

22 July 2015

Corporate Law
Labour and Commercial Environment Group
Ministry of Business, Innovation and Employment
PO Box 3705
Wellington

By email: faareview@mbie.govt.nz

**SUBMISSION on
“Review of Financial Advisers Act 2008 and the Financial Service Providers
(Registration and Dispute Resolution) Act 2008” Issues Paper**

1. Introduction

Thank you for the opportunity to make a submission on the Financial Advisers Act 2008 and Financial Service Providers (Registration and Dispute Resolution) Act 2008 Issues 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. General comments

Consumer NZ agrees changes are required to the Financial Advisers Act 2008 (FA Act) and Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act) to improve the protection they provide to consumers. In response to the Issues Paper, we have highlighted below our main concerns with the legislation as it currently stands.

2.1 Commissions

Consumer NZ has previously submitted in favour of commissions being phased out while the industry moves to fees-based remuneration. Our position remains unchanged for the following reasons:

- (a) Commission payments have been shown to lead to poor advice in the financial service provider industry. A review by the Australian Securities and Investments Commission (ASIC) published in 2014 found life insurance advice given to more than a third of consumers did not meet the required standard. According to ASIC, advisers were more likely to give substandard advice when paid an upfront commission for selling a particular product.¹

¹ Consumer NZ, “Life insurance”, <https://www.consumer.org.nz/products/life-insurance/overview#about-life-insurance> retrieved 15 July 2015.

- (b) Commissions create a conflict of interest and managing this conflict has been problematic. Merely disclosing the commission does not resolve the conflict as consumers may not read disclosure documents. When they do, they may not understand the significance of the disclosures being made.
- (c) Even if we assumed disclosure was effective in overcoming problems associated with commissions, under the current regime Registered Financial Advisers (RFAs) are not required to disclose the commissions they receive; only Qualifying Financial Entities (QFEs) and Authorised Financial Advisers (AFAs) are required to disclose this information. This is problematic from a consumer perspective.
- (d) The potential for commissions to distort financial advice has led the UK Financial Services Authority to ban commission payments. We continue to support a similar ban here. Until commissions are phased out, the risk remains that investors will receive skewed advice.
- (e) **Banning commissions would also address concerns about “churn”, the practice of moving clients from one financial product to another so the adviser can receive more commissions.** Available evidence indicates high upfront commissions remain a predominant feature of the industry.

2.2 Complexity of current system

In our view, the current system is overly complicated and not one that is well understood by consumers.

The terms RFA, AFA and QFE are not well understood and we agree alternative terms should be considered. The labels given to different tiers of financial service providers should enable consumers to understand the difference between the types of advice provided.

In the UK, for example, **there are “Restricted Advisers”**, who are only able to give advice on a limited range of products, **and “Independent Advisers”**, who are able to consider and recommend all types of retail investment products on the market and have to give unbiased and unrestricted advice.

2.3 Dispute resolution schemes

We have a number of concerns about the dispute resolution schemes:

- (a) Although all financial service providers must belong to a dispute resolution scheme and have an internal complaints process, not all providers make it easy for their customers to find out what to do when a problem arises. Last year, we looked at the websites of 75 financial service providers and found only 11 out of the 75 had a complaints or feedback link on their homepage.² Of the 75 providers, 52 did not specify a timeframe for acknowledging receipt of a complaint.
- (b) We believe information about complaints processes and dispute resolution **scheme membership should be clearly visible on the financial service provider’s website and on all written communications to customers.** This would help to increase awareness of the schemes and make it easier for consumers to know

² Consumer NZ, “Financial services – complaints procedures”, <https://www.consumer.org.nz/articles/complaints-procedures> retrieved 14 July 2015.

what to do in case of a dispute. We would also like to see providers being specific about their timeframes for acknowledging and responding to complaints.

- (c) We've previously expressed concerns about the number of dispute resolution schemes, the variability of scheme rules and the fact that the schemes are not required to publish their decisions. These concerns remain and we would like to see the review address these issues.
- (d) We are also concerned that financial service providers are not required to carry professional indemnity insurance. If a service provider becomes insolvent, any decisions in the consumer's favour by a dispute resolution scheme will be worthless. To address this, the review should consider making professional indemnity insurance compulsory for financial service providers, as it is in Australia.
- (e) We are also aware of a number of overseas companies () that have recently been deregistered from the Financial Service Providers Register (FSPR) and dispute resolution schemes. In our view, these cases highlight the need to raise the standards for registration.
- (f) We would like to see the jurisdictional limit raised to \$350,000 in respect of all types of financial services. We think that the current cap of \$200,000 could act as a barrier to the efficient resolution of disputes. Increasing the cap to \$350,000 would also be in line with the proposed increase in the District Court's jurisdiction.

2.4 Qualifications/competency

A high proportion of savings in New Zealand is held in housing stock, rather than in investments. Life and general insurance policies are therefore particularly important for consumers here. However, advice on these products can be provided by RFAs who are not required to hold any qualifications, have any particular expertise or undertake any continuing professional development.

We believe consumer protection in this area would be enhanced if insurers were required to provide standardised disclosure of prices and key policy terms. European regulators have recently agreed on a revised directive for insurance products that will provide consumers with access to better information, enabling products to be more easily compared.³ We believe requirements are needed here to increase the transparency of insurance products and reduce transaction costs for consumers.

In relation to AFAs, we believe the minimum qualification required is too low. Chartered Accountants are required to undertake a minimum of seven years of study to become fully qualified. However, the National Certificate in Financial Services (level 5) can be completed in one semester. Financial advice is comparable, in terms of importance, to accounting advice but Chartered Accountants are required to have much higher qualifications. On this basis, a one-semester level 5 qualification seems inadequate. In our view, raising standards for the industry will be beneficial for consumers.

We acknowledge the argument that higher standards of competency may increase the cost of good quality financial advice. However, consumers will also be unwilling to pay for advice if they do not have confidence in the expertise and independence of the provider. Where cost to basic financial advice is a barrier for particular groups, other market interventions will be required.

³ See http://europa.eu/rapid/press-release_IP-15-5293_en.htm

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

Yours sincerely

A handwritten signature in black ink, appearing to read "Sue Chetwin". The signature is written in a cursive, flowing style.

Sue Chetwin
Chief Executive