



## **Submission to the Ministry of Business, Innovation and Employment,**

### **on the Issues Paper: Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Disputes Resolution) Act 2008**

**July 2015**

#### **Background**

The Health Funds Association of New Zealand (HFANZ) appreciates the opportunity to make a submission on the Issues Paper associated with the review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Disputes Resolution) Act 2008.

HFANZ is the industry body representing health insurers. HFANZ was set up in 1989 and was incorporated in 1995 under the Incorporated Societies Act. HFANZ does not represent the interests of individual insurers. Members include friendly societies, mutuals, and subsidiaries of public companies. Membership is voluntary, with HFANZ membership comprising 11 health insurers, who together account for over 99% of health insurance policies in force. A full list of members is attached as an appendix to this submission.

Given the diverse range of interests of our members, a number of whom will be making their own specific submission, the HFANZ comments are very broad, focusing on key generic interests common across members.

#### **Summary**

HFANZ is fully supportive of the review of these pieces of legislation.

We believe developments such as increased Kiwisaver balances, with savers looking to access these funds to support their lifestyle in retirement, there will be an increasing demand for improved quality financial advice at a reasonable price to be available from trusted advisers and providers to allow consumers to make better informed decisions.

Our submission is based on the Financial Markets Authority maintaining oversight of the financial services advisory market by way of retaining a Register of the various advisors and ensuring there are appropriate qualification standards, codes of compliance and conduct for all participants to engender greater consumer confidence.

We note the existing role of the FMA for both AFA's and QFE's, and believe there is greater oversight required of RFA's. We believe these different designations, coupled with the

varying product types, will be misunderstood by many consumers and will not assist them to select an advisor or service provider who best meets their needs.

We support there being an on-going review of the qualifications and on-going continued professional development of those providing financial advice and services, with greater transparency in terms of their remuneration, and most especially the provision of commissions which we believe can encourage conflicted remuneration. Noting the complexity of remuneration packages, and especially commission arrangements, HFANZ believes there is merit in the development and introduction of standard disclosure forms, including remuneration, for all those providing financial advice and financial services.

HFANZ supports the requirement for all providers of financial advice and services to be a member of an approved Disputes Resolution Scheme that consumers can have confidence will provide a fair and consistent outcome, irrespective of which scheme the provider belongs to. Noting the Disputes Resolution Scheme will usually charge the provider a fee for consideration of the dispute we support a review process which ensures frivolous claims are able to be identified early in the process so unnecessary costs are not incurred. We also believe a provider of the advice or service should have adequate arrangements in place to meet any compensation ordered.

## **Comment**

### **1. Under-insurance**

Most insurance “advice” is delivered by non-AFAs.

Some 30% of the population of New Zealand carry health insurance, substantially less than many other countries. We also believe there is an unacceptably high level of “under-insurance” in New Zealand generally, not just health insurance.

We believe one key consideration and outcome of this review must be to ensure that all insurance products (including health insurance) are positioned as financial products supported by appropriate advice, cost, and review and dispute resolution processes with the goal of increasing insurance cover generally. We believe the provision of a sound financial services sector will support and enhance increased insurance coverage generally, without prejudicing existing levels of cover.

### **2. The Distinction between Category 1 and Category 2 Products**

We believe there is a general lack of consumer knowledge about the different product types and adviser designations.

HFANZ recognises and supports the current distinction between Category 1 and Category 2 products. We believe it is appropriate that there is such a distinction between higher risk and/or more complex products and those less complicated products, and as such it is correct there are different regulatory requirements between these products.

However we also believe that many consumers will not appreciate the distinction between “sales” and “advice”. When discussing a Category 2 product with a provider, this may not fall under the strict definition of “financial advice”, and especially where the agent of the provider is not giving an opinion or making a recommendation, and is instead merely providing information.

While we accept there should be lower regulatory requirements for the provision of Category 2 products, we support the need for ensuring any information provided to a consumer is sufficiently comprehensive to ensure they can make an informed decision. By way of example and specifically considering at health insurance, we believe it is important consumers are fully aware of factors such as the likelihood of premium escalation as they age and the importance of fully disclosing pre-existing conditions.

### **3. Authorised Financial Advisers and Registered Financial Advisers.**

Given a distinction between Category 1 and Category 2 products is retained, and also a differentiation between “retail” and “sales” and “personalised” and “class” advice and services, HFANZ supports maintaining a distinction between an AFA and a RFA.

Specifically we believe the provision of personalised advice delivered to an individual requires a higher level of skill and competence, and as such it is appropriate those providing such advice have appropriate qualifications and experience to be able to tailor their advice accordingly. We also accept that generally this will be advice delivered by an AFA. Accordingly we also support the existing powers the FMA has in terms of the granting of a licence to an AFA, and imposing additional conditions on a licence, and the powers to suspend or cancel a licence

Further, we believe the requisite qualifications for an AFA and the need for them to complete continuing professional development should be continually reviewed and enhanced. While we appreciate this could result in increased compliance costs we note given the increasing value of Kiwisaver deposits, and the anticipated growth in numbers who will be withdrawing their funds and the importance of these to supplement lifestyle as they age, the quality of advice for consumers must not be allowed to diminish in any way. We believe this is especially relevant in the current economic environment of low deposit interest rates which may influence consumers to seek higher returns through alternative investments.

We also believe the required standards and qualifications for an RFA should be continually reviewed. We also note the distinction between an AFA and a RFA in terms of disclosure requirements. Notwithstanding the restrictions for an RFA in terms of the type of advice they can offer, we believe the average consumer will not appreciate there is a distinction between this level of advisor and an AFA.

Consistent with our view about an on-going review of the qualifications of an AFA, we believe the requirements and obligations of a RFA should also be continually reviewed.

Accordingly we support the introduction of higher standards for RFAs which, although less than full AFA status, we believe should be extended to include a requirement of good character including a criminal background check. RFA's should also be required to demonstrate a level of competency, knowledge and skills, ongoing professional development, compliance with an industry code, and provide greater disclosure of their remuneration.

HFANZ also believes RFA's should be subject to a higher level of authorisation, licencing and monitoring by the FMA to ensure compliance with any requisite standards.

#### **4. Qualifying Financial Entities**

HFANZ notes the role QFEs play in terms of the provision of both Category 1 and Category 2 products. We note especially the role of QFE advisors and other employees in providing consumers with a combination of retail support and knowledge associated with both financial literacy and reinforcing the value of the general need for insurance (refer above comments re underinsurance), as well as other more sophisticated and individualised financial services and advice.

Therefore we support the retention of QFE status for relevant organisations given they are licenced and monitored by the FMA, and required to demonstrate they have robust internal control and advice models to ensure their advisors and other employees comply with their requisite obligations under the Act, and the QFE will be liable for any breaches by these individuals.

#### **5. Remuneration**

HFANZ believes there should be greater transparency in terms of the disclosure of the remuneration arrangements of all those providing not just financial advice (noting the current definition), but also financial services generally.

We especially believe commission arrangements should be disclosed to the consumer to ensure both greater transparency and to minimise the risk of an advisor or broker being incentivised to recommend a product (or products) which deliver a higher commission as opposed to a product(s) which may be more appropriate after taking the individual needs of the consumer into consideration.

Therefore we support extending the current requirements for AFAs and QFE advisors to notify such arrangements and other conflicts of interest to RFAs to also be required to disclose commission and other “conflicted remuneration” arrangements. Standard disclosure forms, including details as to their remuneration, for all advisors and other persons providing a financial service, regardless of their status or designation is one way this could be achieved.

Of particular interest to members in terms of remuneration is the issue of “churn”. HFANZ believes it is important the consumer has a choice of product and insurers. We believe the majority of movement is for good reason, reflecting movement in the competitor landscape, with only a minority of advisors moving business inappropriately. However given the nature of health insurance is such that failure to disclose a pre-existing condition may lead to underwriting restrictions due care needs to be applied where a consumer is contemplating moving from one provider to another. We believe greater disclosure of commissions, soft commissions and all other incentives to prevent conflicted remuneration is especially relevant in these circumstances.

#### **6. Complaints and Disputes Resolution**

A key aspect of consumer confidence is a robust and fair disputes resolution process for consumer complaints about advice and services they have been provided, and also the knowledge of the appropriate procedures to follow to implement this process.

HFANZ supports a requirement for all advisers and providers of financial services to be members of an accredited disputes resolution scheme based on the existing approval process and resolution principles.

We note there is currently four approved dispute resolution schemes. The accreditation process should be sufficiently robust to give all parties confidence the outcome of an investigation into a complaint will be consistent regardless of which disputes resolution scheme is nominated by the provider.

The disputes resolution scheme will usually charge the provider a fee for consideration of a dispute or complaint. This being the case, we support an initial review process to ensure claims are reasonable and the provider is not subjected to unnecessary costs where a frivolous claim is lodged.

The insurance sector is regulated, where unless specifically exempted an insurance company must be licenced by the Reserve Bank under the Insurance Prudential Supervision Act 2010. The objective of this oversight is to ensure a sound insurance sector and engender public confidence. Consistent with this requirement for HFANZ members, we believe all providers of financial advice or services should also be required to have adequate arrangements in place to meet any compensation awarded through the disputes resolution process.

## Appendix: HFANZ Members

The following organisations are full members of the Health Funds Association of New Zealand Inc.

- Accuro Health Insurance
- AIA New Zealand
- EBS Health Care
- Manchester Unity Friendly Society
- Nib New Zealand
- OnePath (NZ) Ltd
- Partners Life
- Police Health Plan Ltd
- Southern Cross Health Society
- Sovereign Assurance Company Limited
- Union Medical Benefits Society Ltd (Unimed)

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ACC is an Associate member of HFANZ.