

# Submission template

## Regulations to support the new regime for the conduct of financial institutions

### Your name and organisation

Name	S9(2)(a)
Email	
Organisation/Iwi	Fidelity Life

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## Introduction

Thank you for the opportunity to provide feedback on possible regulations to support the new regime for the conduct of financial institutions being developed under the Financial Markets (Conduct of Institutions) Amendment Bill (**Bill**).

Fidelity Life (**we/our**) is the largest New Zealand-owned and operated life insurer and the 2017, 2018 and 2019 ANZIF New Zealand Life Insurance Company of the year. We're all about protecting New Zealanders' way of life.

We're in the business of paying claims and we're there for our customers and their families when they need us. In the 2020 financial year we paid out \$139.7 million in claims and since 1973 we've paid out more than \$1.1 billion.

We're committed to a model where consumers' interests come first, we have greater transparency across the industry and good conduct is a given. That's why we're active participants in the legislative process helping to shape our industry and support measures that help build trust in the life insurance industry.

As set out in the discussion document, we agree further guidance may be necessary to support the new conduct regime, but only where there is uncertainty or where there may be inconsistencies applied by financial institutions to meet minimum standards set out in the Bill.

We reiterate there is already an existing network of regulation that controls every aspect of an insurer's business, and there appears to be some duplication with existing licensing regimes and obligations which creates confusion for both the industry and consumers. Clarity and consistency across related regulations is required to ensure the Bill and supporting regulations achieve what they set out to do.

## Requirements for fair conduct programmes

1. Do you have any comments on the status quo i.e. no further regulations to support the minimum requirements for fair conduct programmes in the Bill?

Fidelity Life supports the principles-based nature of the new conduct regime. It provides flexibility in how financial institutions deliver the outcomes required and also encourages innovation across the industry. We do agree that some prescription may be necessary to provide clarity and certainty of what an effective fair conduct programme looks like. Consistency across fair conduct programmes will allow consumers to easily compare programmes and reduce confusion. The development of regulatory guidance for some of the requirements where there is uncertainty, in consultation with financial institutions, should be considered as an appropriate alternative to regulations.

2. Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(a)?

Fidelity Life agrees no further regulations are needed at this time to support section 446M(1)(a).

3. Do you have any comments on the proposals regarding distribution of relevant services and associated products? We are particularly interested in how these proposals may be implemented.

Fidelity Life acknowledges there is a shared responsibility between insurers and intermediaries for good customer outcomes throughout a product lifecycle, including ensuring that products are designed and distributed appropriately. We have specialist product and customer experience design teams, and a mature customer satisfaction programme, to help ensure customer insights are central to the design of our products and services. It is important that further design requirements do not remove the ability of insurers to be innovative when it comes to developing product offerings.

Instead there should be a focus on financial institutions communicating and providing accurate information (including the intended audience for products) about their products to intermediaries. We agree that distribution methods and processes (such as distribution agreements) should be consistent with ensuring products will be distributed to the intended customers, including those consumers who fall outside the intended audience but where the product may still be suitable. Where products are sold with advice, financial advisers have responsibilities under the new financial advice regime to ensure product suitability. We consider that a practical approach needs to be taken to monitoring how products are sold, to minimise additional costs being passed on to consumers.

4. Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(ac)?

Fidelity Life agrees that no further regulations are needed at this time to support section 446M(1)(ac).

5. Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(bb) to (bd)?

Fidelity Life agrees that no further regulations regarding the management and supervision of employees, agents and intermediaries are required at this stage. We have provided feedback on the proposed changes to the management and supervision of employees, agents and intermediaries separately, via the consultation on the treatment of intermediaries. As noted in the discussion document, it is difficult to give considered feedback on possible regulations that relate to intermediaries until it is clear what the final form of the Bill will be.

6. Do you have any comments on the proposal to specify further minimum requirements regarding remediation of issues? Are there any further specific remediation principles that should be specified in regulations?

We generally support the minimum requirements regarding remediation of issues and note that we have a good understanding of expectations regarding a formal remediation framework, policy and procedures, following the findings set out in the Life Insurer Conduct and Culture Report.

Remediation must be flexible enough to cover a variety of issues and requires careful consideration of several factors. Our view is the minimum standards should be less prescriptive to ensure that we can respond to issues appropriately. Section 446M(1A) also enables us to continue to develop our remediation framework as appropriate, for example, having regard to the nature, size and complexity of our business.

We also suggest an element of reasonableness be applied to the minimum requirements. We disagree with the proposed wordings at the end of paragraph 66b setting out that “financial institutions must take all reasonable steps to remediate all affected consumers.” They don’t reflect the fact that it may not be appropriate to remediate all customers in all circumstances. There are three main considerations when considering remediations which involve refunds:

1. The circumstances of the customer being remediated. There may be circumstances where the customer could be detrimentally affected by a remediation, for example, a small refund to an estate could cost the estate more to administer than its value.
2. There will be a level at which the refund is so small that it is more of an annoyance to be contacted about the refund.
3. In respect of former customers with small refunds, consideration must be given to the extent to which they want their former insurer seeking to contact them to make payment.

These considerations will depend upon the circumstances, and to reflect this, the proposed remediation requirement set out in paragraph 66b should be changed to “financial institutions must take all reasonable remediation steps.”

Also, the proposed requirement at paragraph 66f that ‘financial institutions must communicate with consumers about the progress and outcome of review and remediation processes in a clear, concise, timely and effective manner,’ may result in consumers receiving more communication than is desirable from their perspective. There needs to be a reasonableness element applied. This could be achieved by changing to the wording to “financial institutions must communicate with consumers about the progress and outcome of review and remediation processes to the extent that is reasonable in the circumstances. Communication must be in a clear, concise, timely and effective manner.”

Consideration should be given as to whether a 'de minimis' level of compensation should be applied below which remediation is not required, and what is expected of providers when customers are not contactable.

7 Do you have any comments on MBIE’s position that no regulations are needed at this time to support section 446M(1)(be)?

Fidelity Life agrees that no regulations are needed at this time to support section 446M(1)(be) but please see our answers under Sales Incentives.

8. Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(bf)?

Fidelity Life agrees that no further regulations are needed at this time to support section 446M(1)(bf).

9. Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(d)?

Fidelity Life agrees that no further regulations are needed at this time to support section 446M(1)(d).

10. Do you have any comments on the proposal to specify further minimum requirements regarding consumer complaints handling?

While we generally support the minimum requirements with respect to policies and processes for dealing with complaints, internal complaints processes and reporting are already well embedded in our business.

As a financial services provider, we are a member of an approved dispute resolution scheme, as required under the Financial Service Providers (Registration and Dispute Resolution) Act 2008, requiring each member to have an internal complaints process which is publicised. Our membership of the scheme also requires us to give disclosure about them. As a Financial Advice Provider (FAP) we are required to comply with licensing standards and disclosure requirements, which include having an internal complaint process for resolving customer complaints. As a member of the Financial Services Council (FSC), we also comply with the FSC Code of Conduct, including Code Standard 4, to seek and consider customer feedback. Any further requirements might be superfluous and add unnecessary additional compliance costs.

If minimum requirements are developed, they need to be consistent with existing requirements that are operating well. We suggest such requirements may be better incorporated into a financial institution (conduct) licensing standard rather than being in the regulations.

11. Do you have any comments on the proposals to specify further minimum requirements regarding claims handling and settlement?

Fidelity Life supports the need to have effective policies and processes when it comes to claims handling. At Fidelity Life, our purpose is to pay claims. We want fair outcomes for our customers in their time of need. We have a claims management framework in place to ensure claims are managed fairly and transparently, a claims committee that provides a cross functional review of claims and a Vulnerable Customers Framework to ensure we are there to support our customers. As noted in the Life Insurer Conduct and Culture Report there was 'generally good customer focus in frontline claims teams... our impression was that insurers are generally looking to ensure fair claims outcomes.'<sup>1</sup>

We suggest that it more appropriate that further details regarding claims handling and settlement is best dealt with in the Insurance Contract Law Act, currently under revision, the purpose of which is to consolidate insurance law. The settlement of claims could then be managed in accordance with the contract of insurance - premiums are set based on the expectation that only claims which fall within the policy terms and conditions of cover will be paid. Prudential management requires us to not pay claims that do not meet these terms and conditions, so that funds are available to pay claims that do. Where a claim is not within the terms and conditions of a policy our reinsurance arrangements also restrict our ability to pay the claim. We have an internal complaints process in place which can be escalated through our external Dispute Resolution Scheme, and have any decision reviewed.

There are also unique characteristics of life insurance that must be considered when 'ensuring claims handling and settlement is fair, timely and transparent.' Section 41A of the Life Insurance Act 1908 incentivises life insurers to pay death claims within 90 days of death. In some cases, life insurance claims can take longer, often for reasons out of the insurer's control such as waiting for probate or medical reviews. Also, the complexity of some products means that some claims are subject to ongoing review, for example income protection claims.

12. Do you have any comments on the proposed definition of 'handling and settling a claim under an insurance contract' means? If so, why?

Overall Fidelity Life is supportive of a definition of claims handling and settlement to provide clarity as to what activities would be covered by claims handling and settlement obligations.

One issue we have identified with the definition is how it would apply to external providers who provide independent review, such as medical or rehabilitation assessments/opinions, which can influence the outcome or progression of a claim. It is our view that these types of activities would not be covered by the claims handling and settlement definition.

13. Do you have any comments on the discussion regarding customer vulnerability?

Fidelity Life does not consider further regulation is required in relation to customer vulnerability. Fidelity Life has a Vulnerable Customer Framework which requires regular review to ensure that it evolves as to reflect improved understanding.

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<sup>1</sup> Life Insurer Conduct and Culture, findings from an FMA and RBNZ review of conduct and culture in NZ life insurers, January 2019, page 15.

14. Do you have comments regarding the option of including vulnerable consumers in section 446M(1A)?

Fidelity Life does not think it is necessary to specifically mention vulnerable customers in the list of factors in section 446M(1A).

15. Do you think any further factors should be added by regulations to the list under section 446M(1A)?

Fidelity Life does not think there are any further factors to be added by regulations to the list under section 446M(1A).

16. Do you think any other regulations that could be made under new section 546(1)(oa) are necessary or desirable? Please provide reasons for your comments.

Fidelity Life does not think other regulations are not necessary at this time.

#### Sales incentives

17. Do you have any comments on the status quo (no regulations)?

As noted in paragraph 143 of the discussion document, Cabinet has already made the decision to prohibit sales targets based on value or volume as the government considers these types of incentives cannot be adequately managed and are therefore prohibited by the regulations. The status quo of having no regulations appears unlikely.

18. Do you have any comments on the option to prohibit sales incentives based on volume or value targets?



Fidelity Life agrees it is important that sales incentives don't lead to inappropriate sales practices or poor customer outcomes and that there is a need to address harmful incentives. We reiterate our previous views noted to the Select Committee that the Bill better address the issues raised by government, the regulators and the IMF on 'high and very high' upfront commissions, and the exposure of New Zealand's insurance sector to undue risk due to high upfront commissions. The proposed options still allow for uncertainty as to the interpretation of the proposed prohibitions. Our view is that further holistic consideration is given to incentives and commissions, to ensure the Bill achieves what it set out to.

As noted earlier in our submission, we agree that ensuring good customer outcomes is a shared responsibility between insurers and intermediaries. Our view is that all markets participants should be subject to the same requirements. We encourage consideration of whether there should also be restrictions on receipt of any incentive payment which are not excluded from the prohibitions, for example through further financial advice obligations being introduced.

At paragraph 152, this option covers 'any incentive that is determined or calculated in any way by reference to the volume or value of relevant service or associated products and which has any target component to it.' There is still a lack of clarity as to what is meant by value-based targets and volume-based targets (i.e. whose definition of 'value', who they apply to and what is included).

19. What would the likely impacts be for financial institutions, intermediaries and/or consumers of prohibiting sales incentives based on volume or value based targets?

It's important to future proof the regulation of sales incentives to ensure a sustainable model for consumers and the life insurance and financial advice industries. New Zealanders are well known to be underinsured compared to other markets. It is important that financial advisers are fairly remunerated for their work and are encouraged to remain in the industry to ensure independent financial advice remains accessible for all New Zealanders, and more New Zealanders get the benefits of insurance protection. This is why we want to ensure that there is greater clarity provided so that there is greater certainty for all market participants and reduced scope for arbitrage by financial institutions.

On this basis, further consultation on draft regulations prohibiting sales incentives based on volume or value-based targets is critical to ensure the life insurance industry is efficient, sustainable and to ensure that every New Zealander has access to affordable life insurance.

20. Do you have any feedback on a more principle-based approach to prohibiting some incentives?

We do not support this proposed option. Fidelity Life agrees that while this approach provides more flexibility, allowing financial institutions to make their own assessments around whether the sales incentives they offer could reasonably be expected to influence sales, we are of the view that overall, this creates less clarity as to what is expected. This may create arbitrage by financial institutions who may (as noted in the discussion document), stretch the boundaries by explaining why their incentives would not reasonably be expected to influence sales. This may also result in less consumer confidence and trust in the industry, which is counter to one of the overarching goals of the Bill.

21. How could a more principles-based approach to prohibiting some incentives be made workable?

As a more principles-based approach could only be workable through further guidance, that would require consultation with financial institutions, to ensure that there is consistency as to how the principles were being applied across the industry.

22. If a more principles-based option was chosen, should there be some incentives specifically excluded?

We don't support this proposed option.

23. Do you think there are any other viable options other than what has been put forward by this discussion document? Please explain in detail.

Our general view is that further consultation on options prohibiting sales incentives based on volume or value-based targets is critical to ensure the life insurance industry is efficient, sustainable and to ensure that every New Zealander has access to affordable life insurance.

24. Are there sales incentives based on volume or value targets that should be excluded from the regulations (i.e. allowed to be offered/given)?

Our view is that to the extent that rewards based on customer satisfaction could be categorised as sales incentives based on volume or value targets, these should be excluded from the regulations.

25. Do you think there are any other types of incentives that should be excluded from the regulations? Please provide reasons for your comments.

Not at this time.

26. Do you think that the scope of who can be covered by the regulations poses a risk of unintentionally capturing other intermediaries that are paid incentives but should not be covered?

We believe the scope of who can be covered by the regulations does not pose a risk of unintentionally capturing other intermediaries that are paid incentives but should not be covered.

27. Do you agree/disagree that within financial institutions and intermediaries sales incentives regulations should apply to all staff? Why/why not?

The expectation set out in the Life Insurer Conduct and Culture Report was that insurers remove or substantially revise incentives for frontline salespeople and 'all layers of management' within their organisation. We agree that, to ensure behaviour of frontline staff is consistent with the tone from the top, the regulations should apply to all staff. Provided that this does not impact on the provision of fair base remuneration for persons in the organisation tasked with business growth.

28. Do you agree/disagree that within financial institutions and intermediaries sales incentives regulations should only apply to frontline staff and their managers? Why/why not?

See our response to question 27.

29. Do you think that external incentives should apply to any incentive paid to an agent, contractor or intermediary? Why/why not?

We agree that external incentives should apply to any incentive paid to an employee, agent or intermediary of the financial institution, provided that the definition of 'value' does not impact on incentives for achieving pure service level targets.

30. Do you agree that both individual and collective incentives should be covered? Why/why not?

We agree that both individual and collective incentives should be covered by the regulations.

31. Do you have any other comments on the discussion related to incentives?

We have no further comments.

#### Requirement to publish information about fair conduct programmes

32. Is more detail needed to outline what information should be published regarding financial institutions' fair conduct programmes to assist financial institutions to meet this requirement, or to assist consumers in their interactions with financial institutions?

Fidelity Life agrees with the objective of not requiring financial institutions to publish extensive detail about fair conduct programmes. There are currently significant disclosure requirements, under the various regimes which life insurers operate, and there is a real risk of information overload for consumers. Disclosure needs to be relevant and straightforward for consumers without being a compliance burden for financial institutions.

A better approach would be for financial institutions to work with the FMA to develop guidance or an approved template designed specifically for consumers. This would also ensure that customers have access to consistent information across financial institutions and that a financial institutions' publication of their fair conduct programme is appropriate.

33. Do you have any comments on the options outlined above? What do you think the costs and benefits would be to financial institutions and consumers of the two options?

While providing more detail under option 2 would have the benefit of more clarity and consistency, we are of the view that it is unnecessary, and option 1 is preferred.

34. This discussion document outlines two options regarding the requirement to publish information about the fair conduct programmes. Do you have any other viable options?

As noted in our answer to question 32, a better approach would be for financial institutions to work with the FMA to develop guidance or an approved template designed specifically for consumers.

#### Calling in contracts of insurance as financial products under Part 2

35. Do you have any comments on the proposal to declare contracts of insurance as financial products under Part 2?

Fidelity Life supports the proposal to declare contracts of insurance as financial products under Part 2 of the Financial Markets Conduct Act.

#### Exclusions of certain occupations or activities from the definition of intermediary

36. Do you think it would be appropriate to exclude people who are subject to professional regulation from the definition of an intermediary (e.g. lawyers, accountants, engineers)?

Consistent with our feedback regarding the treatment of intermediaries under the new regime for conduct of financial institutions, Fidelity Life supports regulations to exclude particular occupations or activities which are already subject to professional regulation.

37. Do you think that any other occupations or activities should be excluded from the new proposed definition of an "intermediary"? If so, why?

Consistent with our feedback regarding the treatment of intermediaries under the new regime for conduct of financial institutions, medical professionals and consultants who are involved in the provision of life insurance products, during different stages of the product lifecycle (for example at underwriting or claim time) should be excluded. These professionals provide an independent view, are covered by their own professional conduct standards and are not directly involved in the provision of products and services to customers.

#### Other comments

We have no further comments.