FINANCIAL SERVICES FEDERATION

18 June 2021

Financial Markets Policy
Commerce, Consumers and Communications
Ministry of Business, Innovation and Employment

By email: financialconduct@mbie.govt.nz

Discussion document: Treatment of intermediaries under the new regime for the conduct of financial institutions

The Financial Services Federation (FSF) is grateful to the Ministry of Business, Innovation, and Employment (MBIE) for the opportunity to provide feedback with respect to the Discussion document on the Treatment of intermediaries under the new regime for the conduct of financial institutions.

By way of background, the FSF is the industry body representing responsible non-bank lenders, fleet and asset leasing providers and credit-related insurance providers. We have over 60 members and affiliates providing these products to more than 1.5 million New Zealand consumers and business. Our affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A. Data relating to the extent to which FSF members (excluding Affiliate members) contribute to New Zealand consumers, society and Business is attached as Appendix B.

As you will see from the FSF member list, the financial institutions to which the conduct regime will apply who are members of the FSF are the three Non-Bank Deposit Taker (NBDT) members, First Credit Union, Nelson Building Society, and the small credit-related insurance provider members. This submission will largely represent the views of these members rather than the remainder of the membership that are Non-Deposit-Taking Lending Institutions (NDLIs) or the Affiliate membership. Although, as responsible lenders who take their compliance obligations very seriously, the NDLI members are keeping a watching brief on the requirements of the conduct regime to ensure that they do not remain out of step with what is being required of other financial institutions.

The FSF has also submitted on the other discussion document issued by MBIE as part of this consultation, namely the discussion document on regulations to support the new regime for the conduct of financial institutions. This present submission will outline the same concerns in our introductory comments below, with respect to the proposed regime as a whole that will be introduced by the passing of the Financial Markets (Conduct of Institutions) Amendment Bill (the Bill).

Introductory concerns
In June of last year, several finance sector industry bodies wrote to then Minister of Commerce and Consumer Affairs, the Hon Kris Faafoi, expressing the collective concern of these bodies with respect to the Bill. The industry bodies who were signatories to this letter were the FSF, the New Zealand Bankers Association, the Insurance Council of New Zealand, the Financial Services Council and Financial Advice New Zealand. The letter is attached as Appendix C.

As you will see, the serious concerns raised in the letter centred around the lack of clarity contained in the Bill as to what the regime requires of financial institutions with respect to their conduct; the speed with which the Bill was originally drafted and the lack of consultation with affected financial institutions or their representatives as a result (which officials tasked with drafting the Bill acknowledged in the Bill's Regulatory Impact Statement); whether there was a need for yet another licensing regime for financial institutions already subject to a number of other licensing or registration requirements under other legislation; and the fact that the regime implemented by the passing of the Bill covered some financial institutions but not all.

The Minister responded by saying that, given the Bill was in front of the Select Committee at the time, he would wait to see what changes, if any, the Committee recommended to the Bill before meeting with the concerned industry bodies to further discuss the concerns raised.

Unfortunately, whilst the Select Committee did make some changes to the Bill when they reported back to the House on it in August last year, these were not sufficiently substantial as to make any real difference to it to address the concerns raised in the letter to the Minister. Given that the General Election was held a couple of months after the report back with the resulting change in ministerial portfolios, the concerned industry bodies have never had the further opportunity of presenting their concerns with respect to the conduct regime to the Government.

The FSF will therefore address those significant concerns about the regime which this Bill is seeking to introduce in relation to the treatment of intermediaries before answering the questions raised in the Discussion Documents.

These are articulated as follows.

The need for a new licensing regime:
The FSF has already articulated our strongly held view in our submissions on the Bill and the discussion document on the regulations to support the regime, that there is no need for an entirely new licensing regime for the conduct of financial institutions, and consequently, no need to interfere further with the treatment of intermediaries. The proposed regime aims to fill the 'gaps' that have been found in FMA's desktop reviews, but the FSF submits that there are no gaps in the treatment of intermediaries and therefore sees no necessity in this regime, particularly noting the recently enacted Financial Services Legislation Amendment Act 2020 (FSLAA).

The FSF queries what issues have been identified in intermediary treatment, that FSLAA has not already addressed, and what these proposed options will do to resolve these issues, as this has not been articulated clearly in the discussion document.

The FSF would like FSLAA to be the primary regime for regulating relevant intermediaries and the financial advice they may offer. MBIE has stated themselves throughout the discussion document that FSLAA's provisions will be duplicated in the Bill, and the FSF sees no need for such duplications but rather proper enforcement from the FMA.

Other relevant legislation

The FSF believes that other regimes that are already in place, are about to come into force, or are currently under review already provide for sufficient clarity and guidance on the treatment of intermediaries and conduct. However, with the introduction of this new proposed regime, the FSF has serious concerns as to the confusion and ambiguity in the definitions of intermediaries, incentives, commissions and so forth. The ambiguity the Bill and the discussion document causes, highlights the rush and poor consideration this consultation and regime has been given.

The FSF lists a whole suite of legislation, as done in our other conjoining submission, which deal with the issues identified in these discussion documents that render an entirely separate conduct regime entirely unnecessary.

The legislation to which the FSF refers includes:

- The recent implementation of a new financial advice regime through FSLAA which requires those financial institutions offering regulated financial advice in New Zealand to obtain a transitional Financial Advice Providers licence through the FMA before applying for a full license, and to prioritise their clients' interests. The requirements of this regime have been extensively duplicated throughout this discussion document.
- Changes to the CCCFA enacted in 2019 and accompanying regulations finalised earlier this year and guidance in the updated Responsible Lending Code of February this year – the vast amount of which is coming into force on 1 October this year. These changes have taken the CCCFA regime from being a very principles-based approach to a significantly more prescriptive one for providers of consumer credit contracts and credit-related insurance products in New Zealand. All of these changes are designed to improve consumer outcomes when applying for credit and the management of agents and employees of financial institutions.
- A new Deposit Takers Act is being proposed for all banks and NBDTs that raise deposits from the public. For NBDTs this will replace the Non-Bank Deposit Takers Act 2013 and will give the Reserve Bank greater supervisory powers over deposit taking institutions. It also introduces a Depositor Insurance Scheme for all deposit takers including banks and NBDTs with the aim of providing more consumer protection when they place investment money with licensed deposit takers.
- The Insurance (Prudential Supervision) Act 2010 review which is under way to ensure that the legislation remains current and relevant in requiring that insurance companies manage their risks well so that the public can have confidence in the insurance sector and that it remains sound and efficient.

- The Insurance Contract law reform which is expected to commence later this year to make improvements to the disclosure obligations for consumers when entering into an insurance policy so that it is clearer for consumers about what information they must tell the insurer; to ensure that insurers must respond proportionately when consumers don't disclose something they should have, or misrepresent themselves; to make changes to the way insurance policies are written and presented, so that it is easier for consumers to understand their insurance contracts; and to strengthen protections for consumers against unfair terms in insurance contracts – all of which is designed to ensure better consumer outcomes when dealing with insurers.

Financial institutions are already under extreme pressure to develop processes, policies, systems, and procedures to meet their obligations under these pieces of legislation or will be when they are finally enacted. The purpose of each of these is to provide a more robust financial sector in New Zealand to provide better outcomes for consumers. Both discussion documents published by MBIE acknowledge the overlap with this other legislation and yet extraordinarily putting in place these two discussion documents proposing severe and unnecessary burdens on financial institutions.

Therefore, on the basis of the fact that the development of the Bill has been rushed which has not allowed for sufficient consultation on its content; on the basis that there are already in place licensing regimes for financial institutions and advisers; and on the basis that there is large swathe of legislation either in place, about to come into force or in train that will also address issues of better consumer outcomes within our financial institutions, the FSF strongly urges Government to halt the progress of this Bill and the regime it seeks to bring in and wait until the other legislative reviews are completed to determine whether there are any gaps remaining with respect to fair conduct, and consequently the treatment of intermediaries.

Having said all of the above, the FSF will now go on to answer the questions posed in the discussion document in relation to treatment of intermediaries.

Question 1: Do you have any comments on Option 1: 'Amend definition of intermediary to focus on sales and distribution'?
The FSF is not in favour of this option. In application, this option would capture many intermediaries unintentionally who are involved with the financial institution.

The option requires a higher standard of monitoring and supervision for each intermediary involved in sales and distribution, which is not an accurate reflection of the nature of arrangements which financial institutions have with their intermediaries.

This option does not create any benefits should it be adopted and leaves the FSF to query what actual issue is MBIE attempting to resolve with the proposal of such an option.

Question 2: Do you think the scope of the proposed definition of an intermediary is comprehensive enough to capture the variety of sales and distribution methods and to avoid gaps and risks arbitrage?
The FSF submits that the proposed definition of an intermediary is too wide, and it does not provide any clarity as to what actually an intermediary is. As stated above, it does not resolve any issues that MBIE sees as an issue with the definition of intermediaries. The variability of intermediary relationships between various financial institutions has not been considered in the presentation of this option either.

Intermediaries working with larger regulated entities are supervised and monitored through differing arrangements and differing incentives, and further imposing the onus on smaller entities to supervise and monitor their arrangements to a higher level is not reflective of the nature of such intermediary relationships.

Question 3: Do you have any comments on Option 2?
The FSF is also not in support of this option. The definition covers a wide range of agents, with resulting further obligations on those financial institutions. The FSF also notes that those who are independent from the financial institution would be covered under this option, for example those people providing administrative services such as lawyers and accountants and other advisory services.

It seems to the FSF to be unjust to impose such an onus on financial institutions when they are not able to monitor such behaviour, nor is the behaviour relevant to the sale of the financial product. The wide range of services which have the potential to be captured under the 'agent' definition is of no benefit to any party and not a preferred option by FSF members.

Question 4: Do you think Option 2 would adequately exclude advisory services (e.g., lawyers, accountants) and other service providers to the financial institution who are not involved directly or indirectly, in providing any part of the financial institution's relevant service or associated products to consumers?
Option 2 would not adequately exclude advisory services and other service providers, as MBIE has identified in their own discussion under this option. The FSF sees no reason to comment any further, as MBIE has already identified this fact.

Question 5: Do you think any explicit exclusions are needed for particular occupations or activities? If so, which ones, and why?
Explicit exclusions are not necessarily a very effective method for regulation as products and financial institutions develop and evolve with market pressures.

The variability of financial institutions in their size, nature and operation is greater than MBIE recognises in the discussion document, and all agents with whom these institutions have arrangements cannot be excluded for nor defined appropriately and resiliently. Thus, the FSF does not see how a list of explicit exclusions would resolve the potential unintended issues with the definition of an agent and does not support this option.

MBIE has already identified the issues surrounding the adequate exclusions of advisory and professional services under this option, and therefore, the FSF sees no reason to pursue with this option.

Question 6: Do you have any comments on the objectives regarding the treatment of intermediaries?
The FSF queries why MBIE has acknowledged the objective to not replicate or duplicate any of the provisions in FSLAA, however, they then propose much the same and even further extensions of the responsibilities in FSLAA.

If duplication of FSLAA provisions is adopted in this new regime, then the FSF wonders why FSLAA was enacted in the first instance.

Question7: Do you have any comments on Option 3: 'Minimal changes to intermediaries' obligations'?
The degree of control required from financial institutions to exert on intermediaries is still very strong under this option.

FSF members have stated that they are in no position to control the conduct of their intermediaries, so a requirement to "manage or supervise" is very much inappropriate. FSF urges MBIE to consider the minimal contact arrangements that entities have with independent intermediaries in the consideration of their proposals, and therefore, requests that a minimal standard of supervision is required, if anything, as anything more is not feasible.

Question 8: If Option 3 were pursued, do you think any other obligations in section 446M (1) (bb), (bc), (bd) or (bf) would need clarifying or amending? Why/why not?
No further obligations should need clarifying nor any amendments, and nor should Option 3 be pursued.

Question 9: Do you have any comments on Option 4: 'More significant changes to intermediaries' obligations'?
In line with the FSF's introductory comments, the FSF's preferred option would be for the whole regime to be abandoned entirely. However, the FSF acknowledges the strong reality that Government will disregard our concerns and submissions on the totality of the regime and the lack of necessity for it, and the FSF therefore submits that Option 4 would be the FSF's least worst option if our first preference option is not taken up.

However, the FSF is still baffled as to why the Government believes that any of the options posited in the discussion document are even necessary. The discussion document itself admits that the purpose of option 4 is to attempt to minimise the potential duplication of responsibilities/activities between what is covered under the conduct regime and under the new financial advice regime in FSLAA. The FSF submits that surely this acknowledgement is sufficient in and of itself to cause the total rethink of this entire regime.

What the FSF can support with option 4 as its preferred least bad option is the removal of the requirement for financial institutions to manage and supervise intermediaries. This level of oversight is not possible in all intermediary relationships.

This option at least acknowledges FSF's argument that entities are not in the position to monitor and supervise intermediaries and third parties, and that current regimes are sufficient. However, it does not entirely acknowledge the FSFs belief that the regime itself is all unnecessary.

The FSF does not agree however with the requirement for all financial institutions to have effective processes etc with respect to requiring training for each intermediary in the financial institution's relevant services and associated products. Some financial institutions will carry out quite detailed training with their intermediaries because it is the institutions rather than the intermediary that carry the burden if relevant legislation (such as the CCCFA) is breached, as opposed to the intermediary.

However, there are requirements on licensed financial advice providers for them to be competent to provide the advice they are giving to individual consumers where the financial adviser carries the burden of not meeting that requirement. It would therefore seem appropriate to the FSF for the requirements of financial institutions dealing with licensed financial advice providers to make available detailed product information which advisers can access so that they have sufficient product knowledge to meet their financial advice obligations, rather than requiring the financial institution whose products the adviser is accessing to undertake training of advisers.

Question 10: What do you think the level of responsibility should be for financial institutions' oversight of intermediaries? For example, "managing or supervising the intermediary to ensure they support the financial institutions compliance with the fair conduct principle" or "monitoring whether the intermediary is supporting the financial institution's compliance with the fair conduct principle", or something else?
"Monitoring whether the intermediary is supporting the financial institution's compliance with the fair conduct principle" is a more reasonable standard for a blanket imposition then the "managing or supervising" standard proposed in previous options in the FSF's view.

The latter is based on the false assumption that financial institutions have that level of control over intermediaries in which they are able to manage or supervise, which is most definitely not the case for independent third-party intermediaries.

Smaller financial institutions have variable levels of control over their intermediaries, compared to that of larger intermediaries. NBDTs and other smaller financial institutions do not have the same bargaining power, access to, and control than banks have over their intermediaries.

The treatment of intermediaries should then reflect the variability in the nature of arrangements between various financial institutions, and not adopt a high threshold which all financial institutions will not be able to meet.

Question 11: What standard do you think financial institutions should have to oversee their intermediaries to?
As has been frequently stated previously in this submission and in the submission in response to the second discussion document, the FSF ultimately thinks that what is currently present in terms of regimes and regulations is sufficient and therefore there should be no other standard imposed on financial institutions.

However, on the assumption that the proposed Bill and accompanying regulations will be passed, FSF advocates for the minimum possible standard to be imposed on financial institutions to oversee the conduct of their intermediaries.

This better reflects the nature of the arrangements financial institutions particularly the smaller regulated institutions, have with their intermediaries. Financial institutions do not have the significant influence over their intermediaries that the discussion document seems to suggest, and the FSF urges Government to consider the arrangements all financial institutions have with their intermediaries, as opposed to applying a lens that is more suited to intermediaries of larger regulated entities.

Question 12: Do you have any comments on Option 5: 'Distinguish between FSLAA and non-FSLAA intermediaries'?
The FSF has some concerns with respect to Option 5. The FSF agrees that those intermediaries that are regulated under FSLAA (i.e. licensed financial advice providers) are already subject to a form of conduct regulation under FSLAA that is intended to achieve largely the same objective as the conduct regime as is acknowledged in the discussion document and which is a point which FSF has made repeatedly throughout this and previous submissions on the proposed conduct regime.

However, the FSF submits that Option 5 suggests a lack of understanding on the part of officials as to how the delivery of products through intermediaries that are not regulated under FSLAA is actually managed by financial institutions who deal with such intermediaries. Once again, existing regimes for financial institutions deal with the treatment of such intermediaries to ensure good customer outcomes.

The CCCFA for example quite clearly regulates the way in which car dealers, travel agents, or retailers sell finance or insurance products from relevant financial institutions. This Act places the responsibility to ensure that these products are sold responsibly squarely on the financial institutions themselves and the new regime coming into force from 1 October introduces very harsh penalties against the institution and its directors and senior managers personally for not doing so.

These financial institutions are therefore highly incentivized to ensure that appropriate customer outcomes are achieved through intermediaries acting on their behalf. Increased prescription with respect to ensuring that the product being sold to the customer is suitable to meet the customer's goals and objectives and there are extreme levels of prescription required of anyone selling the products covered by the CCCFA to assess that the customer can afford the repayments or premiums without suffering substantial hardship coming in as at 1 October will also serve to ensure these better customer outcomes.

These intermediaries themselves are also highly incentivized to ensure that they meet the requirements to sell financial institutions' products responsibly as failure to do so could result in the institutions ceasing to make their products available to the intermediary which would result in the intermediary losing sales of their own goods or services if they are unable to provide the institutions' products.

The FSF suggests that the regulators of the FSLAA regime and the CCCFA regime should be allowed to get on with their jobs and enforce their respective legislation without any further interference. Doing so will ensure that all intermediaries, whether they are regulated under FSLAA or not, are meeting their responsibilities to ensure good customer outcomes.

Question 13: How far do you think financial institutions' oversight of FSLAA intermediaries under Option 5 should extend? For example, should it cover the general conduct of the intermediaries, or more narrowly on product performance and related consumer outcomes (or something else)?
As previously stated, the FSF does not see any reason why FSLAA regulated intermediaries should be subject to such oversight by financial institutions which is one of the reasons why the FSF does not support Option 5.

The FSF queries the purpose of the FSLAA legislation in the first instance if officials believe there is a need for an additional regime to further regulate the FSLAA intermediaries.

Question 14: Do you have any comments on the proposals regarding obligations in relation to employees and agents?
The obligations imposed by Part 3 of the discussion document appear to the FSF to largely repeat what is required of financial institutions in previous options discussed in the document. This warrants the FSF to ask why it is necessary they be duplicated here again.

It also repeats what is required of financial institutions in other legislation such as the CCCFA. The Responsible Lending Code provides further detail and guidance as to the obligations on institutions in relation to the training and managing of agents and employees, in far more depth than what is proposed here, and therefore the FSF submits that once again, this is an unnecessary proposal which should be dropped forthwith.

Question 15: Do you think there should be a distinction drawn between employees and agents? Why/why not?
The FSF refers to previous comments made about the necessity for the conduct regime at all given all the other ways in which the conduct of employees and agents of financial institutions is regulated.

Question 16: Do you think any amendments should be made to the obligations in 446M (1) that would apply to employees and agents?
The FSF does not think these obligations on financial institutions are necessary given the other legislation of the way in which financial institutions manage their relationships with employees and agents, as the FSF has stated many times over.

Question 17: Do you have any other comments or viable proposals?
The FSF's strong view, reiterated in this submission, our previous submission on the Bill itself and on the other discussion document, is that the most reasonable proposal would be to abandon the conduct regime entirely. Nothing that the FSF has seen in either of the discussion documents dissuades us from that view – in fact they have reinforced the fact that considerable duplication exists between existing financial institution regimes and this one.

The FSF believes that this legislation has been rushed and is poorly constructed and written. The FSF does not see any point in such a regime being rushed through the process, whilst several other regimes relevant to financial institutions have been implemented or are undergoing review very shortly as well.

The FSF is happy to speak to any of these points raised and looks forward to a response.

Yours sincerely,

Privacy of natural persons

Diana Yeritsyan
Legal and Policy Manager

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FINANCIAL SERVICES FEDERATION

<u>Appendix A</u>

Membership List as at June 2021

Non-Bank Deposit Takers Leasing Providers	Vehicle Lenders	Finance Company Diversified Lenders	Finance Company Diversified Lenders	Credit Reporting & Debt Coll Agencies	Affiliate Members
<u>Rated</u> Asset Finance (B) <u>Non-Rated</u> Mutual Credit Finance Gold Band Finance ➢ Loan Co <u>Credit Unions/Building Societies</u> First Credit Union Nelson Building Society <u>Leasing Providers</u> Custom Fleet Fleet Partners NZ Ltd Lease Plan ORIX New Zealand SG Fleet	AA Finance Limited Auto Finance Direct Limited BMW Financial Services ➢ Mini ➢ Alphera Financial Services Community Financial Services European Financial Services Go Car Finance Ltd Honda Financial Services Mercedes-Benz Financial Motor Trade Finance Nissan Financial Services NZ Ltd ➢ Mitsubishi Motors Financial Services ➢ Skyline Car Finance Onyx Finance Limited Toyota Finance NZ Yamaha Motor Finance	Avanti Finance ➢ Branded Financial Caterpillar Financial Services NZ Ltd Centracorp Finance 2000 Finance Now ➢ The Warehouse Financial Services ➢ Southsure Assurance Flexi Group (NZ) Limited Future Finance Geneva Finance Harmoney Home Direct Instant Finance ➢ Fair City ➢ My Finance John Deere Financial Latitude Financial Metro Finance Pepper NZ Limited Personal Loan Corporation	Pioneer Finance Prospa NZ Ltd Smiths City Finance Ltd South Pacific Loans L & F Group ➢ Speirs Finance ➢ Speirs Corporate & Leasing ➢ Yoogo Fleet Thorn Group Financial Services Ltd Turners Automotive Group ➢ Autosure UDC Finance Limited	Baycorp (NZ) ➢ Credit Corp Centrix Collection House Equifax (prev Veda) Illion (prev Dun & Bradstreet (NZ) Limited Intercoll Quadrant Group (NZ) Limited <u>Credit-related Insurance Providers</u> Protecta Insurance Provident Insurance Corporation Ltd	255 Finance Limited Buddle Findlay Chapman Tripp Credit Sense Pty ltd Experian EY FinTech NZ Finzsoft Green Mount Advisory Happy Prime Consultancy Limited HPD Software Ltd KPMG LexisNexis PWC Simpson Western Verifier Australia Total 71 members

Appendix B

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FINANCIAL SERVICES FEDERATION

The Financial Services Federation (FSF) is the association for responsible finance and leasing companies operating in New Zealand. This infographic is a snapshot of our 40 lending members, the membership list can be found at our website www.fsf.org.nz.

Consumer Lending

1.6 million
 # Consumer Loans

$7.5 billion
Total Assets

$355,039,962
Secured

$2,996,322,244
Unsecured

$2,484,376,195
Motor Vehicle

$654,604,625
Mortgage

Business Lending

172,4000
 # Businesses Loans

$7.6 billion
Total Assets

$609,678,636
Secured

$79,625,359
Unsecured

$4,134,085,468
Motor Vehicle

$133,896,221
Mortgage

$186,477,244
Operating Lease

FSF lending members data survey period as at 29 February 2020 . Data collected and aggregated by KPMG. Values in NZ$.

Appendix C

ICNZ Insurance Council of New Zealand

Financial Services Federation

Financial Advice New Zealand

New Zealand Bankers Association

Financial Services Council. Growing and protecting the wealth of New Zealanders

19 June 2020

The Hon Kris Faafoi

Minister of Commerce and Consumer Affairs

By email: Kris.faafoi@parliament.govt.nz

Dear Minister

The financial sector industry bodies that are signatories to this letter urgently seek your support to putting an urgent halt on the passage of the Financial Markets (Conduct of Institutions) Amendment Bill (the Bill) in order to enable a comprehensive review of what we believe to be the Bill's significant shortcomings and to allow for development of a better legislative approach to achieve the Government's policy objectives.

We all very much appreciate the support the Government has provided to the sector throughout the period of Alert Levels 4, 3, 2 and now 1 through such initiatives as the wage subsidy, the Cashflow Lending Scheme and most particularly through the deferral of other key pieces of legislation and regulation in recognition of the fact that we are each in our own way impacted by COVID-19. For the members of our organisations this is particularly manifested in the ways in which they have stepped up to provide assistance to their customers and each of us as industry bodies have stepped up to support our members in turn.

Each of us have had our opportunity to appear before the Finance & Expenditure Select Committee in the last few days and each of us have voiced our concern that the Bill in its current form is unlikely to achieve the purpose for which it has been drafted. Indeed, it has become apparent during the Select Committee process that this concern is widespread.

The Regulatory Impact Statement accompanying the Bill made it clear that the officials responsible for the Bill's drafting felt that this process was significantly hindered by the time constraints under which they were working. The RIS points to the fact that these constraints did not allow for extensive consultation with stakeholders on the development and refinement of options and that this would lead to a need for further refinements through consultation during the legislative process.

The RIS further stated that the Bill sets out a high-level framework for a broad conduct regime but that the details would need to be fleshed out over time through regulation and potentially further legislative changes once there has been an opportunity for further policy thinking. It went on to say that the time constraints had also not allowed officials to consider some of the broader options.

We agree with these points and would argue that the speed with which the Bill has been drafted has not allowed for sufficient consultation and that as a result of this, it has significant drafting issues and therefore lacks substance and clarity as to what will be required of financial institutions to demonstrate that their conduct meets the test of being fair.

Legislation which relies heavily on its form through regulations is confusing not only for the industry but also consumers. Consumers must be able to understand the meaning and intent of legislation to ensure it has been applied correctly and understand consumer redress if required.

While we all support the need for good conduct and for customers to be treated fairly we question whether or not a fair conduct regime is required as a separate piece of legislation in itself or whether it would be better incorporated into the requirements that already exist under other licensing regimes under which financial institutions and entities are covered in order to avoid regulatory overlap and to ensure that licensing requirements are clear and sufficiently streamlined as to be easily complied with.

Specific examples of anomalies or potential unintended consequences that will arise as a result of the Bill being passed in its current form which give rise to our concerns include the fact that many providers of financial products like Kiwisaver and consumer credit contracts will not be within scope of the legislation and will not therefore be required to develop a fair conduct programme or have limitations set around the way in which they structure their incentives programme while other providers of similar products will be subject to these requirements.

This means that intermediaries working with a range of providers will be strongly incentivised to refer their customers to those providers who will not be bound by the regime's prohibition against commissions or incentives based on sales volumes or values or to those providers that will not require their intermediaries to comply with their fair conduct programme.

Conversely, there will be other providers of services to financial institutions for whom the Bill as worded would apply when it clearly should not. These providers would include any panel-beater, carpet-dryer, plumber, plasterer, painter etc carrying out repairs arising from an insurance claim because they are carrying out the intermediary financial service of reinstating the loss incurred.

We the undersigned feel that the policy aim of this Bill is too important for it not to be put through a robust process to ensure that it can achieve its aim and we therefore strongly suggest this Bill now be withdrawn and the approach to conduct legislation (if needed) rethought in the context of the current regime, to allow all stakeholders to be consulted in an effective manner to be able to sufficiently consider all the options and to provide the clarity as to what the regime's requirements will be that is currently lacking.

Thank you for taking the time to consider our request. We the below market participants request an urgent meeting with you to discuss this further.

Yours sincerely

Privacy of natural persons

Tim Grafton

Chief Executive Officer

Insurance Council of New Zealand

Privacy of natural persons

Roger Beaumont

Chief Executive Officer

New Zealand Bankers Association

Privacy of natural persons

Katrina Shanks

Chief Executive Officer

Financial Advice New Zealand

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