IAG SUBMISSION

Draft Financial Services Legislation Amendment Bill and Proposed Transitional Arrangements

31 March 2017

1. INTRODUCTION

1. This submission is a response by IAG New Zealand Group (IAG) to the Ministry of Business, Innovation and Employment's consultation paper on the new financial advice regime assessing the draft Financial Services Legislation Amendment Bill and proposed transitional arrangements.

2. IAG is New Zealand's leading general insurer. We insure more than 1.5 million New Zealanders and protect over $450 billion of commercial and domestic assets across New Zealand. Our business is focussed on making the world a safer place, and we are committed to making sure that New Zealanders have the ability to protect themselves and their assets through easily accessible and affordable insurance.

3. IAG supports the government's objective of developing a financial advice regime that leads to more informed and confident participation of consumers in financial markets. We believe this aligns with our company purpose which is to make your world a safer place.

4. While we are supportive of the purpose of the legislation, we note that many of the issues we have raised in our previous submissions on the review of the Financial Advisers Act have not yet been addressed. This includes the definition of "financial advice" and more broadly, our request for greater clarity on the treatment of those who have a sales role in financial services such as in our call centres. These issues mean we face a complex process to demonstrate that our business may not always be providing financial advice when we discuss products with clients. The issues we raise within this submission are representative of the ongoing lack of clarity within sales environments businesses like ours face.

5. Our submission outlines our views on ways in which the proposed legislation could provide greater clarity to industry, particularly around how this regime will work in a sales environment. We also endorse the views put forward by the Insurance Council of New Zealand (ICNZ) in their separate submission which includes recommended amendments to several technical elements of the new financial advice regime.

6. We would welcome the opportunity to discuss our views in more detail with officials in order to refine the government's legislation.

7. IAG's contacts for matters relating to this submission are:

Bryce Davies, Senior Manager Government and Stakeholder Relations
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2. COMMENTARY ON THE DRAFT AMENDMENT BILL

Part 1: Definitions in the FMC Act

1. *If an offer is through a financial advice provider, should it be allowed to be made in the course of, or because of, an unsolicited meeting with a potential client? Why or why not?*

   We support the Bill's intention for financial advice providers to be able to make offers during unsolicited meetings. This is a continuation of the current arrangement where appropriate safeguards are provided through regulation and the oversight of the Financial Markets Authority (FMA) and dispute resolution schemes. We note the ICNZ has also provided a recommendation around addressing a drafting error with the Bill.

2. *If the exception allowing financial advice providers to use unsolicited meetings to make offers is retained, should there be further restrictions placed upon it? If so, what should they be?*

   As noted above, we believe that the existing law includes protections and we would recommend these being retained within new legislation. We do not believe further restrictions need to be included.

3. *Do you have any other feedback on the drafting of Part 1 of the Bill?*

   We seek clarification as to the intent of the change to the definition of 'acquire' in respect of entering into a legal relationship that provides for a variation or renewal. We discuss this further in our comments on question 19.

Part 2: Licensing Requirements

4. *Do you have any feedback on the drafting of Part 2 of the Bill?*

   We believe the legislation needs to more clearly reflect the fact that businesses may offer different services within their organisation. For example, there are often cases where for commercial reasons providers prefer that identifiable parts of their business (teams or functions) offer financial advice rather than it being universally offered. We would expect the legislation to make clear that where this occurs, those areas of a business not providing advice can be ring-fenced and not be subject to the requirements of the new regime. This would replicate the approach currently undertaken for entities that are Qualifying Financial Entity (QFE) advisors and avoid businesses being unfairly subject to what could be significant and onerous compliance costs.

Part 3: Additional Regulation of Financial Advice

5. *Do you agree that the duty to put the client's interest first should apply both in giving the advice and doing anything in relation to the giving of advice? Does this make it clear that the duty does not only apply in the moment of giving advice?*

   We agree that the duty to put the client's interest first should be applied universally including both in the giving of financial advice and doing anything in relation to the

giving of advice. However, we believe greater clarity should be provided around what is intended when businesses are required to put customer interests first.

For example, would our call centre staff be required to check all insurance options across the industry to assess whether our products are the best fit for each customer before we could recommend them? This would seem absurd and is surely not the intention of the Bill. Would the fact our business involves selling products to customers be seen to be in conflict with a strict interpretation of putting customers first given our motivation is clearly to sell a product?

We believe clarity on these matters is required and recommend that caution is exercised when officials assess the scope of "client first" so that the regulation is workable for industry. We maintain that any regulation must allow businesses to retain the ability to refuse customer requests for financial advice. To do otherwise would be to unfairly impose significant compliance costs on business.

6. *Do you have any comments on the proposed wording of the duty that a provider must not give a representative any kind of inappropriate payment or incentive? What impacts (both positive and negative) could this duty have?*

We question how officials will define what is "inappropriate" in a sales environment. A core part of a business is for its salespeople to sell its products and often performance incentives are offered to help staff achieve sales targets. Having reviewed this exposure draft, we're left unsure as to the treatment of financial incentives like a salary for sales staff or performance bonuses and non-financial targets like sales volumes and call handling times and whether these will be seen to constitute an inappropriate incentive.

It is our belief that this legislation has been designed for a range of independent advisers rather than for businesses like ours with a call centre and a sales component. Our structure means the proposed changes will potentially add significant costs and complexity into the customer experience. This will reduce the effectiveness of the operating environment and organisations like ours will need to factor this in to any decision on how we participate in, and comply with, the regime. As we've previously raised with officials, we question whether the real consequence for businesses from the proposed changes actually outweighs the potential benefits officials are looking to realise given the costs and time associated with compliance for those with a sales component.

7. *Do you support extending the client-first duty to providers who do not provide a retail service (i.e. those who only advise wholesale clients)? Why or why not?*

We believe the lack of clarity around what is meant by "client first duty" with respect to Part B or anything in relation to giving advice means we cannot support extending this to wholesale clients because it creates too significant a financial risk.

8. *Do you have any other feedback on the drafting in Part 3 of the Bill?*

If a customer's interest is perpetually being put first, we question how providers operating in a single provider sales environment are expected to meet that test. It would seem absurd for a company that predominantly provides financial products to be made to provide financial advice.

For example, is it an expectation that such firms will be required to employ people to instruct customers that they should not purchase something they had called to purchase from them? Or alternatively, will such firms be required to provide financial advice on other providers' financial products?

We believe this cannot have been the intention of the Bill and encourage officials to clarify this. The legislation needs to retain sufficient room to allow companies to provide appropriate qualifiers to consumers that, where appropriate, they (a) aren't getting advice or (b) that the 'advice' they receive is limited to products within the company and that there is no guarantee about the performance of those products.

Furthermore, we believe greater clarity needs to be provided on how officials expect this duty to work in a traditional sales environment.

Part 4: Brokers' Disclosure and Conduct Obligations

9. *What would be the implications of removing the 'offering' concept from the definition of a broker?*

N/A.

10. *Do you have any other feedback on the drafting of Part 4 of the Bill, for example any suggestions on how the drafting of broker provisions could be simplified or clarified?*

No.

Part 5: Miscellaneous Amendments to FMC Act

11. *Should financial advisers have direct civil liability for breaches of their obligations, if the financial advice provider has met its obligations to support its advisers? Why or why not?*

We endorse the views outlined by the ICNZ on civil liability including the concerns expressed over the potential for financial advice providers to effectively face triple or quadruple jeopardy and be subject to multiple sanctions.

Where a customer suffers poor conduct then the priority must be to right the wrong. For any breach, either from an adviser or from an entity, there needs to be accountability either through disciplinary proceedings or civil pecuniary penalties but not both. The framework for dealing with these breaches should also ensure an individual faces penalties only when they acted outside the systems, processes, policies or protocols in place, and protects providers from the actions of rogue employees where the provider has done everything to be compliant.

Furthermore we caution against a framework that subjects providers to an intense workload and significant cost when being forced to deal with vexatious cases. There will be times where where honest mistakes are made by individuals or financial advice providers and we believe the legislation should recognise this by enabling mitigated penalties to be applied.

12. *Should the regime allow financial advice providers to run a defence that they met their obligations to have in place processes, and provide resources to enable their advisers to comply with their duties?*

Yes, as noted in (11) it is imperative that providers are able to mount such a defence given it is inevitable that there will be some financial advisers who act in a rogue manner. We believe consideration should be given to establishing a register of such people or developing whistle-blowing protection provisions for providers who share information about non-compliant advisers with other providers. Such initiatives will help prevent future incidents of rogue employees breaching compliance and ultimately protect consumers.

13. *Is the designation power for what constitutes financial advice appropriate? Are there any additional/different procedural requirements you would suggest for the exercise of this power?*

Such a broad definition of 'advice' needs to have strong controls. We do not believe the FMA, for example, should be able to unilaterally decide that our business must give advice. While we understand the importance of the FMA having the ability to enforce compliance, there needs to be a way in which a business can still say no to providing advice to avoid a situation where the regulator unfairly imposes costs on a business.

14. *Do you have any feedback on applying the concept of a 'retail service' to financial advice services? Is it workable in practice?*

No.

15. *Do you have any other feedback on the drafting of Part 5 of the Bill?*

No.

Part 6: Amendments to the FSP Act

16. *Does the proposed territorial application of the Act help address misuse of the FSPR? Are there any unintended consequences? How soon after the passing of the Bill should the new territorial application take effect?*

We maintain the view expressed in our earlier submissions that there should be a level playing field and support moves to prevent foreign-based entities misusing the FSPR by implying they are licensed and regulated in New Zealand.

17. *Do you support requiring further information (such as a provider's AML/CFT supervisor) to be contained on the FSPR to help address misuse?*

N/A

18. *Do you consider that other measures are required to promote access to redress against registered providers?*

Yes. If conducting business in New Zealand, we believe all providers should be subject to the same standards and have penalties applied in the same manner for their poor conduct.

19. *Do you have any comments on the proposed categories of financial services? If you're a financial service provider, is it clear to you which categories you should register in under the proposed list?*

We endorse the views contained within the submission made by the Insurance Council of New Zealand questioning why two different types of individual financial adviser have been provided for, and more broadly, expressing disappointment at the definition of "financial advice". This also raises questions of the treatment of renewals or variations to policies and we recommend more clarity is provided on whether discussing these constitutes advice.

20. *Do you support clarifying that schemes must provide information to the FMA if they believe that a provider may be involved in conduct that constitutes breach of relevant financial markets legislation?*

We believe there needs to be appropriate redress when things go wrong and therefore support making clear that information should be provided where people suspect breaches of financial markets legislation. However, while we want the FMA to be able to act accordingly to maintain appropriate conduct, we want to avoid a situation where every second case is being referred to the regulator.

21. *Do you have any other feedback on the drafting of Part 6 of the Bill?*

No.

22. *When should an FMC Act DIMS license granted to AFAs who provide personalised DIMS expire? For example, should it expire on the date on which the AFA's current authorisation to provide DIMS expires?*

N/A.

23. *Do you have any other feedback on the drafting of Schedule 1 of the Bill?*

No.

Schedule 2: New Schedule for FMC Act

24. *Should the FMC Act definition of 'wholesale' be adopted as the definition of wholesale client for the purposes of financial advice? Why or why not?*

N/A.

25. *We understand that some lenders consider that they may be subject to the financial adviser regime because their interactions with customers during execution-only transactions could be seen to include financial advice. Does the proposed clarification in relation to execution-only services help to address this issue?*

N/A.

26. *Are there any unintended consequences resulting from the minor amendments to the exclusions from regulated financial advice, as detailed above?*

N/A.

27. *Do any of the membership criteria or proceedings for the code committee require further clarification? If so, what?*

N/A.

28. *Does the drafting of the impact analysis requirement provide enough direction to the code committee without being overly prescriptive?*

We believe it is important there is a balance between the purpose of the Act and the operational impacts including the financial costs imposed on those seeking to become compliant with the new regime. Cost and achievability are therefore crucial elements that we want to see included within any impact analysis.

29. *Does the wording of the required minimum standards of competence knowledge and skill which 'apply in respect of different types of advice, financial advice products or other circumstances' adequately capture the circumstances in which additional and different standards may be required?*

Yes. However, we note the importance of the complexity of products and potential harm is factored into competency standards. Overall, we would expect the range of competence standards required to be sensibly graduated and achievable without imposing significant costs on the industry which ultimately impacts the availability of advice.

Depending on the nature of the advice given, businesses should also be able to actively control the competency standards of their staff internally. In particular, given the relatively low-risk nature of the financial advice (if any) given by insurance call centre staff, these staff ought to be able to have clear rules around their ability to give information about insurance products without having to attain any external qualification or training, with the business itself ensuring competency of the individual staff. This illustrates our overarching belief that compliance requirements should be proportionate to the risk associated with the financial advice given.

30. *Should the Financial Advisers Disciplinary Committee consider complaints against financial advice providers as well as complaints against financial advisers? Why or why not?*

We believe that from an integrity perspective it is important that there be similar scrutiny applied to conduct from financial advice providers and financial advisers and there should be accountability for any shortcomings.

31. *If the jurisdiction of the Financial Advisers Disciplinary Committee is extended to cover financial advice providers, what should be the maximum fine it can impose on financial advice providers?*

We recommend aligning this to the fine given to a financial advisor. We note that for providers the money associated with any penalty imposed is secondary to the reputational damage associated with the fine and resultant criticism.

32. *Do you have any other feedback on the drafting of Schedule 2 of the Bill?*

We believe it is crucial that officials clarify what qualifies as robo-advice. Do online insurance calculators qualify as financial advice or is the information they provide

considered to be factual information? We suggest further clarity is provided to the industry as this will be an area of growth and development as providers to look to innovate. We would be happy to work with officials directly on this.

Furthermore, we believe the definition of financial advice could be improved by expanding the exclusions contained in Clause 6 of Schedule 5. As is the case for current financial product issues, this will help clarify that any product collateral/advertisement a licensed insurer issues in relation to its own product, which could include exclusions for class advice distributed, is not considered financial advice.

Transitional Arrangements

33. *Are there any other objectives we should be seeking to achieve in the design of transitional arrangements?*

We endorse the views outlined within the ICNZ submission around the difficulty in assessing the transitional arrangements without full details on the regime (including details as to the prescribed information). Certainty and advance warning is crucial given the complexity of our systems and products and we note the long lead times our business requires to implement change.

34. *Do you support the idea of a staged transition? Why or why not?*

N/A.

35. *Is six months from the approval of the Code of Conduct sufficient time to enable existing industry participants to shift to a transitional license?*

As noted in (33), the complexity of our business means we require long-lead times to implement change. A 12-month period to move to a transition license would be welcomed.

36. *Do you perceive any issues or risks with the safe harbour proposal?*

N/A.

37. *Do you think there are any elements of the new regime that should or shouldn't take effect with transitional licenses? What are these and why?*

N/A.

38. *Is two and a half years from approval of the Code of Conduct sufficient time to enable industry participants to become fully licensed and to meet any new competency standards?*

N/A.

39. *Do you support the option of AFAs being exempt from complying with the competence, knowledge and skill standards for a limited period of time? Why or why not?*

N/A.

40. *Would it be appropriate for the exemption to expire after five years? If not, what timeframe do you suggest and why?*

N/A.

41. *Is there a risk that this exemption could create confusion amongst industry and for consumers about what standards of competence, knowledge and skill are required?*

N/A.

42. *If you support this option do you think it should be set in legislation or something for the Code Working Group to consider as an option as it prepares the Code of Conduct?*

N/A.

43. *Do you support the option of a competency assessment process for existing AFAs and RFAs? Why or why not?*

N/A.

44. *Is it appropriate for the competency assessment process to be limited to existing AFAs and RFAs with 10 or more years' experience? If not, what do you suggest?*

N/A.

45. *If you support this option do you think it should be set in legislation or something for the Code Working Group to consider as an option as it prepares the Code of Conduct?*

N/A.

46. *What would be the costs and benefits of a phased approach to licensing?*

N/A.

47. *Do you have any suggestions for alternative options to incentivise market participants to get their full licenses early in the transitional period?*

N/A.

48. *Do you have any other comments or suggestions regarding the proposed transitional arrangements?*

N/A.

3. CONCLUSION

49. IAG is committed to working in partnership with the Government to promote more informed and confident participation of consumers and investors in financial markets.

50. We would be happy to discuss the points contained within this submission in more detail and work closely with officials to help refine the proposed legislation.