Submission

to the

Financial Markets Authority

on the

Review of access to financial advice for New Zealand: Proposed terms of reference

30 May 2025

NEW ZEALAND BANKING ASSOCIATION – TE RANGAPŪ PĒKE
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About NZBA

1. The New Zealand Banking Association – Te Rangapū Pēke (**NZBA**) is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders.

2. The following seventeen registered banks in New Zealand are members of NZBA:

- ANZ Bank New Zealand Limited
- ASB Bank Limited
- Bank of China (NZ) Limited
- Bank of New Zealand
- China Construction Bank (New Zealand) Limited
- Citibank N.A.
- The Co-operative Bank Limited
- Heartland Bank Limited
- The Hongkong and Shanghai Banking Corporation Limited
- Industrial and Commercial Bank of China (New Zealand) Limited
- JPMorgan Chase Bank N.A.
- KB Kookmin Bank Auckland Branch
- Kiwibank Limited
- Rabobank New Zealand Limited
- SBS Bank
- TSB Bank Limited
- Westpac New Zealand Limited

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Introduction

4. NZBA welcomes the opportunity to provide feedback to the Financial Markets Authority (**FMA**) on the *Review of access to financial advice for New Zealand: Proposed terms of reference* (**ToR**). NZBA commends the work that has gone into developing the ToR.

5. Overall, we welcome the FMA's review of access to financial advice and support the intention of improving the availability of financial advice in Aotearoa New Zealand. We consider the review should focus on the areas where there is the greatest opportunity to positively impact access to the advice, including:

    5.1. **Right-sized requirements**: The review should consider how financial advice obligations can be made more proportionate to the scenario. Existing obligations in respect of financial advice are designed to address the most complex scenarios, with little flexibility allowed for advice about simple products or to sophisticated customers.

    5.2. **Regulatory overlap**: The review should examine where different regulatory regimes create overlapping obligations. The transfer of responsibility for the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) to the FMA creates a real opportunity to create a more cohesive regulatory regime, which would lead to better customer experiences and outcomes. We strongly recommend that the Ministry of Business, Innovation and Employment be involved for those parts of the review that consider the impact of legislation on access to financial advice.

    5.3. **Digital advice**: The review should consider how record keeping, disclosure and client identification requirements inhibit the ability to provide simple advice through digital channels.

6. By simplifying the provision of advice proportionately, identifying and easing overlapping regulatory obligations, and addressing current impediments to the offering of digital advice, we believe that innovation and access to advice will significantly improve.

7. We have set out our detailed feedback on each of the four focus areas identified by the FMA below.

Ease of provision of regulated financial advice

8. NZBA submits that access to advice could be improved by ensuring that requirements are proportional to the complexity of the product or advice needed, or the type of customer. In addition to reconsidering the 'class advice' category, the FMA should consider:

    8.1. A lighter regulatory touch for advice on simple products;

8.2. Whether the 'retail client' and 'wholesale client' classifications are achieving their intended effect, in that they capture the right customers in respect of the right financial advice products;

8.3. Clarifying the meaning of 'highly conservative compliance practices'; and

8.4. The opportunity to reduce overlap and inconsistencies between regulatory regimes.

9. The scope of regulated products under the financial advice regime in the Financial Markets Conduct Act 2013 (**FMCA**) is broad, with the inclusion of simple, comparatively low-risk products such as transaction, savings, and call accounts, and term deposits alongside more complex, higher-risk products such as derivatives. The obligations in respect of financial advice are designed to address the most complex scenarios or advice needs, with little flexibility for simple products or sophisticated customers.

10. For example, a customer who wants to understand which savings account offering may best suit them or who wants to know whether to fix the interest rate on their home loan has very different advice needs to a customer who wants diversified investment options for long- and short-term return goals.

11. The process of classifying customers as either 'wholesale' or 'retail' on an ongoing basis can also create a large compliance burden and lead to operational and compliance risks, which may result in cases where factually wholesale customers are treated as retail – particularly for entities with large and wide-ranging customer bases. A simplified and clear approach could enable business customers to benefit from wholesale advice rather than being treated as retail customers, or providing a no advice service to avoid disclosures or other requirements that customers do not value.

12. By way of illustration, basic transactional bank accounts are captured by the definition of 'financial advice product', and business customers may be captured as 'retail clients'. This means the full regulatory regime may apply if financial advice is given to a business customer in respect of a basic transactional bank account. This is not a proportionate outcome.

13. Complex compliance requirements can drive conservative responses and may be a barrier to less conservative practices. For providers offering mass market advice propositions, they can lead to hybrid solutions that are disruptive and convoluted for customers. This introduces risk from regulatory and reputation perspectives.

14. As a result, a no-advice approach is often preferred for relatively simple products or interactions, avoiding the compliance obligations imposed when advice is provided. For example:

14.1. Advisers must provide updates to disclosure when 'material changes' are made. However, it is challenging to assess what would be deemed material, which can lead to conservative compliance practices (e.g. providing disclosure every time the customer seeks financial advice).

14.2. It can be difficult or problematic to comply with advice disclosure and suitability of advice obligations when providing advice to joint or multi-party customers (e.g. joint account holders, trustees of a trust, representatives of a company), where full engagement of all parties (or account owners) is impractical or unnecessary – including, for example when advice given is not actioned.

14.3. Treatment of all advice as the same, and removing class advice, has made basic product advice (e.g. about bank accounts, term deposits, or consumer lending) more complex to deliver, increasing cost and time for both consumers and providers.

15. We also recommend the review looks into the impact that complex compliance requirements have on customer engagement with full advice processes – i.e., whether there is any customer aversion or barriers to engaging in the advice process for simple recommendations due to compliance burden and process. Our view is that consumers do not appreciate or understand the need for lengthy advice disclosures for simple advice questions. This can lead to disengagement, which in turn can drive an increase in no advice models to meet consumer demand.

16. Additionally, the review should examine where different regulatory regimes create overlapping obligations. For example, where conduct obligations provide sufficient protection to customers, the FMA should consider whether it is necessary for additional obligations under the financial advice regime to apply.

17. Where exemptions are appropriate on the basis of compliance with another regulatory regime, those exemptions must be clear and any conditions must be carefully formulated to ensure the exemption can be practically utilised. By way of example, the exemption under clause 10 of Schedule 5 of the FMCA for advice given for the purpose of complying with lender responsibilities is not achieving the intended outcome because the guidance creates implementation challenges for large entities that provide a range of products.

18. The inconsistency of terminology across different regimes can also create operational complexity and confusion, such as the different definitions of consumer used in the CCCFA and Conduct of Financial Institutions regime (**CoFI**).

19. We understand that an objective of the proposed review is to understand availability of financial advice in New Zealand as well as where "consumers" go to get advice, however 'consumer' isn't currently a term applicable to the financial advice regime

under the FMCA. This perhaps highlights the earlier points about the breadth of the current regime.

20. The transfer of responsibility for the CCCFA to the FMA creates a real opportunity to create a more cohesive regulatory regime, which would lead to better customer experiences and outcomes.

Innovation and digital advice

21. Despite policy intent, digital advice adoption remains low. This review should seek to identify why innovation for digital financial advice remains low. Reasons might include regulatory uncertainty, compliance costs and their associated risks, and customer preference for face-to-face advice.

22. In our view, the central area of focus should be identifying how to reduce compliance ambiguity in digital channels and encourage innovation, particularly with the incoming 'open banking' framework.

23. We believe that simplifying legislative requirements regarding digital advice tools, specifically targeted at mass market customers with less complex requirements from both a product and advice perspective, is likely to accelerate the development of digital advice across the market. One example is that record-keeping requirements make it difficult to create public facing digital advice tools that can be accessed without a login or other identifier.

24. The opportunity to link financial wellbeing tools with digital advice is significant and should also be explored.

Consumer demographics and preferences

25. We consider the proposed scope rightly identifies affordability, literacy, education, and financial wellbeing as barriers to advice.

26. We do however submit that the scope should be adjusted to include:

    26.1. Consideration of financial mindsets that include risk profiles, for example growth vs safeguard, entrepreneurial vs collaborative, and save vs spender characteristics.

    26.2. How the development of digital tools for the mass market can cater for consumer preferences.

    26.3. Specific inclusion of demographic specific language, e.g. ethnicity, age, rurality, and digital literacy, to ensure more targeted understanding of access issues. Given the gender retirement gap, it would also be good to include women as a specific demographic that may be experiencing barriers to accessing or taking advice.

26.4. How consumers seek advice as a household rather than individually, and similarly, how businesses and other entities seek advice.

26.5. How advice is provided in a foreign language context.

27. In relation to financial wellbeing, we consider that there are generally three areas that can improve customer financial wellbeing which should be focused on as part of the review:

27.1. Capability of financial advice providers around understanding customer needs

27.2. Inclusion and accessibility

27.3. Protection to ensure fair and safe treatment.

28. We support the inclusion of te ao Māori perspectives to better support Māori consumers and providers to participate in the uptake of financial advice that is both culturally appropriate and relevant.

29. However, significant information has already been provided on this topic and that should be leveraged to avoid an unnecessary duplication of effort. This would include information provided in response to the Commerce Commission, the Select Committee Inquiry into Banking and the RBNZ's Māori Access to Capital workstream.

30. Also in relation to Māori customers, we recommend refining the scope to include the level of engagement needed, references to Te Tiriti and cultural exclusion / bias. For example, the review may consider topics such as:

30.1. internal te reo Māori and tikanga training for staff members and partnerships with external providers to ensure staff have access to resources and support;

30.2. te reo Māori translators for meetings with financial advice providers;

30.3. experts who understand the different legislation that covers whenua Māori; and

30.4. the importance of staff that have lived experience in communities that understand the different approaches that a bank should take when working with Māori to better understand their needs and how a bank can help.

31. We also note that there are a number of industry studies that assist in understanding the relative financial wellbeing of different groups of New Zealanders based on

ethnicity. These typically measure levels of financial confidence, products, holdings, home ownership and literacy.[1]

32. From a consumer behaviour and preference perspective, the following matters might also be considered as part of the review:

    32.1. How 'quality advice' is defined in relation to customer behaviour and outcomes – i.e. what do customers think of advice, and does this align with how it is defined in the legislation? For example, do consumers generally seek advice within a strict product context or for a specific activity (product or fund choice, for example), or do they seek advice on how to solve household lifecycle or life event issues more broadly?

    32.2. How does customer behaviour impact providers' offerings, and do providers use behavioural science to design advice tools and services? Equally, does the legislation align with behaviour science, e.g. do consumers actually engage with and understand lengthy advice disclosures?

    32.3. Is a low demand for advice driving poor innovation? Behavioural biases cause KiwiSaver members, in particular, to experience strong inertia. How are providers' advice offerings innovating to tackle the need to drive demand for advice at the right time?

Remuneration structures and advice business models

33. NZBA submits that the FMA should consider the following points (noting our view that the review should focus on simple advice scenarios, and innovation and digital advice).

34. We support the proposed scope of the review, which is described as looking at "business models and remuneration structures from the perspective of conduct, client care, and advice quality".

35. We would add to the scope of this review consideration of performance management structures, and how remuneration and performance measures can drive the right outcomes for customers. As a result of this review, we would hope that the FMA could provide greater clarity regarding how performance and remuneration structures should be applied, potentially by way of examples, which could avoid inconsistent approaches across the industry.

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[1] See, for example, Financial Capability Research | Retirement Commission Te Ara Ahunga Ora | TAAO-_NZ-financial-capability_maori.pdf | Promoting financial literacy and capability in Pacific communities | Ministry of Business, Innovation & Employment | Financial Advice New Zealand release 'Value of Financial Planning Consumer Research 2023' report — Chatswood

36. Consideration should also be given to whether existing disclosure requirements on commissions and incentives might be simplified for customers and made more relevant and meaningful for them. The language used has a bias towards legal language and could be simplified into plain English customer terms for items that are meaningful.

37. When considering business advice models, we submit that the review should include the perspective that advice business models are part of an ever-evolving journey regarding access to technology that can suitably serve mass market channels while complying with relevant legislation.

38. It will also be important to avoid overlap with work completed on incentives in relation to the implementation of CoFI.