



**Submission to the Ministry of Business, Innovation and Employment,
on the Options Paper:**

**Review of the Financial Advisers Act 2008 and the Financial Service Providers
(Registration and Disputes Resolution) Act 2008**

February 2016

Background

The Health Funds Association of New Zealand (HFANZ) appreciates the opportunity to make a submission on the Options Paper associated with the review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Disputes Resolution) Act 2008. We have also made a submission in July 2015 on the associated issues paper, and reiterate the points made in that submission.

HFANZ is the industry body representing health insurers. HFANZ was set up in 1989 and was incorporated in 1995 under the Incorporated Societies Act. HFANZ does not represent the interests of individual insurers. Members include friendly societies, mutuals, and subsidiaries of public companies. Membership is voluntary, with HFANZ membership comprising 11 health insurers, who together account for over 97% of health insurance policies in force. A full list of members is attached as an appendix to this submission.

While this is an industry submission and efforts have been made to provide general feedback on proposed options where there is some consensus, it is noted that individual HFANZ members may be making their own submissions on aspects of the options paper.

Summary

HFANZ supports the overall aim of promoting more confident and informed consumers and investors. However regulation can only go so far to overcoming some of the barriers identified, and other actions such as consumer education are important.

HFANZ generally supports the regulatory changes proposed to improve the level of competence of, and confidence in, financial advisers and those selling financial products. We reiterate the points made in our 2015 submission and, in relation to the current specific proposals, we support the following:

- Improvements to the ethical requirements for all advisers to put the interests of the consumers first.
- Improved requirements for RFAs to be closer to those of AFAs although some differential may be justified.
- Better disclosure all round, especially of commissions, although with a more simplified statement.
- Splitting the advice service from the sales role insofar as this is feasible, although we do not support the banning of commissions or limitations on the ability of individuals to perform both roles.
- Extending the registration to entities other than natural persons.
- An entity licensing regime similar to QFEs.

HFANZ notes that the major reforms giving rise to the current legislation and regulation was fairly recent, and thus our preference would be for some fine-tuning of this rather than looking for wholesale changes.

In terms of the simplified packages of options, HFANZ would generally support the elements of package 1, with some greater distinction between sales and adviser roles.

Finally, we note there appears to be support for most of these proposals contained in the consumer survey, although this should be tested with a more structured market research sample to get a more accurate picture.

We comment on the above points in detail below and attach our responses to the consultation questions posed.

Improvements to standards for advisers

HFANZ supports the extension of the ethical requirements for all advisers to put the interests of the consumer first. This could be done by requiring RFAs and QFE employees to abide by the requirements in the AFA code of conduct.

HFANZ supports the review and improvement of standards applicable to all advisers. In particular, while recognising there is a legitimate difference between AFAs and RFAs, we support the introduction of higher standards for RFAs.

These should be extended to include requirements of good character including a criminal background check and a credit rating check. RFAs should also be required to demonstrate a level of competency, knowledge and skills, ongoing professional development, compliance with an industry code, and provide greater disclosure of their remuneration.

HFANZ also supports extending the registration to entities other than natural persons, and maintains that the same rules should apply as far as this is possible.

Class and personalised advice distinction

HFANZ notes the perceived current 'advice gap' for personalised advice. However, we also feel it may be premature to make a change such as this given the relatively short time period under which the Act has been in force.

Given the broader improvements to standards and ethics are made, HFANZ believes all advisers should be able to provide both forms of advice as long as it matches consumer demands. Operationally making this change could also present a large training burden for businesses that have numerous staff who give class advice as a part of their role but are not required or able to give personalised advice.

Disclosure

HFANZ supports better disclosure all round, especially of commissions, although with a more simplified statement. The disclosure of commissions should apply to all advisers – AFAs, RFAs, and employees of QFEs, and should be meaningful disclosure.

Remuneration disclosure must go further than a simple statement that an adviser will derive some form of commission or fee. It should be sufficient to give the consumer a general idea as to the likely level of remuneration.

It is noted that remuneration arrangements are often complex and therefore a balance needs to be struck in order to arrive at something which is simple and meaningful, yet avoids the imposition of undue levels of compliance cost. Further work is likely required on the format of disclosure for complex remuneration arrangements.

Advice/Sales split

HFANZ supports splitting of the advice service from the sales role insofar as this is feasible, although we do not support the banning of commissions or limitations on the ability of individuals to perform both roles.

While we have no specific suggestions as to how this might be mandated, the goal should be to achieve clarity and distinction as to what is the 'sales' bit and what is the 'advice' bit, together with the associated remuneration for each.

As stated, we do not support a ban on commissions, nor a more strict separation of roles whereby an individual could not perform both adviser and sales roles. These actions could potentially diminish the availability of affordable financial advice.

Support for an entity licensing regime similar to QFEs.

HFANZ believes a careful assessment of the costs and benefits of imposing a licensing regime is warranted before proceeding, as this will inevitably add costs to consumers. In the event that licensing is pursued, a shift to entity licensing appears to strike a good balance in terms of having a mechanism to promote the enhanced requirements set out above, albeit in a cost-effective manner. In practice, this could be viewed as effectively an extension of the QFE scheme.

Dispute resolution schemes

HFANZ notes the discussion around dispute resolution schemes. While there may be some merit in looking for greater consistency around some aspects, such as maximum amounts, the current multiple scheme model is working well and should be retained.

Thank you for the opportunity to make this submission. Attached are specific responses to some of the questions posed in the options paper.

Roger Styles

Chief Executive

Attachment: Specific comments on questions in options paper

Below are set out specific responses to most of the questions posed in the options paper.

Chapter 3 – Barriers to achieving the outcomes

1. Do you agree with the barriers outlined in the Options Paper? If not, why not?
HFANZ believes the barriers identified broadly cover most of the current problems. We believe there is a general lack of consumer knowledge about the different product types and adviser designations, and that many consumers will not appreciate the distinction between “sales” and “advice”.
2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.
A general unwillingness of people to pay upfront the true costs of financial advice.

Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?
Enter text here.
4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?
Enter text here.
5. Are there any other viable options? If so, please provide details.
Enter text here.

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?
This would likely have the desired impact of overcoming the current advice gap for personalised advice which is more specific or relates to a discrete issue. However, it could increase compliance costs in many cases, eg- imposing a large training burden for businesses that have numerous staff who give class advice as a part of their role but are not required or able to give personalised advice.
7. Should high-risk services be restricted to certain advisers? Why or why not?
This appears to be an unnecessary step, which could have the adverse impact of unnecessarily restricting access to advice.
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?
No comment.

4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?
Requirements should as far as possible be aligned.
10. How, if at all, should requirements differ between traditional and online financial advice?
Requirements should as far as possible be aligned.

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 options appear sufficient.

4.3 Ethical and client-care obligations

12. If the ethical obligation to put the consumers' interests first was extended, what would the right obligation be? How could this be monitored and enforced?
This is supported, with the suggestion of requirements similar to those in the current AFA Code of Conduct be applied to RFAs and QFE advisers.
13. What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?
This may be difficult in practice, and would likely necessitate a prescribed statement in the event of straight sales. Care would be needed to ensure it does not become effectively an 'opt out' of many of the ethical and other conduct requirements. If this option was pursued, the disclosure statement should be strongly worded and include remuneration details.
14. If there was a ban or restriction on conflicted remuneration who and what should it cover?
HFANZ does not support an outright ban on conflicted remuneration, although is supportive of enhancements to the level of disclosure to consumers in instances where this occurs.

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?
HFANZ supports the review and improvement of standards applicable to all advisers. In particular, while recognising there is a legitimate difference between AFAs and RFAs, we support the introduction of higher standards for RFAs.
These should be extended to include requirements of good character including a criminal background check. RFAs should also be required to demonstrate a level of competency, knowledge and skills, ongoing professional development, compliance with an industry code, and provide greater disclosure of their remuneration.
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?
HFANZ also believes RFA's should be subject to a higher level of authorisation, licencing and monitoring by the FMA to ensure compliance with any requisite standards.

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?
Any extension of licensing requirements will increase the level of compliance costs. However, in the event of a move to licensing, a shift to entity licensing appears to strike a good balance in terms of having a mechanism to promote the enhanced requirements set out above, albeit in a cost-effective manner. In practice, this could be viewed as effectively an extension of the QFE scheme.

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

Industry bodies have historically played a significant role in developing industry codes of practice, promoting standards of behaviour and the coordination and provision of input into regulatory and legislative reviews. In more recent years, there has been a growing tendency to codify and set out responsibilities in regulation and regulatory codes, together with mandatory dispute resolution. With this increased role and scope for regulatory agencies, there are opportunities to better use and engage with industry bodies going forward.

4.6 Disclosure

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

Written disclosure information is necessary. This should be as short as possible so as not to distract from the important information. If necessary, a link or direction to further information could be included.

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

Yes, as long as it can be kept short enough.

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

Remuneration disclosure must go further than a simple statement that an adviser will derive some form of commission or fee. It should be sufficient to give the consumer a general idea as to the likely level of remuneration. It is noted that the remuneration arrangements can be complex and varied, and that further work is likely required on the format of disclosure for complex remuneration arrangements.

4.7 Dispute resolution

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

No comment

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?

Generally, more consistency between scheme rules and processes would be beneficial, such as maximum amounts. Some monitoring and benchmarking of the schemes would be beneficial.

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

Yes

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)?

It is suggested that any 'official' advice be kept generic as at present. There would likely be limited support for extending the scope of official resources into a portal which directs consumers to certain advice and ultimately products.

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

There is a need to keep the terminology simple and avoid too many acronyms. Some of the suggestions in the options paper appear sensible to avoid confusion.

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’?

No.

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.

No comment.

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?

No comment.

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

No comment.

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?

No.

Chapter 5 – Potential packages of options

32. What are the costs and benefits of the packages of options described in this chapter?
The regulatory and compliance costs of each package appear to increase moving from option one to three. However it is unclear that there is any significant difference in the benefits to consumers. To the extent that package three might significantly reduce the availability of affordable financial advice, there may be a dis-benefit.
33. How effective is each package in addressing the barriers described in Chapter 3?
There are elements in all packages which would appear to address the barriers as set out. Packages one and two are perhaps likely to do better than the third, as the third would likely shrink the ‘advice’ industry and grow the ‘sales’ industry.
34. What changes could be made to any of the packages to improve how its elements work together?
A modified package one with some clearer definition or distinction around ‘advice’ and ‘sales’ roles could increase the level of benefits without unduly increasing costs.
35. Can you suggest any alternative packages of options that might work more effectively?
As above.

Demographics

1. Name:
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2. Contact details:
roger.styles@healthfunds.org.nz
3. Are you providing this submission:
 As an individual
 On behalf of an organisation
[The Health Funds Association of NZ \(HFANZ\) is the industry body representing health insurers. Its nine members collectively account for around 97% of policyholders.](#)

4. Please select if your submission contains confidential information:

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

Reason: [Enter text here.](#)

Attachment: HFANZ Members

The following organisations are full members of the Health Funds Association of New Zealand Inc.

- Accuro Health Insurance
- AIA New Zealand
- EBS Health Care
- Manchester Unity Friendly Society
- Nib New Zealand
- Police Health Plan Ltd
- Southern Cross Health Society
- Sovereign Assurance Company Limited
- Union Medical Benefits Society Ltd (Unimed)

ACC is an Associate member of HFANZ.