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

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Thank you for the opportunity to comment on the "Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008" Issues Paper. This submission is made by Partners Life Limited ("**Partners Life**"). As a significant participant in the New Zealand life insurance industry, Partners Life is well positioned to provide feedback on some of the key areas discussed in the Issues Paper. In particular Partners Life's Managing Director, Naomi Ballantyne, has been instrumental in creating, growing and leading the New Zealand life insurance industry's three largest companies over the past 33 years (including 26 years in senior leadership and directorship positions) and is, therefore, uniquely experienced to understand the market and the implications to consumers of any industry regulatory changes.

This letter sets some background information on Partners Life's business and the New Zealand life insurance industry generally, together with a high level summary of our key submissions on the Issues Paper. More detailed responses to the specific questions raised in the Issues Paper (set out in the prescribed submissions template) are also **attached**.

In addition, we have also **attached** (by way of appendices to this letter) five "background papers" which expand on some of the substantive issues that are addressed in our submissions. These focus on the particular issues that are relevant to the New Zealand life insurance industry and draw on the experiences of Partners Life and its Managing Director.

Acronyms used in this letter are the same as those set out in the Issues Paper.

In summary, our submissions relate to seven key areas:

1. **Categories of financial advisers:** We consider that the current titles given to the various adviser categories are inappropriate and should be amended to ensure that consumers have an accurate understanding of what products an adviser is allowed to provide them with advice about and the level of competence they have to do so. The term "financial adviser" is particularly problematic in this respect and in our view only AFAs should have that term in their title.
2. **Sales or Order Taking – no advice:** We acknowledge that if a consumer is simply being sold a Category 2 product, they are not being advised on whether the product is to meet any specific needs they might have, and are not in any way provided with opinion about the comparative value of the product versus any existing product or any competitive product, then advice is not being provided and the requirements for disclosure and minimum qualifications recommended for advice do not need to apply.
3. **Qualifications / standards:** Given the financial significance Category 2 products have on the lives of the consumers who purchase them, and given the advice to purchase these products is primarily delivered personally, i.e. face to face by an adviser, a minimum qualification/education threshold should be introduced for all advisers. Individual QFE advisers should also be required to adhere to the same obligations, minimum qualifications and disclosure requirements that RFAs do for Category 2 products as the products they sell have exactly the same financial significance to the consumer.

4. **Remuneration:** Commissions provide a necessary function within the industry that cannot be adequately substituted by other forms of remuneration. Commission structures enable advisers to remain independent from product providers, so restrictions could cause advisers to stop offering such advice, ultimately leading to a lessening of competition in the market and an increase in the existing under-insurance gap. Partners Life strongly opposes restrictions on commissions for Category 2 products for new business, but we consider there are other measures which could be taken to reduce potential conflict issues.
5. **Disclosure obligations:** We believe there should be a mandatory disclosure requirement for all advisers to disclose any interests that could reasonably be expected to "materially influence" the advice being provided to the consumer. Transparency of these potential conflicts will enable the consumer to ask questions of the adviser in order to be confident that the advice they are receiving is in their best interests.
6. **Replacement business:** Advice in relation to "replacement business" should be specifically regulated to ensure that it is the client, not the prospect of financial gain, which is the primary driver behind replacement advice. The replacing of existing benefits creates additional risks to the client over and above those that exist when purchasing new cover. To ensure these risks are understood and mitigated as part of the advice process, requirements should be introduced to ensure that advisers receive training in relation to those risks, and that advisers can and do access information that is necessary to inform their replacement advice - whether from the product provider or through independent research engines.
7. **Dispute Resolution Schemes:** Our preference is that there should be one disputes resolution scheme to which all financial service providers must belong. This will increase the disputes experience and expertise within that scheme and increase the consistency of decisions across all disputes. Alternatively, if there are to remain multiple bodies, there should be robust guidelines to ensure consistent outcomes for consumers and jurisdictional limits should be regulated accordingly.

Overview of Partners Life

Partners Life is a life insurance company established in August 2010 and is registered as a financial service provider and a QFE. Partners Life provides both personal and business insurance products, including life insurance, income protection, medical insurance, disability insurance, trauma cover and business risk protection. Partners Life does employ a small number of QFE advisers to provide additional resources to RFAs but its insurance products are distributed almost exclusively through a network of independent, impartial advisers (largely comprising RFAs).

Partners Life's unique business structure has allowed it to become one of the most substantial competitors in the New Zealand life insurance industry. Our business aims to address what we see as the "significant gap" in today's market, whereby consumer protection needs are not being met and the impartial adviser channel is not being adequately supported. Our business philosophy is to reward adviser expertise as well as customer loyalty. We balance comprehensive cover with affordability for the consumer, recognise and reward customer loyalty and support the adviser channel to deliver expert advice and service to their customers. Advisers are rewarded for identifying when Partners Life products deliver the best solution for their clients and customers.

The Partners Life product philosophy of creating rich product (as measured by independent research houses) and delivering them to consumers at competitive prices (lowest half of advised market) is a direct outcome of our decision to distribute through independent advisers – knowing that they must offer their customers the products that best fit their needs. In other words independent advisers place their customers with Partners Life because it is the best answer for their customers. Independent advisers allow product providers to compete on the basis of consumer value, which we believe is the best answer for New Zealand.

Partners Life is overseen by a Board of Directors and Executive Management Team. Currently the Partners Life Board of Directors consists of six directors, all of which have a strong background in the New Zealand financial services industry - many bringing over 20-30 years experience, including working in the Australian, UK and US financial sectors.

The differences between the New Zealand and the Australian Life Insurance Markets

Distribution of life insurance products in Australia differs considerably from the New Zealand market. Direct to consumer distribution and distribution of life products as add-ons to superannuation funds are significant in Australia. Advised distribution is dominated by advisers belonging to licensed corporate 'Dealer Groups' who are predominantly owned by product providers. In New Zealand it is advised distribution that dominates and most Dealer Groups are owned independently of product providers, meaning 'independent advice' is the single most dominant distribution channel. Being independent of product providers means advisers are able to offer their customers product choice, but it also means they must fund all of the costs of providing advice out of their commission income alone. They do not have their fixed costs 'subsidised' by their 'parent'. Initial commission levels are currently higher in New Zealand than Australia, most probably for this reason, however lapse rates (and therefore churn rates) are lower in New Zealand than in Australia.

New Zealand has a significantly higher under-insurance gap than Australia, possibly due to the Super fund distribution model in Australia and the fact that New Zealand's ACC scheme has created a false sense that life insurance products are not necessary. As a result New Zealanders tend to only buy adequate amounts of life insurance covers when they are advised to do so. Advisers are therefore critical to New Zealand closing the under insurance gap.

While the super fund distribution model in Australia has certainly assisted in a lower under-insurance gap in Australia, the life insurance and reinsurance industries have suffered significant losses as a result of the non-underwritten, voluntary nature of these schemes leading to premium increases to restore profitability. Advised distribution which is independent of product providers, as is dominant in New Zealand, delivers considerable value to consumers and the industry and care should be taken not to follow Australia into its current industry issues.

1. Categories of financial advisers

As a starting point, Partners Life recognises that to ensure adequate consumer protection it is appropriate to have different levels of regulation for different categories of financial advice. In particular, investment/saving advice should be held to a much higher standard than other financial product advice. There is a significant difference between providing advice on investing consumers' own funds compared with advising on products where the consumer is effectively paying a regular charge/premium for the use of the product provider's funds. Fraud on the part of product providers and/or advisers which directly impacted consumers has also been more significant in the investment/savings sector than in other sectors such as insurance and lending. Accordingly, we agree that the requirements for providing investment/savings advice should be very robust. We also agree that a less onerous regime is appropriate for other financial product advice, provided that a minimum qualification/education standard is introduced (discussed further under section 2 below). However, where different levels of regulation apply to different categories of advice, it is important that the titles given to each category of adviser accurately reflect what that category of adviser is offering.

Taking into account the above, Partners Life submit that the term financial adviser should only apply to AFAs, as AFAs are the only advisers who are adequately qualified to provide advice across the broad spectrum of financial products (e.g. investments, savings, insurance and lending). For all non-AFA advisers, the term "financial advice" and the corresponding "financial adviser" categories should be replaced with terms that more accurately reflect the forms of advice these advisers are permitted to give, such as: "insurance advice" and/or "mortgage advice etc.

Where only sales or order taking rather than advice is involved, then the words "advice" and "adviser" should not be permitted at all.

Considering each category of non-AFA adviser in turn:

- The term "Registered Financial Adviser" is misleading to consumers, as it implies that a formal application and approval process has been met by the individual adviser - which is not true. It also implies that the adviser is qualified to advise on a broad range of financial products. If the word "registered" is retained we recommend that a minimum qualification/education threshold be imposed

for each specific product type, and that the relevant adviser's title reflects that specific expertise, eg "Registered Insurance Adviser" or "Registered Mortgage Adviser".

- The term "QFE adviser" is misleading because it confuses the consumer as to the QFE adviser's relationship with the QFE itself. Consumers must be able to identify what type of advice is being provided by the individual who is personally advising them, not the entity that the individual belongs to. REDACTED TEXT

Accordingly, we consider that QFE advisers should be renamed to reflect the types of products the adviser is qualified to advise on and the restrictions on which products are available to it, eg "QFE Insurance/Mortgage Adviser" and that disclosure of the product restrictions should also be made.

To summarise our proposal in relation to each category of adviser:

Current title	Proposed title
AFA	<i>No change</i>
RFA	Registered Insurance/Mortgage Adviser
QFE adviser	QFE Insurance/Mortgage Adviser
QFE adviser	QFE product salesperson

In addition to the proposed changes to the titles of each adviser category, we also consider that changes to each of the AFA, RFA and QFE regimes should be made so that advisers (and obviously QFE sales persons) are restricted from giving any advice about:

- a client's *existing* Category 2 products where the adviser is not able to access information about and fully analyse the existing product (ie in these circumstances they are restricted from giving replacement advice, that is, where existing benefits are being fully or partially replaced).

Further detail about our reasoning for the proposed changes to the QFE adviser regime is set out in our response to question 8 of the Issues Paper.

Partners Life would emphasise that our discussion of QFEs exists within the broader purpose of our submissions in this area - that is, the need to revise the categories of advisers to ensure that consumers are well informed and receive competent advice. Further discussion on the differences between, and merits of, AFAs, RFAs and QFEs can be found in **Appendix One**.

2. Qualifications / standards

As mentioned above, our business structure is centred on ensuring consumer protection. We recognise that a big part of this is ensuring that advisers have the necessary qualifications and experience to be able to deliver expert advice and service to customers. With this in mind, we would strongly support a requirement for all non-AFA advisers (including QFE advisers but excepting QFE product sales persons) to meet a minimum qualification/education threshold in their specific area(s) of practice. This would go some way to addressing the large disparity that currently exists between the qualification requirements for an AFA (which are significant) and those for non-AFAs (which are non-existent). Partners Life currently provides a two week, full-time course on how to be a life insurance adviser, which is industry specific but not company specific. We believe the curriculum of this existing course could be used as a basis to form an industry-wide qualification. See **Appendix Two** for further discussion on this topic, including Partners Life's "Minimum Life Insurance Adviser Qualification Curriculum".

Using our proposed titles from section 1 above, we suggest qualification requirements could apply as follows:

Adviser	Qualification/education standard
AFA's	As currently applies
Registered Insurance/Mortgage Adviser	Registered only once minimum qualifications/education threshold has been met
QFE Insurance/Mortgage Adviser	May only practice once minimum qualifications/education threshold has been met
QFE product sales person	Banned from providing advice

3. Remuneration

As a starting point, it is important to recognise that adviser remuneration (including through commission) on its own does not create an advice conflict. Consumers should expect to pay for professional advice (be that through commissions, fees or a combination of both) and advisers should be entitled to be remunerated for providing valuable, expert advice. All forms of remuneration have the potential to create conflicts, and an equally problematic conflict is created by any limitations on the advice the consumer receives. Partners Life submits that concerns regarding conflicted advice can be mitigated by a combination of a strong disclosure regime (discussed in section 4 below) and restrictions of commissions for replacement business.

In relation to commissions specifically, as recognised in the Issues Paper at para [143]-[144] commissions provide a necessary function within the adviser remuneration framework. In terms of life insurance advisers, these advisers act independently on the client's behalf by holding agencies across a number of companies rather than being aligned to a particular one. These advisers are then able to offer direct, informed choices to the customers - not inappropriately influenced by the virtual 'employer'.

Commissions can also act as a cost effective way for consumers to access advice that they may not otherwise be willing to pay for and help to reduce the under-insurance gap. There is already a mentality amongst New Zealand consumers that they are unwilling to pay to receive financial advice (particularly in relation to insurance). As discussed in the John Trowbridge 2015 report "Review of Retail Life Insurance Advice" at pages 6-7, if the proposed Reform Model (level commissions supplemented by an Initial Advice Payment) did not offer the initial payment to advisers beyond renewal commission, there would be a substantial mismatch between initial advice costs and initial adviser revenue that would be debilitating to the advice industry as:

[A]lthough there is a case for advisers achieving less than full cost recovery when taking on new life insurance clients, in the absence of any such initial payment at all ... it is highly likely that large numbers of financial advisers, including representatives of most of the independently owned adviser groups and perhaps as many as half altogether, would cease to offer life insurance advice. The diminished supply of such advice would likely exacerbate greatly the underinsurance problem in Australia ... the withdrawal of so many advisers from the market would most likely have the greatest effect on supply of advice to lower and middle income families and businesses rather than to higher income earners.

Our specific proposals in relation to commissions on Category 2 products are:

- We strongly oppose restrictions on commissions for Category 2 products for new business, as this would immediately restrict advice which is independent of product providers and, therefore, restrict competition to the detriment of consumers.
- For replacement business, we recommend that commissions be restricted to a level or "as earned" commission when a client is moving premiums they are currently paying from one product provider to another (irrespective of the benefits that premium is paying for). This commission restriction should significantly reduce any opportunistic replacement advice driven solely by the adviser's desire for a new upfront commission from an existing client (discussed further in section 5 below).
- Additional disclosure obligations in relation to commissions should be imposed on all advisers (sales persons excepted), as detailed in section 4 below.

Further discussion on commissions and their role in the life insurance industry can be found in **Appendix Three**.

4. Disclosure obligations

Taking into account the above, we believe the most important additional disclosure that should be required is disclosure of any interest that could reasonably be expected to "materially influence" the advice being provided to the consumer. In combination with our proposed amendments to the titles for each adviser category, this additional disclosure obligation should:

- incentivise consumers to make the necessary inquiries with their adviser in order to be confident that the advice they are receiving is in their best interests; and
- mitigate any legitimate concerns as to commissions as a form of remuneration.

Set out below is a table of the potential conflicts which we believe should be disclosed by each adviser, being matters which could reasonably be expected to materially influence the advice being provided. As RFAs and QFE advisers can have the same potential conflicts this disclosure obligation should apply in relation to all advisers, not just AFAs.

Type of business	Disclosure
For all <u>new</u> business:	<ol style="list-style-type: none"> 1. The product provider and quota details, where there are any obligations to place a fixed percentage or a minimum volume of business with a product provider. 2. The product providers for whom active business agreements/agency agreements are currently held i.e. the only companies the adviser is able to place business with. 3. The research engine/tool the adviser has access to (if any), i.e. whether the adviser is able to provide any advice about the products of product providers they do not hold a current agency with. 4. The <i>difference</i> in total remuneration (including soft dollar incentives) to the adviser between the product providers in no. 2 above if the recommended solution was placed with each of them.
For replacement business (i.e. where existing benefits are being fully or partially replaced):	<p><i>In addition to the above disclosures:</i></p> <ol style="list-style-type: none"> 1. The <u>difference</u> in total remuneration (including soft dollar incentives) to the adviser between retaining the existing benefits with the current product provider and replacing them with benefits from the new product provider.

Further discussion on potential conflicts of interest that exist in the advice process can be found in **Appendix Four**.

5. Replacement business

Whilst replacement business serves a legitimate function within the industry, the giving of replacement advice should be specifically regulated.

Partners Life submits that there are two drivers behind replacement advice, which can be split into two categories:

- advice to better meet the needs of the client; and
- advice to reflect the allegiances of the advisor.

Currently, the industry makes no distinction between replacement business and new business in relation to an advisers remuneration levels. An adviser is incentivised to give product replacement advice to

clients with existing insurance arrangements as the adviser stands to receive the same amount of remuneration for writing the replacement business as they would for writing new business. This incentive exists irrespective of whether the remuneration is by way of commission, salary, bonuses or other remuneration - or whether the adviser is an AFA, RFA or QFE adviser.

A product provider is incentivised to encourage replacement business as it stands to increase its business if the replacement advice is for the client to switch from another product provider to them.

Further, advisers have limited access to information regarding the risks associated with replacement business - whether that information is in the possession of the product provider or through independent research engines. One result is that advisers do not fully understand the associated risks and thereby cannot adequately relay these to the client. The client is then also unable to accurately weigh the risks of replacement. This is concerning as it is the client, not the adviser, who carries the risks associated with replacement business. When moving existing coverage's from one product provider to another, the client is exposed to various claims, health and premium risks. For example, if the new product provider's premium curve is different to the existing product provider's, although at first the premium of the new policy appears cheaper, over the life of the policy, it could become substantially more expensive than the existing policy for the client. The client will be unaware of this fact unless informed by the adviser.

Partners Life submit that the regulation of replacement advice be revised to ensure that it is the client, not financial gain, which is the primary driver behind replacement advice. Our specific proposals are:

- Introducing a definition of "replacement business". We recommend that any premium the client is already paying (and has therefore paid a new business remuneration for) which is cancelled from one product and reissued with another (within six months either-side of the commencement date of the new policy) be considered as replacement business, irrespective of the mix of benefit types and sums insured.
- Introducing a requirement that all advisers who wish to provide replacement advice, receive training on the possible risks associated with replacement business (ie specific claims, health and premium risks for clients). If an adviser fails to satisfy this requirement, they should be banned from providing replacement advice.
- Introducing a mechanism that ensures a right of access to information that is necessary to inform the replacement advice - whether from the product provider or through independent research engines. Advisers must be able to access and analyse the specific policy wordings which apply to a client's existing policy. Similarly, clients should be able to access information that directly impacts on their decision to seek and/or accept replacement advice. If the client and/or adviser does not obtain the policy wordings of the existing policy then the adviser should be banned from recommending replacement.
- Introducing a requirement that product providers who receive replacement business applications must underwrite the application so that the client cannot be exposed to non-disclosure/misstatement being discovered at point of claim (ie non-disclosure and misstatement cannot be used as a reason to decline a claim).
- In the event the adviser gives replacement advice, the adviser must:
 - provide reasons as to why replacement rather than retention of existing benefits is in the clients best interests;
 - disclose the different levels of remuneration the adviser stands to receive between retaining the existing policy and replacing it with a new policy (see section 4 above); and
 - notify the new product provider that the application is either all or in part replacing existing benefits.

Further discussion on replacement business can be found in **Appendix Five**.

6. Dispute Resolution Schemes

Partners Life submit that there should be one disputes resolution body to whom all financial service providers must belong (and pay for). The most important purpose for a disputes resolution scheme (DRS) is to provide a mechanism for consumers to have their grievances heard and to achieve justice if their dispute is found to warrant it. Currently, this purpose is not being met - consumers can end up with inconsistent results depending on which DRS their adviser has elected to belong to – which could have been influenced by cheaper fees, lower jurisdictional limits, or a perception of whether the DRS finds more favourably on behalf of advisers, than clients. By empowering one body to deal with disputes, that body will become an expert body in disputes and should ensure consistent results (in turn increasing consumer trust and confidence in the system).

Alternatively, if there are to remain multiple bodies, the FMA should issue robust guidelines to ensure consistent outcomes for consumers. Jurisdictional limits should also be regulated to ensure consistency for consumers who have no choice regarding which DRS their complaint will be heard by.

Comparison with Australia

As a final point, Partners Life submits that in general terms the Australian situation should not be strongly relied on by MBIE in the review process. As detailed above, the Australian financial market is very distinct from the New Zealand market and, in particular, Australia has experienced and is still experiencing significant issues relating to financial advice which are far in excess of any issues the New Zealand market faces.

Partners Life are happy to provide MBIE with any further information in relation to its submissions and we look forward to engaging with MBIE further as the review develops.

Kind regards,



Naomi Ballantyne
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Partners Life Limited