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Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140

By email: faareview@mbie.govt.nz

SUBMISSION on New Financial Advice Regime Consultation Paper

1. Introduction

Thank you for the opportunity to make a submission on the New Financial Advice Regime Consultation 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.

Contact: Sue Chetwin
Consumer NZ
Private Bag 6996
Wellington 6141
Phone: 04 384 7963
Email: sue@consumer.org.nz

2. General comments

Consumer NZ welcomes the introduction of the Financial Services Legislation Amendment Bill (the bill) to address problems with existing regulation of this industry. However, we have the following concerns:

(a) The financial adviser (FA) and financial advice representative (FAR) designations are too similar and likely to confuse consumers.
(b) Advisers have no direct civil liability under the bill.
(c) The bill has not addressed problems with financial disputes schemes, in particular the failure of schemes to publish dispute details.

Our concerns and answers to selected questions are set out below.

As much of the detail of the new system is to be set in regulations, it has been difficult to provide comprehensive comment on the amendments.

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

Yes, we think the terms "financial adviser" and "financial advice representative" are too similar and will cause confusion amongst consumers.

In our view, the designations should allow consumers to understand when they are dealing with an adviser and when they are dealing with a sales representative who may not hold any qualifications and only deals with a limited range of products. We do not think the proposed designations allow consumers to make this distinction because of their similarity and the fact "financial advice representative" implies someone who is qualified to provide comprehensive financial advice.

We strongly recommend MBIE reconsider the use of these terms.

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

Yes, we agree the duty to put the client's interest first should apply in giving the advice and doing anything in relation to giving the advice. However, the wording of this provision could be improved as it is not entirely clear what "doing anything in relation to giving the advice" means.

Question 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?

Although the proposed wording is an improvement on the current situation, we do not think it goes far enough.

In the absence of a ban on commissions, regulations must require FAs and FARs to disclose the payments and incentives they receive. Regulations should also require standardised disclosure to increase transparency for consumers and help mitigate the risks of commission-based selling models.

Question 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?

Yes, in our view, it would be preferable for advisers to have direct civil liability for breaches of their obligations. We consider this would provide a strong incentive for advisers to meet their obligations to consumers and is essential to improving standards in the industry.

We also think there should be some form of public record of breaches so consumers can ensure they are dealing with reputable advisers.

Question 16 – Does the proposed territorial application of the Act set out above help address misuse of the FSPR? How soon after the passing of the Bill should the new territorial application take effect?

We think the proposed territorial application of the Act will help reduce misuse of the FSPR but agree it is unlikely to prevent misuse altogether. The grounds for de-registration should be expanded to ensure the intent of these new provisions can be achieved.

We agree that the new territorial application should take effect as soon as possible after the passing of the bill. We see no reason to provide a long notice period to any existing registered entities that don't meet the new scope of the Act.

Question 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?

Yes, we support further information being required on the FSPR. As stated in previous submissions, Consumer NZ supports a more user-friendly and detailed register.

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

Yes, we agree other measures are required to promote access to redress for consumers. As stated in previous submissions, we are concerned about the number of schemes, the variation in scheme rules and the fact the schemes are not required to publish their decisions. We are disappointed the bill has not addressed these issues.

Question 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?

Yes, we support clarifying that schemes must provide information to the FMA in a wider range of circumstances, including if the scheme has reasons to believe the provider may be involved in conduct that constitutes a breach of relevant financial markets legislation.

Question 29 – Do you have any other feedback on the drafting of Schedule 2 of the Bill?

The schedule allows providers to meet minimum competency standards through methods they identify themselves (e.g., in-house training). If a provider chooses this route, we consider details of the alternative methods they have used should be available on the Financial Service Providers Register.

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

Yours sincerely

Sue Chetwin
Chief Executive