26 February 2015

Financial Markets Policy
Ministry of Business, Innovation & Employment
PO Box 3705
Wellington
New Zealand

faareview@mbie.govt.nz.

To Whom It May Concern,

Re: AA Insurance submission on the Review of the Financial Advisers Act 2008 Options Paper

This submission is from AA Insurance Limited (AAI), 99 Albert Street, Auckland.

AAI is a direct personal lines insurer, which operates in New Zealand under a joint venture agreement between the Australian financial services group Suncorp and the New Zealand Automobile Association (NZAA). AAI employs over 650 people and operates the AA Insurance brand in New Zealand. At present AAI writes insurance policies to the value of approximately $300m per annum across domestic motor, domestic home & contents, and pleasure-craft portfolios. AAI is a Qualified Financial Entity under the Financial Advisers Act 2008 (FAA) and our QFE advisers deal directly with consumers for the AA Insurance brand. Our submission is limited to our perspectives on fire and general insurance (a 'financial service' and 'category 2 product' under the current legislation).

AAI is part of the Suncorp New Zealand Group and has worked closely with other entities within the Suncorp Group including Vero New Zealand Limited and Asteron Life Limited in drafting our respective submissions. Our views are largely aligned, and any differences relating to the differing type of products and operating models we use have been reflected in our respective submissions.

AAI has contributed to the ICNZ submission and largely supports the points made in that submission.

Where there is a differing view from these individual submissions this has been explained in our submission.

AAI has responded to this Options Paper by making an overall statement and then detailing specific views and answers to each of the questions raised in the Options Paper.

Summary Statement

It is our view that consumers do not understand the complexities of the current financial advisers' regulatory framework. The distinction between sales and advice is not well understood and this has led to confusion as to whether advice is being given or not. The distinction between QFE advisers, AFAs and RFAs is not well understood by consumers and consumers are therefore unsure who to contact to get the right type of advice. There is currently the opportunity for some financial service providers to have different interpretations of whether they offer advice or not. This has led to some advisers making decisions on the advice model they adopt as a result of the burden of compliance.

We believe that the current regime needs to be simplified. The definition of financial advice needs to be narrowed and the understanding of what constitutes advice ought to be clarified, as consumers in general believe that if they are purchasing a financial product that some element of advice is expected to be given. There is the opportunity in this review to make a clear distinction between sales and advice and exclude any sales activity to be excluded from the regime. FSPs who are not financial advisers should be able to have open conversations with their customers about the products they offer. Many consumers value this assistance from insurers without needing to go further to seek personalised advice from an independent financial adviser. Further, the financial advisers regime should not hinder this consumer demand by forcing these "salespeople" to become some kind of regulated financial adviser.

Where a salesperson acts for an individual financial service provider the provider (or its agent) assumes responsibility for individual salesperson's conduct and competency. The obligations within current consumer protection legislation such as Fair Trading Act, Commerce Act and Financial Market Conduct Act, as well as dispute resolution schemes are sufficient to hold salespeople and their employers accountable. Consequently, there is no compelling reason why salespeople should be covered by the FAA.

In contrast to a salesperson an adviser generally acts on behalf of the consumer. Brokers and independent advisers provide a valuable service to the insured by assessing the risks and needs of insureds and recommending suitable products to meet these needs but should also have a basic competency and ethical requirement standard to comply with. It would appear appropriate that advisers should be held to a minimum standard of conduct, competency and accountability that can be monitored and regulated by an advice regime.

Independence is an important factor when considering the conduct of an adviser. A consumer needs to be aware of an adviser's independence and whether an adviser is tied to a particular product or financial service provider. They should also be aware if there are remuneration implications related to a product recommendation.

We agree that there is a need to review the distinction between product categories and AFA and RFA adviser types, as many consumers do not understand them. However, we are not aware of any issues or significant concerns from our customers about our sales process or the advice we provide (if any), other than the occasional remark about the lengthy telephone disclosure statement and its relevance.

We agree that there is little need to retain a distinction between class and personalised advice if the distinction between sales and advice is made. Currently when our QFE advisers are selling our insurance products it seems apparent that consumers understand that we are acting in a sales capacity and are not independently assessing their needs.

As mentioned above our experience suggests that the current disclosure statements are not particularly useful to consumers and welcome an opportunity to review these to become more meaningful for consumers. A simple statement declaring that the consumer may seek independent advice and suggest they do so if they feel it is appropriate would ensure consumers know what they are getting. In making such a declaration the tone and information needs to be appropriate but also not put the customers experience in jeopardy. A statement that “we are not required to act in your best interest” provides no reassurance to the customer that they are being treated fairly and would do nothing to provide confidence in the financial sector.

AAI thanks the Ministry for the opportunity to submit on this review and welcomes any further engagement to contribute towards improving the current adviser regulatory regime.

The following section provides AAI’s answers to the specific questions set out in the Options Paper.

Barriers to achieving the outcomes

1. Do you agree with the barriers outlined in the Options Paper? If not, why not?

   We largely agree.

   AAI considers that the current FAA is both confusing for consumers and difficult to administer. The FAA currently captures all types of financial products and associated advice, both simple and complex, under the same standards which has created a regime that is not operating effectively for all.

   Through the creation of a multi-tiered model which has created AFA's, RFA's and QFE's, all with differing competency requirements, this has discouraged the provision of some advice types e.g. more complicated advice and also made it difficult for consumers to understand who best to seek advice from.

   A clear distinction between advice and sales would simplify the regime.

   Many insurers, including AAI, became QFEs not because we sought to actively provide personalised financial advice to customers, but because there was a legal risk that a staff member may accidentally make a personalised recommendation or give an opinion to assist a customer, and inadvertently put the organisation at risk. AAI deals with its own brand of general insurance, such as basic motor, home and contents insurance. Consumers contacting AAI know what insurance is and are seeking to find out information about AAI's product suite to determine if they want to purchase insurance from AAI. As a QFE AAI provides adequate training to sales staff to ensure they are equipped to deal with consumer requests including asking set questions around the appropriate cover for their asset and there is not a requirement to take into account all elements of a consumer's personal circumstances.

   AAI utilises the NZAA centre network who sell our general insurance products exclusively on our behalf as our 'face-to-face' sales channel. They are a QFE in their own right, however apply the same sales process and competency standards that AAI imposes on its own staff.

   AAI does not deal with RFA's, AFA's or brokers.

   AAI considers some of the terminology in the FAA is unclear and may be confusing to consumers. The differences between RFA's, AFA's and QFE advisers is not well understood by consumers and simplification of this terminology would be of great benefit to consumers when making decisions on who and where to seek advice from.

   Barrier 2. Certain types of financial advice aren't being provided.

   As mentioned above the creation of a multi-tiered model with AFA's, RFA's and QFE's, all with differing competency requirements, has discouraged the provision of some advice types.

   Another barrier is the ability to offer consumers advice in the format they would like. Many consumers do not wish to take advice from a traditional adviser and the industry would benefit from a clearer ability to offer sales or advice via technological solutions. We note however that robo-advice should be carefully defined. Our view is that robo-advice should be defined as being limited to a technology solution which delivers full, independent personalised advice. All other technology solutions are mere facilitators and there should be no limitation on a manufacturer, IFA or sales person making appropriate use of technological aids they take responsibility for using.

Barrier 3: Consumers may receive advice from people without adequate knowledge, skills and competence levels.

In selling insurance there already is an overriding requirement in both a sales and personalised advice context to always put the customer first. It is our view however that this overarching obligation is addressed adequately through other forms of consumer protection legislation. AAI staff are carefully trained, supervised and monitored to ensure that our customers' interests are protected, the right information is provided and that our staff deliver the best possible customer experience. AAI products are also sold by NZAA QFE advisers who are subject to similar training and competency standards. AAI believes that similar training is provided by other QFE's within the personal insurance industry and the adequacy of such training is tested through each insurer's claims, complaints and renewal process.

There is currently the opportunity for redress through the current obligations under other legislation such as the Fair Trading Act, Consumer Guarantees Act, Financial Service Providers Act, and also within the Insurance Council of New Zealand Fair Insurance Code standards which holds members to higher than legislated standards.

Barrier 4: Certain conflicts of interest may be leading to suboptimal outcomes for consumers.

It should be a basic requirement that adviser remuneration/commission arrangements are disclosed to consumers so the consumer can consider the relative independence of advice given or fully and transparently canvass their conflicts to their client, along with having strong fiduciary obligations to their clients, and should be able to meet regulated conduct obligations and education and training requirements.

Barrier 5: Consumers don't always understand the limitations of different types of advice.

General insurance products do not lend themselves to requiring significant explanation of the type of advice given. When our QFE advisers are selling AAI products it seems apparent that consumers understand that we are acting in a sales capacity, provide product information and guidance and are not independently assessing their needs.

2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.

   We believe that the cost of advice is a further potential barrier. Consumers may not seek advice as there is a perception that it will be a costly process, and there is evidence to support this in an insurance environment where consumers rely on 'word of mouth' recommendations from family and friends to influence their buying decisions.

   Advisers should be regulated in a way that is relevant to the sector or product environment they are operating in adopting a risk based approach.

Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?
   In general, we favour options which simplify the provision of advice for consumers including the removal of the distinction between class and personalised advice and the distinction between category 1 and 2 products. In our view a more light-handed regulatory approach to these obligations rather than options that impose unreasonable regulatory burdens on small businesses and individual advisers would be of benefit to all. In particular, while we believe that employers ought to be fully accountable for the actions of its employees, this is balanced by the knowledge that entity licencing will introduce unreasonable burdens on small advisor businesses.

   We favour a clear distinction between sales and advice although we are of the view the distinction as set out in the options paper needs to be further explored. We believe 'financial advice' should be limited to situations where an appropriately qualified adviser is providing a consumer with choice driven advice requiring an objective assessment of the comparative benefits of financial products, for example different providers insurance products. Sales activity should be permitted by employees and be limited to products manufactured by their employer. However, in selling insurance products there should be the ability to discuss and answer consumer queries without falling into the category of providing advice. The majority of consumers who contact AAI require information and want specific questions answered about AAI products, cover levels and price to help guide them in selecting the product they want. This is not significantly different to a sales person promoting the benefits of their product. They are aware that when they contact AAI, they will be offered AAI branded products only.

   In our experience as a QFE under the current FAA the regime appears to be working well in most regards and we have not experienced consumers being disadvantaged by being given poor advice.

4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?
   Increased regulation and licensing may appear beneficial for consumers but would increase the compliance cost for advisers and result in fewer advisers willing to act in an independent manner. This could detrimentally affect the advice regime in the long term. We believe the advice provided to consumers is of better quality when there are a significant number of truly independent advisers able to service that part of the market.

   By introducing the distinction between sales persons and advisers and removing sales persons from the FAA regulatory regime this could result in enhancing consumer access to general insurance products. A reduction of costs of compliance for insurers would also have a positive price impact on general insurance products and increase the take up of general insurance products by consumers. This in turn has far reaching benefits to the economy and community.

   Consumers would still have the benefits of protection by the Fair Trading Act, other consumer protection legislation as well as dispute resolution services under the FSPA. Consideration should also be given to carving out limited financial advice on a providers own products where consumers are already offered adequate protection.

5. Are there any other viable options? If so, please provide details.
   We think that further consideration should be given to carving out limited financial advice, where consumers are already offered adequate protection.

Restrictions on who can provide certain advice

6. What implications would removing the distinction between class and personalised advice have on access to advice?
   Most consumers do not distinguish between class and personalised advice. As a QFE AAI is promoting and selling its own products and it is our understanding that most consumers believe they are receiving information on the AAI products and through a series of predetermined questions this guides the consumer to the appropriate product choice. This also extends to the NZAA who sell AAI general insurance products exclusively on our behalf and do not provide their sales people with commissions for doing so. Therefore we favour the removal of this distinction in combination with the 'sales only' service.

7. Should high-risk services be restricted to certain advisers? Why or why not?
   We believe it is important that advisers do not attempt to give advice which they are not qualified to give. An adviser giving the advice needs to be appropriately skilled and and experienced to give that advice. If there is a demand for the provision of high risk service advice then the regime should ensure it can accommodate and regulate such activity appropriately.

8. Would requiring a client to 'opt-in' to being a wholesale investor have negative implications on advisers? If so, how could this be mitigated?
   AAI does not offer an opinion on this option as it does not deal with wholesale clients.

Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?
   AAI agrees with MBIEs assessment and preferred option to allow financial advice to be provided online by a licenced entity.

   Given the significant shift in consumer behaviour to the online channel it would be appropriate to allow sales and advice to be obtained via this channel. We support the view that ethical obligations to ensure advice is suitable across all channels (although not necessarily in the 'best' interest of consumers as this will difficult to determine in such channels). There needs to be adequate regulatory oversight requiring compliance with prescribed standards for this to be effective.

10. How, if at all, should requirements differ between traditional and online financial advice?
    The focus for advice through technological channels should be on the advice being suitable for the type of client using the service and provision of adequate and clear information as to the limits of the advice.

    Consumers are using technological channels more and more to research their options and are prepared to largely make their own decisions in many matters e.g. the amount of insurance required without requiring full needs analysis.

11. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?
    Many consumers do not require a 'full advice' model and use of technology allows providers to offer an option to 'sell' rather than advise consumers. At AAI our website sales channel activity has increased significantly which does not require an advice model to be applied. Feedback indicates the reasons for this growth include ease, timing and practicality. It also highlights that many consumers do not want or need a 'full advice' model.

Ethical and client-care obligations

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 that all financial advice services should come with an ethical obligation. The difficulty is what is meant by putting consumer's interests first? How is this different from present obligations? We believe the key is that the advice meets the customer's expectations – a customer may not necessarily want or be able to afford 'the best' product for them and this must be provided for.

    The obligation to act in the customer's interest is a prerequisite for selling insurance regardless of the advice model adopted. Our staff are carefully trained, supervised and monitored to ensure that our customers' interests are protected, the right advice and information is given and that we deliver the best possible customer experience. Legislation outside the FAA already provides this safeguard. For example, significant consumer protection is already provided by the Fair Trading Act, Consumer Guarantees Act, Privacy Act, Human Rights Act and Financial Service Providers Act. Consequently, there is no compelling reason why this should be covered by the FAA.

13. What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?
    In practice, we think this distinction will be relatively easy to make. We do not think a person selling a product necessarily puts consumers' interests first even if there is a duty to ensure the product is suitable. A salesperson (as opposed to a person providing advice) should be required to provide disclosure (verbal or written) to that effect including a statement setting out the extent of the service they are providing.

    In terms of advice we believe that the distinction that makes the most sense to consumers, and that would best protect their interests, is between independent advice and non-independent advice .i.e. independent advice is that provided by an entity with access to an array of different products from different providers; non-independent advice is that provided by an entity about their own products or under exclusive distribution arrangements.

    Consumers will have protection from being mis-sold products in other consumer protection legislation as noted above.

By making such distinction consumers would be in no doubt as to the difference between advice and sales, and would then be able to seek out the most appropriate person depending on their own needs and requirements.

14. If there was a ban or restriction on conflicted remuneration who and what should it cover?
    We do not believe a ban on conflicted remuneration is a practical option. It would be difficult to enforce and may have a detrimental financial outcome for consumers without any significant benefit.

Competency obligations

15. How can competency requirements be designed to lift capability, without becoming an undue barrier to entry and continuation in the profession?
    AAI considers that competency requirements should be matched to the complexity of products being sold and the level of information or advice being provided to consumers. Product and advice service providers are in the best position to assess and document how appropriate competency requirements are being complied with whether this is part of entity licencing or internal compliance.

    All financial advisers who offer choice-driven advice to consumers should be required to acquire and display a uniform standard of competency in their chosen area(s) of practice.

16. Should all advisers be subject to minimum entry requirements (Option 1)? What should those requirements include? If not, how should requirements differ for different types of advisers?
    AAI considers that for its own staff, who should be viewed as salespeople, competency standards already exist through internally designed training courses. It is in the best interest of the provider to ensure their staff have a full understanding of the products they sell.

    Advisers should be subject to a minimum standard, that is measurable and be accountable to maintain this standard through regulation.

Tools for ensuring compliance with the ethical and competency requirements

17. What are the benefits and costs of shifting to an entity licensing model whereby the business is accountable for meeting obligations (Option 1)? If some individual advisers are also licensed (Option 2), what specific obligations should these advisers be accountable for?
    As a QFE AAI currently sells insurance products directly to consumers through its QFE adviser status. AAI assumes responsibility for its employees through well-defined processes and procedures.

    AAI is a NZ licenced insurer and has the appropriate governance in place to ensure it meets its obligations under the Insurance (Prudential Supervision) Act 2010. The licencing and regulatory processes appear to work well for the industry and AAI would be in favour of a similar model being adopted for the regulation around provision of advice. A licensing model does need to be simple and not result in a significant increase in the cost of compliance. Any cost associated with regulatory compliance is ultimately passed onto consumers so the benefits need to be measured against any additional cost.

This option may work well for organisations with a number of employees, however may be too expensive for smaller adviser businesses and lead to many advisers joining an established QFE. This could essentially remove any notion of independence in the market.

We believe that the cost of compliance needs to be carefully considered while balancing the benefit to consumers.

18. What suggestions do you have for the roles of different industry and regulatory bodies?
    We believe there is an opportunity for industry bodies to regulate member advisers for smaller sized businesses and sole traders. We do not believe there is a requirement for larger organisations to utilise such bodies and should be able to deal with the regulator directly similar to the current QFE regulatory regime.

Disclosure

19. What do you think is the most effective way to disclose information to consumers (e.g. written, verbal, online) to help them make more effective decisions?
    The provision of a simple declaration such as a recorded telephone disclosure, or a brief disclosure statement in the case of face-to-face or electronic interaction could provide consumers with information on the type of advice given.

    AAI currently makes FAA disclosures via recorded telephone messages, while NZAA in dealing face-to-face with consumers, provides a written declaration. We submit that a telephone disclosure should continue to be a valuable option to communicate important information.

    In making such a declaration the tone and information needs to be appropriate but also not put the customers experience in jeopardy. A statement that "…we are not required to act in your best interest" provides no reassurance to the customer that they are being treated fairly and would do nothing to provide confidence in the financial sector.

20. Would a common disclosure document for all advisers work in practice?
    By distinguishing between sales and advice the disclosures could be streamlined to ensure a consumer is given the information they require and meet consumer expectations. For sales activity a simple verbal disclosure in plain English setting out the extent of advice being provided is preferred.

21. How could remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?
    It would be meaningful for consumers to know if an adviser is being incentivised to promote a particular product. We believe independence is a key disclosure requirement.

Dispute resolution

22. Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?
    AAI is not aware that the existence of multiple dispute resolution schemes is leading to poor outcomes for consumers. AAI supports improvements in transparency and consistency of schemes to reduce the likelihood of Financial Service Providers switching between schemes.

23. Assuming that the multiple scheme model is retained, should there be greater consistency between dispute resolution scheme rules and processes? If so, what particular elements should be consistent?
    AAI is a member of the Insurance and Financial Savings Ombudsman dispute resolution scheme and has not had any experience of any other schemes to form a view on which rules and processes should be consistent. AAI is not aware that the scheme rules and processes differ widely between schemes.

24. Should professional indemnity insurance apply to all financial service providers?
    We believe that advisers providing financial advice should be required to hold such insurance.

Finding an adviser

25. What is the best way to get information to consumers? Who is best placed to provide this information (e.g. Government, industry, consumer groups)?
    AAI does not support the creation of a portal. There is insufficient evidence to determine if this is what consumers actually want, or would use.

    For general insurance products there is a wealth of material and information available to allow consumers to make informed decision about who to approach for either sales or advice and the internet is increasing becoming the channel consumer's use to research before approaching individual providers. AAI does not view there being additional benefit in the creation of a portal which could be a costly option.

26. What terminology do you think would be more meaningful to consumers?
    AAI supports the proposal in Option 2 to identify useful terminology that is more relevant to consumers.

    AAI supports the development of naming changes for QFE advisers to reflect that they are linked to a particular entity. By distinguishing between sales and advice a significant number of QFE advisers would simply become salespeople which is a term consumers currently understand. AAI considers that the term 'adviser' should be limited to advisers who are in the business of conducting a needs analysis in determining appropriate products for a consumer.

    AAI is in favour of renaming 'wholesale' and 'retail' advice, 'class' and 'personalised' advice to terms that have more relevance to consumers.

Other elements where no changes are proposed

The definitions of 'financial adviser' and 'financial adviser service'

27. Do you have any comments on the proposal to retain the current definitions of 'financial adviser' and 'financial adviser service'?
    AAI has no particular concerns with these definitions.

Exemptions from the application of the FA Act

28. Are those currently exempt from the regime posing undue risk to consumers through the provision of financial advice in the normal course of their business? If possible, please provide evidence.
    AAI is not aware of any issues relating to exempted entity activities related to the provision of advice.

Territorial scope

29. How can the FA Act better facilitate the provision of international financial advice to New Zealanders, without compromising consumer protection? Are there other changes that may be needed to aid this, beyond the technological options outlined in Chapter 4.2?
    AAI support any rabo-advice provider needing to be registered to ensure appropriate oversight. We do not support overseas individuals being able to provide financial advice to New Zealanders in New Zealand without being subject to New Zealand laws.

30. How can we better facilitate the export of New Zealand financial advice?
    AAI has no comment on this.

The regulation of brokers and custodians

31. Do you have any comments on the proposal to retain the current approach to regulating broking and custodial services?
    AAI has no comment on this.

AA Insurance

Potential packages of options

32. What are the costs and benefits of the packages of options described in this chapter?
    Please refer to our earlier comments made above to support our view.

    We accept that there needs to be some greater regulation to increase the effectiveness of the provision of financial advice in New Zealand and to address the barriers referred to in the option paper however five years is not a long time to fully judge the effectiveness of the earlier reforms from the 2008 legislation. Any further reforms should endeavour to minimise costs that will ultimately be passed onto consumers and also strive to ensure an even playing field for all participants in the industry.

    We do not support any of the options as they have been proposed. There are elements of each package which we do support but there are shortcomings that need further consideration, as pointed out in the comments we have made above. We do support, in a limited form, the introduction of a distinction between sales and advice, although again the details of this need to be further explored by the industry. We favour sales persons being able to offer limited advice in relation to products manufactured by their employer or QFE or where an exclusive distribution arrangement is in place and it is clear that this is not independent without significant additional compliance requirements.

    We agree that only appropriately qualified advisers should be able to offer choice driven advice which requires an objective comparison of various products and disclosure of limits of any such comparison. Such advice will require more comprehensive needs analysis and options analysis.

    How are Salespeople to assess whether a particular product is suitable for a particular consumer?

    AAI, like most personal general insurers, ask a series of questions to consumers when going through a quote process. The answers to these questions often assist determine the appropriateness of a product. For example a consumer may want to insure their vehicle. Through the sales process a salesperson will be able to provide information on the different cover types and costs related to each product offering. This process also allows the salesperson to assist the consumer in determining what cover fits their needs and budget. This forms part of the sales training given to staff by the provider.

AA Insurance

Demographics

1. Name:
   Jacqui Thompson, Head of Finance Risk and Compliance, AA Insurance Limited

2. Contact details:
   Redacted

3. Are you providing this submission:
   ☐As an individual
   ☒On behalf of an organisation

   AA Insurance Limited, a New Zealand licenced insurer.

4. Please select if your submission contains confidential information:

☐I would like my submission (or specified parts of my submission) to be kept confidential, and attach my reasons for this for consideration by MBIE.

Reason: Enter text here.