

**Partners Life Submissions on the Conduct of Financial Institutions Option
Paper: April 2019 (“Options Paper”)**

Confidential

Parts of this submission are identified as confidential. This means that information is being disclosed on a confidential basis to the Ministry of Business, Innovation and Employment (MBIE), the Financial Markets Authority (FMA) and the Reserve Bank of New Zealand (RBNZ) (together, the Recipients) for the purpose of informing the Recipients of information gathered by Partners Life Limited (Partners Life) in respect of the insurance industry in New Zealand and overseas, solely for the purpose of assisting the Recipients to evaluate responses to, and advise on matters arising from, the Options Paper.

Official Information Act

Pursuant to section 9(2)(b)(ii) and (ba) of the Official Information Act 1982, Partners Life requests that all information in this submission identified as confidential be kept confidential. The release of any of that information (in whole or part only) is likely to unreasonably prejudice the commercial position of Partners Life. Disclosure would also be likely to prejudice the supply of similar information by others, or other information from Partners Life.

If any of the Recipients receives a request under the Official Information Act 1982 or otherwise for the disclosure of any information in this document, Partners Life requests it be notified of that request and given an opportunity to be heard before any decision is made by the Recipients regarding the release of such information.

Objectives of the Review and Preferred Package

Partners Life welcomes the opportunity to make submissions on the Options Paper. Partners Life supports the outcome sought by this review: to ensure that conduct and culture in the financial sector is delivering good outcomes for all customers.

Partners Life is an active member of the Financial Services Council of New Zealand (FSC) and a vocal advocate for the FSC Code. Our staff are actively involved in developing the best practice guidance that underpins the FSC Code and we are committed to ensuring that customers receive good outcomes from all financial services institutions.

Partners Life welcomes the current focus on regulation of financial institutions as our view is that improving standards across the industry will increase consumer confidence and play a part in ameliorating New Zealand’s underinsurance problem.

We acknowledge the tight timeframe that officials face in advancing this review. We have attempted to keep our response practical and informative. However, it is important to ensure that any legislation produces good outcomes for the future. We are concerned that the proposed regime is regulating for problems that have already arisen, for example:

- The mis-selling of personal protection insurance in the UK;
- The failings revealed by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry in Australia; or
- The difficulties suffered by Canterbury residents following the 2010/2011 Canterbury earthquakes.

We believe it is important that this review proceeds in a measured and timely fashion to ensure that we design a regime that is fit for the future and avoids the real prospect of accelerated legislation leading to unintended consequences that are negatively impactful on consumers or the sustainability of the insurance market

We note that the Options Paper does not consider potential future problems in insurance. For example:

- Is it appropriate that insurers incentivise customers with gift tokens and vouchers to access personal health data?
- If customers who complete 10,000 steps a day will pay less premiums, will there be a class of people who refuse to meet the standards set by their “fit-bit” and so become uninsurable?
- What impact has gender fluidity on assessment of insurance risk?

These are some of the difficult and challenging questions that the Options Paper does not consider.

We are in partnership with our customers for the future. We believe that customers deserve best practice regulation, tailored to the particular aspects of the New Zealand market. We are proud of the support we provide to New Zealanders and intend to continue to set best practice standards.

Please contact us if we can provide any additional information or support in the development of a regime to regulate financial institutions.

Partners Life’s responses to the Options Paper questions are set out below:

Options for overarching duties

1. *Which overarching duties should and should not be included in the regime? Are there other duties that should be considered? Do you agree with the pros and cons of each duty? Do you have any estimates of the size of the costs and benefits of these options? Are there other impacts that are not identified?*

Partners Life supports the objective of seeking good customer outcomes through the adoption of duties designed to address poor customer outcomes when dealing with financial institutions.

Option 1

Partners Life supports an overarching duty but believes that Option1 (specifically to prioritise customer’s interests) is not ideal for this purpose. It requires competing interests before a priority can be determined, and then is not well-aligned with ensuring good customer outcomes.

Partners Life agrees that this formulation would give rise to compliance uncertainty, as identified on page 30 of the Options Paper. For example, it is often necessary to balance the interests of one customer against the interests of other customers. In direct relation to Partners Life's business, it may be in one customer's interests to pay a claim that is not covered under the terms of an insurance policy, but to do so would not be in the interests of all other customers, as it could result in an increase in premiums. This example demonstrates the challenges in applying such a duty.

Partners Life submits that a duty to treat customers fairly would be more appropriate. This is the duty recommended by the International Association of Insurance Supervisors (IAIS). The IAIS Insurance Core Principles provide that "supervisors require insurers and intermediaries, in their conduct of insurance business to treat customers fairly, both before a contract is entered into and through to the point at which all obligations under a contract have been satisfied."¹

In addition to meeting international best practice a duty to "treat customers fairly" would resonate with the behaviour and belief of front-line staff, in a way that "prioritizing customers interests" could never hope to do. The way to ensure good customer outcomes is to empower staff, management and the board with a common culture of good ethics. "Treat customers fairly" is an accessible measure that can be understood and applied at every level of an organization to ensure that every customer gets the right outcome.

We understand that there is a desire to align the proposed changes with the requirements of the Financial Services Legislation Amendment Act 2019. We strongly support the development of a sound regime to regulate financial institutions. However, we caution that it is not appropriate to replicate an advice duty, that exists between an adviser and a customer, to the level of a product provider, which owes duties to all its customers.

In addition to meeting international best practice and avoiding the complexities and pitfalls of a conflicts of interest duty, an obligation to treat customers fairly would align the proposed Conduct of Financial Institutions regime with Standard 1 of the Code of Professional Conduct for Financial Advice Services, which requires a person who gives financial advice to treat clients fairly.

Option 2

Partners Life supports a duty to act with due care, skill and diligence, but believes that it requires the additional words "that a reasonable financial institution would exercise in the circumstances", to ensure that there is a suitable context to draw on for determining how the duty should be interpreted.

Option 3

Partners Life agrees with a duty to communicate clearly and in a timely fashion when a financial institution is engaging with its customers. Partners Life believes that any formulation of this duty would need to be expressed in a manner that ensures the duty applies as is reasonable in the circumstances, so that the context of the communications is considered.

¹ <https://www.iaisweb.org/page/supervisory-material/insurance-core-principles//file/77910/all-adopted-icps-updated-november-2018>

The Options Paper acknowledges a move by banks to simplify financial products.² This rush to simplification may not be to the customers advantage. Our experience is that customers receive the best outcomes from rich product which enables the customer to claim in the widest set of circumstances. We submit that different distribution models need to be considered when tailoring the duty to communicate clearly. Financial advisers offer the independent expertise needed to deliver the best customers outcomes.

Option 4

Partners Life is not convinced that it is appropriate to prescribe systems and controls as a legislative duty. Systems and controls are better dealt with under a licensing regime, where alternative approaches can be accommodated. Please see our answer to question 12 below.

Option 5

Partners Life supports a duty to manage conflicts of interest. However, further steps are needed to ensure that regulation is targeted at the behaviours to be discouraged, such as requiring remuneration arrangements not to incentivise poor advice.

An example of a conflict of interest is churn. Partners Life believes that churn in the insurance industry should be addressed by introducing a regulated replacement business advice process to ensure good customer outcomes. (Please see answer to Question 6 below).

Option 6

Partners Life supports a duty to ensure complaints handling is fair, timely and transparent. Partners Life recommends that such a duty is framed so it reflects the circumstances of the complaint and what is reasonable in those circumstances. Further consideration needs to be given as to how this duty will impact the common law. Particularly, the decision in *Young v TOWER*³ in which Gendall J held that a contractual duty of good faith is implied into every insurance contract and is a duty that flows both ways. This duty requires an insurer to process a claim in a reasonable time, taking into account the time required to investigate and assess all aspects of the claim.

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? What are some examples of conflicts of interest that arise outside of conflicted remuneration and incentives?*

While in principle supporting the concept of an overarching requirement to manage conflicts of interest, Partners Life considers that duties should be targeted at the behaviours to be discouraged, such as requiring remuneration arrangements not to incentivise poor customer outcomes. (Please see response to Question 6 below.)

² Ministry of Business, Innovation and Employment "Options Paper: Conduct of Financial Institutions" April 2019 at paragraph 69.

³ *Young v Tower Insurance Limited* [2016] NZHC 2956

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

Partners Life considers that there needs to be clarity around the expectations of the overarching duties.

Partners Life submits that the industry should be allowed to develop codes and guidance that are appropriate for different types of financial institutions. Partners Life envisages this allowing industry bodies to develop codes and guidance by working closely with the Financial Markets Authority (FMA), but not requiring FMA approval. Such approval could decrease responsiveness and flexibility of codes and accountability and professionalism of industry.

Partners Life is a strong supporter of the Financial Services Council Code of Conduct. The FSC Code is an example of an industry-targeted code produced collaboratively by members of the Council, with the objective of promoting industry best practice with a consumer focus.

Options to improve product design

4. *Which options for improving product design do you prefer and why? Do you agree with the pros and cons of the options? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?*

Options 1 and 2

Partners Life supports the extension of FMA's current powers under Financial Markets Conduct Act 2013 (FMCA) to ban or issue stop orders⁴ against specific financial institution products (Option 1), provided the power applies only in cases where the products are materially unsuitable for the market in which they are being sold. The power could be expressed as a power to ban or issue stop orders generally or to a particular class of customer.

Partners Life supports 'banning' a product type (Option 2) but only in circumstances where there is clear evidence that the class of products are materially unsuitable for the market in which they are sold. It would require evidence that all products of the banned type are materially unsuitable or of 'poor value'.

The powers should apply only when the benefits of the ban or stop order outweigh the benefits of consumer choice. The power would need to expressly state whether the ban or stop order requires cancellation of existing products or is on selling further products. Partners Life recommends a ban applies only to new sales for simplicity.

Partners Life would expect there would be consultation processes and due process before a ban or stop order would be imposed. If the power is to be held by the regulator, it would need to be subject to judicial review. MBIE may wish to consider whether there would be an express right of appeal to the Courts. Sections 517 to 521 of the FMCA requires Court approval in the FMCA context, which Partners Life would support in this context.

⁴ s462- 467 FMCA

Partners Life would suggest that bans or stop orders would not be the appropriate remedy where a product was not suitable for some customers but was suitable for others.

Partners Life notes the IMF FSAP finding: “The FMA, in turn, needs to build more insurance expertise to promote adequate conduct supervision of the [insurance] sector.”⁵ A lack of expertise may hinder the FMA’s ability to appropriately determine when to enforce these powers. It should be a priority to increase relevant and knowledgeable capability and resource to better oversee the industry.

Option 3

Partners Life supports the proposal to identify the intended audience for products, when there is one, and that distributors should take this into account when advising on a product. However, in most cases, products are designed for general appeal, and providers should not be required to manufacture a target audience when there is not one.

There is a risk that this duty could be interpreted as a duty to communicate to customers the intended audience for products. Our understanding is that this should be an internal process of the insurer – not an additional burden or decision point for the customer.

Further, although we support the requirement set out in Option 3, we question whether this is an appropriate legislative duty or would be better dealt with as a feature of a licensing regime.

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.*

Additional scrutiny should be applied to products that are sold without financial advice. Independent financial advisers provide additional protections to customers. When customers are sold products without financial advice the customers would benefit from additional protection.

Options to improve product distribution

6. *Which options to improve product distribution do you prefer and why? Do you agree with the pros and cons of the options? Are there other impacts that are not identified – such as unintended consequences or impacts on particular business models? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?*

Partners Life supports steps taken to provide good customer outcomes in the insurance industry, and to remove incentives that may lead to pressured selling behaviours.

⁵ International Monetary Fund “Financial System Stability Assessment” May 2017 at 32.

Option 1

Partners Life supports the aim to design remuneration and incentives in a manner that is likely to promote good customer outcomes. However, how to regulate remuneration structures to achieve good customer outcomes, while remunerating advisers fairly for their efforts is a complex issue.

Without appropriate sales incentives there would be very poor outcomes for consumers as they do not tend to seek out life risk products on their own. This consumer behaviour is reflected in the under-insurance gap in New Zealand. As a result, before consumers will buy insurance, they need to be educated about their needs and then offered a solution to meet those needs. Independent financial advisers are responsible for the distribution of 67% of all life related products that are sold in New Zealand. Without motivated, incentivised financial advisers the underinsurance gap in New Zealand will worsen very quickly.

Regulation of any conflicts of interest, and management of the competence and ethics of salespeople and financial advisers will be most effective in protecting consumers. Lifting the professionalism of the industry will help avoid the unintended consequence of harming the financial education that consumers need in order to insure themselves adequately.

Broadly worded duties could risk removing options to incentivise good behaviours, restrict the ability to adequately reward intermediaries and employees for their effort and to ensure that they continue assisting customers in their role. We recommend the duty be expressed as follows:

Product providers must not make arrangements for the remuneration or incentives with intermediaries or employees which:

- contain volume target levels, above which material additional remuneration or non-financial rewards are earned for the sale of products, without additional conditions to that remuneration or those rewards that also recognise additional customer service or performance against other customer-focused service standards, or
- materially incentivise advising customers to change products when there is customer harm and/or no material customer benefit in doing so.

Partners Life does not support a duty that adopts the expression “good customer outcomes”. There is a risk that this expression is too vague and would have different meanings in different contexts.

Option 2

Partners Life supports a duty prohibiting volume target-based incentives in the form referred to immediately above in our response to question 6, Option 1.

Partners Life supports a ban on volume target-based soft commissions. We submit that "soft commissions" be defined so it is clear that the proposed regime will not preclude provider funded training, adviser support programmes (such as support in transitioning to the new regime for financial advice in the FMCA) and other support which is beneficial to customer outcomes.

Partners Life sees no merit in prohibiting provider funded activities, entertainment, support or rewards which do not include volume based targets as they do not influence a particular sale.

Examples would include adviser entertainment such as:

- Inviting a financial adviser to a rugby game with no requirement that the financial adviser sell a specified number of policies to attend.
- All financial advisers who have placed business with us during the preceding year (and their partners) are invited to our Christmas dinner for the region where they live. There is no set qualifying level of business required.

Many financial advisers work alone. Social events offer a chance for support from colleagues, an exchange of expertise and an opportunity for product providers to communicate expectations or best practice.

Non-volume based soft-commissions such as attending rugby games, are a standard part of New Zealand business practice and do not cause poor customer outcomes.

Option 3

Partners Life agrees that inhouse personnel, who are provided certainty of a proportion of their remuneration because of their employment, should not be further incentivised solely for sales volumes. We therefore support the proposed Option 3.

Option 4

Partners Life does not support imposing parameters around commissions because they would be too prescriptive, could limit customer choice and would lead to unintended consequences for intermediaries, potentially impeding their livelihood or their ability to fully service customers.

Experience has shown that customers do not wish to pay for advice or have unrealistic expectations of the cost of advice if they were to indicate a willingness to pay for it. In practice, if restrictions on commission rates cause advice fees to be imposed on customers, many customers will be deprived of adequate advice.

If the objective of Option 4 is to reduce the incentives for churn or encourage product reviews, there are better ways of achieving this outcome, such as requiring that advisers, who recommend to a customer in person that the customer changes products, must provide a clear written statement of the reasons as to why a product change is in the best interests of the customer, including a comparison of the material differences between the two products which supports that conclusion. Further, the

new regime for financial advice will deliver good customer outcomes. Adviser monitoring by insurers can be used to enforce product reviews.

Further, any form of commission restrictions needs to consider the cost structure of intermediaries, to avoid a risk of business closures, curtailed advice or increased sales volumes to compensate for loss of income irrespective of customer outcomes. All these outcomes would be contrary to the policy objectives. There is a wide variety of intermediary models, and accounting for them all would be difficult.

Option 5

Partners Life supports a duty to take reasonable steps to ensure sales of its products lead to good customer outcomes, provided there is a suitable delineation between the responsibilities of the distributor and of the product manufacturer.

Product manufacturers' obligations should be in respect of customers as a whole group, except when dealing with customers directly (for example for claims or complaints). Product providers' design obligations cannot extend to considering suitability for each individual customer. That must be the role of the distributor, as only the distributor is able to do that. There is only so much a product provider can achieve in this respect. It cannot be expected to be gauging the suitability of the product for each individual client given that it does not nor should it have, oversight into the selection of product provider. That must be the distributor's responsibility.

However, Partners Life agrees that product providers should take reasonable steps to ensure intermediaries meet certain minimum standards, monitor the capability of intermediaries, provide training and establish arrangements for the clear communication of information to customers.

7. *To assist us in comparing the pros and cons of various options, please provide information about remuneration and commission structures currently in use (i.e. what are common structures, average amounts of remuneration/commissions, qualifying criteria etc?)*

Confidentiality

The "commission" load built into policy premiums in the NZ market is around 25% of each client's premium, for the life of a policy.

As premiums change with the age of the client, and with any contractual increases such as CPI indexation, the dollar amount of the "commission load" portion of the premium will change accordingly.

The way in which insurers utilise that “commission” load to remunerate advisers has significant flexibility built into it, usually at the choice of the adviser.

Advisers can opt to simply receive the commission as it is deducted from the client’s premiums. This is commonly called “as earned” commission, which is not subject to any claw-back provisions. If the client doesn’t pay a premium, the adviser doesn’t receive a commission.

Another alternative is for the commission load expected to be collected from each year’s premiums, to be paid as a lump sum at the start of each policy year. This is commonly called “level” commissions. If the client cancels the policy part-way through a year, a claw-back of commissions paid but not collected from the client’s premium, will be clawed-back.

For some insurers their “level commission” option sees only the first year’s “commission” advanced, with commissions paid from the first policy anniversary onwards reverting to “as earned”.

The most commonly selected commission structure for advisers is referred to as the “full upfront” commission option.

Insurers will pay an upfront commission of around 180%⁶ of the first year’s premium to the adviser as soon as the policy is issued, and in exchange they reduce the percentage of the “commission load” built into the client’s premium that will be paid to the adviser over the lifetime of the policy. The insurer retains the rest of the “commission load” to compensate for the risk they take on paying an upfront commission to the adviser. The “renewal” commission paid in the industry when a full upfront commission has been selected by the adviser is around 7%.

Effectively in exchange for taking a full upfront commission based on the first year’s premium the adviser is trading off 18% of each future premium, which are commonly increasing each year. Because the insurer is effectively risking capital to fund upfront commissions, they also impose a 2-year claw-back obligation on advisers for the upfront commission received.

If a policy is held long-term by the client, the insurer will ultimately be financially better off as a result of the upfront commission structure than they would have been had the adviser selected “as earned” or “level” commissions. If the policy is not held long-term by the client, then the insurer will be worse off than had the adviser taken “as earned” or “level” commissions.

Advisers can also choose from a range of “middle ground” options provided by some insurers, where they can choose a lower upfront commission and retain more of the “as earned” commission. These are often called “pendulum” commission options.

The client’s premium is not affected differently between these commission structures.

Most insurers also offer advisers the option to take reduced commissions (irrespective of selected commission structure), which then reduces the commission

⁶ Zurich – “The Risk Advice Disconnect, Briefing paper – life insurance commissions (2019 Feb)” - Figure 6

load built into the client's premium – reducing their premium below the premium usually charged for a similar client.

Most insurers who distribute through advisers also pay additional new business commissions over and above the commissions paid to advisers, to a number of Dealer Groups which operate as membership organisations for advisers who wish to remain independent of product providers but who wish to belong to a larger organisation that can provide economies of scale and support that would be difficult to achieve as an individual adviser. These Dealer Group "over-riders" can range between 10% and 30% of the first year's premiums payable for each new policy issued across the industry. The providers pay this to Dealer Groups to provide their advisers with support, training, systems, processes and monitoring, that providers might otherwise have to deliver to those advisers themselves (which would then compromise the adviser's independence).

Partners Life Shadow Share Scheme

In addition to its market consistent commission structure, Partners Life has historically offered advisers the ability to participate in a deferred commission scheme, which we called our Adviser Shadow Share Scheme. These are not shares (or securities) in Partners Group, they are deferred cash payments, the amount of which is based on the increase in the Partners Group Holdings share price from the date at which the notional allocation of the grants is made ("grant date"). The scheme required a minimum qualifying production level and an ongoing minimum persistency qualifying level for payment of the deferred commission to occur. Production qualification for the final shadow share scheme of this type is in progress and will close on 31 March 2020. There is no plans for further schemes to be offered.

Options relating specifically to insurance claims

8. *What is your feedback on imposing a duty to ensure claims handling is fair, timely and transparent? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of this option?*

Partners Life supports the requirement to ensure claim handling is fair, timely and transparent. It is consistent with ICP 19.10, being "the supervisor requires insurers to handle claims in a timely, fair and transparent manner." However, it recommends that this duty applies "to the extent reasonable in the circumstances" to allow flexibility to deal with different product types and contexts.

Further please see comments re the application of common law duties (Young v Tower Insurance Limited [2016] NZHC 2956), in response to question 1 above.

9. *If this option were to be adopted, should an attempt be made to clarify what fair, timely and transparent mean? Why? Why not? What are the benefits and costs of doing so?*

Partners Life believes that adding "to the extent reasonable in the circumstances" would address the need for flexibility.

Partners Life would not support prescribing timeframes for the insurance industry due to the varied nature of insurance products, the risks insured, the processes required to inquire into and accept a claim, and because claims can be delayed by the actions or inactions by the customer or third-parties.

Furthermore, a customer's condition may change during the life of a policy and this can impact on the assessment of a claim. For example, a customer who has had an accident or illness may not immediately meet the requirements to claim under a total and permanent disability policy, but may get worse in time, such that they will eventually be totally and permanently disabled.

10. *What is your feedback on requiring the settlement of claims within a set time? Are there other impacts that are not identified? How do you think that exceptions should be designed? Should there be different time requirements for different types of insurance? Do you have any estimates of the size of the costs and benefits of this option?*

Partners Life would not support prescribing timeframes for the insurance industry on the basis that time limits are not appropriate for life insurance claims. Please refer to Question 9 above for the reasons.

Having agreement as the basis to extend timeframes would be inappropriate. There would be a risk that customers would have no reason to agree, even if it is reasonable for them to do so.

Options for tools to ensure compliance

11. *Do you agree with this option to empower and resource the FMA to monitor and enforce compliance? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?*

Partners Life supports the FMA as the most appropriate regulator to enforce conduct regime. A new regulatory authority would likely be costlier, both to set up and maintain, due to economies of scale.

12. *What is your feedback on the option to require banks and insurers to obtain a conduct licence? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?*

Partners Life supports the option to require any institution providing financial products or services to obtain a conduct licence and believe this is the best option from a regulatory point of view. We do, however, have reservations about how this will be implemented.

Partners Life believes that conduct licensing best sits within the FMCA. However, the FMA is currently faced with resourcing pressure regarding the Financial Services Legislation Amendment Act (FSLAA) implementation. We have concerns about the FMA's ability to implement a conduct licensing regime on top of FSLAA implementation and other changes in its regulatory ambit.

Further efficiency could be gained by combining all financial institutions licences within one licence with different components, to avoid duplication. For example, once an entity obtains a licence, it is not necessary to conduct the due diligence process again. Instead, a new aspect/category of licence can be added to the overall licence of that entity by demonstrating capability in the relevant field. We envisage this overall license would be a Financial Services License, containing authorised functions.

With the FMA remaining responsible for conduct regulation, and the Reserve Bank for prudential regulation, together, they form the Twin Peaks model of financial regulation. We recommend continued and enhanced cooperation between the two regulators to ensure that each licensed entity is not required to have two or more different licences (such as a conduct licence and a prudential licence). This would avoid unnecessary duplication in some areas including fit and proper director and senior management requirements, and other financial requirements.

13. What is your feedback on this broad range of regulatory tools? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?

Partners Life supports a range of enforcement tools so the regulator can adopt the most appropriate sanction for the circumstances. Infringement notices have not been mentioned and should be considered.

Like all sanctions, it is important that there are suitable defences including reasonable reliance defences, that culpability is based on intentional or reckless behaviours (not strict liabilities), that directors are able to rely on the actions of employees, and that the penalties are aligned with the level of harm caused.

Depending on the requirements imposed and the potential harm caused, Partners Life submits that pecuniary penalties not exceeding \$200,000 in the case of an individual or \$600,000 in any other case, being a scale currently imposed in the FMCA should be sufficient, with the associate brand damage, to deter non-compliance with the more serious obligations to be imposed. Lesser obligations should have lower pecuniary penalty ranges. The penalties described in paragraph 196 of the paper are for one-off transactions where the offender is likely to have made considerable gains from the breaches. That is not the case here. These are regulatory matters, where there are likely to be multiple reoccurrences of lesser harms, where extreme high level penalties would be unsuitable.

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? Is there a case for making the penalties higher?

Partners Life supports the maximum pecuniary penalties available for the most severe breaches of any conduct duties being no more than the lower range existing FMCA penalties. We do not think there is a case for making the penalties higher.

15. What is your feedback on the option of executive accountability? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?

Partners Life takes the view that executive accountability under FMCA sections 533 to 536 may be appropriate in extreme cases but in general would be too harsh. Broad director and management penalties, which are becoming more prevalent in legislation, discourage participation in regulated industries or encourage excessive caution. There are hidden costs in imposing penalties on directors and managers, including narrowing of the pool of talented directors and managers, and Partners Life suggests such penalties are imposed sparingly and only in cases where there is the

risk of substantial harm. The failures that are being considered in this context fall below the level of culpability for taking money from investors on false grounds.

We note the suggestion by the Australian Royal Commission to extend the Banking Executive Accountability Regime (BEAR) to cover both conduct and prudential obligations. BEAR establishes accountability obligations for authorised deposit-taking institutions (ADIs) and their senior executives and directors. It requires people with significant influence over conduct and behaviour in an ADI to conduct themselves with honesty and integrity, and to carry out the business activities for which they are responsible effectively.⁷ It is an extensive regime, but it does not seem suitable for the compliance obligations to be imposed as a result of this review.

The Senior Managers Regime (SMR) in the United Kingdom is a further example of a regime specifically targeted to support a change in culture in banks and insurers. The SMR applies to senior executive decision makers. They must be assessed as being fit and proper, and have clearly defined responsibilities and conduct obligations.⁸ It too is an extensive regime, but it does not seem suitable for the compliance obligations to be imposed as a result of this review.

16. *What is your feedback on the whistleblowing option? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?*

Partners Life supports having effective whistleblowing procedures and has established such procedures in its business already.

17. *What is your feedback on the option of regular reporting on the industry? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?*

Partners Life does not support increased regulatory reporting unless there is a clear purpose, which is sufficient to justify the costs. Increasing the cost of business across an entire industry results ultimately in higher customer costs.

Publicity about remediations undertaken and complaints would create incentives not to remediate customers or recognise complaints, which would be counter-productive.

Partners Life has concerns about the usefulness of collected information as a lack of consistency in the information collected has already occurred in the IPSA context. The Financial Services Council has also tried to increase the breadth of the data it collects and is challenged by the inconsistent definitions of data. For example, there are varying definitions of a claim, and a declined claim.

⁷ [Treasury Laws Amendment \(Banking Executive Accountability and Related Measures\) Bills 2017 Revised Explanatory Memorandum <https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6000_ems_f8dec954-bcff-4408-b8dd-258f0b02288b/upload_pdf/Treasury%20Laws%20Amendment%20\(Banking%20Executive%20Accountability%20and%20Related%20Measures\)%20Bill%202017_Revised%20EM.pdf;fileType=application/pdf>](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6000_ems_f8dec954-bcff-4408-b8dd-258f0b02288b/upload_pdf/Treasury%20Laws%20Amendment%20(Banking%20Executive%20Accountability%20and%20Related%20Measures)%20Bill%202017_Revised%20EM.pdf;fileType=application/pdf) at 10.

⁸ Bank of England "Strengthening accountability" <<https://www.bankofengland.co.uk/prudential-regulation/key-initiatives/strengthening-accountability>>.

18. *What is your feedback on the role of industry bodies? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?*

Partners Life supports a greater role for industry bodies. Partners Life supports the work of the Financial Services Council, and its role in developing and imposing industry codes and best practice guidance. Partners Life does not think it is necessary for the regulator to formally approve any industry code, but Partners Life takes the view it would be beneficial for the regulator and the industry body to work collaboratively regarding the development of guidance and codes.

Who should the conduct regulation apply to?

19. *What is your feedback on the options regarding who the conduct regime should apply to? In particular: Do you agree with the pros and cons of the options? Are there other impacts that are not identified e.g. do the proposed overarching duties conflict with existing regulation that applies to other financial institutions? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of these options? Which options do you prefer and why?*

Partners Life believes it is important to have a level playing field for industry participants. It is inconsistent, for example, to have banks regulated for banking or lending products but to not regulate NBDTs for similar products. An option Partners Life proposes to be considered is to define the product types, as is done with the FMCA definitions, and then require all entities manufacturing these types of products to be regulated for conduct by the proposed legislation.

The ultimate regime should minimise the opportunities for arbitrage, including from offshore providers. Currently, IPSA is governed by rules based on a "carrying on business test" which is largely determined by presence in New Zealand. A number of offshore insurers operate in New Zealand without complying with New Zealand requirements because they are located overseas. Criteria based on physical presence are outdated in this electronic age. Partners Life suggests that the test be changed to one similar to the FMCA, that the tests are that if an insurer is offering insurance to a retail client, the New Zealand legislation should apply. Lesser requirements should apply to offers of insurance to wholesale clients and by reinsurers to insurers.

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED

PROACTIVELY RELEASED