

<b>Your Name</b>
Gary Young
<b>Your organisation</b>
Insurance Brokers Association of New Zealand Inc.
<b>Which overarching duties should and should not be included in the regime? Are there other duties that should be considered?</b>
<p>The overarching Issue is providing the same level of retail client conduct regulation provided by the reform of the financial advisers' regime, to those in the Financial Services sector outside its scope, namely providers of financial products and other non-advice sellers of financial products i.e. Banks, Insurers, Credit Providers, etc.</p> <p>The principle-based set of duties in the revised FMC Act (post FSLAA 2019) &amp; those in the 'Code of Professional Conduct for Financial Advice Services' have been through rigorous public and financial service provider consultation and already provide the framework the advice part of Financial Institutions are required to satisfy.</p> <p>We strongly recommend that wherever possible the same duties and wording apply throughout Financial Services. This benefits the retail client, avoids uncertainty, unnecessary duplication and potential arbitrage that work against the intent of regulation.</p> <p>Options 1, 2, 3, 5, 6 these issues have been addressed in the Code of Professional Conduct for Financial Advice Services which was developed after significant consultation. We submit the standards are relevant to this review.</p> <p>We believe that these duties overlap with those under FSLAA and as previously stated Financial Advisers should be caught under these overarching duties.</p> <p>Option 1: While we agree the customers interests should be a priority some duties would be impracticable. E.g. 129 evaluating customer outcomes after a period of time – in many cases this may not be easy to achieve in an effective way. The dispute resolution schemes now in place for financial services provide a useful way for issues to be identified and communicated back to the financial institutions.</p> <p>Option 6: Existing legislation already requires this; there is no need for this option.</p>
<b>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?</b>
This issue is effectively dealt with in the Code of Professional Conduct for Financial Advice Services - Standard Two "Act with Integrity". This high level standard is more effective than a attempting a prescriptive approach.
<b>Is a code of practice required to provide greater certainty about what each overarching duty means in practice?</b>
A principles-based code following the one developed for financial advice services would be essential to establish as far as possible, common standards across financial institutions.
<b>Which options for improving product design do you prefer and why?</b>
<p>It would prove very difficult to define products sufficiently to ensure the ban remained effective. Option 3 should ensure there is no necessity to ban products.</p> <p>Financial advice services are already under an obligation to ensure products meet the needs of a client through FSLAA and the Code of Conduct and further legislation is not required for this part of the market.</p>
<b>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</b>
The issue will be to separate sales and advice. Where distribution is achieved through an adviser then the FSLAA legislation and Code apply to ensure suitability. The focus of Option 3 therefore would

<p>need to be on sales and how suitability is determined where no advice is given.</p>
<p><b>Which options to improve product distribution do you prefer and why?</b></p>
<p>It is important to note there are two distinct groups of intermediaries, those that provide “regulated financial advice” as defined in the Financial Services Legislation Amendment Act (FSLAA) and those who do not.</p> <p>Those who provide regulated financial advice come under the Code of Professional Conduct for Financial Advice Services. The Code addresses issues of conduct and suitability of recommended products and covers the issues under Options 1 to 4.</p> <p>We agree with the comment (177) on Option 5 that this duty is only relevant to sales through those intermediaries not regulated under FSLAA.</p>
<p><b>To assist us in comparing the pros and cons of various options, please provide information about remuneration and commission structures currently in use</b></p>
<p>The FSLAA and Code together with developments from the Hayne Royal Commission in Australia have already resulted in the removal of soft commissions in the market.</p> <p>In our sector of general insurance there are suitable targets to be set around clients renewing their business, low loss ratios, achieving new business.</p> <p>The term “good customer outcomes” is a challenge where a client has unrealistic expectations of how a product will perform in certain circumstances. In consultation with the Code Working Group there was considerable feedback on the use of the term “outcomes”. They agreed that there will be confusion as to what is meant by a good outcome for a client.</p> <p>For example what is a perfectly normal and appropriate response under an insurance policy may not be what a client desires. It is about realistic expectations.</p> <p>The term was removed from the Adviser Code to prevent such confusion; we submit any legislation/regulation resulting from this conduct review should do the same.</p> <p>It would be impossible under Option 4 to set the right parameters to strike the right balance for all circumstances.</p> <p>Option 5 provides the best basis for creating client focused distribution. In general insurance the manufacturers (insurers) determine which intermediaries they will work with based on the quality of the adviser. Claims provide a good indication whether the client has been given the appropriate cover and renewal of policies shows the client is satisfied with the level of advice/support received through the intermediary. Bad advisers will be identified and removed as a distribution channel.</p>
<p><b>What is your feedback on imposing a duty to ensure claims handling is fair, timely and transparent?</b></p>
<p>The overarching duties should already cover this duty. A principle based approach is necessary given the wide range of insurance covers and the variety of circumstances for individual claims.</p>
<p><b>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?</b></p>
<p>The Code for Financial Advice Services under Standards 1 and 4 provides an appropriate approach to this duty.</p>
<p><b>What is your feedback on requiring the settlement of claims within a set time?</b></p>
<p>To achieve clarity on the meaning of the terms in Option 1 we suggest reference to the Financial Advice Services Code.</p> <p>In regard to setting time-frames for claim settlement, this would be very difficult in the general insurance sector. There is a large range of policy types and significant differences in scenarios under which claims occur. It would simply not be possible to set specific limits to satisfy all circumstances.</p> <p>This can only work by having duties based on principles of integrity, fairness, and transparency.</p>
<p><b>Do you agree with the option to empower and resource the FMA to monitor and enforce compliance?</b></p>
<p>Yes, we agree with the current “twin peaks” model of financial regulation with a divide between conduct and prudential regulation. We see the FMA as regulator for conduct of financial advice services as the most appropriate regulator to enforce a conduct regime.</p>
<p><b>What is your feedback on the option to require banks and insurers to obtain a conduct licence?</b></p>

It would seem appropriate that financial institutions not already under the FSLAA licensing regime should be required to be licensed and comply with a Code of Conduct such as the Code for Financial Advice Services.
<b>What is your feedback on the option which discusses a broad range of regulatory tools?</b>
Regulatory tools such as those identified in Option 3 are all necessary to ensure compliance for a range of circumstances. Having a licencing regime provides a consistent basis on which to apply these tools.
<b>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?</b>
The existing FMC Act penalties already address compliance issues, any amendments should be reviewed once there has been an opportunity to review effectiveness of a new conduct regime.
<b>What is your feedback on the option of executive accountability?</b>
Executive liability should be consistent across all aspects of the FMC Act regime.
<b>What is your feedback on the whistleblowing option?</b>
The current low use of whistle-blowing procedures indicates this may not be a particularly effective method of ensuring compliance with conduct duties.
<b>What is your feedback on the option of regular reporting on the industry?</b>
Regular reporting would appear to be an additional cost for little benefit to consumers.
<b>What is your feedback on the role of industry bodies?</b>
Rather than a formal role we suggest industry bodies are better positioned to have an informal role in raising standards of members above the minimum legal requirements.
<b>What is your feedback on the options regarding who the conduct regime should apply to?</b>
We agree the initial focus should be on conduct obligations where there is the greatest risk of harm and need to protect consumers. Many of the suggestions within this review create an overlap with the existing FSLAA and its associated Code. It is essential financial advice services are exempt from any duplication of duties. We suggest the Code under FSLAA is an appropriate template for a Code covering financial institutions currently outside that regime.
<b>Your email address</b>
Privacy of natural persons
<b>In what capacity are you making this submission?</b>
industry group
<b>Can we include your name or other personal information in any information about submissions that we may publish?</b>
yes
<b>We intend to upload submissions to our website Can we include your submission on the website?</b>
yes
<b>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</b>
no