AMP Submission on
Options Paper: Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration And Dispute Resolution) Act 2008

We note that the options presented in the Options Paper are intricately connected and a decision made in respect of one option may result in another option becoming unfavourable or unworkable. AMP's submissions are primarily based on a combination of options (proposed Package 3A) that would sit most closely with Package 3. AMP's proposed Package 3A is set out at question 5 below.

Chapter 3 – Barriers to achieving the outcomes

1. **Do you agree with the barriers outlined in the Options Paper? If not, why not?**

   Yes. We agree with the barriers set out in the paper. With respect to DIMS we believe very few individual advisers are appropriately qualified to provide a truly personalised DIMS service, as that is currently defined in the legislation so it is appropriate that the pool for this service is small in the current legislative environment.

   With respect to conflicts of interest, we are not convinced, from conduct we have seen that the existence of the duty is sufficient to mitigate this conflict, and more direct action is required. That is, we do not consider that "Churn" behaviour is limited to the RFA population, which suggests that the imposition of a duty will not serve to correct this conduct. We also observe that conflicts of interest are more concerning than consumers not understanding limitations, as conflicts are more injurious to consumers.

   We agree with the other miscellaneous barriers mentioned in the Options Paper e.g. terminology is a barrier, for instance the use of the word "broker" for the vast majority of people usually means a mortgage broker or insurance broker but the Act's definition causes confusion to the public and Advisers alike.

   We note that all of the barriers need to be overcome. If only some of the barriers are cured, the result could be to compound current issues.

2. **Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.**

   Perhaps a subset of the barrier "certain types of advice aren't being provided" is that in some circumstances clients consider they are getting advice, when in reality that client is simply being sold to. This issue is not flagged in the barriers, however we consider it is a substantial issue as it impacts on the credibility of the industry, and its participants, when a "sale" is being dressed up as "Advice".

   We agree with the barrier concerning consumers finding it hard to know where to seek advice. We would add to that, that consumers do not understand the restrictions placed on the person advising them. This in effect means that consumers may not understand or realise what they are missing out on e.g. a full advice process. As an extension of that, a further barrier not addressed by the Options Paper is investor capability. Accessibility to financial advice does not equate to investor capability.

   While not a barrier as such, we also have concerns that the barriers (refer page

18 of the paper) of disclosure requirements are being overplayed/relied on. Written disclosure is of little interest to most consumers so the requirement to add more paperwork is not a cure-all.

Chapter 4 – Discrete elements

3. **Which options will be most effective in achieving the desired outcomes and why?**

   The options comprising Package 3 would be the preferable options if one of the three proposed packages is adopted without any changes. However, AMP submits that Package 3 is refined to Package '3A', which would produce an optimal result. Please refer to Question 5 below.

4. **What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?**

   [AMP not providing response]

5. **Are there any other viable options? If so, please provide details.**

   AMP proposes Package '3A' as a viable solution. Please refer to the separate diagram and summary attached as a Schedule to this submission.

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?**

   We consider that this would increase access to advice that was appropriate to the particular client's individual needs. We believe it would remove concerns that exist that advisers are crossing regulatory thresholds when providing advice on a discrete needs basis or in respect of a particular issue. In our view there would likely be an increase in (what is now known as personalised) advice being provided without a full client needs analysis being performed. Provided the advisory service matched the client's needs we consider that this is appropriate. However, we acknowledge that for any first time client it may still be appropriate for a full analysis to be performed.

   On subsequent servicing we think a less fulsome approach is appropriate. We also note, it would be necessary for there to be a commensurate increase in adviser competence if this were to be coupled with a removal of product distinctions.

Adoption of a sales versus advice model would result in consumers no longer thinking that they were receiving advice when getting a sale (with appropriate disclosure).

7. **Should high-risk services be restricted to certain advisers? Why or why not?**

No. We consider that this would perpetuate the problems existing in the current regime and that this would result in category 1/category 2 issues under a different guise. We believe that the complexity of the customer's needs, rather than product categorisation, should determine the scope of the customer engagement. In our experience it is not the products themselves that create the complexity but the client's needs. A product that is low risk for one client might be very high risk for another. Who is able to identify what is a complex product and what's not?

All advisers should be appropriately qualified to give advice, and limited to giving advice on those products and services on which they are competent.

While AMP does not support restriction of high risk services to certain advisers, AMP submits that if that approach is adopted, it should be based on the risk to the customer and not a rigid product-based standpoint. Eg. the sale of complex commercial general insurance or income protection is much riskier to a customer than a personalised KiwiSaver sale, yet under the current regime the latter is considered Category 1 and needing much higher levels of adviser education/status. Such absurd anomalies should be a priority for changes to the FAA regime.

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?**

AMP's current approach is to require all customers to be treated as retail and have those protections conferred. We consider that it is important that if protections are not to apply to a category of person that they are made fully aware of this. Whilst it would be an additional obligation on an adviser to require clients to opt into this category we consider that this is appropriate, and would pose very few problems for advisers.

It is important to remember that a large account balance in financial terms does not necessarily indicate a wholesale investor.

4.2 Advice through technological channels

9. **What ethical and other entry requirements should apply to advice platforms?**

   We support the concept of robo-advice. AMP submits that only entities should be able to provide robo-advice.

   We note that the FMCA legislation has recently addressed the concept of platforms providing retail investment offerings in the crowd funding and peer to peer space. This might provide an appropriate starting point to consider requirements for advice platforms.

   At a minimum directors must meet standards of good character and we believe there must be a local presence (of the directors, and the corporate running the site) to enable the site to be appropriately within the jurisdictional reach of the FMA. AMP submits that there must be appropriate capital that is available to address any advice failure by the platform.

   The capability of the licensed entity providing the robo-advice platform must be considered. The licensed entity must have the capability to assess whether the platform is giving correct advice, whether through a QA process or otherwise.

   The platform should be subject to the same ethical advice standards as natural person advisers. As part of licensing the provider will need to be able to demonstrate its operational capabilities to ensure that the advice provided is suitable, with appropriate audit processes in place (to test algorithms etc). The operational capabilities should form part of the licensing and a part of the ongoing monitoring.

   While the Options paper has called for submissions on advice in respect of robo-advice sites, there is clear link between robo-advice and the sale of products. With respect to the sale of product from robo-advice sites, AMP submits that there needs to be safeguards and sufficient controls in place over the providers and products that are connected to any robo-advice sites.

10. **How, if at all, should requirements differ between traditional and online financial advice?**

    The scale of a robo advice platform and its ability to be accessed by high numbers means that it must be subject to greater capital requirements.

    We do not consider that there is a need for the platform to direct the customer to a natural person.

11. **Are the options suggested in this chapter sufficient to enable innovation in the**

adviser industry? What other changes might need to be made?

Any regulation around technological channels should not be so specific so as to restrict or prevent innovation. For example, we submit that the law should not require providers to give consumers the option to speak to a person qualified to provide advice to discuss their investment needs, but rather questions such as these should be answered by the market (not by law).

AMP submits that it would make sense for regulation of technological channels to be dealt with in sub-ordinate legislation.

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?**

We support an obligation to put the consumer interests first. We consider this is an appropriate and suitable obligation for any person providing advice. To this end we would support extension of the Code of Conduct applicable to AFAs being extended across any person "authorised/licensed" to provide advice (including extending ethical obligations to any robo-advice provider). We consider it important to leverage those aspects of the existing regime that are understood by those persons subjected to them. We do not support an extension to a "best interests" duty. We consider that in an environment where advisers are generally limited in the products they can provide to meet a client's needs that this is impractical. We note that Australia has had significant difficulties implementing this duty. In our view it is more important that the client is advised what products the adviser is limited to providing, and that the adviser puts the clients' interests ahead of their own. In that regard then the adviser's obligation would be to clearly disclose the limits applicable to the products he/she can advise upon so the client understands that the adviser is not selecting from an unlimited product/service set. The adviser then must ensure that the client's interests are put first in selecting the products/services to meet the client's needs.

We consider that a suitability duty is appropriate in the context of "sales". This should be considered together with our suggestion of a bright line test beyond which sales are not permitted without advice. We also believe that there should be an obligation to act with integrity. These could be encapsulated within a code specific to salespeople. In the context of financial services it is plainly unacceptable for a person to be sold a product that is not suitable to his/her needs. The duties need to reflect that significant gap in knowledge and power between the client and the sales person. Even where a person knows they are dealing with a sales person there is an implicit degree of reliance that is placed on that person's judgement that must be acknowledged in their obligations to the customer. Importantly we consider that there must be some

transactions that are reserved for “advisers” and not appropriate for “sales”. To that end we consider any product switch or replacement transaction requires advice as it alters the consumers current protections.

We recommend imposing an obligation to include transparent disclosure about what product set the adviser is selling, which product providers the adviser has arrangements with, and detail around which product providers the adviser actually placed business with. For example, whilst an adviser may have available to him or her a variety of providers products, the adviser may have only sold one of those provider’s products. This will assist the consumer to understand the extent of an adviser’s bias or conflicts from particular providers they deal with.

An obligation should be imposed to disclose all remuneration that the adviser might earn from that particular transaction – not at a generic level.

How could this be monitored and enforced?

Guidance could be provided as to what ‘put the consumer’s interest first’ means, using the existing Code of Conduct as the starting point. More is required than the current duty – there should be a demonstration to the customer of how this is being discharged. To that end AMP considers that there should be template disclosure (akin to the comparability the PDS regime is designed to achieve), that transparently discloses the products/services the adviser is able to advise upon – to better guard against unmanaged conflicts we consider that if the adviser has a range of products he/she advises upon the disclosure should detail the proportion of revenue derived from those products. Any product bias would then be apparent allowing the consumer to inquire into this.

AMP supports more transparent and complete disclosure of the remuneration derived from a particular transaction as this would assist in providing transparency to the consumer, enabling more informed inquiry as to how his or her interests are being met. This should include disclosure of all remuneration that is directly or indirectly paid to the adviser as a consequence of that transaction. A value must therefore be attributed to any soft commissions that are payable or any bonus payable based on volumes. In our view if an adviser is unable to quantify the commission earned such a commission should not be paid. To this end disclosure that the adviser might be eligible for an off shore trip would not be sufficient. Additionally it provides a more fact based point of inquiry for FMA to assess whether conflicts have been appropriately managed.

Guidelines would need to be provided as to what ‘deemed suitable for the consumer’s needs’ means. For example, to what extent does the salesperson need to know the personal circumstances of the consumer in order to ensure

the suitability requirement is met? We note that FMA has recently provided guidance on this in the context of licensed derivative issuers and this might be a good starting point to define this duty.

AMP supports a model that imposes obligations on licensed entities for advisers aligned to it. Accordingly the entity would be responsible for monitoring accurate and transparent disclosure of its advisers and monitoring the actual advice given to ensure that this duty has been appropriately discharged. In our view this is about the customer's interests demonstrably being put ahead of the licensed entities and its advisers. At its heart this is about appropriate conflict management.

It would be useful if FMA could provide clear guidance as to its expectations of licensed entities monitoring arrangements to ensure a level playing field.

13. **What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?**

Consumers must be told upfront if they are receiving advice or a sales service only. They must be told that the person is only able to sell a limited range of products and that they get paid for doing it (where this is the case), see our further comments below in this respect.

The nomenclature attaching to the person providing the service must make it transparent what their "authorisation/designation" is. Titles cannot be used to confuse the consumer. In that respect an adviser cannot also be a sales person.

What obligations should salespeople have?

Please refer to our comments above concerning ethical obligations. In addition the following obligations would be appropriate:

- Salespeople should have the obligation to notify customers that advice is available through an adviser i.e. that the salesperson is not offering any guidance.

- Obligation to explain the difference between advice and sales so the consumer knows what they are missing out on.

- They should have an obligation to determine the suitability of the products they are selling and act with integrity.

- They should have an obligation to disclose how they are paid, in a way that

can be unitized and disclosed.

In addition to the above, we consider that there should be a clear definition of what constitutes 'execution only'/'no advice'.

14. **If there was a ban or restriction on conflicted remuneration who and what should it cover?**

In our view the restrictions should apply equally to advisers and salespeople.

Whilst we support some commission control, e.g. removal of soft commissions and volume aggregation and would support some regulation that would prohibit disproportionate initial commissions we accept that this position may not be widely supported. An alternative approach, and in the interests of ensuring conflicts of interests are appropriately managed, is to ensure that advisers must be able to disclose their remuneration to a precise dollar amount. If remuneration cannot be explicitly quantified to a dollar amount then it should be prohibited eg. If an adviser is to receive an offshore trip after reaching a certain threshold of sales, it would be very difficult to attribute that benefit to any one specific sale and to quantify an exact amount – therefore would be prohibited.

AMP submits that there should be a balance of interest between remuneration paid and client benefit eg If an adviser gets $5,000 and the customer only saves $10, then this should be clear in the disclosure.

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?**

AMP considers that some transitional period should be permitted to enable competency requirements to be met by existing industry participants over a reasonable period of time. These requirements should be designed to be attained whilst the adviser is working in a full time role. It is appropriate that the advice profession has a barrier to entry to ensure that those entrusted with advising on the financial futures and financial wellbeing of NZ consumers are appropriately skilled and competent.

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. AMP supports competency standards for all advisers. We do not consider that the competency requirements should be different for different types of advisers.

    All advisers should be required to meet core minimum requirements (covering such things as demonstrating understanding of the advice process, understanding what amounts to a conflict and how these are to be managed, demonstrating understanding of legal/code/ethical requirements). The adviser would then need to have demonstrated competency relevant to the adviser's scope of service eg knowledge of risk products, insurance advice, wealth etc. Minimum good character obligations should apply as an entry requirement. Furthermore there must be ongoing training to help maintain competence, gain new knowledge and skills, and keep up to date with relevant developments (akin to current AFA requirement Code of Professional Conduct).

    All advisers should have the ability to demonstrate the skill and knowledge in the products that they are advising on.

    We note our comments above that salespeople also need to be competent.

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?**

    AMP supports the shift to an entity licensing model, with core minimum requirements for individual advisers under each Licensed Entity.

    In our view this model makes best use of scarce resources. Only those Licensed Entities with demonstrated capacity to take responsibility, with a supervisory role, for individuals within that business providing advice would be eligible to be licensed. We note that the legislative environment in NZ has increasingly moved to an entity licensing model with the entity responsible for the conduct of its business, and the people within it. At the time the FAA came into effect this wasn't the case and the QFE was the closest thing to what is now commonplace entity licensing. The entity licensing model is thus consistent with the changing legislative landscape, and also with the financial adviser regulation model in Australia where the FSL holder is accountable for advisers within its business, even though the standards for those advisers is legislatively

prescribed. The existing model also provides overlap where a QFE is responsible for its nominated rep AFAs and yet FMA also has a direct regulatory role in relation to them. This is not an efficient use of resources. Any model that retains some individual licensing needs to address this inefficiency.

In an environment with the FMA has an increased regulatory scope, and no additional funding, FMA simply has too few resources to effectively monitor licensed individuals, focusing its resources on a smaller number of entities offers better value.

It is essential that core minimum requirements are set out in order that there would not be an arbitrage between the level of service a consumer receives from different sizes of adviser businesses eg between a large organisation (eg a QFE under the current regime) versus a small adviser business or sole trader. There must be a consistent application of standards across all licensed entities.

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

As previously submitted, as a general comment, we consider there is room for improvement in the way bodies, such as the Code Committee, engage with industry. We support initiatives that would promote better industry/government engagement. The government and industry groups need to revisit how they can work together more effectively (e.g. establishment of an industry group that the government/regulator can work with on issues such as innovation, advice evolution, Code standards, consumer interests etc). In this respect the fragmented nature of the professional bodies currently serving the advice industry has probably hindered rather than assisted engagement.

We do not believe the FADC has delivered on the intended policy outcomes at the time it was set up, being compared as it was to the NZMDT at that time. Very few cases have been sent to FADC indicating that the process to get before the FADC is too complex or difficult, and in consequence very little meaningful interpretative precedent is available and advisers falling foul of standards have not been held to account. We consider a tribunal that operates without many of the formalities and processes of a court is required to deal with low level breaches and the FADC needs to be revisited in light of this.

Whilst we support the roles that industry bodies can play in terms of offering support and guidance to their members, providing education and training and assisting to lift industry standards we do not consider that there should be a formal role for these bodies.

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?**

    All advice disclosure needs to be simplified and meaningful to the consumer. The disclosure documents today are too lengthy and contain too much boiler plate information. We would support mandating maximum document length.

    Prescribed format of disclosure documents allows consumers to compare between providers more easily.

    Written disclosure (hard copy or online) should be mandated to allow for easier monitoring of compliance (difficult to prove verbal disclosure where advice given face-to-face).

    Remuneration disclosure (specific to the advice being provided by the adviser) should be captured in the Statement of Advice (rather than a separate remuneration disclosure).

    We consider current disclosure focuses on information not meaningful to the customer. Some of this content could be moved to an online mechanism with a shorter document that provides key information.

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

    We believe that the same disclosure requirements should apply to all advisers, and needs to be appropriate for the type of service being provided by the adviser.

    Capturing the remuneration disclosure in the Statement of Advice (rather than in a common disclosure statement or a separate remuneration disclosure) would give greater flexibility and allow a common disclosure document to work in practice.

    Disclosure also needs to be mandated for all sales arrangements to ensure that the consumer understands what service they are receiving from the salesperson. This would comprise an initial verbal disclosure by the salesperson advising the customer of the limitations of the sales service being provided by that salesperson and how the salesperson may be compensated for the sale, followed up by written disclosure.

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

    As set out in question 14, advisers must be able to disclose their remuneration to a precise dollar amount. If a specific dollar amount is unable to be calculated then the commission should be prohibited.

4.7 Dispute resolution

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

    [AMP not providing response]

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?**

    In order for consumers to have confidence in the dispute resolution regime, the schemes must have consistent (prescribed) operating standards/requirements. Because the consumer doesn't get to choose which dispute resolution scheme to use, they need to have confidence that the outcome will be the same regardless of the dispute resolution scheme venue. We cannot have differing thresholds, as this encourages race to the bottom (e.g. encourages participants to join the dispute resolution scheme with the lowest claim limit).

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

    Yes. Consideration should be given to the minimum requirements based on the size, scale and scope of the financial service provider.

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)?**

    [AMP not providing response]

26. **What terminology do you think would be more meaningful to consumers?**

    Adviser, Salesperson, Financial Advice, Sale

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'?**

    [AMP not providing response]

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.**

    [AMP not providing response]

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?**

    [AMP not providing response]

30. **How can we better facilitate the export of New Zealand financial advice?**

    [AMP not providing response]

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?**

    [AMP not providing response]

Chapter 5 – Potential packages of options

32. **What are the costs and benefits of the packages of options described in this chapter?**

    The benefits are outlined throughout our submission above and in our proposed Package 3A as set out in Question 5 and the Schedule to this submission.

33. **How effective is each package in addressing the barriers described in Chapter 3?**

    The options comprising Package 3 would be the preferable options if one of the three proposed packages is adopted without any changes. However, AMP submits that Package 3 is refined to Package '3A', which would produce an optimal result. Please refer to Question 5 above and the Schedule to this submission.

34. **What changes could be made to any of the packages to improve how its elements work together?**

    Please refer to Question 5 above and our proposed Package 3A as set out in the Schedule to this submission.

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

    Please refer to Question 5 above and our proposed Package 3A as set out in the Schedule to this submission.

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?**

    [AMP not providing response]

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

    [AMP not providing response]

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

    [AMP not providing response]

39. **Would limiting public access to parts of the FSPR help reduce misuse?**

    [AMP not providing response]

Demographics

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

   500+

4. **Please select if your submission contains confidential information:**

AMP does not require this submission to
be kept confidential

Schedule

AMP's Proposed Package 3A (distinction between sales and advice expanded)

Overview

Package 3A has the same baseline as the Options Paper's Package 3, but with a number of adjustments, which have been outlined in AMP's submission. Whilst we have responded to the specific questions in the Options Paper, we have also proposed this Package 3A to you as it demonstrates how our feedback works as a cohesive whole.

Package 3A maintains a sales versus advice distinction at its core. However, it requires "salespeople" to meet minimum education standards, including the requirement to understand the distinction between sales and advice. The "own" products terminology is expanded to be clear that it includes the licensed entity's approved financial products. The practical distinction between Sales and Advice, and the potential harm of non-customer-first sales being made is mitigated by including critical criteria that limit the extent of sales:

(1) No sales on replacement business;

(2) limiting sales to transactions that satisfy a bright line test, beyond which the consumer would need to be advised. A specified percentage of either the customer's income or assets could be set as the bright line threshold. We have not identified that threshold for the purposes of this submission; and

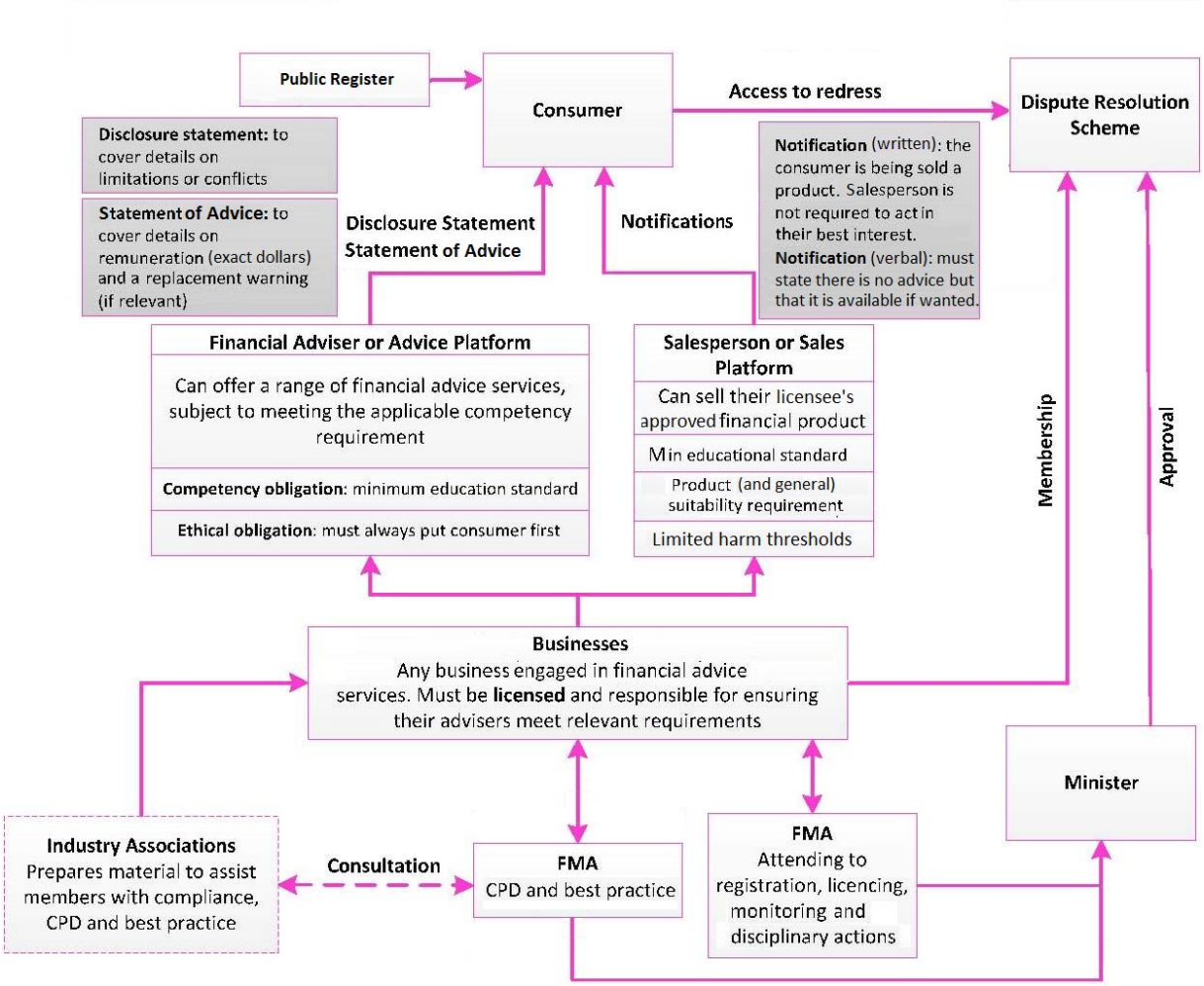
(3) an individual being restricted to being **either** an adviser or a salesperson.

The licensing regime is also made clearer by specifying that the only licensees are businesses. Sole traders could still exist (indirectly), however, they would have to operate as an entity with one adviser working for the entity.

This Package also distinguishes the role of Industry associations. These bodies have a valuable role in providing members assistance with compliance, training, and best practice, however, we consider that they should not be involved in registration, licensing, or monitoring in a consultative role with the FMA; those activities should be directly conducted without interjection from industry associations.

The Disclosure statement would be shorter than under Package 3 because replacement warnings and remuneration disclosure would be provided in the Statement of Advice. This is preferable as there is more likelihood of customers reading and appreciating these critical factors in what they are being recommended rather than in a compliance document.

Figure 1: Package 3A



Summary of Package 3A

Types of Advice Services

Like Package 3, there would be one type of financial advice service. The current regulatory distinction between "class" and "personalised" advice would not exist. Rather, all advisers would be required to provide a service that matched the consumer's request – for a discrete matter the adviser would use transactional advice and for a full financial plan, personalised advice.

Execution-only services (where a consumer has requested a specific product and does not wish to receive advice) are not advice services and are therefore outside of scope. However, we consider that these situations should be rare and consideration be given to renaming this type of transaction "No advice" is warranted. This is because execution-only has been misunderstood historically and utilised following what is, in reality, advice/an advice process.

Types of advisers

An Adviser potentially would be able to offer a full range of financial advice services, from advice on a discrete matter to full financial plans, subject to providing advice within their area(s) of competence. A financial adviser would not be permitted to use the sales process/notification method.

A Salesperson would be required to provide consumers with prescribed notices (written and verbal) and would be subject to an obligation to ensure the product being sold is suitable for the consumer. Salespeople could only sell financial products approved by their licensed entity. They would also be prohibited from making sales where the customer already has that type of financial product. This requires a wide definition of replacement business. Further consumer protections would also be applied: transactions would need to be worth no more than the specified percentage bright line threshold of a customer's income or net assets. These protections would enable, for example, sales of KiwiSaver, simple life insurance, or energy company IPOs to most new customers (except those with very little income or minimal assets) who did not have the product. It would prevent sales where the transaction has significant potential to cause substantial customer loss. There may be a limited number of exceptions at a product level e.g. domestic general insurance.

Barriers

Package 3A, with the additional protections added to the Salesperson role especially, fulfils the desire to reduce barriers whilst ensuring greater consumer protection than baseline Package 3. Along with distinct disclosure differences and the absolute distinction between roles (i.e. an individual could only be an adviser OR salesperson, but not both) should improve access to financial products and advice. Roboadvice, assured by the licensee, should also reduce barriers.

Types of customer

Under Package 3A an 'opt-in' requirement to be treated as a wholesale customer would be required. Practically, this is not a significant obligation on advisers and the potential for harm is high if customers are inappropriately classed as wholesale/eligible investors. Such

an approach is consistent with other risk-based consumer protections aspects of Package 3A, e.g. limitations on the extent of sales versus what can be advised, and is more comprehensive than the current arbitrary product-focused approach of having Category 1 and 2 products.

Types of products

There would be no distinction between product types. Competency requirements would be demanded just as they are for specialists in other fields versus general practitioners (e.g. in the medical profession). The expectation that the advisers and salespeople of licensees are competent to advise on or sell the products that they do is underpinned by competency requirements.

Competency and ethical requirements

All advisers would be subject to a minimum standard competency requirement to ensure they are competent to provide their services. Advisers would be subject to an obligation to put consumers interests first.

Similarly, salespeople would be subject to a minimum standard competency requirement to ensure they are competent. This would include a requirement to have completed a course teaching the fundamental differences and restrictions on sales versus advice.

Whilst the model currently proposes a suitability requirement, further consideration should be given as to the consumer protections conferred by the bright line test and the extent to which the bright line test removes the need for a suitability obligation.

AMP supports a CPD regime consistent with current AFA obligations.

Licensing model

All entities (and only entities) would be licensed by the FMA. There would be a strong focus on engagement with the FMA to ensure each entity had the right processes in place – given the services they provide – to comply with the ethical and competency requirements.

The relative lack of complexity of smaller entities should ensure that they can be licensed in a straightforward manner. If some smaller entities struggle to meet licensing requirements it is appropriate that the advisers/salespeople involved find another entity under which to operate.

Obligations imposed on a licensed entity (for its advisers) are preferable to the two-tier/duplication today where AFAs are monitored by both the FMA and their QFE (where an AFA is a nominated representative). This is another area that is standardised in Package 3A and makes more efficient use of resources.

Roboadvice

This would be available, assured by the licensee, and monitored as carefully as advice provided by natural person advisers is today. Access to a natural person adviser would not be mandatory, however, those entities providing such a service may be naturally more attractive to consumers.

Roles of regulatory and industry associations

Industry associations already provide best practice guidance to their members. This is appropriate and should continue. However, licensing, meeting regulatory obligations, monitoring and discipline should occur directly between the FMA and the licensed entity. A third party should not need to intercede in those processes – licensed entities should be sufficiently competent in those areas.

Package 3 suggests Associations could work with the FMA to produce guidance for their members; that is appropriate but only where the scope of that is limited as outlined.

Disclosure

This would be refined to ensure more succinct documentation and be consistent for all advisers (versus the AFA, RFA, and QFE adviser distinctions today). Remuneration disclosure would be captured in the statement of advice (for advisers) and exact dollar earnings would need to be disclosed. That is, no unspecified statements or percentages would be permitted because that is opaque to the end consumer. For salespeople, commission would also need to be disclosed, which may be via the notifications or as part of the sales materials, but again, it would need to be precise/dollar specific.

For replacement business a warning would be required in the statement of advice. Further, the statement of advice should be explicit in terms of the financial savings (or additional costs) versus the true dollar remuneration received by the adviser. These would be stated alongside each other to ensure clear indicators of the potential conflicts of interest from remuneration to the adviser versus financial benefit to the customer.

Public Register

All advisers and salespeople would be required to be listed on a public register similar to the current fspr.govt.nz and it would require that the competencies and qualifications of that adviser/salesperson be appropriately displayed.