14 February 2016

Financial Markets Policy
Ministry of Business, Innovation and Employment
PO Box 3705
Wellington

To whom it may Concern- FAA Review –Submission

Thank you for this opportunity to make a personal submission regarding the industry that has been my chosen career for 37 years.

Background: My name is Jeff Tobin and I have worked in the Fire and General and Life/Medical insurance industry both as an employee and insurance adviser for 37 years. I have been a self-employed insurance adviser for the past 29 of these years.

I qualified as a Chartered Life Underwriter (CLU) in 1999 which is recognised as the pinnacle qualification worldwide in the Life insurance Industry. I also qualified as a Senior Associate of the Australian and New Zealand Institute of Insurance and Finance (ANZIIF [Snr Assoc]) in 1998, a qualification that is widely recognised in the Fire and General and Life insurance industry in Australia/New Zealand and South East Asia. I also hold an Advanced Life Insurance Certificate (ALIC) from the ANZIIF.

I have advised and serviced my client's insurance needs for nearly three decades and consider my position one of privilege in society. I have many second and now third generation clients. I get closer to people than most professionals, as I need to cover off their intimate financial and health situations and needs during the advice process and personal insurance policy arranging process. I am also involved with clients' claims, often at a very stressful time in their and their family's lives. I am currently dealing with three terminally ill clients (was four - one long term client of 18 years just passed way from metastatic breast cancer). One of these terminal illness clients of mine has just asked me to MC his funeral service, so that gives you an idea of the meaningful relationships that we forge with clients over the years. These clients have been clients and friends for more than 25 years in two cases and over 15 years in another. This is what we do - provide advice and support, both emotionally and financially, in person and with empathy at claim time, when it's needed the most by our clients. We do not earn a commission or charge fees for the work we do when a client calls upon us for help after a policy is implemented. As advisers we do this out of natural love and affection for our fellow citizens/clients/friends and that is why advisers like myself stay in business. We put our clients' best interests first at all times. Many times we do not get paid for this service in monetary terms, nor do we expect to be.

One of the frustrating aspects of these reviews from my viewpoint as an adviser is that since the 2008 GFC, I feel a lot of the legislation has been put in place with predominantly Investment Advisers in mind. I believe the term Financial Adviser clouds the entire act. For example I used to trade as

Tobin Financial Services and people would ask me if I arrange finance, provide budgeting advice etc. I changed my trading name to Tobin Insurance Services some years back and have never had that question again as it clearly describes what service I provide.

There are completely different disciplines and skill sets required between the different types of Financial advisers under the Act and I would like to see this recognised and acknowledged in the outcome of this review.

Insurance advisers help their clients place protection around their assets and lifestyle from the threats of Death, Disability, Illness, Fire, Earthquake and Flood. We provide money when it's needed the most. We do not take clients' hard earned money and invest it, let alone invest it an inappropriate and/or negligent way, nor do we raise a mortgage or buy and sell trading stocks for clients.

The insurance industry pays out billions of dollars each year to New Zealanders whom the Government does not have to find resources to support. This means taxes are more able to be held at the levels they are at, and do not have to be increased due to undue financial pressures in society that insurance claims are taking care of. For example in New Zealand health insurers have paid out over $1 billion dollars in a 12 month period last year (source: Health Funds Association-NZ Herald 24 June 2015). FSC chief executive Peter Neilson said the pay out by FSC members of the insurance industry for personal insurance including life and income protection insurance had topped $1 billion a year each year since June 30, 2011. Combine the HFA and FSC members claims pay outs and that's over $ 2 Billion per year paid to New Zealanders who need it the most, without putting additional stress on the public health system or social income support services. In addition there are billions that are paid out from Fire and General insurance claims to property and vehicle owners and businesses each year.

Trying to legislate with one set of rules for all forms of financial advisers, with completely different markets, needs and skill sets, is not working well in my opinion and opens the door for conflict within the wider financial services industry.

<u>Barriers to Achieving Outcomes:</u>
<u>Question: Do you agree with the barriers outlines below if not why not?</u>
Answer: My answers are based on my experience of consumers accessing <u>insurance advice</u> and not any other form of financial advice: I do not agree that there is any hardship in attaining insurance advice. Everywhere you go the banks, radio/TV, social media, websites, work places, yellow pages, family and friend referrals give the public ready access to insurance advice. Telemarketers are common callers at home and I have myself been called regularly on behalf of financial advisers wanting to offer their services to me. Most people can approach an insurance company easily and almost every time you go into a bank you get hit up for insurance or Kiwi saver.

When we consult with a client (especially a new client prospect) we have a meeting to establish what their concerns and goals are and we provide our disclosure statement and background experience and qualifications. At a second meeting a written report is provided with recommendations and options and gone though in detail with the client so that no questions are left unanswered. Consumers can always ask about an adviser's experience and qualifications but this information will be given when we first contact a client via a disclosure statement. If advisers like myself have additional qualifications, client testimonials/references and years of experience, then these should be supplied as well.

My client references, which can give some insight as to what an insurance adviser does, can be found here: http://tobininsuranceservices.co.nz/references.html

I have heard some comments, mainly AFAs complaining online that they have more compliance than RFAs. Firstly it is ridiculous to compare Investment advice to insurance advice and other types of financial advice. This in my opinion is one of the problems we have in the current Act and a potential barrier. There are some big egos in this industry and some animosity between insurance and investment advisers from my personal experience. There is no way I want to give investment advice and be deemed responsible or associated with losing someone's lifetime savings or hard earned money in the managed funds or investment markets, whether the adviser is at fault or due to outside influences that affect investment markets. My insurance advice allows me to deliver on certain contractual promises: that upon an event happening the policy will respond, providing money to the client when it's needed the most to protect their assets and/or lifestyle at claim time.

Titles such as AFA, RFA, even my Chartered Life Underwriter title (CLU), mean little if anything to clients at the coal face. They want to know if they can be insured, what is covered, what isn't covered, how much is it going to cost them (the premium), who to contact in event of a question and/or claim, and that their claim will be treated with care and paid.

I do not receive many signed acknowledgments of Disclosure Statements back when I email them to clients. I doubt many people read them when there is so much information that we have to give a client when providing reports/quotes etc. It is an "information overload situation" for many.

<u>Re: Suggested Barrier that Certain Conflicts of Interest may be leading to suboptimal outcomes for consumers:</u>

In the brief supplied it mentions the word churn. I do not condone replacing policies for the sake of replacement. There is actually a heck of a lot of work involved in replacing policies. In fact it is potentially a real problem for the agent should a client subsequently make a serious claim such as a life claim, trauma claim, income protection claim, medical claim etc. If in replacing a previous policy some non-disclosure has occurred on the new application, then this could jeopardise a future claim being paid. As a broad brush comment, the longer a client has been insured with an original policy, then any changes in health since that policy was taken out need not be disclosed and this policy longevity may help at claim time. HOWEVER in my 29 year adviser career markets, products and people's needs have changed. Product manufactures (Insurance Companies) have invented and continue to reinvent new and not so new products. This is ongoing as many companies have regular product upgrades and campaigns. For example when I started as an adviser in 1987 savings products including endowment, whole of life and unit link insurance policies, as well as some registered superannuation schemes, were common. These have all disappeared from the market place in favour of Kiwisaver and managed funds. These days Income Protection, Trauma, and other disability insurance products plus medical insurance have become the mainstay products in the life insurance industry. Many of these products did not exist when I started as an adviser.

Had I not serviced my clients as their needs and lives changed, provided up to date and relevant advice, and offered improved product choices where in the best interest of my clients as they became available, then my clients would be less adequately covered than they could have been.

Subsequent claims outcomes may not have been as favourable for some clients had I not helped them upgrade and improve their insurance protection over time. These clients would have eventually been approached by someone with a better product offering relative to their needs and I would have likely ended up losing their business. <u>One product change example</u>: Some medical insurance companies cover non pharmac approved medications to varying degrees, some do not. These are very expensive treatments and can sometimes mean a difference between hope/life and death. A full needs analysis must be completed and it is imperative that any new application is submitted with full health disclosure. In many cases I cannot upgrade a client's policy as their health has deteriorated since their original policy was taken out and a new policy would result in new exclusions that may not be in a client's best interest. There is a process to follow here and a client is informed at each stage. You cannot place an exclusion on a policy and issue it without a client being notified and obtaining their agreement and understanding first. Note that people change their house and contents and car insurances all the time usually for premium or for unhappy claims reasons without understanding the finer terms and conditions of their covers, there are also some big differences in these type of policies in the market place.

I believe that in the main it is the few insurance providers/companies who have not kept up their product offering and/or service standards with the competition in today's market who are losing business and calling "churn". There are some insurance companies who need to look at themselves, their product range and service and make a major shift in the way they run their businesses, if they are to maintain and capture new market share. The market is very competitive and every time an insurance company launches a product range upgrade they take it on a road show to the adviser market, do their best to sell the benefits as to why their product is now the best for consumers, and exert pressure on advisers to review their clients so they get the opportunity of having the best new wordings at claim time. We are advised that if we are not reviewing our clients at least once a year we are not doing our jobs or looking after our clients properly, which could lead to a Professional Indemnity or disputes resolution claim if the product fails to respond when called upon. This trend has been cyclic and ongoing for years. I believe for the most part when advisers these days upgrade clients' policies it is done for right and proper reasons so their client is getting better cover for their premium dollar. Due process has to be observed and full underwriting assessments completed. It is not an easy task upgrading a client's policies especially if they have been with one insurer for many years. Not all clients can be or should be upgraded, due to health changes. There is a big difference between churn and reviewing, providing quality advice and service to clients. Some people with agendas - mainly within insurance companies – use the word "churn".

On the subject of commission. I believe it is by far the most honest way to earn a living for insurance advisers, and the best way for consumers to have and afford access to quality advice, more so than fee based remuneration (fee based remuneration is the right way for investment products, but investment advisers also receive a performance commission as a percentage of funds under management in many cases). This is because if I do not do my utmost best for the client, build a positive relationship with them, earn their trust and provide evidence of my competence, explain the recommendations/solutions to the point that they understand a complicated subject and feel comfortable to accept my recommendations, then I do not get paid at all. Sometimes we do a lot of work and never receive any remuneration (community service calls I call these). This is because they decide not to buy because of price, or medical evidence shows they are not insurable etc. If I charged a fee for time and a client doesn't take the advice I still get paid, so where is the need to act to the very best of an adviser's ability on a fee basis? The other issue with fee based remuneration for insurance advisers is that the public/consumer wants to know what the premium is (<u>i.e. what is</u>

the cost to them), and they expect the premium to be the only charge. No one is going to pay me what I am worth for the time and knowledge I have acquired in order to advise them on a fee for time basis, either during the sales/advice process or when servicing a client - particularly at claim time which involves a lot of work - and still pay a premium on top. If commissions are banned it will be the end of the insurance broker adviser force as we know it and therefore the end for some insurance companies, their staff, shareholders and policies. Commission based remuneration has always worked well for the insurance industry and the public and should not be changed unless the intended outcome is to decimate the “independent” insurance adviser force. This decimation will result in serious consequences of probably losing at least 4-6 or more adviser supported insurance companies. That is why at least four insurance companies recently resigned from the Financial Services Council in 2015 after a non-balanced and poorly researched Melvin Jessop report with a clearly biased agenda was released. If the adviser force is decimated then the public will suffer and there will be even greater underinsurance in New Zealand. This will led to an undermining of future economic stability and of the growth of New Zealand and leave a lot of uncertainty for many. The public of New Zealand’s insurance needs will be best served by a robust- freelance commission based adviser force.

Over the years very few people have asked what I get paid. They sometimes ask how I am paid and sometimes they want to know if they have to pay any additional fee on top of a premium for advice. This is covered off in my disclosure statement and I advise up front that I am remunerated by commission and that I get paid via the insurance company from the premium. I have never had anyone indicate a problem with how I am remunerated. People expect you to get paid. One client recently asked how much she owed me for arranging an urgent medical operation claim pre-approval for her, something we do for clients on a regular basis. I explained that ongoing policy and claims servicing is free to her and that I do not charge for helping with clients claims. Yes, there was a lot of time and work involved on my part, but that’s what insurance advisers do for their clients, without expectation of payment. I have third generation clients in this lady’s family, and like many clients have become extremely good friends with them over the years.

In the life insurance industry, we must consult at length over several meetings with a prospective client, help arrange completion of an application, arrange medical examination/reports etc. and finally if a policy is accepted and issued we get paid. This process usually takes between one and three months. HOWEVER there is typically a two year claw back of 100% of commission paid in the first 12 months and a pro rata claw back of commission received in the second 12 months. So if a client cancels a policy or stops paying for any reason, then we must pay all or part of that income received back. Can you imagine being on a salary or wage and out of the blue your employer can ask for all or some of your wages back? How secure would this make you feel? We have an implied and a real pressure to do the utmost best and continue to do the utmost best for our clients, put their interests first, or we risk losing them and either not earning an income or having to pay back income earned. This clawback process is a huge barrier to new advisers entering the insurance adviser field and is always in the back of your mind when you write new business.

My business expenses for two fulltime employees plus office and associated business running costs is $144,000 plus or minus a year. That is before I make any disposable income for myself. Income received has to pay for all our office running/business costs and cover servicing our clients’ policy-associated needs (including claims) for many years after a policy is initially completed. There is some renewal commission paid which varies from minimal to reasonable depending on the options available and selected when a policy was first completed and issued. We certainly do not charge any client a fee every time they contact us to ask a question, change a bank account, do a review or help with a claim.

New advisers should ideally be mentored by an experienced adviser. This where some dealer groups and insurance companies come into play helping provide training days/courses and ongoing backup. I am currently training and mentoring a new adviser. These days it is extremely hard to get in front of new people as competition is everywhere, from banks, online robo quotes, other advisers etc. Yet there is a big need for personal advice. The new adviser I am mentoring is 24 years of age - generation Y. One of the points she has made to me is that as generation Y's become older they are missing out on personal face to face relationships/advice. Most communication is via social media, texting, emails. So there is a need for the industry to attract new younger advisers without any more barriers to what is already there. Again as a lot of information is readily available consumers can easily suffer from information overload and this puts people off becoming adequately insured. Consumers need an adviser to help guide them get to the right decision and coverage for their situation.

As far as competency skills for insurance agents/RFAs is concerned, we get a lot of product training from insurance companies. If you don't upskill yourself you won't be very successful obtaining new clients and you will be less effective compared to your competitors. Eventually you will be out of business. <u>For advisers like myself who have sat and passed tertiary exams and become qualified, these existing industry standard qualifications should be recognised and accepted as a competent level such as CLU, ANZIIF, CPA, CFP etc.</u>

I am all for extra education for insurance advisers as long as it is relevant to **<u>the insurance industry</u>**. Many papers out there relate to Investment advice, are irrelevant to the insurance industry, and place unnecessary time and financial costs on insurance advisers - further barriers to staying in business or getting into the industry.

<u>Section 4</u>
In the brief on page 22 it is stated that "We have also heard concerns about the current distinction between category 1 and 2 products. For example concerns were raised about imposing lower requirements for advice on insurance products which can be very complex and can cause significant harm to consumers."

I find that comment extraordinary. After 37 years in the insurance industry I have never heard of an insurance policy that has caused significant harm to a consumer! I suggest the people who have made this accusation likely have an ego driven/hidden agenda. Some facts and data to back this statement up would have been helpful.

The robo advice question seems to be based on investment advice only as it states "the lower cost of robo advice could appeal to a large spectrum of investors that are not presently catered for; including those who would otherwise be shut out of the market due to insufficient funds." Page 24. <u>Or are you asking about insurance advice as well?</u>

The same ethical and entry requirements should apply to both robo advice and traditional face to face advice, otherwise there could be dangerous loop holes and avoidance and breaches of standards. I do not believe robo advice will provide the detail and requirements of traditional insurance based advice. That having been said simple house and contents and life insurance quotations can be done online now. The problem with robo pricing is that consumers often go for the cheapest price and do not understand their options and the consequences of their decision fully, until possibly a claim is made. No one reads the fine print in their policies when taking a policy out, so I doubt disclaimers in robo advice platforms will be read and understood properly even though a box may be ticked to say they have read and understood any disclaimer and hold harmless. It's a bit like loading new software into a computer, unless you agree to the terms which no one reads, you cannot proceed to installing the software. I doubt many of my clients actually read their policies as they continually ask me if they are covered at claim time or in a particular situation. My clients are safer, because they have relied on my advice and if they suffer financially because of it, then I have a potential professional liability claim pending. How would consumers be similarly protected using a robo advice platforms?

Question 12
I find it personally unthinkable not to put a client's best interest first. It should be part of any financial advice process and disclosure statement.

That having been said you cannot legislate integrity. Either a person has integrity or they do not.

I am not sure how it can be enforced, but universal laws - some call it karma - will operate at all times and if you don't put your clients best interest first you won't last in business.

Question 13.
I don't think you can distinguish between sales and advice. The advice will hopefully end up in a sale/gaining a client as far as insurance is concerned. Salesmanship is a skill and a profession in its own right - no one should ever apologise for being a salesperson. We all have had many things sold to us. Without someone making a sale we would likely still be wearing animal skins and living in caves.

Question 14.
Further to my previous comments on this subject, there should be no ban on commissions. Commission allows access for all people to quality insurance advice. If there is a ban, New Zealand as a whole will suffer. There will be much greater underinsurance and incorrect insurance, which will leave more people exposed to risk and lead to more demand on social service providers and public funded services. There will be huge job losses in the insurance industry (underwriters, claims people operations and support staff management etc.) Investors in the industry will suffer and this will give a poor impression overseas.

Question 15 and 16:
Set minimum competency exams relevant to specific advice models - i.e. insurance based exams for insurance advisers and not investment based exams for insurance advisers. Consideration must be taken into account if the adviser has already attained an industry recognised exam-based qualification that entitles letters after one's name. Remove the AFA and RFA terms, they are not needed. Advisers should be better labelled such as Investment adviser/ Insurance adviser etc. which will be less confusing for the public. Perhaps implement colleges or fraternities that one can belong to and be mentored/monitored by Government and/or Industry associations such as the PAA, ANZIIF, and IFA.

Couple this with a basic continuing education points system that can be attained by attending industry meetings, product upgrade launches and other accreditation meetings, seminars/conferences, industry reading etc. There should be a minimum points value to be obtained in any two year running period.

There are some education providers in the industry that will jump on any band wagon to promote their expensive courses and push up the compliance costs. One such organisation is promoting courses now before their fees go up and you have to sit and pass more papers to get the same qualification, opportunist scare mongering comes to mind here. There needs to be clear recognition for existing qualifications achieved in the industry as well as for seeking any new qualification for advisers. But it must be ensured that unnecessary or artificially high costs and time to qualify do not become a barrier to achieve or remain in the industry.

Question 17 and 18

Do not load up any more or greater compliance costs onto small adviser businesses which make up the majority of the freelance adviser network. Regulation and compliance costs play into the hands of the banks and direct seller companies who would like to see the demise on the individual and small adviser agencies to remove the competition. This would not be in the public's best interests.

One problem I have with industry bodies such as IFA, PAA etc. is that often these are run by and have committees of advisers which have varying degrees of experience. Sometimes individuals exert big egos and do very little effectively for member's businesses. Also I don't think you can legislate to join an organisation, it needs to be voluntary. Over the years I have seen good associations hijacked by egotists who think they know what's best for everyone in these organisations, and they often do not.

I think it best to separate and administer Investment Advisers from insurance advisers and mortgage advisers for example. They need to have colleges that understand the roles of each discipline - one set of rules does not work for all disciplines. The ANZIIF has different colleges of disciplines for various parts of the insurance industry that you can join and gain access to relevant information for the area you work in. These colleges also assist with continuing education requirements.

Questions 19, 20 and 21

I think the current written disclosure document is fine. Again because of the different disciplines I do not think a common disclosure would work.

As mentioned before, consumers/clients expect you to be paid for your service. You can't work for free and make a living/survive. With insurance the premium is the identified cost and the NZ public understand what a premium is, so it's quite simple. I do believe disclosure should state whether you are tied to a particular company and can only recommend that company's products, or whether an adviser is not tied to any particular company. You could also mention the agencies you have in a disclosure document - I already do this in a supplementary disclosure document. Banks only recommend their company's products and there are some tied agents with limited options that I believe are not in the public's best interests. In my experience no one company can always have the best product options/solutions. Consumers should be encouraged to seek advice from a non tied adviser if they have received advice from a tied adviser for comparison.

You could just say that the adviser is commission based remuneration and the premium will have a direct bearing on the amount of remuneration received by the adviser.

Questions 22, 23 and 24.
I have no experience to make comment on questions 22 and 23. I am not aware of any problems.

With regard to needing to have professional indemnity insurance, you cannot get a general or life insurance agency without proving you have required minimum limits of professional indemnity insurance. Most agencies require you to produce evidence of this each year to maintain your agency. So yes professional indemnity should apply for all financial advisers and should be disclosed in a disclosure document as long as it doesn't void your cover. Advisers would need to take advice from their PI insurers first if they are allowed to disclose PI cover as it may breach policy conditions, but in principle it would be a good thing to disclose and have PI cover as part of being a financial adviser.

Questions 25 and 26
There is already enough information on the internet to find advisers or associations. The PAA for example has a list of advisers you can contact. Most advisers will have a website and or Facebook or LinkedIn page.

The problem with making yet another industry website is who is going to promote it? There is no guarantee consumers will land on this website. I really don't think finding an adviser is the problem that it is made out to be in this paper.

Terminology wise: as suggested before, get rid of not only RFA but get also AFA designations and bring in insurance adviser, investment adviser, mortgage adviser budgeting adviser etc. These are much simpler and more meaningful.

It used to be investment advisers who wanted a formal qualification studied for CFP Certified Financial Planner and insurance advisers studied for Chartered Life Underwriter and/or ANZIIIF.

If you are a tied bank adviser then yes as an example ANZ investment adviser or ANZ insurance adviser for example would be a better description for the public together with a disclosure that they can only recommend ANZ products.

A combination of Government and Industry bodies (like it is presently) is good for getting information to consumers as they both have different resources, areas of expertise and experience at different levels

Questions 32, 33 34 and 35
I prefer option 1 and the first point of package 2

Introducing expert financial adviser and financial adviser is no real world change to the existing regime of two types of financial adviser types (AFA and RFA), which as has been suggested, has led to some discord. You still have two different names that mean nothing on face value in describing what the financial adviser does. Seems like déjà vu!

Sales people/advisers who are tied to one company's products should have to disclose this, so that aspect of option 3 is good.

Try and keep any changes simple yet effective. I don't agree advisers need to be licenced, this sounds like Government revenue collecting and placing yet another onerous cost on the small adviser business. I cannot see that licencing will protect the consumer any more.

Professional indemnity insurance is a must for all advisers. This will give much more protection to consumers over and above Dispute resolution scheme and the courts.

Thank you for the opportunity to submit these comments and feedback for consideration about an industry that I am passionate about: providing valued service to fellow New Zealanders when needed the most via tailor made insurance policies.

Sincerely

Redacted

Jeff Tobin CLU, ANZIIF (Snr Assoc).
Ph:09 4125997 Mob: 0274963144

TOBIN INSURANCE SERVICES (Since 1987)
Life, Medical, Fire & General Insurance