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Financial Markets Policy
Ministry of Business, Innovation & Employment
PO Box 3705
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By email: faareview@mbie.govt.nz

Options Paper: Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 – Parts 1 & 2

1. The New Zealand Law Society (Law Society) welcomes the opportunity to comment on Parts 1 and 2 of the Options Paper *Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008* (Options Paper).

Part 1: Introduction

Chapter 3 – Barriers to achieving the outcomes

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

2. Yes, but please see response to question 2 below, which highlights an additional option.

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

3. Yes. The earlier Issues Paper[1] set out three goals for the review. The third of these was that "Public confidence in the professionalism of financial advisers is promoted".

4. In an attempt to refine the scope of the issues and put the consumer at the heart of the review, the Options Paper misses a barrier: consumers do not value financial advice. To achieve the Issue Paper's goal of promoting public confidence in the professionalism of financial advisers, the review of the Financial Advisers Act 2008 (FA Act) should acknowledge this barrier and put forward ways to overcome it. Consumers would be more likely to value financial advice if they understood that it was separate from sales and provided by professionals.

5. Because this barrier has not been identified, the Options Paper looks to increase professionalism through processes (such as passing exams or applying for licences). Professionalism comes from belonging to a profession. Good culture cannot be imposed by a regulator but must be owned and developed by that profession. The professionalism of financial

[1] Issues Paper: Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008, released 20 May 2015.

advisers and the public's recognition of that professionalism are critical to achieving the outcomes of the review.

Part 2: Options for change

Chapter 4 – Discrete elements

Question 3: Which options will be most effective in achieving the desired outcomes and why?

6. The three desired outcomes are that:

   a. consumers can access the advice and assistance they need;

   b. consumers have access to effective redress; and

   c. advice improves consumers' financial outcomes.

7. The Law Society supports options that will enhance consumers' ability to access independent financial advice while improving the professionalism of financial advisers. Any changes to the legislation must simplify the regime and be principles-based. Proposed option 3 outlined at page 23 of the Options Paper – restricting the provision of certain complex or high-risk services to certain advisers – comes closest to achieving those aims. However, as noted below, questions arise about the cost and effectiveness of the entity licensing proposal.

Question 4: What would the costs and benefits of the various options be for different participants (consumers, financial advisers, businesses)?

8. The Law Society limits its comments to the benefits of distinguishing sales from financial advice and the implications of entity licensing.

Distinguishing sales from financial advice

9. Anecdotal evidence suggests that consumers do not trust or value financial advice given in the sales process. This issue could be addressed by proposals to:

   a. enable a sales process that does not stray into "financial advice"; and

   b. require that product providers and distributors be subject to positive obligations as to the suitability of the financial product or financial service.

Entity Licensing[2]

10. It is not clear from the Options Paper how licensing would achieve any of the "goals" of the Issues Paper (or the "outcomes" of this Options Paper). Licensing could impose significant costs on market participants and strain the resources of the Financial Markets Authority (FMA).

11. In Chapter 4.5 licensing is proposed as an option for ensuring "that financial advisers meet their respective obligations", but the proposal raises the following questions:

    a. Which business must be licensed: any financial service provider, dealer groups, adviser businesses? There is potential for duplication of regulation and costs.

[2] For ease of reference, these comments are also made in response to questions in Chapter 4.5.

b. Many market participants already hold multiple financial services licences, such as bank, insurance company and Qualifying Financial Entity (QFE) licences. On what basis will the cost of multiple layers of licences meet the goals of this review or the needs of consumers?

c. Is licensing necessary if the individual advisers who provide the advice are to be required to meet higher competency and ethical standards?

d. The FMA already has wide powers to regulate market participants and to request information under the Financial Markets Conduct Act 2013 (FMC Act) and FA Act but does it have the resources or appetite to carry out licensing?

Question 5: Are there any other viable options? If so, please provide details.

12. See the response to question 18 below.

Chapter 4.1 – Restrictions on who can provide certain advice

Question 6: What implications would removing the distinction between class and personalised advice have on access to advice?

13. The Law Society supports removing the distinction between class and personalised advice. The distinction is artificial and difficult for consumers and financial advisers to understand. The definition relies on factors that a financial adviser cannot control – a client's reasonable expectation of the service is a key factor in determining whether advice is personalised. Financial advisers should be able to respond to the needs of their clients without being forced down artificial channels such as class or personalised advice. All financial advice should be personalised financial advice.

Question 7: Should high-risk services be restricted to certain advisers? Why or why not?

14. Financial advice services should not be provided to a client unless the financial adviser is competent to provide that service. The risk level of a service depends not only on the type of product, but on the consumer. Maintaining a list of "risky" products fails to recognise that the risk of a product depends to a significant extent on the consumer.

15. Introducing a new designation of "Expert Financial Adviser", as proposed in Package 2 in Chapter 5, may create more confusion for consumers. Lifting the competence, ethical standards and professionalism of the whole industry would be a better way to manage high-risk services.

Question 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?

16. The areas of the regime that are not regulated need to be better defined in the legislation. The Law Society supports the requirement that a client must "opt-in" to being a wholesale investor, rather than automatically being treated as such if they meet the criteria, as wholesale investors do not have the same protections under the FA Act.

17. The scope of the regime as it relates to "execution only" services should also be further clarified. "Execution only" transactions should be defined in the FA Act to ensure that the service is only provided where a customer has requested a specific product and does not wish to receive advice.

Chapter 4.2 – Advice through technological channels

Question 9: What ethical and other entry requirements should apply to advice platforms?

18. Advice platforms should be required to put the interests of the customer first. This means that the platform should only recommend a product that is suitable for a customer and should appropriately manage conflicts of interest.

19. Work must be undertaken to understand how robo-advisers deal with the conflicts around replacement products. If no quality assessment of the current product can be undertaken, the regime should prohibit robo-advice where there is an existing product, until such time as the risks can be properly managed.

Question 10: How, if at all, should requirements differ between traditional and online financial advice?

20. There should be no distinction between traditional and online financial advice. The FA Act should be amended to allow the responsible provision of each type of advice. Many of the robo-advice solutions currently being developed involve a mix of "robo" and "traditional" advice, highlighting why the same regulatory requirements should apply to both channels of advice.

Question 11: Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?

21. The FA Act regime should be simplified. A principles-based approach should be taken to ensure that regulation does not unnecessarily inhibit innovation.

Chapter 4.3 – Ethical and client-care obligations

Question 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?

22. All financial advisers should be required to put the consumer's interests first. Consumers would expect their interests to be put first when they receive financial advice from a professional. The Professional Standards Councils of Australia provide the following definition of a "profession" (highlighting added):[3]

> *"A profession is a disciplined group of individuals who adhere to ethical standards. This group positions itself as possessing special knowledge and skills in a widely recognised body of learning derived from research, education and training at a high level, and is recognised by the public as such.* ***A profession is also prepared to apply this knowledge and exercise these skills in the interest of others"***.

23. If an adviser puts his interests before the client's interests it is not advice – it is a sale. It may even be mis-selling, exposing the adviser and financial service provider to liability under the FMC Act. As noted, the legislation should be amended to make a clearer distinction between "sales" and "advice".

24. An obligation in legislation or a Code of Conduct for Financial Advisers to put the consumers' interests first must be clearly articulated and backed by guidance. This obligation could be

[3] www.psc.gov.au.

difficult to monitor and enforce. Publication of judgements and guidance notes would enable the industry to identify and develop what it means to put consumers' interests first. (We note that precise terminology is important: the Options Paper uses the phrase "acting in the consumers' best interests" interchangeably with "putting the consumers' interests first", although these are two distinct concepts.)

25. It must also be clear that "putting the consumers' interests first" does not prohibit the financial adviser getting benefit from the transaction. Any potential conflict of interest must be clearly and effectively disclosed to the consumer.

Question 13: What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?

26. Currently much sales activity is given the cloak of "financial advice". Distinguishing "financial advice" from "sales" will enhance the reputation of "financial advice" and the professional standing of financial advisers. Allowing a properly regulated sales channel would also enable the wider distribution of basic financial products, provided such products were suitable for the customers.

27. The FMC Act requires that anyone selling a financial product or service must not do or say anything that could be misleading as to the nature, characteristics, suitability for a purpose, or quantity of the financial products service. Guidelines on suitability in sales should be developed.

28. Consideration should be given to the additional protections that are needed where a sales process (rather than an advice process) is followed. Financial products have different characteristics to other types of products. It may be many years after a consumer buys a financial product before he or she can assess whether they made a good or bad bargain. For this reason, it is normal for regulation to provide more consumer protection for financial products than standard products.

29. The FMC Act contains fair dealing provisions that reflect the Fair Trading Act 1986 (FT Act). There is a risk that these provisions may not adequately protect consumers when financial products are sold without financial advice. Either regulations or FMA guidance should be used to refine the fair dealing protection a consumer receives when buying a financial product without financial advice.

30. There are key distinctions between financial sales and financial advice:

    a. When providing financial advice the consumers' interests should always be put first.

    b. Financial advice may result in a sale, but the financial advice always comes first. A mechanism to differentiate sales and advice must be effective at the *start* (rather than the end) of the interaction with the consumer.

    c. Salespeople should be separate from financial advisers. Financial advisers (or QFE advisers) should not provide sales without advice. A mechanism should be developed to allow a financial adviser to provide an "execution only" service rather than a sales service.[4]

[4] "Execution only" should be defined in the FA Act so that that the scope of these services is clear.

31. Financial advice can be given when the financial adviser is remunerated by commission, provided the commission is appropriately disclosed (see the response to question 19). The Law Society understands that fewer consumers are obtaining financial advice in the United Kingdom following a ban there on commissions, and this fall-off may be due to consumers' reluctance to pay upfront fees for advice.

32. Sales could be carved out from the regime by inserting a new section 10(3)(ba) into the FA Act. Section 10 defines "financial advice" and sets out the circumstances when financial advice is not provided. A new section 10(3)(ba) could state:

> *"making a recommendation or giving an opinion about a financial product when the prescribed warning has been given."*

33. An appropriate warning must be given to consumers at the start of an interaction for the bright line exclusion for sales to apply. The warning could state:

> *"WARNING: I am selling this financial product on behalf of [name of financial service provider]. It is my job to sell this product and I am rewarded for this sale. I have not taken into account your particular financial situation or goals. If you want financial advice you should talk to a financial adviser."*

34. Consideration should be given to whether the warning includes an explanation of suitability or other protections (see concerns above about mis-selling). Processes around giving the warning could be developed based on section 36U of the FT Act (extended warranties).

35. The FA Act should also be amended to include a definition of a "sale". Similarly, "execution only" should be defined to ensure that it is only provided where a customer has requested a specific product and does not wish to receive advice.

36. Sales should not be made by the same people who provide financial advice, unless the sale is "execution only". The financial adviser should never offer or require "execution only". A financial adviser must offer financial advice when she or she sells a product. If the customer asks for no financial advice, then an "execution only" service is possible if an appropriate process is followed. No "execution only" service should be provided for replacement business.

Question 14: If there was a ban or restriction on conflicted remuneration who and what should it cover?

37. An adviser should disclose and explain any conflicted remuneration to a customer in a clear, concise and effective manner. Where the adviser does not meet the disclosure requirement, any remuneration should be banned. The regulatory requirements should encourage remuneration models to be simplified to aid effective disclosure.

Chapter 4.4 – Competency obligations

Question 15: How can competency requirements be designed to lift capability, without becoming an undue barrier to entry and continuation in the profession?

38. There will always be a tension between introducing a bar for competency and creating a barrier to entry. The answer may lie in looking at ways to raise the professional standards and public perception of financial advisers so that well-educated and reputable people want to become and remain financial advisers.

39. In order to ensure that New Zealand has equivalent standing with other jurisdictions, the Law Society supports the extension of Code Standards 14 and 15 to all financial advisers. It is important that financial advisers only provide advice where they have competence, knowledge and skills to provide that service.

40. Academic qualifications are more widely available and expected than they were 20 years ago. Academic qualifications should be required for new entrants to the industry. Registered Financial Advisers who currently do not comply with Code Standard 16 must be supported to enable them to operate under any amended regime. This could be through the use of transitional periods or grandfathering provisions, for example.

Question 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?

41. In order to increase the professionalism of financial advisers all new entrants to the profession should meet minimum entry requirements. These requirements should include an understanding of the processes and the types of products that the adviser will use.

42. Continuing professional development is also required to ensure that financial advisers are up to date with product developments.

43. However, support and transitional arrangements must be put in place for current Registered Financial Advisers, for the reasons set out above in question 15.

Chapter 4.5 – Tools for ensuring compliance with the ethical and competency requirements

Question 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?

44. The purpose of the proposed entity licensing model is not well articulated in the Options Paper. It is listed as a "tool" to ensure compliance with ethical and competency requirements. Questions arise about the costs and effectiveness of the entity licensing proposal. Additional licensing will impose significant additional costs, but it is unclear how additional licensing will create more informed and confident consumers. It is also not clear whether the FMA is sufficiently resourced to carry out either individual or entity licensing.

45. It would be helpful to obtain evidence from analysis of the QFE regime to demonstrate that this option would achieve the goals of the Issues Paper (or the outcomes of this Options Paper). QFEs have already borne the cost of licensing and so may have competitive reasons for seeking to have the rest of the market subject to the same costs.

46. Entity licensing is proposed as an option for ensuring "that financial advisers meet their respective obligations", but raises significant questions, as discussed in response to Question 4, above.

47. Further analysis should be done regarding the benefits of licensing and of other ways to improve the culture of the financial advisers' profession, to increase public confidence in the professionalism of advisers without imposing undue compliance costs.

48. The Financial System Inquiry in Australia recently recommended that the Australian Securities and Investments Commission should complete the establishment of an enhanced public register

of all financial advisers, which includes those who are employees. The current regime in New Zealand has the potential to allow for the tracking of rogue advisers and any move from a regime that places responsibility on individuals to a regime that solely places responsibility on entities should be made with caution.

Question 18: What suggestions do you have for the roles of different industry and regulatory bodies?

49. Further work should be done to identify the benefits of amending the FA Act to establish a sole professional body for financial advisers. A professional body could be responsible for licensing financial advisers and regulating conduct through setting and enforcing a Code of Conduct for Financial Advisers.

50. A professional body could co-regulate with the FMA. The FMA would continue to have an important oversight role, while the day-to-day guidance and disciplining of financial advisers was managed through the professional body. It would be important to ensure the boundaries between the professional body and the FMA were clearly established to avoid any duplication of regulatory oversight.

51. Financial service providers would remain regulated by the FMA under the fair dealing provisions of the FMC Act and other regulators, such as the Reserve Bank. As set out above, sufficient analysis has not yet been done on the need for entity licensing.

Chapter 4.6 – Disclosure

Question 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?

52. Disclosure should be clear, concise and effective. It should be capable of being made in writing or verbally, and online. This review of the FA Act should be used as an opportunity to streamline the disclosure required to consumers under various pieces of legislation, including the Insurance (Prudential Supervision) Act 2010 and Credit Contracts and Consumer Finance Act 2003. Complex adviser remuneration structures should be discouraged.

53. The interaction between the Secret Commissions Act 1910 and the FA Act should also be considered. It is an offence to advise any person to enter into a contract with a third person and receive or agree to receive from that third person, without the knowledge and consent of the person so advised, any gift or consideration as an inducement or reward for the giving of that advice or the procuring of that contract (section 8 of the Secret Commissions Act 1910).

Question 20: Would a common disclosure document for all advisers work in practice?

54. A common disclosure document should include less information than the current form of disclosure document. Customers do not sufficiently engage with the current form. A document that is short, clear and concise would be more effective.

Question 21: How could remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?

55. Remuneration could be represented in a visual format. Commission could be displayed as a percentage of the first year's premium (or first five years' premium). A similar diagram could be used to that required in a managed investment scheme product disclosure statement for disclosing the risk of particular funds.

Chapter 4.7 – Dispute resolution

Question 22: Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?

56. The Law Society has no evidence that this is the case.

Question 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?

57. The Law Society has no comment.

Question 24: Should professional indemnity insurance apply to all financial service providers?

58. Yes.

Chapter 4.8 – Finding an adviser

Question 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)?

59. The Law Society has no comment.

Question 25: What terminology do you think would be more meaningful to consumers?

60. Further research should be carried out to identify the terminology that would be most meaningful to consumers. "Financial adviser" appears to have become part of common usage and is therefore likely to be meaningful to consumers.

Chapter 4.9 – Other elements where no changes are proposed

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

Question 27: Do you have any comments on the proposal to retain the current definitions of 'financial adviser' and 'financial adviser service'?

61. The Options Paper does not discuss investment planning services or discretionary investment management services. The status of these services should be clarified in the preferred options.

Exemptions from the application of the FA Act

Question 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.

62. Lawyers are exempt from the application of the FA Act to the extent that they provide a financial advice service or broking service in the ordinary course of their business.

63. The Law Society made detailed submissions in 2010 on the Financial Service Providers (Pre-Implementation Adjustments) Bill and amendments proposed in Supplementary Order Paper No 113. A copy of those submissions is **attached**.

64. The Law Society recommended an exemption for lawyers from the operation of the FA Act, principally for the reason stated in the Options Paper: that lawyers are already fully regulated

under the Lawyers and Conveyancers Act 2006 and the regulations and rules made under that Act. As stated in the Options Paper,[5] there does not appear to be any evidence that the exemption is having a detrimental impact on consumers' financial outcomes, or on the professionalism of, or consumer confidence in, the financial advice industry. The Law Society has provided detailed guidance to lawyers in relation to what is considered to be "in the ordinary course of business", and has seen no evidence to date that lawyers are 'crossing the line' from financial advice in the ordinary course of business.

65. The Law Society's view remains that there is no benefit in requiring lawyers to comply with the FA Act in relation to financial advice that they might provide as part of their normal activities, and supports the proposal to retain the existing exemption.

Territorial scope

Question 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?

Question 30: How can we better facilitate the export of New Zealand financial advice?

66. The Law Society has no information on this and is unable to comment.

The regulation of brokers and custodians

Question 31: Do you have any comments on the proposal to retain the current approach to regulating broking and custodial services?

67. The Law Society has no comment.

Chapter 5 – Potential packages of options

Question 32: What are the costs and benefits of the packages of options described in this chapter?

68. **Package 3** has the greatest benefits and the greatest cost.

Question 33: How effective is each package in addressing the barriers described in Chapter 3?

69. The Law Society has expressed support for **Package 3**. **Package 1** (improving consumer focus through minor change) has the least cost and the least benefit. **Package 2** has more benefits and more cost. The changes suggested in Package 2 run the risk of causing significant costs to industry without resolving some of the key issues identified in this review, such as the need to distinguish clearly between sales and advice.

[5] At page 39.

Question 34: What changes could be made to any of the packages to improve how its elements work together?

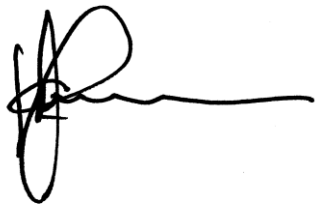
Question 35: Can you suggest any alternative packages of options that might work more effectively?

70. Please see the response to questions 32 and 33 above.

Conclusion

71. This submission was prepared by the Law Society's Commercial and Business Law Committee. If further information or discussion would assist, the committee convenor, Rebecca Sellers, can be contacted through the committee secretary, Karen Yates (ph 04 463 2962, karen.yates@lawsociety.org.nz).

Yours sincerely,



Chris Moore
President

Attached:
Excerpt from New Zealand Law Society submission dated 15.4.10 on the Financial Service Providers (Pre- Implementation Adjustments) Bill

Submission on Financial Service Providers (Pre-Implementation Adjustments) Bill and amendments proposed in Supplementary Order Paper No 113

1. Introduction

1.1 The New Zealand Law Society ('**Law Society**') welcomes the opportunity to present submissions on the above Bill. The Law Society would like to be heard in support of its submissions.

2. Exemption for lawyers

2.1 It is submitted that lawyers should be exempted from the operation of the Financial Advisers Act 2008 ('**FAA**').

2.2 Lawyers are already fully regulated under the Lawyers and Conveyancers Act 2006 ('**LCA**') and the regulations and rules made under the LCA.

2.3 The legal profession has in place numerous public protection safeguards which are by no means fully replicated in any other profession or occupation group. Some of these are set out below.

- The fundamental obligations imposed on all lawyers by s 4 LCA include the following:

  (a) to be independent in providing services to clients; and

  (b) to act in accordance with all fiduciary duties and duties of care owed by lawyers to their clients.

- Rule 3 of the *Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008* ('**RCCC**') states that a lawyer must always act competently. Accordingly, a lawyer who provides financial services must at all times do so competently.

- The RCCC comprises a detailed set of rules of conduct and client care which are binding on all lawyers. A copy of these rules is **attached**.

- Lawyers have fiduciary obligations to their clients which exceed the duties of other professional or occupation groups, including financial advisers.

- As required by the LCA, the Law Society maintains a Lawyers Complaints Service which operates on a user friendly basis. Complaints are considered by Standards Committees comprising lawyers and at least one lay person. Standards Committees are able to impose a wide range of orders, including orders to:

  (a) reduce or cancel fees;

  (b) pay compensation;

(c) rectify at the lawyer's own expense any error or omission;

(d) pay a fine.

A complainant may apply to the Legal Complaints Review Officer (an independent Government-appointed person) to review a Standards Committee decision.

- The Law Society operates a comprehensive financial assurance scheme. Compliance with trust account rules is monitored and enforced by a team of Law Society inspectors supplemented by a number of chartered accounting firms.

- The Law Society maintains a fidelity fund which reimburses clients in the event of any theft.

- The Law Society has a continuing legal education division which, among other things, conducts travelling seminars. The seminars cover a wide range of topics. Seminars directed to the provision of financial services can readily be included in this programme.

2.4 The obligations of financial service providers would do little other than replicate those already applying to lawyers under their regulatory regime.

This is graphically illustrated by the consultation draft *Code of Professional Conduct for Authorised Financial Advisers*. The obligations of lawyers under the LCA and RCCC meet and in most cases exceed those under standards 1 to 18 of the draft *Code*.

Standards 19 to 21 which address qualifications of authorised financial advisers are understandably not currently replicated in the RCCC. However, the Law Society could readily bring down rules harmonising these requirements for lawyers who provide financial services.

2.5 It is inappropriate for lawyers to be subject to two separate regulatory regimes. This would confer little or no benefit on anyone, would cause confusion and add to compliance costs which would ultimately be met by the public.

2.6 It would also be unreasonable for lawyers to be subject to two separate complaints and discipline regimes under the Financial Advisers Act ('**FAA**') and the LCA. This would permit individuals to lodge complaints under either or both regimes. Lawyers should not be exposed to this dual process.

2.7 Accordingly, the Law Society submits that:

(a) s 12(d) of the FAA be amended by omitting the words 'if the advice or decision is a necessary incident of legal practice'; and

(b) s 77C(a) as set out in the Supplementary Order Paper be amended by omitting the words 'if the broking is a necessary incident of legal practice'.