**Submission to the MBIE Issues Paper relating to the Review of the Financial Advisors Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008**

Asteron Life Limited

22 July 2015

We understand that the Ministry of Business, Innovation and Employment (**MBIE** or **the Ministry**) is required to undertake a five year review of the Financial Advisors Act 2008 (**FAA**) for the Minister of Commerce and Consumer Affairs and Parliament. The review is due in mid- 2016. The Ministry is undertaking a parallel review of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSP**).

We have been involved in drafting the FSC's submission to MBIE regarding the same subject. We are making this submission to emphasise a number of key matters of concern to us. It is not an exhaustive submission.

This submission is based on a number of principles which Asteron Life Limited (**Asteron**) holds dear:

1. We are passionate about developing and maintaining a sustainable life industry: where customers can feel confident in the wide choice of financial advice on offer across a range of prices and levels of sophistication; IFAs (whether they be AFAs or RFAs) can make a living; and shareholders investing in manufacturers can receive a reasonable return on their investment.
2. Providers (AFAs, RFAs, QFEs or manufacturers) are motivated to innovate, take advantage of technological change and met the expectations of customers, without tripping over the law.
3. Advice provided is appropriate for the circumstances of the customer and the law is clear enough for customers to access the right type of advice or information. It's about customers making an informed choice about advice or information options based in the circumstances, need and financial constraints.
4. Providers are accountable for the advice and service they provide.

Turning to each of these principles, we submit:

**1. A sustainable Life industry.**

As we have said, we are passionate about developing and maintaining a sustainable life industry: where customers are placed at the forefront of service and financial advice; providers (whether they be AFAs or RFAs) can make a living; and shareholders investing in manufacturers can receive a reasonable return on their investment.

Customers with life insurance needs, manufacturers and providers are co dependant on each other. We need a viable solution which addresses the price pain passed on to consumers, driven by the effect of up front commissions and lapses, which cannot be so extreme that financial advisors cannot maintain a sustainable business model.

We also note that some replacement business is healthy. Consumers' needs change. Advisors ought to actively review policies for ongoing suitability. Manufacturers need to be up for the challenge of

ensuring their service proposition and product set is sufficiently flexible and competitive to meet the needs of consumers as their needs change.

However, where possible we believe that further work needs to be done to remove the conflicts of interest that are present in our market, and introduced better disclosure requirements where those conflicts cannot be avoided. We do not believe that a blunt instrument such as removing commission from the sector would be appropriate to achieve this.

**2. Technological change.**

The law keeping pace with providers and manufacturers utilising technologies to ensure customers access financial advice or service when they want it, how they want it, by someone qualified to provide that advice is in everyone's best interests. Innovative delivery tools will be the key to customer satisfaction and competitive value.

- It provides a flexible environment for consumers to access financial advice or services.
- Providers have flexible working environments and can focus on customers who most need their type of financial advice or service.
- Online or self service options provide customers with a highly accessible, minimised price point offering.
- Manufacturers can use these technologies to partner better with financial advisors to provide optimised service to customers, particularly where needs change.
- The regulator provides an environment where the public has confidence in the financial advice and services sector.

**3. Access to appropriate advice or services.**

We believe that it's a fundamental right of consumers to have access to the right level of financial advice or product information for their circumstances and financial constraints. We also believe that consumers deserve to make an informed choice about what type of service or advice they access from properly qualified providers, using effective plain language disclosure techniques. Disclosure should always include a written component to ensure the customer has reference material.

We know that there is consumer confusion between an AFA, and RFA and a QFE Advisor. Clarity for the consumer about what type of financial advice or service is being given is more important than the type of advisor for the customer. We think that financial advice and selling (we prefer to look at information only as a service) is a continuum and one which should be applied flexibly and in accordance with the needs of the customer.

We know that the sector finds the law relating to personalised advice, class advice and information only selling confusing. We know this because in October 2012 the FMA issued a 27 page guidance note about the difference between these things in the context of Kiwisaver. However we understand this document is often used to interpret the difference between personalised advice, class advice and information only selling for any type of financial product.

All providers would feel empowered to provide customers with an appropriate service within their scope of practice and qualification. This may mean that in appropriate cases an AFA could provide an

information only service to a customer- but the catch in this is that that the AFA should not run the risk of being caught up in a compliance breach by doing so.

The exemptions relating to financial advice or service are found in sections 14 and 10(3) of the FAA. We think it would be valuable to revisit these exemptions. We question whether the best way of providing the best possible service or financial advice to consumers is to differentiate between recommending a product based on a customer's specific circumstances; making a recommendation about a product based on a generalised class of circumstances; or providing information. Also, the exempted professions do not necessarily have any knowledge of financial products nor any competence to provide financial advice so the blanket exemption in section 14(1)(d) seems inappropriate.

**4. Provider accountability.**

All providers are accountable for the financial advice and services they provide. We know that the equivalent of QFE advisors or nominated representatives in Australia have more personal liability of the services they provide for their employer. It seems to us that it is a better outcome for the customer, the regulator and the industry for QFEs to remain accountable for the financial advice and services provided by their employees (QFE advisors or nominated representatives). QFEs are generally large, stable and liquid entities with a greater ability to train employees, monitor and supervise the quality of their work and, if necessary, compensate the customer for errors.

We believe there should be a place for providers to be independent of a QFE where they are responsible for their own advice.

Providers are accountable to an independent dispute resolution scheme and the FMA. We believe that these are important consumer protections and we support the continued requirement for all providers to join an independent dispute resolution scheme. This is a key plank of the current regulatory environment which supports investor and customer confidence.

We note however there are four dispute resolution schemes with different rules and variations regarding the size of the disputes they have jurisdiction over. We have no opinion regarding the number of dispute resolution schemes in the market. However we note if the rules or dispute size are harmonised the schemes would have fewer competitive levers. We think that it is sensible for independent providers to carry professional indemnity insurance but manufacturers should have the option of self insuring for this type of dispute.

We have heard it said in the industry that the FMCA, FAA and FSP legislation has given rise to significant compliance costs for providers and manufacturers. We believe that the cost of complying with this legislation is outweighed by the benefits which drive better customer outcomes. Compliance is simply a cost of doing business. If compliance responses are optimised it can drive better competitive and customer outcomes.