

# Submission template

---

## Fit for purpose financial services conduct regulation

This is the submission template for the discussion document, *Fit for purpose financial services conduct regulation*. The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in the discussion document by **5pm on 19 June 2024**. Please make your submission as follows:

1. Fill out your name, organisation and contact details in the table: “Your name and organisation”.
2. Fill out your responses to the consultation document questions in the table, “Responses to discussion document questions”. Your submission may respond to any or all of the questions in the discussion document. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.
3. If you would like to make any other comments that are not covered by any of the questions, please provide these in the “Other comments” section.
4. When sending your submission:
  - a. Delete this page of instructions.
  - b. Please clearly indicate in the cover letter or email accompanying your submission if you do not wish for your name, or any other personal information, to be disclosed in any summary of submissions or external disclosures.
  - c. Note that, except for material that may be defamatory, MBIE intends to upload PDF copies of submissions received to MBIE’s website. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission. If your submission contains any confidential information:
    - i. Please state this in the cover page or in the e-mail accompanying your submission, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 that you believe apply. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.
    - ii. Indicate this on the front of your submission (eg the first page header may state “In Confidence”). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).
  - d. Note that submissions are subject to the Official Information Act 1982 and may, therefore, be released in part or full. The Privacy Act 2020 also applies.
5. Send your submission:
  - as a Microsoft Word document to [FinancialMarkets@mbie.govt.nz](mailto:FinancialMarkets@mbie.govt.nz) (preferred), or
  - by mailing your submission to:

*Financial Markets  
Small Business, Commerce and Consumer Policy  
Ministry of Business, Innovation & Employment  
PO Box 1473  
Wellington 6140  
New Zealand*
6. Please direct any questions to [FinancialMarkets@mbie.govt.nz](mailto:FinancialMarkets@mbie.govt.nz).

# Submission on discussion document: *Fit for purpose financial services conduct regulation*

## Your name and organisation

Name	Privacy of natural persons
Organisation (if applicable)	
Contact details	Privacy of natural persons

[Double click on check boxes, then select 'checked' if you wish to select any of the following.]

The Privacy Act 2020 applies to submissions. Please check the box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

MBIE intends to upload submissions received to MBIE's website at [www.mbie.govt.nz](http://www.mbie.govt.nz). If you do not want your submission to be placed on our website, please check the box and type an explanation below.

I do not want my submission placed on MBIE's website because... [Insert text]

## Please check if your submission contains confidential information:

I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

I would like my submission (or identified parts of my submission) to be kept confidential because... [Insert text]

## Responses to discussion document questions

### Introduction

1

*Do you agree the proposed criteria are appropriate, given the objectives? Are there other criteria which should be considered?*

***For changes made to be of minimal disruption and cost to organisations.***

### 1: Options for CoFI Act reform

#### A. Options for amending minimum requirements for fair conduct programmes

##### *Option A1: Remove/amend some minimum requirements for fair conduct programmes*

2

*Do you support removing or amending some of the minimum requirements for fair conduct programmes? What are the advantages and disadvantages of this option?*

***Yes.***

3

*Which requirements should be removed or amended, if any? Please explain what changes you would like to be made.*

***All requirements that are duplicated or don't lead to a tangible benefit to consumers.***

4

*What would be the impact of removing or amending particular requirements (for example, on compliance costs for businesses)?*

***Any change results in costs to businesses, both to update documents and procedures and to train staff.***

5

*Do you have any other comments on the minimum requirements for fair conduct programmes?*

***Why has AI not been considered with this update? The increasing use of AI, needs to be considered in that consumers interacting with a company's AI assistant should expect the same conduct requirements and expectations of accuracy.***

##### *Option A2: Potential additions to minimum requirements for fair conduct programmes*

6

*What are the advantages and disadvantages of adding an express minimum requirement for fair conduct programmes relating to fees and charges?*

***This should be limited to non-banks, particularly short term lenders.***

7

*What are the advantages and disadvantages of adding an express minimum requirement for fair conduct programmes relating to complaints processes?*

***The Complaints process is already heavily regulated within FAP's. Non-FAP's should be targeted.***

8

*Do you consider that financial institutions already need to cover fees and charging arrangements and/or complaints processes in their fair conduct programmes under the*

current requirements?

Yes.

*Option A3: Remove all minimum requirements for fair conduct programmes*

9

*Do you support removing all of the minimum requirements for fair conduct programmes from the legislation? What are the advantages and disadvantages of this option?*

**No. Directions are needed to avoid rabbit warrens. Smaller institutions do not have access to large legal budgets to determine if requirements are met. Prescription saves smaller organisations time and money. FMA guidance notes also need to be provided in a timely manner, unlike the AML/CFT Trust updates provided 3 weeks before the legislative change. This caused costs to double with the rework required.**

*Option A4: Retain minimum requirements for fair conduct programmes without change*

10

*Do you support retaining the existing list of minimum requirements for fair conduct programmes without any changes? What are the advantages and disadvantages of this option?*

**No. This has already been illustrated as problematic and should be corrected from the start.**

*Proposal: proceed with Option A1 (remove/amend some minimum requirements)*

11

*Do you support the proposal to remove and amend some of the minimum requirements for fair conduct programmes and not to proceed with the other options? Why/why not?*

**Yes**

**B. Options for amending fair conduct principle**

*Option B1: Keep the fair conduct principle open-ended*

*Option B2: Make the fair conduct principle definition exhaustive*

*Proposal: retain status quo (Option B1)*

12

*Do you support the proposal to maintain the status quo in the definition of the fair conduct principle? What are the advantages and disadvantages of this option?*

**n/a**

13

*Are there any additional clarifications that could be made to the definition of the fair conduct principle, or matters that you consider should be included or removed? Why or why not?*

**n/a**

14

*Do you have any other suggestions or comments in relation to the fair conduct principle?*

**n/a**

15

*Do you have any comments in relation to other areas of the CoFI Act that have not been*

covered in this section?

n/a

## 2. Options for regulatory framework and powers

### C. Consolidating financial market conduct licences

*Option C1: Amend the FMC Act to require the FMA to issue a single licence covering different classes of market service*

16 Do you support the FMA being required by legislation to issue a single conduct licence covering one or more market services? What are the advantages and disadvantages of this approach?

**Yes. Cost savings.**

17 Could consolidating existing licences into a single conduct licence give rise to any unintended consequences or costs for existing licensed firms? If so, please explain with examples where relevant.

**Only those with multiple licences can answer this question.**

18 Are there any other matters that should be considered around market services conduct licensing?

n/a

### D. Enabling reliance on another regulator's assessment

*Option D1: Amend legislation to enable the FMA and RBNZ to rely on an assessment by the other regulator where appropriate*

19 Should the FMC Act be amended to enable the FMA to rely on the RBNZ's assessment for appropriate matters? Please provide examples of any specific areas where you think this could be useful.

**Yes. If the outcome is a cost saving and simplification.**

20 Should there be equivalent provisions enabling the RBNZ to rely on the FMA's assessment for appropriate matters? Please provide examples of any specific areas where you think this could be useful.

**No. The RBNZ should remain as independent as possible.**

21 Are there any other improvements that could be made to the way the FMA and the RBNZ work together to reduce compliance costs and regulatory burden?

n/a

### E. Ensuring the FMA has effective tools

*Option E1. Introduce change in control approval requirements*

22 Should change in control approval requirements be introduced into the FMC Act? Please

explain your answer, including why the current approach does or does not work.

**IF Conduct is heavily regulated, then this is duplication. If conduct remains flexible, then this would be needed, but would need to be introduced with time frames in mind. If a small FAP wishes to purchase another small FAP, introducing complexity and another layer of costs would be prohibitive to growth and innovation. If implemented it should be over sales over a particular value, such as \$10mil.**

23 Should change in control approval requirements apply only to firms licensed to act as financial institutions, or to all firms licensed under Part 6 of the FMC Act? Why?

**What benefit is achieved by adding a layer of compliance and costs if two firms, both regulated under Part 6 combine? This should be exclusively for situations in which the purchaser is not licenced.**

24 Do you have any other feedback on the change in control requirements option?

**Please consider what additional benefit is provided to consumers, if only in certain circumstances, then limit to those circumstances.**

#### Option E2: Introduce on-site inspection powers for the FMA

25 Should the FMA have the ability to conduct on-site inspections without notice? Please explain your answer, including why the current approach does or does not work.

**No. An FMA visit is exceptionally disruptive, placing all work on hold. While larger firms may have the resources to have staff on hand for impromptu visits, a smaller firm does not. With all the licensing and regulatory burden already placed on FAPs, what additional benefit will be provided to consumers by this approach. From a small business standpoint it would disrupt the service provided to customers. To become a licenced FAP, the FMA has investigated all of our documentation and issued us with a licence. A Warrant of Fitness type of approach would be far more beneficial and those without their current WOF could be subjected to closer scrutiny.**

26 Should an on-site inspection power apply only certain firms or in certain circumstances, e.g. to firms licensed under Part 6 of the FMC Act, or to all firms regulated as financial markets participants? Why?

**None whatsoever. There is no tangible benefit to any consumer that an impromptu visit would create over a systematic audit. If impromptu visits are pursued you would expect FMA productivity in monitoring to deteriorate significantly. Firstly the right person needs to be available at the business being investigated, and once they are available, need to source documents requested. Most staff are booked out for a week in advance. In a day, where time critical events are occurring it is unreasonable to expect a smaller business to drop their customers in order to facilitate this.**

27 What safeguards should be in place for on-site inspections without notice?

**I do not support impromptu visits.**

28 Do you have any other feedback on the on-site inspection option?

**The motivation for this option appears to be a limited number of firms that are non-responsive. Capturing all business by the non-compliance of a few is akin to allowing the**

**Police to do random searches at any persons house at any time, because there is crime.**

*Option E3: Introduce an expert report power for the FMA*

29 *Should the FMA have the ability to commission expert reports? Please explain your answer, including why the current approach does or does not work.*

**Absolutely Not. From a small business perspective, the idea of additional costs being forced onto us, is concerning and to achieve what exactly? If the FAP system does not work, then scrap it and remove a layer of costs from us. If it does work, then work within its parameters.**

30 *Should an expert report power apply only to firms licensed under Part 6 of the FMC Act, or to all firms regulated as financial markets participants? Why?*

**None. If the FMA holds concerns about a particular business, then audit them using the existing powers available.**

31 *What safeguards should there be for an expert report power?*

**That this is not used, unless the audit reveals that something is amiss. It should be a last resort not the first port of call.**

32 *Is it appropriate that the firm concerned bear the cost of the expert report? Why / why not?*

**No. There are many single person FAPs and smaller businesses which may be put out of business when facing an in-depth audit at their own expense. Consider what an authorised firm would charge for an in-depth audit? For a larger business, the data set would be much larger and in turn the costs larger.**

33 *Do you have any other comments on the expert report power option?*

**This section does not appear to place the consumer first. How is the consumer benefitting? At what point does the FMA consider costs to become unreasonable? I have already encountered 1 person FAPs NOT expanding because the compliance cost and burden is too great. What relief does this proposal bring to good corporate citizens?**

**3: Limitations and constraints on analysis**

34 *Are there any other areas and options for change that we should consider that have not been addressed in this discussion document?*

**When the FMCA was reviewed after the first 5 years, the industry was consulted and believed there could be SOME improvement. We did not anticipate a whole new regime and the 2 years of work that followed to adjust (large organisation). If the objective is to provide relief, it is concerning to see the draconian powers sought for impromptu visits and the escalation of costs through nominated auditors. Where is the consumer in all of this? All of these will further increase costs to the consumer at no tangible benefit.**

**Other comments**

At present a Financial Adviser is required to be registered under a FAP with an inability to have a career break or to take on another role short term outside of a FAP without the loss of their licence. We want to attract and retain Financial Advisers to the industry, not loose them over technicalities.

We have hired a staff member to a non-advising position, but are forced to register them in order that they maintain their Financial Adviser Licence that they will not be using for at least the next 12 months. This has introduced around \$2,000 in unnecessary costs, not only the FSPR cost but also a Dispute Resolution Scheme (DRS) cost. One cannot be on the register without a DRS scheme, even though NO advice is being provided.

We have also wanted to keep Financial Advisers within our business on secondments to other roles. Again, no advice is being provided but to maintain licences, the dual cost of FSPR and DRS exists.

The previous systems of AFA's allowed for a lot more flexibility.