Your Name
Carissa Perano
Your organisation
AMP Wealth Management, New Zealand
Which overarching duties should and should not be included in the regime? Are there other duties that should be considered?
Option 1: AMP supports the Financial Services Council (FSC) submission. "Prioritise the customer's interest" is not suitable (for the reasons noted in the Options Paper's cons for this option). Option 2: The duty to "act with due care, skill and diligence" is preferable as it is a well-understood and long-running duty. However, the reality is that it does not get enforced. For example, the FMA indicated in its replacement business investigations of RFAs* that, "Half of the advisers we reviewed were either not aware of the obligation, under the Financial Advisers Act 2008, to exercise care, diligence and skill, or they were in breach of that obligation." It appears no substantive action was taken against those advisers. * http://www.fma.govt.nz/assets/Reports/180322-FMA-update-on-inquiries-into-insurance-replacement-business.pdf
Do you think the overarching duty for managing conflicts of interest should be general (as it is currently worded) or focus on conflicts of interest that arise through remuneration?
Further to the FSC submission, AMP suggests that there should be baseline conflicts of interest requirements for all financial institutions, principally for financial institutions not otherwise subject to conflicts of interest duties under FMA issued licenses. In addition to the examples and policy detailed in para 142 of the Options Paper, this should include further minimums requirements such as: a conflicts register, documented procedures and training to staff. With any conflicts of interest proposal, care should be taken to ensure that this duty complements rather than confuses. The FSLAA, for example, introduces prioritising customer interests in relation to the provision of financial advice and other conflicts of interest requirements. There is a danger that further overarching duties do little other than confuse the market, for example, we still hear "best interests" used which has no place in the New Zealand regime.
Is a code of practice required to provide greater certainty about what each overarching duty means in practice?
Unless it is legislated, there is uncertain value in the creation of another code to add to the abundance of codes in existence in the industry. Examples include the association codes of the FSC and NZBA and the Code of Professional Conduct for Financial Advice Services. There is also the question of whether these codes have consistency, especially when an institution may be a member of more than one association.
Which options for improving product design do you prefer and why?
In general, AMP agrees with the FSC analysis on the three options. In addition, AMP notes that some "poor value" products may be valued by certain people despite being inappropriate for consumers in general. Similarly, some products may be "poor" if not well explained to consumers. An example is reverse mortgages. One option, which is not considered, would be to place additional requirements in relation to specific products (rather than banning them). This could be in the form of explicit information requirements, limiting such products' sale to financial advisers with specific qualifications or other requirements.
If a design and distribution requirement like option 3 were chosen, are there particular products for which this is more necessary than others? If so, please explain what and why
The key to this question is "if". If option 3 is selected, clearly it would be more relevant to some products/consumer combinations than others. To illustrate: • A residential mortgage is designed to enable a consumer to buy a house and live in it. The Responsible Lending Code aims to ensure that such loans are provided appropriately. There is little need for the manufacturer to have additional controls stemming from option 3 in that case. • Opaque high-risk financial instruments often have no readily identifiable target audience, so those could be appropriately addressed by requirements such as those proposed in option 3.

Which options to improve product distribution do you prefer and why?
Option 1: AMP agrees that remuneration and incentive structures should be balanced and reward sales that deliver good customer outcomes rather than a one-size-fits-all banning approach. Option 2: Targets per-se are not bad, provided the benefits for meeting the target are withheld where bad customer outcomes are identified or suspected. Accordingly, AMP does not support this option. Option 3: This is not a balanced approach. It infers that in-house sales measures are bad. They are not. In-house sales that deliver poor customer outcomes are bad. In-house sales that deliver good customer outcomes are good. Financial institutions should not be restricted from rewarding in-house sales that are good. Option 4: If the intention of this option is to specifically address perceived life insurance market failure in addressing high upfront commission rates, as the commentary implies, that should be made clear. As with all interventions, any proposal needs to weigh up any unforeseen consequences. AMP is against a wide ranging imposition of parameters on all forms of commissions to intermediaries: if adopted, this Option should be highly restricted to those areas where market failure is proven. Option 5: It is laudable that MBIE do not consider that product manufacturers should be directly responsible for all the actions of their intermediaries (para 174). Suggestions that there is "ultimate" responsibility is inconsistent with the regulated responsibilities of the myriad of institutions, licensees and human beings involved in delivering good outcomes for consumers. Provided Option 5 is limited to being reasonable, requiring the manufacturer to deliver good outcomes along with all those involved in the sales process, that could be acceptable. The specifics of the requirement need to be clear before AMP expresses an unequivocal view on this option.
To assist us in comparing the pros and cons of various options, please provide information about remuneration and commission structures currently in use
Preparation of this analysis was not feasible in the submission timeframe.
What is your feedback on imposing a duty to ensure claims handling is fair, timely and transparent?
AMP Life may answer this question together with its potential submission on MBIE's Insurance Contract Law review.
If a duty to ensure claims handling is fair, timely and transparent were to be adopted, should an attempt be made to clarify what fair, timely and transparent mean?
AMP Life may answer this question together with its potential submission on MBIE's Insurance Contract Law review.
What is your feedback on requiring the settlement of claims within a set time?
AMP Life may answer this question together with its potential submission on MBIE's Insurance Contract Law review.
Do you agree with the option to empower and resource the FMA to monitor and enforce compliance?
Empowering and resourcing the FMA, and strong penalties for non-compliance, is supported in principle. However, more detail is required regarding how [the implied] additional resourcing would be funded. Further increasing fees/levies on financial institutions is not supported. Additional funding (noting that industry 100% funded the last increase that was supposed to go toward increased monitoring, etc.) should be derived from the government if it is deemed necessary. Regarding monitoring and enforcement generally, there should be improved qualitative and quantitative Key Performance Indicators that enable meaningful assessment of the FMA's performance. Otherwise whether additional, or indeed, even the current, resourcing improves customer outcomes is uncertain. For example, in Australia ASIC regularly bans financial advisers for poor conduct, whereas the FMA rarely penalises advisers, except in relation to the most egregious conduct.
What is your feedback on the option to require banks and insurers to obtain a conduct licence?
As articulated continually by the FMA and RBNZ, organisations should be responsible for their own culture and conduct and not all financial institutions have the same profile or measures for assessing their conduct. Consequently, creating a generic and meaningful "conduct licence" is probably unviable.

Additional conduct licencing runs the risk of duplicating or creating inconsistencies with existing licence requirements (like those applying to MIS, DIMS, DI, and FAP licensees) and this would result in unnecessary associated costs. The focus of additional licencing should be on those financial institutions that fall outside of any FMA regulated licensing. Such financial institutions could be required to have a 'default' conduct licence that prescribes baseline conduct requirements.
AMP supports the submission made by the FSC that a review is required of existing regimes and the regulators involved. However, this could go further and address inconsistencies in existing licencing, for example; MIS and DIMs versus derivatives licencing, products that fall completely outside licencing regimes altogether (such as lenders that are not deposit takers) and providers that exploit loopholes such as managed funds that are structured as equity funds.

What is your feedback on the option which discusses a broad range of regulatory tools?

Please refer our answer to question 11.

Do you think that the maximum pecuniary penalties available for breaches of any conduct duties should be the same as the existing FMC Act penalties?

The recommended alignment to the FMCA regime in Option 3 would deliver consistent approaches.

What is your feedback on the option of executive accountability?

AMP supports the FSC submission's starting point; that is, this Option should be deferred and re-visited as a future 'phase 2' consideration. The extent of personal liability in particular needs to be considered after sufficient time to reflect on, and debate, the consequences, appropriateness of, and potential unintended consequences. AMP's current position is that expansion of personal liability at this point in time seems inappropriate and is actually counter to the trend in recent times in New Zealand legislation (i.e. reduction in personal liability that was brought in with the FMCA regime).
For many FSC members, the current FMCA liability regime addresses serious breaches of specific obligations.

What is your feedback on the whistleblowing option?

Whistleblowing procedures are better addressed separately as they do not meet the test of being principles based.

What is your feedback on the option of regular reporting on the industry?

Further to the FSC's submission, AMP questions the value consumers would get from such reporting. This consideration should be the key driver. Does the FMA have usage statistics on its other reports? It may be that there is little consumer usage of such reports, so energy spent on them (i.e. the industry gathering data; regulators compiling, analysing and writing; etc.) would be better spent on enforcement and monitoring. This may also help fund such activity without the need for additional funding as suggested in Question 11. Care needs to be taken to consider the size and scale of various financial institutions and their capabilities too.
Where there is a shortage of reporting in New Zealand at present is detailed examples from the regulators of poor conduct that they have observed. What is available is either examples from the Royal Commission or generic statements such as, "absence of lead indicators" or "what we have generally seen". Learning from specific past examples should be provided, with names removed, if necessary.

What is your feedback on the role of industry bodies?

Many enforceable codes and regulations already exist. Industry bodies' Codes should not be enforceable at law because that would just add to what is already a very complex web of requirements. Giving regulators more power within industry bodies, in a supervisory role, would undermine their independence and the value that these voluntary membership groups deliver.
Targeted consultation with industry bodies (rather than to the market generally), as occurs today, does have value for those industry bodies and regulators in considering responses and position on specific issues, however.

What is your feedback on the options regarding who the conduct regime should apply to?
In principle, baseline conduct requirements could extend to all financial institutions because carve outs provide unnecessary complication. However, extensions to the baseline are appropriate at a licensee or product level, for example, conduct expectations within Standard Conditions for licensees. Certain products have special requirements (for example mortgage lending and the Responsible Lending Code). The regime should avoid unnecessary complications: our answer to Question 12 notes means of avoiding such complexity or duplication.
Your email address
Privacy of natural persons
In what capacity are you making this submission?
business
Can we include your name or other personal information in any information about submissions that we may publish?
yes
We intend to upload submissions to our website Can we include your submission on the website?
yes
You may ask us to keep your submission, or parts of your submission, confidential If so, you'll need to attach reasons and grounds under the Official Information Act 1982 for consideration
no