

**Submission to:**

Corporate Law
Labour and Commercial Environment Group
Ministry of Business, Innovation & Employment

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Subject:

Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008

Contact Person:

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[18\(d\)](#)

Background

Citizens Advice Bureau New Zealand (CABNZ) Ngā Pou Whakawhirinaki o Aotearoa welcomes the opportunity to comment on the Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

The purpose of our organisation is to:

- Ensure that individuals do not suffer through ignorance of their rights and responsibilities or of the services available; or through an inability to express their needs effectively — Me noho matāra kia kua te tangata e mate i tana kore mōhio ki ngā āhuatanga e āhei atu ana ia, ki ngā mahi rānei e tika ana kia mahia e ia, ki ngā ratonga rānei e āhei atu ana ia; i te kore rānei ōna e āhei ki te whakaputu i ana hiahia kia mārama mai ai te tangata.
- Exert a responsible influence on the development of social policies and services, both locally and nationally — Kia tino whai wāhi atu ki te auahatanga o ngā kaupapa-ā-iwi me ngā ratonga-ā-rohe, puta noa hoki i te motu.

We support the principle of partnership reflected in the Treaty of Waitangi. E tautoko ana Ngā Pou Whakawhirinaki, i te mātāpono nohotahi (hononga), e whakaatahia ana i roto i te Tiriti o Waitangi.

We work to empower individuals to resolve their problems and to strengthen communities. The person-to-person service provided by over 2,400 Citizens Advice Bureau (CAB) volunteers is unique in New Zealand. From 83 locations around New Zealand, the CAB



provides individuals with a free, impartial and confidential service of information, advice, advocacy and referral. In the 2014/2015 financial year, the CAB assisted with over 530,000 client enquiries across the gamut of issues that affect people in their daily lives.

We use our experience with clients to seek socially just policies and services in Aotearoa New Zealand.

1.0 Summary of recommendations

CABNZ regards this review as an opportunity to significantly strengthen the regulative protections for consumers of financial advice and correct flaws in the current dispute resolution system. Our recommendations include:

- A regulatory purpose statement that emphasises consumer protection
- A ban on commissions and other forms of conflicted remuneration
- Less emphasis on disclosure as the key means of consumer protection
- A more user-friendly and informative Register of Financial Service Providers
- Changing the name *Registered Financial Adviser* to *Restricted Financial Adviser*
- One neutral disputes resolution body to deal with all disputes between consumers and Financial Service Providers

2.0 Primary purpose of regulation is to protect the consumer

The Financial Advisers Act (FAA) came into being because consumers needed protection from advisers who were being unscrupulous or negligent. The primary reason for regulating the industry is to increase the chances of consumers being given good financial advice - advice that matches the client's financial position and risk profile and puts their interests first. The three 'goals for regulation' proposed by the Issues Paper skirt around this purpose:

- *Consumers have the **information** they need to find and choose a financial adviser*
- *Financial advice is **accessible** for consumers*
- *Public **confidence** in the professionalism of financial advisers is promoted*

Information and accessibility are important, but they do not directly influence the quality of the advice provided to the consumer. Neither does the public perception of the industry. These things do not guarantee good outcomes for consumers and should not be regarded as proxies for advice that is financially and ethically sound.

We recommend that the three goals be replaced with one:

- *That consumers get the best possible advice when they engage the services of a financial adviser*

with a view to amending the purpose statement of the Financial Advisers Act accordingly.



Currently the FAA's main purpose statement focuses on how services are delivered and how the public perceives the industry:

The purpose of this Act is to promote the sound and efficient delivery of financial adviser and broking services, and to encourage public confidence in the professionalism and integrity of financial advisers and brokers.

We recommend placing the emphasis on consumer protection instead. For example:

The purpose of this Act is to create the conditions that will give consumers the best possible chance of obtaining financial advice which is sound and puts their interests first.

Regulation informed by a purpose statement that places the consumer at the centre will automatically have the effect of increasing/promoting consumer confidence, which is the stated aim of the review.

A similar shift in emphasis is needed where the role of the Financial Markets Authority (FMA) is concerned. Currently the Authority "focusses its enforcement resources on conduct that harms or presents the greatest likelihood of harm to the function of open, transparent and efficient capital markets" (Issues Paper p.31). Protecting the market is not the same as protecting the consumer. Instead of focusing on conduct that harms the market, the FMA should focus directly on conduct that harms consumers.

3.0 Phasing out commissions is key to consumer protection

This review is an opportunity to take the long-overdue step of phasing out commissions and other forms of conflicted remuneration. These stand in the way of advisers acting in the best interests of their clients. It is unrealistic to assume that advisers will manage the conflict of interest created by such remuneration. It is also unrealistic to assume that consumers will be able to evaluate advice in the light of a disclosed conflict of interest. The solution is to regulate to avoid the conflict of interest.

As the Issues Paper points out, commissions and similar third party payments make it hard to distinguish between financial adviser as salesperson and financial adviser as provider of unbiased advice. Consumers expect the latter and they are not always aware that what they are being given instead is a sales pitch – which may also be bad advice.

A ban on all forms of conflicted remuneration is essential if we want consumers to have the best possible chance of getting advice that puts their interests first. The result may be an increase in upfront fees, but this is preferable to the lack of transparency and conflict of interest generated by commissions and their ilk.

4.0 Disclosure is not a silver bullet

While an important element of consumer protection, disclosure of information is not a silver bullet. Sometimes it has the undesirable effect of leaving the consumer inundated with information but none the wiser as to how to interpret it.

Disclosure shifts liability to the consumer under the false premise that being in receipt of information equates to being informed. Where the disclosure relates to a conflict of interest, consumers will not necessarily know how to use that information to evaluate the financial advice they are being given. In the worst case scenario the disclosure may give the consumer a false sense of security rather than acting as a warning. The research findings presented in the Issues Paper (p.36) make disturbing reading and only confirm that information disclosure, no matter how robust, does not remove the risks to consumers associated with conflicts of interest. The only way to do this is, as already recommended, to regulate to prohibit the conflict of interest.

5.0 A more user-friendly and informative Register

We have found the Register of Financial Service Providers to be decidedly unhelpful as a means of obtaining information about providers and comparing them. The 'information' in the Financial Services field is generic and full of jargon – it is only meaningful to somebody who understands how the industry is structured. Two examples:

This FSP is registered to provide the following financial services:

Financial adviser service.

This person is a registered financial adviser but not an authorised financial adviser. Only an authorised financial adviser may give advice on any of the following products:

- a security*
- any estate or interest in land*
- a futures contract*

unless they are exempt from authorisation under section 17 of the Financial Advisers Act 2008

This FSP is registered to provide the following financial services:

Employer or principal of a financial adviser and/or Qualifying Financial Entity

This FSP is not a Qualifying Financial Entity

The Register currently fails in its purpose “to provide consumers with easy access to information about financial service providers” (Issues Paper p.60). We recommend that it be re-designed to reflect what non-expert consumers need to know and what they say they would find useful. A panel of non-expert consumers should be convened by MBIE to assist with this process.

6.0 Regulatory framework too complex

We agree with the suggestion that consumers have difficulty understanding “the differences between classes of financial advisers and their different obligations and abilities to advise on



different products and to give different types of advice” (Issues Paper p.32). We also share the view that this confusion puts consumers at risk and does nothing to enhance consumer protection.

We support the proposal to clarify the distinction between Authorised Financial Advisers and Registered Financial Advisers (Issues Paper p.24). The latter designation is misleading, and in no way implies that the bearer is restricted to providing a limited range of advice and that their disclosure obligations are also less stringent than those of an Authorised Financial Adviser.

We recommend changing the name **Registered** Financial Adviser to **Restricted** Financial Adviser.

7.0 Dispute resolution system flawed

We are pleased that the review is considering the impact of having multiple dispute resolution schemes. The impact on consumers is not positive. The current arrangement favours financial service providers and disadvantages consumers. The four schemes compete to provide the best possible deals and protections for their members (the financial service providers) and, by extension, the worst possible outcomes for complainants (consumers of financial services). We recommend that the four competing schemes be replaced with one neutral disputes resolution body which deals with all disputes between consumers and Financial Service Providers.

Thank you for this opportunity to comment. Please contact me if you have any questions, or want any clarification about our submission.

Yours sincerely

A handwritten signature in black ink, appearing to read "Kerry Dalton".

Kerry Dalton
Chief Executive