholesale clients*

**Q36. 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?**

4.78 We have no comment.

**Q37. 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?**

4.79 We have no comment.



25<sup>th</sup> May 2018

Financial Markets Policy  
Building, Resources and Markets  
Ministry of Business, Innovation and Employment

By email: [faareview@mbie.govt.nz](mailto:faareview@mbie.govt.nz)

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

Thank you for the opportunity to comment on the discussion paper. In our submission we have focused on the key issues for our members.

IBANZ is New Zealand's professional body representing fire and general insurance brokers, risk managers and consumers in New Zealand. In excess of 90% of all general insurance brokers, registered financial advisers are members of IBANZ. We are the voice of the industry, advising members, government, consumer groups and other stakeholders on key insurance issues.

We provide technical advice, guidance on regulation and business support. We seek to raise and maintain standards in the industry, and provide education and continuing professional development opportunities.

IBANZ has canvassed opinion from its membership before preparing this submission.

IBANZ has no objection to the release of any information in our submission.

Yours faithfully

**S9(2)(a)**

Gary Young   
Chief Executive  
Insurance Brokers Association of New Zealand Inc.

**Submission by**



To

**Ministry of Business, Innovation & Employment**

On

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

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25<sup>th</sup> May 2018

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

## Your name and organisation

|                     |   |
|---------------------|---|
| <b>Name</b>         | Gary Young  |
| <b>Organisation</b> | Insurance Brokers Association of New Zealand Inc. (IBANZ) |

## 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 objectives identified in this discussion paper

### 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 agree that certain information will be relevant at different points in the advice process. However the advice process in general insurance may differ from that in other financial services sectors. Within the General Insurance sector there are different processes depending on whether the advice is in relation to say new customers, renewals of existing insurance or additions and changes to existing insurance.

It is essential therefore that the regulations allow for flexibility as to what relevant information is disclosed in the advice process. It is recognised that a “one size fits all” approach won’t be appropriate

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, information ideally needs to be disclosed at the time when it is relevant to client, otherwise it is at risk of being ignored and forgotten.

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 regulations should allow for general disclosure information to be provided in advertising material, web site or from other readily available sources.

### 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 would suggest a principles based approach, e.g.

1. Disclosure of the regulatory entitlement to advise must occur in writing before the consumer engages the adviser.
2. Disclosure of a potential conflict of interest must occur in writing before the adviser gives the advice that raises that potential conflict of interest.
3. Disclosure of the commission and fees must occur in writing before the consumer becomes contractually obliged to pay them.

In all cases 'in writing' can be satisfied by reference to the adviser's website page containing the disclosure, and where it is not practical for it to be in writing, it can be given orally so long as it is followed in writing as soon as practicable thereafter."

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 recommend a regulatory response.

Civil liability would be messy and the courts can only respond in monetary terms (assuming there is a monetary loss). The regulator has a larger 'tool box' and can respond proportionately.

### 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



8

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

The benefit of a prescribed text is that it provides a level playing field for adviser firms – consumers can quickly and easily compare answers. In addition, it makes it difficult for brokers who don't want to comply with the spirit of the legislation to come up with 'creative solutions' forcing competitors to follow in order not to feel disadvantaged. In the absence of prescriptive regulations, it may lead to increased compliance costs to determine what may be required and overly detailed disclosure which may not be of use to consumers.

However, the prescription needs to be industry specific e.g. one for general insurance, one for life insurance, one for financial planners etc. One size fits all will not work here because the industries are too diverse.

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 this information should be provided to a consumer by all financial service providers when a complaint is received.

## 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?*

We agree with the proposals however note that the general publicly available information relating to General Insurance could easily become too detailed and therefore confusing. The requirement should be for an overview only of products and providers that can be considered.

11

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

Within General Insurance the extent of the market available can only be determined after the scoping exercise is completed.

It would be normal to include details of market considered when presenting recommendations.

## 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?*

We agree in principle with the proposals regarding disclosure of fees to clients. However some clarity needs to be provided in terms of what may constitute a “fee”. For example we would not consider insurance premiums themselves to be “fees”. Fees (paid by the client for services) to be contrasted to commission paid by the provider on the product.

However with General Insurance broking the amount of fees will be determined taking into account a wide number of factors and using a variety of methods. The clearest point regarding what the actual amount of the fee would be is at the time of making a recommendation and before the consumer is committed to paying them.

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)?*

We see this is a non-issue for general insurance. Apart from commission and fees there are no other consequential fees chargeable beyond those that have to be disclosed by separate legislation anyway, e.g. FENZ levy and EQC levy.

## 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?*

Commission (brokerage) can only be disclosed in very general terms at the start of the advice process. In general insurance the detail is often not known until the final placement of cover is completed. Even then adjustments can occur throughout the term of a policy and after it has ended meaning specific dollar amounts cannot be determined during the advice process.

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?*

Given that commissions vary by product and provider, it will be onerous to provide detailed disclosure to clients at a product level. We would therefore suggest a percentage of gross premium threshold for disclosure of commissions

## 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 the disclosure regulations should not be prescriptive regarding the disclosure of commissions and other incentives.

One size does not fit all, with General Insurance we believe prescriptive regulations could be cumbersome and potentially confuse rather than provide clarity for consumers.

Because of the range of advice processes involved with general insurance broking we believe it would be difficult to make prescriptive regulations relevant for all circumstances.

17

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

A Principles – based approach.

**For General Insurance Broking Option 3** is the only practical, cost effective and accurate method of approaching disclosure of commissions and other incentives.

This option would enable the general insurance industry to agree an appropriate methodology for relevant, clear and transparent disclosure of remuneration.

**Option 1** is possible where the needs of a client are limited to a few insurance products from a limited number of providers. However given the size of the general insurance market particularly for businesses caught by the new “retail” definition, is extensive which would result in disclosure information overload.

**Option 2** is not practical for General Insurance Broking as it is not possible to determine the exact dollar amount ahead of implementing the recommendations.

## 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?*

We agree that disclosing relevant potential conflicts of interest makes sense as part of the general publicly available information and provide further details at the point when making recommendations to the client.

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)?*

Not applicable

#### 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 it is relevant information for a consumer to have confidence in a financial adviser and financial advice provider but not to a nominated representative.

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, to give confidence to consumers in whom they are dealing with.

23

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

No, unless it has led to some disciplinary action of some sort.

## Additional options

### A prescribed summary document

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

A prescribed Template could potentially be of assistance however the issue with a template is making it relevant to all possible scenarios. Any template would have to be developed with each sector if it is to be at all useful to consumers as well as cost effective to produce.

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)?*

By requiring it to be followed up with the prescriptive template as soon as practical thereafter.

### Requirements for disclosure provided through different methods

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

It should be possible to disclose general information verbally. In many cases business is conducted over the phone (e.g. when arranging or amending insurance on a car) and disclosure is not practical at that time.

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

In the case of very simple advice scenarios, as in the above example, adding additional requirements would impose extra cost which inevitably increases the cost of insurance for no real benefit to the consumer.

### 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?*

During a phone conversation the client has the opportunity to request additional information whereas this is not likely with robo-advice. It would seem appropriate the robo-advice has additional information available for viewing.

29

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

Yes, given there is no opportunity for a person to person interaction in which additional information can be provided.

#### **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?*

Unlike life and health insurance, general insurance products renew annually anyway and there is no issue about pre-existing health conditions.

With General Insurance broking up to 20% of clients may replace financial products (change Insurers) each year.

This is standard general insurance business practice and undertaken for the reasons of improved policy terms/coverage and conditions along with pricing.

With General Insurance typically commission rates by product do not vary materially between Insurers.

This is another area where the range of scenarios within financial services dictates that the relevant information that needs to be provided will vary considerably assuming there is a need in any particular situation.

A general principle could be applied, that details are provided of any real or potential negative impact to the client of the recommended change.

31

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

As stated above the requirement should only apply where it is relevant to the particular product being replaced.

For example providing financial advice to replace a motor vehicle fleet insurance policy from NZI to Vero should not require notification.

The issue of replacement products generally has the most significant impact for life and health products relating to cover for pre – existing conditions. The same considerations generally do not apply for general insurance products.

### 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?*

Yes, within General Insurance existing clients should have reduced disclosure requirements. Disclosure for existing clients should only be necessary where something material has changed to the previously disclosed information or where the new advice situation has different disclosure requirements to that which applied previously.

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

No, as long as the disclosure already provided remains accurate.

### 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?*

It should be possible to comply within the transition period as long as the full details of the requirements have already been finalised. This assumes that the requirements are not overly complex or require significant system changes to implement.

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