



## **Submission on Options Paper: Conduct of Financial Institutions**

To the Ministry of Business, Innovation and Employment

June 2019

### **About Health Funds Association of New Zealand**

Health Funds Association of New Zealand Inc (HFANZ) is the industry body representing New Zealand's health insurance sector. The association has six members, who collectively account for over 80% of the 1.4 million New Zealanders with health insurance. The majority of HFANZ members are not-for-profit organisations, dedicated to the funding of healthcare services for their members and policyholders. A list of HFANZ members is attached to this submission.

Health insurers are collectively the largest funder of healthcare services in New Zealand outside of Government. With 28.5% of New Zealanders covered, health insurers fund around \$1.3 billion annually in healthcare – mainly for elective surgery.

HFANZ members return on average 88 cents in every dollar of premium to members and policyholders in the form of funded healthcare services – by far the highest percentage of claims/premium of any form of insurance in New Zealand.

HFANZ members abide by an industry code with a strong emphasis on fair treatment of consumers. As a sector, health insurance enjoys very high levels of customer satisfaction and a track record of low volumes requiring formal dispute resolution services.

### **Summary & Key Points**

HFANZ supports the intent of the options paper to improve conduct of financial institutions, particularly in relation to ensuring good customer outcomes, and would like to stress several key points in this submission:

1. **Simplicity:** With customer outcomes being the focus of a number of separate initiatives, there is a high risk of overlap from a fragmented approach. As far as possible, any initiatives should seek to make use of current structures – ie: existing entities, legislation and regulation. Options involving additional entities, creation of dual licensing regimes, or significant additional bureaucracy are not supported.
2. **Compliance costs:** Some of the proposed options carry the potential of significant compliance costs which are ultimately borne by customers through higher premiums. Care needs to be taken to keep compliance costs to a minimum in order to prevent poor customer outcomes from unnecessary premium impact.

3. Specification & safe-harbour: Several of the options, particularly those duties which are principles-based or relying on terms such as 'reasonable', could benefit from greater clarity and specification of what is expected. Examples would provide a good steer in terms of what is expected, and some might be framed to provide a safe-harbour.
4. Member-based entities: A number of insurers are member-based societies, with customers also being members. They exist fundamentally for the benefit of their members, with this enshrined in their rules or constitutions as well as in governing statute. In effect, members are collectively providing themselves a financial product or service. Some differential treatment may be warranted to avoid unnecessary compliance costs where a duty to members already exists.

Thank you for the opportunity to make a submission. I am happy to provide such further comment or clarification as may be required.



Roger Styles  
Chief Executive

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**Appendix: HFANZ full members**

The following insurers are full members of HFANZ:

- Health Service Welfare Society Limited
- AIA International Limited
- Manchester Unity Friendly Society
- Police Health Plan Limited
- Southern Cross Medical Care Society
- Union Medical Benefits Society Limited

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## Responses to questions in options paper

### Options for overarching duties

#### Question 1

**Which overarching duties should and should not be included in the regime? Are there other duties that should be considered?**

HFANZ believes the overarching duties set out in the options paper are generally acceptable. Being principles-based, many of these are similar in nature to those contained in the HFANZ Industry Code.

It is noted that the options paper in some cases provides some illustrative examples of what meeting the particular duty might entail. This is supported, and HFANZ suggests that whichever duties are included that there be accompanying examples of what behaviours or actions can generally be taken as meeting that duty. This will provide a good steer and help avoid unnecessary compliance costs.

In terms of the duty to prioritise the customer's interest to the extent reasonably practicable, this could be expanded upon to provide clarity as well as considering the conflict which may arise between what might be in a particular customer's interest vs the interest of customers.

#### Question 2

**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?**

There is a case for limiting this duty to conflicts which arise through remuneration, as it is here that there is the most significant risk of conflicts detrimental to customers. Application more generally could involve a lot of unnecessary resource for marginal benefit. If the conflict of interest duty is to be limited to remuneration only then it should be enshrined in a duty to (say) design remuneration structures to promote good customer outcomes supported by guidance. This duty is then supported by the broader duty to prioritise customers' interests.

#### Question 3

**Is a code of practice required to provide greater certainty about what each overarching duty means in practice?**

If specific duties are to be written into law as the options paper appears to propose, then it is not clear that any additional code of practice is required. Any duties which are formally written into law will have effect by virtue of statute or regulation. They will likely also likely be reflected in the Financial Advice Code as well as industry codes generally, including the HFANZ Industry Code.

Alternatively, adoption of a Code may be an effective alternative to over-specifying too much detail in legislation. Some of the aspects raised by MBIE could be considered within the code, including duties to communicate with customers clearly and effectively, design and distribute products responsibly, treat customers fairly, consider/settle claims in a timely manner. If this approach were taken, then codes could be more readily amended to include detail and examples around best practice.

### Options to improve product design

#### Question 4

**Which options for improving product design do you prefer and why?**

Of the three options, option 1 appears to have the best balance between influencing product design while minimising compliance costs. Option 3 could involve considerable costs at the same time as limiting product developments or improvements.

If option 1 is chosen, it is recommended that the regulator be the FMA, and that the legislation specify parameters and processes around the exercising of that power, including requirements for consultation. Further emphasis should be placed on allowing for due process, giving insurers an opportunity to consider / investigate regulatory concerns and respond within a set timeframe. Regulators should consider those responses before deciding to proceed with any stop orders or bans.

It should be noted that there are likely to be a host of practical challenges in defining the criteria to ban products and the approach to managing existing customers holding these products (especially when some of these products may not be cancellable).

#### **Question 5**

**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.**

While option 3 is not favoured, if it were to be considered further, then its application could be limited to niche products where potential for being mis-sold is higher. Products with a general audience could be exempted, as could products provided by member-based organisations, thereby limiting the potential for unnecessary compliance costs.

A variation on Option 3 might give the regulator (FMA) the power to require manufacturers and distributors to identify and have regard to the audience for specific products or product classes.

#### **Options to improve product distribution**

#### **Question 6**

**Which options to improve product distribution do you prefer and why?**

HFANZ maintains that incentives and commissions can play an important positive role in the sales process, as long as these are not at the expense of good customer outcomes. Indeed, they should promote good customer outcomes as they help connect customers with appropriate and beneficial products.

As such, options 2 and 3, which involve banning outright target based remuneration as well as in-house incentives, are not favoured.

HFANZ believes option 1 is an appropriate option which could readily be added to the other duties discussed.

If option 5 is to be considered further, it would benefit from further clarification around what constitutes 'reasonable steps' in terms of a manufacturer's oversight of intermediaries. It is not feasible to expect insurers to have to adopt a supervisory role over intermediaries. It is noted that the three examples given are useful but not exhaustive, and could be fleshed out somewhat to provide more comprehensive guidance.

Finally, HFANZ notes that one of the most administratively simple options appears to be option 4 – a lid on both upfront and trail commissions – and this probably also has the least compliance costs.

### **Question 7**

**To assist us in comparing the pros and cons of various options, please provide information about remuneration and commission structures currently in use.**

Health insurers use a range of remuneration and commission structures which vary between insurer and distribution channel. Individual insurers may provide more detail in their individual submissions.

### **Options relating specifically to insurance claims**

### **Question 8**

**What is your feedback on imposing a duty to ensure claims handling is fair, timely and transparent?**

HFANZ supports option 1 of including a duty to ensure claims handling is fair, timely and transparent, although as noted in the paper this would benefit from some guidance as to what constitutes fair, timely and transparent.

### **Question 9**

**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?**

As noted above, clarification of these and provision of context and/or examples would be beneficial.

### **Question 10**

**What is your feedback on requiring the settlement of claims within a set time?**

Health insurers generally settle claims relatively quickly once all relevant information has been obtained. Most insurers offer a pre-approval process so that the claim is effectively approved and then treatment proceeds, rather than the insured having to seek reimbursement after the cost of treatment has been incurred. In relation to health insurance, any delay would typically arise due to delays in getting all relevant information an insurer needs to consider a claim. If a time limit is considered further, then HFANZ believes it is important that it only takes effect once all relevant information has been obtained.

It is also worth noting that the timeliness of claims settlement is impacted by the type of claim submitted. Claims for day to day medical treatment are usually processed quickly as additional information is often not required by the insurer. For specialist treatment and surgery more information may be required from the policyholder and the medical provider before the claim can be processed.

### **Options for tools to ensure compliance**

### **Question 11**

**Do you agree with the option to empower and resource the FMA to monitor and enforce compliance?**

HFANZ supports the option of using existing regulatory structures and agencies as a means of limiting additional administrative and compliance costs. To the extent that the options envisaged in this paper are adopted, there will be additional compliance costs (on industry participants) as well as additional administrative costs (on the FMA).

HFANZ believes that the additional compliance costs borne by the industry – and ultimately paid for by customers – will significantly outweigh any additional administrative costs borne by the FMA. In this regard it would seem appropriate and fair that any additional resource required by the FMA would be met by taxation funding.

**Question 12**

**What is your feedback on the option to require banks and insurers to obtain a conduct licence?**

HFANZ strongly opposes the suggestion of a dual licensing regime with conduct licensing. The discussion of options in the paper correctly notes that such a dual regime would likely result in some duplication of effort for financial institutions and regulators.

As highlighted elsewhere in this submission, any additional compliance costs are ultimately borne by customers. It is difficult to see how the option of a dual licensing regime would pass a rudimentary regulatory impact assessment.

**Question 13**

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

The option of including a range of regulatory tools for the FMA is supported. These should be consistent with current FMC Act powers that the FMA already has for some participants. It is clear that this does not require a dual licensing regime.

If this option is favoured, then further consultation may be required around exactly what tools are included in the toolbox. It is noted that the items listed in the options paper were suggestions only and not an exhaustive list.

**Question 14**

**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?**

For consistency it is suggested that the present penalties provided for in the FMC Act are appropriate.

**Question 15**

**What is your feedback on the option of executive accountability?**

In principle the objectives are supported, although there is a danger of potential adverse impacts on recruitment and product design if any rules are too restrictive or onerous. Executive accountability, while well intentioned, may also lead to some stifling of innovation due to risk averse behaviour. New product design inherently carries some risk and insurers may respond with less innovative products leading to poorer outcomes for customers. One solution could be to allow greater flexibility for insurers in "proving the case" for new products considering that it may take some time until the benefits for customers (and the performance of the new product) are known or can be proven.

There may be some benefit from adopting a more facilitative than punitive approach. It is noted that the current prudential licensing regime already includes fit and proper tests for key personnel as well as relying on tools such as director attestations. There may be scope to develop tools which help enhance executive and director accountability without risk of adverse impacts on recruitment and product design.

### **Question 16**

#### **What is your feedback on the whistleblowing option?**

HFANZ supports the proposal to require whistleblowing procedures to be put in place.

### **Question 17**

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

HFANZ suggests there are opportunities for regulators to work collaboratively with industry associations and industry participants to help enhance the availability and quality of industry data available. Industry associations already collect and publish a range of information on a regular basis – in the case of HFANZ including data on premiums, claims, loss ratios, lives covered and more. HFANZ and health insurers can also assist the regulator in understanding the unique features of the health insurance industry so that this data can be appropriately interpreted. e.g. product mix, scale of participants, business models etc.

The collection and dissemination of industry data is an important function for industry associations, and care needs to be taken that any proposed initiative recognises this and doesn't seek to duplicate or supplant this role.

It is suggested that if any further exploration of options is carried out that it involve engagement with the relevant industry associations, with a view to building on what's already available and minimising compliance costs.

### **Question 18**

#### **What is your feedback on the role of industry bodies?**

Industry bodies have a range of functions including aggregation of industry perspectives and views, maintenance of industry codes, collection and dissemination of industry data and provision of broader resources including consumer information and guidance. Industry bodies also assist in providing convenient reference points for engagement with Government agencies on a range of issues, beyond simply providing input into the legislative process.

While the options paper does not envisage formalising the role of industry bodies, there should properly be consideration of the important role industry bodies already play, along with how they might better be used in helping achieve the overarching objectives in the paper relating to good customer outcomes.

#### **Who should the conduct regulation apply to?**

### **Question 19**

#### **What is your feedback on the options regarding who the conduct regime should apply to?**

HFANZ supports the application in relation to the retail rather than wholesale customers of banks and insurers. In terms of health insurance, this would see a distinction made between individual insurance policies and those covered by virtue of a corporate or group scheme.

In the interests of fairness and consistency, HFANZ supports the option of applying to the wider group of financial services providers offering similar services to banks and insurers (option 2).

HFANZ also is concerned about the level of overlap with existing legislation and regulation which will likely arise, and supports options to address overlaps involving carve-outs where appropriate.



Further carve-outs for some aspects of the proposed regime might be considered for those member-based organisations offering financial products or services to members where a formal duty in relation to members' interests already exists.

The options paper appears to envisage a new conduct regime being a stand-alone piece of legislation, when it is not clear that any case has been made that this is the best or only option. HFANZ considers there are other options, such as amending existing legislation, to minimise overlap and additional legislation. The most obvious candidate for this is the Financial Markets Conduct Act 2013, which already contains a number of similar provisions as envisaged in the options paper. An amendment to this Act could be the logical vehicle to include any package of options from the paper.

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## Your details

Your name Roger Styles

Your organisation Health Funds Association of New Zealand Inc

Your email address Privacy of natural persons

In what capacity are you making this submission?

- Individual
- Consumer group/advocate
- Business
- Industry group
- Researcher/academic
- Other

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