

NAVIGATING REGULATION

Financial Services Council.
Growing and protecting the wealth of New Zealanders

2018



This is the third message from the Financial Services Council about future changes coming to financial advice regulation. *The FSC's goal is to highlight key things you need to know about the Financial Services Legislation Amendment Bill (FSLAB), its regulations and the Code of Professional Conduct for Financial Advice Services.*

MBIE released a consultation document about disclosure

The Ministry of Business, Innovation and Employment (MBIE) released a [consultation paper](#) on 10 April. Submissions are due on 25 May 2018. We encourage you to submit your views, to ensure a broad range of ideas contribute to developing these regulations.

The disclosure regulations will apply to anyone who gives financial advice to retail clients (this includes robo-advice), and may also impact wholesale advice.

MBIE proposes regulations that set out what to disclose and when, but not how. This is intended to ensure that the regulations are flexible enough to adapt to innovation.

What disclosures could be required, and when?

MBIE proposes disclosure should occur around three points in the advice process (pp16-24). Pages 30-31 summarise how disclosure would work in an insurance advice scenario. This is a good place to start.

Each financial advice provider (FAP) would have to disclose the following *information publicly*, such as on its website, or provide it *to clients on request*:

- That the FAP holds a licence issued by the FMA, and is subject to conduct and client care duties (including a Code of Conduct).
- Details about the FAP's complaints resolution process, and that clients have free access to their disputes resolution scheme.
- A general description of limitations on the nature and scope of the advice they can give.
- Whether the FAP charges fees to give financial advice.
- Whether the FAP pays or receives commission or other incentives, and any other conflicts of interest.

By the time the *nature and scope of advice is known*, the following information would be disclosed:

- Relevant disciplinary history of the financial adviser and/or the FAP (e.g. by the FMA), and insolvency or bankruptcy history.
- Details of the nature and scope of advice, including the providers whose products will be considered, and limitations on the advice.
- Details of commissions or incentives that the adviser and FAP may receive, and about material conflicts of interest.

- A reasonable estimate of fees, and the basis on which they are charged (before the client incurs charges).

The following information would be disclosed *when making a recommendation*:

- Any material changes to the nature and scope of advice (e.g. if only a subset of providers or products was considered).
- Details of specific conflicts of interest, including specific commissions and incentives.
- Any additional expenses that the client may incur (e.g. commission clawbacks on-charged to the client if the policy is cancelled.)

Other points of disclosure

- Before the client incurs any charges, the details of and basis for the charge.
- When a client complains, details of the FAP's dispute resolution scheme.

Additional options

MBIE is undecided on some things (pp25-28):

- Should there be a prescribed summary disclosure document?
- Should it be possible to disclose verbally? Should there be additional requirements if disclosure is verbal or online?
- Should there be additional disclosure requirements for replacement business, e.g. the risks of replacement?
- Should there be reduced requirements when disclosing to existing clients?
- Will there be enough time to adapt, or should there be a transition period?
- Should wholesale clients be informed of their ability to opt-out, and be treated as retail clients?

Submissions close 25 May 2018

The template for submissions is [available here](#).

The FSC encourages you to discuss the issues and your ideas with your colleagues and your clients. Are there challenges with this proposed framework? Would the proposed disclosures benefit your clients? What do your clients want to know during the advice process?

Here are a few tips for submissions:

- Submissions *will be considered*, so get involved.
- Include an introduction to explain who you are and what you do for clients.
- Don't feel you have to answer every question (there are 37). Focus your efforts on the areas that concern you most.
- Try to write concisely and clearly.
- Try to be objective and constructive, not emotive. How will the suggested framework affect consumers generally and your clients specifically?
- When answering a question, include with what you disagree, why you disagree, any likely consequences they may not expect, evidence (if you can), and an alternative you think could achieve MBIE's goals more effectively.

Previous messages in this series

- Message 1, general information and timeline, is available [\[here\]](#).
- Message 2, submitting on the Code Working Group consultation document, is available [\[here\]](#).

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