# Fidelity Life submission on the Options Paper – Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008

Fidelity Life Assurance Company Limited (**Fidelity Life**) welcomes the opportunity to submit on the paper released by the Ministry of Business Innovation and Employment setting out options and packages for changes to the Financial Advisers Act 2008[1] and Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**Options Paper**).

**Financial advice - independent, competent and ethical**

Fidelity Life supports a model where consumers are readily able to obtain independent financial advice through competent and ethical financial advisers. Financial advice involves putting the customer's interests first and offering consumers a range of products from different providers. Independent financial advice has significant benefits for the financial health and well-being of New Zealanders. Financial advisers play an important role in the promotion and improvement of financial literacy of consumers.

Research by Massey University academics found that New Zealanders are under-insured by about $650 billion. The underinsurance problem is particularly acute for income protection insurance.[2] Because insurance is used as part of the process of managing a consumer's financial risk, insufficient insurance means there is insufficient protection for a consumer if an adverse personal event occurs (such as death, illness or disability). If underinsurance is to be addressed then consumers need to value and recognise that they need financial advice. Furthermore, a thriving financial adviser channel is essential to ensure that consumers can access financial advice.

## Chapter 3 – Barriers to achieving the outcomes

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

   Yes, but please see answer to question 2 below.

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

   A barrier is missing: Consumers often do not value financial advice or recognise when they should seek it. This barrier must be recognised in order to achieve the Issue Paper's[3] goal of promoting public confidence in the professionalism of financial advisers.

   Consumers need to be educated on the value of financial advice and how it can improve their financial health and well-being. Value comes from financial advice that is tailored to the person

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[1] Financial Advisers Act 2008 is referred to as the Financial Advisers Act throughout this submission.
[2] "Exploring Underinsurance in New Zealand" (2013) Massey University and Financial Services Council available at http://fsc.org.nz/site/fsc/files/Insurance%20Gap%20Files%202013/Massey-FSCReportFinal-20%207%2012.pdf
[3] Issues Paper: Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 released 20 May 2015.

and some or all of their circumstances. Fidelity Life supports the drive to educate consumers on the value of advice. Helping consumers understand the value of financial advice will ameliorate the problem of underinsurance, encourage more financial advisers to join the profession and so enable financial advice to be more readily available.

## Chapter 4 – Discrete elements

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

Fidelity Life's response to the specific questions in the review follows.

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

MBIE has indicated that entity licensing is a preferred option. We have seen no evidence that this will improve consumer outcomes, but entity licencing will increase compliance costs. The QFE regime, which is a kind of entity licencing, was designed to allow organisations to act as the front line regulator for their employees and others who sell their products. While it is suitable for a distributor that is aligned to a manufacturer, such as a financial institution selling its own products through a branch, it is not suitable for independent distributors who are not controlled, owned or supervised by the product manufacturer. These costs would impose a significant burden on distributors who want to provide independent financial advice.

The details of entity licensing are not fleshed out well in the Options Paper and we have a number of concerns:

- What empirical work has been done to establish the costs and benefits of entity licensing?
- Which business must be licenced: any financial service provider, dealer groups, adviser businesses? There is potential for significant duplication of regulation and costs. Many market participants already hold multiple licences. Fidelity Life is licensed as an insurer by the Reserve Bank.
- Why is this necessary if individual financial advisers are to be required to meet higher competency and ethical standards?
- The FMA already has wide powers to regulate market participants and to request information under the Financial Markets Conduct Act 2013 and Financial Authorities Act 2011.
- The QFE regime allows organisations to act as the front line regulator for nominated representatives and employees who sell financial products on behalf of the QFE. The delegation of authority from the FMA to the QFE requires the FMA to investigate and test the QFE's processes and controls on a regular basis. How are the costs of licencing justifiable for entities that do not want to act as frontline regulator?
- On what basis will the cost of multiple layers of licences meet the goals of this review or the needs of consumers?

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

We recommend that this review seek to promote financial advisers by educating consumers on the value of financial advice. Helping consumers understand the value of financial advice will ameliorate the problem of underinsurance, encourage more financial advisers to join the profession and so enable financial advice to be more readily available.

## Options paper 4.1 - Restrictions on who can provide certain advice

Fidelity Life prefers:

Option 1 - Remove the distinction between class and personalised advice

Option 2 - Remove any distinction based on product category

**6. What implications would removing the distinction between class and personalised advice have on access to advice?**

The distinction between class and personalised advice is artificial and difficult for consumers to understand. The definition relies on factors that the financial adviser cannot control. A consumer's reasonable expectation of the service decides whether a personalised financial advice is provided.

Financial advisers should be able to respond to the needs of their customers without being forced down artificial channels such as class or personalised advice. We recommend that changes to the regime are made to allow financial advisers to be more responsive to consumers' needs, with an appropriate regulatory burden.

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

Financial advisers should only provide financial adviser services that they are competent to provide. Maintaining an artificial list of "risky" products fails to recognise that the risk of a product depends primarily on the consumer – not the type of product. Whether a service is high-risk (or low-risk) depends on the consumer's circumstances, for example their income, investments, insurance products, risk tolerance, age, gender, short and long term goals. The current legislative framework for distinguishing between categories of products should be removed.

We are concerned that the introduction of a new designation of "Expert Financial Adviser" would create more confusion for consumers. A financial adviser should only provide financial advice where they are competent to provide the service. Lifting the competence, ethical standards and professionalism of the whole industry is the way to ensure the proper approach to high-risk services.

**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?**

Fidelity Life has no comment on this question.

## Options paper 4.2 - Advice through technological channels

Fidelity Life prefers

Option 1 - Allow financial advice to be provided online by a licensed entity.

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

We understand that by "advice platforms" you mean "robo-advice" platforms, which are online financial advice services that provide automated, algorithm-based advice without the use of human financial advisers. Advice platforms should be subject to the same obligations and requirements as human financial advisers. In that respect the legislation should be technology neutral.

However, the legislation should recognize the additional risks to consumers in robo-advice, particularly if the provider of the advice is located overseas. For that reason, all providers of robo-advice platforms should be licenced by the FMA. The licencing requirements should include fit and proper requirements for senior managers and directors and that the entity has in place appropriate financial resources and insurance.

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

Please see answer to question 9 above.

**11. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?**

The focus should be on the outcomes for consumers and a uniform playing field for all providers of financial advice. Ensuring that consumers have ready access to advice from financial advisers must also be taken into account.

## Options paper 4.3 - Ethical and client-care obligations

Fidelity Life prefers:

Option 1 - Extend ethical requirements to all financial advice services

Option 2 - Clearly distinguish between sales and advice.

Option 3 - Suitability requirement for sales of financial products

**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?**

Fidelity Life supports the proposal that all financial advisers must put the consumers' interests first. We believe this is what consumers think financial advice is.

Putting the consumers' interests first does not mean acting in the "best interests" of the consumer. Acting in the "best interests" of the consumer is too wide. Consumers want flexibility from their financial adviser and it should be possible for a financial adviser to respond to that. There should be no requirement to do a full "needs assessment" for the consumer and work out what is the best possible option – unless the consumer wants that level of support.

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

Fidelity Life recognises that from a consumer point of view there are challenges in distinguishing sales from advice. Fidelity Life supports a regime where consumers are able to obtain independent financial advice through competent and ethical financial advisers. Financial advice involves putting the customer's interests first and offering consumers a real range of products from different providers. Such advice has significant benefits for the financial health and well-being of New Zealanders. Financial advisers play an important role in the promotion and improvement of financial literacy of consumers.

While Fidelity Life supports moves to simplify the current regime, we submit that the regime must do more to distinguish between a financial adviser who deals with a number of financial service providers (an independent financial adviser) and a seller or employee who sells only their employer's products. It is misleading to consumers to describe the service that each provides as "financial advice". The Financial Advisers Act should recognise that independent financial advice has value and find ways of communicating that value to consumers.

We have however identified the following areas which need to be taken into account if sales are distinguished from advice. We ask that consideration be given to the following three risks:

*Potential for unregulated selling and mis-selling*

Financial products have different characteristics to other types of products. It may be many years after a consumer buys a financial product until he or she can assess whether they made a good or bad decision. For this reason, it is normal for regulation to provide more consumer protection for financial products than other products.

The Financial Markets Conduct Act contains fair dealing provisions that reflect the Fair Trading Act 1986. Are those standard protections adequate when financial products are sold without financial advice? Our view is that consumers will not be adequately protected. Either regulation or FMA guidance should be used to refine the fair dealing protection a consumer receives when buying a financial product without financial advice.

If there is a substantial compliance gap between an individual's responsibilities when providing advice or selling, there is a risk that selling may become unregulated. It could have the unintended consequence that access to advice is reduced while the number of unregulated sales people increases substantially. It is important that any regime ensures that there is adequate and appropriate recourse available to consumers where issues arise.

*Competition issues*

Consumers benefit from markets that are dynamic and efficient with the result that goods and services are provided at competitive prices. The impact of enabling sales without advice must be considered from a competition perspective. If changes to the legislation make it easier and cheaper for sales, what impact will this have on financial advisers?

*Damage to public confidence in the professionalism of financial advisers.*

If the regime allows for the sale of financial products without financial advice, consideration must be given to ways to promote public confidence in the professionalism of financial advice. Wider consideration should be applied to measures to encouraging New Zealanders to obtain independent financial advice.

*Sales distinguished from advice*

Key to the distinctions between a sale and financial advice:

- When providing financial advice the consumers' interests should always be put first.
- Financial advice may result in a sale, but the financial advice always comes first. A mechanism to differentiate sales and advice must be effective at the start of the interaction with the consumer, not at the end of the interaction. There should be also a mechanism to deal with a request for advice during the process.
- Salespeople should be separate from financial advisers. Financial advisers (or QFE advisers) should not provide sales without advice.

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

Fidelity Life makes no comment.

## Options paper 4.4 - Competency obligations

Fidelity Life prefers:

Option 1 - Minimum entry requirements

Option 2 - Create a stepped pathway to adviser roles

Option 3 - Require mandatory and structured CPD

**15. How can competency requirements be designed to lift capability, without becoming an undue barrier to entry and continuation in the profession?**

Competency requirements should have both generic requirements which apply to all financial advisers and also allow for specialisation into areas such as life insurance, general insurance, mortgage, investment etc.

Fidelity Life supports a Code of Conduct that applies to all financial advisers. This includes extending the minimum standards of competence, knowledge and skills required to provide financial adviser services (Code Standards 14 and 15) to all financial advisers. It is important that financial advisers only provide advice where they have competence, knowledge and skills to provide that service. Financial advisers must have knowledge of relevant legislative obligations (although we suggest an appropriate transition period in which registered financial advisers can obtain Unit Standard Set B or its equivalent).

*Transition*

The skills required to be a financial adviser are not well measured by examination alone. Experience and understanding of the customer can be more important than academic achievements. People seek financial advice from individuals they trust. Academic qualifications play only a part in that trust.

While we support academic qualifications for new-entrants to the industry, current RFAs must be supported and grandfathered to enable them to operate under any amended regime without complying with Code Standard 16. To lose the experience and skills of these financial advisers would significantly damage the outcomes sought by this review:

- It would be harder for consumers to access the advice and assistance they need;
- Consumers would have poorer financial outcomes as they could not access advice;
- There would be significantly increased compliance costs for all financial advisers who are currently registered;
- Public confidence in the professionalism of financial advisers would not increase: people currently seek advice from people they trust, not from the academically well-qualified.

We also submit that QFEs' obligations should be the same as other financial advisers where financial advice is provided.

**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?**

We agree that new entrants to the profession should meet minimum entry requirements. These requirements should include an understanding of the processes and the types of products that the financial adviser will use. If minimum entry requirements are mandated then the same standard should also apply to all employees and nominated representatives of QFEs.

Support and transition arrangements must be put in place for current registered financial advisers to ensure that these financial advisers do not leave the profession. To lose the experience and skills of these financial advisers would significantly damage the outcomes sought by this review:

- It would be harder for consumers to access the advice and assistance they need;
- Consumers would have poorer financial outcomes as they could not access advice;
- There would be significantly increased compliance costs for all financial advisers who are currently registered;
- Public confidence in the professionalism of financial advisers would not increase: people currently seek advice from people they trust, not necessarily from the academically well-qualified.

We also support continuing professional development being used to ensure that financial advisers are up to date with any product developments.

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

Fidelity Life prefers:

Option 1B – Greater role for industry bodies

Option 2 – Individual licensing

Option 2B – Code, Code Committee and Disciplinary Committee to support individual licensing

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?**

MBIE has indicated that entity licencing is a preferred option. Fidelity Life does not support this approach. We are concerned about the costs and effectiveness of the entity licencing proposal. Entity licencing will impose significant costs, but it is unclear how entity licencing will create more informed and confident consumers.

The details of entity licensing are not fleshed out well in the Options Paper and we have a number of concerns:

- What empirical work has been done to establish the costs and benefits of entity licensing?
- What impact would entity licencing have on the pool of available independent financial advisers?
- Which business must be licenced: any financial service provider, dealer groups, adviser businesses? There is potential for significant duplication of regulation and costs. Many market participants already hold multiple licences. Fidelity Life is licensed as an insurer by the Reserve Bank.
- Why is this necessary if the individual financial advisers are to be required to meet higher competency and ethical standards?
- The FMA already has wide powers to regulate market participants and to request information under the Financial Markets Conduct Act 2013 and Financial Authorities Act 2011.
- The QFE regime allows organisations to act as the front line regulator for nominated representative and employees who sell financial products on behalf of the QFE. The delegation of authority from the FMA to the QFE requires the FMA to investigate and test the QFE's processes and controls on a regular basis. On what basis will the cost of multiple layers of licences meet the goals of this review or the needs of consumers?

Fidelity Life proposes that work is carried out to establish the costs and benefits before progressing with the option of entity licencing.

The current regime in New Zealand has the potential to allow for the tracking of financial advisers and we urge caution in moving from a regime that places responsibility on individuals to a regime that solely places responsibility on entities.

It is essential that a barrier to continued operation is not created for financial advisers. Loss of financial advisers would reduce the availability of financial advice and do nothing to help close the underinsurance problem.

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

Good conduct comes through good culture. Culture cannot be imposed by a regulator but must be owned by a profession. The financial advice industry would benefit from having a single professional body to "co-regulate" with the FMA to boost the culture and professionalism of financial advisers.

Fidelity Life proposes that MBIE investigate establishing a single approved professional body for financial advisers. Consideration should be given to a regime where:

- Any financial adviser or entity that provides a financial adviser service must be a member of the professional body.
- The purpose of the professional body would be to set the professional and ethical standards of financial advisers in New Zealand, set the competence standards and continuing professional development requirements and promote the value of financial advice in the creation of better consumer outcomes.

In addition it is important that the cost of membership is not prohibitive for financial advisers. Loss of financial advisers would reduce the availability of financial advice and do nothing to help close the underinsurance problem.

## Options paper 4.6 – Disclosure

Fidelity Life prefers:

Option 1 - All advisers have the same disclosure requirements

Option 2 – More meaningful 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?**

Disclosure should be clear, concise and effective. Disclosure should provide material information in a succinct manner without excessive detail that could confuse consumers. Current disclosure documents for Authorised Financial Advisers are lengthy and at times too technical.

This review of the Financial Advisers Act 2008 should be used as an opportunity to streamline the disclosure required to consumers under various pieces of legislation. The requirements of the Insurance (Prudential Supervision) Act 2010 and the Financial Advisers Act 2008 are directly relevant to Fidelity Life's consumers, but wider consideration should be applied across the industry to find a solution for other relevant legislation.

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

Yes. A common disclosure document would include the information a consumer needs to make an informed decision and would provide a level playing field for all distribution channels. Consumers do not sufficiently engage with the current form of disclosure document, so a document that was clear, concise and comparable would be more effective.

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

Disclosure of remuneration should be clear, concise and effective.

## Options paper 4.7 Dispute resolution

Fidelity Life expresses no preference on the options proposed.

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

Fidelity Life has no evidence that this is the case.

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?**

Fidelity Life has no comment.

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

Yes.

## Options paper 4.8 – Finding an adviser

Fidelity Life expresses no preference on the options proposed.

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)?**

Helping consumers understand the value of financial advice will help to ameliorate the problem of underinsurance, encourage more financial advisers to join the profession and so enable financial advice to be more readily available.

The best way to inform the next generation of consumers is to make financial competency, planning and insurance as a core part of the curriculum in secondary schools.

Sorted.co.nz is a successful government funded website providing useful information for consumers, which is not product or provider specific. Ongoing media adverts are required to maintain internet traffic.

A portal for consumers on financial advisers could be helpful. Perhaps, links to financial adviser websites could be provided listing advisers living nearby using a rotation process similar to allocation of KiwiSaver default providers.

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

"Financial adviser" would be more meaningful to consumers. Consumers expect that anyone giving them financial advice, including anyone recommending that they purchase a financial product, will put their interests first and will be competent to provide that service. The regime should be amended to be in line with consumer expectations.

Different designations of financial advisers should be avoided because consumers do not understand what they mean. Similarly, different categories of products should be resisted, partly because consumers do not understand those categories, but also because the risk of a product is related to the impact it could have on a particular consumer, instead of a category set by legislation or a regulator.

## Options paper 4.9 –Other elements where no changes are proposed

Fidelity Life expresses no preference on the options proposed.

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

Fidelity Life makes no comment.

**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.**

Fidelity Life makes no comment.

**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?**

Fidelity Life makes no comment.

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

Fidelity Life makes no comment.

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

Fidelity Life makes no comment.

## Options paper chapter 5 – Potential packages of options

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

**Package 1** (improving consumer focus through minor change) has the least cost and the least benefit. Fidelity Life supports independent, competent and ethical financial advice. We agree that the requirement "to always put the consumer's interest first" should be extended to all financial advisers. However, Option 1 will do little to promote the importance of financial advice for consumers or improve financial literacy.

**Package 2** has more benefits and more cost. We support the requirement that all financial advisers be competent and put the consumer's interest first. We are concerned that insufficient work has been carried out to establish the benefits and costs of entity licencing. As currently proposed we are concerned that there is not a clearly identified purpose for the proposal. In addition, this package introduces more confusing terminology (Expert Financial Adviser). As with package 1, package 2, will do little to promote the importance of financial advice for consumers or improve financial literacy.

**Package 3** has the greatest benefits and the greatest cost. It also has the greatest risk. We set out in our answer to question 13 our concerns about distinguishing between sales and advice: mis-selling, competition and damage to the financial adviser profession.

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

Option 3 most effectively addresses the barriers described in Chapter 3 if it is amended to:

- Provide additional protections to consumers from mis-selling;
- Promote the importance and value of financial advice;
- Deal with any competition issues.

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

Entity licencing should be replaced by individual licencing.

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

Option 3 most effectively addresses the barriers described in Chapter 3 if it is amended to:

- Provide additional protections to consumers from mis-selling;
- Promote the importance and value of financial advice; and
- Deal with competition issues.

## Demographics

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3. Are you providing this submission:

   ☐As an individual

   ☒On behalf of an organisation