

**Submission to the Ministry of Business, Innovation and Employment  
on the Options Paper  
Review of the Financial Advisors Act 2008**

**February 2016**

**Summary of Submission**

- 1.0 Accuro supports the goals of the review to make such changes to;
  - 1.1 Ensure consumers have the information they need to find and choose a financial adviser.
  - 1.2 Make financial advice accessible for consumers
  - 1.3 Promote public confidence in the professionalism of financial advisers
  
- 2.0 Accuro has previously submitted that the key changes required to achieve these goals are to;
  - 2.1 Consider the financial literacy of the public
  - 2.2 Make it easy for consumers to identify qualified, independent financial advisors
  - 2.3 Have only one registration category
  - 2.4 Restrict use of the title 'financial advisor'.
  - 2.5 Require a standard disclosure of authority to give advice and of any matters that may assist a consumer to decide whether or not the advisor is the most appropriate person to advise them on the financial matter concerned
  
- 3.0 Accuro considers the potential policy options listed as *Package 3: Distinguished sales and advice* in the options paper goes furthest in making changes we consider are required to achieve the goals of the review.

However;

- 4.0 Accuro considers the goals of the review would best be achieved through a package of policy options that included only one registration category, restriction on the use of the title 'financial adviser' and empowerment of professional associations to investigate and discipline members.

**1. Background**

Accuro Health Insurance was set up in 1971 as the Hospital Services Welfare Society which was owned, operated and funded as an entity of the Hospital Boards Association but with its own board appointed by the Department of Health, the Hospital Boards Association and the Combined Hospital Unions. Accuro is a member of the Health Funds Association of New Zealand.

In 1991 the board established HSWS as an independent society under the ownership of its members. Today it operates as a private health insurer trading under the name Accuro Health Insurance and is solely a health insurance provider, New Zealand based in terms of its operation

and membership. Accuro has been providing health insurance to its members for 45 years. The current count of insured individuals is 30,000.

As a health insurer grounded in the public health sector Accuro is strongly committed to supporting the effectiveness of publicly funded health services and better health outcomes for all New Zealanders. Effective regulation of financial services is essential for the protection of the public and to obtain better financial outcomes for all New Zealanders'. Accuro sees strong parallels between the objectives of regulation of health professionals and the regulation of financial advice professionals.

Accuro commends the Ministry of Business, Innovation and Employment in undertaking this review and welcomes the opportunity to make this submission.

## **2 Discussion**

### **2.1 One registration**

Making it easy for the public to identify whom they can trust to give sound, independent financial advice is an important public protection measure.

There will always be good reasons why a regulatory framework needs to be complex but all drivers towards complexity must be tested against the need to deliver a 'product of regulation' that is fit for public consumption. If the outcome is a product that can only be understood by the financial professionals themselves or requires specialist legal interpretation, then it will be of limited use for its primary purpose.

Instead of attempting to define registration categories in response to types of financial products advised upon, registration should be based on those core things required of a professional financial advisor for them to be deemed a competent practitioner;

1. They have proof of competence – education, qualification, practise
2. They have integrity – clearance on police and business checks
3. They are subject to discipline – bound by code of ethics, under authority of peer review and some form of empowered expert body or regulatory review

The issue of different types of products requiring different levels of expertise should be dealt with as an internal professional and regulatory function rather than by way of outward expression of regulation. This would be analogous to medicine where there is just one registration; registered medical practitioner - even though no individual doctor is able to undertake or advice on all types of medical 'product' or 'service'. The public has the simple assurance that if they need medical advice and they consult a registered medical practitioner they can trust the advice they receive. The problem that not all medical practitioners are qualified to advise on every area of medical practice is managed via specified requirements to belong to relevant professional colleges or societies and to hold authority to practice only in specified scopes of practice. These broad controls are further refined by restrictions imposed by the medical code of practice.

Also congruent with the professional regulatory approach developed with health practitioners is our submission that the obligations and responsibilities of individual professionals must be located unambiguously at the individual practitioner level. This does not absolve businesses providing financial advice of all responsibility but the obligations upon an employer or consulting service must not erode the professional responsibilities of their individual employees or partners. Rather the employer and business obligations should be around engaging suitably qualified staff and supporting

all their individual practitioners to fulfill all their personal professional obligations.

## 2.2 Restricted use of title

The distinction between whether financial information is independent advice tailored to individual need or sales information is often unclear. It is unrealistic to expect the distinction can always be made clear but the current framework tends to blur the distinction rather than make it easier for consumers to identify when an advisor is acting independently in their best interests. This blurring arises for example when staff who are employed by a financial product provider to facilitate sales of their product are required to hold authority to provide independent advice. This can support an inference to be drawn by a consumer that while the customer has engaged with a particular provider they are receiving unbiased advice independent of the adviser's employer.

We agree it is essential that there are checks and balances on sales information but it is our submission that the assurance of the integrity of sales information and public protections against false or misleading sales practices is appropriately managed separate from measures to assure the integrity of financial advisory services.

The simplest way to make it clear to consumers that the person they are being advised by is not engaged in sales but is providing independent financial advice is by restricting the use of the term financial advisor only to persons determined by regulatory process to be competent, trustworthy, subject to independent review and engaged only in providing independent advice with clear duty of care to their clients.

## 2.3 Empower professional associations to investigate and discipline members

An important element of an effective professional regulatory regime is the presence of a body empowered with the authority to investigate and discipline members of the profession when there is complaint against their practice. This element was not explicitly included in Accuro's initial submission but was listed as one of the requirements for achieving the assurance of competence. It is explicitly discussed here in response to section 4.5 *Tools for ensuring compliance with the ethical and competency requirements*.

Currently a number of industry bodies have the capability to evaluate individual members against the professional practice standards they have established. In our view this capacity should be harnessed and industry associations should be supported with powers to investigate complaints and impose sanctions in the event evidence of failure to meet a standard is established. We recognise that not all the current industry bodies have this capacity and it would be necessary to have a fair and effective way of ensuring that industry bodies empowered in this way demonstrate they have this capability.

## **3 Contact**

For further discussion on any of the points raised in this submission please contact:

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This submission is made by Accuro to support the MBIE in the conduct of its review of the Financial Advisors Act. Accuro gives approval to MBIE to use this submission in whatever ways it considers may facilitate the aims of the review.

## 4 Attachment

### Responses to questions in options paper

## Chapter 3 – Barriers to achieving the outcomes

1. Do you agree with the barriers outlined in the Options Paper? If not, why not?  
Yes
2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.  
It should be assumed most people have little or no understanding of the potential value of financial products and services or what information they require to make decisions that will best serve their intentions.

## Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?  
Package 3: Distinguished sales and advice in the options paper goes furthest in making changes we consider are required to achieve the goals of the review.
4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?  
Enter text here.
5. Are there any other viable options? If so, please provide details.  
While package 3 goes furthest Accuro considers the goals of the review would best be achieved through a package of policy options that included only one registration category, restriction on the use of the title 'financial adviser' and empowerment of professional associations to investigate and discipline members.

### 4.1 Restrictions on who can provide certain advice

6. What implications would removing the distinction between class and personalised advice have on access to advice?  
Simplification will in general improve consumer access and this is an example where the benefits of simplification outweigh potential problems
7. Should high-risk services be restricted to certain advisers? Why or why not?  
No. It is preferable to ensure the regulatory regime and professional oversight provides assurance that advisers only advise on products and services they have demonstrated the particular competencies required.
8. Would requiring a client to 'opt-in' to being a wholesale investor have negative implications on advisers? If so, how could this be mitigated?  
Enter text here.

## 4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?  
Requirements should be the same and this will necessitate clear designation of personal professional liability to an adviser or advisers who are maintaining the platform
10. How, if at all, should requirements differ between traditional and online financial advice?  
They shouldn't
11. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?  
They should be sufficient

## 4.3 Ethical and client-care obligations

12. If the ethical obligation to put the consumers' interests first was extended, what would the right obligation be? How could this be monitored and enforced?  
All financial advisers should be bound by an agreed code of ethics. Existing codes should be unified and extended as may be needed to spell out in more detail what it means to put the consumer first. Professional associations should be engaged in detailing these obligations. Monitoring could be via professional associations including publicised public complaints process and regular adviser declarations.
13. What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?  
Anyone 'advising' only on which products to choose from a range provided by just one financial services provider is engaged in sales, regardless of any competencies they may have to provide financial advice. This should be made clear in the disclosure statement required. Beyond this relatively straightforward discrimination it becomes more difficult but through a combination of restrictions on use of title, codified obligations and disclosure statement requirements it should be possible to make it clear to consumers when they are receiving independent advice and when they are being encouraged to purchase a product.
14. If there was a ban or restriction on conflicted remuneration who and what should it cover?  
The principle objective must be to make it easier for more people to access good financial advice. There is a problem with the way some sales remuneration structures work but simply banning particular structures is unlikely, of itself, to improve achievement of the primary objective.

## 4.4 Competency obligations

15. How can competency requirements be designed to lift capability, without becoming an undue barrier to entry and continuation in the profession?  
Through engagement with the professional associations and recognising that competency requirements will restrict incompetent performers from continuation in the profession.
16. Should all advisers be subject to minimum entry requirements (Option 1)? What should those requirements include? If not, how should requirements differ for

different types of advisers?

Yes and also required to undertake ongoing training and demonstrate ongoing competence.

#### 4.5 Tools for ensuring compliance with the ethical and competency requirements

17. What are the benefits and costs of shifting to an entity licensing model whereby the business is accountable for meeting obligations (Option 1)? If some individual advisers are also licensed (Option 2), what specific obligations should these advisers be accountable for?

Simpler for provider entities but significantly weakens the basis of personal professional accountability

18. What suggestions do you have for the roles of different industry and regulatory bodies?

Professional financial adviser associations should be empowered to investigate complaints, discipline members and evaluate competency to practise.

#### 4.6 Disclosure

19. What do you think is the most effective way to disclose information to consumers (e.g. written, verbal, online) to help them make more effective decisions?

Written, including on-line

20. Would a common disclosure document for all advisers work in practice?

Yes

21. How could remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?

Disclosure must make it clear if the adviser will receive different benefits depending on the product choices made by the consumer and if this is the case the nature of any benefit and a reasonable estimate of the level of the benefit. This could be presented as an approximate percentage of the annual cost to the consumer of the products they choose.

#### 4.7 Dispute resolution

22. Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?

Enter text here.

23. Assuming that the multiple scheme model is retained, should there be greater consistency between dispute resolution scheme rules and processes? If so, what particular elements should be consistent?

Enter text here.

24. Should professional indemnity insurance apply to all financial service providers?

Enter text here.

#### 4.8 Finding an adviser

25. What is the best way to get information to consumers? Who is best placed to provide this information (e.g. Government, industry, consumer groups)?  
So long as all elements of the regulatory process are directed to the goal of making it easy for any reasonable, prudent consumer to discover how to identify reliable sources of financial advice then the actual media and sources used will not matter very much.
26. What terminology do you think would be more meaningful to consumers?  
Support removal of the term 'registered'. Standardise, simplify and restrict meaning of 'financial adviser'

#### 4.9 Other elements where no changes are proposed

##### **The definitions of 'financial adviser' and 'financial adviser service'**

27. Do you have any comments on the proposal to retain the current definitions of 'financial adviser' and 'financial adviser service'?  
Enter text here.

##### ***Exemptions from the application of the FA Act***

28. Are those currently exempt from the regime posing undue risk to consumers through the provision of financial advice in the normal course of their business? If possible, please provide evidence.  
Enter text here.

##### ***Territorial scope***

29. How can the FA Act better facilitate the provision of international financial advice to New Zealanders, without compromising consumer protection? Are there other changes that may be needed to aid this, beyond the technological options outlined in Chapter 4.2?  
[Click here to enter text.](#)
30. How can we better facilitate the export of New Zealand financial advice?  
Enter text here.

##### ***The regulation of brokers and custodians***

31. Do you have any comments on the proposal to retain the current approach to regulating broking and custodial services?  
Enter text here.

#### Chapter 5 – Potential packages of options

32. What are the costs and benefits of the packages of options described in this chapter?  
Enter text here.
33. How effective is each package in addressing the barriers described in Chapter 3?  
Package three is most effective
34. What changes could be made to any of the packages to improve how its elements

work together?

Package three would be further enhanced by adding the empowerment of professional associations to evaluate ongoing competence, investigate complaints and discipline members.

35. Can you suggest any alternative packages of options that might work more effectively?  
Enter text here.

## Chapter 6 – Misuse of the Financial Service Providers Register

36. Do you agree with our assessment of the pros and cons of the options to overcome misuse of the FSPR?  
Enter text here.

37. What option or combination of options do you prefer and why? What are the costs and benefits?  
Enter text here.

38. What are the potential risks and unintended consequences of the options above? How could these be mitigated?  
Enter text here.

39. Would limiting public access to parts of the FSPR help reduce misuse?  
Enter text here.

## Demographics

1. Name:  
Accuro Health Insurance

2. Contact details:  
Redacted

3. Are you providing this submission:  
 As an individual  
 On behalf of an organisation

Accuro is a not for profit industrial and provident society licensed by the Reserve Bank to provide health insurance. Accuro has a membership of around 30,000

4. Please select if your submission contains confidential information:

I would like my submission (or specified parts of my submission) to be kept confidential, and attach my reasons for this for consideration by MBIE.

Reason: Enter text here.