

# Submission template

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

### Your name and organisation

Name	Katrina Shanks
Email	Privacy of natural persons
Organisation/Iwi	Financial Advice NZ

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## 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?

No comment

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

No comment

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.

No comment

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

No comment

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)?

Refer other submission

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?

No comment

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

Refer other submission

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

Refer other submission

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

Refer other submission

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

No comment

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

No comment

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

No comment

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

No comment

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

No comment

15

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

No comment

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.

No comment

## Sales incentives

17

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

Our first preference is not to regulate sales incentives. We support the status quo.

Section 446P has the meaning of incentive “in relation to a relevant service or any associated product, means a commission, benefit, or other incentive...”

The definition of commission is when money is paid in payment for services rendered for performing a service. To label a significant portion of a sectors remuneration as an incentive sends a message to the sector and consumers the remuneration is based solely on sales. The new regime is focussed on advice which has duties and obligations alongside a Code of Professional Conduct for Financial Advice Services. Financial advice under the new regime reflects a level of professionalism based on knowledge competency and skills and it is disappointing to see this language to be used in legislation and regulations.

Where commission is a form of remuneration which is obtained under the framework of FSLAA we strongly believe this should be excluded from the bill.

We believe there has been no evidence of systemic harm for consumers through the use of sales incentives which gives rise to the legislation and regulation to prohibit certain types of sales incentives.

We also believe FSLAA and CoFI which are the primary legislation for conduct and culture should have time to be implemented before addition regulations are formed.

The legislative change with the focus on treating the client fairly should be allowed to be implemented, monitored and assessed and then if there are concerns regarding the remuneration structure then regulations should be drafted for consideration.

The sector is aware of the Minister’s desire to obtain good consumer outcomes and the sector is focussed on achieving this as well – this does not always have to be achieved through the use of regulation when there is currently no evidence of systemic harm.

The sector is aware of the need to manage conflict of interest which occurs through the remuneration structure which currently exists. The implementation of the new disclosure requirements under FSLAA allows for greater transparency for consumers. New regulation is being created without allowing the new regime to be implemented, monitored and assessed.

This is our preferred second option after status quo. This is due to the limited nature of the regulation which is directly addressing the concerns of the Minister.

The ability to prohibit remuneration for a whole sector through primary legislation is very wide-reaching powers and has the ability to destabilise a whole industry – especially when this is passed down via regulations.

Interfering in commercial remuneration structures can lead to dysfunctional markets which has unintended consequences.

We understand the intent of this regulation is to remove the conflict of interest for advisers receiving sales incentives based on volume or value targets as this could encourage advisers to place clients where they receive the greatest remuneration.

However, FSLAA has duties and obligations to ensure the client receives advice which is suitable for them (Code Standard 3) and treats the client fairly (Code Standard 1). In addition to this the regulation is not necessary at this time with the implementation of the new disclosure requirements under FSLAA. It appears regulation is being created without allowing the new regime to be implemented, monitored and assessed.

If this regulation was to proceed we strongly agree that linear targets are not included.

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

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The impact of prohibiting sales incentives based on volume or value-based targets is:

- Other forms of incentives could replace these incentives such as meeting product providers other targets e.g., persistency rates. This can have an adverse impact as well. For a client to remain in the same product may not be the best outcome for the client yet persistency rates maybe a measure of success and this is in the best interest of the product provider to retain clients.

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

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We do not support this approach as we believe this allows the powers of the regulator to be too wide reaching.

The ability to regulate a remuneration structure for advisers in a commercial environment which has no set parameters provides significant powers to a regulator during licensing.

Powers this great should be in primary legislation where oversight, public scrutiny and the consultation process are significantly more transparent.

21

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

We do not support this approach with such broad legislation.

22

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

We do not support this approach with such broad legislation.

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

23

Prohibiting remuneration for a whole sector through primary legislation is very wide reaching and has the ability to destabilise a whole industry – especially when this is passed down via regulations.

We believe while the legislation is still before Parliament there is an opportunity for changes via an SOP. Consideration should be given to having this section reconsidered and removed.

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

We believe there are many sales incentives that should be excluded from the regulations as they benefit advisers and obtain good outcomes for consumers. These include:

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- Professional Development – Development of advisers technical, business and personal skills can only benefit the consumer. This aligns with core competency, knowledge and skills which financial advisers are required to obtain under the Code of Professional Conduct for Financial Advice Services.
- Conference – Financial Advisers attend conferences to grow their personal, technical and business skills and share and obtain knowledge which enhances the advice a consumer receives. This aligns with core competency, knowledge and skills which financial advisers are required to obtain under the Code of Professional Conduct for Financial Advice Services.
- Membership to Professional Bodies – To allow financial advisers to have access to professional organisations like Financial Advice NZ via membership fees from providers increases their access to a Professional Bodies who promote standards, professionalism and ethics.
- Sponsorship of Conferences - This allows Professional Bodies to provide high calibre conferences with international speakers. Without the ability to have commercial sponsors these events would not be financially viable in such a small market. Conferences provide advisers personal, technical and business skills. The sharing and obtaining of knowledge enhances the advice a consumer's makes zero sense.

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

No

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?

No comment

27

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

Yes – It has to be an even playing field for all market participants otherwise (via legislation and regulation) you may have the unintended consequence of influencing either intentionally or unintentionally financial advisers to align more closely with financial institutions which will reduce the amount of independent financial advice consumers will receive. This is contrary to the intend of the legislation and will lead to poor consumer outcomes.

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?

Good conduct and culture should be across the whole organisation.

29

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

We believe if incentives are to be regulated then it has to be consistently applied across all advice which is provided.

30

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

The bill stipulates only individual incentives – we understand the intent of including collective incentives. We believe that the harm for which this bill was designed was for concerns regarding the placement of product based on remuneration. Collective incentives fall outside of the perceived harm therefore should be outside of the scope of the regulations.

31

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

We believe good legislation and regulation is formed on evidence-based research which supports the requirement for change. We cannot locate any such evidence.

It is unusual to regulate a remuneration structure for a sector via regulations. Regulative interference has the ability to distort a marketplace. In addition to this we have concerns the use of regulations are a blunt tool and not agile enough to respond to market changes.

If these changes were to be implemented, we would be concerned if the changes were not extremely specific and measurable to ensure they are reducing the harm for which they are intended.

#### 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?

No comment

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?

No comment

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?

No comment

#### 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?

No comment

#### 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)?

No comment

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

No comment



## Other comments – see below

Our first preference is not to regulate sales incentives. We support the status quo.

Section 446P has the meaning of incentive “in relation to a relevant service or any associated product, means a commission, benefit, or other incentive....”

The definition of commission is when money is paid in payment for services rendered for performing a service. To label a significant portion of a sectors remuneration as an incentive sends a message to the sector and consumers the remuneration is based solely on sales. The new regime is focussed on advice which has duties and obligations alongside a Code of Professional Conduct for Financial Advice Services. Financial advice under the new regime reflects a level of professionalism based on knowledge competency and skills and it is disappointing to see this language used in legislation and regulations.

We understand the intent of this regulation is to remove the conflict of interest for advisers receiving sales incentives based on volume or value targets as this could encourage advisers to place clients where they receive the greatest remuneration.

However, FSLAA has duties and obligations to ensure the client receives advice which is suitable for them (Code Standard 3) and treats the client fairly (Code Standard 1). In addition to this the implementation of the new disclosure requirements changes the information a consumer will receive so the remuneration structures will be more transparent to the client from inception to when the advice is received.

It appears regulation is being created without allowing the new regime to be implemented, monitored and assessed.

Where commission is a form of remuneration which is obtained under the framework of FSLAA we strongly believe this should be excluded from the bill.