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Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
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New Zealand

By email: faareview@mbie.govt.nz

**Consultation Paper – New Financial Advice Regime
The draft Financial Services Legislation Amendment Bill and proposed transitional arrangements**

Workplace Savings NZ Incorporated thanks the Ministry of Business, Innovation and Employment for this opportunity to make a submission in relation to the Consultation Paper for the proposed new Financial Advice Regime. We support the Ministry's aim of improving access to quality financial advice, resulting in more informed and confident participation of consumers in financial markets.

This submission provides our view of the key issues within the new financial advice regime and gives voice to the recommendations of our members. In responding to the Consultation Paper we have worked with the Financial Services Council (FSC) and endorse the broad themes and the specific responses of the FSC's submission.

Workplace Savings NZ Incorporated (WSNZ) represents the interests of employers who offer workplace retirement savings schemes, their trustees and their members, other retirement scheme managers (including KiwiSaver scheme providers) and supervisors, retirement savings industry service providers and professional advisers.

Please contact Richard Klipin on **REDACTED** to discuss our submission.

Yours sincerely

David Biegel
Chairman

Richard Klipin
Chief Executive Officer (FSC)

Who we are

Workplace Savings NZ (WSNZ) is a not-for-profit apolitical membership organisation representing the interests of employers who offer workplace retirement savings schemes, their trustees and their members, other retirement scheme managers and supervisors, retirement savings industry service providers and professional advisers. WSNZ's membership embraces all types of retirement schemes (KiwiSaver, workplace savings and superannuation schemes) and participants who are public and corporate, union-sponsored and industry-based.

The objective of WSNZ (which works closely with the Financial Services Council) is to be the *Voice of Workplace Savings* - advancing the sustainable, effective, and efficient delivery of workplace savings outcomes for all involved, including the workplace savings scheme members who remain key to the organisation. WSNZ aims to do this through:

1. Advocacy – proposing and commenting on legislative and public policy initiatives beneficial to workplace savings and participation in the workplace savings industry, making submissions, engaging with policy-makers and officials and issuing media commentary to advance those causes.
2. Education – promoting trustee, employer and member financial and regulatory education through dedicated training programmes, newsletters and special interest seminars.
3. Networking – providing trustees, employers and service providers involved in workplace superannuation with a regular forum for sharing ideas and information on industry matters.
4. Promotion – publicising the benefits of workplace savings and helping to improve public confidence and participation in workplace savings.

Strategic Intent - our view

The intent of the proposed changes is clear – improving access to high quality financial advice for New Zealanders. We fully support this intent and believe it is in the best interests of the financial services industry, our members and all consumers.

Putting the consumer at the front and centre of the financial advice regime means:

- A focus on enabling advice and assistance when and where consumers need it
- Helping consumers make good choices about their financial wellbeing, covering the areas of investing, protecting and borrowing
- Developing a trusted industry where participants put the consumer first with transparent, simple, disclosure of interests
- Making sure consumers have simple and easy recourse when things go wrong

Our view is the changes proposed in the Consultation Paper enable these outcomes. It will be up to market participants to deliver and truly promote a sustainable, consumer-led industry. We acknowledge that WSNZ members are striving for the same outcomes as the Government and regulator in this regard.

Change is unlikely to be easy, and both overseas and in New Zealand, legislation has already significantly disrupted the industry. However, disruption is needed because it is the only way in which we can deliver the twin outcomes of improving the professionalism of the market and lifting consumer trust. We support steps which deliver on these outcomes. As the change progresses, we expect to see improved regulations, better training for advisers, consistent higher standards, business models that evolve with the changes and more engaged consumers.

Given the under-insurance and retirement savings challenges the country is facing, we believe the proposed 'level playing field' will aid New Zealanders in making better long-term choices for their wealth, health and lifestyle. Bringing consistency to the skill, competence and knowledge of advisers is a key step along the journey and we endorse the intent of the proposed changes. Care will be needed to ensure sufficient flexibility for all business models in relation to standards, products, processes and controls. The final solution may be best achieved through the licensing process.

Future-proofing the regime through the facilitation of robo-advice acknowledges changes in technology, demographics and quite simply, what consumers want and need. We support the intent to get this legislation 'right' and minimise future change.

Our view is that, in the main, market participants will endorse the overall aims of the proposed regime, and there will be little debate around licensing or level playing fields.

Our experience suggests the biggest areas of debate, and those which will make the most difference to consumers, are advisers/advice categorisation, client first, conflicts of interest and the transitional arrangements. These topics talk to the heart of enabling consumer access to good quality advice.

In the following section we address these key themes.

Themes and Recommendations

Theme One – The Consumer

A well-functioning market balances the interests of the consumer and the industry. We support the intent of the legislation to align the financial advice regime further with the interests of consumers. The ideal outcome is informed consumers making good financial decisions to grow and protect their wealth.

To achieve this outcome, consumers require:

- Access to the advice and information they need, when they need it, in the way they need it
- Confidence and trust in the sector, knowing they will be treated fairly and with integrity
- To understand their responsibilities and the responsibilities of those they seek advice from
- To accept the outcome of their decisions where they have been informed and treated fairly
- Someone to go to and a way to seek recourse when things go wrong

We acknowledge the proposed legislative changes are one part of the overall solution, together with the supporting regulations, Code of Conduct and market activity. However the legislation is an important part because it sets the overall framework for how market participants will behave. The behaviour of all market participants is key to building confidence and trust.

It is therefore important to have consumer outcomes front and centre when making decisions about the proposed legislation.

Recommendation One

Where there is uncertainty over the best way forward, use the guiding principles of:

- a. Putting consumer outcomes at the centre of the solution
- b. Helping the consumer understand the part they need to play in putting their interests first

Theme Two – Advisers/Advice Categorisation

A key issue with the current regime is the confusion caused, for both consumers and the industry, by the terminology and definitions relating to advice. We agree with MBIE that an outcome of this confusion is a deterioration in consumer confidence and understanding.

The proposed changes take the industry forward on many fronts and we support the removal of unnecessary complexity such as product categorisation and the class and personalised advice distinction. We further support the move away from the confusing adviser designations of ‘registered financial adviser’, ‘authorised financial adviser’ and ‘qualifying financial entity’.

Despite best intentions, the definition of advice remains a grey area, with feedback from our members that further clarity is needed for market participants. A potential unintended consequence of the lack of clarity is further confusion for the end consumer.

In our view, there are two issues to consider when answering the question around adviser categorisation:

1. The consumer needs to be able to understand the differences in the duties and obligations of each type of adviser.
2. The industry needs to understand the duties and obligations for all market participants

As long as these duties and obligations are simply defined and communicated, the question of categories and titles becomes secondary. To aid in this definition and communication we recommend MBIE ensure financial adviser categorisation is channel agnostic.

Our members highlight there is industry confusion over the impact of the word ‘engaged’, and what this may mean for distribution arrangements between product providers and adviser groups (particularly where an adviser may distribute for more than one product provider).

Recommendation Two

MBIE provides further clarity on the bounds of advice for Financial Advice Representatives, specifically around determining whether a recommendation has been made and therefore whether the interaction is advice or no advice.

Recommendation Three

MBIE, FMA and industry discuss the potential impact on QFEs, product providers and adviser groups to determine impact and potential amendments, if any.

Theme Three – Client First

In our opinion, this is the most critical element of the proposed legislation to get ‘right’ ensuring there are no potential unintended consequences for either the industry or the consumer.

We agree with the aim of putting the client first, only providing advice where competent to do so and clients understanding the limits of the advice. Together these create a level playing field which makes it easier for consumers to trust in the advice they receive.

As written in the Consultation Paper, the client first duty applies when both giving advice and when ‘doing anything in relation to the giving of advice’. We generally agree (given the Financial Advice Provider can agree a scope that excludes advice), but raise a concern around the lack of precision in the expression and the potential unintended consequences that may flow out of the ‘doing anything in relation to the giving of advice’ part of the duty, which may compel advice when it is not required – leading to a sub-optimal experience for the client. It is important that the legislation be sufficiently clear so those seeking to comply know what is expected of them.

It would be helpful if the duty included an acknowledgment that the behaviours required by it are limited by the agreed scope of the engagement.

We also raise the issue of whether the duty to put clients’ interests first should be restricted to retail clients, relying on the protection wholesale clients enjoy through their contracts. To put this in practice and make sure clients receive the service best suited to their needs, we recommend clear definition of retail vs wholesale.

Further, the wording of the client first duty appears to encompass conflicts of interest with anyone, not just related parties. This appears broad and could impact on the length of disclosure and the ability of an adviser to provide advice.

Finally we are aware of the challenges in Australia arising from the introduction of the ‘prioritise the interests of the client’ duty and expect there are learnings for New Zealand from the Australian experience.

Recommendation Four

MBIE provides greater clarity, maybe with safe harbour examples and an acknowledgment of the agreed scope, to guide market participants on how to interpret the client first duty.

Recommendation Five

MBIE looks further at how the similar Australian duty (‘prioritise the interests of the client’) has been adopted and any challenges that have occurred in Australia since implementation. Discussion with industry about the scope of the duty will reduce the risk of similar challenges in New Zealand.

Theme Four – Conflicts of Interest, Inappropriate Incentives

We welcome the proposed stance on prohibiting inappropriate incentives and note the continuing work in relation to inappropriate incentives and soft commissions. We acknowledge there will be debate over what is deemed to be 'inappropriate' and that this is not an easy issue to resolve.

The 'Guide to the FMA's View of Conduct' together with the FSC's Code of Conduct (in development) will be helpful in steering the market towards the best solution.

WSNZ members are seeking further clarity in order to determine potential approaches and impacts. We are keen to work with MBIE on the continuing investigation.

This work needs to be completed before the content of the amended disclosure statements is agreed – otherwise, consumers will not receive the full picture of the incentives their adviser is receiving.

We note that detailed disclosure requirements are yet to be determined and acknowledge the consultation needed to find a balance between consumer protection and simplicity.

Recommendation Six

MBIE works with industry to refine the proposed legislation to reflect a balanced approach to sales incentives and mitigating policies, procedures and controls. We further suggest the FMCA Framework Methodology could be used to further expand and provide guidance on this subject.

Recommendation Seven

MBIE and the FMA work with industry and consumer groups to develop and test the new detailed disclosure requirements.

Theme Five – Transition and Code Development

It has only been six years since the Financial Advisers Act 2008 (FA Act) fully came into force, and the industry is still recovering from the impact of those material regulatory changes. Our members want to do the best thing for the consumer, and are supportive of the Government and regulators' strategic intent, but only have limited resources. Time spent on regulation may mean less time spent developing products and services that truly meet consumer needs. The proposed transition period is critical to mitigate this risk.

We fully support the transition period, however our members have expressed concern over potential business model impacts should there be any delay in developing the Code. Until the Code is developed, market participants will be unable to ascertain the true impact of the regime. Our view is the composition of the Code Working Group (and the Code Committee) will be key to shaping the future of the industry.

With regard to potential business model impacts, our members have questioned the transitional arrangements for both ex-QFEs and non-QFEs in relation to on-boarding new employees. We are seeking further specific assurance on how this will work in practice.

Further, given the proposed length of the transition and the guidance that only currently provided services are permitted during transition, our members have asked if there is a better way to obtain a licence for new services, such as robo-advice.

Finally, we look forward to working with MBIE as the licensing consultations progress to ensure costs and obligations are proportionate to a range of business models. We believe there is an opportunity to learn from overseas experience where consolidation shrunk the number of market participants and therefore reduced the ability of consumers to access financial advice.

Recommendation Eight

MBIE works with industry to understand the business model impacts from different scenarios and examples during transition.

Recommendation Nine

The Code Working Group includes membership criteria for experience in wealth management, insurance services and mortgages (among other specific areas of expertise) to ensure a thorough understanding of the complexity of the industry.

Recommendation Ten

MBIE considers allowing providers to apply for a robo-advice licence during the transitional process, and ahead of a full licence.

Theme Six – Robo-Advice

Recent research¹ reinforces consumer appetite for robo-generated financial services advice (banking and insurance), with 78 percent of the 33,000 people surveyed saying they would welcome robo-advice for traditional investing and 74 percent saying they would welcome it for help in purchasing insurance. However the study also found consumers still want human interaction in relation to servicing and complex products.

In our view, online access is part of the larger solution in providing consumers with the advice and assistance they need, and in our experience the consumer's channel of choice will change in different life stages and circumstances. It is therefore important for the legislation to enable a variety of channels.

We endorse how the proposed legislation opens the door to robo-advice and online capabilities. In our view this reflects changing consumer behaviour and future-proofs the legislation.

We seek clarity on minimum requirements for robo-advice, including monitoring, and expect there are learnings from the Australian experience.

Recommendation Eleven

Given the close economic relations between Australia and NZ it would be desirable for FMA to take the ASIC Regulatory Guide 225 (digital financial product advice for retail clients) into account when determining its approach to licences covering robo channels.

¹ 2017 Global Distribution & Marketing Consumer Study, Financial Providers: transforming distribution models for the evolving consumer, Accenture Consulting

Specific Responses

We endorse the specific responses contained in the submission of the Financial Services Council, with the following additions:

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?

We encourage consideration of any relevant global experience or research on whether unsolicited advice improves consumer outcomes in setting potential restrictions on the exception

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

Our members provide two areas of detailed feedback. Please note not all members share these views:

- a. On a principles basis, we recommend simple and clear definition of the advice categorisations (refer Theme Two). Notwithstanding this, the term 'Financial Advice Representative' could lend itself to consumer confusion similar to that to which the AFA and RFA terms previously gave rise. We note the suggested amendment MBIE issued in the FAQ (8 March 2017) to 'Financial Provider Representative' (or [licensee name] Representative if the adviser sells only the licensee's products) which could potentially more clearly align the staff member to the provider and remove the word "Advice" from the title.

Please note not all members share this view given both Financial Advice Representatives and Financial Advisers can provide advice.

- b. We consider the term 'engaged' to be broad and that it could inadvertently extend to multiple levels of contracts - for example where a Financial Adviser is employed by a Financial Advice Provider who is a member of a distribution group selling a manufacturer Financial Advice Provider's products. We note some Financial Advisers are presently engaged by more than one business. The draft Bill allows this and we draw attention to it to ensure that FSPR and FMA licensing processes also allow it.

For completeness, we note again that FMA guidance infers that advice on switching between investment funds in a retirement scheme is financial advice regulated by the FA Act. This is based on the view that advice on a switch is captured by the current definition of category 1 product in the Act by reason of being a "a renewal or variation of the terms or conditions of an existing category 1 product". If it is intended that this advice be captured, then the definition of "financial advice product" in part 1 of the Bill should be amended to capture switches between funds in retirement schemes, as in the context of KiwiSaver, superannuation and workplace savings schemes a decision to switch funds within a scheme is not a renewal or variation of the terms or conditions of the product.