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Financial Markets Policy
Ministry of Business, Innovation and Employment
PO Box 3705
Wellington

By email: faareview@mbie.govt.nz

**SUBMISSION on Part 1 and 2
Review of Financial Advisers Act 2008 and the Financial Service Providers
(Registration and Dispute Resolution) Act 2008 Options Paper**

1. Introduction

Thank you for the opportunity to make a submission on part 1 and 2 of the Financial Advisers Act 2008 and Financial Service Providers (Registration and Dispute Resolution) Act 2008 Options Paper. This submission is from Consumer NZ, New Zealand's leading consumer organisation. It has an acknowledged and respected reputation for independence and fairness as a provider of impartial and comprehensive consumer information and advice.

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2. Questions

We have provided responses to selected questions in parts 1 and 2 of the Options Paper below.

Question 2 – Is there evidence of other major barriers not captured here? If so, please explain.

Yes, we believe the current dispute resolution schemes are acting as a barrier to effective redress for consumers. See question 23 below.

The lack of standardised disclosure requirements for common financial products, such as insurance, is also a major barrier. For these types of products, we think the review needs to consider how to improve consumers' ability to access information and make comparisons, reducing transaction costs.

Standardised disclosure requirements for financial products are increasingly common in other jurisdictions. The absence of similar disclosure requirements here puts consumers at a disadvantage. Regulating the products, not just those providing "advice", is particularly important given the prevalence of commission-based selling in the New Zealand market.

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

While there may be some benefit in designating certain financial services as complex or high-risk and only allowing such services to be provided by a subset of advisers, this would not overcome the complexity of the existing regime and the difficulty for consumers of distinguishing between different types of adviser.

Consumer NZ supports an over-arching requirement on those providing financial advice to have the competence, knowledge and skill to provide a particular service, accompanied by changes to competency and ethical requirements.

Question 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?

We agree the current situation - with different advisers facing different ethical requirements - is unsatisfactory. As previously stated, our preference is for the introduction of a ban on conflicted remuneration for all financial advisers.

However, we agree that all advisers should be required to put consumers' interests first.

In Australia, advisers are required to act in the best interests of their clients, only provide appropriate advice and, in the case of a conflict, put the client's interests first. Conflicts cannot be managed simply by disclosing them.

Question 16 – Should all advisers be subject to minimum entry requirements? What should those requirements include? If not, how should requirements differ for different types of advisers?

Yes, in our view, all advisers should be subject to minimum entry requirements. They should also be subject to continuing professional development requirements and be required to be competent to give the advice they provide.

Raising standards for the industry will be beneficial for consumers.

Question 19 – What do you think is the most effective way to disclose information to consumers to help them make more effective decisions?

This will probably depend on the consumer and the situation. However, we think disclosure should be undertaken both verbally and in writing (whether online or not). That is, a financial adviser should be required to firstly disclose information in writing and then provide a verbal explanation to back up the written disclosure.

This would address concerns that some consumers will not read disclosure documents and help consumers to understand the implications of the disclosure.

Question 23 – Assuming that the multiple scheme model is retained, should there be greater consistency between scheme rules and processes? If so, what particular elements should be consistent?

Yes, there needs to be greater consistency between the schemes' rules and processes. We've previously expressed concerns about the number of dispute resolution schemes, the variability of scheme rules and the fact the schemes are not required to publish their decisions. These concerns remain and we would like to see any reform address these issues.

In Australia, the Financial Ombudsman Service has been required, since 2013, to publish all its determinations. The Financial Ombudsman Service also produces summaries of its determinations. This helps to promote openness and transparency and we would like a similar approach to be adopted in New Zealand.

In addition, the Service publishes regular data on dispute outcomes by provider. See for example, the table relating to life insurance providers below. There's no valid reason why disputes schemes here should not be required to publish this type of information. At present, only the Banking Ombudsman scheme publishes any data specific to individual providers.

#11: Life Insurance

Financial Services Provider (FSP)	Member Status Code	Member Status Type	Primary Business	Chance of a Dispute Coming to FOS (per 100000)	Received Disputes	Average Resolution Length	Outcome of Resolution Process				
							Disputes Resolved by Agreement	Applicants Favour	FSP Favour	Confirm FSP Offer	Discontinued
ACE Insurance Limited	E	ACT	General insurer		7	2.8	80%	0%	0%	0%	20%
AIA Australia Limited	E	ACT	Life insurer	0.7		4.6	41%	15%	33%	0%	11%
AMP Financial Planning Pty Limited	E	ACT	Financial advisor / planner		7	4.6	40%	30%	20%	0%	10%
AMP Life Ltd	E	ACT	Life insurer	2.5		4.0	62%	6%	17%	0%	15%
Australia and New Zealand Banking Group Limited	E	ACT	Bank		10	3.8	50%	25%	13%	0%	13%
Australian Scholarships Group Friendly Society Limited	E	ACT	Friendly society		6	1.4	100%	0%	0%	0%	0%
Charter Financial Planning Limited	E	ACT	Financial advisor / planner		7	4.4	40%	20%	20%	0%	20%
Commonwealth Financial Planning Limited	E	ACT	Financial advisor / planner		6	4.5	33%	0%	50%	0%	17%
Greenstone Financial Services Pty Ltd	E	ACT	Product distributor	10.5		3.4	63%	15%	0%	0%	22%
HCF Life Insurance Company Pty Limited	E	ACT	Life insurer		11	4.2	73%	0%	18%	9%	0%
MLC Limited	E	ACT	Life insurer	3.4		4.2	52%	12%	28%	0%	8%
National Australia Bank Limited	E	ACT	Bank		7	2.5	100%	0%	0%	0%	0%
National Mutual Life Association of Australasia Limited (The)	E	ACT	Life insurer	16.6		3.9	71%	2%	14%	3%	10%
OnePath Life Limited	E	ACT	Life insurer	7.4		4.1	50%	17%	19%	5%	9%
Suncorp Life & Superannuation Limited	E	ACT	Life insurer	13.3		4.2	55%	19%	19%	0%	6%
TAL Life Limited	E	ACT	Life insurer	2.4		4.0	57%	21%	12%	1%	8%
The Colonial Mutual Life Assurance Society Limited	E	ACT	Life insurer	2.0		3.8	58%	12%	15%	1%	14%
Westpac Banking Corporation	E	ACT	Bank		12	4.6	43%	0%	57%	0%	0%
Westpac Life Insurance Services Limited	E	ACT	Life insurer	2.3		4.1	52%	4%	35%	0%	9%
Zurich Australia Limited	E	ACT	Life insurer		7	5.0	25%	50%	13%	0%	13%

As mentioned in previous submissions, we would also like to see:

- An obligation on all financial service providers to clearly and prominently display information about their complaints processes and scheme membership on their website and all forms of written communications to customers.
- Providers being specific about their timeframes for acknowledging and responding to complaints.
- The jurisdictional limit raised to \$350,000. The current cap of \$200,000 could act as a barrier to efficient resolution of disputes.

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

We believe all financial service providers should be required to carry professional indemnity insurance, as they are in Australia. If a service provider becomes insolvent, any decisions in the consumer's favour by a dispute resolution scheme will be worthless. Having adequate professional indemnity cover is also in the interest of all financial advisers.

Question 25 – What is the best way to get information to consumers? Who is best placed to provide this information?

As mentioned in our submission on Part 3 of the options paper, Consumer NZ supports the introduction of a more user-friendly and detailed register or portal.

We also support the use of more user-friendly language but this would be difficult to monitor and enforce.

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

We support the idea of this being tested with consumers.

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

We do not support option 1 as it does not address the fact that consumers may be receiving advice from people without adequate knowledge, skills and competence levels. The term adviser would continue to be used by those who don't have to meet any competency standards.

With option 2, the two-tier adviser structure proposed (i.e., Expert Advisers and Financial Advisers) may create a complexity similar to the existing AFA and RFA/QFE structure. It's not clear the new structure would make navigating the market any easier for consumers.

Given many RFAs and QFE advisers are essentially sales reps (and not advisers), the changes proposed in option 3 to introduce a specific "salesperson" designation may better reflect the difference between those who simply sell products and those qualified to provide advice.

However, we believe any changes to the adviser structure need to be considered alongside changes to product disclosure requirements. The prevalence of commission-based selling of financial products, particularly insurance, means it's extremely difficult for consumers to find independent advice.

Introducing requirements for standardised disclosure (e.g., a simplified one-page document of key cover provided by an insurance product) would help to mitigate the risks to consumers of commission-based selling models. Standardised disclosure would increase transparency and also assist consumers to "shop around".

Thank you for the opportunity to make a submission on the Options Paper. If you require any further information, please do not hesitate to contact me.

Yours sincerely

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Consumer Advocate