

**From:** Tenancy No Reply  
**Sent:** Friday, 7 June 2019 3:25 p.m.  
**To:** Insurance Review  
**Subject:** Response to Review of Insurance Contract Law quick form

**What is your feedback on the overarching duties? Which option do you prefer and why?**

Trustees Executors Limited (TEL) is a professional trustee company that provides a range of services to individuals and the corporate sector.

Our submission in relation to the Options Paper primarily comments on the possible extension of conduct regulation to financial service providers other than banks and insurers (“Other Providers”) that is discussed in Part 4 of the document. While not taken as exhaustive, the examples provided in the Options Paper of the Other Providers include NBDTs, managed investment scheme providers and discretionary investment management service providers. The former two are providers TEL supervises, while TEL holds a license to provide the latter service.

We agree with the Overarching Duties in principle, and the idea of uniformity of conduct regulation across the financial sector. For this reason we support the Initial Preferred Package of Options, which includes all Options 1 to 6, as outlined in part 3.2.

However, in relation to Other Providers that operate under a Financial Markets Conduct Act 2013 (FMCA) licence, given the regulatory overlap, we recommend mapping existing regulatory and licensing requirements to any new Overarching Duties. For example, for two of the providers mentioned, licensing requirements cover many of the overarching duties, be it through the FMCA, its regulations, licence standard conditions, or minimum standards to maintain licences. These providers are also more likely to be required to be licensed under the new Financial Advice Provider licensing regime and will therefore have new statutory duties to comply with. Furthermore, most providers will be subject to conduct obligations in relation to client money and property services. Consequently we see merit in aligning, mapping or consolidating any regulatory overlap or duplication at the policy or licensing stage rather than for financial providers to navigate. This will particularly assist small sized providers comply with their obligations and assist achieve the outcomes sought.

**What is your feedback on the options to improve product design? Which option do you prefer and why?**

We support the Initial Preferred Options (which includes Option 1 and 3 within Part 3.3).

Option 1, gives the regulator the power to ban or stop the distribution of specific products.

For many licenced providers, the FMA has existing powers to suspend or cancel licenses where material breaches have occurred. Nevertheless, this measure will address any gaps and create consistency with other product providers.

Option 3, requires manufacturers to identify an intended audience for products and a requirement for distributors to have regard to the intended audience when placing the product. These are measures of good practice. We note similar measures exist in other jurisdictions, including the UK, European Union and through recently passed legislation in Australia. The primary benefit of this option is it requires distributors to identify groups that a product is not suitable for. Incorporated into distribution strategies, this will assist preventing poor selling practices.

**What is your feedback on the options to improve product distribution? Which option do you prefer and why?**

In our view Options 1 (A duty to design remuneration and incentives in a manner that is likely to promote good customer outcomes) and Option 2 (Ban target-based remuneration and incentives, including soft commissions) as outlined within Part 3.4 will be the most effective of the options in achieving the outcomes sought.

Remuneration and incentive structures drive behaviours throughout an organisation and as such aligning them to good customer outcomes is expected to be effective. Removing target-based remuneration will also eliminate a feature that could contribute to the greatest risk of mis-selling, whether this risk is perceived or actual.

**What is your feedback on the options relating specifically to insurance claims? Which option do you prefer and why?**

**What is your feedback on the options for tools to ensure compliance? Which option do you prefer and why?**

We are supportive of the Initial Preferred Package of Options (Part 3.1) as these relate to ensuring compliance.

This is because we agree the cons of other options such as dual licensing and a greater role for industry bodies exceed the benefits.

**What is your feedback on who the conduct regulations should apply to? Which option do you prefer and why?**

It is important that any new consumer protection measures be extended to cover other participants that provide similar products or services to banks and insurers.

Therefore in our view Option 2 should apply.

**What is your feedback on the initial preferred package of options?**

We are supportive of the Initial Preferred Package of Options.

**Do you have any other general feedback?**

We concur with the problems identified within the Options paper and are supportive of measures to achieve the outcomes sought.

In relation to Other Providers, we also support MBIE's suggested timeline for implementing after the banks and insurers in order to benefit from any lessons learned. As banks will also generally hold FMCA licences, these lessons will assist with the implementation for Other Providers.

In relation to executive accountability, we note the options for banks and insurers include either aligning with FMCA liability provisions or for a new liability regime to be established for them. For Other Providers that are FMCA licensees (and are not banks) our view is the existing director liability provisions within the FMCA adequately achieves the accountability objective.

**Your name**

Andrew Cleland

**Your email address**

Privacy of natural persons

**Your organisation**

Trustees Executors Limited

**In what capacity are you making this submission?**

business

**Other capacity**

**Privacy act/release**

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

yes

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

yes

**You may ask us to keep your submission, or parts of your submission, confidential. If so, you'll need to attach reasons and grounds under the Official Information Act 1982 for consideration.**

no

**You've indicated that you would like us to keep your submission confidential. Please give your reasons and grounds under the OIA that we should consider.**

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