Discussion Document

2021 Review of the Financial Markets Authority Funding and Levy

5 October 2021

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How to have your say

Submissions process

MBIE and the FMA are seeking written submissions on the proposals and questions raised in this document.

The questions are listed in boxes throughout this document. Your submission does not necessarily need to answer all of these questions.

Your submission may respond to any or all of these proposals. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please send your written submission on the proposals and questions raised in this document by **5pm 7 November 2021**. Please include your name, or the name of your organisation, as well as contact details.

You can make your submission by attaching it as a Microsoft Word or PDF document and sending to:

FMALevyReview@mbie.govt.nz

Alternatively, you can mail your submission to:

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

Please direct any questions to: ***FMALevyReview@mbie.govt.nz***

Use of information

The information provided in submissions will be used by MBIE and the FMA to inform the review of FMA's funding and the FMA levy and will be considered in the policy development process.

MBIE may contact submitters directly if clarification on any matters in submissions is required.

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List of Acronyms

CRD	Climate-related Disclosures
CoFI	Conduct of Financial Institutions
CoFI Bill	Financial Markets (Conduct of Institutions) Amendment Bill
CoFR	Council of Financial Regulators
FAP	Financial Advice Provider
CRD Bill	Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill
FMA	Financial Markets Authority
FMC Act	Financial Markets Conduct Act 2013
ICL	Insurance Contract Law
MBIE	Ministry of Business, Innovation and Employment
NBDT	Non-Bank Deposit Taker
RIS	Regulatory Impact Assessment
RBNZ	Reserve Bank of New Zealand
XRB	External Reporting Board

1 Executive summary

1. The Financial Markets Authority (FMA) is the principal conduct regulator of financial markets in New Zealand. Since the FMA's baseline funding was reviewed in 2019/2020, its remit is evolving as a result of three new legislative regimes: Conduct of Financial Institutions (CoFI), changes to Insurance Contract Law (ICL) and Climate-related Disclosures (CRD). The FMA requires additional funding to oversee these regimes.

2. MBIE and the FMA are reviewing the FMA's additional funding requirements for these three regimes. As part of this review, MBIE commissioned Deloitte to conduct an independent assessment of the FMA's funding options and underlying costing for each regime.

3. Sections 6, 8 and 9 of this discussion document set out two funding options for each regime, as summarised in the tables below. These options reflect two different regulatory approaches, both of which would deliver on the legislative intent of the regimes. MBIE and the FMA are seeking feedback on which of the two options is most appropriate for each regime.

Conduct of Financial Institutions

	2022/23	2023/24	2024/25	2025/26 & outyears
CoFI Option 1	$6.847 million	$8.432 million	$11.538 million	$15.243 million
CoFI Option 2	$5.640 million	$5.808 million	$8.062 million	$9.945 million

4. Under CoFI Option 1, the FMA would take a proactive monitoring approach, aimed at identifying poor conduct before consumer harm occurs. This option would provide for deep engagement with entities, the sector and consumers, guidance that sets clear expectations for entities, and identification of risks at an earlier stage. Under CoFI Option 2, the FMA would take a more reactive approach, and focus its resources on responding to misconduct and enforcement.

Insurance Contract Law

	2022/23	2023/24	2024/25	2025/26 & outyears
ICL Option 1	$0.723 million	$1.262 million	$1.432 million	$1.703 million
ICL Option 2	$0.408 million	$0.679 million	$0.865 million	$1.141 million

5. Under ICL Option 1, the FMA would seek to proactively monitor compliance with the regime's requirements. Under ICL Option 2, the FMA would either perform 'light touch' monitoring of plain language requirements, presentation regulations and unfair contract terms, or divert resources from other areas of its core mandate to ensure broader coverage.

Climate-related Disclosures

	2022/23	2023/24	2024/25	2025/26 & outyears
CRD Option 1	$1.790 million	$2.105 million	$1.856 million	$1.856 million
CRD Option 2	$1.307 million	$1.657 million	$1.411 million	$1.411 million

6. Under CRD Option 1, the FMA would seek to deliver a proactive approach supporting consistent high-level climate disclosures. The FMA would engage with entities making climate-related disclosures to understand challenges they may see in the market. Under CRD Option 2, the FMA would take a slower approach to building up capabilities for the new regime.

Implementation and funding recovery options

7. Section 7 of this discussion document seeks feedback on the implementation of the CoFI regime, including the proposed licensing window. This feedback will help to ensure the FMA and financial institutions have enough time to prepare for the regime to take effect.

8. As the FMA is currently funded through a mixture of Crown and third-party levy funding, section 11 of the discussion document seeks feedback on how any increase in the FMA's appropriation should be apportioned between the Crown and levy payers. Under Option A, any increase in the FMA's appropriation would be fully met by levy payers. Under Option B, any increase in the FMA's appropriation would be met by a combination of Crown and levy funding, maintaining the current Crown contribution of 17% from 2022/2023.

9. Section 12 of this discussion document proposes changes to the levies payable for market participants who are in scope of the CoFI, ICL and CRD regimes. MBIE is also proposing some new levy classes to better reflect the types of entities captured by the three new regimes.

10. MBIE propose that the following new or revised FMA levy classes pay a new or increased levy as a result of the three new regimes. The new levy class for climate-reporting entities will cover entities (such as large banks and insurers) that also pay FMA levies under other classes.

FMA Levy Class	CoFI	ICL	CRD
[revised] Class 2 (non-retail registered banks and NBDTs)	n/a	n/a	n/a
[new] Class 2A (retail registered banks and NBDTs)	✓	n/a	n/a
[revised] Class 3 (non-retail insurers)	n/a	✓	n/a
[new] Class 3A (retail insurers)	✓	✓	n/a
[new] Class 17 (Climate-reporting entities)	n/a	n/a	✓

11. Annex 1 sets out proposed new levies from 2022/2023 for the above levy classes. The funding options presented in sections 6, 8 and 9 could be put together in multiple combinations, leading to many different overall funding options for the FMA. For the purposes of this consultation, the proposed new levies assume the funding options for all three new regimes are fully met by levy payers. If the Crown contributes towards the FMA's additional funding, the levies would reduce from the figures presented in Annex 1 to reflect this.

12. Annex 2 sets out the FMA levy classes that would not be subject to any levy changes.

2 Introduction

Purpose of the review and context

13. The FMA is an independent Crown entity and New Zealand's principal conduct regulator of financial markets. Since the FMA's funding was reviewed in 2019, its remit is evolving to encompass activities that are not covered by its current funding. This includes the new Conduct of Financial Institutions (CoFI), Insurance Contract Law (ICL) and Climate-related Disclosures (CRD) regimes.

14. It is desirable for the FMA to be a credible conduct regulator that is sufficiently resourced, resilient and able to adopt a proactive, risk-based and systems-wide approach to regulation that includes contributing to wider government policy objectives, where appropriate.

15. MBIE, in conjunction with the FMA, is reviewing the FMA's additional funding requirements for the regimes and the FMA levy.

16. The objectives of the review are to:

    - review the FMA's additional funding requirements to ensure it can meet its new statutory functions under the CoFI, ICL, and CRD regimes, and can operate as a credible and effective financial markets regulator
    - consider the level of Crown and third-party levy funding that is appropriate to reflect the public-private good elements of the FMA's new role and operations under these regimes
    - ensure that the FMA levy settings remain appropriate and proportionate to the benefits received.

17. As part of this review, MBIE commissioned Deloitte to conduct an independent assessment of the FMA's new funding requirements.[1] The costings used in this discussion document are consistent with those in Deloitte's report. The independent assessment does not address the appropriate level of Crown and third-party levy funding or the levy settings. These have been considered separately by MBIE and the FMA.

1	Do you have any feedback on the objectives of the review?

[1] See https://www.mbie.govt.nz/business-and-employment/business/financial-markets-regulation/crown-entities-we-monitor/financial-markets-authority-funding/

What does this discussion document do?

18. We are seeking feedback on the additional funding options and levy proposals in this discussion document. Specifically, this discussion document:

- provides an overview of the FMA, its evolving remit and its current funding
- outlines the FMA's need for additional funding
- presents two different FMA funding options under each of the CoFI, ICL, and CRD regimes
- presents the proposed approach implementation of the CoFI regime, including the proposed licensing window for financial institutions to obtain the relevant licence
- discusses the options for recovering FMA's funding
- outlines proposed changes to the FMA levies paid by financial markets participants who are in scope of the CoFI, ICL and CRD regimes.

What this discussion document does not do

19. This discussion document does not:

- include a review of the efficiency and effectiveness of the FMA, or of its baseline funding needs, as this was reviewed in 2019
- propose increases to levies for financial markets participants who are not in scope of the CoFI, ICL or CRD regimes
- discuss options for licensing fees under the CoFI regime, as this will be addressed through a separate consultation in 2022.

Timeline for the review

20. A proposed timeline for this consultation process and review is set out below.

Guidance considered in the review

21. The review takes into account existing guidance on setting charges, including the Treasury's *Guidelines for Setting Charges in the Public Sector.*[2] The principles set out in these guides are reflected in the options for adjusting levies, where relevant.

Using this discussion document

22. The remainder of this discussion document is structured into different sections. Suggested questions are included throughout the document and all paragraphs are numbered for ease of reference.

23. Submissions on this discussion document are due by **5pm 7 November 2021**. Submissions received after this time may not be considered.

[2] https://treasury.govt.nz/publications/guide/guidelines-setting-charges-public-sector-2017-html

3 Overview of the FMA

What does the FMA do?

24. The FMA is responsible for enforcing securities, financial reporting and company law as they apply to financial services and securities markets in New Zealand. The FMA also regulates securities exchanges, financial advice providers, auditors, supervisors and issuers - including issuers of KiwiSaver and superannuation schemes. The FMA jointly oversees designated settlement systems in New Zealand, with the Reserve Bank of New Zealand (RBNZ).

25. The FMA's main legislative objective is to promote and facilitate the development of fair, efficient and transparent financial markets.

26. Well-regulated financial markets are vitally important to New Zealand's economy and the financial wellbeing of every New Zealander. Strong financial markets help New Zealanders plan for the future and their retirement, access capital and investment opportunities, manage risk and participate in the economy. Well-regulated financial markets that encourage confident and broad participation drive the efficient allocation of capital which benefits the broader economy.

27. As a risk-based conduct regulator, the FMA focuses its resources on conduct that it thinks poses the most significant risk to it achieving its objective.

Who the FMA regulates

28. The table below outlines the types of financial services and products the FMA regulates.

Direct regulatory relationship	Other level of regulation/oversight
Issuers	Brokers
Trading venues (e.g. financial product markets such as NZX)	Wholesale funds
Alternative capital raising (e.g. peer-to-peer and crowdfunding)	Custodians
Audit	Retail platforms and aggregators
Market infrastructure (e.g. settlement systems)	Life insurance
Retail funds, KiwiSaver, superannuation etc.	Non-life insurance

Direct regulatory relationship	Other level of regulation/oversight
Supervisors and licensed independent trustees	Banking: • Deposit taking • Payment services • Mortgages • Overdrafts • Credit cards • Personal loans • Discretionary investment management services (DIMS)
Financial Advice Providers	
Derivatives issuers	

29. Please note that the entities regulated by the FMA will change as a result of the three new legislative regimes discussed further in this paper.

How the FMA regulates

30. The extent of the FMA's oversight varies across the sectors of the financial markets and is prioritised relative to its assessment of the potential risk of harm to investors and/or confidence in markets. This reflects the FMA's intelligence-led and risk-based approach to conduct regulation. The other principles underpinning the FMA's regulatory approach and guide its regulatory decisions, as set out in the FMA's Strategic Risk Outlook[3], are as follows:

- outcome-focused: focusing resources on where the FMA has the greatest opportunity of achieving desired outcomes and reducing harm. The FMA considers the most appropriate action for each situation, recognising the limits of its powers, and considering regulatory burden and the potential unintended consequences of its actions.
- effective and efficient: the FMA regularly reviews the use of its resources to enhance its effectiveness and efficiency.
- consistent and transparent: clearly communicating intentions and expectations to market participants.
- flexible and responsive: adapting and responding quickly to changing market conditions.
- a systems view: the FMA promotes an integrated and coordinated approach to financial markets regulation in New Zealand.

[3] The Strategic Risk Outlook is available at https://www.fma.govt.nz/about-us/corporate-publications/strategic-risk-outlook/

31. The FMA's regulatory approach involves extensive engagement with financial service providers. A good understanding of the business models and conduct 'maturity' of the industry is critical – as is clear understanding on the part of providers as to the FMA's expectations of them. This is a resource intensive model that is designed to identify and reduce risks posed to investors, markets and consumers before they crystallise into harm.

32. This approach relies on being adequately resourced to provide breadth of activity across the markets the FMA regulates and the customers and investors it is charged with protecting. Additionally, it relies on the capability and capacity to undertake detailed investigation of specific issues or entities.

33. The FMA's Annual Corporate Plan 2021/22 provides stakeholders with details of the FMA's priorities and their intended work over the next 12 months. [4] The FMA's current list of priorities includes delivering on the Government's reform agenda across financial advice, banking and insurance and climate-related disclosures.

How the FMA has performed

34. The FMA reports its performance against published performance measures intended to assess its progress towards achieving its regulatory objectives.[5] A key measure of the FMA's effectiveness is that investors are confident in New Zealand's financial markets. The FMA undertakes an annual 'Investor Confidence' survey to assist in testing this measure. The surveys show that investor confidence in the New Zealand financial markets has been steadily increasing over recent years. In 2021, it reached its highest level since 2013 at 72% with markets rebounding significantly after March 2020 (+5 percentage point increase from 2020).[6]

35. The FMA also tests whether stakeholders and consumers of financial services believe that the FMA's actions help raise standards of market conduct and integrity. The FMA carries out an annual 'Ease of Doing Business' survey of stakeholders and market participants to test the conduct part of this question. [7] In 2020, 84% of respondents believed that the FMA's actions help raise standards of market conduct. This suggests that an engaged, well-informed and well-resourced regulator is a positive contributor to New Zealand's financial markets.

36. In 2019/2020, MBIE commissioned PricewaterhouseCoopers (PwC) to conduct an independent efficiency and effectiveness review of the FMA. The purpose of the review was to provide confidence to Government and stakeholders that the FMA is focused on the right activities in support of its main statutory objectives and the extent to which resources are efficiently and effectively directed to these ends.

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[4] https://www.fma.govt.nz/assets/Reports/2021-22-Annual-Corporate-Plan.pdf
[5] More information on the FMA's performance measures is available in its Statement of Performance Expectations: https://www.fma.govt.nz/about-us/corporate-publications/statement-of-performance-expectations/
[6] https://www.fma.govt.nz/assets/Reports/FMA-Investor-Confidence-Report-2021.pdf
[7] See page 44 of our latest Annual Report for more details: https://www.fma.govt.nz/assets/Corporate-Publications/FMA-Annual-Report-2020.pdf

37. PwC found that the FMA is a high performing organisation with good alignment between its activities and its main statutory objective. It also found strong indicators that the FMA uses its resources effectively and efficiently. The review report is available on MBIE's website, at: https://www.mbie.govt.nz/business-and-employment/business/financial-markets-regulation/crown-entities-we-monitor/financial-markets-authority-funding/.

4 The FMA's current funding

38. The FMA's annual appropriation is made up of Crown and third-party funding. In addition to the appropriation, the FMA also receives up to $5 million annually from the Crown for external litigation expenditure. The FMA also recovers some of its expenses through fees for services it provides, including licensing fees and auditor quality review fees.

39. Due to funding pressures, including preparation for the new financial advice regime, the FMA incurred a $5.6 million deficit during the financial year 2019/2020. In response, the FMA's baseline funding was reviewed. Following consultation, Cabinet agreed to increase the FMA's funding by $24.805 million to a total of $60.805 million, phased in over three years.

40. The 2019/2020 FMA funding review provided an increase in funding for the implementation of the new financial advice regime. It also provided a small amount to begin preparatory work that needed to be undertaken ahead of the new CoFI regime coming into effect, but not for its implementation.

5 The need for additional funding

The FMA's evolving remit

41. The FMA's mandate has continued to expand since its funding was reviewed in 2019/2020.

Conduct of Financial Institutions

42. In late 2018 and early 2019 the FMA and RBNZ published two joint reviews into the conduct and culture of banks and life insurers in New Zealand. The New Zealand Government considered options to address the issues that had been identified with the conduct and culture of those key financial institutions. In 2019, it subsequently introduced the Financial Markets (Conduct of Institutions) Amendment Bill (CoFI Bill) to Parliament in response to these findings.[8]

43. The CoFI Bill amends the Financial Markets Conduct Act 2013 (FMC Act) to introduce FMA conduct licensing of banks, insurers and non-bank deposit takers (NBDTs) that provide products and services to consumers/retail customers. It also requires those institutions to have systems and processes in place to ensure they treat consumers fairly. The new regime will also prohibit or regulate incentives based on sales targets.

44. The CoFI regime represents a significant expansion in FMA's remit by giving it direct oversight of the 'entity-level' conduct of these financial institutions and providing the FMA with formal supervisory and enforcement tools to support good conduct that comes with licensing.

45. The total number of prudentially registered banks, insurers and NBDTs consists of 136 entities (currently comprising 89 insurers, 27 banks, and 20 NBDTs). This sector includes systemically important institutions that form part of the critical infrastructure necessary to support the wellbeing of the individuals, families and communities in New Zealand. The FMA and MBIE estimate that around 110 entities that provide services to retail clients may seek a licence under the CoFI regime. The licensed population under the CoFI regime has a number of large and complex institutions which will be challenging to regulate.

46. The FMA anticipates incurring significant costs for implementing the regime, designing and building a new licensing regime and building capability within the FMA to operationalise oversight of the CoFI legislation.

[8] https://legislation.govt.nz/bill/government/2019/0203/latest/LMS262880.html

47. As the CoFI Bill is still going through the legislative process, the timeframes for implementation have not been finalised, but there is a "backstop" for the Bill to come into force three years after being passed. The intention is for the CoFI Bill to be passed in the first half of 2022. Section 7 sets out proposals for the timing of conduct licensing.

Insurance Contract Law

48. In November 2019, the Government agreed to reform insurance contract law to further enhance a suite of consumer protection legislative measures.[9] This complements the CoFI regime objectives, which is also a part of this suite of initiatives.

49. The reforms include:

- placing the responsibility on insurers to ask consumers the right questions when processing new insurance policies, rather than leaving it to consumers to know what to tell their insurer
- requiring insurance policies to be written and presented clearly, so that consumers can easily understand them
- strengthening protections for consumers against unfair terms in insurance contracts.

50. An exposure draft of the ICL Bill will be released for industry consultation in late 2021 and is planned to be introduced to Parliament in early to mid-2022. The intention is for the ICL Bill to be passed by the end of 2022 or early 2023, with the effective date yet to be decided.

51. The FMA will be responsible for monitoring and enforcing key parts of the ICL regime, including having shared responsibility with the Commerce Commission for enforcement in relation to unfair contract terms.

Climate-related Disclosures

52. The Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill (CRD Bill) was introduced to Parliament in April 2021, and is at its Second Reading.[10] The CRD Bill amends the FMC Act, Financial Reporting Act 2013 and Public Audit Act 2001. The CRD Bill inserts a new Part 7A into the FMC Act which provides a framework to require certain climate reporting entities to comply with record-keeping requirements and produce annual climate statements.

53. Climate statements will be required from late 2023/early 2024 at the earliest, and the new regime will capture around 200 entities, including:

- all registered banks, credit unions, and building societies with total assets of more than $1 billion

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[9] https://www.mbie.govt.nz/business-and-employment/business/financial-markets-regulation/insurance-contract-law-review/

[10] https://legislation.govt.nz/bill/government/2021/0030/latest/LMS479633.html?src=qs

- all managers of registered investment schemes with greater than $1 billion in total assets under management
- all licensed insurers with greater than $1 billion in total assets or annual gross premium revenue greater than $250 million
- certain equity and debt issuers listed on licensed exchanges.[11]

54. It is proposed that monitoring and enforcement of the new regime be carried out by the FMA. The FMA's view is that clear guidance on compliance expectations to set the expectations of climate reporting entities in regard to monitoring and enforcement will be needed to ensure the success of the regime.

These changes will require additional funding

55. Although policy work had commenced on both the CoFI regime and ICL regime when the FMA's funding was last reviewed in 2019/2020, funding for the implementation of these new regimes was outside of the scope of that review. This is because the proposals were not developed enough for appropriate funding analysis to be undertaken at that time. However, this review provided the FMA with some funding to begin preparatory work for the CoFI regime and follow-up work on the FMA and RBNZ's 2018/2019 conduct and culture reviews of banks and life insurers.

56. Cabinet has previously noted the FMA would likely require additional funding to oversee the three new regimes.[12]

57. The FMA has also used existing internal resources to begin preparatory work for the CoFI regime and its current large work programmes, such as the new financial advice regime, are not expected to slow in the next few years.

Counterfactual of no change in funding

58. If no new funding is provided, the FMA would take a bare minimum approach to implementing the new regimes, including reprioritising existing funding and resources based on the relative risks of the different activities it regulates. The following paragraphs set out how the FMA expects each regime would be implemented without additional funding.

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[11] Entities that are listed on growth markets are excluded, as are issuers listed on other licensed exchanges that have a market capitalization of no more than $60 million

[12] https://www.mbie.govt.nz/dmsdocument/6929-conduct-of-financial-institutions-introduction-of-a-new-conduct-regime-proactiverelease-pdf; https://www.mbie.govt.nz/dmsdocument/7479-insurance-contract-law-reforms-minute-of-decision-proactiverelease-pdf; https://environment.govt.nz/publications/cabinet-minute-climate-related-financial-disclosures/

CoFI regime

59. The FMA would only be able to take the lightest touch possible approach to licensing. This would mean that there would be no proactive entity-based monitoring. Reactive monitoring would be prioritised based on self-reporting from financial institutions. The FMA would not provide guidance for the new regimes and would only be able to respond to the most serious cases of misconduct.

60. As identified in the 2019 CoFI Regulatory Impact Statement (RIS), the counterfactual of no regulatory changes could lead to significant consumer harm in the long run.[13] The same would also be true if the FMA was not sufficiently resourced to oversee the regime.

61. The 2018 bank conduct and culture review revealed conduct and culture issues within retail banks and weaknesses in the governance and management of conduct risks.[14] That review found issues such customers being charged incorrect fees or interest due to weaknesses in systems and processes. It also highlighted that poor conduct was being driven by sales incentives, resulting in unsuitable products being sold to consumers. Conduct and culture issues leading to poor consumer outcomes and consumer harm were also identified in the subsequent review of life insurers and the fire and general insurer update.[15]

62. An insufficiently resourced regulator could signal to financial institutions that it is acceptable to have a culture that places sales over and above the needs of consumers. It may also result in the continued undetected poor consumer outcomes and harms that were identified in the conduct and culture reviews. Firms may then be encouraged to ignore the regulatory requirements to gain a competitive advantage, which would not protect consumers from the harms the CoFI regime seeks to address.

ICL regime

63. The FMA would be unlikely to be able to monitor and enforce compliance with the presentation and publication requirements, unless resource was diverted from other areas of its remit.

64. As identified in the 2019 ICL regulatory impact statement, if the FMA is not adequately resourced to oversee the new regime it may not be able to act as an effective regulator of the new requirements.[16] A review of insurance contract law in New Zealand identified that consumers do not understand their obligations in relation to their disclosure duty for insurance contracts.[17] Without additional funding, consumers may remain unaware of their

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[13] https://www.mbie.govt.nz/dmsdocument/7372-regulatory-impact-statement-regulatory-regime-to-govern-the-conduct-of-financial-institutions-december-2019-pdf
[14] https://www.fma.govt.nz/assets/Reports/Bank-Conduct-and-Culture-Review.pdf
[15] https://www.fma.govt.nz/assets/Reports/Life-Insurer-Conduct-and-Culture-2019.pdf; https://www.fma.govt.nz/assets/Reports/Insurance-conduct-and-culture-fire-and-general-insurers-update.pdf
[16] https://www.mbie.govt.nz/dmsdocument/7480-impact-statement-insurance-contract-law-reforms-proactiverelease-pdf
[17] https://www.mbie.govt.nz/dmsdocument/962-issues-paper-review-insurance-contract-law-pdf

disclosure rights and obligations, and insurers may continue to decline claims for breach of disclosure obligations, which could have disproportionate and long term consequences for those insured. More generally, a lack of FMA funding for this regime could undermine the effectiveness of our insurance markets and result in consumer harm.

CRD regime

65. The FMA's independent monitoring, guidance on compliance expectations and enforcement of the CRD regime will be an essential part of promoting high quality climate reporting.

66. Without additional funding, the FMA would be limited to targeting entities that fail to file a climate statement, and would not be able to provide guidance or undertake monitoring. This could lead to entities filing low quality or misleading disclosures, which in turn would affect investors' ability to access information about how climate change may impact a business' strategies and financial position.[18]

Other FMA functions

67. To implement the new regimes, even to this minimal operational level, the FMA would need to divert funding and resources from other areas of its remit. This would undermine core areas of the FMA's existing remit, likely leading to increased risk of harm to consumers.

68. It would require a major restructure of organisational resources to deliver bare minimum operable oversight across the FMA's remit, reducing monitoring in other critical areas. The FMA would need to reassess frontline activity in the highest risk areas of its core mandate and reduce work in any discretionary areas. This would also mean:

    - a significant reduction in guidance to assist firms and professionals to comply with the law
    - less information and resources to help investors and consumers make better investment and financial decisions
    - generally less engagement with other agencies individually and collectively through the Council of Financial Regulators (CoFR), compromising system coordination and efficiency.

69. As such, the FMA's ability to fulfil its statutory responsibilities going forward would be compromised.

70. Further, the FMA's reactive approach to monitoring and constrained response to harms after the fact that would be both slow and limited. This would create a risk of regulatory failure across multiple areas, which would likely lead to a decline in confidence in both the FMA and the regimes it regulates. The FMA and MBIE therefore believe that it would not be viable for

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[18] https://environment.govt.nz/assets/Publications/REDACTED-CRFD-Regulatory-Impact-Assessment-July-2020.pdf

the FMA to meet Government and stakeholder expectations, nor the policy objectives of the regimes, without additional funding.

External assessment of new funding options

71. PwC's 2020 independent efficiency and effectiveness review of the FMA found strong indicators that the FMA uses its resources effectively and efficiently. Given PwC's review was carried out recently, MBIE does not consider another baseline review is required for the 2021 funding review. Instead, MBIE commissioned Deloitte to conduct an independent assessment of the FMA's new funding requirements.

72. The findings from the independent assessment have been incorporated in the funding options set out in sections 6, 8 and 9 of this document. Deloitte's report is available on MBIE's website alongside this discussion document to inform stakeholder consideration of the proposals.[19]

73. MBIE is interested in hearing stakeholder views on these options before developing a view on a preferred option for any of the regimes.

The funding options

74. Two funding options relating to each of the regimes were considered in detail as part of the independent assessment and these are described in the next sections of this discussion document. In addition, the FMA also considered scenarios of no more funding and a more intensive regulatory approach.

75. MBIE and the FMA consider that no additional funding is not a viable option. The FMA considered a more intensive regulatory approach, such as close and continuous monitoring of financial institutions, but did not believe it would be appropriate in New Zealand at this time.

76. The two options proposed were assessed against the following criteria:

Criteria	Components	Description
Strategic alignment	• Engagement with the market. • Deterrence of misconduct. • Consumer confidence.	Explores how well each option is likely to give effect to the legislative intent of the regime (i.e the intended outcomes), and how well it fits with known FMA strategy and approaches.
Achievability	• Ability to build and recruit. • Resilience and future proofing.	Explores how well each option is likely to be implemented, including risks and the ability for the FMA to scale or adjust its approach as details for the three regimes becomes clearer.
Good Public value		Discusses the balance between the above and the costs of the options.

[19] https://www.mbie.govt.nz/business-and-employment/business/financial-markets-regulation/crown-entities-we-monitor/financial-markets-authority-funding/

2	Do you have any feedback on the criteria for assessing the funding options?

77. The options were developed using seven "regulatory pillars" to characterise the FMA's regulatory activities across a consistent set of categories or "types" of work. These pillars are summarised below:

Pillar	Description
Identify	Identify and prioritise for attention areas of regulatory risk and harm. This tackles areas where the risk of harm is the greatest, reflecting an intelligence-led and risk-based approach.
Set Standards	Set expectations for the financial sector. This provides clarity and certainty for businesses and consumers.
Influence	Influence and guide the financial sector to meet the FMA's expectations, and influence and guide users of financial services. This builds collaborative and engaging relationships with the sector, and trust for consumers.
Permit	Authorise financial products, services, and markets. This ensures, for example, the FMA only authorises entities that meet the licensing criteria and have sufficient capability to operate in the financial markets.
Assess	Determine if the financial sector is meeting the FMA's expectations. This holds the financial sector to account and helps build consumer confidence and trust.
Respond	Decide on the appropriate action to take if the financial sector is not meeting the FMA's expectations. This helps build consumer confidence by acting as a credible deterrent to misconduct.
Evaluate	Evaluate impact and whether the FMA has been effective and efficient in its actions. This ensures the FMA consistently promotes the confident and informed participation of businesses, investors, and consumers in the financial markets.

78. The FMA developed the funding options by considering the resourcing that will be required to support each of the regulatory pillars identified above, rather than allocating new headcount by current functional teams. This reflects that the FMA anticipates that its structure may be significantly different in the future.

6 Funding options – Conduct of Financial Institutions

Summary of options

	2022/23	2023/24	2024/25	2025/26 & outyears
CoFI Option 1	$6.847 million	$8.432 million	$11.538 million	$15.243 million
CoFI Option 2	$5.640 million	$5.808 million	$8.062 million	$9.945 million

79. Under CoFI Option 1, the FMA would take a proactive approach to the CoFI regime, with capacity to enable dedicated focus and engagement across industry segments. The FMA's funding for CoFI would increase to $15.243 million per year from 2025/2026. Under this option, the FMA would seek to hire an additional 102 FTE.

80. Under CoFI Option 2, the FMA would take a more reactive approach, and focus its resources on responding to misconduct and enforcement of the regime. The FMA's funding for CoFI would increase to $9.945 million per year from 2025/2026. Under this option, the FMA would seek to hire an additional 67 FTE.

81. In both cases, the proposed funding increase is phased over four years, reflecting how the FMA's focus will evolve over this time from designing and building, to implementing and then operating the regime, supporting the sector through licensing, and then on to public awareness campaigns, monitoring and taking regulatory action.

82. The following table provides the number of FTE for each option by the end of 2025/2026, broken down to show the amount of additional resource that will be able to be applied to each regulatory activity:

Pillar	CoFI Option 1	CoFI Option 2
Identify	6	5
Set standards	5	2
Influence	11	2
Permit	3	3
Assess	34	25
Respond	21	20
Evaluate	6	2
Support	16	8
Total FTEs	**102**	**67**

CoFI Option 1

83. The table below shows the breakdown of FMA spending on CoFI Option 1 across future financial years:

Additional Funding ($m)	2022/23	2023/24	2024/25	2025/26 & outyears
Cumulative New FTE	22	51	75	102
Capital Costs	$1.426	$0.381	$0.072	$0.081
Project Operating Costs	$1.382	$0.020	$0	$0
People & Capability Development Costs	$0.292	$0.191	$0.282	$0.214
Personnel Costs	$2.805	$6.502	$9.562	$13.005
Other Operating Costs	$0.589	$0.956	$1.217	$1.511
Depreciation & Amortisation	$0.353	$0.382	$0.406	$0.433
Total funding	**$6.847**	**$8.432**	**$11.538**	**$15.243**

84. This funding option would enable the FMA to:

- develop a detailed licensing assessment process resulting in an enhanced and comprehensive understanding of each sector and entity type, with a manual assessment component for higher risk institutions.
- evaluate information held by the FMA as well as publicly available information and information provided by the RBNZ (such as entity risk ratings) as part of that assessment process to provide a comprehensive view of risk factors to be considered.
- authorise entities that meet the licensing criteria and have sufficient capability to operate in the financial markets.
- undertake a proactive monitoring approach aimed at identifying poor conduct before consumer harm occurs. This would include proactive on-site monitoring of the largest registered banks plus the largest insurers, with NBDTs and remaining banks and insurers subject to a mixture of proactive/reactive and entity/portfolio based-monitoring. The frequency of onsite and desk-based monitoring would be determined according to risk and intelligence gathered from sources such as thematic monitoring.
- adopt a proportionate approach to monitoring to facilitate lower risk entities' conduct maturity journey.
- undertake comprehensive and targeted thematic monitoring projects.
- quickly develop FMA's understanding of sectors through its proactive monitoring approach.

- influence and set standards for the sector through guidance to proactively tackle conduct issues, while retaining the ability to launch multiple significant enforcement-led actions if required.
- engage in more consumer-focused research and behavioural insights, enabling the FMA to build and deliver a more consumer-driven approach. This includes both broad and targeted consumer advocacy campaigns, increased consumer stakeholder support, customer journey maps for core products and services, and enhanced social media management.
- increase both bilateral and collective engagement with other financial regulators and policymakers, which is critical to managing gaps and overlaps with the RBNZ and Commerce Commission.

Strategic alignment

85. Under CoFI Option 1, the FMA would have the ability to focus on influencing industry conduct and culture through setting standards and issuing guidance, rather than focussing on enforcement after the fact. Engagement in this option would allow the FMA to build deeper relationships with regulated sectors, resulting in improved conduct through influencing behaviour rather than enforcement action by default. However, CoFI Option 1 would still give FMA the resource to respond to misconduct in a proportionate manner. This would better give effect to the legislative intent of the CoFI regime that financial institutions treat their customers fairly.

86. CoFI Option 1 would better support risk-based licensing (which would materially improve the ability of the FMA to identify risks to consumers) and proactive monitoring (aimed at addressing conduct and culture issues before such issues manifest as consumer harm). It provides the most appropriate assessment available and more sector-specific information.

87. This option would achieve greater financial market system co-ordination through engagement and influence with CoFR agencies, which provides a-whole-of-system view and a cohesive government-wide approach to support effective financial markets regulation.

88. CoFI Option 1 would equip the FMA with a full range of regulatory responses, including enforcement and litigation, to deter misconduct. This is particularly important against large and well-resourced institutions.

89. Resource and research to support consumer-focussed behavioural insights and targeted consumer campaigns would enable the FMA to build and deliver a consumer approach under CoFI Option 1. This enhanced understanding of consumers would mean the FMA could better target campaigns, leading to consumers making more informed decisions and financial institutions improving their conduct and culture to meet their customers’ expectations.

Achievability

90. The key achievability risk for CoFI Option 1 is around staff recruitment and retention. It would be more challenging for the FMA to recruit the higher number of new FTE required for CoFI Option 1 than for CoFI Option 2 (102 over four years, compared to 67 over four years). Successful delivery would also require the FMA to manage and mitigate staff turnover.

91. The FMA has in recent years faced a highly competitive and tight labour market, managing both recruitment and retention pressures. This reflects that the skill sets required by the FMA have been in demand within the financial services industry, and the FMA cannot match private sector levels of remuneration at some career levels. Despite this, the FMA has successfully on-boarded significant numbers of new staff in recent years, including replacing staff who have left the FMA.

92. A key feature of CoFI Option 1 is that it would enable the FMA to maintain focus on a range of sub-segments within the regulated population, including by dedicating resource to specific entities. This should make it more able to respond to changes and maintain specialists in relevant areas.

93. The proactive approach of CoFI Option 1 would seek to build willingness and ability to comply across the market from the regime's outset. The FMA would identify areas of good practice and promote and influence its adoption by similar entities in the sector. This should mean the FMA would need to devote relatively less resourcing to enforcement in the long term.

94. CoFI Option 1 would provide the FMA with greater capacity to respond to any changes to the regime as the Bill is finalised, and to any new conduct issues identified in the market.

Good Public Value

95. Compared to CoFI Option 2, CoFI Option 1 provides:

    - $12.6 million more funding over the four year horizon of 2022/2023 – 2025/2026
    - $5.3 million more funding annually from 2025/2026.

96. CoFI Option 1 is likely to better deliver on the intended outcomes of the CoFI regime. Deeper FMA engagement with industry and consumers would mean the FMA would be able to influence behaviour, set conduct standards and identify risks from an early stage of the regime. This would equip the FMA to address misconduct that may lead to consumer harm in a more responsive and proportionate manner.

97. The proactive and collaborative regulatory approach under this option aligns with the FMA's acknowledged strengths and broader strategic approach, and because of this is less likely to require refinement in the medium term.

98. However, it would be more difficult for the FMA to recruit 102 new staff over four years rather than the 67 proposed under CoFI Option 2.

99. While the FMA's costs are higher under Option 1, which may involve some entities paying higher direct costs in the form of levies, some entities' total compliance costs may be lower than under this option, as they would have better access to guidance and engagement from the FMA.

100. CoFI Option 1 may also deliver greater benefits for consumers. For example, the FMA issuing clear, proactive guidance may decrease the likelihood of misconduct leading to consumer harm.

101. CoFI Option 1 is therefore the FMA's preferred option. Deloitte's assessment also recommended Option 1.

CoFI Option 2

102. The table below shows the breakdown of FMA spending on CoFI Option 2 across future financial years:

Additional Funding ($m)	2022/23	2023/24	2024/25	2025/26 & outyears
Cumulative New FTE	16	35	53	67
Capital Costs	$1.408	$0.351	$0.054	$0.042
Project Operating Costs	$1.382	$0.020	$0	$0
People & Capability Development Costs	$0.189	$0.095	$0.158	$0.101
Personnel Costs	$2.040	$4.463	$6.759	$8.544
Other Operating Costs	$0.274	$0.512	$0.708	$0.860
Depreciation & Amortisation	$0.347	$0.366	$0.384	$0.398
Total funding	$5.640	$5.808	$8.062	$9.945

103. This funding option would enable the FMA to:

- develop a more generic and less risk-based licensing application and assessment process, compared to CoFI Option 1. While the FTE count for the Identify and Permit pillars remain broadly the same between CoFI Options 1 and 2, CoFI Option 1 benefits from an additional 9 FTE in the Assess pillar. These staff would be available under Option 1 to provide expertise on complex or in-depth licence applications. This additional resource would not be available would under CoFI Option 2, so the FMA could carry out a less detailed licensing process.

- assess information held on FMA systems but not information held by other regulators as part of the application assessment, which would result in a partial view of risk factors. The FMA would have some ability to ask limited resource-intensive questions and carry out enhanced due diligence on applications that indicate the highest risk. This means the FMA would have less insight into its regulated population compared to CoFI Option 1, which would lead to more general assessment of knowledge of risks and opportunities.

- identify risks and harms in a largely reactive manner, which would mean consumer harm would generally be identified after the fact. However, CoFI Option 2 would provide the FMA with sufficient resource to enable a relatively swift response to misconduct, giving the FMA the flexibility and capability to allocate resourcing based on an intelligence-led and harms-based approach.
- undertake relatively infrequent desk-based and entity-based monitoring compared to CoFI Option 1, limited to entities that pose the highest risk. There would be little to no on-site monitoring.
- undertake a limited number of thematic reviews, which would be largely informed by general environmental scanning and reactive monitoring, rather than deeper insights gathered from a detailed licence application or proactive entity based engagement. Similarly, regulatory return question sets would likely be more general in nature with little or no targeting towards relevant sectors.
- undertake a more enforcement-led approach, rather than setting standards and engaging with industry to improve practice.
- use existing relationships with other regulators to tackle gaps and overlaps. Under this option, the FMA would only look to provide limited regulatory system leadership.
- provide some selected consumer engagement, which would prioritise areas considered most important, and may need to specialise in either banking or insurance consumers, rather than achieving broader coverage.

Strategic Alignment

104. Under CoFI Option 2, the FMA would have a lesser ability to effectively influence industry conduct and culture through setting standards and guidance, therefore requiring more focus on enforcement after the harm has occurred. This could mean industry lacks of clarity and certainty about the regulator's expectations, which may lead in turn to overly conservative industry behaviour that could be detrimental to consumer outcomes.

105. CoFI Option 2 supports risk-based licensing to a lesser extent than CoFI Option 1, which would mean the FMA has less ability to identify risks to consumers. A more reactive identification of harms and risks would mean the FMA would address conduct and culture issues after the issues have manifested as consumer harm.

106. The reduced focus on system leadership and the FMA using its relationships with other regulators to tackle gaps and overlaps presented by this option would also likely increase regulatory burden.

107. Under CoFI Option 2, the FMA would be equipped to provide a base level of credible deterrence under the Response pillar, as resource constraint may hinder its ability to use the full range of regulatory tools. While the Response pillar has a similar level of FTE when compared to CoFI Option 1, the assessment resource would be more focused on actual harm

assessment and the use of more formal enforcement tools, rather than proactive monitoring and prevention.

108. The FMA's more limited consumer education focus under CoFI Option 2 may reduce consumer awareness and therefore the potential impact of the new regime.

Achievability

109. As with CoFI Option 1, the key risk to achievability of CoFI Option 2 is the FMA's ability to recruit and retain staff. This means that there is less risk of the FMA not delivering on the regulatory approach under CoFI Option 2, but at the same time there is a risk that the FMA's resourcing is not high enough to meet stakeholder expectations in certain areas. There is also a risk under CoFI Option 2 that FMA staff may have higher workloads and increased stress, which could risk increased turnover and loss of capability, capacity and skills.

110. Under CoFI Option 2, the FMA would have less knowledge and specialist expertise in sub-sectors, which would take time to source and establish if this became necessary.

111. The reactive approach under CoFI Option 2 may be effective for an extended period of time after the introduction of the new regime. However, it is more likely that the FMA would need to fundamentally review and revise its regulatory approach in response to market issues and behaviours, which could require the FMA to reprioritise resources from other areas.

Good Public Value

112. Compared to CoFI Option 1, CoFI Option 2 provides:

- $12.6 million less funding over the four year horizon of 2022/2023 – 2025/2026
- $5.3 million less funding annually from 2025/2026.

113. CoFI Option 2 carries a lower cost to levy payers than CoFI Option 1, but it may result in higher total cost of compliance for some entities, who would have less access to guidance and engagement from the FMA. This could in turn result in greater harm to consumers, as the FMA may not have the ability to address harm until after it has occurred.

114. If the reactive approach under CoFI Option 2 was found to be inadequate, the costs of rectifying the situation (e.g. moving more towards CoFI Option 1) would likely be higher than doing so from the outset – and in the meantime, more harm would have occurred.

3	Do you agree with the analysis of the FMA funding options for CoFI? Which option do you consider to be most appropriate and why?
4	How would CoFI Option 1 impact you/your business compared to CoFI Option 2?
5	If you were to make material changes to the CoFI options, how would you do so and on what basis?

7 Implementation – Conduct of Financial Institutions regime

Background - objectives

115. This section seeks feedback on MBIE's preferred approach to implementation timing of the Financial Markets (Conduct of Institutions) Amendment Bill (CoFI Bill).

116. The CoFI Bill will introduce a new regime that regulates the general conduct of registered banks, licensed insurers and licensed NBDTs (collectively referred to as 'financial institutions' under the CoFI Bill) for the first time. The CoFI regime will also require financial institutions to obtain a licence from the FMA to act as a financial institution and offer products and services to consumers/retail customers (a 'conduct licence').

117. The intent is for the CoFI Bill to pass through all stages of the Parliamentary process and receive Royal assent by the first half of 2022. This would allow sufficient time for any amendments to be made to the Bill and for full consideration of regulations necessary to support the new regime, following recent public consultation on the CoFI regime.

118. To prepare for the new regime and obtain a conduct licence, financial institutions will need to review their businesses and carefully consider what they need to do to meet the proposed requirements. They must have systems and controls in place to ensure good conduct and fair treatment of customers. They will also need to ensure that their products and services are clearly understood by customers and suited to their needs.

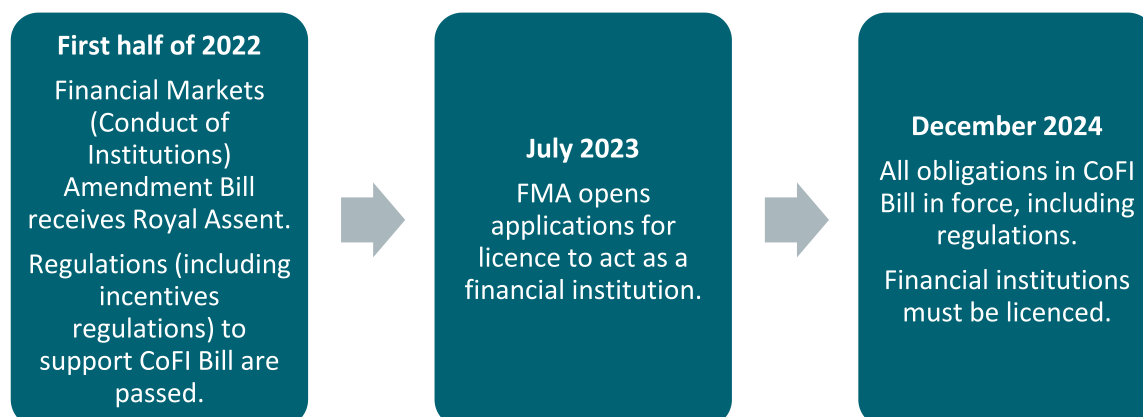
119. MBIE proposes the following objectives to guide how the CoFI regime should be implemented:

    - The new regulatory regime comes into effect as soon as practicable, to improve the conduct of financial institutions, while ensuring financial institutions and the FMA can transition to the CoFI regime with an appropriate amount of time to prepare.

    - Minimise, to the extent possible, unnecessary compliance costs and burden associated with preparation and transition to the new regime.

6	Do you have any feedback on the objectives for the implementation of the CoFI regime?

Overview – proposed high level timeframes



Analysis – factors we have considered

120. In proposing this timeframe for implementing the CoFI regime, MBIE has considered the factors outlined below.

Sufficient time for the industry to prepare

121. The CoFI regime represents a significant shift in how financial institutions are regulated. Many institutions have already made good progress towards embedding good conduct and culture into their organisations. Others, however, have more work to do to meet the requirements of the new regime. For all institutions, ongoing investment of time and resources will be needed to meet the licensing standard. We anticipate that tasks to prepare for the new regime will include:

- developing fair conduct programmes
- ensuring any incentives arrangements offered comply with incentive regulations
- preparing fair conduct programme summaries for publication
- reviewing and amending contractual arrangements (eg agency agreements with intermediaries)
- undertaking product and service reviews
- undertaking staff training and investment in IT systems.

122. Financial institutions will need sufficient time to prepare internally, as well as time to prepare an application for a conduct licence and submit this to the FMA once the period for making applications opens.

123. Although there is no conduct regulation currently in place in New Zealand, these changes have been clearly signalled for many years, giving institutions some time to prepare. The FMA has been communicating to financial institutions its continued expectation that they should demonstrate good conduct in their dealings with consumers, and has asked institutions to check they have systems and controls in place needed to ensure good conduct and fair treatment of consumers. Further, the CoFI Bill has been in development since December 2019, signalling that the new CoFI regime is coming. Therefore, we presume institutions have been, and will continue to, review and bring their business practices up to a standard that will comply with the new requirements. However, the CoFI Bill covers a diverse range of financial institutions, and we understand there are varying degrees of conduct maturity within, and across sectors.

Resourcing the FMA

124. As discussed in Section 5, the FMA is not currently resourced to implement the CoFI regime. The first tranche of increased funding to implement the CoFI regime is expected from July 2022, when new levies are introduced. This restricts the FMA's ability (before expected new funding in mid-2022) to adequately prepare internally for CoFI implementation (for example, to recruit new staff, design and build systems and develop assessment frameworks). In addition, as with other licensing regimes, the FMA will need to complete key deliverables such as developing the licensing process, application questions and guidance, and licensing standard conditions.

125. We expect that in the period between July 2022 and July 2023 (when the licensing window opens), the FMA will increase industry engagement and may develop regulatory guidance if helpful to provide clarity about its expectations for various aspects of the CoFI regime.

Timing of Financial Advice Provider full licensing

126. Transitional licences for financial advice providers (FAPs) are valid until 15 March 2023. The FAP full licensing window is currently open. While applicants are encouraged to apply sooner rather than later, it is expected that the FMA may receive a number of FAP full licence applications towards the end of this transitional window (towards December 2022).

127. We consider that it would be preferable to stagger the FAP licensing window and the CoFI licensing window to avoid any overlap. If the two licensing windows were to overlap, this could stretch the FMA's licensing resources and runs the risk of undermining FAP full licensing by, for example, having to divert resources away to prepare for and undertake CoFI licensing.

128. We also acknowledge that if the FAP and CoFI licensing windows overlapped, this could be burdensome for financial institutions who are required to be licensed under each regime.

7	Do you agree that the CoFI licensing window should begin after financial advice provider transitional licensing window has closed?

8	Are there other areas of regulatory reform in the financial services sector, where implementation overlaps with the proposed timeframes above, and that you consider it would be preferable to align CoFI implementation with those timeframes from an efficiency perspective? If so, please provide examples.

Sufficient time for the FMA to assess conduct licence applications

129. We propose an 18 month licensing window for financial institutions to obtain a conduct licence from the FMA before all obligations in the CoFI Bill come into force, including the requirement to be licensed in order to act as a financial institution.

130. MBIE and the FMA currently estimate that approximately 110 financial institutions would need to obtain a conduct licence.[20] While the FMA's general guideline for other licence types has been that it aims to process licensing applications within three months, this timeframe can be extended if FMA has, for example, not been provided with all the information it needs. In view of the different levels of conduct maturity across, and within, the banking, insurance, and NBDT sectors, higher levels of engagement may be required with some applicants for the FMA to be satisfied that a license should be issued. The licensing period needs to allow sufficient time for this process.

131. More generally, licensing is a central aspect of the framework of the new regime and the requirement to obtain a licence provides an initial quality control 'gateway' for sector applicants to pass through. Having an efficient and effective licensing process is critical to the overall effectiveness of the regime.

132. The licensing process provides valuable information to the regulator about individual entities as well as at a sector level, which will assist in assessing conduct maturity and conduct risks. The knowledge gained through the licensing process directly informs the monitoring and supervisory approach that the FMA will take. Therefore, it is important that an adequate time period is provided for assessing conduct licence applications.

9	Do you have any feedback on the proposed 18 month window between applications for a conduct licence opening and all the obligations of the CoFI Bill coming into force (including having a conduct licence)?

Possible option of 'phased' licensing window

133. The CoFI Bill provides the ability to bring a phased approach to the obligation to hold a conduct licence. This means the requirement to hold a conduct licence for different classes of financial institution can come into effect on different dates. Different classes of entities could also have different dates for applications to open and/or close.

[20] Not all registered banks, licensed insurers and licensed NBDTs will need to obtain a conduct licence. For example, if a bank only provides services to wholesale clients.

134. The CoFI Bill provides the following example to illustrate:

Example

The requirement for financial institutions to hold a market services licence comes into force on a particular date (**date A**).

However, regulations under this clause provide that the requirement does not apply to NBDTs until a later date (**date B**).

While the requirement applies to registered banks and insurers on date A, it only starts to apply to NBDTs on date B.

135. A 'phased' licensing window may provide for a more efficient method for financial institutions to apply for a licence and for the FMA to assess licence applications. For example, there may be benefits for the FMA to consider all bank licence applications in a single window (and similarly for other classes of entities) given the differences in circumstances, products and business models between each class of financial institution (banks, insurers and NBDTs). This may also reduce the risk noted above of receiving many applications towards the end of the licensing window putting pressure on the FMA, as well as the risk of financial institutions operating without a licence once obligations are in force.

136. If a phased approach based on class of financial institution were to be adopted, a judgement would need to be made in what order classes of financial institutions would be phased in. This would consider such factors as fairness, conduct risk to consumers, and the level of conduct maturity. This would not be a straightforward exercise as some factors may conflict with each other. For example, a large bank may pose greater conduct risk to consumers due to the size and complexity of the business, large product ranges and complex distribution methods. However, they may have been assessed as having a higher degree of conduct maturity than other financial institutions.

10	Do you think a phased approach to CoFI licensing would be preferable, compared to a single licensing window for all types of financial institutions? Please provide reasons.
11	If a phased approach to CoFI licensing would be preferable, what factors do you think should be considered in determining the order of phasing?
12	Do you have any other general comments regarding the implementation timing of the CoFI regime?

8 Funding options – Insurance Contract Law

137. The ICL exposure draft Bill is intended to be released in late 2021. As such, the below options have been developed based on the Government's high-level policy decisions and some subsequent discussions between FMA and MBIE. As the final design of the ICL regime is not yet clear, the funding options developed have required significant amounts of judgement. The details of the ICL options may need to be reviewed once the regime has been finalised.

Summary of options

	2022/23	2023/24	2024/25	2025/26 & outyears
ICL Option 1	$0.723 million	$1.262 million	$1.432 million	$1.703 million
ICL Option 2	$0.408 million	$0.679 million	$0.865 million	$1.141 million

138. Under ICL Option 1, the FMA would take a proactive approach to the regime, including industry engagement and guidance. The FMA's funding for ICL would increase to $1.703 million per year from 2025/2026. Under this option, the FMA would seek to hire an additional 12 FTE.

139. Under ICL Option 2, the FMA would take a more reactive approach to the regime. The FMA's funding for ICL would increase to $1.141 million per year from 2025/2026. Under this option, the FMA would seek to hire an additional 8 FTE.

140. The funding increase is proposed to be phased in gradually over the four year period, reflecting the longer implementation period for the ICL regime. The FMA's focus over the period will evolve from shaping the FMA's approach under the new regime, to monitoring, engagement with industry and consumers, to business as usual monitoring.

141. The following table provides the additional number of FTE required for each option by the end of 2025/2026, broken down to show which regulatory activity that resource will be applied to:

Pillar	ICL Option 1	ICL Option 2
Identify	1	1
Set standards	2	1
Influence	2	1
Permit	0	0
Assess	4	3
Respond	2	2

Pillar	ICL Option 1	ICL Option 2
Evaluate	0	0
Support	1	0
Total FTEs	**12**	**8**

ICL Option 1

142. The table below shows the breakdown of FMA spending on ICL Option 1 across future financial years:

Additional Funding ($m)	2022/23	2023/24	2024/25	2025/26 & outyears
Cumulative New FTE	4	8	10	12
Capital Costs	$0.012	$0.012	$0.006	$0.006
Project Operating Costs	$0.100	$0.100	$0	$0
People & Capability Development Costs	$0.053	$0.026	$0.023	$0.160
Personnel Costs	$0.510	$1.020	$1.275	$1.530
Other Operating Costs	$0.044	$0.096	$0.118	$0.140
Depreciation & Amortisation	$0.004	$0.008	$0.010	$0.012
Total funding	**$0.723**	**$1.262**	**$1.432**	**$1.703**

143. This funding option would enable the FMA to:

- quickly develop the FMA's understanding of what "good" looks like under the ICL reforms, allowing comprehensive guidance and engagement with the sectors
- proactively monitor compliance with the new requirements relating to consumer insurance contracts, by specifically dedicating resource to monitor the plain language requirements, presentation requirements and information that insurers must make publicly available
- develop engagement materials to increase consumers' understanding of their rights, protections and obligations under New Zealand insurance contract law
- prepare guidance on specific issues that have been identified based on insights gathered from monitoring the policies, or through undertaking thematic monitoring
- respond to unfair contract terms in relation to financial services and financial advice products where engagement with industry is insufficient to influence compliance with the new regime
- facilitate engagement with the sector and other agencies (individually and collectively through CoFR).

Strategic Alignment

144. ICL Option 1 would enable the FMA to provide the sector with clear guidance in relation to consumer policy presentation requirements and unfair contract terms. This is likely to influence insurer behaviour to better meet the legislative intent.

145. ICL Option 1 would send a signal to well-resourced insurers that the FMA has the ability to respond with a variety of regulatory tools. This is necessary to promote credible deterrence of misconduct and achieve the government policy objective of improved consumer protection.

146. This option would provide the FMA with capacity to develop meaningful consumer campaigns that will enhance consumer confidence and drive better understanding of rights and obligations.

147. ICL Option 1 would facilitate engagement with the sector and other agencies, to ensure system coordination. This is particularly important under the ICL regime as enforcement of unfair contract terms will be a shared responsibility between the FMA and Commerce Commission.

Achievability

148. As with the CoFI regime, the key achievability risk for ICL Option 1 would be the FMA's ability to recruit and retain staff (12 under ICL Option 1, compared to 8 under ICL Option 2). However, the required skills are expected to be accessible in the market over the 3-4 year implementation period.

149. ICL Option 1 arguably provides the FMA with greater ability to reprioritise resources if the regulatory approach changes. However, there is a risk that with hindsight the additional FTE under ICL Option 1 could be seen to have provided relatively little marginal value.

Good Public Value

150. Compared to ICL Option 2, ICL Option 1 provides:

- $2.0 million more funding over the four year horizon of 2022/2023 – 2025/2026
- $0.6 million more funding annually from 2025/2026.

151. ICL Option 1 is likely to better deliver on the intent of the ICL regime because:

- the proactive and collaborative approach should drive better value for insurers and consumers (in terms of certainty, guidance and requirements)
- the approach should deliver some of the consumer benefits intended by the reforms more rapidly than Option 2.

152. While ICL Option 1 is higher cost to levy payers, the sector's overall compliance costs will also be high. The total compliance costs may be lower for some insurers under ICL Option 1, as they would have better access to guidance and engagement from the FMA.

153. ICL Option 1 is therefore the FMA's preferred option. Deloitte's assessment also recommended Option 1.

ICL Option 2

154. The table below shows the breakdown of FMA spending on ICL Option 2 across future financial years:

Additional Funding ($m)	2022/23	2023/24	2024/25	2025/26 & outyears
Cumulative New FTE	2	4	6	8
Capital Costs	$0.006	$0.006	$0.006	$0.006
Project Operating Costs	$0.100	$0.100	$0	$0
People & Capability Development Costs	$0.024	$0.010	$0.018	$0.014
Personnel Costs	$0.255	$0.510	$0.765	$1.020
Other Operating Costs	$0.022	$0.049	$0.071	$0.093
Depreciation & Amortisation	$0.002	$0.004	$0.006	$0.008
Total funding	$0.408	$0.679	$0.865	$1.141

155. This funding option would mean that:

- the FMA would either perform "light touch" monitoring of the plain language requirements, specific presentation requirements and unfair contract terms, or divert resources from other areas of its core mandate to ensure wider coverage for ICL.
- the FMA would adopt a more reactive monitoring approach, with issues more likely to be identified after consumer harm has already occurred.
- proactive monitoring/information and intelligence gathering would be more constrained, delivering insights of more limited value. This would in turn impact the FMA's ability to influence the market.
- engagement with the market to assist market participants with best practice would be constrained, leading to a less collaborative and more enforcement based approach with the sector.
- there would be limited ability to enhance consumer understanding through information campaigns.

Strategic Alignment

156. Under ICL Option 2, the FMA would have less resource dedicated to setting standards and influencing regulatory pillars. This may mean the FMA is less able to provide insurers detailed guidance in relation to the consumer policy presentation requirements and unfair contract terms. This could mean that insurers have less certainty of their obligations under the new regime.

157. A reduced focus on consumer campaigns and a more reactive FMA monitoring approach under ICL Option 2 could similarly mean consumers are less aware of their rights under the new regime, and may be more vulnerable to harm.

Achievability

158. The achievability risk of staff recruitment and retention under ICL Option 2 is lower than ICL Option 1, given the small amount of FTE required.

159. While it is possible the reactive approach under ICL Option 2 would be effective for an extended period of time after the introduction of the new regime, it is more likely that the FMA would need to revise its approach in response to market issues and behaviours.

Good Public Value

160. Compared to ICL Option 1, ICL Option 2 provides:

- $2.0 million less funding over the four year horizon of 2022/2023 – 2025/2026
- $0.6 million less funding annually from 2025/2026.

161. This option is lower cost for levy payers than ICL Option 1, but could lead to higher compliance costs for some insurers, as they would have less access to FMA guidance and services from the FMA. Similarly, it may take longer for consumers to see the benefits of this new regime under ICL Option 2.

13	Do you agree with the analysis of the FMA funding options for ICL? Which option do you consider to be most appropriate and why?
14	How would ICL Option 1 impact you/your business compared to ICL Option 2?
15	If you were to make material changes to the ICL options, how would you do so and on what basis?

9 Funding options – Climate-related Disclosures

162. These proposals are based on the CRD Bill as tabled for its second reading. Should there be significant changes to the legislation, further changes may be required to FMA's regulatory approach and funding needs.

163. The FMA has based its proposed options for the CRD regime on a higher average cost per employee, given this is a new area of developing specialised knowledge and there is an anticipated demand for skilled staff from financial services businesses.

Summary of options

	2022/23	2023/24	2024/25	2025/26 & outyears
CRD Option 1	$1.790 million	$2.105 million	$1.856 million	$1.856 million
CRD Option 2	$1.307 million	$1.657 million	$1.411 million	$1.411 million

164. Under CRD Option 1, the FMA would take a proactive approach to the regime, with capacity across the relevant technical domains. The FMA's funding for CRD would increase to $1.856 million per year from 2025/2026. Under this option, the FMA would seek to hire an additional 8 FTE.

165. Under CRD Option 2, the FMA would take a more reactive approach to the regime, with less focus on guidance on compliance expectations and assistance/engagement with the industry. The FMA's funding for CRD would increase to $1.411 million per year from 2025/2026. Under this option, the FMA would seek to hire an additional 6 FTE.

166. Given the tight timeframe for implementation, phasing over the four years would be concentrated in the initial years to ensure resource is on-boarded as swiftly as possible. The FMA's focus over the period will evolve from building capability, guiding and supporting firms through the initial period, to business as usual monitoring.

167. The following table provides the additional number of FTE required for each option by the end of 2025/2026, broken down to show which regulatory activity that resource will be applied to:

Pillar	CRD Option 1	CRD Option 2
Identify	0	0
Set standards	3	2
Influence	2	1
Permit	0	0

Pillar	CRD Option 1	CRD Option 2
Assess	2	2
Respond	1	1
Evaluate	0	0
Support	0	0
Total	**8**	**6**

CRD Option 1

168. The table below shows the breakdown of FMA spending on CRD Option 1 across future financial years:

Additional Funding ($m)	2022/23	2023/24	2024/25	2025/26 & outyears
Cumulative New FTE	6	8	8	8
Capital Costs	$0.018	$0.006	$0	$0
Project Operating Costs	$0.230	$0.230	$0	$0
People & Capability Development Costs	$0.080	$0.013	$0	$0
Personnel Costs	$1.111	$1.481	$1.481	$1.481
Other Operating Costs	$0.345	$0.367	$0.367	$0.367
Depreciation & Amortisation	$0.006	$0.008	$0.008	$0.008
Total funding	$1.790	$2.105	$1.856	$1.856

169. This funding option would mean that the FMA would:

- seek to deliver a proactive approach that supports consistent high-level disclosures
- engage and inform the market through guidance on compliance expectations and thematic monitoring
- undertake detailed monitoring, including technical capability with regard to greenhouse gas emissions disclosures
- choose samples of disclosures on a risk basis
- have sufficient resource to build good working capability in most climate-related disclosure frameworks.

Strategic Alignment

170. CRD Option 1 is more likely to support the FMA to give effect to the purpose of the CRD regime, as it provides more capacity for the FMA to and meet industry expectations through a proactive approach to monitoring disclosures and issuing guidance.

171. Under CRD Option 1 the FMA would take a more proactive and guidance focused approach as the regime builds and becomes fully operational. This should increase FMA's influence in the market, build positive relationships and encourage better understanding as well as compliance with requirements – ultimately ensuring that climate-reporting entities are meeting their obligations under the regime.

172. Under CRD Option 1, the FMA would have the ability to take enforcement action and respond to issues raised by the public, particularly towards the end of the four-year period covered. Both options are premised on deterring only serious non-compliance within the four-year horizon, as the market learns and builds capability, with a stronger focus on guidance on compliance expectations and uptake of good practice.

173. The FMA's capacity to respond (and be seen to respond) to a high degree of public interest would enhance broad public confidence.

174. CRD Option 1 has a stronger focus on collaboration and uptake of good practice to deter non-compliance than CRD Option 2. If delivered as part of a well-coordinated regime implementation across government, CRD Option 1 could better enhance consumer/investor confidence, as the FMA may be seen to take the issues more seriously, and have more resourcing to engage and deal with issues as they arise.

Achievability

175. The key CRD achievability risk is likely to be the FMA's ability to recruit the required specialist staff with the necessary level of technical expertise and capacity. This risk is greater for CRD than the other regimes, given how scarce the skills are globally, and that other agencies may be competing for similar skills. The FMA is considering alternatives to acquiring people with the skills "ready-made" e.g. through intensive training and contracting.

176. With more FTE under CRD Option 1, the FMA may be more resilient as it would have greater ability to reprioritise resources if required.

177. Given the timeframes for implementation and degree of uncertainty about the regime, it is likely that the FMA would need to review its approach in the medium term. There is a risk that future changes to the FMA's approach would be more difficult under CRD Option 1, in the event the FMA is unable to meet industry expectations of proactive engagement.

Good Public Value

178. Compared to CRD Option 2, CRD Option 1 provides:

- $1.8 million more funding over the four year horizon of 2022/2023 – 2025/2026
- $0.4 million more funding annually from 2025/2026.

179. The FMA's approach to CRD is likely to require refinement or redevelopment in the medium term, as there is some degree of uncertainty about the regime while the CRD Bill is still progressing through the legislative process. CRD Option 1 would provide the FMA with more flexibility to adapt to any changes to the regime.

180. Under CRD Option 1, a proactive approach which supports consistent high-level disclosures could drive better value for reporting entities (e.g, in terms of guidance on compliance expectations). This proactive approach is also consistent with the FMA's regulatory approach which involves engagement with entities in order to identify and reduce risks posed to investors, markets and consumers before they crystallise into harm.

181. The CRD Bill is intended to ensure that effects of climate change are considered by businesses and disclosed to the public, help businesses demonstrate responsibility of climate issues and transition to a more sustainable low emissions economy. CRD Option 1 would provide the FMA with a better opportunity to deliver on this legislative intent through a more proactive approach and engagement with the industry.

182. CRD Option 1 is therefore the FMA's preferred option. Deloitte's assessment also recommended CRD Option 1.

CRD Option 2

183. The table below shows the breakdown of FMA spending on CRD Option 2 across future financial years:

Additional Funding ($m)	2022/23	2023/24	2024/25	2025/26 & outyears
Cumulative New FTE	4	6	6	6
Capital Costs	$0.012	$0.006	$0	$0
Project Operating Costs	$0.230	$0.230	$0	$0
People & Capability Development Costs	$0.047	$0.010	$0	$0
Personnel Costs	$0.740	$1.110	$1.110	$1.110
Other Operating Costs	$0.274	$0.295	$0.295	$0.295
Depreciation & Amortisation	$0.004	$0.006	$0.006	$0.006
Total funding	$1.307	$1.657	$1.411	$1.411

184. This funding option would mean that the FMA:

- would have some capacity to begin developing capability to oversee the new regime and begin to build up internal expertise in a completely new area, while minimising disruption to other ongoing FMA work
- would seek to review a sample of entities' disclosures and there would be some ability to inform the market on best practice

- would undertake some thematic monitoring on specific issues as they are identified
- monitoring would include technical capability with regard to greenhouse gas emissions disclosures
- could build a reasonable working understanding of the climate-related disclosures framework and standards designed by the XRB
- would have some knowledge regarding the technical accounting of greenhouse gas emissions and understanding of the scenario analysis
- would be able to further build its expertise over time.

Strategic Alignment

185. CRD Option 2 is a valid alternative to CRD Option 1, which would have less overall resource and would take longer to build up capabilities for the new regime.

186. Under CRD Option 2, the balance of the FMA's approach would be more reactive and cover less technical specialist depth. The FMA would have less capability and capacity to influence the sector, which could impact public and consumer confidence.

187. Relative to CRD Option 1, the FMA would have more limited ability to monitor disclosures and issue guidance on compliance expectations. As such, it may be less valued by the market.

188. Early investigative and enforcement efforts will be similar to CRD Option 1, for example failure to file a statement and/or misrepresentation/fair dealing issues.

189. Slightly lower resourcing under CRD Option 2 could mean the FMA would be less able to deter poor compliance.

Achievability

190. As staff recruitment and retention is the key risk to achievability, CRD Option 2 comes with lower risk of successful delivery. However, the lower coverage of technical specialists could make it more difficult to respond to issues as they arise.

191. The lower capacity (in terms of employees) during the build up to operating the new regime would make it more difficult for the FMA to support sector preparation compared to CRD Option 1, for example as standards are developed and datasets established.

Good Public Value

192. Compared to CRD Option 1, CRD Option 2 provides:

    - $1.8 million less funding over the four year horizon of 2022/2023 – 2025/2026
    - $0.4 million less funding annually from 2025/2026.

193. CRD Option 2 would allow the FMA to build a reasonable working understanding of the CRD framework and the standards developed by the XRB. This option is a valid alternative that takes a slower approach to building up capabilities for the new regime.

194. CRD Option 2 requires less funding than CRD Option 1 over the four year horizon and may similarly require refinement or redevelopment in the medium term as there is some degree of uncertainty about the regime while the CRD Bill is still progressing through the legislative process. This option may provide less scope for the FMA to adjust its approach if needed.

16	Do you agree with the analysis of the FMA funding options for CRD? Which option do you consider to be most appropriate and why?
17	How would CRD Option 1 impact you/your business compared to CRD Option 2?
18	If you were to make material changes to the CRD options, how would you do so and on what basis?

10 Summary of funding options

195. The funding options presented in sections 6, 8 and 9 could be put together in multiple combinations, leading to many different overall funding options for the FMA. The following table summarises the total additional funding and indicative new FMA appropriation from 2025/2026, assuming the regimes are funded either all under Option 1 or all under Option 2:

Additional funding ($m)		2022/2023	2023/2024	2024/2025	2025/2026 & outyears	Indicative FMA appropriation from 2025/2026 (excl. litigation fund and fee revenue)
Status quo		-	-	-	-	$60.805 million
Option 1	CoFI	$6.847	$8.432	$11.538	$15.243	
	ICL	$0.723	$1.262	$1.432	$1.703	
	CRD	$1.790	$2.105	$1.856	$1.856	
	Total	$9.360	$11.799	$14.826	$18.802	$79.607 million
Option 2	CoFI	$5.640	$5.808	$8.062	$9.945	
	ICL	$0.408	$0.679	$0.685	$1.141	
	CRD	$1.307	$1.657	$1.411	$1.411	
	Total	$7.355	$8.144	$10.158	$12.497	$73.302 million

11 FMA funding recovery options

196. The FMA is currently funded through a combination of third-party revenue collected from financial markets participants through the FMA levy (around 83% in 2022/23) and Crown funding sourced from general taxation (around 17%).[21] In addition to their appropriation, the FMA receives a small amount of revenue from fees for services.

197. Financial markets participants directly benefit from operating in well-regulated markets and increased consumer confidence and participation in financial services and markets resulting from FMA regulation.

198. In addition, well-regulated financial markets benefit New Zealand by driving down the cost of capital, which benefits the wider economy.

199. The Government is considering what portion of the FMA's increase in funding should be met from the Crown and what portion should be met by the levy. To assist in this, MBIE are seeking feedback on two possible options for how additional FMA funding should be recovered:

- **Option A:** Increase is 100% levy funded.
- **Option B:** Increase is 17% Crown funded and 83% levy funded (maintaining the current 2022/23 split).

200. Under both options, the levy increases would be met by parties in scope of the new regimes:

- CoFI: banks, insurers and NBDTs that provide retail services
- ICL: insurers
- CRD: climate-reporting entities.

201. MBIE are not proposing levy increases to entities outside of these classes.

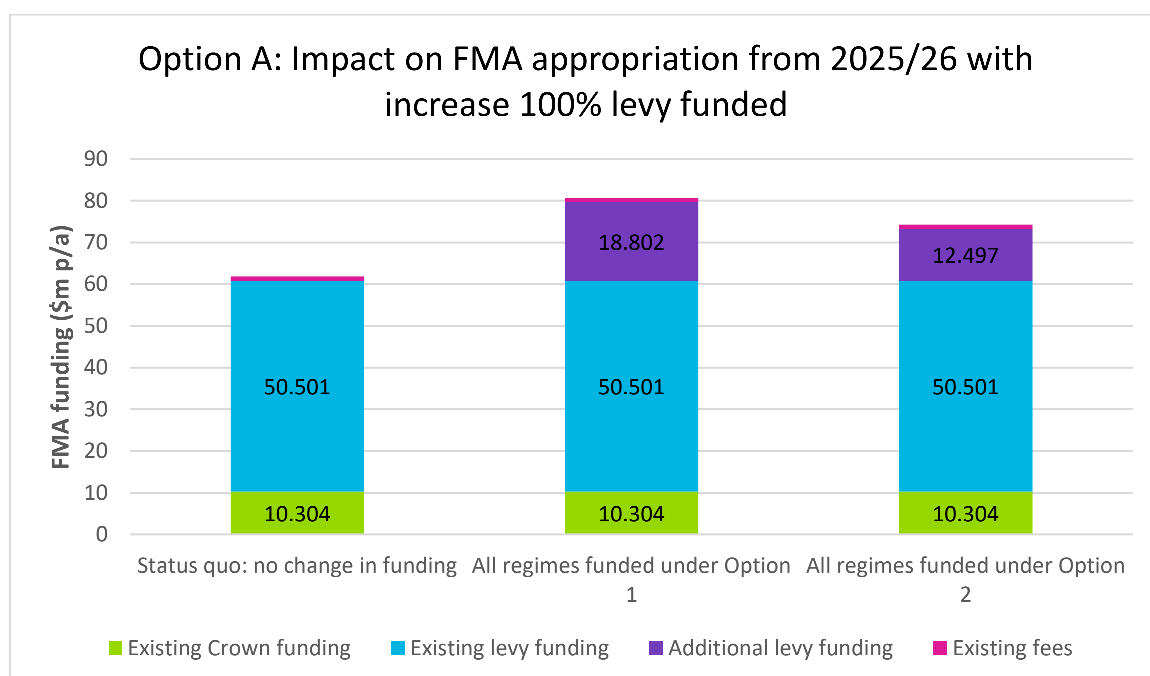
202. This discussion document does not include licensing costs in the proposed levy increases. MBIE will consult on proposals for licencing fees in 2022, following further work on implementation.

[21] These percentage splits will be correct from 2022/23 onwards, once the funding increase from the 2019/20 funding review has been fully phased in.

Options for recovering an increase in the FMA's appropriation

Option A: Increase is fully levy funded

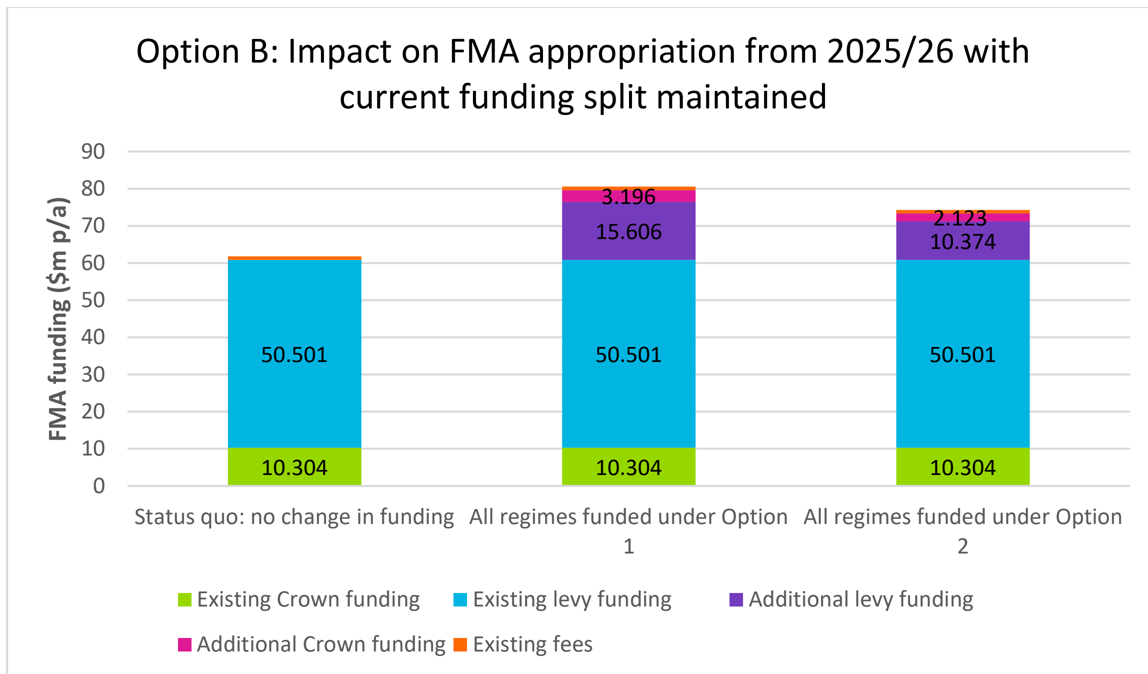
203. Under Option A, the increase in the FMA's appropriation would be met entirely from third-party levy funding. The graph below illustrates the impact Option A would have on the sources of the FMA's appropriation when all regimes were fully phased in (from 2025/2026). For the purposes of this consultation, the graph assumes the regimes are funded either all under Option 1 or all under Option 2.[22]



Option B: Increase is Crown and levy funded

204. Under Option B, the increase in the FMA's appropriation would be met by a combination of Crown and levy funding so that the current split of 17% Crown and 83% levy funding is maintained. This option would be more reflective of the private and public good aspect of the FMA's operations. The graph below illustrates the impact Option B would have on the sources of the FMA's appropriation when all regimes were fully phased in (from 2025/2026). For the purposes of this consultation, the graph assumes the regimes are funded either all under Option 1 or all under Option 2.

[22] Note the figures in the two graphs are approximate.



Criteria for assessing recovery options

205. It is intended that the following criteria will be used to assess which funding recovery option should be recommended:

- proportionality – the proportion of Crown and third-party levy funding reflects the public good element of the FMA's operations as well as the private benefit levy payers receive from well-regulated financial markets
- equity – the relative impacts of the proportion of Crown and third-party funding (e.g. ability to pay) are taken into account
- sustainability – the split of funding is sustainable and viable in the long-term and the Crown operating balance and market activity are not negatively impacted as a result of the levy.

19	Do you think that the proposed additional FMA funding should be wholly levy recovered or should the Crown contribute towards the increase? Why?
20	Do you think that the Crown should contribute relatively more to any of the regimes than others? If so, please explain why.
21	What is the appropriate Crown/levy split of the FMA's appropriation and why?

Impact on the FMA levy

206. As noted above, from 2022/23 the Crown will contribute 17% annually to the FMA's operating appropriation, with the remaining 83% to be recovered from financial markets participants. Any increase in the FMA's funding will therefore impact the amount to be recovered by the levy and levies payable.

207. Annex 1 provides the proposed levy increase payable for the relevant financial market participants affected by the CoFI, ICL and CRD regimes under the two different funding options. Annex 2 outlines those classes where no levy increase is proposed as a result of the three regimes.

208. Funding recovery Option A (where a funding increase is 100% levy funded) has been used to calculate the resulting changes to the levy under the different funding options. If the Crown increases its contribution towards the FMA's funding, the amount to be levy recovered and the levies for each class will reduce from the figures presented in this paper.

12 The FMA levy

The current FMA levy model

209. The following section outlines the current FMA levy model and seeks feedback on some proposed changes to it.

Background

210. The FMA levy model was introduced in 2012 to enable the cost-recovery of parts of the FMA's operations. The model has been periodically amended over time to add new market participants or make changes to population forecasts, most recently by the Financial Markets Authority (Levies) Amendment Regulations (No 2) 2020.

211. The levy is payable by financial market participants either on registration or annually or at the time of a prescribed event. The majority of the levy is collected by the Companies Office across the different registers they administer such as the FSPR or Disclose Register. The FMA also collects some levy classes from financial market participants outside of the registers.

212. The levy is prescribed on an activity basis such that financial market participants make a contribution for each class in which they operate.[23] For example, a registered bank that is also a derivatives issuer and manages a KiwiSaver scheme will pay the levy for all three activities.

213. In addition, where appropriate, levy amounts are tiered within classes to recognise variations in size and nature of financial market participants. Accordingly, the amount of levy charged is typically proportionate to the size of the business.

214. However, the FMA has a discretionary power to waive a levy where the circumstances of a financial markets participant are exceptional when compared to others in the same levy class. The threshold is deliberately high and the waiver power is not intended to be used to revisit settled policy positions.

Objectives

215. The balancing objectives underlying the levy are:

- The cost of the levy for market participants is consistent with the benefits they receive from well-regulated financial markets.

[23] See the Financial Markets Authority (Levies) Regulations 2012.

- The levy does not discourage entry into the market for, and/or the continued supply of, financial products or services.
- The levy does not unduly burden smaller market participants.
- The levy is practical in respect of its implementation, collection and also avoids large over- or under-collections.

216. It is on this basis that MBIE and the FMA have assessed the levy, and propose that the larger banks, insurers and climate-reporting entities pay a relatively larger portion of any levy increase.

22	Do you have any feedback on the objectives underlying the levy model?
23	Do you agree that larger entities should pay a relatively larger portion of any levy increase? If not, please explain why.

Key assumptions of the model

217. The levy model is underpinned by forecasts of the number of financial markets participants in each class and in some cases the size of businesses within those classes.

218. There is a certain element of judgement in setting the tiers within each levy class and the levies payable. Under the levy model objectives, different metrics for the levy classes are used to assess the size of participants within each class (e.g. total assets for registered banks and NBDTs). These metrics are rough proxies for economic activity and the perceived benefit each financial market participant receives from well-regulated financial markets.

219. Like many conduct regulators around the world, the FMA takes a risk-based approach to regulating and enforcing the sectors it is responsible for. It focuses on the types of conduct and practices that may pose the most harm, and its assessment of risks drives the activities it undertakes. As risk impact and likelihood of harm change over time and may have interactions across sectors, products and services, it would be impracticable to attribute the levy to individual participants in terms of the FMA's specific interaction with that participant.

220. The proposed levy increases are based on MBIE and the FMA's current understanding of the number of entities likely to apply for a licence under the CoFI regime and likely to be caught under the definition of climate-reporting entities. This may be subject to change.

Levies collected

221. As the levy model is reviewed every few years, the model assumes that the estimated volume forecasts remain static over time. However, in reality the total population of financial markets participants and the number within each levy class and tier fluctuate from year-to-year in ways that are not predictable. Given this, the levy generally over- or under-collects by some amount over time. MBIE and the FMA periodically review the model to ensure any changes adjust for under- or over-collection.

Proposed changes to the FMA levy

222. MBIE and the FMA are seeking feedback on proposed new and increased levies for entities that are directly in scope of the CoFI, ICL and CRD regimes. MBIE considers it is appropriate to maintain the levy settings for other financial markets participants, given that:

- these entities are not directly in scope of the new regimes
- the 2020 review levy increases for these entities are still being phased in through to 2022/2023.

223. MBIE therefore propose that the following entities would experience increases in the portion of the levy they pay. These changes are primarily driven by the degree of benefit that these organisations receive from participating in the new regimes:

- Retail registered banks and NBDTs (currently paying levies under Class 2)
- Licensed insurers (both retail and non-retail; currently paying levies under Class 3)
- Climate-reporting entities (currently paying levies under multiple classes).[24]

Registered banks and NBDTs

224. The CoFI Bill will introduce a licensing regime for banks and NBDTs in respect of their general conduct towards consumers. It is necessary to introduce a new levy class for those banks and NBDTs that provide retail services, to differentiate levies payable from banks and NBDTs that only provide wholesale services.

225. MBIE propose splitting current levy Class 2, to reflect whether the entity provides retail services:

- [revised] Class 2 (non-retail registered banks and NBDTs)
- [new] Class 2A (retail registered banks and NBDTs).

226. This means that any registered bank or NBDT that does not provide retail services (i.e. they are not required to obtain a license under the CoFI regime) will remain in [revised] Class 2. If a registered bank or NBDT does provide retail services, they will shift from paying levies in current Class 2 to the [new] Class 2A.

227. MBIE are proposing that levy tiers or levies payable will not change for banks who do not provide retail services (revised Class 2). Tiers within the new Class 2A will mirror the current Class 2, with banks and NBDTs that provide retail services paying increased levies according to their total assets.

[24] Certain tiers within classes 2, 3, 5, and 8.

228. Reflecting the levy model objectives above, MBIE propose that the levy increases are graduated according to entity size, i.e. larger banks and NBDTs would incur a larger increase than smaller entities.

Licensed insurers

229. The CoFI Bill will introduce a conduct licensing regime for insurers in respect of their general conduct towards consumers. It is necessary to introduce a new levy class for licensed insurers that provide consumer/retail services, to differentiate levies payable from insurers that only provide commercial, reinsurance, or captive insurance services.

230. MBIE propose splitting current Class 3 to reflect whether the entity provides retail services:

- [revised] Class 3 (non-retail licensed insurers)
- [new] Class 3A (retail insurers).

231. This means that any licensed insurer that does not provide retail services (i.e. they are not required to obtain a license under the CoFI regime) will remain in [revised] Class 3. If a licensed insurer does provide retail services, they will shift from paying levies in current Class 3 to the [new] Class 3A.

232. MBIE proposed that tiers within the new Class 3A will mirror the current Class 3, with insurers that provide consumer/retail services paying increased levies according to their gross annual premium revenue.

233. Further the ICL regime will introduce requirements mostly in relation to consumer insurance policies, as well as some for all insurance policies. MBIE thinks that retail insurers should pay most of the ICL increase, with some increases also applying to non-consumer insurers (to reflect that parts of the ICL regime apply to all insurance policies, as well as the benefits that non-consumer insurers derive from efficient and well-regulated insurance markets).

234. Reflecting the levy model objectives in paragraph 210 above, MBIE propose that the levy increases are graduated according to entity size, i.e. larger insurers would incur a larger increase than smaller insurers.

Climate-reporting entities

235. The Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill will introduce new requirements for climate-reporting entities. It is necessary to create a new 'climate-reporting entity' levy class, given the entities subject to the CRD regime currently fall under multiple levy classes. This would be new Class 17 (Climate reporting entities).

236. MBIE are proposing new tiers within this new levy class that reflect the different climate-reporting entity definitions in the CRD Bill, and that are similar to tiers within other FMA levy classes. MBIE consider that these tiers would appropriately reflect the different sizes of

entities captured by the new regime. The table below sets out the proposed climate-reporting entity tiers.

Levy class description	Tier
Banks, credit unions, building societies	Total assets exceed $10B
	Total assets exceed $1B but not $10B
MIS fund managers	Total managed assets exceed $10B
	Total managed assets exceed $1B but not $10B
Insurers	Gross annual premium revenue exceeds $1B
	Gross annual premium revenue exceeds $250M but not $1B
Listed issuers	listed issuer (market cap >$60m)

Summary of affected levy classes

237. The table below summarises which new and revised FMA levy classes will be impacted by the three regimes.

Levy Class	CoFI	ICL	CRD
[revised] Class 2 (non-retail registered banks and NBDTs)	n/a	n/a	n/a
[new] Class 2A (retail registered banks and NBDTs)	✓	n/a	n/a
[revised] Class 3 (non-retail insurers)	n/a	✓	n/a
[new] Class 3A (retail insurers)	✓	✓	n/a
[new] Class 17 (Climate-reporting entities)[25]	n/a	n/a	✓

24	Do you think the proposed levy changes meet the objectives?
25	Do you have any comments on the proposed new levy classes/tiers? Should further classes be considered?
26	Do you have any feedback on the impacts of the proposed changes to the levies presented in Annex 1? How would the proposed changes impact your business? Please provide examples.
27	Do you think any of the levy classes in Annex 2 should pay an increased levy as a result of these new regimes? If so why?

[25] Note new Class 17 will include entities (such as large banks and insurers) that also pay levies under other FMA levy classes.

13 Summary of Questions

1	Do you have any feedback on the objectives of the review?
2	Do you have any feedback on the criteria for assessing the funding options?
3	Do you agree with the analysis of the FMA funding options for CoFI? Which option do you consider to be most appropriate and why?
4	How would CoFI Option 1 impact you/your business compared to CoFI Option 2?
5	If you were to make material changes to the CoFI options, how would you do so and on what basis?
6	Do you have any feedback on the objectives for the implementation of the CoFI regime?
7	Do you agree that the CoFI licensing window should begin after financial advice provider transitional licensing window has closed?
8	Are there other areas of regulatory reform in the financial services sector, where implementation overlaps with the proposed timeframes above, and that you consider it would be preferable to align CoFI implementation with those timeframes from an efficiency perspective? If so, please provide examples.
9	Do you have any feedback on the proposed 18 month window between applications for a conduct licence opening and all the obligations of the CoFI Bill coming into force (including having a conduct licence)?
10	Do you think a phased approach to CoFI licensing would be preferable, compared to a single licensing window for all types of financial institutions? Please provide reasons.
11	If a phased approach to CoFI licensing would be preferable, what factors do you think should be considered in determining the order of phasing?
12	Do you have any other general comments regarding the implementation timing of the CoFI regime?
13	Do you agree with the analysis of the FMA funding options for ICL? Which option do you consider to be most appropriate and why?
14	How would ICL Option 1 impact you/your business compared to ICL Option 2?
15	If you were to make material changes to the ICL options, how would you do so and on what basis?
16	Do you agree with the analysis of the FMA funding options for CRD? Which option do you consider to be most appropriate and why?
17	How would CRD Option 1 impact you/your business compared to CRD Option 2?

18	If you were to make material changes to the CRD options, how would you do so and on what basis?
19	Do you think that the proposed additional FMA funding should be wholly levy recovered or should the Crown contribute towards the increase? Why?
20	Do you think that the Crown should contribute relatively more to any of the regimes than others? If so, please explain why.
21	What is the appropriate Crown/levy split of the FMA's appropriation and why?
22	Do you have any feedback on the objectives underlying the levy model?
23	Do you agree that larger entities should pay a relatively larger portion of any levy increase? If not, please explain why.
24	Do you think the proposed levy changes meet the objectives?
25	Do you have any comments on the proposed new levy classes/tiers? Should further classes be considered?
26	Do you have any feedback on the impacts of the proposed changes to the levies presented in Annex 1? How would the proposed changes impact your business? Please provide examples.
27	Do you think any of the levy classes in Annex 2 should pay an increased levy as a result of these new regimes? If so why?

Annex 1: Proposed new and increased FMA levies (excluding GST)

The funding options presented in sections 6, 8 and 9 could be combined in multiple ways, leading to many different funding options for the FMA. For the purposes of this consultation, the proposed levy totals assume the three new regimes are fully levy funded, either all under Option 1 or all under Option 2.

The proposed new levies under each option would replace the amount set out in the Financial Markets Authority (Levies) Amendment Regulations (No 2) 2020, reflected in the 'Status quo 2022/2023 $ levy (excl. GST)' column.

Note that the status quo levies for new Classes 2A and 3A are included for reference, to acknowledge that entities who would move into this class are currently paying levies under Classes 2 and 3.

Current levy model			Approximate total $ levy under proposed funding changes (excl. GST)							
Levy class	Type of levy (fixed levy or tiers)	Status quo 2022/2023 $ levy (excl. GST)	2022/2023		2023/2034		2024/2025		2025/2026	
			Option 1	Option 2	Option 1	Option 2	Option 1	Option 2	Option 1	Option 2
[new] Class 2A [retail] Registered FSPs that are	Total assets exceed $50 billion	$1,130,000	$1,760,000	$1,602,000	2,168,000	$1,801,000	$2,565,000	$2,102,000	$3,030,000	$2,339,000
	Total assets exceed $10 billion but not $50 billion	$350,000	$551,000	$505,000	$683,000	$570,000	$820,000	$670,000	$1,021,000	$748,000

Current levy model			Approximate total $ levy under proposed funding changes (excl. GST)							
Levy class	Type of levy (fixed levy or tiers)	Status quo 2022/2023 $ levy (excl. GST)	2022/2023		2023/2034		2024/2025		2025/2026	
			Option 1	Option 2	Option 1	Option 2	Option 1	Option 2	Option 1	Option 2
registered banks or licensed NBDTs	Total assets exceed $2 billion but not $10 billion	$95,000	$154,000	$137,000	$179,000	$161,000	$222,000	$181,000	$257,000	$211,000
	Total assets exceed $1 billion but not $2 billion	$46,000	$67,000	$76,000	$108,000	$70,700	$98,000	$102,000	$170,000	$126,000
	Total assets exceed $500 million but not $1 billion	$17,000	$31,000	$21,000	$27,000	$22,000	$36,000	$24,400	$38,120	$29,100
	Total assets exceed $40 million but not $500 million	$10,500	$14,000	$12,500	$14,060	$12,800	$17,500	$14,600	$15,700	$15,100
	Total assets do not exceed $40 million	$3000	$3,920	$3,300	$3,880	$3,540	$4,700	$4,000	$5,000	$4,200
[revised] Class 3 [non-retail] Registered FSPs that are licensed insurers	Annual gross premium revenue exceeds $1 billion	$480,000	$481,400	$480,800	$482,000	$481,400	$482,700	$482,000	$482,800	$482,400
	Annual gross premium revenue exceeds $500 million but not $1 billion	$370,000	$371,100	$370,600	$371,800	$371,100	$372,300	$371,700	$372,500	$372,000
	Annual gross premium revenue exceeds $250	$136,000	$136,900	$136,500	$137,400	$136,900	$137,900	$137,200	$138,400	$138,400

Current levy model			Approximate total $ levy under proposed funding changes (excl. GST)							
Levy class	Type of levy (fixed levy or tiers)	Status quo 2022/2023 $ levy (excl. GST)	2022/2023		2023/2034		2024/2025		2025/2026	
			Option 1	Option 2	Option 1	Option 2	Option 1	Option 2	Option 1	Option 2
	million but not $500 million									
	Annual gross premium revenue exceeds $100 million but not $250 million	$94,000	$94,700	$94,400	$94,800	$94,760	$95,760	$94,900	$95,920	$95,100
	Annual gross premium revenue exceeds $50 million but not $100 million	$50,000	$50,440	$50,200	$50,640	$50,540	$51,380	$50,400	$50,900	$50,640
	Annual gross premium revenue exceeds $10 million but not $50 million	$20,000	$20,260	$20,100	$20,340	$20,300	$20,600	$20,300	$20,680	$20,380
	Annual gross premium revenue does not exceed $10 million	$5,200	$5,280	$5,240	$5,340	$5,280	$5,380	$5,300	$5,380	$5,360
[new] Class 3A [retail] Registered FSPs that are licensed insurers	Annual gross premium revenue exceeds $1 billion	$480,000	$721,000	$656,400	$890,000	$732,000	$1,016,000	$832,000	$1,189,440	$931,000
	Annual gross premium revenue exceeds $500 million but not $1 billion	$370,000	$537,000	$485,000	$655,000	$544,000	$744,200	$614,000	$860,940	$685,000

Current levy model			Approximate total $ levy under proposed funding changes (excl. GST)							
Levy class	Type of levy (fixed levy or tiers)	Status quo 2022/2023 $ levy (excl. GST)	2022/2023		2023/2034		2024/2025		2025/2026	
			Option 1	Option 2	Option 1	Option 2	Option 1	Option 2	Option 1	Option 2
	Annual gross premium revenue exceeds $250 million but not $500 million	$136,000	$202,000	$180,300	$246,000	$204,000	$281,700	$232,200	$328,960	$258,000
	Annual gross premium revenue exceeds $100 million but not $250 million	$94,000	$143,000	$126,800	$174,000	$145,000	$204,000	$161,000	$238,960	$182,000
	Annual gross premium revenue exceeds $50 million but not $100 million	$50,000	$73,000	$63,000	$90,000	$75,000	$99,000	$85,000	$120,600	$94,200
	Annual gross premium revenue exceeds $10 million but not $50 million	$20,000	$25,900	$23,500	$29,000	$24,500	$32,260	$27,260	$32,300	$29,100
	Annual gross premium revenue does not exceed $10 million	$5,200	$6,860	$5,780	$7,200	$6,300	$8,000	$6,900	$8,500	$7,500
[New] class Climate-reporting entities	Banks, credit unions and building societies where total assets exceed $10B	n/a	$50,000	$38,000	$60,000	$46,500	$54,000	$40,000	$54,000	$40,000

Current levy model			Approximate total $ levy under proposed funding changes (excl. GST)							
Levy class	Type of levy (fixed levy or tiers)	Status quo 2022/2023 $ levy (excl. GST)	2022/2023		2023/2034		2024/2025		2025/2026	
			Option 1	Option 2	Option 1	Option 2	Option 1	Option 2	Option 1	Option 2
	Banks, credit unions and building societies where total assets exceed $1B but not $10B	n/a	$25,000	$18,500	$30,000	$24,300	$26,500	$20,100	$26,500	$20,100
	MIS fund managers where total managed assets exceed $10B	n/a	$54,800	$40,900	$67,000	$50,100	$57,300	$42,500	$57,300	$42,500
	MIS fund managers where total managed assets exceed $1B but not $10B	n/a	$28,500	$20,600	$33,100	$26,500	$29,700	$22,900	$29,700	$22,900
	Licensed insurers where gross annual premium revenue exceeds $1B	n/a	$7,000	$4,500	$8,400	$7,400	$8,200	$5,900	$8,200	$5,900
	Licensed insurers where gross annual premium revenue exceeds $250M but not $1B	n/a	$3,500	$2,020	$3,900	$3,200	$3,200	$2,300	$3,200	$2,300
	listed issuer	n/a	$2,500	$1,780	$2,800	$2,200	$2,400	$1,900	$2,400	$1,900

Annex 2: Proposed unchanged FMA levies (excluding GST)

Levy class	Type of levy (fixed levy or tiers)	Status quo 2022/2023 $ levy (excl. GST)	Total $ levy 2022/2023 – 2025/2026 (excl. GST)
Class 1 New financial service provider (FSP) registrations	Fixed levy	$600	$600
[revised] Class 2 [non-retail] Registered FSPs that are registered banks or licensed NBDTs	Total assets exceed $50 billion	$1,130,000	$1,130,000
	Total assets exceed $10 billion but not $50 billion	$350,000	$350,000
	Total assets exceed $2 billion but not $10 billion	$95,000	$95,000
	Total assets exceed $1 billion but not $2 billion	$46,000	$46,000
	Total assets exceed $500 million but not $1 billion	$17,000	$17,000
	Total assets exceed $40 million but not $500 million	$10,500	$10,500
	Total assets do not exceed $40 million	$3000	$3000
Class 4 Registered FSPs that are supervisors licensed under the Financial Markets Supervisors Act 2011 in respect of the supervision of debt securities and managed investment products in registered schemes	Total supervised interests exceed $5 billion	$265,000	$265,000
	Total supervised interests exceed $1 billion but not $5 billion	$122,000	$122,000
	Total supervised interests exceed $100 million but not $1 billion	$39,000	$39,000
	Total supervised interests do not exceed $100 million	$12,000	$12,000
Class 5	Total managed assets exceed $15 billion	$670,000	$670,000

Levy class	Type of levy (fixed levy or tiers)	Status quo 2022/2023 $ levy (excl. GST)	Total $ levy 2022/2023 – 2025/2026 (excl. GST)
Registered FSPs that are managers	Total managed assets exceed $10 billion but not $15 billion	$565,000	$565,000
	Total managed assets exceed $5 billion but not $10 billion	$400,000	$400,000
	Total managed assets exceed $2 billion but not $5 billion	$205,000	$205,000
	Total managed assets exceed $1 billion but not $2 billion	$130,000	$130,000
	Total managed assets exceed $500 million but not $1 billion	$75,000	$75,000
	Total managed assets exceed $250 million but not $500 million	$44,000	$44,000
	Total managed assets exceed $100 million but not $250 million	$32,000	$32,000
	Total managed assets exceed $20 million but not $100 million	$9,000	$9,000
	Total managed assets do not exceed $20 million	$2,100	$2,100
Class 6 Registered FSPs where One of the following amounts (being whichever applicable amount is the greatest)	(a) if the person is authorised to undertake trading activities on licensed markets	$8,300	$8,300
	(b) if the person is a contributory mortgage broker	$3,500	$3,500
	(c) if the person is registered for the financial service described in section 5(1)(k) of the FSP Act	$10,400	$10,400
	(d) if the person is licensed to provide the licensed market service of acting as a derivatives issuer	$18,200	$18,200
Class 6A Registered FSPs that are DIMS retail providers	Funds under management exceed $2 billion	$90,000	$90,000
	Funds under management exceed $1 billion but not $2 billion	$45,000	$45,000
	Funds under management exceed $500 million but not $1 billion	$30,000	$30,000

Levy class	Type of levy (fixed levy or tiers)	Status quo 2022/2023 $ levy (excl. GST)	Total $ levy 2022/2023 – 2025/2026 (excl. GST)
	Funds under management exceed $250 million but not $500 million	$17,100	$17,100
	Funds under management exceed $100 million but not $250 million	$11,800	$11,800
	Funds under management exceed $50 million but not $100 million	$6,500	$6,500
	Funds under management exceed $20 million but not $50 million	$4,000	$4,000
	Funds under management do not exceed $20 million	$2,200	$2,200
Class 6B Registered FSPs that are brokers other than persons in class 6(a) or 6C	Fixed levy	$3,600	$3,600
Class 6C Registered FSPs that are custodians and persons providing custodial services	Fixed levy	$11,900	$11,900
Class 6D Registered FSPs that provide a crowd funding service or a peer-to-peer lending service	Fixed levy	$3,560	$3,560
Class 6E Registered FSPs that are benchmark administrators	Fixed levy	$22,000	$22,000
Class 6F	Fixed levy	$880	$880

Levy class	Type of levy (fixed levy or tiers)	Status quo 2022/2023 $ levy (excl. GST)	Total $ levy 2022/2023 – 2025/2026 (excl. GST)
Registered FSPs that are authorised bodies			
Class 6G Registered FSPs that are financial advisers (as defined in section 6(1) of the FMC Act)	Fixed levy	$400	$400
Class 6H Registered FSPs that are licensed financial advice providers	Fixed levy	$340	$340
	Plus every nominated representative engaged by the financial advice provider	$300	$300
	Plus if the financial advice provider gives advice on its own account	$1,180	$1,180
Class 7 Registered FSPs that are not included in any of classes 2 to 6	Fixed levy	$660	$660
Class 8 Listed issuers	Fixed levy	$4,800	$4,800
Class 8A Small issuers	Fixed levy	$1,220	$1,220
Class 9 Persons that lodge a PDS	All except for PDS of a managed fund	$4,700	$4,700
	Per managed fund (including self-select schemes)	$860	$860
Class 10 Licensed market operators	Fixed levy	$65,000	$65,000

Levy class	Type of levy (fixed levy or tiers)	Status quo 2022/2023 $ levy (excl. GST)	Total $ levy 2022/2023 – 2025/2026 (excl. GST)
Class 10A Growth market operators	Fixed levy	$9,500	$9,500
Class 11 FMC reporting entity	Fixed levy	$80	$80
Class 12 Accredited bodies	Fixed levy per specified licence	$5,400	$5,400
Class 13 Overseas auditors	Fixed levy	$5,700	$5,700
Class 14 Persons that apply for registration or incorporation	The Building Societies Act 1965	$21.74	$21.74
	The Companies Act 1993	$21.74	$21.74
	The Friendly Societies And Credit Unions Act 1982	$21.74	$21.74
	The Limited Partnerships Act 2008	$21.74	$21.74
Class 15 Persons that are registered or incorporated, and make an annual return	The Building Societies Act 1965	$21.74	$21.74
	The Companies Act 1993	$21.74	$21.74
	The Friendly Societies And Credit Unions Act 1982	$21.74	$21.74
	The Limited Partnerships Act 2008	$21.74	$21.74