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Financial advice provider licensing fees and changes to the FMA levy

Thank you for the opportunity to submit on the discussion paper titled *Financial advice provider licensing fees and changes to the FMA levy* ('discussion paper'), which was released by the Ministry of Business, Innovation and Employment (MBIE) on 13 December 2018.

ICNZ represents general insurers that insure about 95 percent of the New Zealand general insurance market, including about a trillion dollars' worth of New Zealand property and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, motor vehicle insurance and travel insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

Please contact Andrew Saunders ([redacted] if you have any questions on our submission or require further information.

This submission is in two parts:

- Overarching comments
- Responses to questions in the discussion paper

Overarching comments

ICNZ supports quality implementation of regulation, and regulators need to be resourced to deliver this. It is nonetheless important to remember that costs imposed by regulation increase the costs of providing financial services such as insurance and these are ultimately passed on to consumers.

ICNZ is cognisant that as well as the proposed increase in Financial Markets Authority (FMA) levies for insurers outlined in the discussion paper, insurers are also currently subject to a range of other direct and indirect regulatory costs. These include the implications of *Financial Services Legislation Amendment Bill* ('FSLAB') itself and significant IT and other system changes required to implement regulatory amendments to the Fire and Emergency New Zealand (FENZ) levy and the Earthquake Commission (EQC) Act regime. We also note that potential consideration of funding model changes in relation to prudential regulation has been signalled, which might include the imposition of new levies on insurers and other relevant financial service providers.[1] Individual regulatory costs increases for certain entities, such as those outlined in the discussion paper, need to be seen in this wider context.

Overall we consider the licencing fees (both transitional and full) look reasonable for different types of relevant entities and support the application of an explicit cost recovery approach, as is proposed. It is however challenging to comment on fees for licensing in the absence of information on the licensing process that is likely to be implemented by the FMA.

Although it is stated the overall annual levies collected by the FMA will remain the same, for larger entities there will be significant increases in annual levies. We note the basis for the significant changes in levy rates for different types of entities is not clearly outlined in the discussion paper and does not appear to relate explicitly to the changes provided by FSLAB.

While the discussion paper relates to the changes being progressed through FSLAB and its supporting instruments, we note further regulatory change for financial services entities centred on strengthening regulation of conduct is planned by the Government in response to FMA/Reserve Bank investigations into the conduct and culture of banks and life insurers. These changes are likely to inform future regulatory settings, including those related to fees and levies.

Responses to questions in the discussion paper

FMA licensing fees	
1	***Do you agree with the identified objectives for fee setting? Are there other objective which should be considered?***
	We support the identified objectives for fee setting.
2	***Do you have any comments on our proposed transitional licensing fees as set out in the discussion document?***
	The proposed transitional licensing fees appear modest and reasonable.
3	***Do you have any comments on our assessment of the proposed full licensing fees as set out in the discussion document?***
	The proposed fees appear modest and are in line with current charging by the FMA (e.g. $155 per hour ex GST). We note that proposed fee levels for full licensing suggest the licencing process is not expected to be long or complex for a Financial Advice Provider ('FAP') that engages nominated representatives (e.g. $885 plus $155 per hour after 4-hours processing, ex GST). While we recognise that each application will differ and that the 4-hour figure is not definitive, we assume it is supposed to be indicative and note that such a brief process seems out of step with the discussion paper, which at paragraph 18 states: "Unlike transitional licensing, the FMA is required to consider a wider range of factors when considering a full licence application, including whether the applicant has the systems and processes in place to ensure it, and the people it engages, are capable of effectively performing the service. As such, the process for full licensing will be more

[1] Refer page 68 of "Safeguarding the future of our financial system, The role of the Reserve Bank and how it should be governed", which was released for consultation in November 2018 as part of Phase 2 of the Review of the Reserve Bank Act 1989.

complex and the time required to consider an application will vary according to how the applicant chooses to provide advice."

We realise the proposed approach automatically allows the FMA to recover the costs of processing for whatever number of hours it takes. Nonetheless the way it is outlined in the discussion paper can give a misleading impression (particularly the table at the bottom of page 12). If the 4-hour figure is not likely to be representative of actual processing times for larger and more complex FAPs then the appropriateness of its inclusion in the regulations needs to be carefully considered.

This also begs the question of whether the referred to processing times of 2/3/4 hours are likely to be exceeded in relation to an individual application and if so by how much. It is not for instance stated in the discussion paper what might constitute a complex application, beyond it taking a lot of time to process, which makes it hard to assess how this will work in practice and creates uncertainty for fee payers as to potential costs. Given that for larger entities it seems the per hour rate of $155 (ex GST) is likely to be most relevant, as more than 4 hours will be required, there will be interest in the process applied and the controls in place at the FMA to ensure work is undertaken efficiently and the fees charged are transparent. Measures for increasing certainty for fee payers are required in order to meet objective (c) on page 9.

ICNZ understands that the process the FMA will follow in regard to full licensing has yet to be confirmed and this relies on various factors, not the least of which is the enactment of the legislative changes provided in FSLAB. While we welcome the desire to provide a degree of certainty as to future fee settings, given that full licensing is not scheduled to open until at least Q2 2020, we wonder whether the setting of these fee levels could have awaited greater clarity on the nature of the process that will be applied by the FMA in assessing licence applications. The licensing process for FAPs is an important part of the regime for financial advice and we welcome further engagement and information from the FMA on it.

In regard to whether to provide a separate licence renewal fee (discussed in paragraph 25 of the discussion paper). We note the FMA is considering whether to remove the current requirement to renew licences on a five-yearly basis and switch to an open-ended term for all FMC licence-holders, while the regulator would retain the right to set licence term-limits on a case-by-case basis. We would support this approach, however, should this change not be progressed (i.e. five-yearly renewal of licences retained) then the nature and cost of the renewal process will need to be determined (i.e. whether this is a repeat of initial licensing or different, the latter seeming more appropriate).

Changes to the FMA Levy

4 ***Do you agree with the identified objectives for setting the levy amounts that will apply in the new financial advice regime? Are there other objectives which should be considered?***

We note these are the same objectives that were used in the 2016-17 review[2] of FMA levies and recognise that in contrast to the objectives for licensing fees discussed above, the stated focus is not on recovering the costs of specific activities but rather collecting the FMA levy from relevant entities on the basis of "the benefits they receive from a well-regulated financial market", and that this is applied by aligning FMA levies payable by a FAP to its respective commercial size (e.g. turnover, assets etc.) as a proxy for the "benefits they receive".

[2] Refer to page 41 of the consultation paper, Reviews of the Financial Markets Authority funding, the Financial Markets Authority levy, the External Reporting Board levy and Companies Office fees, July 2016.

Given the levies proposed are in addition to those already applied to licenced insurers and other types of relevant entities under Schedule 2 of the *Financial Markets Authority (Levies) Regulations 2012* it would be appropriate to make clear in the objectives that the relevant benefits are those related to the regulation of financial advice in particular, since licensed insurers and others are already paying substantial amounts of levy for the "benefits they receive from a well-regulated financial market".

It is noteworthy that a large and compliant business will have invested significantly in its culture, systems and controls, yet they will attract significantly higher levies under the proposed levy structure. A small less-compliant entity on the other hand that has made no such investment benefits significantly relative to the large compliant entity from the proposed levy structure. The blunt nature of the proposed levy approach does not recognise the regulatory effort each entity entails in relation to financial advice, or of itself encourage greater compliance generally.

There would also be value in including further objectives based on those considerations outlined in section 1.3 of Treasury's *Guidelines for Setting Charges in the Public Sector: April 2017*[3], including the need for: effectiveness; efficiency; transparency; simplicity; and equity.

5 ***Do you have any comments on the proposed levy? Are there any further advantages or disadvantages to our proposal?***

For FAPs that engage more than a few nominated representatives under the new regime the proposed levies will be a considerable increase and for those with large numbers of nominated representatives the increase is in proportional terms astronomical.

The rationale for this significant change in cost imposition is not however clearly stated in the discussion paper beyond the following statement in paragraph 35:

> "We consider that this model will meet MBIE's objectives. It will ensure that the businesses that benefit the most from participating in a well-regulated environment will pay a greater portion of the levy."

Given the identified objectives have not changed since the preceding review of the FMA levy, it is disappointing there is no further explanation of this change in the discussion paper. We note the supporting Cabinet paper[4] touches on this issue:

> "For single-adviser businesses, the levy is comparable to the current levy. Small to medium sized businesses will pay a considerably lower levy than under the current regime. However large businesses like banks will pay a considerably higher levy. I am comfortable with these businesses paying a higher levy, recognising the significant benefit they receive from operating in a well-regulated environment."

The proposed new levies at annual confirmation for FAP's will mean that those with significant numbers of nominated representatives will pay substantially more than they do currently (e.g. a FAP with 100 nominated representatives that was previously a Qualifying Financial Entity (QFE) will go from $460 to $18,130 per annum and one with 446 or more nominated representatives will increase to $80,000, all figures ex GST), all on top of the existing FMA levy paid by licensed insurers (between $2,200 and $150,000 ex GST based on an insurer's annual gross premium). This represents an increase of up to 174 times[5] in relation to financial advice

[3] https://treasury.govt.nz/sites/default/files/2017-04/settingcharges-apr17.pdf

[4] Refer to paragraph 7 of the Cabinet paper, "Consultation on fees and levies in the new financial advice regime...", Minister of Commerce and Consumer Affairs.

[5] From $460 to $80,000 ex GST for a licensed insurer FAP with 446 or more nominated representatives that was previously a QFE.

	provided by nominated representatives, or a total increase of approximately 50% in the case of a large insurer (from just over $150,000 to $230,000 per annum ex GST). We also note that under the *Financial Advisers Act 2008* currently, a QFE is liable for the financial advice given by nominated representatives and this will also be the case under the new regime with the FAP being liable. As such, the role of the QFE/FAP as the frontline regulator appears to remain intact and the discussion paper itself does not outline an increase in direct oversight of nominated representatives by the FMA. Further, the legislation and the *Code of Professional Conduct for Financial Advice Services* will set the regulatory standards that nominated representatives will need to meet so the FAP will have a clear framework for its role as frontline regulator. We consider continuing the levy of $460 (ex GST) at initial registration is reasonable.
6	***Should the levy relating to financial advisers be payable by the financial adviser as proposed, or the financial advice provider?***
	We recognise this is essentially an administrative issue and that there are pros and cons associated with which party pays the levy for financial advisers. On balance we support the levy relating to financial advisers being payable by the financial adviser themselves on the basis that they are the specific entity regulated by the regime and individuals may be engaged by multiple financial advice providers.
7	***Do you have any comments on the alternative options set out in the discussion document? Are there other options, or variations on the alternative options, that should be considered?***
	We note the alternative tiered approach would align with the existing approach to FMA levies for banks, NBDTs and insurers. Given the proposed levy would be proportional to the number of nominated representatives and has a cap in application it would share some of the attributes of a tiered regime, however, as no proposed tiered levels are proposed in the paper it is not possible to comment on the relative impacts/benefits of such an alternative approach.
8	***What would the costs and benefits be of providing relief to single adviser businesses?***
	We are supportive of relief being provided to single adviser businesses in relation to both the initial registration levy and the annual levy. This would support ensuring the availability of advice by reducing regulatory costs for the large number of financial advisers that operate as sole traders. Regarding the annual levy, we do not consider relief on this (by not having to pay the financial adviser levy of $267 ex GST) would discourage a business from engaging additional advisers.
Changes to levies relating to authorised bodies	
9	***Do you have any comments on the proposed changes to the levies that relate to authorised bodies?***
	No comments.

Assumptions	
10	***Do you have any comments on the assumptions used in this paper as outlined in Annex 1 of the discussion document?***
	We question the absence of any assumptions specifically related to the setting of FMA levies beyond the estimated number of FAPs, financial advisers and nominated representatives.

Conclusion

Thank you again for the opportunity to submit on the discussion paper. If you have any questions, please contact our Regulatory Affairs Manager on [redacted]

Yours sincerely,

Tim Grafton
Chief Executive

Andrew Saunders
Regulatory Affairs Manager