FinancialServicesCouncil.

growing and protecting the wealth of New Zealanders

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

23 February 2016

Introduction

The Financial Services Council (FSC) appreciates the opportunity to submit on Parts 1 and 2 of the Options Paper on the Review of the Financial Advisers Act 2008 because access to competent, effective financial advice is a major driver for the financial security and resilience of New Zealanders.

Who is the FSC and who does it represent?

The Financial Services sector is of comparable size to the Dairy Industry and consists of the banking, insurance and the investment management (including superannuation) industries. If you have a bank account, term deposit, life insurance or income protection insurance policy or a KiwiSaver account, it is likely that a FSC member provides it.

The FSC members are trusted by New Zealanders to manage their retirement savings, help them save for a first home deposit and to protect against the risk of premature death or extended illness. As well as providing products, FSC members also utilise agents and brokers to distribute those products. Many of those agents and brokers also provide financial advice. FSC members want trust and confidence in the industry to grow and therefore have a very direct interest in how advisers are educated and are regulated.

This submission does not necessarily reflect the views of all member organisations.

Chapter 3 – Barriers to achieving the outcomes

1 Do you agree with the barriers outlined below? If not, why not?

Yes, but please see FSC's answer to question 2 below.

2 Is there evidence of other major barriers not captured here? If so, please explain.

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

Chapter 4 – Discrete elements

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

The proposal to enable a sales process that does not stray into "financial advice" would be most effective in achieving the desired outcomes. Consumers do not trust or value financial advice in the sales process. The FSC has proposed that the legislation be amended to enable a sales process that does not stray into "financial advice". In this submission, the FSC proposes some practical ways to ensure consumers protection where financial products are sold without financial advice (see question 13).

A clear distinction between sales and financial advice would enable **t**he following complexities in the current regime to fall away for financial adviser services:

- No distinction between class and personalised advice. All financial advice is personalised.
- No RFA/AFA distinction. Only AFAs can provide financial advice. Anyone who distributes financial products or financial services must be registered on the FSPR as a distributor or be part of a QFE.
- No distinction between category 1 and category 2 products.
- The FA Act would only apply to people advising retail customers. Wholesale participants are governed by the fair dealing provisions of the Financial Markets Conduct Act, not the FAA.

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

A clear distinction between sales and financial advice could benefit consumers by:

- Encouraging consumers to seek out truly independent financial advice, rather than receiving financial advice from the party selling the product;
- Enhancing the reputation of financial advice by regulating financial advice and not the sales process;
- Reducing the cost for consumers – currently the cost of providing financial advice forms part of the product;
- Increasing penetration of insurance and savings products that are suitable for the consumer's purpose helping ameliorate some of the problems of the "advice gap";
- Increasing consumer engagement by providing less complex "compliance" information;
- Encouraging financial capability - consumers would be more motived to read information provided, if it is clear that the person selling the product is not required to put the consumer's interests first;
- Giving firms the regulatory clarity and create the right environment for them to innovate and grow; and
- Enabling consumers:
    - to make informed decisions about financial advice;
    - to better judge the quality of financial advisers;
    - to determine the interests and incentives of financial advisers; and
    - to have increased trust and confidence in financial advisers.

The impact on current market participants would be that:

- Consumers recognise, trust and value financial advice as the product of the financial advisers profession. Consumers gain clarity between product sales and financial advice.
- No change in legislation until 2018 – grandfathering provisions in transition period.

- Current matrix of suitability obligations clarified and simplified.
- RFAs become distributors or apply to be authorised as AFAs.
- QFE structure remains to ensure efficiency of sales process and to manage risks of conflict for AFAs within QFEs (assuming no appetite for all AFAs being independent).
- The FA Act would only apply to people advising retail customers.

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

The Options Paper links sales with entity licensing. The proposal that a salesperson must be aligned with a single financial product provider and sell only their "own" financial products may have unintended consequences – including reducing competition. Furthermore, many QFE's "white-label" the products they recommend to customers which are manufactured by others. The QFE takes responsibility for what is being sold but does not "own" the product. To provide a full range of products including investments, personal insurance and mortgages it is in the interest of the client that a QFE not only source its "own" manufactured products but offers a range of products including ones it does not manufacture

The FSC recommends that there should be a framework of additional protection for consumers where there is a sale without financial advice (for example professional indemnity insurance and suitability requirements that are clearly articulated by the regulator and understood by the industry). The FSC submits that a mechanism to differentiate sales and financial advice must be effective at the start of the interaction with the consumer not at the end of the interaction. The FSC has proposed the following mechanism to distinguish sales from financial advice.

Sales could be carved out from the regime by inserting a new s 10(3)(ba) in the FA Act. Section 10 defines financial advice and sets out the circumstances when financial advice is not provided. A new s 10(3)(ba) could state:

"making a recommendation or giving an opinion about a financial product when the prescribed warning has been given."

An appropriate warning must be given to consumers at the start of an interaction for the bright line exclusion for sales to apply. The warning could state:

> ***"WARNING: I am selling this financial product on behalf of [name of financial service provider]. It is my job to sell this product and I am rewarded for this sale. I have not taken into account your particular financial situation or goals. If you want financial advice you should talk to a financial adviser."***

Consideration should be given as to whether the warning includes an explanation of suitability or other protections (see concerns above about mis-selling). Processes around giving the warning could be developed based on s 36U Fair Trading Act (extended warranties).

Chapter 4.1 – Restrictions on who can provide certain advice

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

There should be no distinction between class and personalised advice. All financial advice should be personalised. Removing the distinction between class and personalised advice would simplify the regime and ensure that it is better able to meet the needs of consumers.

The current regime requires an explanation to the consumer of what class advice is, including an explanation that the class adviser cannot provide personalised advice. An explanation of the different adviser types may also be required. This is potentially confusing for consumers because they do not understand the difference between information only, class advice and personalised advice.

In certain situations, the current regime may also see the consumer receiving substantially more compliance related information than what they request or require. This can result in disinterested consumers due to information overload and it all becoming "too much". The consumer may also feel that they are required to work too hard to get the information that they need before they can get any useful questions answered.

There is the risk that removing the distinction between class and personalised advice could increase the compliance costs of distributing financial products. Accordingly, the FSC supports proposals to enable a service that is more responsive to the needs of the consumer: this may consist of limited financial advice or a sale without financial advice. Where no financial advice is given, the consumer should be given a prominent warning that no financial advice is being provided.

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

The FSC does not support the introduction of a new designation of "Expert Financial Adviser". Such a designation would create more confusion for consumers. The current categorisation of products is too simplistic as the risk of a product depends primarily on the consumer – not the type of product.

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?

The FA Act should apply to people advising retail customers – wholesale participants should be regulated by the fair dealing provisions of the Financial Markets Conduct Act 2013, not the FA Act. Requiring a client to 'opt-in' to being a wholesale investor could increase compliance costs. On balance, the additional protection to consumers probably justify any such compliance costs.

Chapter 4.2 – Advice through technological channels

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

The FSC supports Option 2. This proposes that a 'hybrid' regulatory model be adopted:

- The FA Act would be amended to ensure that financial advice does not have to be provided by a natural person;

- All providers of online financial advice services would be licensed; and
- Providers would be required to give consumers the options to speak to a person qualified to provide advice to discuss their investment needs.

Regulation must not require that a consumer speak to a human adviser. The consumer must be free to decide whether or not to accept the offer to speak to a human adviser.

Only entities with sufficient reputational and financial strength should be able to provide financial advice online. Potential online financial advice platforms should be able to prove their robustness and compliant background of the advice offered, just as an individual AFA would do, including remuneration, research, services offered etc. The regime should require online providers of financial advice to create and keep up to date an adviser business statement.

A clear definition between a sales and financial advice would need to be made on the online platform. Further consideration is needed as to whether consumers would receive adequate protection if sales were provided without financial advice through an online platform.

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

The FSC supports consistency in the quality of financial advice and levels of consumer protection regardless of whether the means of delivery is a face-to-face meeting or online methods. The standard for online financial advice should match the standards of being an AFA.

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

The options suggested, particularly Option 2 would enable innovation and a good working relationship between traditional advisers and online delivery of financial advice. The FSC recommends that "robo-advice" should be viewed as a change in method of delivery rather than a new advice process. The FSC understands that overseas this approach has led to a partnership between online platforms who can provide cost and time effective delivery and traditional advisers who seek to attract new younger and more tech savvy clients.

Chapter 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?

The FSC supports the introduction of an ethical obligation to put the consumer's interest first. This should apply to any person or entity licenced providing a financial adviser service.

The requirement to comply with the Code of Conduct (and the obligation to put consumers' interest first) should be extended to any person or entity that provides a financial adviser service. Market participants are familiar with the Code of Conduct. There is an advantage in leveraging such familiar aspects of the current regime.

It is important that the meaning of "putting the consumer's interest first" is clear. Unfortunately, the Options Paper is not consistent: pages 44, 47 and 50 state that "Advisers would be required to act in consumers' best interests". "Acting in the consumers' best interests" is not the same as "putting the consumers' interests first".

The obligation to put the consumers' interests must be clearly articulated and backed by guidance issued by the FMA or a professional body (if such a body was involved in the regulation of financial advisers). The guidance could include factors such as:

- The level of commission – where commission levels are high, advisers will have to work hard to justify that they are putting the consumer's interest first;
- The product set offered by the adviser may be important – if it is restricted, it may be difficult to establish that the adviser is putting the consumer's interest first.

The FSC acknowledges that identifying what it means to "put the consumers' interests first" will be depend on the circumstances in each case. However, there are common features:

- The consumer will receive a material benefit if he or she follows the recommendation or opinion given;
- The financial adviser or entity must be able to demonstrate how they put the consumer's interests ahead of their own; and
- The financial adviser or entity may receive some benefit as a direct or indirect result of the recommendation or opinion given (in the form of commission or other benefits).

It is extremely difficult to quantify the benefit to each party. Accordingly, the financial adviser should be required to disclose:

- All remuneration that the financial adviser earns from that particular transaction to a precise dollar amount (not at a generic level); and
- Details of the product set the adviser is selling, which product providers the adviser has arrangements with and detail around which product providers the adviser actually places business with.

Monitoring and enforcement

If financial advice is provided through a licenced entity, that entity should be responsible for monitoring accurate and transparent disclosure of its financial advisers and monitoring the actual advice given to ensure that the duty to put the customers' interests first has demonstrably been put ahead the interest of the licensed entity 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. The FMA could carry out regular reviews to establish whether standards are consistent across all licensed entities.

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

Sales could be carved out from the regime by inserting a new s 10(3)(ba) in the FAA. Section 10 defines financial advice and sets out when financial advice is not provided. A new s 10(3)(ba) could state:

> *"making a recommendation or giving an opinion about a financial product when the prescribed warning has been given."*

An appropriate warning must be given to customers in order for the bright line exclusion for sales to apply. The warning could state:

> ***"WARNING: I am selling this financial product on behalf of [name of financial service provider]. It is my job to sell this product and I am rewarded for this sale. I have not taken***

into account your particular financial situation or goals. If you want financial advice you should talk to a financial adviser."

Consideration should be given as to whether the warning includes an explanation of suitability. Processes around giving the warning could be developed based on s 36U Fair Trading Act (extended warranties).

Further ways to distinguish sales and financial advice

- The FSC considers that there may be some transactions that should be reserved for financial advisers as they are not appropriate for a sales channel. To that end, we consider any product switch or replacement transaction requires advice as it alters the consumer's current protections.
- Consumers must be told upfront if they will receive financial advice or a sales service only.
- The nomenclature attaching to the person providing the service must make it transparent what their "authorisation/designation" is. Titles must not be capable of being used to confuse the consumer.
- Sale may be concluded in one meeting/conversation, whereas financial advice likely to be at least 2 meetings (in order that discovery and a needs analysis etc can be completed).
- Where advice is given, there is more likely to be an obligation on the consumer to take action i.e to follow the guidance or recommendation and proceed to the sale/purchase of the product.
- How the consumer approached the adviser/salesperson could be indicative of whether financial advice or sales. If the consumer came with a problem (= advice) or with a requested solution (= sale). The need for the financial adviser to find out more information from the consumer indicates that likely to be financial advice.
- The pool of products available eg. a salesperson may only have 1 branded family of products whereas adviser may have multiple categories of product. Although we caveat this with the note that some existing QFE's sell products off an approved product list, which are not manufactured by that QFE.
- The way a salesperson or financial adviser is remunerated is not a good indicator of whether there is a sale or financial advice as both can be remunerated by commission.

What obligations should salespeople have?

As product providers, the FSC's members focus on conduct and culture to ensure the appropriate distribution of products. Each organization also has business processes to ensure best customer outcomes. These processes are different for each member but include:

- A new product due diligence process, which identifies key features of the product and is used to formulate training;
- Regular product updates provided to employees and agents;
- On-the-job and external training courses and coaching;
- Employees and agents follow compliance process that are checked to ensure that the solutions provided to the client are suitable;
- Telephone calls are recorded and the recordings of those calls are audited to ensure they meet standards;

- If an employee or agent does not meet the expected standard, appropriate intervention is undertaken; and
- Quality assurance of all customer files.

Salespeople must warn that they are not providing financial advice, but that financial advice is available from a financial adviser. Consideration should be given to imposing an obligation to explain the difference between financial advice and sales and whether, in the absence of financial advice, it is necessary for the salesperson to disclose how they are paid.

Suitability

Salespeople must ensure that any product sold without financial advice is suitable for the consumer. A legislative requirement for suitability should be backed by non-binding guidance issued by the FMA or industry professional body. Product providers must be able to demonstrate to the FMA that their products are fit for purpose and identify who they are suitable to be sold to. This information must be provided to distributors. Suitability could be regulated by:

- (relying on ss 20 and 21 of the Financial Markets Conduct Act plus FMA guidance; or
- developing the concept of 'responsible financial service provider' in the Financial Service Providers (Registration and Dispute Resolution)Act 2008; or
- A suitability requirement could be introduced in the FA Act (s 33 or 36 and amended 20F).

In structuring a suitability requirement, consideration should include the following:

- Section 29 of the Consumer Guarantees Act 1993 which is a guarantee that a service supplied to a consumer will be reasonably fit for purpose.
- Sections 20 and 21 of the Financial Markets Conduct Act which prohibits conduct that is liable to mislead the public as to suitability for a purpose of financial products or services.
- The FMA suitability requirements in FMCA derivative licensing conditions.
- Code 8 of the Code of Professional Conduct for Authorised Financial Advisers.
- The equivalent requirements for credit contracts: lender responsibility principles and Responsible Lending Code.
- The recommendations of the recent Australian Financial Systems Inquiry, UK requirements for suitability across investments, insurance and finance and EU and IOSCO recommendations.

Concern about limiting sales to "own" products

Further clarification must be provided as to what is being proposed in the Options Paper when it states that providers can only sell their "own" product. Many products are "white labelled" and even insurance risk is shared with reinsurers. A better requirement is that the licensed entity can only sell products where it will be held responsible for any mis-selling.

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

We recommend that further research is carried out to establish the benefits and costs of restricting conflicted remuneration. The ban on commissions in the UK has had unintended consequences on access to financial advice.

Chapter 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?

The FSC supports a Code of Conduct that applies to all financial advisers. This includes extending to all financial advisers the minimum standards of competence, knowledge and skills required to provide financial adviser services. Financial advisers must have knowledge of relevant legislative obligations (although we suggest an appropriate transition period in which RFAs can obtain Unit Standard Set B or its equivalent).

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. To lose the experience and skills of these financial advisers would significantly damage the outcomes sought by this review.

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 adviser will use. However, support and transition arrangements must be put in place for current RFAs for the reasons set out above.

Chapter 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?

We understand that individual licencing would place significant strain on the FMA's resources.

There is strong support amongst those of our members who are QFEs for a shift to an entity licensing model with core minimum requirements for individual advisers under each licensed entity. This is because 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).

Other members are concerned that entity licencing would increase costs. Those members question if there evidence that increasing regulatory burden would result in better consumer outcomes. We recommend that further work is carried out to identify the costs and benefits of entity licencing.

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

No comment.

Chapter 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?

The issue with current disclosure documents is that they are complex, inconsistent and not easy for consumers to understand. The opportunity therefore is to regulate for simply, standard and easy to understand disclosure documents. The best outcome for disclosure is that it builds consumer trust and confidence in the financial advice they are receiving, and hence in the industry.

Given changing customer buying behaviours, disclosure documents should be offered in various ways (for example, traditional hard copy hand-out vs. online) and be consistent between mediums. Simplicity vs. detail will need careful balancing, acknowledging the need to provide enough detail to enable consumer confidence without becoming overly lengthy.

How to disclose remuneration is a question that a number of potential solutions:

- Disclosure documents could include basic remuneration information (i.e. yes I get paid commission from x, y and z), together with information on soft incentives (benefit/values). Tied-agencies should be identified; or
- Disclosure documents could disclose for that transaction – not generically. The 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. This will assist the consumer to understand the extent of an advisers bias or conflicts from particular providers they deal with.

The FSC looks forward to working with MBIE, the FMA and the wider industry to clarify the most effective way to disclose information to consumers.

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

There would be significant advantages to financial service providers, financial advisers and consumers in producing a consistent disclosure documents. The experience of FSC members is that consumers want to receive less compliance information. However, the advantages of a consistent disclosure document could be overstated. What is most important is that any disclosure enables consumers to understand the cost and any risk in receiving financial advice from that financial adviser.

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

Our members look forward to working with MBIE, the FMA and the wider industry to ensure that disclosure is as meaningful as possible for consumers.

Chapter 4.7 – Dispute resolution

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

The FSC has not evidence that this is the case. We support the current choice of dispute resolution schemes, and believe competition and choice could lift quality and control cost.

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

The FSC support greater consistency between scheme rules and process to ensure the fairest outcome for consumers. We believe the current level of $200,000 is appropriate given that there is no right of appeal for product providers and distributors.

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

We recommend that professional indemnity insurance be mandatory for all financial advisers and financial service providers including online advice providers.

Chapter 4.8 – Finding an adviser

25 What is the best way to get information to consumers? Who is the best placed to provide this information (e.g. Government, industry, consumer groups)?

FSC members play an important role in providing information about financial adviser services to consumers through their distribution channels, websites and involvement in financial capability projects. Industry organisations, such as the FSC, also provide information to Government, industry and consumer groups. The FSC:

- Promotes best practice in the financial services industry, including through the publication of guidance for industry participants; and
- Develops and promotes evidence-based policies and practices designed to assist New Zealanders to build and protect their net wealth.

The FSC plays an active role in reviews such as this review of the FA Act and maintains a website to provide New Zealanders with information about the financial services industry (http://fsc.org.nz/About+Us.html).

The Commission for Financial Capability plays a valuable role in providing information to consumers (particularly through Sorted). We note that the FMA also plays an active role in consumers education.

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

Consumers don't understand what the different categories mean and often think an RFA is a "higher" qualification than an AFA designation. Changes to make the regulatory regime more consumer friendly need to be based on simplifying the regime by removing the categories of advisers, making sure that consumers know what type of service they are receiving (i.e. financial advice or sales process), and requiring product providers to ensure that their products meet suitability requirements. Such an approach would not require any artificial division as between the current Category 1 and 2 products.

Chapter 4.9 – Other elements where no changes are proposed

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

The FSC makes no comment in response to this question.

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.

The FSC has no evidence that those currently exempt from the regime posing undue risk to consumers through the provision of financial advice in the normal course of their business.

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?

The FSC supports a move towards more principles based regulation and away from the current prescriptive regime. This could simplify and future proof the legislation, reduce cost and improve consumer protection. The needs of the customer should be put at the centre of the regulation, without losing sight of the additional purposes adopted from the FMCA such as facilitating the development of fair, efficient, and transparent financial markets and cutting compliance costs.

The internet provides "international" access to knowledge and financial advice. This will lead tech savvy investors to look for cost effective, robust advice. Any New Zealand legislation needs to be able to deal with this. New Zealanders can already access a number of financial advice sites and even open accounts that are based off-shore. Discussions with FMA/MBIE show whilst they are aware of this they are unsure how to monitor and enforce – both New Zealanders using global sites and overseas visitors using New Zealand sites.

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

Measures to support the professionalism of the financial adviser industry will facilitate the export of New Zealand financial advice. More principles based regulation will, as far as is possible, ensure that innovation is not stifled by regulation.

Further consideration should be given to promoting the Trans-Tasman mutual recognition of advisers. Accordingly, in looking to improve the educational standards for NZ advisers, it appropriate to look to Australia as a matter of direction (bearing in mind that Australian policy is not always applicable in the NZ context, and the impact of aligning adviser qualification levels (e.g. degree qualification) would need to be considered).

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

There is a possible overlap in reporting between brokers, custodians and DIMs licensees and this should be reviewed in the future to ensure compliance burdens are kept at a minimum for all parties including the FMA.

Chapter 5 – Potential packages of options

32 What are the costs and benefits of the packages of options described below?

Package 1

AFA's currently have an obligation to place the interest of their client first but this has not been effective in some cases.

The customers most likely to be vulnerable do not read disclosure statements and place their trust in the financial adviser.

Most customers will remain confused as to whether they are being advised or being sold a product

Package 2

This package requires the additional cost of extending licensing from QFEs and AFAs employed outside of a QFE to cover all businesses engaged in financial adviser services.

The package assumes most customers have a good understanding of what they need and can "request" it but many of these products are typically sold not bought.

Customers will remain confused as to whether they are being advised or sold a product

This approach is unlikely to fix the access to advice problem.

It is likely that in this package the "execution only" option will continue to be used by some advisers to avoid or opt out of their regulatory obligations.

Package 3

This package is closer to that recommended by the FSC but needs additions to be complete.

The proposal that a salesperson must be aligned with a single financial product provider and sell only their "own" financial products may have unintended consequences. Many QFE's "white-label" the products they recommend to customers which are manufactured by others. The QFE takes responsibility for what is being sold but does not "own" the product. To provide a full range of products including investments, personal insurance and mortgages it is in the interest of the client that a QFE not only source its "own" manufactured products but offers a range of products including ones it does not manufacture.

A far better and effective safeguard is the standing, reputation, balance sheet and liability insurance of the QFE or licensed entity that can have its license withdrawn for non-compliance and a requirement to engage employees and put in place processes that ensure customers are only sold suitable products.

Explicit verbal advice from the salesperson employed by the QFE and a short (one page) plain English disclosure statement is needed to make this package more effective in protecting the customer.

Consumers would benefit from easier, cheaper access to financial products and services that are suitable for their needs.

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

Please see answer to question 32 above.

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

Consumer protection has not been sufficiently well articulated in the articulation of Package 3, particularly around ways to distinguish financial advice from sales. We are concerned that this will impact the number of submitters who support package 3. The FSC suggested in its earlier submission on the Issues Paper and in this submission ways that consumers could be protected where there is a sale without financial advice (see answer to question 13 above).

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

The FSC suggests that package 3 with modifications would most effectively protect consumers and support the good functioning of the financial services industry.

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