This submission addresses the request by MBIE to present any unintended consequences emerging from the Exposure Draft of the Bill to review the Financial Advisers Act 2008.

Much of the Draft has merit and the content deserves appropriate recognition and acknowledgement.

However, in a recent public statement released by MBIE cited in Good Returns, a lack of understanding on how distribution occurs within the financial services industry was revealed –

> "*However, this would have meant that these people ('salespeople') would be able to give financial advice (that is, make a recommendation or give an opinion to acquire or dispose of a financial product) without being held to the same standards as others performing the same activity*."

This indicates a crucial misconception of the activity, function, and process, carried out by those retained by product providers to sell product, and Financial Advisers who source products from the wider market to fit the client circumstances.

Salespeople make a recommendation on behalf of the product provider; Financial Advisers make a recommendation on behalf of the client.

The distinction is germane and critical for consumer understanding.

Furthermore, there are more specific issues involved in the draft, the proposed solutions to which have created wholly unintentional circumstances that will be significantly counter-productive.

These can be conveniently grouped under three headings – Confusion; Conflict; Contention.

Confusion

In MBIE's Final Report document (p.51), reference is made to consumers being confused with the titles Registered Financial Advisers (RFA), Authorised Financial Advisers (AFA), Qualifying Financial Entities (QFE). The definitions and distinctions were held to be insufficiently delineated to achieve clarity with the general public.

As laudable as the intention is to dispense with these titles, the proposal in the Draft to replace them with Financial Advice Representative (FAR), Financial Adviser (FA), and Financial Advice Provider (FAP), only serves to continue the current confusion. The same lack of distinctive delineation occurs, particularly with the terms FAR and FA – indeed, MBIE's own schematic identifies these two

categories as providing identical services and uses the same words to define their respective functions.

This is inaccurate.

There is a need for these terms to present the consumer with an immediate and unequivocal confirmation of what the presenter does, and whom they represent.

Those retained by Vertically Integrated Organisations (VIOs) to sell the company's products have a vastly different framework of responsibility, accountability, and process from Financial Advisers who act on behalf of their client, or are so charged to by contract or regulation.

Confusion will not be reduced by the introduction of these particular replacement terms.

Conflict

Apart from perpetuating the consumers' confusion, the definitions are inaccurate, the vague perspective on client interest is opaque, and has created stakeholder conflict with the Code Committee publicly criticising the Draft. The Code Committee's contention that 'client first' should extend to all individuals offering personal guidance on financial matters to consumers is misplaced.

Those individuals retained by VIOs seek clients to fit their employer's products; non-aligned financial advisers seek products to fit their clients.

In this regard, the VIO employee has a contractual obligation to serve the interests of their employer; non-aligned financial advisers are charged with putting the client interest first. Furthermore, VIO retained employees cannot know if they are avoiding conflict of interest in the context of client first, as they do not have access to the wider universe of products available in the market. It is therefore impossible to discharge the responsibilities suggested by the Code Committee within the entity-licensing model.

The wording of the draft is correct in this respect, but the lack of clarity around the functions of FAR and FA – and even around the terms themselves – has unintentionally created conflict among industry stakeholders.

Contention

By adopting the entity-licensing model and avoiding the imposition of personal accountability, the Draft follows the Australian model de facto. Evidence from the Australian market indicates that frequent and significant inappropriate conduct occurs in such a model, particularly within the VIO sector, specifically from banking organisations' wealth management units.

Consumers allege to have been misled, confused, and have generally misunderstood the nature of such advice, believing that solutions offered were based on the wider market, rather than the bank's internal product range.

While the client interest obligations in Australia are couched in "best interest" terms, a similar model in New Zealand will inevitably produce similar outcomes.

Conclusion

The entire confusion, complexity, and cost (to the public purse) could have been avoided if the original legislation had held firm to the fundamental provision that anyone involved in offering consumers life insurance and/or investment advice had to be suitably qualified and accountable for such advice, irrespective of their employment circumstances.

However, faced with the current environment, consistency and clarity is called for, in order to avoid extending the confusion presented by the current regulatory environment.

Recommendations

1. Replace Financial Advice Representatives (FAR) with Financial Product Representative (FPR). While not perfect, this at least addresses consumer confusion to a certain extent, and reduces stakeholder tension.

2. Remove 'client first' obligations on FPR personnel.

3. Consider the implications of requiring all FPR and FA to be suitably qualified and personally responsible/accountable/liable for advice offered, whether in private practice or corporate employment. This creates one category of Financial Adviser and removes all possible consumer confusion.

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