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Financial Markets Policy
Ministry of Business, Innovation and Employment

Emailed to: faareview@mbie.govt.nz

To Whom It May Concern,

ICNZ submission on the Options Paper

1. Thank you for the opportunity to submit on this options paper. We provide this submission for the Insurance Council of New Zealand ('ICNZ'). ICNZ represents the interests of its members, 28 general insurers (that is, not life and health insurers) licensed to operate an insurance business in New Zealand. Our members insure over $600 billion worth of New Zealanders' assets.

2. This submission should be read in conjunction with our submission of 22 July 2015 on the original review paper. Some of our members will also be providing submissions directly to MBIE with their individual company's views.

3. We will begin by making some comments that underpin our views on the discrete options in the Options Paper. We then give our views on those discrete options. Finally, we will note that we do not support any of the proposed packages, as each package has significant shortcomings based on our views of the discrete options, and our members do not have a collective preference for any one package as a result.

Overarching comments on the Options Paper

4. We wish to submit points that contextualise and overarch our submission on the discrete options in the Options Paper. They are set out in the following paragraphs.

5. First, we note the current regime is working well for general insurers, irrespective of whether they have structured their compliance as QFEs, provide personalised or class advice, are intermediated, or otherwise. Our members that are QFEs have good direct relationships with

the regulator, and we are not aware of any concerns the regulator has in respect of their service to consumers, or any consumer harms that result from this structure aside of misunderstandings about the "QFE" label. We stress that any amendments to the regime should permit our QFE members to be regulated to the same standard they are currently. It would be a poor outcome to this review for additional regulatory cost and compliance burden to be added to QFEs, who have already spent a significant amount complying with the current regime, when there is no clear case for change for those QFEs.

6. There are a few isolated issues in other areas of the financial services industry – such as churn of life insurance products – that could well be addressed with tailored responses and without disturbing the bulk of the current regime. A largely well-functioning regime should not be reset simply because of problems with discrete elements of it. We think this means a high onus needs to be met before the case for fundamental change to the regime is proved. Compliance costs can be significant for all Financial Service Providers ("FSPs"), and the greater the change from the current regime, the greater compliance costs have the potential to be. In saying so, we appreciate the first principles approach MBIE has taken to conducting this review, and we appreciate the opportunity to advance our view of an alternative regime that would better achieve the outcomes sought by MBIE.

7. We will now outline our views on that alternative regime, noting throughout that our members take different approaches to particular aspects of such an alternative regime.

8. We strongly support a conceptual distinction between sales and advice. But we must first note that we strongly disagree with MBIE's characterisation of the nature of sales in the Options Paper:
    - The Options Paper casts sales in an extremely negative way.
    - "Sales" is an inaccurate term to describe the service that some insurers provide to their customers. It is more than an "execution only" service. FSPs who are not financial advisers should be able to have free and frank conversations with their customers about the financial products they offer. Many consumers value this assistance from insurers without needing to go further to seek personalised financial advice from an independent financial adviser. Further, the financial advisers regime should not hinder this consumer demand by forcing these "salespeople" to become some kind of regulated financial adviser.
    - Some members, particularly those that are QFEs, already have ethical and client care standards, training standards, put the client's interests first, and would continue to do so, irrespective of the minimum level of client care set out in relevant legislation. FSP's desire to develop strong brands and consumer goodwill will incentivise higher service standards in the industry without the need for government regulation.
    - A "salesperson" should not have to disclose to a consumer that they are not acting in the consumers' best interests. This is not only inaccurate, but it is also an extremely negative statement. We think it will harm consumer trust and confidence in insurers and financial service providers, and damage the use of a service that consumers find valuable – that service being the provision of information about a product directly from the product provider.

- Instead, if any kind of mandated disclosure about the difference between sales and advice is required, then we submit the disclosure should focus on encouraging consumers to consider the **positive, value-adding** aspects of an adviser's service – i.e., that an adviser is an independent professional who can advise on a range of products, not just the insurer's products.

9. Returning to the first principles of an alternative regime, we note a fundamental problem with the current regime is its unworkably broad definition of "financial advice". The definition captures every conceivable piece of financial advice that could be given by an individual in the financial services business, with certain limited exceptions. It is a regime that captures everyone, until they take steps to avoid capture. This catch-all approach has two significant unintended consequences.

10. The first is that some FSPs, including our members, became QFEs not because they sought to actively provide personalised financial advice to their customers, but because there was a legal risk that someone, somewhere in their organisation may accidentally make a personalised recommendation or give an opinion to assist a customer, and it is sound risk management practice to ensure that such a person is not acting unlawfully in making such a recommendation or giving such an opinion. The second is that for others in the industry, it creates a race to the regulatory bottom line. This kind of race is not in anyone's interests. All it achieves is added compliance costs to the industry without any kind of benefit.

11. Instead of a catch-all regime that FSPs must take steps to opt out of, we strongly support a regime that fosters an exclusive, well-regulated, opt-in financial advice **profession**. A profession then entails, by definition, all of the good discrete measures outlined by MBIE in the Options Paper: ethical and client care obligations, up-front and ongoing competency, management of conflicts of interest through remuneration disclosure, and so on.

12. We stress that any such professional regime needs to be binary. An individual is either a professional financial adviser, or not. Professional regulation for financial advisers must simply not apply to individuals who are not financial advisers. Further, granular categories of adviser with different legislative requirements based on the product types and services provided must be avoided to avoid consumer confusion and resultant consumer harm.

13. To explore the issue further, a person should be a professional financial adviser not because of the activities they engage in, but because of who they hold themselves out to consumers of their services to be. The current regime focuses on regulating activities when instead it should focus on regulating categories of person. Courtroom representation is not limited to lawyers. Building work and plumbing work is not limited to builders and plumbers respectively. The financial adviser regime should focus on regulating persons who hold themselves out as being professional financial advisers, rather than regulating every conversation that could possibly be deemed advice.

14. We think a change of focus from a bloated, complex and restrictive regime to a simple regime with clear and high standards of professional conduct will naturally bring about the outcomes sought.

15. There are three schools of thought amongst our members about what obligations the exempted category referred to as "sales" should face:
    - The majority of our members support an unequivocal and total exemption from the financial adviser regime for everyone not giving professional financial advice as outlined above. For those outside the regime, there remains government regulation through the Financial Markets Conduct Act and Fair Trading Act obligations to not mis-sell or misrepresent products to consumers. Accountability for complying with these obligations exists through the dispute resolution schemes, which are functioning well.
    - Some of our members who are currently QFEs are already under an obligation to act in the client's best interests and in their view that obligation should remain under any alterations to the regime.
    - Finally, some of our members put the customer's interests first but do not support a legislated obligation to do so. There is uncertainty in what the obligation requires, and there is a risk that if the obligation is interpreted strictly and the standard is set too high, then salespeople will be required to conduct onerous due diligence with consumers, like in-depth fact finds and comparisons with competitors' products. This kind of interaction with the consumer begins to look the same as professional financial advice, blurring the lines and confusing consumers about exactly what kind of service they are receiving.

16. Finally, we note that the role of distributing agents needs to be considered under such an alternative regime. In our view an insurer's underwriting agent, or a tied (that is, not independent) distributor of an insurer's product is the agent of the insurer, not the consumer. These agents should therefore be considered in the exempt "sales" category, rather than the professional financial adviser category.

17. Whatever regulatory settings are settled on for a sales and advice distinction, our view is that a positively-framed disclosure to inform consumers about their ability to get value-added professional financial advice, teamed with a simple, binary, opt-in, regulatory regime for advisers and a robust set of occupational regulation for those advisers, best achieves the outcomes and objectives sought by MBIE.

Section 4.1: restrictions on who can provide what advice

18. If a distinction between sales and advice is not made then the class and personalised advice distinction must remain. Some of our members treat the point of sale information provided to customers as class advice, and comply with the requirements of the Act in kind. If the sales/advice distinction is made, then the class/personalised advice distinction could possibly be removed, but only if there was no risk that individuals selling particular financial products on

behalf of a product provider and giving general information about those products would be considered an 'adviser' rather than a salesperson.

19. We support removing a distinction between product category types, and we do not support restricting provision of certain complex or high risk services to certain advisers. Creating subsets or categories of adviser complicates the regulatory regime for both the profession and consumers. Carving out "expert advisers" from other financial advisers repeats the same problem the current regime suffers with an AFA/RFA distinction.

20. Further, as we have previously submitted, we do not think it is appropriate to separate financial products into categories based on risk and complexity for the purposes of ethical and competency obligations. A simpler product can cause greater harm if misunderstood by consumers. For example, most New Zealanders take our home and contents insurance, which is currently a category 2 product and relatively easy to explain in terms of basic concepts and underlying principles when compared with, say, a derivative investment product. However if the house is insured negligently, the financial consequences for the consumer could be greater than any comparable losses on savings and investment products. In our view, it is equally important for an individual professional giving financial advice to be as diligent and prudent and take the same level of care advising the archetypal "mum and dad" investor about insurance as much as investment products.

Section 4.2: advice through technological channels

21. We agree with amendments to the financial adviser regime to regulate technological channels of financial advice delivery, and we submit that these channels should be subject to the same accountability requirements as other financial advisers, but not necessarily the same competency and disclosure obligations. In principle, the regulatory regime should apply to all channels equally, but we acknowledge there could possibly be some inefficiencies and unintended consequences to a 'one size fits all' approach to regulation.

22. One option could be to have the same regulatory requirements apply to all channels, but allow the regulator to make case-by-case exemptions from particular aspects of the regime for licensees when the licensee can prove that consumers are at no disadvantage for the licensee not being subject to that particular part of the regime.

Section 4.3: ethical and client-care obligations

23. We agree that ethical and client care obligations for all professional financial advice services should be measured by the same yardstick. A single standard will reduce consumer confusion and be more efficient for both the regulator and the industry to monitor and comply with respectively, as opposed to a multi-tier approach. In our view the current AFA standard is appropriate for all advisers. It was developed after extensive consultation with the industry, and in our view is not an onerous standard to apply to all advisers.

24. We strongly support a distinction being drawn between sales and advice. We do not agree that consumers would not know how to respond to a clear and simple disclosure that the person they are talking to is a salesperson and if the consumer wants independent advice they should contact a financial adviser. We submit that any such disclosure should be framed positively rather than negatively. For example, rather than saying that salespeople do not act in the consumer's interests, it would be more accurate to say that an adviser must act solely in the consumer's interests and can give independent professional financial advice about all other products to help the consumer make a fully informed comparison and decision. Some of our QFE members already have internal requirements to put the consumer's interests first when selling products, and so it would be inaccurate to make the negative statement proposed by MBIE.

25. In terms of practical ways of distinguishing sales and advice and the obligations salespeople should have, please refer to paragraphs 18 to 24 of our 22 July 2015 submission. We copy those paragraphs here for ease of reference. In our view the 'independence' requirement of a professional financial adviser is critical:

> 18. The FAA's current definition of financial advice is broad and does not distinguish sales and advice, to the extent that many 'sales' situations will be caught by the current definition of 'financial advice'. Some of our members have registered as QFEs because their staff and agents will from time to time have conversations with customers which could fall within the definition of 'financial advice' (generally) or a 'personalised service' (in particular), even though the conversations are about the characteristics of an insurance product and whether that product is suitable for the customer's needs. This, as MBIE rightly identifies, is not 'pure advice', and should therefore not be regulated by the FAA. Insurers' staff and agents should be able to have free and frank conversations with customers about the products being sold by the insurer.
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> 19. Consumer protection for sales can by and large be regulated by other existing legislation, such as the Consumer Guarantees Act generally,[1] and the Financial Markets Conduct Act specifically.[2] In our view the Fair Dealing provisions of the Financial Markets Conduct Act provide substantial protection for the purchasers of financial services.[3] Those provisions ensure that accurate information and representations about insurance products will be made at point of sale with the customer, irrespective of whether the customer is dealing with the insurance company directly or through an intermediary. Further, provided the *Financial Service Providers (Registration and Dispute Resolution) Act 2008* continues to apply to individuals and companies selling insurance products, consumers will have access to basic information about those salespeople through their own or their company's registration and free dispute resolution if any problems should arise.
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> 20. We do not agree that salespeople should be subject to greater regulation simply because of information asymmetries between the seller and the insured.[4] First, we expect these asymmetries will be reduced over time through other avenues such as financial literacy projects[5] and the introduction of new service

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1 Under sections 28 and 29 of the *Consumer Guarantees Act 1993*, 'services' (which specifically includes contracts of insurance under the definition of services in section 2 of that Act) must be supplied to consumers with reasonable care and skill and must be fit for **any** particular purpose. We expect the Consumer Guarantees Act would apply to the sale of most (if not all) personal risk insurance products as those products are 'ordinarily acquired for personal, domestic or household use...'

2 We have not reiterated the *Fair Trading Act 1986* prohibition on misleading and deceptive conduct because of the more specific provisions in Part 2 of the *Financial Markets Conduct Act 2013*.

3 Under sections 19 and 21-23 of the *Financial Markets Conduct Act 2013*.

4 See paragraph 124 of the Issues Paper.

5 For example, ICNZ has a financial literacy strategy which includes a public education website: www.covered.org.nz. ICNZ has also developed partnerships with the Young Enterprise Trust (see http://www.icnz.org.nz/educating-small-businesses-a-focus-of-insurance-council-young-enterprise-trust-partnership/) and Banqer, who are developing an

requirements in the Fair Insurance Code.[6] But we also submit that salespeople and financial advisers would operate in a market for their services that overlaps to a certain extent. Consumers who require a higher level of care to understand insurance and make optimal purchasing decisions should be able to disengage with a salesperson and engage a financial adviser instead.

21. Given existing protections for the regulation of sales, the FAA could be left to focus on regulating 'pure advice' about insurance products and focus on supporting a strong, efficient market for independent financial advice. In our view 'independence' helps to distinguish a salesperson from an adviser. Someone who holds themselves out as being able to provide holistic analysis of different products supplied by different providers in the insurance market should, by nature, be professionals. As professionals, they should either be totally independent (that is, free of conflicts of interest) or fully and transparently canvass their conflicts to their client, have strong fiduciary obligations to their clients, and should be able to meet regulated conduct obligations and education and training requirements.

22. In contrast, a salesperson could be subject to lighter, broader, more fundamental regulation as outlined above.[7]

23. Independence can therefore determine whether financial adviser regulation should apply or not:
    a. If the individual concerned is an employee or agent of the insurer that is underwriting the insurance product, then the individual concerned should generally be regarded as a salesperson.
    b. If the individual concerned is independent of the insurer, and is assisting the customer to distinguish between two (or more) underwriters' insurance products, then the individual concerned should be regarded as an adviser and regulated by the FAA.[8]

24. We support this analysis because in our view the greatest potential for consumer harm arises where a salesperson or adviser holds themselves out as being independent when they are not. There will need to be discussion about how an individual's independence (or lack thereof) is communicated to the consumer. We would appreciate consultation with MBIE officials on this topic if MBIE chooses to pursue a sales/advice distinction. However, we do not support the strictures of template disclosures, which, in our view, are inflexible and can be ineffective.

26. As described above in our overarching comments, if the regime had a set of opt in standards for anyone who wanted to be licensed by the regulator to join the financial advice profession, there is no need to draw exhaustive and definitive lines between the exempted "salespeople" category and advisers. There would be a natural incentive for independent advisers to opt in. We also note this kind of regime would allow any individuals or companies who are not actually

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insurance module for their classroom virtual economy (see http://www.icnz.org.nz/virtual-classroom-economy-to-get-real-lessons-on-insurance/). ICNZ is not the only organisation involved in promoting consumer insurance and financial literacy. The Commission for Financial Capability and ASB Bank's GetWise financial literacy programme in schools are examples of organisations that are joining current efforts to boost demand side financial literacy.

[6] The new Code, which comes into force on 1 January 2016, will require insurers to provide a clear summary of key policy features to the insured and to otherwise engage in more effective communication with the insured, and in particular to assist people who may have difficulty communicating with the insured like speakers of English as a second language or people with disabilities.

[7] See paragraph 19 above.

[8] One of our members supports an additional requirement for the individual to be remunerated by the underwriter when considering whether the individual should be regarded as an 'adviser'. So, where an individual is assisting the consumer to distinguish between two or more underwriters' insurance products but is not remunerated for the sale of those products, then the individual should be a 'salesperson' rather than an 'adviser'. We think this approach is arguable: the individual is not under a conflict if they are not remunerated, and can be impartial in their assistance to the customer. However, they are still providing financial advice to distinguish between two products. That advice needs to be quality, which means it needs to be regulated in the manner we outline. On balance our view is that the individual distinguishing two or more products for a consumer must provide quality advice regardless of whether they are remunerated for that advice or not. This approach accords with the current Act, which regulates individuals in the business of advice whether given for profit or not (under the section 5 definition of 'business' in the FAA).

providing financial advice to opt in to licensing and comply with the licensing standards and principles required of other advisers in the profession as a point of difference amongst other FSP competitors.

27. We disagree with the option 3 suitability requirement. We do not think it would add anything above the other measures taken to improve consumer trust and outlined in the options paper. Aside of the cons already listed in the options paper, we think the word 'suitable' is unsuitable because it is too vague, too subjective, and could be subject to a range of interpretations that would defeat its purpose. The instances of advisers acting intentionally and in bad faith to sell products that are clearly unsuitable for a consumer are comparatively rare across the adviser market. Instead, improving other regulatory measures like extending ethical requirements and requiring a certain level of competency will organically reduce instances of consumers being sold unsuitable products.

28. We disagree with any kind of ban or restriction on remuneration for financial advisers. In our view, full disclosure of the source, nature and extent of an advisers' commission is necessary for consumers to have trust and confidence that their adviser is managing any conflicts of interest. We agree that if commissions were restricted, then access to financial advice will be restricted because of New Zealand consumers' reluctance to pay for financial advice. Our members also seek flexibility in the ways they incentivise advisers to achieve high quality performance when distributing insurance products. These forms of remuneration will change over time, and we see no consumer harm, provided they are disclosed in full to the consumer.

29. We note disclosure of all types of an adviser's interests may be complex. It can be difficult to adequately describe the nature and extent of soft commissions, sponsorships and funding arrangements between advisers and brokers. There will also be potentially commercially sensitive content to these arrangements which may not be appropriate to disclose in full detail. The nature and details of any proposed regulation requiring disclosure of all types of adviser commission will need to be considered carefully.

30. We also note MBIE's comments in the Discussion Paper regarding churn of life insurance products and consequent consumer harm. One of our members will submit that restrictions on remuneration are warranted to prevent consumer harm in this area. While there may be a case for targeted regulation of specific harms in this area – that is, remuneration restrictions in respect of life insurance products only – the majority of our members are not agreed on this issue and instead see the harm being addressed through disclosure and education in the first instance.

Section 4.4: competency obligations

31. Option 4 strikes the best balance between raising adviser competency and not creating an unduly burdensome compliance environment. The regulator is the best entity to receive industry concerns about the impact of occupational regulation on the adviser market over time, and to be responsive to those concerns by tailoring specific requirements over time.

32. However, option 4 does not rely exclusively on the entity licensing option in section 4.5. The regulator can administer competency obligations across classes or categories of financial product without the need for entity licensing, as long as legislation contained the principle that all advisers must achieve and maintain levels of competency to provide the type(s) of advice they offer. The regulator could ensure compliance with this principle for QFEs through the existing QFE model, and for other advisers through development of codes or other forms of subordinate regulation to supplement the legislation.

33. However the obligations manifest, all advisers should have to meet minimum upfront and continuing standards of competency. However, those standards should not be homogenous for all advisers. Instead, they should be agreed to by the regulator and tailored for the specific service(s) the adviser seeks to provide and the specific products that the advisers seeks to advise on.

Section 4.5: tools for ensuring compliance with the ethical and competency requirements

34. We support entity licensing rather than individual licensing. Entity licensing appears to achieve the outcomes sought for less cost. Some of our members have invested large sums of money establishing QFEs and the regime appears to be working well for those QFEs.

35. As noted above, we submit that for insurers that are currently QFEs, their treatment under a possible new regime as a licensed entity should be no more onerous from a compliance perspective than under the current regime, given the significant costs involved in complying with this regulation and the fact that there does not appear to be any relevant harm or problem caused by insurers that are QFEs.

36. We would be interested to know whether there is any empirical evidence that suggests individual licensing achieves greater levels of consumer confidence or higher degrees of professionalism than entity licensing. In both instances advisers must know and meet the same standards. That being equal, entities will be able to create efficiencies by streamlining compliance to both satisfy the regulatory that regulated standards are being met and ensure that individual advisers are meeting those standards. Entities will also be able to tailor fit-for-purpose compliance requirements for their members.

37. The main argument for individual licensing seems to be that advisers will maintain higher professional standards if they know they can be held personally liable for the advice they give. There are three separate facets to this argument. The first concerns whether personal liability can encourage higher professional standards. In our view an adviser's accountability to their licensed entity – their employer or their industry body – can achieve the same incentive to encourage higher professional standards. An entity would arguably be better placed to deliver content to their advisers and monitor compliance because of the closer trust and relationship between entity and adviser than between independent regulator and adviser.

38. Second, there is accountability to the consumer who has been wronged by negligent advice under both individual and entity licensing models, both in terms of redress to the consumer and repercussions for the adviser. An adviser does not escape scrutiny and sanction by their entity simply because the entity takes responsibility for interaction with the regulator and pays any compensation owed to the consumer. Entities can pool risk to take out an insurance policy for all its advisers, which will spread cost more efficiently among the adviser group and reduce advice costs for consumers. An entity may also be better at monitoring and enforcing an adviser's ongoing compliance if any flaws are found in the adviser's service than an individual acting on their own accord could.

39. Finally are concerns about "phoenix advisers" – where an adviser with a bad track record can move from entity to entity without restriction or consumer knowledge of their bad track record, much like the current building practitioners' regime attracts criticism for. In our view this can be addressed by allowing the regulator to collect and use information about individuals when making entity licensing decisions. For example, a regulator could impose certain conditions on an entity relating to a particular individual, or refuse to license an entity if a particular individual will be acting for that entity. A regulator could also be granted a power to exclude certain individuals from the industry by way of a publicised blacklist and legislated criteria for exclusion, to focus resources on excluding troublesome individuals rather than licensing all individuals. A blacklist would allow other licensed entities and FSP employers to be aware of troublesome individual advisers before engaging their services. Either way, we submit that information about individuals could be used effectively in an entity licensing regime to achieve the perceived benefits of an individual licensing regime but without the costs.

40. We also support a greater role for industry bodies in regulating their member advisers. It will be difficult for sole trader advisers and small adviser businesses to manage the cost and resource requirements of complying with the preferred regulatory regime. The least-cost way to improve the regulatory regime would be for a sole trader or small business adviser to join an industry body that has an entity license from the regulator. Having several different industry associations is not problematic, provided the regulator has centralised oversight of those bodies and can assess their compliance against legislated principles and obligations. In our view this approach would not be dissimilar from the current QFE model, which we understand was originally intended to allow industry bodies to comply with the legislation in this way.

41. For clarity, we note that ICNZ does not intend to become a licensed entity, nor are we supportive of a licensing regime with two layers of licensed entity under the regulator. We simply see industry association licensing as a way for broker aggregators (for example) to add value and reduce costs for their member advisers, the industry, and consumers by taking charge of the advisers' back office compliance function in respect of their regulatory requirements and relationship with the regulator.

Section 4.6: disclosure

42. In principle we support both options 1 and 2 to harmonise disclosure among advisers and thereby reduce consumer confusion and make compliance and enforcing compliance more efficient for the regulated and the regulator respectively. We agree that the information listed by MBIE in option 2 would be usefully disclosed to consumers, along with details of the adviser's internal and external dispute resolution processes.

43. However, further research into consumer behaviours needs to be conducted before it is possible to arrive at an informed opinion about the most effective form and content of disclosure for consumers, and the most efficient way to deliver it. The consumer focus groups mentioned at page 33 of the Options Paper would be a useful start, but until we have this greater understanding, we do not think it is possible to hold definitive views on the particular types of information that should be disclosed, or the most effective way to communicate that information to consumers.

44. Our members' experience suggests verbal disclosure to consumers should be permitted and encouraged. It gives the consumer an initial interaction with the subject matter of the disclosure, whereas a consumer may choose not to read a written disclosure and therefore not engage with the subject matter at all. Verbal disclosure could accompany written disclosure, or be an alternative to written disclosure. We prefer the latter approach, provided a FSP can retain a record that disclosure has been made to the consumer and provide the information to the consumer again in future on request. Many of our members (including QFEs) already provide telephone or pre-recorded disclosures (including QFE disclosure) as they consider it to be an effective way of conveying this information to consumers.

45. We are not sure what kinds of "further information" could be made available to consumers through the Financial Service Providers Register, but we note (as we have in our previous submission) that any changes to the Register will presumably be borne by FSPs in the form of increased fees and levies, and as such any changes must be consulted on and pass rigorous cost benefit analysis before proceeding.

Section 4.7: dispute resolution

46. We agree with MBIE's analysis that there is insufficient evidence of any problems with the multiple scheme model to warrant change. As noted in our previous submission, our members support the ability to choose between dispute resolution schemes.

47. We support the changes outlined, subject to the following comments:
    - We support a requirement for FSPs to disclose to complainants which dispute resolution scheme they belong to, how to access the scheme, and the timeframe they can expect a response. We would add a description of the FSP's dispute resolution process to this list. These requirements are already requirement of best-practice internal dispute resolution processes, and have been codified in ICNZ's Fair Insurance Code 2016.

- If case summaries were required to be published, the FSP's identity should remain confidential. One of the cornerstone trade-offs of an industry-funded dispute resolution scheme is that the dispute does not play out in a public forum and the FSP can settle the dispute knowing that confidentiality is maintained. This system is more conducive to open, good faith, without prejudice exploration of options by FSPs to resolve consumer disputes efficiently and effectively. Conversely, a FSP that knows its name will be made public in respect of a complaint will be more likely to forego concession and conciliation in a dispute resolution process and instead look to have its position vindicated through a formal investigation and decision on the matter. We also note that from 2017 ICNZ will be releasing aggregate claim and complaint statistics to the public on behalf of its members. This will not identify individual insurers, but the dataset will provide transparency and accountability to the public, and may also encourage insurers to improve their claim and complaint handling performance against the industry benchmark, or publicise their above average performance of their own accord.
- Summaries should only be published for complaints that have proceeded the full way through the dispute resolution scheme's process and a final recommendation has been issued by the scheme. As above, the integrity and flexibility of settlements would be jeopardised if details of the settlement, or even the process engaged in by the parties, were made public.
- Mandatory professional indemnity insurance may create barriers to entry for some FSPs. As with any industry, some risks may be uninsurable, which would have the effect of driving high-risk uninsurable FSPs out of the market. We would instead support a requirement to disclose whether a FSP has professional indemnity cover. This would be consistent with other professions and allow interested consumers to inquire about further details of the cover.

Section 4.9: other elements where no changes are proposed

48. In terms of territorial scope, we agree that the Act's protections should continue to apply to advice or services received in New Zealand, regardless of the adviser or service provider's location. Despite difficulties in monitoring and enforcing compliance by overseas providers, the provisions will become more important if the risks posed by overseas advisers increase and warrant greater attention and resources from the New Zealand regulator. Simply having such a broad scope of application could also be a disincentive for some overseas advisers and service providers to engage with New Zealand consumers because of the risk of attention from the New Zealand regulator if things go wrong.

49. We do not think MBIE should have to facilitate the provision of financial advice from foreign sources to New Zealanders. We agree with MBIE's suggested approach of educating consumers on the risks of taking advice from overseas financial advisers, and to focus instead on facilitating a strong local financial advice market.

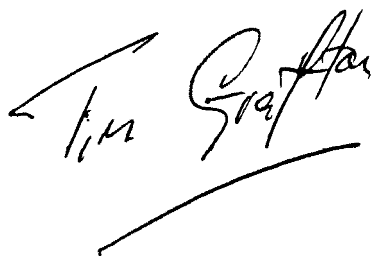
The proposed packages of options

50. ICNZ is unable to express a preference for or lend support to any of the three packages proposed. Each has significant shortcomings based on our submissions on the discrete elements of the Options Paper above. There is also no majority view or consensus among our members on the packages.

51. Each member will provide their company's comments on the packages in separate submissions.

52. Thank you for considering our submission. If you have any questions please contact our legal counsel, Nick Mereu, at nick@icnz.org.nz or (04) 495 8008. Thank you for your time and we look forward to hearing about the next steps of this review.

Yours sincerely,



Tim Grafton
Chief Executive