Submission - Financial Services Legislation Amendment Bill

17 March 2017

By John Cliffe of Cliffe Consulting Limited

REDACTED

Please note: I attempted to use the Submissions Template provided, but the prescribed format and design of the document did not allow me to address the major issues that I have with this proposed legislation.

This submission in the main part relates to Part 1 of the Bill, Point 3 (Do you have any other feedback on the drafting of Part 1 of the Bill?). The final section relates to Part 3 of the Bill, Point 6 of the Submissions Template.

1. "Financial Advice Representative" title creates unnecessary complexity and is a legal misrepresentation.

To quote the amendment: "A financial advice representative means an individual who is engaged by a financial advice provider to give financial advice; and is not a financial adviser."

In common English, this title creates a legal misrepresentation. It should have **no** reference to the words "financial advice". The public should not be expected have to consult the Act to figure out the differences between "financial adviser" and "financial adviser representative".

The Financial Advice Provider can be granted the ability to allow their "Financial Adviser Representatives" to give financial advice to a client in specific defined areas? This raises several problems:

1. The only advice that can be provided by a financial advice representative if authorised to do so by the Financial Advice Provider is robo-like advice. Real and proper financial advice is determined by the totality of a client's situation not by a particular specific area. Look at the adviser code if you doubt that statement.
2. A misrepresentation as to purpose. Most Financial Adviser Representatives will be employed to sell a product, many being incentivised via sales targets and quotas, be it the Financial Advice Provider's managed funds, preferred Kiwisaver scheme, term deposit or investment scheme. A clear conflict of interest with any advice given. It is also worth commenting that the Financial Advice Representative is not required to act in the best interests of clients
3. Client expectation. In robo-like advice, the client clearly understands the potentially limited scope/quality of the advice being given. The same is not true when the client is speaking with a "Financial Advice Representative" who will be perceived to be a "Financial Adviser" by the client.

An analogy to explain

If I have a problem with paint peeling on my house I have two options. I can go to the internet and look up articles about paint problems and try to determine what is the problem and the best way to solve it. The responsibility for my attempted fix rests solely with me.

If however I employ a painter to solve the problem or ask a specialist from Resene to visit to specify how to solve the problem the responsibility for the fix no longer solely rests with me. The bulk of the responsibility has been shifted to the painter or to the specialist.

Robo-advice is the equivalent of looking up articles on the internet. There are a set series of questions and a set series of answers and solutions. As a client I understand the limitations of that advice. I am dealing with a computer that has limited ability to think outside the square or identify other questions that may or should be asked. The responsibility for following that robo-advice still rests with me the client. It is a "do it yourself" solution. It may be a very good "do it yourself" solution but in many cases it will not be, possibly because not only will it not know all the relevant questions to ask but also it will struggle to address the emotional needs of the client.

If I am dealing with a Financial Adviser however I would expect that person to know all the questions to ask that are relevant to my situation and needs. To follow the intricacies in my situation and to give advice based on the totality of my situation. To take some of the responsibility for making those decisions off my shoulders. To emotionally connect with my financial requirements and planning.

But the Financial Adviser Representative is effectively low quality robo-advice, masquerading as a Financial Adviser giving financial advice, to assist the Financial Advice Provider firm sell product.

2. The fact that Financial Advice Providers can appoint "Financial Advice Representatives" opens the door for major financial rorts.

It appears under the legislation that almost any entity can set itself up as a Financial Advice Provider. It can then under the new structure use Financial Advice Representatives to sell its products.

Consider recent historical events with New Zealand financial institutions. For example some 85 plus finance companies between 2008 and 2010 went broke losing billions of dollars for investors. Under the new proposed regime, almost all of these could have become Financial Advice Provider firms. All could have appointed Financial Advice Representatives. The Financial Advice Providers may well have been limited under their arrangement with the FMA to only giving financial advice on fixed interest bonds offered by the financial advice provider firm. Regardless, under this legislation, these Financial Advice Representatives would have been able to sell vast amounts of their company's product, effectively masquerading as, or appearing to be, financial advisers to the clients.

The finance company goes broke. The Financial Advice Representatives have no liability despite all manner of abuses that inevitably become out after the event. The company is in liquidation. The Directors have their personal assets in their wife's names or in Trusts or in both.

The proposed legalisation is naïve. Expect rorts if it is implemented as recent experiences in Australia with even the largest banks demonstrates.

3 Why ask again for public submissions if the Department decides to arbitrarily change the major finding in the previous public submission?

No wonder independent and objective advisers give up making public submissions when a major finding about the appropriate name for a role is glibly and unreasonably changed. So the word "agent" is arbitrarily dismissed on the basis of what independent research undertaken by the MBIE? The financial industry in New Zealand has suffered for years from misleading role descriptions. The Financial Advice Representative is an agent. If the word "agent" is unacceptable then the correct term is "**<Company name> representative**". This way the organisation that is paying the individual's wages, salary or commission is clearly defined and there is no misrepresentation to the consumer about the skill, conflict of interest or the role of the representative. The NZ public deserves to have a spade called a spade.

Part 3 of the Bill, Point 6

4. Incentives – or bribery.

There is no way that payments or incentives can be identified as inappropriate or appropriate

It is worth noting that the FMA has specifically allowed incentives to operate for Kiwisaver. Continuing and extending this option for companies under newly issued guidance notes. The already bad practice of banks requiring that employees seek to obtain switches from Kiwisaver clients to their bank scheme to meet their sales targets or to obtain special offers for the client based on the number of products the client has at that particular bank will now become rampant. Mortgage rates and offers being conditional or advantageous based on such criteria.

The concept that the Financial Advice Representative can be a Financial Adviser in these circumstances when given incentives, or even guidelines that they must recommend the provider's products, is incongruous.

Effectively the Financial Advice Representatives will be given incentives around the advice they give to clients, effectively creating a huge conflict of interest. A practice actively supported and endorsed by the FMA, which will have no capacity or ability to be able to effectively track or regulate the kind of benefits given by a Financial Advice Provider to Financial Advice Representatives.

There is no point in having a code of conduct for Financial Advisers. This new law will create a situation that will destroy the credibility of financial advisers in the eyes of the public and actively support rorting behaviour. The proposed law changes effectively undermine the spirit and intent of the financial adviser's code of conduct and the previous legislative goal of protecting the public from sub-standard financial advice.