

Alice Barnard

From: Privacy of natural persons
Sent: Wednesday, 12 June 2019 5:31 p.m.
To: Financial Conduct
Cc: Privacy of natural persons
Subject: RE: Comprehensive Submission - TCA - MBIE [UNCLASSIFIED] [DLA-CLIENT.FID639408]

Good evening.

A copy of the full submission is attached below. It is marked in yellow.

Kind regards

Alasdair McBeth
Partner

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DLA Piper New Zealand
www.dlapiper.com

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Comprehensive submission form: Conduct of financial institutions review

This is the comprehensive feedback form for the conduct of financial institutions review.

You should refer to the options paper as you work through the questionnaire.

This form contains 19 questions and may take some time to complete.

If you are preparing a comprehensive submission in collaboration with others, you may wish to first prepare answers to each question in Microsoft Word or similar. That is because the online form does not save progress if you exit the browser.

If you are unable to access or use the online form, please either:

- contact us at FinancialConduct@mbie.govt.nz to make other arrangements to receive your electronic submission; or
- mail your submission to:

Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

Questions

Options for overarching duties

Section 3.2 of the Options Paper discusses a number of 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?

In particular:

- 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?

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?

In particular:

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

Question 3

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

Options to improve product design

Section 3.3 of the Options Paper presents some options to improve product design.

Question 4

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

In particular:

- 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?

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.

Options to improve product distribution

Section 3.4 of the options paper discusses options to improve product distribution.

Question 6

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

In particular:

- 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?

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.

In particular:

- What are common structures, average amounts of remuneration/commissions, qualifying criteria etc.?

Options relating specifically to insurance claims

Section 3.5 of the options paper discusses 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?

In particular:

- 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?

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?

In particular:

- Why? Why not?
- What are the benefits and costs of doing so?

Question 10

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

In particular:

- 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?

Options for tools to ensure compliance

Section 3.6 of the options paper contains options to contribute to the effectiveness of new conduct obligations.

Question 11

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

In particular:

- 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?

Question 12

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

In particular:

- 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?

Question 13

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

In particular:

- 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?

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?

In particular:

- Is there a case for making the penalties higher?

Question 15

What is your feedback on the option of executive accountability?

In particular:

- 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?

Question 16

What is your feedback on the whistleblowing option?

In particular:

- 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?

Question 17

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

In particular:

- 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?

Question 18

What is your feedback on the role of industry bodies?

In particular:

- 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?

Who should the conduct regulation apply to?

Part 4 of the options paper discusses who the proposed options might apply to.

Question 19

The Trustee Corporation Association supports work that enhances the promotion and facilitation of the development of fair, efficient and transparent financial markets in New Zealand, and that all customers are receiving good outcomes from the financial sector.

Prudential standing at financial institutions is a key first line of defence and this must be the primary focus of regulators. Most harm in recent times occurs through financial failures caused by lack (or poor enforcement) of financial frameworks. Many customers engage with financial institutions for a long time

and have an expectation that the entity be around to meet the obligations when they need to call on the product.

The Submitter sees the strength of the Prudential Standards as contemplated by the Reserve Bank for both the bank and insurance sectors as positive.

However, there is no need to apply further conduct regulation to managed investment schemes (including KiwiSaver) as conduct is already regulated under the current regulatory regime.

Overlaying additional conduct regulations in respect of Issuers and Supervisors of managed investment schemes and other financial products in respect of which there is a Licensed Supervisor is unnecessary. It is likely to result in significant duplication, confusion and additional cost with no benefit to customers.

We consider that the objectives MBIE is seeking to achieve by introducing the proposed regulations are already adequately covered by the current licensed regime applicable to managed investment schemes. In particular, the Financial Markets Conduct Act 2013 and its Regulations (the Act) already impose a number of duties and obligations on Licensed Managers aimed to ensure good conduct and good customer outcomes are achieved. Examples of some of the requirements are:

Licensed Managers must act honestly and in the best interest of investors and treat investors equitably;

Licensed Managers must not use information to gain an improper advantage or cause detriment to investors;

Licensed Managers have a duty to comply with the relevant professional standard of care (including duties of directors and senior managers);

fair dealing requirements including not engaging in misleading or deceptive conduct;

requirements relating to disclosure of offers of financial products;

restrictions on transactions giving related party benefits; and

liabilities for contravention of the Act.

Furthermore, Licensed Supervisors, whose function is to act on behalf of investors in relation to Licensed Managers and supervise the performance by the Licensed Managers of their functions and obligations, have a number of duties to ensure good customer outcomes including:

Licensed Supervisors must act honestly and in the best interests of the investors and exercise reasonable diligence in carrying out their functions as a Licensed Supervisor;

Licensed Supervisors have a duty to comply with a professional standard of care.

The licensing regime under the Act requires the Licensed Manager to meet certain standards imposed by the Act and the Financial Markets Authority (FMA) including being fit for purpose and fit and proper.

In addition, Licensed Supervisors are licensed themselves by the FMA. Under the Act they must deliver regular reports to FMA and in addition are required by section 202 of the Act to attest at any time as to whether the Licensed Supervisor is satisfied that the issuer has not contravened any issuer obligation in all material respects.

Therefore the current licensing regime and the regulatory framework ensures that compliance with the legislative requirements is closely monitored at the financial institution level by Licensed Supervisors and across the wider industry by the FMA.

The Submitter also submits that the New Zealand supervisory regime in respect of managed investment schemes (including KiwiSaver) which requires a Licensed Supervisor, independent of the Licensed Manager (with significant and separate obligations to investors under the FMCA) to oversee the Licensed Manager's compliance with its obligations to its customers is superior to other jurisdictions, in particular Australia's, which has no such requirements and essentially provides for MIS managers (or entities related to them) to essentially 'supervise themselves'. The Submitter believes this current model works very well and enables

close monitoring and oversight of MIS managers conduct and compliance with their obligations the government 'supervisor' does not typically perform very well.

Supervisors use a variety of tools (regular reporting and cross checking, meetings, deep dives, thematic assessments etc.) to supervise the financial institutions and performance by the Licensed Manager of its functions and issuer obligations. This allows Licensed Supervisors to develop a very close understanding of how those financial institutions operate and what processes, procedures and controls they have in place to comply with their duties and requirements. Therefore, Licensed Supervisors are well placed to assess operations of those institutions and the robustness of their processes, procedures and controls to ensure good customer outcomes are achieved. They monitor compliance of those financial institutions on a regular basis and ensure that any potential noncompliance that may adversely impact on the customers has been appropriately addressed in a timely manner. Unlike the responsible entity regime in Australia, supervisors are independent of the financial institutions they supervise.

We note that many of the issues and findings from the Australian Royal Commission into misconduct in the banking, superannuation and financial services industry and more recently the FMA and RBNZ reports into the conduct and culture of banks and life insurers in New Zealand centred on conflicted conduct, with examples of poor identification of errors or adverse customer outcomes and/or equally poor remediation. It is the Submitter's view that under New Zealand's current MIS regulatory regime the important obligations that Licensed Supervisors provide to a managers customers means that Licensed Supervisors are very well placed to help prevent poor customer outcomes from occurring in the first place and/or when poor customer outcomes are identified are able to work with the Licensed Managers to ensure that customers are fairly remediated in a timely manner. It also helps to ensure that the FMA is kept abreast of material issues and non-compliance (by both financial institution and Licensed Supervisors) at a more granular level which would enable it to quickly become aware of any developing trends and potential wider industry issues that may need to be addressed.

Therefore, while the proposed conduct regulations may be relevant to the financial institutions who are not subject to strong conduct regulations and, importantly, whose customers do not benefit from close independent oversight (i.e. life insurers) we strongly believe that conduct and good customer outcomes are already the main building blocks of the current MIS regime and legislative framework which provides for close independent monitoring and oversight (by Licensed Supervisors and FMA) and ensures that any issues get quickly and appropriately addressed.

The proposed regulations, if extended to areas where Licensed Supervisors play a role, would add another layer of unnecessary regulation but would not add any additional benefits to improve conduct and good customer outcomes that are not already captured by the current regime.

The FMA has from day one focussed on conduct and its guidance notes and its monitoring and reporting requirements make it very clear to Licensed Managers and Licensed Supervisors their conduct requirements and the current statutory regime has all the necessary powers and controls to satisfactory enforce these requirements.

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?

Your details

Your name

David Brown Douglas

Your organisation

Trustee Corporations Association of New Zealand Inc

on behalf of all members except Trustees Executors Limited who are making their own separate submission(Submitter)

Your email address

Privacy of natural

In what capacity are you making this submission?

Individual

Consumer group/advocate

Business

Industry group

Researcher/academic

Other

Other capacity:

Use and release of information

The *Privacy Act 1993* applies to submissions. You may choose how your personal information is used.

Unless otherwise requested, we may also share submissions received with relevant government agencies such as the Financial Markets Authority.

Can we include your name or other personal information in any information about submissions that we may publish?

Yes, you can include my name or other personal information

No, don't include my name or other personal information

We intend to upload submissions to our website. Can we include your submission on the website?

Yes, you can publish my submission on the website

No, don't publish my submission on the website

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.

Yes, I would like my submission (or parts of it) to be kept confidential.

No, I do not wish for my submission to be kept confidential

From: Financial Conduct <FinancialConduct@mbie.govt.nz>

Sent: Wednesday, 12 June 2019 4:35 PM

To: McBeth, Alasdair [Privacy of natural persons]; Financial Conduct <FinancialConduct@mbie.govt.nz>

Cc: David Brown Douglas [Privacy of natural persons]

Subject: RE: Comprehensive Submission - TCA - MBIE [DLA-CLIENT.FID639408] [UNCLASSIFIED]

Hi Alasdair,

We haven't received either the partial or full submissions which you refer to below.

Did you have the submission or the information in another form and could send it to us that way?

Financial Conduct Team

15 Stout Street, PO Box 1473, Wellington 6011



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

From: McBeth, Alasdair [Redacted] Privacy of natural persons
Sent: Wednesday, 12 June 2019 4:16 p.m.
To: Financial Conduct
Cc: David Brown Douglas [Redacted] Privacy of natural persons
Subject: RE: Comprehensive Submission - TCA - MBIE [DLA-CLIENT.FID639408]

Good afternoon,

I would be grateful for a reply to my email below and for a copy of the submission.

Kind regards

Alasdair McBeth
Partner

T [Redacted] Privacy of natural persons
F [Redacted]
M [Redacted]
E [Redacted]



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From: McBeth, Alasdair
Sent: Friday, 7 June 2019 4:22 PM
To: FinancialConduct@mbie.govt.nz
Cc: David Brown Douglas [Redacted] Privacy of natural persons
Subject: Comprehensive Submission - TCA - MBIE [DLA-CLIENT.FID639408]

Good afternoon

We submitted an incomplete Comprehensive submission form for the Conduct of Financial Institutions Review on behalf of the Trustees Corporation of New Zealand Inc in error this afternoon.

It is concerning that the submission was made before pressing the submit button. It happened inadvertently when pressing the enter button in the process of populating one of the boxes.

The below highlighted items were omitted:

Name: David Brown Douglas
Organisation: Trustees Corporations Association of New Zealand Inc
On behalf of all members except Trustees Executors Limited who are making their own separate submission
Email address: [Redacted] Privacy of natural persons

Please confirm that the above information has captured in the submission and provide us with a copy.

Kind Regards
Alasdair

Alasdair McBeth
Partner

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www.govt.nz - your guide to finding and using New Zealand government services

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