IAG submission

to the

Ministry of Business Innovation and Employment

on the

Discussion paper: Disclosure requirements in the new financial advice regime

25 May 2018

1. INTRODUCTION

1.1 This submission is a response by IAG New Zealand Ltd (IAG) to the Ministry of Business Innovation and Employment on its the Discussion paper: Disclosure requirements in the new financial advice regime (the Paper).

1.2 IAG is New Zealand's leading general insurer. We insure more than 1.5 million New Zealanders and protect over $650 billion of commercial and domestic assets across New Zealand.

1.3 We welcome the opportunity to discuss our submission with officials.

1.4 IAG's contact for matters relating to this submission are:

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2. SUMMARY OF RECOMMENDATIONS

2.1 We recommend that:

- the regulations do not include a materiality threshold to determine which commissions and incentives are disclosed
- advisers / providers are required to disclose all the remuneration, commission, fees, bonuses, benefits and incentives they receive
- all remuneration, commission, fees, bonuses, benefits and incentives should be itemised to the extent that it allows the consumer to understand what money is ultimately being received by the adviser, the adviser's employer and the product provider(s) being recommended
- guidance material be prepared by the Code Committee with relevant industry and consumer groups, that includes:
  - how to assess materiality and relevance, specifically in relation to conflicts of interest and disciplinary history
  - how to describe key information, specifically different forms of commission, incentives and other benefits, both generally and in relation to specific advice
  - Safe harbor wording and templates
- the regulations allow advisors / providers greater flexibility in when disclosure is made
- the FMA approves disclosure arrangements as part of the licencing of advisers / providers

3. GENERAL COMMENTS

3.1 IAG has always been supportive of disclosure and believes that it is essential that consumers have the information they need to confidently select their adviser and act on their advice.

3.2 For this to occur, the disclosure regime must recognise the breadth of financial advice that is available and cut through its inherent complexity to ensure consumers can see and understand the factors that will be most material to their decisions. To do this the regulations must reach the right level of detail and specificity, without making disclosure onerous or difficult to understand or expensive and cumbersome to deliver.

3.3 We are broadly supportive of the proposals in the Paper. We applaud and strongly encourage the willingness to take a flexible approach. The current set of proposals can be characterised as specifying 'what' and 'when' but being flexible on 'how'. Our comments can be summarised as wanting more specificity and guidance on the 'what' and greater flexibility on the 'when' and 'how'.

3.4 These themes of specificity and flexibility are repeated in answers to the specific questions posed in the Paper.

The need for greater guidance

3.5 The proposals include all the categories of information that we expect to be part of disclosure and that will support good decision making by consumers. Our concern is that some of this information relates to practices and situations that are open to interpretation, both in terms of whether they should be disclosed and how they should be described. This ambiguity creates a risk that information material to a consumer's decision is either omitted or unclear.

3.6 To overcome this, the disclosure regime must be supported by specific guidance that captures and is tailored to the different distribution models and arrangements in the market. This will help to ensure that advisers / providers can consistently and confidently meet the information needs of consumers.

Timing of disclosures

3.7 Not all advice processes are the same. The provision of holistic independent financial advice is not the same as the sale of general insurance. They vary in terms of breadth, choice, intricacy, timing and procedure, and it is vital that the disclosure regime can be tailored by advisers / providers to these differences.

3.8 This is most important for 'simple' advice processes like that which might be used when selling general insurance direct to the consumer. This type of advice typically

relates to a single transactional need, single product or category of product and single provider, and occurs in a single interaction. This is known in advance by the adviser / provider of any selection decision by a consumer. We believe that this is also well understood by consumers.

3.9 In addition, all potential advice is subject to a single remuneration structure, single fee structure (if any), single set of conflicts (if any) and single insolvency or bankruptcy history (if any). Again, all of this is known by the adviser / provider in advance of a consumer selecting the adviser / provider and will not change with or during the giving of advice.

3.10 So for example, any consumer calling AMI will only ever get advice on buying, altering, or cancelling an AMI general insurance product. The fees, biases and standing of AMI does not change with the advice and nor does the adviser's remuneration.

3.11 The nature of this 'simple' advice also means that the three points in time described in the Paper (searching for the advice, the point by which the scope and nature of the financial advice is known, and the giving of advice) are not mutually exclusive or well separated. The three points of disclosure would therefore be unnatural, unnecessary and impose unreasonable compliance costs.

3.12 Instead, disclosure may be most relevant, useful and efficient if it only occurs at one or two points in the process. All the information required to be disclosed can be disclosed as part of the adviser's / provider's *general publicly available information*. The consumer can also then be advised of and directed to this information during the *giving of advice*.

4. ANSWERS TO SPECIFIC QUESTIONS

Objectives

Q1. Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?

4.1 We agree with the objectives that have been identified.

4.2 We are pleased to see a focus on efficiency. The cost of the disclosure regime for advisers / providers is driven by when and how disclosure is made. Care is needed to ensure that the regime is sufficiently flexible to allow advisers / providers to fit it within, and not have it shape, their advice processes.

The timing and form of disclosure

Timing

Q2. What are your views on the proposal that information be disclosed to consumers at different points in the advice process?

4.3 We agree with the proposal in principle. Disclosing information at different points in the advice process will help ensure that consumers have the right information at the right time to support their decisions.

4.4 However as discussed above (see Timing of disclosures), not all advice processes have the three distinct stages described to allow for separate disclosures. It is essential that disclosure fits within, and does not dictate, the advice process. And so, for some advice processes disclosure may be most relevant, useful and efficient if it only occurs at one or two points in the advice process.

Q3. Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?

4.5 Yes, in principle it will improve the effectiveness of disclosure and ensure that consumers received the information most relevant to where they are in their decision making: selecting an adviser; accepting their offer of advice; and acting on their advice.

Q4. 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?

4.6 Yes, but only in advertising related to their advice services.

The form of disclosure

Q5. 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?

4.7 We strongly support an approach that is unambiguous about what is to be disclosed and flexible and how it is disclosed. To achieve this, we think the regulations should:

- Specify the objectives of disclosure;
- Specify the information that needs to be disclosed;
- Include definitions for key information;
- Allow the Code Committee to prepare optional safe harbour wording and templates
- Allow the Code Committee to develop and issue guidance material on:
  - Definitions (as required)
  - Application of concepts such as 'material' and 'relevant'
  - How to articulate certain disclosures
- Require the Code Committee to work with industry and consumer groups and organisation in preparing the guidance material
- Reference the guidance material in enforcement provisions

Q6. 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?

4.8 We agree that disclosure should be clear, concise and effective, and that it meet the (paraphrased) objectives of relevance, timeliness, accessibility, consistency and efficiency. Many of these outcomes are subjective and care is needed in how they might be codified in regulations.

4.9 We would not support 'hard' presentational requirements such as word limits. Imposing word limits, if they are to be meaningful, risks constraining effective disclosure in more complex situations – precisely when complete disclosure is needed – and so should be avoided.

4.10 We agree that there is a role for orders, penalties and civil liabilities in the regime. These must be proportionate in design and use and applied through robust due process. The regime must include penalties for failing to disclose or failing to disclose in a timely manner, and for misleading or deceptive disclosure.

4.11 To avoid concerns about objectivity, consistency and fairness, the regime should avoid penalties and civil liabilities for disclosure that falls short of being misleading and deceptive, but that also fails meet subjective presentational obligations. Stop orders may be appropriate in these circumstances.

What information do consumers require?

Information that promotes confidence among consumers

Q7. Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?

4.12 We partially agree with the proposal.

4.13 We agree that information relating to the licence, duties and complaints process should be in an adviser's / provider's general publicly available information.

4.14 We agree that in some circumstances information relating to the licence should be disclosed by the point that the nature and scope of advice is known. However, as discussed above (see Timing of disclosures), in other circumstances this could be unnatural, unnecessary and impose unreasonable compliance costs and so should not be required.

4.15 We agree that in some circumstances information relating duties and complaints process should be disclosed at the point of giving advice. However, as discussed above (see Timing of disclosures), in other circumstances this could be unnatural, unnecessary and impose unreasonable compliance costs and so should not be required.

Q8. Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?

4.16 Yes. This text should provide safe harbour but not be mandatory, allowing advisers and providers to vary from it where to do so provides better disclosure.

Q9. 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)?

4.17 Yes, consumer should be informed of their ability to access free dispute resolution through the adviser's / provider's Approved Dispute Resolution service (ADRS). However, this should only be provided when it is apparent that a complaint cannot not be resolved through the adviser's / provider's internal dispute resolution process.

4.18 The consumers expectation when making a complaint is that the adviser / provider will remedy the problem as a priority, not that they are informed of a service they can use when the problem that is the subject of their complaint remains unresolved. To alert all consumers with a complaint will send the wrong signal by implying that the adviser / provider does not expect to resolve the complaint.

4.19 It would also be highly inefficient to tell all complainants about the ADRS, when most complaints are resolved without having to be referred to such services.

4.20 We agree that this obligation should apply to all financial service providers.

Information about the financial advice

Limitations in the nature and scope of the advice

Q10. Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out above? Why or why not?

4.21 We partially agree with the proposal.

4.22 We agree that it is important for consumers to understand the scope and nature of the advice they receive, especially any limitation to the type of advice provided and or the products and providers considered. We also agree that this information should be included in advisers' / providers' general publicly available information.

4.23 We agree that in some circumstances this information should be disclosed by the point that the nature and scope of advice is known and at the point of giving advice.

4.24 However, as discussed above (see Timing of disclosures), in other circumstances this could be unnatural, unnecessary and impose unreasonable compliance costs and so should not be required. Instead reliance could be placed on this information having been disclosed in general publicly available information and reference made to it at the point of giving advice.

Q11. How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?

4.25 We have no further comment.

Costs to the client

Q12. Do you agree with the proposal relating to disclosure of costs to clients, as set out above? Why or why not?

4.26 We partially agree with the proposal.

4.27 We agree that consumers need to know the costs they will incur to receive financial advice and that this information should be included in advisers' / providers' general publicly available information.

4.28 We agree that in some circumstances this information should be disclosed by the point that the nature and scope of advice is known.

4.29 However, as discussed above (see Timing of disclosures), in other circumstances this could be unnatural, unnecessary and impose unreasonable compliance costs and so should not be required. Instead reliance could be placed on this information having been disclosed in general publicly available information and reference made to it at the point of giving advice.

4.30 We agree that consumer should be informed of additional expenses they might incur in buying or exiting a product and that this should be provided at the point of giving advice.

Q13. 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)?

4.31 Disclosure regulations should ensure consumers are made aware of the fees they will be charged should they follow the advice they receive.

4.32 We recommend that all fees and expenses should be itemised to the extent that it allows the consumer to understand what money is ultimately being received by the adviser, the adviser's employer and the product provider(s) being recommended.

4.33 We believe that the disclosure of fees and expenses by the point that the nature and scope of advice is known and at the point of giving advice should only be required if such fees and expenses exist.

4.34 It is worth noting that in many instances there will be no fees or expenses associated with the advice a consumer receives or any additional fees or expenses beyond the purchase price of the product when acting on that advice. An adviser / provider should not be required to disclose an absence of fees and expenses as this is unnecessary and would impose unreasonable compliance costs.

Commission payments and other incentives

Q14. 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?

4.35 We partially agree with the proposal.

4.36 We agree that providers should disclose the commissions and incentives they pay to the advisers they employ and engage, and that this information should be included in their general publicly available information.

4.37 We agree that more detailed disclosure of remuneration should be made later in the advice process as the specific remuneration an adviser will received (if their advice is followed) becomes known.

4.38 However, as discussed above (see Timing of disclosures), in other circumstances this could be unnatural, unnecessary and impose unreasonable compliance costs and so should not be required. Instead reliance could be placed on this information having been disclosed in general publicly available information and reference made to it at the point of giving advice.

4.39 We do not agree that only the 'particular' commissions and incentives be disclosed. Those commissions and incentives that are 'particular' may not be all those that are relevant or material to a consumer's decision. For example, arrangements can exist where the adviser or their employer may receive income or benefits that are not connected to one piece of advice and yet may be perceived by consumers as being a relevant and material incentive acting of the advice they receive.

Q15. If the regulations were to include a materiality threshold that would determine the commissions and incentives that needed to be disclosed, what would an appropriate threshold be?

4.40 We do not agree that a materiality threshold should be used to determine which commissions and incentives are disclosed.

4.41 We acknowledge that a materiality threshold can help to create clear, concise and effective disclosure, and achieve more tailored and light-handed regulation.

4.42 However, we believe that relevance and materiality must be assessed from the consumers perspective. To avoid the subjectivity and risk of under-disclosure that is inherent in advisers / providers making that assessment on consumers behalf, we further believe that all commissions and incentives must be disclosed. This is an item of disclosure where we cannot trade away relevance for efficiency.

4.43 We recommend that advisers / providers are required to disclose all the remuneration, commission, fees, bonuses, benefits and incentives they receive. This should include:

- Salary or wages
- Initial and annual / trail commissions
- Incentives at the time of sale and during the life of the product.
- Fees paid in addition and separate to commissions
- Annual bonuses and rewards
- Soft commissions

4.44 As stated above, we recommend that all fees and expenses should be itemised to the extent that it allows the consumer to understand what money is ultimately being received by the adviser, the adviser's employer and the product provider(s) being recommended. This can be achieved by requiring an adviser to disclose the product suppliers base price.

4.45 If a materiality threshold is included in the regulations, then we recommend that it is supported by detailed guidance on what is and is not material and that it captures and reflects the different remuneration models in the market.

How to disclosure commissions and other incentives

Q16. Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?

4.46 Yes. Commissions and incentives are many and varied and as such can be opaque and open to interpretation about if and how they are disclosed. We believe they are a key input to consumers' decision making and so it is vital that the regulations leave no doubt as to what must be disclosed. As discussed above, this must be supported by detailed guidance.

Q17. Which of the above options do you prefer? What are these costs and benefits of the options?

4.47 We prefer option 3. We believe that one principle should be that commissions and incentives are described in ways that are tangible and understandable to consumers, such as using percentages (option 1) and dollar figures (option2) when that is appropriate and achievable.

4.48 As discussed above, the description of commissions and incentives should be a key part of supporting guidance.

Other conflicts of interest and affiliations

Q18. Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?

4.49 We partially agree with the proposal.

4.50 We agree that all financial advice providers should include relevant potential conflicts of interest in their *general* publicly available information.

4.51 We agree that in some circumstances *further details* on relevant potential conflicts of interest should be disclosed by the point that the nature and scope of advice is known. This should only occur if further undisclosed details exist.

4.52 However, as discussed above (see Timing of disclosures), in other circumstances this could be unnatural, unnecessary and impose unreasonable compliance costs and so should not be required. Instead reliance could be placed on this information having been disclosed in general publicly available information and reference made to it at the point of giving advice.

4.53 We also agree that the conflicts disclosed should be limited to those financial interests, relationships and affiliations 'which could be perceived to materially influence the financial advice'. We recommend that this is supported by the development of clear guidance to advisers / providers as to what is considered material.

4.54 We do not agree that only the 'particular' conflicts be disclosed at the point that the nature and scope of advice is known and at the point the point of giving advice. The conflicts that are 'particular' to that piece of advice may not include all those considered 'material' by the consumer. As such the disclosure should capture conflicts that are 'particular' or material.

4.55 Subject to the above point, we agree that in some circumstances 'particular' and or 'material' conflicts of interest should be disclosed at the point of giving advice.

4.56 However, as discussed above (see Timing of disclosures), in other circumstances this could be unnatural, unnecessary and impose unreasonable compliance costs and so should not be required. Instead reliance could be placed on this information having been disclosed in general publicly available information and reference made to it at the point of giving advice.

Q19. Are there any additional factors that might influence financial advice that should be disclosed?

4.57 We have no further comment.

Q20. 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)?

4.58 We think that the exact format or placement of information within a disclosure should be left to advisers / providers to decide, guided by the objective of providing accessible information to consumers.

Information about the firm or individual giving advice

Disciplinary history, insolvency and bankruptcy

Q21. Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?

4.59 We partially agree with the proposal.

4.60 We agree information relating to disciplinary history and bankruptcy or insolvency history should be disclosed. As discussed above, we believe that this disclosure would be strengthened by developing guidance on what is and is not considered 'relevant'.

4.61 We agree that in some circumstances relevant potential conflicts of interest should be disclosed by the point that the nature and scope of advice is known.

4.62 However, as discussed above (see Timing of disclosures), in other circumstances this could be unnatural, unnecessary and impose unreasonable compliance costs and could instead be disclosed in general publicly available information and referenced to when giving advice.

Q22. Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider? Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?

4.63 Yes. However, a provider should not be required to disclose an absence of a disciplinary history and bankruptcy or insolvency history as this is unnecessary and would impose unreasonable compliance costs.

4.64 It should be noted that many of the large entities that will be providers under this new regime will be licenced by the Reserve Bank of New Zealand (RBNZ) and subject to its 'fit and proper' regime. The requires insurers, for example, to consider, amongst a wide range of other factors, an individual's disciplinary, insolvency and bankruptcy history. The practical effect is that people with a history in these areas would not be considers for a directorship nor approved by the RBNZ.

Additional options

A prescribed summary document

Q24. Do you think that a prescribed template will assist consumers in accessing the information that they require?

4.65 It is not clear from the Paper whether the 'summary document' would be in addition to or merely provide a template for disclosure.

4.66 We believe that clear guidance is needed to support advisers / providers to make effective disclosure. This guidance could include templates that support the major advice service types. We do not support mandatory templates.

Q25. 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)?

4.67 We have no additional comment.

Requirements for disclosure given through different methods

Q26. Should the regulations allow for disclosure to be provided verbally? Why or why not?

4.68 Yes, the regulations should allow for verbal disclosure.

Q27. If disclosure was provided verbally, should the regulations include any additional requirements?

4.69 The regulations should require advisers / providers to provide non-verbal disclosure if requested by the consumer to do so. The form should not be prescribed and could include a written document or a link or reference to information held on their website.

Requirements for advice given through different channels

Q28. Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?

4.70 We have no comment.

Q29. Do consumers require any additional information when receiving financial advice via an online platform?

4.71 We have no comment.

Disclosure when replacing a financial product

Q30. Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?

4.72 We have no comment.

Q31. Should this apply to the financial advice given on the replacement of all financial advice products?

4.73 No. A prescribed notification should only be required when the scope of advice captures all products and providers in the market and the circumstances of the consumer or the nature of the product means that replacing the product creates material financial risk to the consumer.

Information to existing financial advice clients

Q32. 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?

4.74 We have no comment.

Q33. Should there be a limit on the length of time that this relief would apply?

4.75 We have no comment.

Transitional requirements

Q34. 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?

4.76 We have no comment.

Q35. Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?

4.77 We have no comment.

Disclosure to wholesale clients

Q36. 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?

4.78 We have no comment.

Q37. 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?

4.79 We have no comment.