



SUBMISSION ON DISCLOSURE REQUIREMENTS IN THE NEW FINANCIAL ADVICE REGIME

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NOTE: Financial Advice New Zealand is the new professional body for professional New Zealand advisers. Combining the memberships of The Institute of Financial Advisers, The Professional Advisers Association and NZ Financial Advisers Association, Financial Advice New Zealand represents the interests of over 1,800 AFA and RFA members.

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Introduction

Consumers are increasingly faced with many and varied financial decisions in the areas of:

Lending advice, Personal risk advice, Health Insurance, Investment advice, Retirement planning – Accumulation, Retirement planning – Decumulation and Comprehensive Financial Planning which includes all these areas and also includes financial management, estate planning and taxation issues.

Financial Advisers provide a valuable service in helping consumers make financial decisions around these complex issues.

The financial advice industry contributes positively to the New Zealand economy by ensuring people have quality and timely advice in these areas. Research conducted by the Financial Planning Standards Board (FPSB) has shown that people who had received financial advice felt more financially confident, had greater control over their financial future and were better prepared for retirement.

It is also apparent however that there is a lack of appreciation of the value of financial advice.

Financial literacy levels in New Zealand are such that often the adviser's time is spent educating clients as to what their options are so that they can make informed decisions. There is immense value in this.

The advice-process is one of continuous verbal and written disclosure. However, written, mandatory disclosure is a vital part of the advice process and adds value and reduces risk to the consumer by informing them of a number of key facts and processes regarding the product provider, financial advice provider, the adviser, their competence and knowledge, their services and the limitations.

The key purpose of mandatory disclosure is to ensure the consumer is in a position to make an informed decision – and the success of any mandatory disclosure requirements must be assessed to that outcome.

We therefore agree with the objectives set out in the Discussion paper of:

- Objective 1 - provide consumers with the key information they need
- Objective 2 – provide consumers with the right information at the right time
- Objective 3 – provide information in a way that is accessible to consumers
- Objective 4 – provide consumers with effective disclosure, regardless of the channel used
- Objective 5 – not impose unnecessary compliance costs on industry

The journey of disclosure.

Item 3 in the Discussion paper “provides a summary of the information that should be disclosed and the points in the financial advice process when it should be disclosed”

Three points are discussed:

- Information that should be publicly available – or available to clients on request
- Information to be disclosed when the nature and scope is known
- Information that should be disclosed when making a recommendation

Advice Process & Disclosure

Financial advice involves an ongoing two-way process of continuous disclosure between the client and adviser.

However, the timing of written, mandatory disclosures has to be taken in the context of the advice-cycle.

There are ‘key points’ in the six-step advice-process when disclosure ought to be mandatory. We provide a schematic of the advice-process and how these disclosure work in practice.

In this Advice-Process Schematic we note:

- a) The purpose of the disclosure from an adviser’s perspective
- b) The client outcome after the written disclosure is made
- c) What disclosure (evidence) is required in the mandatory, written format
- d) When the disclosure is required (in the advice-process context)
- e) Where the disclosure is required
- f) In regard to a recommendation to replace a financial product what are the additional disclosure requirements

Financial Advice that includes a recommendation to replace a financial product

Rationale:

Financial advice that includes a recommendation to replace a client’s existing financial product is an area that represents an area of risk to the consumer, often very high risk.

The consequences to the consumer of accepting a poorly researched recommendation to dispose or replace a financial product can be material and ongoing. In many circumstances the consumer has made this decision based on in-complete analysis of their needs, and a poor or non-existent presentation to them of a product comparison and the risks that this ‘replacement advice’ may expose them to.

Recommendation:

We would recommend that there be additional disclosure requirements for 'replacement advice' with a mandatory requirement to provide the consumer:

- a) a product comparison*, outlining to the client the material difference in the products,
- b) the reasons for the recommendation to replace the financial product with a meaningful narrative that the consumer can understand, and
- c) the specific risks to the client of taking this advice.

Replacement of financial products can clearly be in the client's best interests. With these additional mandatory, disclosures to the consumer in place inappropriate advice to the consumer in this area can be minimised and even eliminated.

[*In the cases where a product comparison is not practically viable to complete e.g. an very old insurance policy document cannot be located, then the adviser must disclose that limitation and risk inherent in proceeding with the replacement.]

Note: There also may be cases where an adviser is instructed by a client to find a replacement for a product the consumer has decided to dispose of. This is not a situation of a replacement recommendation nevertheless the adviser should be required to disclose the risks to the consumer and seek client acknowledge of the limitation of the advice engagement.

Adviser Commissions and Embedded Costs

The current insurance commission regime spreads the cost of the financial adviser to the client over the lifetime of the policy. The client pays the premium every year and within that premium is the actual cost of the advice. Most advisers are normally remunerated upfront by the provider for their work in establishing the insurance policy however there are many variations to this remuneration model.

We do not consider that initial adviser remuneration and trailing commission leads to poor client outcomes where there are appropriate compliance measures, commission disclosure and disclosure and management of actual and potential conflicts.

Disclosure of commissions as a percentage must be taken in this context. The main aim of these commission disclosures is to highlight actual and perceived conflicts of interest. However, clients often get confused that they are paying these commissions and additionally many get confused as to whether they are paying extra premiums for their insurance.

It is our firm opinion that discussion of commissions should not dominate the entire disclosure debate. Commission disclosure, in isolation, could override a more useful disclosure between the consumer and adviser. We hold that there also ought to be discussion and disclosure of the actual embedded advice costs to the client.

Rationale:

Embedded in the insurance premium is the additional amount on the premium that relates to the adviser services. The cost to the consumer is the margin the insurer adds to the premium to cover the costs of using adviser distribution. Currently, insurance consumers do not know what it actually costs them for the service and advice provided by their adviser however this information is generally available.

E.g. an insurance premium quoted without commission doesn't reduce it by the upfront commission. Instead it reduces by about 12-15%. This is what it costs the consumer to obtain advice.

Consumers could be informed that this is the cost of acquiring the expertise of a qualified adviser and their advice services, namely:

- Assess their personal risk management needs and review them on a regular basis
- Advise them on the risks and benefits of product – and what best suits their needs
- Ensure that the insurance portfolio is relevant to their overall risk needs
- Negotiate terms on behalf of the client.
- Manage policy adjustments and advise changes as required over time
- Advise the client through a claims process

Recommendation:

Disclose at step four of the advice-process the actual 'embedded costs' of advice in the cost of the financial product – expressed as a percentage cost.

Commission in other distribution channels such as Vertically Integrated Organisations

Rationale:

Vertically Integrated Organisations (VIO) often offer badged insurance products that are underwritten by a product provider. In-house salaried staff provide financial advice on these in-house products.

In taking this example further, if banks in New Zealand were required to provide an expanded product suite – how would their commission earnings be disclosed? Often these product offerings are identical or very similar to those offered by non-aligned advisers.

E.g. ASB currently offers Sovereign insurance products. Westpac currently offers their bank-badged insurance products underwritten by AIA. There is a similar arrangement between BNZ and Partners Life product and ANZ and OnePath.

Recommendation:

Consumers ought to have the same rights of protection and disclosure when considering a financial product offered by a Financial Advice Provider who is a VIO. There ought to be disclosure of the payment and commission paid between the VIO and the Insurer. Similarly the embedded acquisition

and distribution costs in the product premium should be disclosed in the same manner as that proposed above for adviser's embedded costs in the premium.

Lending and Mortgage Advice

A similar situation occurs in regard to residential lending advice and the mortgage adviser community. Mortgage advisers receive initial and ongoing commission on lending products. Within the loan lending rate the lender should provide the adviser and client the embedded advice costs to the client.

Customers may deal directly with the Bank and their salaried employees. In these circumstances the mortgage provider should be required to disclose the embedded advice costs of their own in-house products.

This will ensure a level playing field and provide the consumer with a meaningful comparison of alternatives.

Percentage Commission or Dollar \$ figures

It is our firm opinion that discussion of commission in dollar terms would;

- be often very difficult to quantify and
- override a more useful disclosure discussion between the client and advisers.

A more meaningful disclosure from a client's perspective would be actual costs of the advice embedded in the premium.

We have made specific recommendations in regard to dollar disclosures in Option 2 under the 'Principles-based vs Prescriptive' section below.

How to disclosure - Principles-based vs Prescriptive 'approach'

With regard to questions 16 & 17 (page 22) there are three helpful 'options' in regard to taking either a Principles-based or prescriptive approach in regard to disclosure of commissions and incentives. Our key question is – in this area of managing conflicts of interest is - what approach best serves the client and adviser relationship? Option 1, 2, or 3?

Option 3 – Principles-based approach

We agree.

Rationale:

A ‘principles-based’ approach provides a high duty of care on financial advice providers, advisers and their supporting financial advice processes without the limitations of a prescriptive approach.

With a principles-based approach the desired consumer outcomes can be clearly articulated. E.g. in the case of disclosure of the adviser interests the outcome could be expressed as; ‘The client can provide their informed consent to such conflicts or reject them’.

However, while fully supporting this principles-based approach, the advice process could be significantly improved for the consumer and risk reduced for them, if there is a mandatory requirement that the adviser provide ‘sufficient factual information’ (see our principles-based policy below).

Recommendation:

Adopt the principles-based policy below

DISCLOSURE & MANAGEMENT OF CONFLICTS

“When providing financial advice a financial adviser (and nominated representative) must make full disclosure of all material conflicts of interest that could affect the client-adviser relationship.

*This obligation requires the adviser **to provide sufficient specific facts** so that the client is able to understand the adviser’s conflicts of interest, the business practices that give rise to the conflicts and the mechanisms through which the adviser manages such conflicts, so the client can provide informed consent to such conflicts or reject them.*

A sincere belief held by the adviser with a material conflict of interest that he or she is acting in the best interests of the clients is insufficient to excuse failure to make full disclosure.

An adviser must adopt and follow business practices reasonably designed to prevent material conflicts of interest from compromising the adviser’s ability to act in the client’s best interest.”

Option 1 – Require a comparison of commission rates

We agree

Rationale:

Such a comparison table would meet the ‘sufficient specific facts’ principle. In such an important area such as commissions the adviser ought to provide sufficient facts to assist the client in understanding the conflict and the business practices that give rise to the conflict and how the adviser manages those conflicts.

Recommendation:

In addition to the principles-based option 1 we agree to this requirement to disclose sufficient specific facts on relevant commissions and other incentives paid by providers.

Option 2 – Require the disclosure of commission and incentives in dollars terms

Disagree

Rationale:

There is a common assumption by clients that the commissions paid to advisers are the direct cost to them for the advice given. Commissions are paid by the provider to the adviser and are not a cost paid by the client. The lending and insurance commission structures reflects the reality that advisers provide many clients advice that never leads to a product purchase, for a myriad of reasons, not the least reason being client eligibility but also loading costs, exclusions and affordability.

Recommendation:

The additional disclosure of commission dollars to the client would add significantly to the current client confusion around commissions and ought not to be adopted.

Instead, as discussed earlier, we recommend the more meaningful disclosure of cost of advice in terms of the percentage of the premium.

Alternative to Option 2 – disclosure of embedded costs in percentage terms

Rationale:

The premium is the direct cost to the client. What ought to be transparent to the client is the embedded cost to them of the advice provided. This can be simply calculated by providers supplying advisers additional quotes for financial product, without the cost of commissions and incentives paid to the adviser.

E.g. on a \$3,000 per year life insurance premium, the ongoing embedded cost of advice is say 15%. The adviser can then explain these embedded advice costs to the client in relation to the service provided and ongoing support to the client, such as claims support and reviews.

Recommendation:

That product-providers be required to disclose to the adviser the embedded adviser cost. This would enable the adviser to provide 'sufficient specific facts' to their client around the direct cost of their advice and give context to their remuneration.

Disclosure of Soft Incentives as conflicts

Rationale:

Soft Incentives are not remuneration for services. Some soft incentive as noted in the recent FMA report would be unlikely to lead to a material conflict. For example an incentive where the aim is to provide professional development for the adviser would at least would be neutral for the client. Although there is potential conflict, full disclosure of such incentives could manage these.

However other soft incentives can lead directly to a material conflict because they can influence the adviser in a manner that compromises their ability to act in the client's best interest. Such practices ought to be avoided to prevent the material conflict.

Recommendation:

Adopt the principles-based approach. An adviser must adopt and follow business practices reasonably designed to prevent material conflicts of interest from compromising the adviser's ability to act in the client's best interest.

Attachments

Schematic A: Proposed mandatory disclosure requirements and the Advice-Process

Submission Template from Financial Advice New Zealand

Schematic A Proposed mandatory disclosure requirements and the Advice-Process

Page 1 : Advice-Process, advice outcomes, purpose of disclosure, key client outcomes, written** mandatory disclosures

Advice Process*	Establish client relationship ->	Collect client information ->	Analyse & assess client financial status->	Develop/present recommendations->	Implement recommendations ->	Review client's situation -> to 2,3,4,5
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
Advice Outcomes	Inform client about financial advice/adviser's competencies	Identify client's personal/financial needs, objectives and priorities	Analyse client's information	Identify & evaluate advice strategies	Agree on implementation responsibilities	Agree on responsibilities and terms of review of client situation
	Determine if adviser can meet client needs Define scope of engagement	Collect quantitative information and documents Collect qualitative information	Assess client objectives, needs and priorities Identify issues and concerns	Develop financial advice recommendations Present recommendations to clients	Identify & present to client products and services for implementation	Review and re-evaluate the clients' situation
Purpose of disclosure - the adviser's perspective (outcome)	To inform the consumer that they bona fide and have a service proposition that is suitable for the client's needs			Place the client in a position to make an 'informed decision' to buy and/or dispose product/service		The client has been advised about any changes to scope of service, remuneration or other material matters
Client's key outcome after disclosure provided by adviser	I am in a position to make an informed decision to engage this adviser? Are they right for me?			Can I make an informed decision to purchase this product? (and/or replace or dispose of another) Do I provide consent to conflicts or business practices that give rise to the conflicts?		Have the changes disclosed by my advisers affect my decision to continue with their recommendations and services? Are they still right for me?
Written**, Mandatory disclosures	<ol style="list-style-type: none"> FAP License and Adviser FSPR # Suite of possible product providers Interests and how conflicts managed Nature and scope of services General info as to remuneration, fee and commission structure FAP internal/external complaints and relevant disciplinary disclosures Relevant qualifications held Attest to CPD compliance (current competence) 			<ol style="list-style-type: none"> Specific and material conflicts, business practices that give rise to conflicts, management of conflicts Embedded costs of their advice and/or service <u>in the product cost</u> to the client as a % of that cost Actual commissions payable to the adviser as a % of the product cost to the client Direct \$ costs payable for advice and/or service Actual scope of service - specific limits to the advice and/or service, material changes Any changes to disciplinary history 		<ol style="list-style-type: none"> New disciplinary or regulatory proceedings, judgements Changes or limitations to service or scope. Changes to embedded % costs of advice/service in product Changes to commissions as % to adviser Changes to ongoing direct costs of advice/service

Schematic A : Proposed mandatory disclosure requirements and the Advice-Process

Page 2 : Advice-Process, when mandatory disclosure required, where disclosure published, Disclosure for replacement product

Advice Process*	Establish client relationship ->	Collect client information ->	Analyse & assess client financial status->	Develop/present recommendations->	Implement recommendations ->	Review client's situation -> to 2,3,4,5
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
When Mandatory disclosure is required	Must be made <u>prior to engagement</u> , and prior to any recommendations presented to client at step 4 Preferably at step 1, or if the steps 1,2 & 3 are combined then before step 4			Must be made prior to or at time of <u>presentation of recommendation(s)</u> , with sufficient time to allow informed consent to conflicts of interest or limitations. Must be prior to the client commitment to buy, dispose, replace, step 5		Must be at time of review, step 6
Where Mandatory disclosure is required and what format	Required to client in written form** Verbal disclosures and disclaimers are not sufficient General Website & apps - optional only			Required to client in written form** Verbal disclosures and disclaimers are not sufficient Client online file/apps - optional		

Additional disclosure requirements for advice on replacement product

Additional Written, Mandatory disclosure in case of **Replacement Recommendation**

1. A comprehensive product comparison, outlining to the client the material differences and the specific risks to the client
 2. Reasons for the recommendation to replace the financial product
- IMPORTANT NOTE: A RECOMMENDATION TO REPLACE A PRODUCT CANNOT PROCEED WITH THE CLIENT UNLESS THERE IS WRITTEN DISCLOSURE OF PRODUCT COMPARISON***.**

Key

** 'written form' means any personal delivery INCLUDING any digital means e.g. email, text, video format, audio message

*Financial Advice New Zealand - Practice Standards

process and the requirements for written mandatory disclosure.

***In the cases where a product comparison is not practically viable to complete e.g. an very old insurance policy document cannot be located, then the adviser must disclose that limitation and risk inherent in proceeding with the replacement.

Note: There also may be cases where an adviser is instructed by a client to find a replacement for a product the consumer has decided to dispose of. This is not a situation of a replacement recommendation nevertheless the adviser should be required to disclose the risks to the consumer and seek client acknowledge of the limitation of the advice engagement.

Submission on discussion document: *Disclosure requirements in the new financial advice regime*

Your name and organisation

Name	FRED DODDS
Organisation	FINANCIAL ADVICE NEW ZEALAND

Responses to discussion document questions

1	<i>Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?</i>
	Yes

The timing and form of disclosure

2	<i>What are your views on the proposal that information be disclosed to consumers at different points in the advice process?</i>
	Agree with process
3	<i>Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?</i>
	Yes
4	<i>Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?</i>
	Yes

The form of disclosure

5	<i>If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?</i>
	See our schematic
6	<i>Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?</i>
	Dealt with by FMA

What information do customers require?

7	<i>Do you agree that information relating to the licence, duties and complaints process should be</i>
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made available to consumers?

Yes

8

Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?

Yes to allow consumers to make meaningful disclosure comparisons across advisers

9

Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?

Yes

Information about the financial advice

Limitations in the nature and scope of the advice

10

Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out on page 19? Why or why not?

Yes

11

How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?

By including limitations in the Disclosure Document

Costs to client

12

Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page 20? Why or why not?

Yes

13

What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?

The “additional expenses” particularly the claw back of commissions needs to be clearly communicated to the customer so they can absolutely understand the extent of any such fee being charged. industry

Commission payments and other incentives

14

Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?

Yes – but an initial and a final only. The process of an insurance application eg involving loadings, deferment, and change to client priorities if disclosed at each point would confuse a client.

15

If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?

The issue is could commissions and incentives influence the advisers decisions and are they substantive enough to give rise to a conflict. We have provided a detailed view on commissions in an attached submission. Incentives come in many forms from minor eg a ticket to a sports fixture through to possible offshore trips but could also include an incentive to the adviser in the form of professional development. The “test” is that it should all be disclosed.

Options for how to disclose commissions and other incentives

16

Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?

No – should be principles based

17

Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?

See our wider submission on this point

Other conflicts of interest and affiliations

18

Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?

Yes

19

Are there any additional factors that might influence financial advice that should be disclosed?

No

20

Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?

Yes

Information about the firm or individual giving advice

Details of relevant disciplinary history

21

Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?

Agree

22

Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?

Yes

23 *Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?*

Yes

Additional options

A prescribed summary document

24 *Do you think that a prescribed template will assist consumers in accessing the information that they require?*

Yes

25 *How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?*

This is most important and there should be no difference to disclosure requirements merely by distribution or advice type. Customers must receive written and mandatory disclosure information in all cases that aligns with face to face adviser responsibilities.

Requirements for disclosure provided through different methods

26 *Should the regulations allow for disclosure to be provided verbally? Why or why not?*

No – verbal disclosure is not appropriate and over the phone disclaimers are borderline. Stated/recorded acceptance alone should be subject to more scrutiny, and those processes that currently rely on playing or reading a disclosure on the phone should also involve an emailed written disclosure.

27 *If disclosure was provided verbally, should the regulations include any additional requirements?*

Yes – see Q26

Requirements for financial advice given through different channels

28 *Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?*

Robo advice should certainly inform the client that there is no human involved. A disclosure to a client must reinforce that and that the information is “computer advice”. Phone advice see Q26

29 *Do consumers require any additional information when receiving financial advice via an online platform?*

No

Disclosure when replacing a financial product

30 *Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?*

	See our wider submission on this point
31	<i>Should this apply to the financial advice given on the replacement of all financial advice products?</i>
	Yes
Information to existing financial advice clients	
32	<i>Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?</i>
	Yes – if the ongoing advice is not changing the initial agreed advice there should merely be a confirmation that there has been no material change to an original plan. If there is a change eg to life cover, asset allocations etc then a more detailed disclosure would be required.
33	<i>Should there be a limit on the length of time that this relief would apply?</i>
	No
Transitional requirements	
34	<i>Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?</i>
	No
35	<i>Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?</i>
	No
Disclosure to wholesale clients	
36	<i>Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?</i>
	The key is as per current Code Standard 6 and that a client is made full aware of that status to the extent that the client signs off to that knowledge.
37	<i>Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?</i>
	See Q36

Other comments