



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



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

Submissions MacKay to NZBrokers

**5 September 2018**

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

## Contents

Submitter	Page #
Mackay Cover letter .....	2
MacKay Financial Advice and Solutions .....	3
Medical Assurance Society of New Zealand (MAS) .....	4
Melior Law and Regulation .....	14
Mercer NZ .....	17
Michael King from Prosperity Systems Limited, Workplace Benefits Specialists Limited .....	24
Michael Lay from Foresight Financial Planning .....	29
Milford Asset Management .....	36
Mortgages Online .....	44
New Zealand Law Society .....	50
New Zealand Shareholders Association.....	52
NZ Brokers Management Ltd .....	58

KiwiSaver  
Insurance  
Retirement Planning  
Wealth Management  
Mortgages



**MacKay**  
Financial Advice & Solutions

25 May 2018

Financial Markets Policy Building  
Resources and Markets  
Ministry of Business Innovation & employment  
faareview@mbie.govt.nz

Level 5, MacKay House,  
92 Queens Drive, PO Box 31 440,  
Lower Hutt, 5040, New Zealand.

**S9(2)(a)**

Dear Sir / Madam

My name is Chris MacKay.

I am the Managing Director of a financial advisory firm trading as MacKay Financial Advice and Solutions.

We have four AFAs working within the company – three contractor advisers plus me. We have two administration staff who are Registered Financial Advisers plus another three full-time and one part-time administration staff. Total of 10.

I have been giving financial advice for 41 years after graduating with a Commerce degree majoring in Accounting in 1976. I completed my New Zealand Diploma in Life Assurance in 1980 and was the first New Zealander to hold both the CFP and CLU designations.

Our other AFAs have 36 years', 30 years' and 12 years' experience in financial services.

Initially I held a sole agency with National Mutual. For the past 25 years, we have extended that so that now we have arrangements with the major Life and Medical insurers, five KiwiSaver providers and six Fund Managers in order that we can provide holistic financial solutions when requested. One of our AFAs also advises on mortgages and deals with a number of lenders.

Typically, our clients are wanting advice on their KiwiSavers, their insurance or on their lump sums to invest, in order to generate cash flow for their retirement, but not always wanting advice on all these areas at the same time.

Obviously, the flow on from the advice results in financial solution/s being recommended with an appropriate mix of products.

Thank you for the opportunity to make some comments and submissions on the discussion document: Disclosure requirements in the new financial advice regime. Our submission follows.

Best regards

**S9(2)(a)**

**CHRIS MacKAY**

AFA, BCA, CLU, CFP<sup>CM</sup>, Fellow IFA, FNZFAA, JP  
Authorised Financial Adviser – **S9(2)(a)**

Chris MacKay Financial Planning Ltd

*Disclosure Statements are available on request and free of charge*

KiwiSaver  
Insurance  
Retirement Planning  
Wealth Management  
Mortgages



25 May 2018

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Thank you for the opportunity to make some comments and submissions on the discussion document: Disclosure requirements in the new financial advice regime. Our submission follows.

Best regards

A handwritten signature in blue ink that reads 'Chris MacKay'.

**CHRIS MacKAY**

AFA, BCA, CLU, CFP<sup>CM</sup>, Fellow IFA, FNZFAA, JP  
Authorised Financial Adviser – FSP No: 26122

Chris MacKay Financial Planning Ltd

Disclosure Statements are available on request and free of charge

# Submission template

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## Disclosure requirements in the new financial advice regime

### Instructions

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

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

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

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

5. Send your submission:

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

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

Please direct any questions that you have in relation to the submissions process to [faareview@mbie.govt.nz](mailto:faareview@mbie.govt.nz).

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

## Your name and organisation

<b>Name</b>	Adrian Rumney Compliance Manager
<b>Organisation</b>	Medical Assurance Society New Zealand Limited (MAS)

## 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?*

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Yes. MAS supports the 5 identified objectives set out in section 2 of the discussion document as being appropriate.

### 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?*

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Broadly supportive as this approach will allow relevant information to be disclosed at the most relevant point of 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?*

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Potentially, this approach may help to improve effectiveness of disclosure. Aligning the disclosure of information with the most relevant part of the advice process should provide contextual basis that can help consumers understand the information being presented and its relevance to the advice that they are receiving.

There are risks though. Over prescription creates the risk that disclosure requirements may not provide the flexibility for financial advice providers to clearly disclose important characteristics unique to their business models, or allow consumers to discern differences if doing a comparison between financial advice providers. An example of how over prescription has created flaws in the in the present disclosure regime is evidenced in the prescribed form of the AFA primary disclosure statement whereby regulations require a check box selection of prescribed options for 'How do I get paid for the services that I provide to you'. None of the options cater for a salaried adviser, creating a situation of potential confusion whereby regulation sets out to achieve something, but completely misses an important mark.

Consideration should also be given to how effective a staged timing of disclosure will be. Anecdotally it is our understanding that some consumers are confused by the current 2-step disclosure of the present AFA disclosure regime where secondary disclosure may be presented at a later stage of the advice process than the primary disclosure which is provided at the outset.

Care must also be taken with aligning disclosure requirements to the obligations set out in Code of Professional Conduct for Financial Advice Providers that is concurrently under development. Overlapping or potentially ambiguous obligations should be avoided.

Consideration should also be given to the role that the Financial Service Providers Register can play, and is intended to play, in being a source of important information about providers.

Paragraph 34 of the discussion document proposes that certain information be disclosed upfront once the nature and scope of the financial advice is known. Earlier, paragraph 23 extrapolates out what such information should be disclosed at this point. We agree that details regarding the nature and scope of the financial advice (23(b)), details of any material commissions or incentives and any material conflicts of interest (23(c)), and a reasonable estimate of fees (23(d)) be disclosed at this point in the advice process. However, we feel that issues such as an adviser's disciplinary history (23(a)) and any relevant insolvency or bankruptcy history (23(e)) is information that is important to a consumer in choosing an adviser or advice provider and should form part of the publicly available general information contemplated in paragraph 22.

A further note in relation to paragraph 25(a) which proposes that disclosure of a relevant dispute resolution scheme be made at the time a complaint is received. We propose that this be changed to disclosure of the advice provider's *complaints resolution process* (which will ultimately include the dispute resolution scheme) to ensure that complaints have the opportunity to be resolved in accordance with internal processes and are only escalated to external dispute resolution schemes when deadlock is reached, or escalation is otherwise appropriate.

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?*

This proposal could help to simplify the disclosure regime particularly if all generic information (i.e. similar to the content of a current QFE disclosure statement) can be included within what is defined as general information. If consumers are educated and become aware of where this information can be found, then it should help them make informed decisions about choosing a financial advice provider.

However, important information is sometimes subject to change. One advantage of the current regime is that, by providing a consumer with a copy of the disclosure, they have the version that was relevant at the time they sought, or were provided, the advice.

The (potential) role of the Financial Service Providers Register should also be considered for the disclosure of important information. Adding another layer outside of the FSPR by requiring this information to be added to advice provider websites adds complexity and is potentially confusing for consumers who increasingly don't know where to go to find information about financial service providers. Although we do acknowledge that the likely first source of information that consumers turn to is likely to be a financial advice provider's own website.

## 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 flexibility within the disclosure regime where possible to ensure that disclosure can be tailored to the channels that advice is being delivered and to cater for the preferences of consumers as to how they access advice.



Flexibility is also important to cater for the broad definition of financial advice under the Financial Services Legislation Amendment Bill, and the diverse range of scopes of advice across those who will be financial advice providers.

Word count limits may be a barrier to flexibility where a financial advice provider has a broad scope or is particularly complex (i.e. in terms of remuneration structure or conflicts of interest).

There should be a consistent approach to the form of disclosure irrespective of the channel through which the advice is provided. For example, allowing a simplified level of disclosure for a roboadvice channel is not appropriate when the same risks present should that advice be delivered through a traditional face-to-face advice channel.

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?*

In cases of negligence and/or knowingly misleading conduct, civil liability as provided for under the Bill may be an appropriate course of action. However, the FMA should have the flexibility to utilise other regulatory responses to effectively address less material or unintended breaches of presentational requirements, especially where there has been no adverse consequence to consumers.

#### 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. MAS supports the proposed disclosures set out in paragraphs 43 – 45 of the discussion document. However, we again reiterate that the purpose and role of the FSPR be considered. For example, information about an existing AFA or QFE entity's disputes resolution scheme and licensing status is already required to be disclosed, and is publicly available on the FSPR.

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

If the expectation of what information should be disclosed is set out clearly in the regulations then there should not be a need for prescribed text.

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)?*

Upon receipt of a complaint, advice providers should be compelled to disclose information about their broader complaints process as it is not intended, or desirable, that the external dispute resolution scheme be the first port of call for complainants. Therefore they should be provided with not only information about the external dispute resolution scheme but also information about how the complaint will be firstly managed and attempted to be resolved internally.

### 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 this information being disclosed but do note that there is crossover with the conduct obligations that will be set out in the Code of Professional Conduct.

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 regulations should (as proposed in the first bullet point following paragraph 53) require advice providers to detail the types of advice, products and providers that they deal with, or have considered in the provision of advice.

### 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 that it is important that consumers are clearly informed of the cost of accessing financial advice before they incur any such cost.

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)?*

The disclosure regulations should limit disclosure to costs in respect to the provision of advice and not the direct costs of the recommended products themselves. To some extent these costs are contemplated within the Code of Professional Conduct in ensuring that a client can make an informed decision, and through other regulatory mechanisms (for example Product Disclosure Statements).

It is reasonable to expect that consumers are aware that insurance products attract premiums and the cost would be set out in any offer of insurance made prior to the consumer's acceptance of that cover.

Management fees, and other investment fund costs are already required to be disclosed within the relevant Product Disclosure Statements for those products. It is not logical to replicate those costs within the advice disclosure regime.

### 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. MAS supports greater emphasis being placed on requiring advice providers to clearly disclose any incentives that could influence their behaviours when providing financial advice.

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

We can see the benefit of a materiality test particularly in regards to clarifying when soft incentives are material enough that they be disclosed. If a threshold test was to be implemented it would need to ensure that it took into account the aggregate benefit that

incentives may have on a cumulative and not just an individual basis.

### 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 risk of being prescriptive here is that incentives may evolve specifically to avoid the boundaries set by prescription. A principles based approach to disclosure of incentives is likely to ensure better outcomes for consumers.

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

No comment.

### 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 is important that any conflicts that could be reasonably expected to influence advice and the behaviours of advisers be disclosed.

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

No comment.

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

Conduct and client care is one of the fundamental principles of the Code of Professional Conduct. Care should be taken that the disclosure requirements remain consistent with the broader obligations of the Code. Ideally conflicts of interest should be given prominence within any disclosure document (or other form of disclosure).

### 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. Factors that point to the previous conduct of a financial advice provider are important information for consumers to be able to make an informed choice about who to seek advice from.

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

No. Whilst previous conduct of persons involved in the governance of a financial advice provider is important, we feel that at an individual level, this is best assessed and addressed within the licensing processes carried out by FMA. The FMA is best placed to provide an in

aggregate view as to whether the persons governing an advice provider are fit and proper, and in aggregate appropriate for the governance of a particular provider.

23

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

Yes. But a disciplinary tribunal, or the FMA (as an outcome of any investigative or enforcement action) should have the discretion to impose this requirement, or not. This would ensure that contraventions which did not have a material adverse impact on consumers could be catered for without potentially having prejudicial consequences for the advice provider.

#### Additional options

##### A prescribed summary document

24

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

Over prescription should be avoided as it may have the unintended consequence of misleading consumers (i.e. summary is too brief and they miss important relevant information). Prescription may be useful as to the headings under which required information may be disclosed though.

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 consistency in the information disclosed regardless of the channel used to access the advice.

##### Requirements for disclosure provided through different methods

26

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

It is important that the disclosure regime be flexible to provide for access to advice by consumers through the channels that they wish to access it. Should it not allow for verbal disclosure, the regime risks presenting a barrier for consumers accessing advice which is contrary to the overarching intent of the review of the advice regime review.

27

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

Simplified verbal disclosure should at minimum include how the consumer can access general information and important information about incentives and conflicts of interest.

##### 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. Disclosure requirements should be consistent irrespective of the channel that the consumer chooses to access advice from. Having a source of general information that can be publicly accessed and which can be brought to the consumer's attention should help to overcome difficulties in delivering full disclosure information over the phone or via a digital

platform.

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

Only where that channel presents specific risks that are not disclosed in the general disclosure information of the financial advice provider.

#### 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?*

They should. But such a disclosure we feel is better required within the obligations of the Code of Professional Conduct and tailored to the circumstances relevant to the advice engagement as opposed to being in a prescribed form.

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

Yes, but as per the process noted in response to question 30.

#### 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 with the current regime, fresh disclosure should only be required where there has been a material change to the information required to be disclosed. The proposal to present much of this information within a publicly available general disclosure largely mitigates this issue as up to date disclosure (as it applies to the financial advice provider, but maybe not an individual adviser) is available to the consumer at all times.

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

No. The trigger for requiring fresh disclosure should be material changes to the information that is 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?*

A nine month period should be sufficient for MAS to comply with any new disclosure requirements. However, we do not speak for the industry and it may be prudent to allow for transitional requirements allowing for either the new or existing disclosure requirements to run concurrently until financial advice providers become fully licensed under the new regime.

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?*

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No comment.

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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?*

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No comment.

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## Other comments

25 May 2018

Financial Markets Policy  
Building, Resources and Markets  
Ministry of Business, Innovation & Employment  
PO Box 1473  
Wellington 6140  
**By email [faareview@mbie.govt.nz](mailto:faareview@mbie.govt.nz)**

## Discussion paper: Disclosure requirements in the new financial advice regime

Thank you for the opportunity to submit on the Discussion paper. Melior is broadly supportive of the objectives and proposals and we look forward to reviewing and commenting on the detail of the regulations.<sup>1</sup>

### 1 Effectiveness of disclosure

1.1 Professor Pamela Hanrahan questioned the effectiveness of disclosure in her Background Paper for the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry:<sup>2</sup>

*“Whether disclosure is a useful regulatory strategy has been questioned. Recent work in the field of behavioural economics supports the long-held intuition of many that mandatory disclosure is not particularly effective, at least outside its original securities law context where the purpose is to inform the market to ensure that all relevant information is captured in the price of securities in the secondary markets, rather than to support consumer choice.”*

1.2 In light of Professor Hanrahan’s comments, we submit:

- a The information to be disclosed to a particular retail client should be minimised as far as possible. Relevant information should be provided on the financial advice provider’s website.
- b Disclosure should not be used to pass on the “good news” that financial advice is properly regulated, or to re-present the same or similar information.
- c Disclosure is not sufficient to manage the risks of commission and incentives. The financial services industry should be given opportunity to enable good customer outcomes.
- d There should be further clarity provided on enforcement to ensure that financial advice providers do not take a cautious and legalistic approach to compliance.
- e Customers’ low engagement should be formally acknowledged in the design of this disclosure regime.

<sup>1</sup> References to paragraph numbers in this submission are to numbered paragraphs in the Discussion paper.

<sup>2</sup> Professor Pamela Hanrahan, April 2018, *Legal Framework for the Provision of Financial Advice and Sale of Financial Products to Australian Households*, Background Paper 7 prepared for the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

## 2 Time and content of disclosure

- 2.1 If disciplinary, insolvency or bankruptcy history is “relevant” is it appropriate for the entity to hold a licence? If there is a risk that such information is “relevant”, it may be more appropriate to disclose it on the provider’s website. To wait to disclose information until the nature and scope of the financial advice is known could waste the client’s time (paragraphs 70 and 72).
- 2.2 If “relevant” is a term that will be used in the regulations, please can guidance be provided as to whom the information is relevant (the client, the intermediary or the provider) and whether the perspective is subjective or objective.
- 2.3 Please consider whether it is appropriate for the same information to be provided at multiple points during the client’s experience of obtaining financial advice. Repeatedly providing information about complaints processes and dispute resolution membership will increase compliance costs and produce large, unwieldy documents that do not engage clients’ attention (paragraph 47).
- 2.4 New Zealanders deserve higher levels of financial literacy. Financial advice disclosure statements only play a small part in helping achieve this. For example, a disclosure statement provided to an individual is not the appropriate place to advertise that providers are subject to conduct and client care duties (paragraph 45).

## 3 Commission and other incentives

- 3.1 The Disclosure paper makes various proposals about the disclosure of commission and other incentives. Noting concerns about the effectiveness of disclosure, we consider that disclosure to the client should form part of a wider solution to the risks of commission and other incentives. Industry should be encouraged to agree best practice protocols to ensure that the payment of commission and use of other incentives does not adversely impact good customer outcomes.
- 3.2 The Commerce Act 1986 limits the ability of industry participants to reach agreement about commission. Industry participants are competitors. Commission forms part of the price of a product or service. Agreements between competitors on price are unlawful. The Commerce Act applies even if competition is only marginally affected or there are good public benefit reasons for the agreement.
- 3.3 Where an agreement is likely to contravene the Commerce Act, the parties can apply to the Commerce Commission for authorisation. However, the authorisation process can be long, expensive and the outcome uncertain.
- 3.4 To support the development of the regime, we submit that Government officials should seek authorisation from the Commerce Commission to enable industry participants to discuss commission and other incentives, so that the interests of consumers and the financial services industry are better aligned.



## 4 Enforcement

- 4.1 We support the proposals to limit the consequences of contravening the presentation requirements for financial advice disclosure to stop orders or similar regulatory response. Please consider providing clarity on the enforcement of substantive contraventions.
- 4.2 The penalties proposed in the Financial Services Legislation Amendment Bill for contraventions of the duty of disclosure are significant, including pecuniary penalty orders of up to \$1 million for an individual or \$5 million for an entity. False or misleading statements in a disclosure statement also expose the person providing the disclosure to the risk of significant criminal sanctions, including a term of imprisonment.<sup>3</sup>
- 4.3 Contrary to the objectives outlined in the Discussion paper, these penalties could lead to a very cautious and legalistic approach to compliance.
- 4.4 We submit that the risk of a cautious and legalistic approach to compliance with disclosure requirements could be mitigated if the Financial Markets Authority provide guidance on its approach to enforcing the disclosure regime.

## 5 Customer engagement

- 5.1 The disclosure regime should expressly acknowledge low customer engagement. The Discussion paper notes in passing that behavioral biases and low levels of financial capability reduce the effectiveness of disclosure. However, the objectives and proposals do not acknowledge that many customers will not engage with the information they will be able to access.
- 5.2 This is particularly relevant when considering staged disclosure as it is likely that customers will only engage with a small part of the information made available. Lack of customer engagement must be considered when considering contraventions of the disclosure requirements.
- 5.3 Please contact Rebecca Sellers on S9(2)(a) with any questions about this submission.

Yours faithfully

**Melior Limited**

S9(2)(a)

**Rebecca Sellers**  
**Director**

S9(2)(a)

w: [www.melior.co.nz](http://www.melior.co.nz)

<sup>3</sup> Proposed new section 4310 and section 511 of the Financial Markets Conduct Act 2013.

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

## Your name and organisation

Name	SARAH WHITELOCK
Organisation	MERCER (N.Z.) 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?*

We agree with principles 1-5, in particular providing information which is clear, concise and readily understood.

By way of example, we are of the view that the Product Disclosure Statement (PDS) for retail managed investment schemes (MIS), with its prescribed text and formatting, as well as page/word limits, provides a much improved customer experience.

### The timing and form of disclosure

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

We support full disclosure from the beginning of the advice process.

The disclosure of information at multiple points in the advice process risks causing information duplication and overload from the customers’ perspective. Receiving too much information could result in the customer choosing to ignore it all.

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 approach may not result in an improvement in the effectiveness of disclosure.

For example, depending on an entity’s business model, the customer may request and receive advice on a single occasion in relation to a single product issued by the entity. Under the current proposal, this requires a multiplicity of disclosures: publicly available information; when nature and scope is known; when making a recommendation; and before a fee is incurred.

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?*

It’s unclear what the “general information about the provider” might entail but on the basis that it is the information set contained in paragraph 22, advisers should have the option to include general information on their websites or in a prescribed statement.

### 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 are of the view that the regulations should provide flexibility as to the timing of all of the required information and permit it to be coincided at earlier stages in the advice process.

To provide certainty to the industry, we would look for a measure of prescription as to content, which approach has had demonstrated success in relation to MIS PDS.

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?*

Guidance as to the interpretation of any presentational requirements should be a first step. Any alleged contravention should be considered by FMA before action is taken. Civil action may be appropriate in circumstances where there has been a loss to the customer as a direct result of a proven breach of presentational requirements.

### 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?*

Information relating to the licence, duties and complaints process should be made available to customers and can be done so on the adviser's website.

We would be concerned if the information requirements were too lengthy as this could discourage customers from seeking advice.

8

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

We agree that regulations should substantially prescribe the text for disclosure of these pieces of information but recognise that there are a multiplicity of products and advice situations to be covered.

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)?*

We note that customers of MIS have already been informed via the PDS of their right to a free dispute resolution service (DRS) and how to initiate the process.

In the case of a formal complaint being received by an adviser, there should be a requirement to respond within a certain period and to include information on the DRS.

We make a distinction between informal and formal complaints e.g. an informal complaint may arise in the course of a telephone call but be resolved during that conversation. A formal complaint is one which is received in writing, email or the customer verbally advises or signals that they wish to make a complaint.

### 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?*

The discussion concerning nature and scope is challenging inasmuch it attempts to cover all potential advice situations across all types of financial products.

We are of the view that the adviser should be required to communicate at the initial stage of the customer engagement any limitations in respect of nature and scope of their financial advice.

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 regulations can assist by requiring disclosure of the named products offered by the adviser from which the adviser will make a recommendation or the customer will be asked to make a choice.

However, it is not only the regulations that influence or ensure customers receive an accurate indication of the extent of products in the market that 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?*

We agree that financial advisers should be required to disclose whether the customer will incur a fee for advice, prior to the customer obtaining any such advice.

13

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

In certain circumstances, the adviser should be able to rely on providing a Product Disclosure Statement to the customer which contains all fees, costs, expenses etc.

Otherwise, the regulations should provide that all fees, costs, expenses etc. are disclosed at the time the advice is provided in order to provide transparency for the customer.

#### **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?*

In our view, commissions and other incentives should be disclosed at or close to the beginning of the advice process and should be confirmed at end of 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?*

No comment

#### **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?*

No comment

#### 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?*

Whilst we generally agree that advisers should be required to disclose material actual and potential conflicts of interest, we consider that they may already be covered by conduct and client care duties. In the event they are disclosed, we don't necessarily agree that it should be done via publicly available information.

The risk of including such information via publicly available information is that customers may elect to ignore it if it is lengthy; it may not be relevant to the particular customer; and the time lapse between reading it on a publicly available website and receiving the advice may be too long for the information to have been retained.

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

We recommend that care should be taken to keep the disclosures within the bounds of clear, concise and readily understood.

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 agree that one option for communicating conflicts could be to position them alongside conduct and client care information but comment that the adviser should in any case take their conflicts into account when performing their conduct and client care duties.

#### 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 there should be disclosure of information relating to disciplinary history, bankruptcy and insolvency history, both in New Zealand and in other jurisdictions. The customer has a right to know this information so that they can make an informed decision about whether or not to engage the services of a particular company.

This disclosure should be either publicly available or in material received by the customer prior to / at the advice meeting.

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?*

It is appropriate that the disclosure of information relating to disciplinary history and bankruptcy and insolvency history should also apply to the directors of a financial advice provider.

23

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

The answer to this question may depend on the nature of the duty contravened and its seriousness.

### Additional options

#### A prescribed summary document

24

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

Whilst we support the concept of a prescribed template, it may limit the adviser's ability to consolidate the various information disclosure requirements in a way which is appropriate to their business model and the advice situation. It risks being seen by the customer as superfluous if the information load is already significant and duplicative.

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 prescribed template could run counter to the channel neutral goal of disclosure discussed earlier in the paper and impose unwarranted restrictions on these advice mechanisms.

#### Requirements for disclosure provided through different methods

26

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

The regulations should allow for disclosure to be provided verbally so as to be channel neutral.

27

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

If disclosure was provided verbally the customer should still receive disclosure in soft or hardcopy and/or be directed to the adviser's website or log in to their member account for a softcopy.

#### 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?*

We agree that the regulations should provide for additional requirements to apply when advice is given either via robo-advice or over the phone.

29

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

In our view, customers will increasingly turn to technology for many services and advice, including financial advice. The essence of rob-advice is the immediacy and brevity of any supplementary materials.

Customers should be aware of the nature of the advice (algorithm based).

#### 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 are of the view that this may be product specific. Requiring a prescribed notification when advising a change to another provider may not materially add to the level of customer protection.

31

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

No

#### 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, the regulations should provide for reduced disclosure requirements for existing clients.

33

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

This depends to a large extent on the nature of the product which gives rise to the advice.

#### 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?*

We do not believe that the regulations should require advice to wholesale clients to include an explanation of the consequences of that categorisation. Wholesale clients could generally be regarded as better informed as to their investor rights and protections.

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?*

For the reason above, we do not believe that wholesale clients should have a choice to opt-out and be treated as a retail client.

The nature and type of their investments will not infrequently mean that they have taken legal/financial advice before investing and are cognisant of their contractual rights with respect to their investment.

## Other comments

We have a concern that the current disclosure proposal is based on only one advice scenario i.e. where the customer has an initial meeting with an adviser; followed by another meeting during which the nature and scope is determined; concluding with a final meeting where a recommendation is made. Not all advice scenarios occur in the same linear manner e.g. all of the above meetings may occur at a single point in time. Similarly, robo-advice situations will see the above meetings occur contemporaneously.

Our other concern is that the disclosure process is being developed to cover all product and advice circumstances from the simple to the complex. Not all advice situations may require the same nature, type and frequency of disclosure.



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

## Your name and organisation

<b>Name</b>	Michael King
<b>Organisation</b>	Prosperity Systems Limited, Workplace Benefits Specialists Limited

## Responses to discussion document questions

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

### The timing and form of disclosure

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

This is logical & sensible. The disclosure process can be daunting when all delivered and once, and can chill the interaction and the prospective client’s engagement

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.

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?*

This is something that good RFAs already do as a matter of course. Making it a REQUIREMENT, while possibly improving the behaviour of those less diligent, does however simply add another layer of compliance complexity which may be of little value to the client anyway.

### 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?*

Use of the principles-based approach should serve here.

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?*

Civil liability is an onerous process. In my experience, I have come across some dodgy and even egregiously bad behaviour by other advisers, but the clients who have suffered the consequences have been unwilling to 'start a fuss'. Without their complaint, I have not been able to get the FMA in the least bit interested. If possible, it should be allowed that an adviser can lay a complaint without requiring agreement from the affected party.

#### 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 but most simply don't care anyway. As long as the disclosure is not tiresome

8

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

A uniform approach is easier to monitor

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)?*

Of course!

#### Information about the financial advice

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

10

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

11

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

##### Costs to client

12

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

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)?*

A Minor role, please.

##### 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, as the actual level of commission in dollar terms cannot be known at the outset.

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?*

If necessary, however, it should also be an option for an adviser to include a summary of overheads so that the commission is seen in context as BUSINESS REVENUE, not as a profit or adviser income

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

The Principles-based approach is overwhelmingly preferable. There should be equity across all remuneration models.

For example, a tradesman is NOT required to disclose the %age mark-up over wholesale on material used, nor the incentives (such as a week in Fiji) based on purchasing volume through suppliers, let alone the dollar value of such things. Neither should the financial advice 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?*

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?*

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?*

Uniformity has advantages in that offering can be compared ore easily.

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?*

No. There is no protection for the adviser in a 'he said – she said' situation

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?*

The existing Code already requires a written statement on the advantages & disadvantages of replacing a product – what is improved and what is decreased or eliminated (in terms of benefits & levels). However, it is widely known that few current RFAs or BANKS provide such disclosure.

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. If the adviser-client relationship has been continuous – i.e. annual review offers, newsletter contact – then disclosing AGAIN each time more business is transacted is onerous and pointless.

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 template

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## Disclosure requirements in the new financial advice regime

### Instructions

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

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

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

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

5. Send your submission:

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

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

Please direct any questions that you have in relation to the submissions process to [faareview@mbie.govt.nz](mailto:faareview@mbie.govt.nz).

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

## Your name and organisation

<b>Name</b>	Michael Lay
<b>Organisation</b>	Foresight Financial Planning

## 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 – so long as the same rules apply to all types of advisers (irrespective of the advice they are qualified to give)

### 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 think this is very flawed and will cause confusion. All advisers need to provide Disclosures to clients at the same time

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

I don't believe that many consumers actually read Disclosure Statements; they view it as just another piece of legislation. Giving a client a Disclosure Statement does not make an adviser honest or trustworthy

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?*

That is the million dollar question!

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



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?*

Totally

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)?*

The issue here is that you are inviting consumers to make a complaint; that said the same rules must be applied to all financial service advisers

### 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?*

#### 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)?*

You have to accept that consumers also have to take some responsibility. There is a need to prove that product disclosure statements have been provided

#### 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?*

### 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?*

You need to remember that commission is not the problem, the quality of the advice is

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

Principles based approach

### 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?*

Totally

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

All soft dollar benefits 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)?*

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 – this is paramount to consumer confidence

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 100%

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

Yes 100%

### 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 and it will provide clarity and have everyone singing from the same hymn sheet

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 need to be sent to a client – without exception

#### Requirements for disclosure provided through different methods

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

No – this goes against everything you want to do and would just cause a “he said/she said” situation

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?*

Yes – that the consumer is NOT receiving client specific advice

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

Only that they are buying a product that may not prove to be suitable for their needs

#### 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?*

A detailed comparison on the benefits the client is potentially giving up – this would help stop the banks from recommending poor products with inferior cover replacing good benefits

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

As above

#### 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 – should apply the same rules for all

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?*

No

35

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

No

#### 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 template

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## Disclosure requirements in the new financial advice regime

### Instructions

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

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

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

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

5. Send your submission:

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

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

Please direct any questions that you have in relation to the submissions process to [faareview@mbie.govt.nz](mailto:faareview@mbie.govt.nz).

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

## Your name and organisation

<b>Name</b>	Philip Morgan Rees
<b>Organisation</b>	Milford Asset Management 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?*

We agree with the objectives identified. We think a further objective of consistency and equal information for consumers regardless of the advice channel would enable comparisons across different channels.

### 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?*

The most important point in the advice process where clients should be given clear and detailed relevant information is immediately *before* they make a decision. General information can be available (for example on a company website) but this should be at a summary level and should not make it difficult to understand or discourage investors from seeking advice. Ongoing information should be provided to clients if there is a material impact as soon as is reasonably practicable.

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 will depend on the components that have been presented. For example, the prescriptive and legal nature of AFA's secondary disclosures is a current weakness. We suggest the general information outlines the reach of advice e.g. We advise on investments from our firm or life products from three insurers.

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 expect that most consumers will refer to the provider's website for initial, general information and recent updates from the FMA confirm that.

### 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?*

Provided the industry has a point of certainty that all relevant disclosure must occur before the consumer takes up the advice services, we expect that is sufficient and should be a workable solution and protect investors. There should be flexibility in the form and timing of disclosure prior to and subsequent to these points. We would support guidance on the form of disclosure.

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 support civil liability generally but would need further information as to which contravention might warrant a stop order intervention or other direct response from the regulator.

### 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 that this should be made available to consumers, again at a succinct summary level.

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

No, if the text is prescribed the disclosure of this information could become unwieldy and legalistic but we welcome an example or detailed guidance to assist participants.

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?*

We agree, this is what we are currently doing.

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?*



Yes, we agree with this proposal.

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)?*

Require full disclosure of the total financial impact of the service before the consumer takes the advice.

#### 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, we believe this has the potential to be confusing. We believe full disclosure of commissions and other incentives should be disclosed once to the client before they take the advice.

15

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

Anything over \$100 should be disclosed.

#### 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, we believe this should be prescriptive in the interests of transparency and it facilitates comparison between providers (regardless of channels).

17

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

We would prefer in the interests of transparency for options 1 and 2.

#### 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, this is already established practice in the market for those giving advice where there has been disciplinary history regarding their advice e.g. AFA disclosures. Therefore, we agree that information relation to advice disciplinary history is relevant.

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?*

Our understanding is this is already covered in the Companies Act and or Financial Service Providers Act.

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

Yes, but depending on the severity.

## Additional options

### A prescribed summary document

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

AFA disclosure statements are prescribed, so could be used as a measure of whether or not this assists consumers. These documents are not always easily understood by clients.

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

-

### Requirements for disclosure provided through different methods

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

Yes, but the regulations should require any disclosure to be followed up in writing within 7 business days.

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

Any verbal disclosure to be followed up in writing within 7 business days.

### 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?*

Where robo-advice is provided, the advice should disclose how the algorithm works together with any potential bias.

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

Yes, consumers need to be informed of who is responsible for the 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?*

We believe all advice should provide consumers with sufficient information to allow them to make an informed decision.

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

No.

#### **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, where there are no material changes.

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

5 years.

#### **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?*

Everything should be aligned to licencing.

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

Everything should be aligned to licencing.

#### **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?*

Solely for the eligible investor type.

*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>	Hamish Patel
<b>Organisation</b>	mortgagesonline.co.nz

## 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, disclosure should also be meaningful to the client and minimise any unintended confusion when comparing products, providers or delivery channel.

### 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?*

The earlier most information is disclosed the better chance the consumer will have before full engagement.

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

Many consumers make a choice very early on in the process, after a certain point, clients feel obligated to an advisor.

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?*

Clients seem to be fairly aware that they can request general information

### 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?*

Guidance from the industry body would be important here.

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?

FMA

### 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

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

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 is interesting many advisors have access to many options but may only be using one mainly. The consumer should be able to ask the advisor if they predominantly use a particular provider. And be given a approximation of which providers are used and if only one, why.

#### 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)?*

Any fees related to the product being supplied should be disclosed.

#### 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. It should be disclosed in general terms. In terms of the range and type of commissions received, early on. An approximation of variance between commission from providers that the advisor works with could be helpful.

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?*

Have all commissions been disclosed should be the test.

### 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, with industry changes it can be difficult for a detailed method to potentially keep up with new hybrid deliveries of products. Also the regulations encompasses many different disciplines.

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

Option 3, would make more sense as it would allow for different disciplines to be dealt with properly. Also it would allow for future changes in the delivery method of financial advice across disciplines.

Option 1, would be too time consuming for smaller operators to manage. Unless comparison is shown in general terms. With further information available on request. So for example you could disclose that the providers I deal with have a variance of upfront and trail over the first four year of 5%.

Option 2, would be time consuming and tricky in the mortgage space, this is sometimes we swap the relevant lender very late in the process, usually due to credit or pricing policies changing while clients look for a house. Also various products have different commission rates within a provider. As in a revolving credit or business component of lending– some banks pay less on this. Sometimes the final structure of a loan is not known until the client has secured a property and or other professionals have had input (lawyer or accountant).

In the Life insurance space this is also the case due to health underwriting. Usually by the time we know for sure which provider it is the client, generally feel obligated due to the relationship or the time spent.

It is important to note that with commission disclosure, any product provider with a bias for a pay per acquisition will appear more expensive than a provider with fixed costs. Even though the end cost to the consumer for the product might be the same. This may cause confusion in the market and a further entrenchment of established providers at the cost of smaller parties trying to establish a foot hold. Smaller NZ banks are a good example of this along with new insurance companies. Some of whom have led the way in terms of more competitive product features.

### Other conflicts of interest and affiliations

18 *Do you agree that those giving financial advice should be required to disclose all relevant*

	<i>potential conflicts of interest?</i>
	Yes
19	<i>Are there any additional factors that might influence financial advice that should be disclosed?</i>
	No
20	<i>Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?</i>
	Yes

### Information about the firm or individual giving advice

	<b>Details of relevant disciplinary history</b>
21	<i>Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?</i>
	Yes
22	<i>Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?</i>
	Yes
23	<i>Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?</i>
	Yes

### Additional options

	<b>A prescribed summary document</b>
24	<i>Do you think that a prescribed template will assist consumers in accessing the information that they require?</i>
	Yes
25	<i>How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?</i>
	Online platforms should be able to automate a lot of the disclosure
	<b>Requirements for disclosure provided through different methods</b>
26	<i>Should the regulations allow for disclosure to be provided verbally? Why or why not?</i>
	Yes it can be but a record should be able to have been kept. An email of a recording or video would be important.
27	<i>If disclosure was provided verbally, should the regulations include any additional</i>



requirements?

Yes see 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?*

Robo advise should make it obvious that a human is not involved in deciding the best options.

29

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

As 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?*

It should be the same, obviously the consumers should be aware that a change in product will mean new commissions.

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, existing clients would need full disclosure if we recommend a change in provider.

33

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

No.

### 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.

### 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.

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.

## Other comments

A broker like me under the new regime may disclose that to obtain a 4.5% on a home loan it will cost the bank .65% in commissions. The client could go to the bank direct and it would seem that the home loan would cost 4.5%, with no mention of associated costs.

Under both scenarios the cost to the client is 4.5%. Please note that often we do not have the liberty of showing the final interest rate to the client at the start of the relationship. As we often help clients through the buying process and the final loan amount is unknown till the house is found. We are unable to hold interest rate quotes for more than a few days and often only once all finance conditions are met.

The true cost of the transaction is the interest rate. This also includes costs associated with bank bonuses, fixed rents, salaries and other costs. The banks provide us with processing units with slimmer fixed costs – rents, bonuses salaries are more consolidated for a bigger volume of settlements.

If disclosure is only required for one channel say advisors. This may skew things towards the lenders and banks who are able to pay higher salaries but do not rely heavily on pay per performance.

You can be a smaller lender and still compete by scaling up the sales force, without a large capital injection into the fixed costs – salaries, rents etc. Some smaller banks benefit from this.

I do think that there needs to be disclosure in terms of the variance in commissions from different lenders. But perhaps there is a simple way to do this by explaining the percentage difference in the first 2 year period. This is important as some lenders pay less upfront and pay higher ongoing commission.

The consumer should be able to compare the costs of various channels in a fair way. There should not be the appearance that one channel is more expensive, when the end cost to the consumer is the same.

21 May 2018

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

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

### Disclosure Requirements in the New Financial Advice Regime

1. The New Zealand Law Society welcomes the opportunity to comment on the *Disclosure Requirements in the New Financial Advice Regime, April 2018* discussion paper.
2. The discussion paper discusses what disclosure obligations should apply to individuals and firms who give financial advice.
3. The Law Society has no comments to make on the discussion paper, but has considered the proposals in the wider context of the enforcement regime of the Financial Markets Conduct Act 2013 (FMC Act) as proposed to be amended by the Financial Services Legislation Amendment Bill (Bill) currently before select committee.
4. The Bill proposes that a number of existing civil and criminal penalties in the FMC Act will apply to breaches of obligations under the new disclosure regime. Some of these penalties are significant (see details, annexed), and their application in the context of the new disclosure obligations could lead to a cautious and legalistic approach to disclosure. That would appear to be contrary to the objectives of effective disclosure outlined in the discussion paper (see objectives 1-4, at page 10). In order to encourage open and effective disclosure it may be necessary for the Financial Markets Authority to provide guidance on their approach to enforcing sections 431N and 431O of the Act.
5. These comments have been prepared with the assistance of the Law Society's Commercial and Business Law Committee. If you wish to discuss this further, please contact the convener, Rebecca Sellers, via the committee secretary, Jo Holland at **S9(2)(a)**  
**S9(2)(a)**

Yours sincerely

**S9(2)(a)**

Kathryn Beck  
President

Annexure

## **Annexure – Proposed changes to criminal and civil liability in the Financial Markets Conduct Act 2013**

### *Disclosure*

The Bill proposes to introduce a new section 431N of the Act, which provides:

“(1) A person who gives regulated financial advice must, at the request of a prescribed person or at the prescribed times or on the occurrence of the prescribed events, make available to a prescribed person the information that is required to be made available under this section by the regulations.

(2) The information must be made available in the prescribed manner.”

Proposed new section 431O prohibits false or misleading statements in information provided under proposed new section 431N.

### *Civil Liability*

Proposed amendments to sections 449 and 484 of the Act provide that certain civil liability orders are available for a contravention or involvement in a contravention of proposed new section 431N. Generally the licensed financial advice provider will be primarily liable for contraventions, but an individual financial adviser or nominated representative could face criminal liability or civil liability as a person “involved in the contravention”.

The Financial Markets Authority can apply for a pecuniary penalty order of up to \$1 million for an individual or \$5 million for an entity.<sup>1</sup> The Court also has wide powers to make compensation orders which can require a financial advice provider to pay to a customer any amount the Court thinks just to compensate that customer for his or her loss. Other civil liability orders that can be sought include orders that the financial advice provider refund money, return property, vary or cancel agreements, or reinstate the parties to former positions.

### *Criminal Sanctions*

False or misleading statements in the disclosure statement expose the financial advice provider to the risk of criminal sanctions including a term of imprisonment for a term not exceeding 5 years, and a fine not exceeding \$500,000 for an individual or, for an entity, a fine not exceeding \$2.5 million.<sup>2</sup>

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<sup>1</sup> Sections 489 and 490 of the Act

<sup>2</sup> Proposed new section 431O and section 511 of the Act

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

## Your name and organisation

Name	Michael Midgley
Organisation	The New Zealand Shareholders Association Inc.

## 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. No further objectives required.

### 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 information should be disclosed at different points based on the relevance of the information at the time of disclosure and that the quantity of the information needs to be balanced against the need for the disclosure.

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

Provided the information is relevant to the consumers needs at the time of disclosure and the disclosure is in a form that is understood by the consumer this approach should aid the engagement and understanding.

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

Yes. Consumers should be told where they can access general information about the provider.

### 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 the proposals at points 37 to 39 in the discussion paper. We would also suggest that providers be either encouraged or required to attain the "Crystal Mark" awarded by the Plain English Campaign <http://www.plainenglish.co.uk/>. The Mark has been available since 1979. A number of international financial service providers have attained the Mark.

6 *Should a person who contravenes the presentational requirements under the proposal be*

*subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?*

We believe contravention should be subject to at least civil liability.

#### 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. It would be preferable that there was a prescribed text written in plain English.

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. It should not be assumed that all consumers are aware of their rights.

#### 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. There is a knowledge imbalance between the provider and the consumer. The onus should be on the provider to provide the information the consumer requires to make an informed decision.

11

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

Given the number of vertically integrated providers and the information coming out of the Australian Royal Commission it is difficult to see vertically integrated providers providing complete comparative market information to a consumer of their own accord. The regulations should require such providers to state that they are not providing information on all products available in the market and that the consumer will need to go to other providers to get comparative product information.

##### 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. This information should be provided at the beginning of the process to avoid wasting the consumer's time if they expect the advice will be at no cost.

13

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

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

These fees can be significant, so it is important that the consumer receives information as part of the discussion around the product.

#### 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. The consumer should be informed at the outset that the adviser will be receiving a commission if the consumer purchases the product.

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?*

Materiality tests are subjective. What is material to one consumer is not material to another. Therefore, the quantum of the commission and incentives should be disclosed in all circumstances.

#### 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 regulations should simply provide that the consumer should receive details of the commission that will be paid and any other incentive that will be received on the sale of the product. Commission schemes by their nature are often complicated with various volume trigger points and retrospective payments. Sometimes there will be special commissions attached to a product that a provider wants the advisers to sell at that time.

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

We believe our position at question 16 avoids the complications of the various options. This places the onus on the provider to disclose to the consumer the commission and any incentive that will result from the sale of the product. There is no additional compliance cost on the provider as they will be paying the commission and providing the incentive if the sale to the consumer proceeds.

#### 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. Disclosure and transparency must be a basic principle if the regulations are to be effective.

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)?*

NA.

#### 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 important for the consumer to know if they can trust 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, for the same reason as outlined in 21 above.

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.

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 information is provided over the phone the template should be sent to the consumer by email or post after the call.

##### Requirements for disclosure provided through different methods

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

Yes. It is common for disclosures and information to be provided verbally and recorded. We believe this approach should be adopted and a written summary of the disclosures sent to the consumer by email or post.

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

As per 26 we believe an audio recording should be made of all verbal conversations to allow for any future dispute that might arise about what was said at the time.

##### 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?*

We believe the regulations should ensure good advice is provided to consumers regardless of the platform.

29

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

We believe consumers should get the same information no matter what method is used to provide that information.

#### 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 are concerned around the issue of churn. Rather than providing a prescribed notification which may or may not cover all eventualities we believe the regulation should state that the provider seeking to replace a product must take all reasonable steps to ensure the consumer understands the potential implications and the consequences of the replacement.

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?*

On the one hand the regulation could require the same level of disclosure regardless of whether the client was new or existing. On the other hand, this could present practical issues such as clients receiving repeated disclosure of information they had already received multiple times in the past and were already aware of. The regulation needs to provide a balance and place some reliance on common sense and usual business practise.

33

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

See above at 32.

#### 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. Competent providers should be able to manage the transition within this time frame.

35

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

No.

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> <p>We believe if the definition of “wholesale client” is aligned with the definition of “wholesale investor” as defined in the Financial Markets Conduct Act there is no need for any additional information to be provided.</p>
37	<p><i>Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?</i></p> <p>See our answer to Q36.</p>

## Other comments

We believe the three major issues to be addressed are as follows;

1. The vertical integration of the industry means that consumers are less likely to be exposed to the full range of market products if they go to a vertically integrated provider.

A vertically integrated provider should be required to disclose that they will be not be providing advice around all products that may be available to the consumer but only either their own products or products they provide as an agent.

2. Consumers must be provided with the details of the commission and or incentives the adviser will receive for selling the product and whether the sale of this product will or might result in an enhanced commission and or incentive. Both the UK and Australia have produced examples where the mis-selling of products was motivated by the commissions and incentives the adviser received.

3. We believe, considering the recent FMA report around commissions and incentives plus the findings of the Australian Royal Commission, that commissions and incentives may not be the appropriate method of remunerating Advisers who also sell financial products.

These findings suggest that the benefits of the commissions and incentives to the Advisor may have an adverse impact of the advice consumers receive and the appropriateness of the products they are sold. Advisers should be rewarded for giving the best possible advice to consumers to ensure they purchase the best products to meet their needs.

S9(2)(a)

Michael Midgley  
 Chief Executive  
 New Zealand Shareholders Association

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

## Your name and organisation

<b>Name</b>	Simon Moss
<b>Organisation</b>	NZbrokers Management Ltd (NZbrokers)

*NZbrokers is a collaborative group of more than 58 independent general insurance broker businesses throughout New Zealand. Within our group we handle the non-life insurance policies for 140,000 mostly retail clients. These clients pay approximately \$550m premium annually.*

## 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>We agree with the objectives and emphasise the importance that the disclosure requirements should be adequate for consumers to identify the difference between those advisers who provide market-wide advice compared to those who provide advice on behalf of a single product provider. For example the advice from a genuine broker with access to multiple product providers, compared to advice from a bank or an online service.</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>An insurance broker will typically provide advice many times during the period of an insurance policy (at prospect time, renewal and when changes are made to the policy). It would overwhelm consumers if disclosure occurred at the time of every transaction, diminish the likelihood that they would absorb the disclosure and add significant cost to the business which would need to be passed on to the consumer.</p> <p>We suggest disclosure be limited to prospect and renewal stages only.</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>Disclosure at the time of every transaction will overwhelm consumers, diminish the likelihood that they would absorb the disclosure and add significant cost to the business which would need to be passed on to the consumer.</p> <p>We suggest disclosure be limited to prospect and renewal stages only.</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> <hr/> <p>For general disclosure information referral to a website through email footers and other easily accessible links will reduce the number of pages presented to consumers and make it practical for disclosure to be available more frequently, increasing the likelihood that the</p>

information is read and absorbed.

## 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?*

Minimum disclosure requirements could be expressed within codes of professional conduct published by industry bodies such as **IBANZ**. The standards can be implemented and monitored by the business or the industry association as it currently is by our body, **IBANZ**.

If a regulator must monitor or approve the standard, published by the industry body, then we suggest that be a role for the FMA.

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?*

A stop order in the first instance, then civil liability depending on the seriousness of the contravention.

## 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?*

We agree.

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

No, if the text must be prescribed then by the industry body as we suggested in response to question 5 above.

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, we agree.

## 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 because it will help the consumer differentiate between the advice from a genuine broker with access to multiple product providers, compared to advice from an adviser who utilises a single product provide (e.g. banks, travel and real estate agents, online products).

11 *How can the regulations ensure that consumers receive an accurate indication of the extent of*

*the market that can (and will) be considered?*

Perhaps through a simple disclosure like *'the advice and service we provide is based on our relationship with more than 15 product providers'* or *'the advice and service we provide is based on our relationship with one product provider'*.

#### 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, prior to final instructions, fees can be determined more accurately and it reasonable to disclose these amounts to consumers. Such fees might include annual service fees, administration or documentation fees.

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)?*

The regulations should be consistent, requiring early disclosure of fees for all stages of the advice process.

#### 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?*

For general insurance brokers commission is based on a percent of the insurance premium, often variable according the type of insurance policy. Therefore the actual amount of commission cannot be accurately calculated until after the client has given their final instructions. The insurance brokers can only give the percentage amounts (which increases the complexity for the client) or an estimate of the commission amount. Both options fail to achieve the objectives stated in the discussion document.

Fees are usually based on known or forecast factors (e.g. time costing, volume of work, level of expertise etc). These are typically stated to clients before instructions are given to the broker and we agree it is a disclosure that should be made when the nature and scope of the financial advice is known.

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?*

All kinds of minor 'gifts', which might be regarded as incentives, are available from product providers. We're don't believe a coffee, light lunch, calendar etc is material, nor is it efficient to maintain a record of such 'gifts'. Many insurance brokers already have standards that say:

'If you can't eat it or drink it, you can't accept it' or

'Gifts exceeding \$(state amount) in value cannot be accepted'.

#### 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?*

Fees are relatively quantifiable but the dollar amount of commission cannot be quantified

until the final instructions are received from the client because it depends on the type of insurance policies, sums insured, deductible amounts, period of cover etc being selected. Making prescriptive regulations relevant for all these circumstances will not achieve the objectives expressed in this 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?*

**Option 1** will result in consumers being given information like:

Domestic House commission rates range between 20% and 24%, however for insurers A, B and C the commission rate paid for the Natural Disaster portion of the premium ranges between 5% and 9%.

The disclosure would also need to explain that the commission rate does not apply to EQCover Levies, FENZ Levies or GST.

**We don't believe information presented in this way, often for multiple policies to one consumer, will achieve the objectives expressed in this paper.**

**Option 2** is not practical prior to receiving instructions from a general insurance client. The dollar amount of commission cannot be quantified until the final instructions are received from the client because it depends on the type of insurance policies, sums insured, deductible amounts, period of cover etc being selected.

**To present the commission dollar amount with multiple options that a client will typically consider will not achieve the objectives expressed in this paper.**

**Option 3 is the only reasonable disclosure method that will work.** We strongly support transparency in respect of remuneration and recommend that minimum disclosure requirements be expressed within codes of professional conduct published by industry bodies such as **IBANZ**. The standards can be implemented and monitored by the business or the industry association as it currently is by our body, **IBANZ**.

We suggest a disclosure such as *We receive commission from the Insurer each time you buy a policy (including renewals), and for some variations to your policy which increase the premium payable. The commission is calculated as a percentage of the base premium (this is the premium less GST and other government taxes, charges and levies).*

#### 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.

19

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

None apparent to us.

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)?*

If so we suggest a disclosure such as *We receive commission from the Insurer each time you buy a policy (including renewals), and for some variations to your policy which increase the premium payable. The commission is calculated as a percentage of the base premium (this is*

*the premium less GST and other government taxes, charges and levies).*

## 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.

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 agree.

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

Yes, but only when there are disciplinary consequences adjudicated by the regulator. Disclosure of a minor duty contravention could have disproportionate consequences on an adviser's business and/or their career.

## 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 prescriptive template is unlikely to provide for the many different scenarios that exist for general insurance broking therefore a principle based requirement should be implemented.

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)?*

A prescribed template will not work.

### Requirements for disclosure provided through different methods

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

Verbal disclosure of general information should be permitted. Technology does enable a good record of disclosures but insurance is a relationship business where a significant amount of information is exchanged over the telephone.

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

Many verbal exchanges relate to Q&A for simple products. Over-regulation in the disclosure process will attract additional time and costs for the business, which will be passed on 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 and FAQs on such websites often omit the specific issues a consumer might need to be prompted about, a substantial amount of additional information must be supplied.

General insurance products are complex and differ significantly, even within the same class of insurance; consumers usually don't know what they need to know.

#### 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?*

General insurance products are not all the same, even within the same class of insurance. Product comparisons are useful when replacing products but very rarely will it demonstrate that the recommended product will provide the best cover for every claim that the consumer or the broker might anticipate. No product is 'top of class' all of the time.

Having said that the general principle could be applied, that details will be provided about significant negative impacts, particularly those in relation to the client's expectations.

31

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

The requirement should only apply where it is relevant to the particular product being replaced and when relating to the client's expectations.

#### 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 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, provided the disclosure previously provided remains valid.

#### 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?*

Subject to there being no complex or IT system change requirements and in terms of



	disclosure requirements we expect to be able to comply within the transition period provided the complete requirements have been finalised at the commencement of the transition period.
35	<i>Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?</i>
	<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>
	Disclosure for wholesale clients would only be appropriate when the client is selecting an adviser.
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>
	None that are apparent.

## Other comments

In principle we support regulations where they are appropriate for relatively simple general insurance products, which are arranged or renewed in high volume where the remuneration, for example, averages less than \$150 per house insurance policy, often less for other policies.

On average the NZbrokers Group arranges or renews about 3,500 policies per work day, often with personal dialogue between the client and the broker. Over- regulation will not achieve the objective expressed in this paper and will add significant costs which will need to be passed on to clients.