Allianz New Zealand

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Financial Markets Policy
Ministry of Business, Innovation and Employment ("MBIE")

By email: faareview@mbie.govt.nz

To Whom It May Concern

Re Allianz New Zealand Submission on MBIE Paper

Summary

1. Allianz New Zealand is part of the largest Property & Casualty insurer group in the world and, through its predecessor companies, has been operating in New Zealand since 1914. It is the 7th largest general non-life insurer in New Zealand by premium with the majority of its business carried out with or via intermediaries – both brokers and agencies.
2. Allianz New Zealand is pleased to have this opportunity to respond to the MBIE Options paper on the *Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008* ("Options Paper"). We have had the benefit of discussing some of the key issues with major broker representatives and the New Zealand broking industry body, IBANZ. Our position is summarised in paragraphs 3 and 4 below.
3. We already have a healthy financial advice regime as it relates to general insurance, with no convincing evidence of either the need to change it materially or of the realistic tools that might be usefully adopted to streamline the costs of the current environment and/or secure the desired objectives at a reasonable cost level.
4. We note the diagram of preferred consumer outcomes on page 8 of the Options Paper and the stated barriers to achieving those outcomes:
    a. While accepting that regulation could apply to the overall financial advice arena, that should not mean that the burden of achieving the consumer outcomes should be largely borne by those subject to the regimes under review, or insurance industry staff in our case;

Level 11, Tower 1
205 Queen Street
PO Box 794
Auckland

Telephone 09 354 2900
Facsimile 09 309 3002
Toll Free 0800 500 115

b. Second, the MBIE paper does not recognise the role of the intermediated insurance market despite the insurance broking industry facilitating more than 50% of the $5.2BN premium pool in the local general insurance industry;
c. Third, mechanisms designed to address concerns arising from other areas of the "Financial Adviser" industry do not apply to the general insurance market; and
d. Fourth, we would support some evolutionary changes to the current regime which would serve to address the above perceived barriers and meet some internationally accepted practices at the same time.

The General Insurance Dynamic

5. General insurance products are currently Category 2 financial products, being relatively simple products ranging from domestic (eg home, contents, motor and travel) to commercial (small business, first and third party liability overages) to corporate (larger business with more intense requirements).
6. Consumers can buy insurances directly from insurers, typically at the domestic end of the scale.
7. Consumers can also buy insurances, even domestic insurances, from intermediaries such as brokers (acting on behalf of customers and sometimes for the insurers during the same transaction) or agents (representing the insurer).
8. There is no investment or capital return profile in these general insurance transactions. The product is a series of promises by the insurer to recompense the customer in the event of an uncertain event outside the insurer's control. In the great majority of cases, the only time the customer can get any return of the original premium is if the policy is part cancelled and a partial refund is made. The payment of a claim is not a "return" on the premium: it is a direct function of the policy responding to a covered loss.
9. When the customer purchases that product, the customer might do so on the basis of a simple execution order ("I know what I want already") or via a pre-purchase analysis ("I'm not 100% sure of what I want and I want some help in deciding what I will buy"). That interaction might be online, via a call centre, through a broker (the customer's representative) or through an agent of the insurer.
10. The current regime respects the customer's right to make his or her own decision: there is no current obligation on any adviser to universally ask the customer about their other needs beyond the insurance coverage request. The current regime also protects the provider of that product who only provides class or general information to facilitate that decision. The more severe compliance obligations only applying where the provider provides "advice" which is tailored to meet that customer's particular requirements. This blend of autonomous customers and not providing advice is called out in the Options Paper as a carve-out for "Execution-only" services (see page 46).

11. The role of the insurance broker in the general insurance industry (vs the Life Insurance or Estate Planning industries for example), is unique and important. The insurance broker is engaged by the customer to source the best insurance coverage according to the customer's instructions. In those situations, the insurer is in a wholesaler's role and not a direct retailer to the customer. It follows that the obligations differ also given that (i) the insurer is no longer providing any products or advice direct to the customer, and (ii) the broker is now part of the process representing the customer to source the coverage. The broker might also act for the insurer in the same transaction, for example by issuing policies and other administrative tasks at the policy's inception. The broker will be remunerated for those different services by the customer and insurer respectively. This is usual and a long accepted part of how general insurance is transacted. The point here is that the insurer cannot carry all the "adviser" obligations all the time given the incidence of intermediated general insurance business in NewZealand.
12. With no long term investment profile for general insurance products, there is no remuneration based on term or potential return. The general insurance client/carrier relationship does not go through the same "churn" which one might see in the Life Industry for example. Quite the opposite: if a broker has placed a customer together with a carrier, it is more usual for that three-way relationship to remain.

Comments on Chapter 4

[4.1 and 4.2: there is no better alternative to the current advice and product distinctions. More modern ways of providing service makes sense]

13. Because of the non-investment profile of general insurance products, there is no need to move from the current advice and product distinctions, although a more modern delivery system as per 4.2 in the Options Paper makes sense in 2016.
14. We acknowledge the difficulty in identifying the point at which information turns into advice in the sliding scale of "Information Provision" to "Fully Personalised Advice".
15. We would disagree with the "sales" vs "advice" distinction in the Options Paper. Even a "salesperson" representing one employer may have the remit to sell a number of products underwritten by that employer. While the "salesperson" might offer products on an "execution only" basis, in certain circumstances, that "salesperson" might also provide tailored advice to the consumer depending on the products he or she has been employed (and trained) to sell. At the same time, that "salesperson" could be just as motivated by sales returns as the "adviser" who is authorised to sell the products of two or more providers. In either case, the consumer could be presented with a number of product options at varying costs. And that would be the case whether that sales interface has been enabled by one *or more* organisations to act as a distribution channel. Put another

way, from the consumer's perspective, the product provider could be a tied agent, a pure distribution/ execution only agent or a fully fledged adviser trained and motivated to recommend tailored advice. For that reason, we do not think changing the current distinction of "information vs advice" is beneficial.

16. The mechanism of regulating "information vs advice" through the outcomes of disputes might not seem an elegant tool to bring about the desired outcome of consumers accessing the advice and assistance that they need, but it protects the consumer's right to elect for execution only services and avoids the blanket costs of over-training staff who do not need it for information only products or sales. It is an issue of materiality and drawing a line around the transactions that should be regulated. Incidental instances of accidental and incorrect "advice" should be caught by the current complaints and dispute resolution processes. But if an insurance industry staff member intended to be more than helpful, and intends to provide tailored advice, then they should be subject to a different standard of training: eg on competency standards. This is basically the current position where organisations who sense an exposure to providing "advice" have elected to either (i) become QFEs, or (ii) train the relevant people to a high (eg AFA) standard, or (iii) ensure that they only provide information. If there were fewer categories of actionable advisers, then that might assist in educating the consumer as to who is offering personalised advice. MBIE and the FMA are in a good position to help provide this kind of communication.
17. (While not directly relevant to Allianz in New Zealand, we would be interested in a discussion about how to make the obligations of QFEs less onerous with a view to streamlining costs in the intermediated market).
18. The systemic downside of consumers not accessing the advice that they "need" are (i) a costly regime (all market facing staff being trained up to AFA standard, costs which are likely to be passed on) and (ii) the probable instance of under-insurance problem (which would include incorrect insurance). We would define under-insurance as the customer paying a relatively high price for the overall product but for less "correct" coverage. However, that assessment can only be made retrospectively. At the time of the purchase, the insurer might provide options and leave it to the customer to do his or her own diligence on the suitability of the offering. The broker, depending on instructions, might also make a specific recommendation. In any case, there are already mechanisms in place to deal with offerings that appear poor: eg the customer can seek cover from another carrier, or try to negotiate better cover or a lower price or make a complaint to an external dispute resolution provider or via the FMA or perhaps the Commerce Commission. For a wider community issue of under-insurance where previous expectations of what was reasonable before a catastrophe turned out to be misplaced, that's an overall market issue and would be unfair to place at the feet of the insurance provider.

[4.3: insurers cannot be in a conflict over consumer interests pre-inception. conflicted remuneration should be addressed by a common form of disclosure]

19. Insurers owe a duty of utmost good faith to the customer once the contract is in place. But neither they or their agents can be obliged to put the consumer's interests first before the contract is incepted: that conflict could result in an unbearable and unsustainable capital and commercial position. The usual contractual obligations of negotiating in good faith are sufficient with the current remedial channels.
20. It would be redundant to impose a primacy obligation into broker contracts of engagement as the whole point of such engagement is for the broker to represent the customer in negotiating the insurance market.
21. When an intermediated contract of insurance is negotiated, the broker and insurer will be aware of the income categories earned by each of them which only arise from securing that contract (ie excluding base salaries of staff). However, the exact details might not readily be apparent pre-inception:
    a. The premium charged by the insurer: usually settled but could be a little more uncertain for more expensive policies if the agreement has been based on percentages of values where the values are to be finally determined;
    b. Governmental charges: the rates are known but the amount could flex depending on a. above;
    c. Brokerage: what the broker charges the customer for sourcing the requested coverage, this could be either a fee or a percentage of the premium;
    d. Commission: what the insurer pays the broker, most commonly for administrative duties in getting the policy incepted;
    e. Profit share: calculated over a period and not tied to any single transaction;
    f. Other various service fees charged by the broker or a related entity: eg for maintaining an on-line web portal, providing marketing services, managing claims or risk management.

22. We propose that the final quote to the client in an intermediated transaction contain a list of the above categories.
23. However, because the exact details will not be known pre-inception, then if an exact figure cannot be cited, that a reasonable range be provided in either dollar or percentage terms or at least a description is provided of the calculation needed to derive the applicable figure. The details of the disclosure could be worked out with brokers individually if not through an agreed form via the insurance broker body, IBANZ.
24. We should make it clear that, in our experience, the full details of the associated costs/remuneration may not be clear until well after inception.

25. We would cite the Australian practice as a useful template to refer to, not the least because so many carriers and brokers have Australian head offices or links. We would summarise the Australian practice as follows:
    a. The Australian model (*Corporations Regulation 7.7.04*) requires that remuneration be disclosed whenever financial services (not just financial advice) are provided, unless an exemption applies. The disclosure requirement applies to remuneration (including commission) and other benefits (such as profit share, marketing contribution and other form of incentives);
    b. If remuneration and benefits can be ascertained at the time of disclosure, the details (ie exact amounts) must be disclosed;
    c. If remuneration and benefits cannot be ascertained at the time of disclosure, there are two options:
        i. disclose the particulars of remuneration (including commission) and other benefits must be given, including a range of amounts or rates of remuneration (eg. commission rates); or
        ii. disclose generally information about how remuneration and other benefits are calculated and include a statement that the customer can ask for more information before services are provided.
    d. commission amounts cannot be ascertained at the time disclosure is required, so standard practice is to disclose the range of commission rates; and
    e. currently, distribution agents also have to make a remuneration disclosure.

26. We note from a user perspective that the information might not seem particularly useful if, for example, the ranges were quite large eg "5 to 30%". It will be important to work through the most practical and useful disclosure in much more detail, and we would suggest a joint insurer and broker dialogue perhaps involving workshops facilitated by MBIE in order to settle on the correct form.
27. Carriers selling direct to consumers already disclose the cost to the consumer. We would specifically recommend that New Zealand does not adopt the Australian practice of distribution agents make remuneration disclosure as is done under the Australian *Corporations Act sections 941A, 942B, 942C*: if they are distributing simple, non-investment products, we consider that the reasonable consumer should expect that "agent" to be remunerated for the sale.
28. Conversely, if the product requires tailored advice, then we would expect a disclosure to be made by brokers and general (or multi) agents specifically because there is a risk that they might have a financial conflict behind the advice which could flow from differential remuneration levels as opposed to whether the recommended product suits the customer.

[4.4. Minimum competency standards and training for market-facing staff]

29. We expect all carriers to provide some kind of training to their staff. We would support a minimum level of competency for those market-facing staff who do not provide advice for Category 2 products. If nothing else, a distinction should be made about communicating those instances where a staff member *cannot* provide Category 1 or detailed advice.
30. We suggest that this would be sufficient given our view on the respective rights and levels of autonomy that should rest with the customer as opposed to the potential cost of what could be seen to be an overly paternalistic framework for an industry of relatively simple products.

[4.5. Compliance]

31. Because of where we stand on 4.3 above, the issue of Compliance with that falls away.
32. In any case, there are current channels for dealing with allegations of poor advice or misrepresentation.
33. We would suggest that the issue may be one of education and communication and would draw an analogy with the current form of disclosure for financial strength ratings. Insurers have to disclose their rating on quote forms and on their website. That rating is typically a letter with a symbol to disclose further strength variations within that outlook: for example, Allianz in New Zealand has an AA- rating (one of the highest in the New Zealand market). However, that rating is not enough in itself as there is no context. That further context is provided by obliging the insurer to also disclose the range of applicable ratings which includes that specific rating, as well as a more qualitative description: Very Strong, Strong etc. Similarly, we would suggest that the tailored adviser inform the customer in the quote what kind of adviser and product was involved in that transaction (along the lines of the current Financial Adviser Disclosure) – along with information about where that adviser and product sits in the scale of regulation. MBIE should provide the single source of reference of the relevant regulated options and their consequences in order to help provide some context to the interested customer.
34. The "Financial Adviser" industry is currently too fragmented to find compliance support through industry bodies or code committees. For insurance, there are currently certain existing demarcations which seem quite firm (general insurance vs insurance brokers vs life insurers vs medical insurers etc) and this is without also taking into account the non-compulsory nature of membership. Having said that, there may be some natural coalescence in the future: for example, Allianz is a member of the FSCL external dispute resolution service as are many insurance brokers with whom Allianz transact with on a daily basis.

35. It also follows from what we have said immediately above that we have no issue with the current state of multiple external dispute resolution schemes.

[4.6: see 4.3 re common form of disclosure]

[4.7: see 4.5 above as support the status quo on the number of external dispute resolution providers]

[4.8: if MBIE agree to a common disclosure based on the advice/product provided as per 4.5 above, would it help for advisers to include this information, along with usual contact details, in the FSPR? If so, what is the real cost of extending the FSPR's visibility on that given the current amount of annual fees? The FSPR could also consider a "name and shame" section for applicable advisers]

Comments on Chapter 5

36. We would suggest that if the objective is to obtain "more informed and confident consumers", the current regime does a lot to achieve that already in the general insurance industry, perhaps with the exception of the ongoing customer dissatisfaction flowing from the Christchurch earthquakes. Putting that major and significant episode to one side for the purposes of this discussion, if MBIE were minded to pursue a package, we would support Package 1 with these further amendments:
    a. A common form of remuneration disclosure to be provided directly by the entity who has been requested by the customer to provide that coverage. The trigger for such disclosure will be the risk of that advice being coloured by the remuneration that the provider receives for that particular transaction;
    b. A form outlining the categories of advice and products to be compiled by MBIE as a common form of reference for all advisers who have to disclose at quoting where they sit on that scale/matrix;
    c. A base level of competence for all market facing staff, which means at the level of Category 2 products and class advice; and
    d. Upgrading the level of information in the FSPR.

Chapter 6

37. We agree that option 1 (stronger registration requirement) and option 2 (amend the grounds for de-registration) would reduce incidence of misuse of the FSPR.

Conclusion

38. While we support the current regime, we also recognise some room to improve and would therefore recommend certain changes to address the perceived barriers as per paragraph 36 above.

39. I would be very happy to discuss further, or answer any queries, as needed.

Yours sincerely
Redacted

T. Eugene Elisara
Chief Executive Officer
Allianz New Zealand