MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Submissions on: Disclosure requirements in the new financial advice regime

Submissions ICNZ to JMIS

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New Zealand Government

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

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ICNZ submission on disclosure requirements in the new financial advice regime

Thank you for the opportunity to submit on the discussion paper *Disclosure requirements in the new financial advice regime* ("discussion paper"). ICNZ represents general insurers which insure about 95 percent of the New Zealand general insurance market, including over half a trillion dollars' worth of New Zealand property and liabilities.

This submission is in two parts:

1. Overarching comments
2. Responses to questions in the discussion paper

Please contact Andrew Saunders S9(2)(a) if you have any questions on our submission or require further information.

1. Overarching comments

ICNZ supports robust disclosure requirements and welcomes the introduction of commission/incentive related disclosure. We support disclosure requirements that result in useful information being provided to consumers and are workable for subject entities to provide. As such we generally support quality over volume and note the current QFE disclosure arrangements are generally efficient and streamlined.

In general terms we support a principles-based approach being taken in the new disclosure regulations ("regulations"), which will assist in providing for different advice delivery methods (e.g. face-to-face, over the phone and robo-advice), avoid stifling innovation, and allow organisations to provide disclosure in a way that suits their processes and information systems. Whilst we support a principles-based approach it is important the regulations are clear on what must be disclosed. They should not however be prescriptive as to when and how it is disclosed.

We recognise such an approach will need to be supported by guidance material that more specifically addresses the 'when' and 'how' of disclosure in different situations. This guidance should be

developed by government in consultation with industry and other stakeholders. While flexibility is important we also note that where regulatory expectations are less clear there is a greater risk of some providers being more conservative leading to excessively long and complex disclosures while others may try to exploit the uncertainty to provide little disclosure.

It will also be important that when the regulations are finalised regulators support compliance, and once in force they also appropriately monitor and enforce the requirements.

The discussion paper envisages that both the Regulations and the *Code of Professional Conduct for Financial Advice Services* ("the Code") may include disclosure requirements (refer paragraph 38 of the discussion paper). We consider that ideally the two documents will not both address disclosure requirements, but if they do then it is important to ensure the Code dovetails with the primary requirements in the regulations.

ICNZ welcomes an exposure draft of the regulations being consulted on later in the year. The timing of this needs to be considered in relation to the timing of the planned consultation on the draft of the Code. If, as is envisaged in the discussion paper the Code and the regulations both include disclosure related obligations, it would seem useful for stakeholders to be able to consider the exposure draft of the regulations first so that the planned regulatory requirements are clear at the time the draft of the Code is consulted on.

2. Responses to questions in the discussion paper

1	**Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?**
	ICNZ agrees with the content of the objectives outlined on page 10 but considers a few extra matters should be included. Objective 4 relates to different channels but there would also be value in explicitly acknowledging in the objectives the differing nature of advice processes subject to the regulations (e.g. from investment planning to simple single product situations) and the need for the disclosure requirements to work effectively and efficiently for all of these. In regard to objective 5, as well as reducing unnecessary compliance costs for providers, it is also important to ensure disclosure obligations don't discourage providers from providing advice (e.g. due to excessive complexity).
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?**
	It is vital that correct information is disclosed to consumers at appropriate and relevant times during an advice process. It is important to remember though that advice processes can take many forms and so the regulations should not specifically require disclosure at different points in the process. In some cases it will be appropriate for information to be disclosed at different times but in others it may be appropriate for a single upfront disclosure as interactions subsequent will not alter the disclosure required.

3	**Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?**
	This ability to provide disclosure information at different times where appropriate will improve the effectiveness of disclosure because consumers receive information at the time it is pertinent to their decision making (e.g. at the time they decide who to seek advice from or subsequently whether to accept that advice). It also avoids the need to provide what turns out to be unnecessary and irrelevant disclosure information to consumers early in the process or to repeat information.
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?**
	We support the regulations prescribing what information is to be disclosed in the general publicly available information but not setting the specific form for how this information must be disclosed. We note websites can provide a key role in providing up to date disclosure information to all consumers.
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 support the concept of enabling flexibility by setting clear requirements regarding the information that needs to be disclosed without being overly prescriptive in the regulations as to when and how. As outlined above in Part 1 of this submission we see a role for guidance material in providing greater specificity in regard to how and when disclosure is made in different situations.
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?**
	As with the original implementation of the *Financial Markets Conduct Act 2013*, it would be sensible if the FMA could initially take a constructive approach to enforcement of the new regime. At the outset, we recommend that FMA work with willing compliers to ensure requirements are met over an initial 6 – 12 month period. We would suggest that the FMA should have a number of options available that are proportionate to the nature and severity of the contravention. For example, a minor infraction with no potential for material impact to the consumer, should be addressed through something such as a warning. In contrast, deliberately misleading disclosure should attract much stronger penalties.
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?**
	Overall as outlined above we support the regulations being clear on what should be disclosed with supporting guidance used to provide greater certainty on when and how in different contexts (e.g. different types of products and advice situations etc).
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)?**
	ICNZ supports consumers being informed of their ability to access a free dispute resolution service when making a complaint. This should occur within the wider context of information about a providers' dispute resolution process (both its internal and external aspects).
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 generally support the proposal in relation to the disclosure of nature and scope of advice as set out on pages 18 and 19 of the discussion paper. We are unclear exactly what is contemplated in paragraph 52 of the discussion paper in terms of individual adviser level disclosure. With regard to nominated representatives we consider that the level for disclosure sits at the Financial Advice Provider ("FAP") level as the individual nominated representatives operate within the systems and constraints of the FAP.
11	**How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?**
	ICNZ agrees it is important consumers have a clear understanding of the type of service that the individual or firm giving advice can provide and the extent of the relevant market that may be actively considered in doing this. We therefore generally support the proposal in relation to the disclosure and scope of advice set out in the three bullet points below paragraph 53. We do however consider the focus of this is better placed on outlining what the scope of advice covers rather than what it doesn't. It is also important to recognise and provide for different contexts. For example, where a consumer phones an insurer with the purpose of securing insurance for a vehicle, the nature and scope of the advice (general insurance and that providers products) are essentially determined by the consumer before the conversation begins. ICNZ supports requiring disclosure of the types of arrangements detailed in paragraph 51 of the discussion paper.

	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 agree it is fundamental consumers are aware of fees that a FAP charges for the advice they give and any expenses that the consumer might be required to pay in the event of a cancellation, including any clawback commissions. It is necessary to recognise though that in some cases it may not be possible to precisely define potential costs, for example explaining (at the time of providing advice) what could be clawed back (and by whom/against whom), in which it may be appropriate to require a fair and reasonable estimate, or the process that would apply.
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)?**
	ICNZ supports measures to ensure consumers are aware of all the costs they might incur in following advice. We question the characterisation of "insurance premiums" as an "other fee" in Question 13 as premiums are the price paid for an insurance policy in exchange for the cover the policy provides. An insurance premium is not a type of fee.
	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?**
	ICNZ supports the disclosure of commissions and other incentives. With regard to how and when this disclosure is made, we consider flexibility is important to ensure this can be constructively and efficiently done during the advice process. It is important to recognise the advice process varies, for example it can sometimes involve multiple face-to-face meetings over days/weeks but in others could all take place over the course of a single relatively brief phone call, or online. As the relevant commissions or other incentives, if any, may be identifiable from the beginning of the advice process in some situations then the regulations should not specifically require more detailed disclosure later when it can all take place from the beginning. Please also note our related comments in response to Questions 15 and 16 below.
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?**
	Whilst ICNZ can see the appeal of including a materiality test as a means for simplifying the information that is disclosed, the subjectivity involved would be problematic in various ways and so we have concerns with using this to determine which incentives have to be disclosed to consumers. Subjectivity is problematic both in the sense that different FAPs might make different judgments on whether to disclose similar information (creating inconsistency) and the more fundamental issue that materiality is very subjective. Whether an incentive is material in practice will depend on both the nature and scale of the incentive and the situation of the

individual/s involved. Consumers' perception of the materiality of similar incentives may also differ.

It is also important to recognise the main reason for disclosure of incentives is to reveal conflicts of interest and the context of an intermediary offering varying products with differing incentives attached is different in nature to a salaried employee of a provider offering only that company's products and with a small performance-based component or bonus.

Where an adviser is offering multiple financial product provider's products and directly receiving commissions/incentives - full disclosure of the level of commissions from each financial product provider and any soft incentives is logically required and may only be possible to be disclosed at the point of recommending specific products. On the other hand, where FAP's employ advisers, but the adviser receives no direct commissions or soft incentives from the placement of business – disclosure as to the fact that they are an employee and might receive certain types of incentives would seem appropriate and may be able to occur at the commencement of the process (because it would not change).

If a materiality test was to be included in the regulations the following matters would need to be carefully considered:

- How to provide for the difference contexts of advisers who are not employed by a financial product provider and are able to offer multiple providers' products and advisers who are employees or tied agents of a financial product provider.
- How materiality would be determined at the individual, team/group, and the FAP level in relation to different types of incentives - consumer perceptions of materiality and the advice context also vary substantially.
- Making a materiality test sufficiently clear to avoid inconsistent application.

Please also note our comments below in regard to Question 17.

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?**

ICNZ supports consumers being made aware of the differing commission rates an adviser can receive between different products/providers.

We don't necessarily believe it is necessary for the regulations to be prescriptive regarding the disclosure of commissions and other incentives but they will need to set very clear expectations. This will be necessary to reduce uncertainty of application for subject entities and to ensure consumers receive the information required to help them decide whether to seek advice from a particular person, whether to accept any advice given and whether conflicts are being appropriately managed.

We expect supporting guidance will be required in this area to address the variety of situations that might occur in practice in the different sectors and situations subject to the regime and note the usefulness of the case studies provided in the discussion paper.

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

Consistent with our answer to Question 16 above we consider that taking a principles-based approach to the regulations is the best of the three options outlined on pages 21-22 but

recognise further detailed work will be required. Regulatory requirements in this area need to be sufficiently flexible to account for different arrangements and structures and the evolution of these whilst also being sufficiently clear to avoid under or over compliance. It is important to remember that commissions, soft commissions, referral payments, other incentives and performance targets come in many and varying forms.

Effective disclosure of commissions/incentives so as to enable consumers to understand conflicts of interest may involve an element of all three options. Simply disclosing that commissions might be received seems insufficient, whilst at the other end of the spectrum it could be counter-productive or impractical to specify the exact dollar amount of a commission or the details of all the performance targets that might be relevant to the individual providing the advice, their team, or at corporate level. Some sort of middle ground may most usefully serve the policy objectives of informing consumers whilst being practical for providers, but as noted above in regard to the concept of a materiality test we understand successfully providing for this won't be easy.

Whilst supporting a principles-based approach we recognise that Option 3 runs the risks of being applied in a way that is overly open to interpretation. This could mean that some entities provide insufficient disclosure while others may take a conservative approach (i.e. excessive disclosure) to ensure they are complying, rather than a more pragmatic customer-friendly approach. As outlined above providing supporting guidelines will be important.

Amongst Options 1 and 2, neither would to be suitable in itself and we note that commissions and incentives can be structured in different ways and include elements of percentage rates and specific numbers (i.e. dollar amounts).

With regard to Option 1, commission rates are easily understood by consumers and would often be more straightforward and workable to communicate for entities (i.e. it could be standardised if shown in % terms.) than disclosure in dollar terms as per Option 2. Percentages could potentially be shown in ranges rather than specific numbers but these ranges would need to be sufficiently narrow to be useful (e.g. "20% - 30%" might be useful information for a consumer whereas "0% - 100%" wouldn't be).

While Option 2 would likely provide the most easily understandable information to the consumer it would be complex to apply in practice. For instance, with an insurance product it might not actually be known until the sum insured was confirmed (or later), making it more challenging and complex to apply than Option 1. There also seems to be a risk that providing specific dollar values of incentives functions as a distraction for some consumers and potentially risks introducing confusion with other dollar values being discussed with regard to the advice or financial product/s.

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. It would be inconsistent and incomplete to require disclosure of commission/incentive whilst not requiring disclosure of other sorts of conflicts or affiliations.

19	**Are there any additional factors that might influence financial advice that should be disclosed?**
	In the insurance space, brokers often operate under binding authorities but may not have authority to provide advice on behalf of the insurer. In this context it would seem appropriate for the adviser to disclose that while it may provide some services to the product provider (in the insurance context, limited underwriting services), it does not provide financial advice on the product provider's behalf. This would help provide clarity to the consumer on where their rights of recourse sit, and from the advisers' perspective would help them manage their duty to prioritise clients' interests.
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)?**
	We don't have specific comments to make on this aspect but note that when disclosure of these factors is relevant/appropriate may vary depending on the advice process.
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?**
	We agree that that nominated representatives should not be required to disclose relevant insolvency or bankruptcy issues as, unlike AFAs, they are following the FAP's processes and limitations and so a nominated representative's recent insolvency or bankruptcy history should not be relevant to how much confidence a consumer should place on the advice. We also consider that in relation to disciplinary issues, an FAP should not have to provide the relevant disciplinary history of an individual nominated representatives if they are employed by a FAP. In contrast, we consider that in the case of AFAs it may make sense for them to, as they currently do, disclose information relating to their personal history in terms of disciplinary action, bankruptcy or insolvency. Thought may need to be given as to exactly what is relevant for disclosure and whether a threshold for this would be appropriate. Overall for corporate entities it is appropriate and much more workable for corporate level disclosure rather than potentially an individualised level for each employee. FAP's are responsible for the activities and actions of their nominated representatives and so it is appropriate for disclosure to occur at that level. We note the approach we advocate could require a distinction between investment planning and financial advice. This would nonetheless be consistent with the approach being contemplated for the Code.

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?**
	We note that directors subject to the *Insurance (Prudential Supervision) Act 2010* are already required to meet "fit and proper" standards issued by the Reserve Bank of New Zealand. The added value of requiring the proposed disclosure is not clear in this situation but may be appropriate in situations where there is no independent authority already monitoring Directors on a fit and proper basis.
23	**Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?**
	We would suggest that this may have a place but the imposition of this sort of requirement needs to be carefully considered in terms of the value it would provide and whether it would be proportional. For example we would question whether it would be appropriate to require a minor one-off infraction to be disclosed. In contrast, in the case of a sustained history of infractions or deliberately misleading disclosure, this may be appropriate for disclosure.
Additional options	
	A prescribed summary document
24	**Do you think that a prescribed template will assist consumers in accessing the information that they require?**
	As outlined above we generally advocate a more principles-based, rather than prescriptive, approach. There may be a role for more specific presentational expectations to be set through guidance material, whilst still allowing flexibility and innovation in implementation. We are also cognisant of the limitations of this noted in the discussion paper in relation to online robo-advice or advice over the phone.
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)?**
	As noted above we don't considered a prescribed template would be a good approach in relation to advice provided over the phone or online. We recommend keeping the requirements principles based and where necessary providing more specific examples in guidance that are tailored to different advice settings.
	Requirements for disclosure provided through different methods
26	**Should the regulations allow for disclosure to be provided verbally? Why or why not?**
	Yes, this is amongst other things necessary to facilitate advice being able to be provided over the phone, which is a key delivery model for providers and consumers.

27	**If disclosure was provided verbally, should the regulations include any additional requirements?**
	Verbal disclosure can an effective form of communication but we recognise following it up with written disclosure could be appropriate and convenient for some consumers. In situations where disclosure is provided over the phone then customers should be able to request it in writing, particularly if it is not available on a website, ensuring certainty of disclosure by FAPs, particularly if the verbal disclosure is not scripted or pre-recorded.
	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?**
	Whilst phone-based advice is not face-to-face, it still involves a consumer directly dealing with a person and so whilst recognising the context it can potentially be treated in much the same way as offering advice face-to-face. A robo-advice platform is fundamentally different as there is no direct person-to-person interaction. Notwithstanding these differences and regardless of the channel/s used, the matters that are required to be disclosed should be the same, but the regulations must allow flexibility in how to recognise the use of one or more of these channels during an advice process.
29	**Do consumers require any additional information when receiving financial advice via an online platform?**
	Note our comments in relation to Question 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?**
	We don't consider there is a general need for a prescribed notification in all situations involving the replacement of a financial product. Should such a requirement be imposed, it should only be in those situations where particular risks associated with the replacement of that type of financial product justify it. For short-tail insurance products (e.g. general insurance[1]) we do not see a rationale for regulations to impose a prescribed notification associated with replacement. For long-tail products (e.g. life, disability, health insurance) where there is a clear risk of the consumer being put in a worse position by changing products, we agree there is a rationale for requiring a specific notification in relation to replacement (as noted in paragraph 80).
31	**Should this apply to the financial advice given on the replacement of all financial advice products?**
	As outlined above in relation to Question 30 we do not consider this should apply to the financial advice given on the replacement of all financial advice products.

[1] For example home and contents, motor or liability insurance.

	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?**
	As part of efforts to ensure disclosure is not unnecessarily burdensome for consumers or FAPs we see merit in the concept of reduced disclosure requirements for existing clients as an option. We also recognise that general insurance contracts are renewable on anywhere from a monthly to annual basis and so if there are any material changes these can be communicated at the time of renewal. Existing customers could be referred to the FAP's website to see the latest version of the disclosure information. We also recognise choosing to undertake full disclosure for existing clients could be more straightforward for some FAPs.
33	**Should there be a limit on the length of time that this relief would apply?**
	Repeating the same information appears to have little value although we agree there is a need to update consumers when previously disclosed information has changed or the scope of advice is meaningfully different. We haven't identified any particular time period that would be appropriate.
	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?**
	Many of our members have indicated comfort with the proposed nine-month transition period although some have suggested a longer period would be appropriate.
35	**Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?**
	No comments – not relevant to general insurers.
	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?**
	We agree it is important for wholesale clients, and FAPs, to be clear as to whether a client is being treated as such. Notwithstanding this in our view any provision of additional information regarding the wholesale designation in some circumstances needs to be focussed on addressing a specific issue, and be straightforward to comply with, to avoid imposing unnecessary complexity and cost. We would recommend that any requirements of this kind should to be required to be carried out on a one-off basis at the outset of the relationship and at the entity level (if dealing with a corporate client, for example).

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 additional comments beyond those made above in relation to Question 36.

Conclusion

Thank you again for the opportunity to submit on the discussion paper. If you have any questions, please contact our Regulatory Affairs Manager on S9(2)(a)

Yours sincerely,

S9(2)(a)

Andrew Saunders
Regulatory Affairs Manager

25 May 2018

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Submission on Discussion Paper: Disclosure requirements in the new financial advice regime

Thank you for the opportunity to comment on the proposed regulations under the Financial Advisers Act 2008 to implement changes to the registration regime. Generally, we support the draft Regulations.

Our responses to the question are as follows:

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

   Yes.

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

   We agree with this proposal in principle. However, this does require financial advisers to identify a range of "*trigger*" points at which they are required to provide information.

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

   In theory, yes, because it allows for information to be provided when it is relevant. However, in our experience, its effectiveness will depend on the delivery. It also requires consumers to read and understand the information they receive.

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.

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?**

   Again, we agree with this proposal in principle, however, drafting these provisions will be difficult.

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?**

It should be dealt with by the FMA.

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. The IFSO Scheme requires all its Participants to provide information to customers about IDR and EDR processes, but we believe it should also be a regulatory requirement.

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

Yes, we think it is extremely important the information suggested is publicly available. This is so consumers can compare the services provided by the financial advice provider ("FAP") before engaging the FAP's services. If the information is provided after they see the FAP, it is more difficult for them to disengage.

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

With great difficulty, given the extent of some FAPs' knowledge of other products in the market. In practice, we think FAPs can only completely disclose what they can provide advice on, but that does not necessarily make it clear to consumers what they cannot provide advice on.

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

Yes. Consumers need to know whether or not a fee is, or might be, charged and, if it might be charged, the basis on which it will be calculated. Information about fees, particularly those that might be charged (as opposed to will be charged) need to be highlighted prominently in the document and allow the consumer to work out when they will apply and how much they will be.

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)?**

Regulations should require FAPs to highlight that other fees could, or might, be charged.

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 threshold that would determine the commissions and incentives that needed to be disclosed, what would an appropriate threshold be?**

A threshold is theoretically useful, but we believe it would be difficult to implement in practice as there is a highly subjective element to incentives. For example, for a high achieving FAP, a sale that entitles them to attend an on-shore conference might not be a strong incentive to recommend a particular product; whereas, it might be for a more poorly performing FAP.

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

Not necessarily, provided the outcome allows consumers to easily compare the reward to the FAP.

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

Option 1 appears to provide the best information for consumers.

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?**

Possibly.

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

Yes, but only if it is able to be explained concisely.

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 to consumer choice.

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, it is relevant to consumer choice.

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

Yes, in principle. It would need to be clear whether this also covered decisions made by dispute resolution schemes.

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

Yes, as a prompt to ensure the required information is provided and also to allow them to compare a range of financial advice providers.

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

It would act as a prompt and be better than nothing. It would, again, allow consumers to more easily compare services.

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

Yes, in addition to written information.

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

We do not believe this should be verbal alone.

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?

See question 29.

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

The fact that robo advice is being provided, needs to be explicit.

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, we believe financial advice providers should be required to include specific warnings about the significantly increased risks to consumers of unintentional non-disclosure if they change, for example, health, life, or disability policies; particularly if the existing cover has been in place for a long time. The warning should state product providers do not usually obtain applicants' own medical history and that the consumer may choose to obtain and provide their medical history if they wish to reduce their risk. In addition, it is important that any commission paid to the FAP (if the consumer is moving from a current product to a replacement product) should be required to be

disclosed in such a way that the consumer can compare the current and replacement commission.

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

It does not need to apply to fire and general policies; it does, however, need to apply to life and disability and health products.

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, as long as consumers receive disclosure of anything that has changed before new financial advice is provided.

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

Yes, we consider a 3-5 year timeframe is appropriate for (unchanged) disclosure statements to be reissued.

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?**

For industry consultation.

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

For industry consultation.

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 response.

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 to a wholesale client?**

No response.

Yours sincerely

S9(2)(a)

Karen Stevens
Insurance & Financial Services Ombudsman

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

Your name and organisation

Name	Janet Harris – Mortgage Adviser
Organisation	Point Home Loans

Responses to discussion document questions

1	*Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?*
	Yes I agree – key information, given at the right time, in a clearly written (non-jargon) way so that it can be easily understood. Plus in a concise way, so that the consumer is able to read it, not be put off by pages and pages of small print; only the information relevant at each stage of the advice process, and relevant to the particular product that the consumers requires, is given.
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 like the way that this has been proposed, and I agree with it.
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 it will – at the moment the amount of disclosure materials is overwhelming, especially for investment advisers. If the information is deemed to be overwhelming or difficult to read, the consumer will not read it, quite simply!
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?*
	Not sure
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?*
	Not sure
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?*

	Not sure – but they need to be dealt with effectively.
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?*
	Perhaps?
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, I agree, but it is also essential to disclose the number of products or providers in a simple, easy to understand way. As a mortgage adviser, I currently state that I deal with most banks, other than Kiwibank and HSBC, as well as a number of non-bank lenders; I have seen others list 25 different banks/lenders as if the longest list makes them 'better'. But a long list is confusing to the consumer (hard to identify which provider is not listed) and I believe that is more relevant to state those that the adviser does not/cannot deal with, if there are many choices. Similarly, if an individual can only sell one provider's products, that should be clearly disclosed.
11	*How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?*
	Not sure – other than above, when clear disclosure is made of which providers the adviser deals with, or does not deal with – depending on the situation.
	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?*
	Absolutely yes! I believe that a lot of consumers hold back from getting advice as they have no idea what it may cost, and yet are afraid to ask. It is essential to give them an outline of potential costs (if any) as soon as possible, so information on a website is a great idea, as well as in an introductory phone call or email when a meeting is being set up (eg "To clarify, there

will be no charge for this meeting …"). It's good business conduct as well!

Later, when the nature and scope of the financial advice is known, then an accurate outline of cost can be given. It is imperative that the consumer is made aware of any charges BEFORE they are incurred, to preserve the integrity of doing business with an adviser. The charges, if any, are to be in writing and signed by the consumer, so they are fully understood and no surprises.

If the adviser has a policy that requires the consumer to pay or reimburse for clawbacks, this should absolutely be outlined, and in my opinion as early as possible. It's not good enough to tell the client about this potential fee/charge just as they are about to sign to accept the product – that's far too late in the process!

An adviser's clawback repayment policy should be disclosed when the nature and scope of advice is known – which is usually at the first meeting - as this can have a huge relevance to whether the client wishes to continue using that particular adviser's services.

I have heard horror stories of a mortgage broker charging clients who decided not to get their loans through him – sending them an invoice after he'd learnt they'd bought a property with a loan from elsewhere. Or charging way beyond the industry norm.

I have personally never charged anyone for a clawback – probably as I rarely get clawbacks (with the banks, the clawbacks are charged on a lowering % up to 27 months after the loan is drawn down).

However, if I was helping a client who was buying with the intention of refurbishing a property to on-sell within a 2 year period, I probably would charge – but only if I had made the client aware of this as soon as possible, likely in our first meeting.

Another example for the mortgage industry is 'break fees' if a client already owns a property. There are some more unscrupulous mortgage brokers out there who will readily allow the customer to incur a 'break cost' of a fixed rate loan, if it means that they, the broker, can get the commission to refinance the loan to another bank. Sometimes this is because the client's existing loan is with a bank that the broker cannot deal with; sometimes this is because the broker simply wants a 'churn' type higher commission.

It is essential for full disclosure of any such additional fees that will be incurred, as well as why and how these fees can be avoided, if possible. For example, the client could wait 6 months for a fixed rate to expire, to avoid a fixed rate break cost, or the adviser should be honest that they don't work with the particular bank that the client's loan is with, so if the client wants to work with them, they will need to change banks and incur a break fee.

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)?*

If ongoing fees are part of the product placement, then yes, they should be disclosed. For example, as a mortgage adviser, if I suggest a Revolving credit account as part of the loan structure for a client, I always advise that the bank charges a $10 (or whatever) monthly fee for this account, and this covers all transactions, including eftpos, APs, transfers, but not the 'Other bank ATM' charge.

Similarly, if an insurance premium contains an admin fee, that should be disclosed too. It's often the small charges such as this that infuriate consumers the most, and it's not enough to simply tell the consumer after they've signed up that 'that fee is just standard'. Not good enough in this environment.

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, yes, yes!! As a mortgage adviser, I can initially say 'I get paid by the lender, when (and if) you draw down a loan' is sufficient (or similar, depending on the stream of advice).

Per the table of disclosures and timing, the next stage of disclosure is when the nature and scope of advice is known – so by this stage, the product choices have usually been narrowed down, and a 'range' of commissions should be given, in a percentage form, plus a general overview of incentives.

In the MBIE discussion meeting in Auckland I attended, there were insurance advisers who were not at all happy with a detailed disclosure, as apparently, they receive different commissions for different products and different insurance companies. I am not sure why this should present an issue?

For example, as a mortgage broker, the banks all pay an upfront commission in the range of 45pts to 85pts (0.45% to 0.85%) of the loan amount, with the lenders paying the lower upfronts also paying trail at 20pts (0.20%), starting a year after the year is drawn down. Surely this is not difficult to put into a disclosure for clients? It's a simple range; if an insurance adviser has more products, it is still not difficult to list a product with range of payment – could be in table for clarity?

When making a final recommendation, at this stage, the actual commission and incentives should be declared. I agree with the discussion paper that a dollar amount for the commission paid is not necessarily helpful, as the amount that some people consider a large commission may be considered a very reasonable amount to someone else. But the percentage commission for the products actually recommended should be disclosed, as well as whether the adviser receives any potential 'soft commissions' for placing the business with that particular product provider.

In the MBIE discussion I attended, most insurance advisers were totally against disclosing these 'soft' commissions, such as the potential of being rewarded with a future overseas trip. They said it deflected from their advice (ie that their clients would focus only on the holiday the adviser may qualify for, not on the quality of the product advice given) and these advisers also said that they didn't/wouldn't take the trip anyway.

This is absolutely no reason to not disclose – the onus is on the adviser to fully disclose all actual and potential incentives/rewards/gifts. The adviser can tell the client, 'but I do not participate in / have never accepted / etc this overseas trip offer from this insurer'.

In this way, the adviser can FULLY JUSTIFY WHY they have recommended to place the business with the product provider as being the best product for the client, and not because they will get a free jaunt to an exotic location. The best interest of the client, remember!

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?*

Ah and this is where the issue arises! As the FMA found that the insurance brokers who undertook most 'churn' did not realise that recommending a certain insurance company, which rewarded them with an overseas holiday was a conflict of interest, can we rely on an appropriate test of materiality??

I think it's important for all incentives and commissions to be disclosed, as unfortunately if we leave people to make their own determinations of relevancy/materiality, there is a bias towards 'justifying' a decision in their own favour. They didn't declare that selling this product

	put them into a draw to win $25,000 cash, for example, as it was only a draw and they were unlikely to win anyway – what are the odds of winning?? However common sense should prevail. If a lender/ insurer/ investment firm gives a free pen, or other low cost (less than $10?) similar item as a general give away (ie no purchase required!) then it starts looking a little silly if that has to be disclosed – as offering promotional items is seen as standard / common business practice. If a promotional item is only given if a particular product is sold, or a certain sales threshold has to be met, then that item/gift/incentive requires full disclosure as the receiving of the item is directly linked to a product or sale. NB: When I first started as a mortgage broker (January 2007), I worked for over 5 years in an open plan office alongside many insurance brokers. Every Monday there were gifts left on the insurance broker's desks from an insurance company, as a result of the particular sales incentive campaign results from the previous week. These gifts were items such as wine, champagne and giant Toblerone bars. And then there's the volume of business to qualify for the overseas trips, with the highest volume qualifying to bring a spouse and children along as well, for free.
	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?*
	Yes, I firmly believe that it is, simply as there is so many 'kickbacks' out there and the public needs to know. The consumer cannot fully trust an adviser – in today's more open environment where information is so readily available - if the payments and soft commissions are kept hidden or secret. Because of the reticence of the industry – especially the insurers – to openly disclose their commissions and incentives, it leads to the need for prescriptive disclosure regulations. As I've written above, this is not that difficult and as part of the overall disclosure regime will become commonplace and expected by the consumer.
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 support Option 1, as it gives sufficient information for the consumer to compare the commissions/incentives, but is not as 'in your face' as Option 2, where dollars are stated. I disagree with Option 3 as the industry has not helped itself to date, and I fear a very 'soft approach', especially to the soft commission / incentives issue, if the industry itself is to set the tone for this disclosure. For example, insurance brokers still offer a very weak disclosure over their incentives/soft commissions, such as "from time to time, we may receive incentives from an insurer…." Name the incentives and disclose!!
	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! I thought they already had to…. The issue is that some advisers need a bit of help in recognising what 'conflicts of interest' are, unfortunately.

	There may need to be a guideline for this. For example, from an accountant (CA) recently, I heard of a mortgage broker who specialises in investment property; she puts her clients in touch with the person selling the property, who pays this mortgage broker an 'introductory fee/referral commission' of a few thousand dollars for each property. However, as this 'fee' is paid into an account in the name of the mortgage brokers' trust, the broker does not declare this referral fee to the client, as the trust is a separate entity from herself. And of course, this is also surely a conflict of interest that should be disclosed. This is what I mean when I say that people justify their disclosures to suit themselves. So a guideline is needed, to clearly highlight that it's final ownership of the commission/fee/payment that requires disclosure, or words to that effect.
19	*Are there any additional factors that might influence financial advice that should be disclosed?*
	Real estate agents being paid referral fees by mortgage advisers, especially if the mortgage adviser has a desk in the real estate office, and attends the real estate sales meetings, for example.
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! As we are financial advisers, the consumer should be able to have confidence in an advisers ability to handle their own finances / business.
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 – otherwise this can be used as a means to avoid disclosure.
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?*
	Not sure…
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?*
	I have now run out of time, unfortunately…..
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?*
29	*Do consumers require any additional information when receiving financial advice via an online platform?*
	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?*
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

I am sorry, I've run out of time to complete this Submission fully. As a mortgage adviser, I trust that my thoughts have helped outline how the mortgage advice stream is at times the same as, and at other times different from the investment and insurance streams.

I am happy to discuss matters further, please call or email me at any time.

I have also attached a couple of recent 'incentives' pertinent to the mortgage industry, to demonstrate that it's not just insurers that try to incentivise (bribe?) new business.

Many thanks and kind regards

Janet Harris

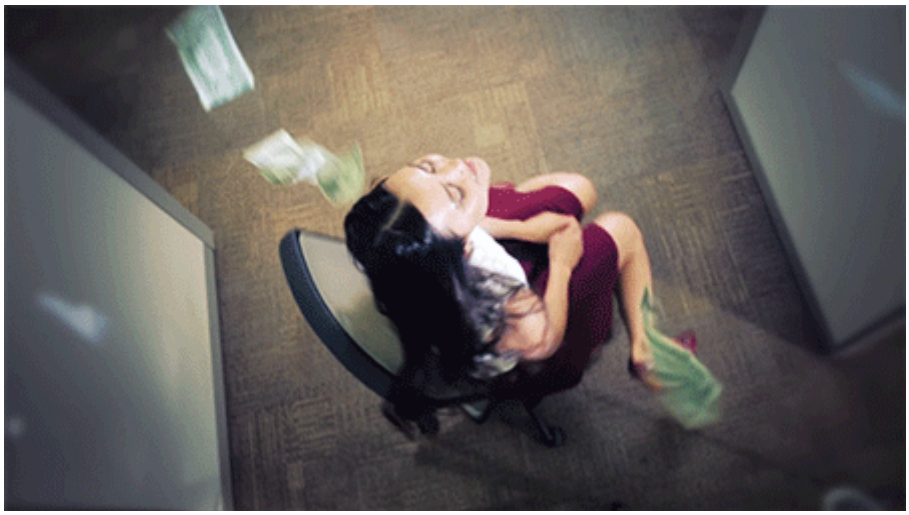
Janet Harris

From: S9(2)(a)

Sent: Friday, 4 May 2018 9:19 AM
To: Janet
Subject: You've got to be in to WIN!

View this email in your browser

What would you do with $25,000?



Dear Janet

S9(2)(a)

It's S9(2)(a) who is holding a firm lead in first place on our April leaderboard. Who can bump him down? Call us to discuss your deal. It might be you!

Don't forget our ongoing Big Bucks promo. For every deal you settle with DBR you'll be rewarded with some DBR Big Bucks.

If that's not enough to pick up the phone and call us, then our $500 cash promotion surely will. All enquires during May will go in the draw to win $500 cash. All you need to do is phone or email us to discuss your deal.

It has never been easier to pick up some extra cash when you deal with DBR.

But remember ... you've got to be in to WIN!

DBR LEADERBOARD

DBR
PROPERTY FINANCIERS

MONTH: APRIL

TO GO: 6 MONTHS

S9(2)(a)

$25,000	S9(2)(a)	1
$10,000		2
$5,000		3
Spot Prize ?		4
Spot Prize ?		5
Spot Prize ?		6
Spot Prize ?		7
Spot Prize ?		8
Spot Prize ?		9

Kind regards

S9(2)(a)

Let us help you

If a solution exists, we'll help you find it.

Contact DBR today:

p: 0800 555 001

a: 5 The Parade, Bucklands Beach
22 Tennyson Avenue, Takapuna

w: www.dbr.nz

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Janet Harris

From: S9(2)(a)

Sent: Friday, 4 May 2018 2:34 PM
To: S9(2)(a)
Subject: Tower Incentive Winner

Email not displaying correctly? View it in your browser.

NZFS
NZ Financial Services Group

Good afternoon,

The Tower referral Incentive has now officially ended and we are excited to announce the winners.

Over the past 8 weeks we have had **992** referrals from over **287** individual advisers so thank you all for your hard work and support – what a superb effort!

There were **223** entries for the **Grand Draw**, so check out the video of the draw for the winner of the 1000 Airpoints prize! - Click here

Congratulations to everyone on our regional leader boards as shown below. The winners of the luxury mystery escapes are: S9(2)(a) for Auckland; S9(2)(a) for the rest of the North Island; and S9(2)(a) for the South Island.

We look forward to hearing about your travel stories guys!

Leader Board Auckland	Leader Board Rest of North Island	Leader Board South Island
S9(2)(a)		

Once again, thank you all for your support and making this such an exciting competition!

We look forward to our next Incentive in a couple of months time.

Kind regards,

The Team at NZFSG

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

Your name and organisation

Name	Annie Lan
Organisation	JMIS 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?*
	Yes, we agree.
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 are comfortable with the proposal and agree that clients should only be provided with information that is relevant to them. This way, they are more likely to be engaged and gain a better understanding of the information given to them.
3	*Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?*
	As above.
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?*
	We agree that advising consumers that general information is available will increase consumer awareness; however, in our experience, most consumers would prefer that information is only given when it is relevant. Therefore, making this a "requirement" may become another compliance task rather than adding value to the client-adviser engagement. Given that all the general information proposed to be disclosed publicly or on request, will be disclosed again (in a more specific form) at other points of the advice process, the act of 'making client aware of general information' becomes desirable but non-critical. A more pragmatic approach perhaps is for the individuals or firms who give advice to demonstrate how they interact with clients to ensure they have the information necessary to make decisions. This could be considered in its entirety, rather than certain steps of the advice process.
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 agree with your proposal in setting out clearly in the regulations on what information must be disclosed, any presentational requirements applied to this information, and up to which point that this information needs to be provided. We see this approach is consistent with the requirements for other types of licensees under the FMC Act.
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?*
	Given there are many small financial advice providers in the industry, when considering the nature, size and complexity of these businesses, we believe a stop order or similar regulatory response by the FMA is likely to be effective. If civil liability is considered under the new regime, we would suggest this is not a punitive measure and should be used to put the consumers right. The regulations should also make it clear whether the civil liability will be applicable to the firm, directors or senior managers of the firm, or all of the above.
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, we agree the information mentioned above should be disclosed. However, we note that the MBIE's proposal is to disclose the details of the complaints process and DRS publicly, at the time when making a recommendation, and at the time when a complaint is received. In our experience, it would be more effective to provide specific information when it is relevant. An alternative approach could be that a more concise description on 'how to make a complaint' and the DRS information is provided at the time when making a recommendation. More details on the complaint process and DRS is provided again when a complaint has been received but a resolution is not reached at the first instance. We think this is the critical time for the consumers to receive further information on how to escalate the complaint and potentially reach out to the DRS for assistance.
8	*Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?*
	We expect this information is likely to be similar across the industry therefore we do not object to a prescriptive disclosure.
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, consumers should be informed of the fact that the DRS is a free service to retail clients. We see this information should be provided by all financial service providers as this will help improve consumer awareness and confidence in the financial markets.

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?*
	In principle, we agree with the proposal. However, we would appreciate further guidance or more examples are given to clarify the meaning of 'material changes'. Does this mean the individual or firm giving advice changes the offering materially from the time when they first interacted with the client? Or does this mean the client has changed the nature or the scope of the advice required, for example, the client initially requires advice on a sum of $1 million and later reduces this sum to $500k. In the former case, we believe an updated disclosure is required. In the latter case, unless the recommendation will change as now the investible sum is $500k, a supplementary disclosure may be appropriate to stipulate the funds under consideration has changed but there will be no change to the recommendation.
11	*How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?*
	We observe that in general, there are advisers who can and will consider a wide range of product providers when formulating recommendations for their clients. In contrast, there are also advisers who indicate they can consider a wide range of product providers but in practice they are either restricted to, or have a preference in, recommending products offered by their affiliated providers. This is particularly seen under the larger QFE structures. For the latter situation, the individual or firm should clearly explain this restriction or preference. For example, "We primarily recommend funds managed by ABC Limited, which is an affiliated entity. However, from time to time we may consider changing our approach and recommend replacing the existing funds with funds managed by other fund managers. We will notify you at least x days prior to making such change". Further disclosure will also be required if there is an upcoming change of approach and without disclosing this change, the individual or firm is likely to mislead or create a false impression.
	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 that fees relevant to the provision of advice, and the basis on which the fees are charged, should be disclosed. However, it would be useful for the regulations to provide guidance on what 'other expenses' are required to be disclosed. This will ensure consistency and improve transparency across industry.
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)?*
	Regulations should be clear on what needs to be disclosed and where this disclosure needs to

	be made, but not prescriptive so the disclosure can be tailored to different business models or different types of businesses.
	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, we agree that the public disclosure on the commissions or incentives should be of general nature and more specific details are to follow when it is clear that the prospective client is interested in taking part in the advice process. We would suggest that the specific information on the commissions or incentives will only need to be disclosed once, and it is permissible to reference to an earlier disclosure as long as what is disclosed remains accurate. For example, if the details of the commissions or incentives are disclosed at the time when the nature and scope of the advice is known, it is not required to disclose this information again when a recommendation is made unless there is a change. Additionally, we believe the regulations should be consistent for fee disclosures and commission/incentive disclosures. If fees are required to be disclosed regularly, then commissions/incentives should be disclosed regularly.
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?*
	The regulator could consider methods of calculating materiality commonly used by auditors. For example, the commissions or incentives are calculated to be greater than a set percentage (e.g. 5%) of the gross income received by the individual who gives the advice; the commissions or incentives in aggregate account for more than a set percentage (e.g. 0.5%) of the gross revenue generated by the firm. Other materiality consideration could be a structural change of commissions/incentives received, for example, newly introduced commissions / incentives to the business.
	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 prescriptive disclosure regime may be helpful as a large number of advisers in the industry have not been required to disclose commissions and incentives previously. Through prescribed disclosure, the industry can uplift its standard and improve transparency and consumer awareness. While deciding on the format of disclosure, the regulations should take into consideration the nature of businesses (e.g. investment, insurance, mortgage etc) and to ensure the disclosure can be fit for purpose.
17	*Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?*
	If a prescriptive disclosure approach is adopted, the regulator could possibly request data to be submitted as part of the annual regulatory returns and produce relevant industry report. This data set could be used to provide a cross market comparison of the commission rates

	which would be more useful for consumers. If a principle-based approach is adopted, we would suggest further guidance is provided to ensure consistency across the industry.
	Other conflicts of interest and affiliations
18	*Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?*
	Yes.
19	*Are there any additional factors that might influence financial advice that should be disclosed?*
	No.
20	*Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?*
	We do not object to disclosing conflicts or affiliations in the section where conduct and client care duties are disclosed. However, we would suggest a separate disclosure is made, on its own, so the conflicts or affiliations disclosure is prominent.
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, we are in favour of the proposed disclosure as any adverse information is likely to impact the consumers' decision to use a particular financial adviser service. We believe the disclosure of the relevant disciplinary history should either be given verbally or clearly highlighted so the consumers are made aware of this.
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, we consider this is appropriate.
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?*
	Under the current FAA regime, AFAs already provide various disclosure statements to

	consumers and often the feedback is that consumers feel they are overloaded with information. In this situation, we question how effective the additional "important information" document would be in practice. From what we observe, during the initial engagement, most consumers are interested in information relating to the services and products the financial advice provider can offer, (e.g. scope of service, risk, potential returns, and fees). Only after gaining an understanding of what the financial advice provider can offer, they would consider other general information or specific information about the firm or individual who is giving advice. Therefore, if a prescribed template is introduced, it needs to be concise, so consumers are not overwhelmed with the amount of information received. We think it is appropriate to have the prescribed template to be provided by the time when the nature and scope of the advice is known.
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)?*
	The financial advice provider could create an online mechanism which requires the viewer to click-through the terms and conditions and to give positive confirmation.
	Requirements for disclosure provided through different methods
26	*Should the regulations allow for disclosure to be provided verbally? Why or why not?*
	Yes. This allows financial advisers and nominated representatives the flexibility to use different channels to conduct their advice process. Also, some clients may find a verbal walk-through of the disclosure much easier than trying to read and understand on their own.
27	*If disclosure was provided verbally, should the regulations include any additional requirements?*
	Where verbal disclosure is given, there should be supporting evidence kept on file. The regulations should allow flexibility in what form the evidence should be. Evidence could be a signed acknowledgement by client, a recording of the phone conversation, or an email to client with a link to the full disclosure.
	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 regulations should provide additional requirements to ensure the prospective clients are aware that the robo-advice they receive will be dependent upon the information they provide. The information provided by them will become the inputs into the model which in turn will form the basis of the advice / recommendation. This also means no consideration will be given to factors which have not been required by the platform therefore not provided by the client. It is important for the clients to note that the personalised advice they receive will have limitations and their expectations on the robo-advice need to be realistic.
29	*Do consumers require any additional information when receiving financial advice via an online*

	platform?
	As discuss above, potentially a prescribed disclosure should be in place to ensure it is very clear that no consideration is given to factors which the client has not provided. Even though the advice may be deemed "personalised", there are limitations.
	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?*
	It would be easier to have a prescribed notification tailored to the nature and types of the products (e.g. investment, insurance, mortgage) so clients who are receiving product replacement advice can get a better understanding of the potential consequences. Useful information includes: • why does the adviser believe the advice is appropriate for the client • what are the risks and costs associated with implementing the replacement recommendation
31	*Should this apply to the financial advice given on the replacement of all financial advice products?*
	Yes. As long as the prescribed notification is tailored to the different nature and types of the 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?*
	It is justifiable to provide reduced disclosure to existing clients when the nature and scope of the advice remains largely unchanged. We would suggestion a confirmation stating the following: • the client's circumstances, goals and objectives, and timeframe remain unchanged • the recommended strategy remains appropriate • the client can find more information (state where) if required
33	*Should there be a limit on the length of time that this relief would apply?*
	If there is no change to the nature and scope of the advice for 5 years, the individual or firm giving advice must undertake a full review of the client's circumstances, including risk profiling the client, to ensure the recommended strategy remains appropriate. The full review report should be sent to the client and kept on file for record.
	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?*
	For new clients, our business should be ready for the new disclosure requirements by the

	time when the financial advice regime becomes effective. For existing clients, we would appreciate a longer transitional period is applied, (e.g. an additional 12-18 months). During this period, we will provide updated disclosure to our existing clients alongside with their review reports. It will also allow us a chance to explain to the existing clients what have changed, and what they should expect going forward under the new financial advice regime.
35	*Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?*
	Not applicable to our business.
	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?*
	Wholesale designation can be treated as general information and made available on the financial advice providers' websites. The regulations could prescribe what needs to be disclosed and request the disclosure is made by the time when the nature and scope of the advice is known.
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?*
	Under the Bill clients who fit into the wholesale client definition will be treated as wholesale clients unless they choose to opt out of being wholesale clients. In our business practice, regardless of the regulatory classifications, we observed most clients want to access free dispute resolution schemes. They expect their advisers to be competent and to be bound by conduct and client care duties. We therefore believe a better regime is to treat all clients as retail clients unless they opt out of being retail clients. To opt out of being a retail client, the client provides a signed notification to confirm that he/she is aware of the consequences of being a wholesale client. This notification should be kept on file and refreshed every two years to ensure client is comfortable with remaining opted out. A discussion of whether a wholesale client should be treated as wholesale should occur by the time when the nature and scope of the advice is known. A signed notification should be obtained before the implementation of the recommendation. Alternatively, the regulators could review and tighten the wholesale client definition to ensure private clients will equally receive adequate protection.

Other comments