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

Your name and organisation

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Organisation (if applicable)	Financial Advice New Zealand
Contact details	Privacy of natural persons

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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?*
	Financial Advice NZ supports the government's objectives to reform the regulatory landscape for financial services and the open consultative approach of MBIE. Broadly, we support steps to improve clarity on financial institutions regulatory requirements in designing fair conduct programmes, specifically, in relation to the separate legal licensing requirements of Financial Advice Providers and financial institutions. We support the reform objectives to: • Simplify and streamline regulation of financial services (including reducing duplication) • Remove undue compliance costs for financial market participants • Improve outcomes for consumers. In relation to point three – improve outcomes for consumers. Our interpretation of this objective is that it has broad application to include building consumer confidence in the financial services market. If consumers do not have the confidence in the market to seek a financial product in the first place, either directly or through an intermediary such as a Financial Advice Provider, then we suggest that the outcomes for consumers can be worse in the absence of the financial product – e.g access to credit, insurance, funds etc. From our perspective, we see the objectives of financial services reform to be viewed as a whole – that is, all aspects of the relevant Acts, working in tandem to promote consumer confidence in the financial services market and achieve good financial outcomes for consumers.
	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?*
	We believe all financial institutions should have a robust risk management controls and their fair conduct programmes should be aligned to and support the fair conduct principle. The requirements of paragraph (a) and subparagraphs (i) to (iii) in paragraph (c), are matters that are best determined by the financial institution in their adherence to the intent of the Act, enabling them to take a more flexible and proportionate approach to relevant areas of their business. We therefore support the removal of these prescribed requirements.

Adjusting or consolidating paragraphs (e) to (h) to reduce the level of prescription

We would strongly advocate that an adjustment to these paragraphs is necessary in respect to how the financial institution's fair conduct programmes relate to employees and agents.

We have evidenced examples of confusion in the market in respect to how training and ensuring a 'reasonable understanding' extends to financial advice providers, specifically in relation to paragraphs (g) and (h).

Our view is that financial advice providers and financial advisers who are engaged by licensed FAPs already have an obligation of knowledge, skills, and competencies under the Code of Professional of Professional Conduct. The adjustment of paragraphs (e) to (h) would avoid duplication and unnecessary compliance costs for the both the institution and the intermediary.

Financial advice providers and financial advisers operating under a licence are already supervised and monitored by the FMA and are subject to their own set of conduct rules under subpart 5A of Part 6 of the FMC Act, and the Code of Professional Conduct for Financial Advice Services which sets out the minimum standards of competence, knowledge, and skill.

Part 1 of the Code sets out the ethical behaviour, conduct, and client care and Standard 1 obligates 'a person who gives financial advice must always treat clients fairly'.

We are supportive of adjustments to the CoFI minimum requirement clauses to ensure improved clarity that financial institutions provide training, supervision and monitoring of their employees, and financial advice providers ensure compliance with their regulatory obligations of the Code.

We note, in June 2023, the FMA released a CoFI guidance note on intermediated distribution. 'It gives guidance on the FMA's expectations when financial institutions distribute products and services through intermediaries'.

The FMA states in their guidance note, that 'an intermediary that holds a FAP licence will generally pose a reduced level of risk that the institution's distribution method will not meet the fair conduct principle'.

We believe the guidance note of the FMA is a positive and clear outline of the 'shared responsibility' of financial institutions and intermediaries in the fair treatment of consumers. We would like to see some of the points raised in that guidance moved into the legislative framework, to provide greater certainty for market participants.

We see the interplay between the scope of FSLAA and CoFI legislation delivering good outcomes for consumers. The implementation of the FSLAA legislation regulates financial advice providers and financial advisers in the fair treatment of consumers; CoFI regulates financial institutions.

The government's objectives of

- Simplify and streamline regulation of financial services (including reducing duplication)
- Remove undue compliance costs for financial market participants

will not be achieved if financial institutions overreach their fair conduct programmes to intermediaries, where the financial advice providers must already have effective policies, processes, systems and controls in place.

An example in the market of this includes:

- Financial institutions asking FAPs for confirmation of individual financial advisers' competency levels.
- Inconsistent requirements from financial institutions.
- Seeking access to advice documents on the suitability of advice provided by the adviser to the client.

That unnecessary compliance burden imposed through the manner in which some financial institutions have constructed their fair conduct programmes to ensure compliance could be overcome if there was express statutory relief provided for financial institutions relying on the procedures and processes of their intermediaries, including those in relation to training and supervision of individuals providing financial advice for consumers, where the intermediary is a licensed financial advice provider.

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

As noted in our cover letter, Financial Advice NZ is the largest representative professional body for financial advisers and financial advice providers in New Zealand.

Our view is that any amendments which improve clarity for market participants and provide confidence in all aspects of the regulatory framework will help achieve the government's objectives of improving consumer confidence in the financial services market and delivering good consumer outcomes.

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

We have gathered recent anecdotal evidence from a series of member meetings around the country, that there is a disproportionate amount of time financial advice providers and financial advisers are spending replying to - or meeting - requests from financial institutions. These are often inconsistent and varied depending on the institution. The implication is that financial advisers are spending less time with their clients to deliver good advice outcomes.

We would like to see further investigation and consultation with our financial advice provider members to establish data-led decision making.

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

	Broadly, we are supportive of the principle that there is flexibility to enable fair conduct programmes to accommodate proportionate risks and tailored to account for the size and nature of the business of financial institutions. We have a concern that further clarification is required to distinguish between the obligations of financial advice providers and financial advisers, where they have a distinct and separate legal obligation to a financial institution. We are supportive of the FMA's CoFI guidance note that sets out they do not expect constant surveillance of intermediaries, monitoring individual instances of advice, and institutions supervising intermediaries' legal compliance. We see this distinction as avoiding unnecessary compliance costs and removing duplication, while strengthening both financial advice provider and institution commitment to achieving fair treatment of consumers. We note MBIE's comments on the process and timeline for CoFI to commence on 31 March 2025, and that the expected amendment legislation will be passed no earlier than Q3 2025. We support regulatory relief from the start of CoFI until the amendments are passed to remove additional compliance costs.
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?*
	Our view is that as CoFI is intended to be principle-based legislation, adding further complexity and additional requirements could lead to duplication in compliance. We note that FAPs and financial institutions already have disclosure obligations in relation to fees and charges in their dealing with customers.
7	*What are the advantages and disadvantages of adding an express minimum requirement for fair conduct programmes relating to complaints processes?*
	We note there is an existing regime for complaints processes and adding further requirements may result in additional complexity and duplication.
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?*
	Broadly, we agree with MBIE's assessment that this option would lead to a decrease in clarity and increase in uncertainty. We have noted examples of inconsistencies and additional compliance burden being incurred by financial advice providers when responding to requests from financial institutions. We would like to see policy settings that encourage consistency across the market.
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?*
	Broadly, we agree with the suggestion in paragraph 45 that improved transparency, certainty and accountability to regulatory standards are achieved through primary or secondary legislation.
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?*
	As stated above, feedback we have received anecdotally is that further clarification and adjustments of the minimum requirements would result in a reduction of compliance costs and duplication for financial advice providers.
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?*
	In principle, option A1 would seem the best option to deliver the government's objectives. However, we would like to consult further with the financial advice market on the potential implications and unintended consequences. As noted, improved clarity on the separation of obligations between financial advice providers and financial institutions will ultimately deliver better outcomes for consumers.
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?*
	Broadly, our view is that a principle-based approach is more desirable than an overly prescriptive approach. We see CoFI not in isolation but intersecting and working in conjunction with other aspects of financial services market regulation to build consumer confidence in the sector, encourage innovation to meet the future needs of New Zealand society, and reduce unnecessary compliance costs.

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?*
14	*Do you have any other suggestions or comments in relation to the fair conduct principle?*
15	*Do you have any comments in relation to other areas of the CoFI Act that have not been covered in this section?*
	As noted, this is a significant piece of reform with far reaching implications. Further consultation with the advice market will lead to more informed, data-driven decision making.
	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?*
	From our perspective most financial advisers operate under one license of a financial advice provider. For entities which operate with two or more licenses we support removal of duplication and reduction in unnecessary compliance costs.
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.*
18	*Are there any other matters that should be considered around market services conduct licensing?*
	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.*

	Our view is that both the FMA and the RBNZ should be able to rely on each other's assessment on appropriate matters. We note that the Council of Financial Regulators forum exists where five agencies, including the FMA and RBNZ meet to discuss regulatory issues, risks and priorities for financial markets.
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.*
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?*
	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.*
	We note the explanation of the difference between prudentially regulated institutions change in control, and the FMC Act relating to conduct assessments in change of control of licensed entities. In practice, financial advice providers already notify the FMA with changes to control and have obligations in applying for a license and director's duties. We see the potential for complications identified in paragraph 100 of the submission document that identifies increased direct transactions costs, business costs and opportunity costs in executing commercial transactions. Commercial constraints of seeking approval for change in control may work against the government's objectives by adding further compliance costs. Further consultation with our financial advice providers would be necessary to quantify the practical implications and implementation of this proposed change.
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?*
	As noted above, there are potential consequences which require further consultation with financial advice providers who are not prudentially regulated.
24	*Do you have any other feedback on the change in control requirements option?*
	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.*
	We are curious to understand further detail on how this change may work in practice. As identified in the submission document prudential regulation and conduct regulation are fundamentally different. Broadly the concept that for the twin peaks regulatory model to work efficiently and effectively – the RBNZ and FMA should have similar and equivalent powers. However, in practice the management of risks are different. Further discussion and consultation on practical examples, market optics, and appropriate safeguards is warranted.
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?*
27	*What safeguards should be in place for on-site inspections without notice?*
28	*Do you have any other feedback on the on-site inspection option?*
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.*
	Broadly, the use of experts to help identify risks, and enable firms to address issues and resolve concerns before enforcement action is necessary will lead to more proactive outcomes. We would expect if compliance issues or risks have been identified by the FMA then steps to address these risks would already be undertaken by the firm before the need of expert reports. As noted previously, we agree with the submission that prudential and conduct regulation are different and therefore the application of expert reports in practice should be considered differently.
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?*
31	*What safeguards should there be for an expert report power?*

32	*Is it appropriate that the firm concerned bear the cost of the expert report? Why / why not?*
	We do not believe firms should be bear the costs of expert reports where a risk has been identified.
33	*Do you have any other comments on the expert report power option?*
	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?*
	4: Implementation
35	*Do you have any comments on implementation of these reforms?*

Other comments