

Submission template

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

Your name and organisation

Name	Privacy of natural persons, GM, Governance and Compliance
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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 further 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)?

The NZAA is supportive of MBIE's position as it pertains to 446M(1)(a), in that 'The fair conduct programme must be in writing and include effective policies, processes, systems, and controls for 'enabling the financial institution to meet all of its legal obligations to consumers, including under this Act, the Fair Trading Act 1986, the Credit Contracts and Consumer Finance Act 2003, the Consumer Guarantees Act 1993, and the Financial Service Providers (Registration and Dispute Resolution) Act 2008'.

While no regulations are required to support , as with the 446M(1)(a), we suggest the guidance may be required, to support financial institutions maintain consistent 'policies, procedures, system and controls' that would likely meet the obligations under 446M(1)(a), where required.

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.

We have no further comments on 446M(1)(ab), as we believe the principle-based obligations are reasonably clear, i.e. the requirement for financial institutions for designing, and managing the provision of relevant services and associated products, including regularly reviewing relevant services and products provided 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)?

We have no further comments to make, as we also believe the principle-based obligations under 446M(1)(ac) are reasonably clear for financial institutions 'identifying, monitoring, and managing risks associated with conduct that fails to comply with the fair conduct principle, including roles, responsibilities, maintaining records and reporting.'

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)?

The principle-based obligations under 446M(1)(bb) to (bd) assumes that the financial institution would require an intermediary, such as the NZAA, to have training on the 'fair conduct programme' and procedures and processes under paragraph (b). It is currently unclear whether it would be the responsibility of the financial institution to provide this training to the intermediary, or whether it would be the intermediary who would be responsible for their own 'fair conduct programme'. As the NZAA is a licensed Financial Advice Provider (FAP); selling multiple insurance products from multiple financial institutions by many nominated representatives, it may not be practical or possible, for financial institutions to provide different versions of training to the NZAA as an intermediary, on their 'fair conduct programmes', as:

- Some financial institutions 'fair conduct programmes' training, may conflict with other 'financial institutions training programmes; and
- The NZAA has its own conduct programme, and this may conflict with the financial institutions' requirements of the intermediary.

A fairer approach may be to require FAP's to simply maintain their own training to meet their own conduct programmes, as required under their FAP license.

In addition, (bc) requires that financial institutions would need to check that an intermediary has a 'reasonable understanding' of the matters covered by the training. The term 'reasonable understanding' may need further expanding on as some financial institutions may expect exam style tests to be completed by the intermediary, while others may simply require intermediaries to self-evidence, through internal checks and balances, that the nominated representative meets the minimum requirements. We believe that further guidance is required in relation to the meaning of 'reasonable understanding', together with examples around how this could be evidenced by the financial institution, as well as the objective of being able to demonstrate these requirements.

Please also see the NZAA's separate submission on the *Conduct of financial institutions treatment of intermediaries* paper (particularly NZAA's preferred Option 5) which would remove or limit a financial institutions ability for 'managing or supervising' the NZAA. As mentioned in the NZAA submission, as the NZAA has multiple insurers, it would not be practical or possible to be managed or supervised in this way.

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 are supportive of minimum requirements around remediation of issues. However, clarity would need to be provided in relation to the term 'adequate' and 'adequately' as they pertain to:

d) Review and remediation processes must be **adequately** resourced'.

e) **Adequate** records must be kept of review and remediation processes.

If 'adequate' pertains to allowing the financial institution to meet the other sections, i.e. a, b, c, f and g, then this would potentially aid clarity.

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

7

Please see the NZAA's submission on the *Conduct of financial institutions treatment of intermediaries* paper (particularly NZAA's preferred Option 5) removing the ability of financial institutions to manage or supervise FAP licensed entities such as the NZAA. In this regard we do not see financial institutions playing a supervisory role around how the NZAA provides incentives to employees.

8

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

No further comments.

9

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

No further comments.

10

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

No further comments, although noting many of these provisions would be required under FAP licensing, and so could be more relevant for non FAP's to meet these additional requirements.

11

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

No further comments.

12

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

No further comments.

13

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

NZAA is very supportive of these discussions around customer vulnerability, and we are interested in how the 'significant initiatives in train by the FMA on consumer vulnerability, can further guide and support NZAA programmes and guidance already underway, which support our vulnerable customers.

14

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

We are supportive, however further guidance would then be required in order to meet these obligations.

15

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

No further 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 further comment.

Sales incentives

17

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

No further comment

18

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

The NZAA is supportive in prohibiting sales incentives, but only insofar as the incentive policies, processes, and systems of the financial institution, or intermediary, could lead to incentives that are largely or mainly sales target based. For the NZAA, sales are a small component of a much wider set of metrics used to incentivise our nominated representatives. Other measures include the annual results from Quality Assurance procedures, showing that nominated representatives had adequately addressed customer needs, as well as other measures around ensuring customer satisfaction and good customer outcomes. As such, the sales incentive structures employed by the NZAA, while perhaps motivating, are a relatively small component of a wider set of measures, which in itself in combination with all other measures, would result in a relatively small monetary reward as a % of the nominated representative's overall annual salary. In addition, other measures, such as the NZAA's internal independent quality assurance function, monitors completed sales to make sure that nominated representatives continue to provide good customer outcomes. We therefore recommend that incentive programmes that provide sufficient checks and balances, such as the one described above, are excluded from the sales incentive prohibition.

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

19

The discussions to date are that it may have a negative impact on the NZAA in terms of motivating (encouraging) Insurance Consultants to adequately provide insurance services to enough customers during their working day. We know through recent reports, including the FSC's "[Gambling for Life](#)" report that New Zealanders are 'Under Insured'. Therefore, having some component of an incentive framework that encourages a certain volume of sales; even if it is based on sales per branch, as opposed to being linked to an individual, would not in itself be problematic, and actually have a positive effect.

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

20

As per sections 18 and 19, we think that sales incentives that are balanced through other incentive measures that encourage good customer outcomes should be excluded for the prohibition. For example, the NZAA has a QA programme in place assessing each insurance consultant's ability to deliver good customer outcomes. The outcomes from this QA would also be used to determine whether a nominated representative qualifies for an incentive payment as part of their annual bonus.

21

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

As per 19.

22

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

As per 18, 19 and 20.

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.

No further comment.

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)?

As per 18, 19 and 20.

25

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

As per 18, 19 and 20.

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 further comment.

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

27

The intention of the proposed regulations, as we understand them, would be to discourage sales that are problematic, i.e. would cause a conflict of interest, and potentially lead to poor customer outcomes. By having a balanced set of KPI's, with sales volumes being only one component, we feel that this would not be problematic to those selling insurance. As other staff members, including those supervising nominated representatives, would not be involved in the sale directly, and would also be subject to the same balanced KPI's, or a subset thereof encouraging good customer outcomes, then we would see that all staff would necessarily need to be included in the incentive regulations.

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?

As per 27.

29

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

No further comment.

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

30

We feel that collective incentives, i.e. those which apply at branch level, and not linked to individuals, would encourage a certain level of sales volume; thus, encouraging measures sufficient for a business to thrive/survive. If these were also balanced out by other incentives to directly encourage good customer outcomes, then yes we feel that collective incentives that demonstrate this balance, should be excluded from the prohibition.

31

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

No further comment.

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 further 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 further 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 further 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 further 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 further 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 further comment.

Other comments

No further comment.