

Westpac New Zealand Limited's submission to the Ministry of Business, Innovation & Employment on the Options Paper: *Review of the Financial Advisers Act 2008 and the Financial Services Providers (Registration and Dispute Resolution) Act 2008* – 4 March 2016

Introduction

This submission to the Ministry of Business Innovation & Employment (**MBIE**) is made on behalf of Westpac New Zealand Limited (**WNZL**) in respect of the Options Paper: *Review of the Financial Advisers Act 2008 and the Financial Services Providers (Registration and Dispute Resolution) Act 2008 (Options Paper)*. We appreciate the opportunity to provide feedback on the Options Paper. We are keen to engage further with MBIE as the proposals for reform of the Financial Advisers Act 2008 (**FAA**) and the Financial Services Providers (Registration and Dispute Resolution) Act 2008 (**FSP Act**) develop.

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Proposed Package of Options

The Options Paper sets out three packages of options for changes to the regime. However, MBIE has stated it is also seeking feedback on whether there are other packages that could work better than the three permutations presented in the Options Paper. Westpac sets out its proposals for an alternative package of reforms below.

Licensed providers of financial advice

Licensing the provision of financial advice should be introduced. Licensing could be regarded as an extension of the existing Qualifying Financial Entity (**QFE**) registration model, which is working well. The licensing process could also be flexible enough to take into account the size and nature of the adviser business, including single-adviser businesses. This would remove current concerns about the Registered Financial Adviser regime which results in potential regulatory arbitrage.

Where an entity is licensed to provide financial advice, the entity, rather than its employees, should be responsible for complying with the requirements under the FAA with respect to that advice. There should be no requirement for individual employees of a licensee to be individually licensed. (However, nothing should prevent an individual within an entity from being able to obtain a licence in his or her own right if they meet the relevant requirements. In such a case, the individual's obligations should be subsumed to the entity licensee obligations.)

There is a precedent for this licensing model in relation to businesses providing class and personalised discretionary investment management services (**DIMS**) under the Financial Markets Conduct Act 2013 (**FMCA**). FMCA licensees are responsible for the service provided and individual employees working within the licensee are not required to be licensed. As under the FMCA licensing regime, smaller and single-adviser businesses could obtain a licence and this could provide flexibility in how businesses meet the minimum standards for licensing. The systems and controls expected in a single-adviser business would be simpler than those expected in a larger or more complex business.

Barriers to the provision of online advice should be removed

Licensing should also apply to the provision of online or "*robo-advice*". Westpac supports the proposals in the Options Paper to abolish the requirement that personalised advice can only be delivered by a natural person. The provision of online advice should be encouraged as it has the potential to deliver advice to consumers who might otherwise not be able or willing to access personalised financial advice, for example consumers with relatively small sums to invest or in more remote areas. The provision of online advice is also likely to appeal to a growing number of consumers who expect to be able to access financial services online.

Ethical and client care obligations

As stated above, the licensee should be responsible for complying with the requirements under the FAA with respect to the advice. The licensee should have governance and compliance arrangements that promote a culture of compliance with obligations as a licensee. (See the Culture Minimum Standards for DIMS providers.) The licensee would be required to ensure that individual staff members comply with those obligations.

As noted above, if licensed individuals are employed within the licensee, the entity licensee should be responsible for ensuring those individuals satisfy any competency requirements imposed by the Financial Markets Authority (**FMA**).

Training and competency

Licensees should be responsible for training and competency of their staff. The licensee should determine the level of qualifications and competencies required by its staff over different levels of complexity of financial advice. The most complex areas of advice could be reserved for "*expert advisers*" who, although not individually licensed, could be required by the licensee to meet higher qualifications or training standards. Training and competency standards should be principles-based rather than prescriptive minimum standards. Because the licensee would be legally responsible for the advice, appropriate flexibility should be granted to the licensee to determine the training and competency requirements for its staff.

Disclosure

Disclosure should be simplified. Consumers should receive one disclosure document from the licensee about the advice services it provides. A consumer is more likely to read and understand a short, simple document.

As product disclosure is already covered by other regimes (FMCA, Responsible Lending), disclosure under the FAA should concentrate on the focal issues for an adviser/customer relationship, namely internal and external complaints processes, how the entity deals with potential conflicts of interest and commissions. There should be consistent standards across

the industry. It is particularly important that commissions and other incentives are disclosed where an adviser represents themselves as being independent. There is also an opportunity to look at disclosure differently, for instance it adds little to have to make disclosure around remuneration where employees are salaried and also receive simple discretionary performance based remuneration.

Individual disclosure and Adviser Business Statements (**ABSs**) should not be required for any employees working under the supervision of a licensee. For the licensee, an approach similar to the QFE's annual report to the FMA could be used and expanded to include more information around the supervision of employees and then the requirement for QFEs to formally submit an ABS annually could be removed. We question the value of the annual requirement as the process for updating the ABS for a large organisation is time consuming and may result in only minor changes to the document.

Westpac's answers to the consultation questions are set out below.

Chapter 3 – Barriers to achieving the outcomes

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

In considering the barriers and the desired outcome "*Consumers can access the advice they need*", it is important to remember that consumers do not always require a comprehensive, personalised advice service and in some cases they will not be able to afford this type of service. In some cases, it may be entirely appropriate for a consumer to purchase a financial product without first receiving comprehensive, personalised advice. Limited personalised advice or class advice (to use the current terminology) may meet a consumer's needs and ensure that appropriate financial decisions are made.

Westpac generally agrees with the barriers outlined in the Options Paper but notes there are other barriers to achieving the outcomes sought (see the response to question 2 below). Further, not all the barriers outlined in the Options Paper can be overcome through legislative reform alone.

With respect to the barrier "*Hard for consumers to know where to seek financial advice from*", Westpac agrees that amendments to the legislative regime may address this barrier to some extent, for example the terminology to describe different types of adviser could be simplified. However, as the Option Paper notes, measures to increase consumers' knowledge and skills may also be required, for example the government's current financial capability programme could be expanded and enhanced.

With respect to the barrier "*Certain types of advice aren't being provided*", Westpac agrees that the FAA does create barriers to the provision of certain types of advice, for example the requirement that personalised financial advice be provided by a natural person is a barrier to the provision of a complete personalised online or robo-advice service. Westpac strongly supports the proposal to remove legislative barriers preventing the provision of such advice. However, factors other than the FAA also apply to create barriers. For example, a consumer may not be able to afford a comprehensive, personalised advice service when the consumer has only a small amount to invest. Online advice may reduce the cost of providing advice and thus increase access to advice for consumers. There is also greater potential for

customisation to meet differing segments of a customer base.

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

The small numbers of authorised financial advisers (**AFAs**) and the demographics of the profession are also barriers to consumers being able to access the advice they need. As noted in Westpac's submission to MBIE's Issues Paper, if the trends under the current regime continue, in the future there may not be enough AFAs, particularly as New Zealanders' needs for advice increase. The number of new AFAs is very low and the majority of current AFAs will reach the age of 65 in the next twenty years. This also reflects the relatively small market in New Zealand for financial services, which needs to be considered in any changes to the FAA. Simplicity and effectiveness of the regime are key.

Chapter 4 – Discrete elements

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

Please see the section "*Proposed Package of Options*" of this submission for Westpac's proposals with regards to which package of options would be the most effective.

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

It is difficult to assess the costs and benefits of the various options without further detail about how they might be combined and the trade-offs that might be associated with each option. The potential for a licensing regime to leverage off the processes that exist for QFE registration may make it a cost-effective option.

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

Please see the section "*Proposed Package of Options*" of 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?

Under a licensing model, the nature and extent of the advice provided by the licensee could be dealt with as part of the licensing process and the distinction could be removed. Licensees would demonstrate as part of the licensing process that they have processes and controls in place to ensure staff are competent to advise on their specific products and services. Nothing should limit a licensee providing "*class*" type advice if appropriate controls are in place.

The current distinction discourages the provision of limited personalised advice and class advice in some circumstances limiting access to advice. Removing the distinction under a licensing model could therefore promote greater access to advice. However, the FAA would need to make clear that any advice provided by a product provider such

as Westpac is not independent and does not need to be.

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

Under an entity licensing model, there would be no need to restrict high-risk services to certain advisers. Instead, the entity would be responsible for ensuring that its staff only provided advice within their area of competence. Entities that sell or advise on more complex financial products are already mindful of the need to ensure financial products are suitable and are already required to comply with obligations to ensure products are suitable under the Responsible Lending regime and the derivatives licence under the FMCA. Under the FMCA, market services licensees are required to ensure that staff have the right skills and experience for their roles.

If a distinction is to be retained, the current categories should be revisited. The current distinction between Category 1 and Category 2 products does not necessarily reflect the riskiness of the product, as it relates to the consumer, for example a \$1,000 investment in a growth KiwiSaver fund may present less financial risk to a consumer than a large consumer credit contract.

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 proposal that clients should opt-in to being a wholesale investor is not supported. It is not evident from the Options Paper what risk this proposal is intended to address. Westpac has recently updated its systems, including IT, to reflect recent amendments to the definition of "*wholesale investor*". In the absence of a compelling reason for doing so, further change in this area is not supported.

4.2 Advice through technological channels

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

The provision of online advice should be subject to the same ethical requirements as other advice services. The licensee should be required to exercise reasonable care, diligence and skill (s33 FAA). Online services should be subject to regulatory supervision like any other advice service.

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

Under a licensing model, the licensee would be the provider of all its advice services. The requirements should be the same for traditional and online financial advice.

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

Westpac strongly supports the proposal to remove barriers preventing the provision of online advice. Option 1 (Allow financial advice to be provided online by a licensed entity) is preferred over Option 2 (Adopt a '*hybrid*' regulatory model to financial advice through non-traditional means). Westpac's experience of providing banking services online is that where a consumer has chosen an online channel, there is little demand

for the option to speak to an individual. Option 1 is more flexible and less likely to create barriers to future innovation.

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?

Licensees should be required to exercise care, diligence and skill (s33 FAA). The current QFE model where the entity takes frontline compliance responsibility for its advisers' professional conduct and competence and ensuring retail clients receive adequate consumer protection works well and enables a more principles-based approach. If the obligation to put the consumers' interest first was extended to all advisers, there is a risk that this would limit access to advice.

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

Westpac does not support the proposals in Package 3 of the Options Paper that would create a distinction between sales and advice.

The Options Paper does not offer a definition of 'sales'. It appears from the Options Paper that MBIE intends sales to include a suitability analysis (which might include a statement about how products on offer meet a consumer's needs and objectives) but to exclude circumstances where a customer is presented with information about products and no statements are made as to what might best fit their needs. It is not evident when statements about how a product meets a consumer's needs and objectives might cross the boundary into advice.

Sales by financial services providers that issue and distribute products are already subject to suitability requirements under the Responsible Lending regime and, in the case of derivatives, under the FMCA. The focus of the FAA should be on the regulation of financial advice services rather than on product regulation.

The proposal that salespeople provide a prescribed notice to the effect that they are not required to act in the consumer's best interest would make the sales regime very unattractive. The proposed warning will also be confusing for consumers in the context of the proposal that the salesperson must nonetheless ensure that the product is suitable. The use of the warning may drive financial services providers towards an information-only model.

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

It is not evident that a ban is justified, although we are aware of concerns about churn in the insurance and mortgage markets. Registered financial adviser (RFA) disclosure does not require disclosure of remuneration, Financial Advisers (Disclosure) Regulations 2010, Schedule 3. This may be an issue where RFAs acting as traditional insurance or mortgage brokers receive commissions from or have other material relationships with product issuers. The first step in addressing this issue should be through disclosure. There is an existing statutory power for the disclosure regulations

to require remuneration disclosure by RFAs, s23(1).

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 entry level qualifications for insurance and mortgage brokers should be increased. RFAs do not have to meet minimum competency standards (and are not necessarily subject to the same level of supervision as an adviser within a QFE). This is inadequate and not well-understood by consumers. Structured continuous professional development should also be introduced for this group.

There is no mechanism for increasing the competency standards for individual RFAs without having some impact on the market as there are currently no industry wide qualifications that are held by the existing pool of RFAs. MBIE may wish to consider a longer time period for transition and recognition of prior learning.

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?

It is not sensible to have minimum entry requirements for staff of a licensee who will only be required to offer a specific provider's products and where the licensee will take responsibility for that advice. The existing QFE regime where the QFE is able to set its own competency standards in accordance with the FAA and QFE Adviser Business Statement Guide and under the supervision of the FMA is effective for this purpose. Option 4 is preferred for QFE entities like Westpac.

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?

Westpac strongly supports a licensing model (see the section "*Proposed Package of Options*" of this submission). Licensees can take responsibility for the advice provided by all their employees. In practice, QFEs are already subject to a licence. The current QFE regime is working well.

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

The industry bodies are a diverse collection of bodies and it does not appear sensible to increase their role. QFEs can currently draw on industry competency standards and professional development where they exist, for example New Zealand Financial Markets Association.

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 consumer should be able to choose which mode of disclosure they prefer.

Disclosure should be simple and meaningful. Otherwise, consumers will not read it. Consumers should receive one disclosure document from the licensed entity about the advice services it provides.

The Option Paper suggests further information could be made available on the Financial Services Providers Register. This would only be worthwhile if consumers check the register. It is not clear that they do.

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

Disclosure should be the responsibility of the licensee. However, a standard or more common disclosure document may better aid comparability.

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 focus on the key risks to the consumer. Disclosure around remuneration where employees are salaried and also receive simple discretionary performance based remuneration (not directly linked to individual products) provides little benefit to the consumer. (See our comments under the heading "*Disclosure*" in the "*Proposed Package of Options*" section of this submission for more general comments on disclosure.)

4.7 Dispute resolution

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

Not that we are aware of.

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?

The FSP Act already prescribes a number of matters that the Minister must consider in order to approve a dispute resolution scheme. There is no need to increase regulation in this area.

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

Yes. Professional indemnity insurance should be regarded as essential for all financial service providers. Many financial service providers are not subject to prudential regulation. Professional indemnity insurance would ensure that such providers are in a

position to honour their legal obligations in the event that a customer has a legitimate claim against them.

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)?

The Sorted website is a good way to get information to consumers. It is consumer-friendly. The Commission for Financial Capability which provides the Sorted website is the most appropriate government agency to lead work on enhancing consumer knowledge and skills. By contrast, the Financial Service Providers Register is unwieldy and is not a consumer-friendly tool.

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

Westpac agrees that the terminology under the current regime "*Registered Financial Adviser*", "*Authorised Financial Adviser*", "*QFE Adviser*" is not meaningful for consumers. The use of the term "*registered*" is also confusing when compared to other industries which use the term "*registered*" to denote attaining a minimum qualification or training standard, ie teachers or nurses. We agree with the proposal that this should be subject to further consultation with consumers and advisers.

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'?

If the proposal for a distinction between sales and advice is progressed, s10(1) of the FAA will need to be amended.

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.

Westpac is not aware of any specific harm caused by the exemptions.

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?

It is not the core role of the FAA to facilitate the export of New Zealand financial advice.

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 comment.

Chapter 5 – Potential packages of options

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

It is difficult to meaningfully assess the costs and benefits given the high level at which the packages of options are described.

Decreasing barriers to the provision of online advice is strongly supported. This represents a more cost-effective means of providing advice to consumers and is anticipated to increase consumers' access to advice.

Simplifying the disclosure regime is supported and would bring potential benefits by improving consumer understanding and confidence. There would be a cost if disclosure requirements were reformed. This would include the costs of the design and production of new disclosure which would require input from business, compliance and legal experts. However, these costs would probably be justified by the potential benefits.

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

Package 1: As stated above, Westpac strongly supports legislative reform that would facilitate the provision of online advice. Westpac also supports making disclosure simpler. Consumers are more likely to read short, simple disclosure documents. Changing adviser designations to make them more meaningful and less confusing would also be beneficial for consumers. Westpac agrees with the assessment in the Options Paper that the changes proposed in this package are relatively minor. The compliance costs to business of the regulatory change would be the lowest for this package.

A disadvantage of Package 1 is that it retains the distinction between personalised and class advice which may cause some advisers to refrain from providing advice in certain circumstances.

Package 2: Westpac strongly supports a licensing regime. This would extend the efficiencies of the current QFE model, which is working well. However, Package 2 appears to require that advisers within the QFE should be individually licensed if they are giving complex advice. Licensees should be able to provide and take responsibility for more complex adviser services and the requirement for advisers within the QFE to be individually licensed should be removed. Consumers would be protected by the availability of access to a disputes resolution regime and regulatory supervision of the licensee.

Package 2, unlike Package 3, proposes that all staff working within a licensee would be subject to *legislative* competency requirements. It is not evident why this would be an element of Package 2 when it is not an element of Package 3. Licensees should be able to set the competency and training requirements for their staff as the licensee will ultimately be held responsible for the service.

Package 3: While this package removes the distinction between a "*class*" and "*personalised*" service, it introduces a new distinction between sales and advice which may raise similar issues. It is not clear from the Options Paper to what extent a salesperson could make a recommendation or give an opinion on a product before the interaction was regarded as a financial advice service.

The proposal that a consumer that is subject to a sales process be subject to a warning that the sales person is not required to act in the consumer's best interest is likely to be very unattractive to providers. This could drive providers towards an information-only service. It is not clear how well consumers would understand a regime where the provider states that it is not required to act in the consumer's best interest but nonetheless is required to ensure that a product is suitable.

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

See comments on each package above.

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

See the section "*Proposed Package of Options*" of this submission.

Demographics

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

Westpac New Zealand Limited is a registered bank which provides a full range of banking services throughout New Zealand.

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: